Children's Services Practice Notes is a newsletter for North Carolina's child welfare workers produced four times a year by the North Carolina Division of Social Services and the N.C. Family and Children’s Resource Program, part of the Jordan Institute for Families and the School of Social Work at the University of North Carolina at Chapel Hill.

In summarizing recent research, we try to give you new ideas for refining your practice. However, this publication is not intended to replace child welfare training, regular supervision, or peer consultation—only to enhance them.

Let us hear from you!
If you would like to comment about something that appears in this or any other issue of Children's Services Practice Notes, please do so! Address your comments to:

John McMahon
Jordan Institute for Families
UNC–CH School of Social Work
Chapel Hill, NC 27599-3550
State Courier Number: 17-61-04
E-mail: johnmcmahon@mindspring.com

Newsletter Staff
Lane Cooke, MSW, Advisor
John McMahon, MA, Writer/Editor
Amy Ramirez, Asst. Editor
Daniel Brezenoff, Writer

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TERMINATION OF PARENTAL RIGHTS

Termination of parental rights (TPR) is one of the most difficult elements of child welfare. Though most families involved with our system never reach the point where someone petitions a court to terminate parents’ rights, TPR is there. It does happen.

When social workers and others concerned with the welfare of children do seek TPR, they do so out of necessity: sometimes TPR is a child’s only chance of growing up in a safe, loving, permanent home.

Yet social workers also find TPR to be a source of ambivalence and personal pain. Though they may recognize that seeking TPR is in the long-term best interests of a child, they also grieve when TPR occurs—for the pain that TPR inevitably causes the child, and for that part of the birth parent that loves the child and wants to be a good parent.

Because TPR is so serious and final, we must understand when and how to seek it.

TALKING TO PARENTS ABOUT TPR

As any social worker who has been through the process knows, it is not enough to know the laws, policies, and procedures behind termination of parental rights (TPR). Even with all this firmly in your grasp it still falls to you to talk about TPR the family involved.

What you say to parents will depend a lot on their unique circumstances and your relationship with them. Although no one can tell you what to say—there is no right or easy way to have this conversation—the following may help.

YOUR FIRST DISCUSSION

Good social work practice requires you to begin to prepare for the possibility of TPR from the moment a case is substantiated. However, it is not appropriate to discuss TPR with parents unless their child is taken into DSS custody or DSS petitions a court to take custody of the child. Discussing TPR before this point would be premature, and could severely hurt your chances of establishing a trusting, supportive relationship.

If their child is taken into DSS custody, talk clearly and honestly with parents about TPR. Make sure they understand what TPR means and that, though it is not what anyone wants, TPR is often a necessary part of the “alternate” plan your agency will need to pursue if it is not possible for their child to return home. As part
TALKING TO PARENTS ABOUT TPR

Understanding Foster Care can help you explain TPR to parents.

of your initial discussion about TPR, it may be helpful to use the explanation of TPR found in Understanding Foster Care: A Handbook for Parents:

After a period of time, if DSS feels you are not making efforts or progress toward making your home safe for your children to return, DSS may petition the court for a Termination of Parental Rights (TPR). If the judge orders the termination of your parental rights, you have no rights to your children. They are no longer legally your children. They will be adopted by another family.

A TPR is serious because you will not be able to get your children back afterwards. Please work with your social worker, the GAL, your attorney, and the judge so that a TPR is not necessary (NCDSS, 1998).

If their children are already in foster care, it will be helpful to leave parents a copy of this handbook, which you can obtain through your agency.

This discussion about TPR should be only the first of many. Each time you meet with the family to go over their family case plan or to discuss something else, remind parents of the gravity and potential consequences of their involvement with your agency. When you bring TPR up in these conversations make it clear that you and your agency are committed to helping the family address the issues that caused them to be involved with you. Explain that you bring up TPR not as a threat, but to motivate them to act so it does not happen to their family.

If families understand what TPR is and why agencies seek it, they may be better able to help their children move on to their adoptive homes if TPR does happen.

IF IT SEEMS INEVITABLE

In some cases, despite everyone’s best efforts, it is not possible for children to return home. In these cases, you and your agency must pursue the alternative plan you have devised to ensure that the children involved grow up in a safe, permanent home. Before you can help the parents and children understand and accept this change in plans, you must make some adjustments yourself.

One of the most important things to understand about this switch in plans is that it does not have to be all or nothing when it comes to your relationship with the parents. As one former child welfare supervisor explains, “The most successful worker I ever supervised had this approach: she would say to parents ‘I support and respect you as a person, but I can no longer support you as a parent.’ Parents did not always hear this, but she truly looked at TPR and relinquishment this way. Because of this, I think, she was better able to support parents, which of course helped the children.”

If approached in the right way, some parents are willing to relinquish their rights to their children, which is one of the best ways to reduce the trauma to their kids.

RELINQUISHMENT

If it seems likely that your agency will soon pursue TPR, in most cases you will want to encourage parents to consider voluntarily relinquishing their parental rights. Before you approach parents about this, however, you should talk both with your agency’s attorney and the parents’ attorney.

The Court of Appeals in the Maynard case, 116 N.C. App. 616 (1994), held that the parents’ right to counsel in a juvenile abuse and neglect case includes the right to counsel about the decision to relinquish the child for adoption. Not all parents want to or will consult with their attorney about this decision, but you must ensure the parents’ attorney is notified of the relinquishment discussions and that the parents understand their right to legal advice on this issue. Your DSS attorney can help insure that timely notice is given (Thompson, 2001).

When you do discuss relinquishment, explain it in a straightforward way, as in the following:

Sometimes parents recognize that they cannot provide their children with a safe, permanent home within a reasonable period of time. If this is the case in your situation, you have the option to voluntarily relinquish (give up) your parental rights to your children so that they can be adopted by another family (NCDSS, 1998).

Emphasize the benefits to the child and to them: relinquishment can be an act of love that can spare both parents and child a painful, protracted legal battle.

THE FINAL DISCUSSION

Regardless of how you approach it, the news that your agency has decided to pursue termination of their parental rights will be devastating to parents. Because this can be such a difficult conversation, it is wise to take safety into consideration beforehand. If possible, do not have a TPR conversation by yourself with parents. For other suggestions for improving your personal safety and handling angry people, see Prac-
ADVICE ABOUT TPR

Practice Notes asked current and former child welfare supervisors what they thought social workers and supervisors should know and understand about TPR, over and above the legal and procedural details covered on pages 4, 5, and 6. Here’s what they had to say.

SOCIAL WORKERS

- Start planning for TPR as a possible outcome the day the case is substantiated. Talk with parents about TPR as soon as a child enters DSS custody, and as a regular part of meeting with parents afterwards. TPR should never be a surprise to parents.
- Use lifebooks with every child as soon as the child is placed in foster care. This will help a child understand and cope with placement and, if necessary, relinquishment or TPR.
- Understand that TPR is both an event and a process. It may happen officially on a certain day in court, but it is also a process that begins when a case is substantiated.
- Know about the family. This is especially important in situations when you are involved in a TPR but were not part of the initial decision to seek termination. If you do not fully understand your agency’s decision you will not be able to present or adequately defend this decision. As a result you may feel quite conflicted.
- Seek all the guidance and support you can get, especially from your supervisor and experienced peers.
- Actively pursue training and formal learning about reaching closure with families, preparing children for TPR, and TPR itself. This topic is addressed in some detail in Legal Aspects of Child Welfare in North Carolina and Case Building Toward Permanence, courses offered by the NCDSS Children’s Services Statewide Training Partnership.
- Observe a contested TPR hearing where you can observe cross examination, etc., before you have to prepare for a TPR hearing.

SUPERVISORS

- Know the law and the entire TPR process. Keep abreast of policy changes.
- Frequently review relevant laws and state policies with your staff.
- Constantly review your staff’s caseload; make sure they are aware of the grounds for TPR. This is of greater significance today because of the new law, which gives workers 60 days to draft a petition for TPR after they are relieved of reunification efforts. Supervisors must ensure that things are in order with these cases, and verify that there are indeed grounds for TPR.
- If the plan is to seek TPR, ensure that every effort is made to attain adoption or another permanent outcome for the child in question.
- Be available to your staff. Offer support, guidance, and direction. In TPR cases this can take the form of attending the hearing with your worker.

Special thanks to the following for their contributions to this article: Rhoda Ammons, NC Division of Social Services, Velvet Nixon, Wilson Co. DSS, Ann O’Shel, UNC-CH School of Social Work, Kathy Stone, Wilson Co. DSS, and Nina Wright, Wake Co. DSS.
TERMINATION OF PARENTAL RIGHTS: LEGAL ISSUES

Editor’s Note: This article is not intended to replace the advice of an attorney, nor does it constitute legal counsel. It is simply an overview of the broad issues social workers will encounter when considering termination of parental rights. It was not written by an attorney.

Termination of parental rights (TPR) in North Carolina is guided by federal and state law. To promote the well being of children and to minimize the harm done to children and their families, we must understand this procedure and the laws that guide it.

FEDERAL LAWS GUIDING TPR

On the federal level, social workers should be familiar with the Adoption and Safe Families Act of 1997 (ASFA), the latest in a series of federal laws designed to clarify the most important and controversial issues in termination procedures and standards (Genty, 1998). ASFA amends the Adoption Assistance and Child Welfare Act of 1980, also known as P.L. 96-272, which had previously been the federal law most relevant to TPR. Under P.L. 96-272 agencies were required to make “reasonable efforts” to preserve families. This was the term lawmakers chose to help agencies balance parents’ basic right to raise their children with the right of children to be safe.

ASFA amends the reasonable efforts requirements in two ways. First, it states that the “child’s health and safety shall be the paramount concern.” Second, it allows agencies to ignore reasonable efforts when a parent subjects the child to aggravated circumstances (e.g., torture, abandonment, chronic abuse, etc.) as defined by state law, or when a parent’s rights to another child have been involuntarily terminated.

ASFA also includes very specific requirements about TPR designed to shorten the time children spend in foster care. ASFA requires states to seek termination:

- When a child has been in the custody of the state, in foster care, for 15 of the past 22 months
- When a court rules that a parent has killed or tried to kill another child, or severely assaulted a child
- When a court finds the child to be an abandoned infant

The implications of these requirements are broad and far-reaching. Incarcerated parents, for instance, or those with severe medical or psychological impairments, may be unable to care for their children for more than 15 months. Thus, the state would be required to seek TPR.

There are exceptions to ASFA’s rules. A termination hearing does not have to be brought if the:

- Child is being cared for by a relative (Note: NC has modified this exception. It requires that the “permanent plan be that the child is in the guardianship or custody of a relative “or other suitable person.”)
- State can document a compelling reason that termination would not be in the child’s best interest
- State admits that it has not provided the family of origin with the services state law requires

NC law [G.S.7B-907(d)] requires court approval for TPR.

BEST INTEREST AND TPR

- The child has a basic need for care, stimulation, continuity and reciprocity. The child welfare system cannot provide continuity and falls short in providing reciprocity. Only membership in a stable family can answer the child’s questions: “Who will take care of me?” and “Who will be there for me?” TPR and adoption provide a chance for the child to be a member of a family where he will receive this continuity of care.
- The child needs stable roots to promote identity development. Multiple placements result in multiple roots — a confused life and sense of self. A family connection that is permanent is a way to answer the child’s questions: “Who am I?” and “Where do I fit in the world?” The child needs to belong to a family where he can sink permanent roots.
- A child needs to be claimed to believe he has worth. A child who has been moved or who fears the possibility of a move does not think he is worth loving or keeping. A child who does not feel loved or valued will not be able to love or value others. A permanent family connection will answer the child’s question: “Does anyone love me enough to keep me?” A child needs to be claimed by a family where he will be valued.

Source: Malpass & Thompson, 2000

Only membership in a stable family can answer the child’s question, “Who will be there for me?”

cont. p. 5
to confirm that these exceptions exist; ASFA merely requires they be documented. Only in the most severe cases can reasonable efforts to preserve or reunite the family be ignored (Genty, 1998).

**NORTH CAROLINA LAWS GUIDING TPR**

TPR is also guided by state law. N.C. General Statute Chapter 7B lays out the general procedure and requirements for termination. Court decisions, however, also set precedents for termination procedures. Consulting your agency’s attorney is the best way to prepare to meet the current standards as decided by case law precedent.

The first step in termination is filing a petition with the court. This petition can be filed by a parent, a court-appointed guardian of the child, a guardian ad litem, DSS, anyone with whom the child has lived for a continuous period of two years or more, or anyone who has filed a petition for adoption of the child.

After petition, the courts hold a preliminary hearing. Once the termination procedure begins, the court must decide two things: whether the petitioner has shown the existence of one or more grounds for TPR, and whether termination of the parents’ rights is in the child’s best interest.

More specifically, based on statute and relevant case law precedents, the evidence should answer these questions, excerpted from the Malpass and Thompson's (2000) training course, *Case Building Toward Permanence*:

**Regarding Termination:**
- Have all *appropriate services* been offered to the parents in a *timely* manner?
- Have the parents responded in a way that demonstrates they are *now* able to provide *at least a minimally sufficient* level of care for their children?
- If the child has special needs, are the parents able to meet those needs *at the time of the TPR hearing*?
- Is there reason to believe that the parents could materially improve the conditions or behavior that led to the removal of their child within the next three months? Can any improvement be expected to last?
- What type of relationship have the parents maintained with their child since removal?
- What progress or problems has the child experienced while in foster care?

**Regarding the Child’s Best Interest:**
- What can we offer the child that is better than continued foster care?
  - Are there foster parents willing to adopt the child?
  - Do we have other adoptive parents waiting? What is our plan to find them?
  - Have we had success in placing children of the same age, race, or special needs?
- Have we had success in placing children of the same age, race, or special needs? *cont. page 6*

**GROUND FOR TPR IN NORTH CAROLINA**

1. Previous abuse/neglect with little improvement in the parent’s ability to care for the child and the probability of a repetition of abuse/neglect if the child is returned home.
2. Willfully leaving a child in foster care for more than 12 months without the parents making "reasonable progress under the circumstances" to correct conditions that led to the removal of the child.
3. Failure of a parent for a continuous period of six months immediately prior to filing of TPR petition to pay a reasonable portion of the cost of foster care although physically and financially able to do so.
4. Failure of a father of a child born out of wedlock prior to filing of TPR petition to (1) establish paternity, (2) legitimate the child, (3) marry the mother of the child or (4) provide substantial financial support or consistent care for mother and child.
5. Inability of a parent as a result of mental retardation, mental illness, organic brain syndrome, or substance abuse to provide proper care and supervision for a child and a reasonable probability that this inability will continue for the foreseeable future.
6. Willful abandonment of a child by a parent for at least 6 consecutive months.
7. The parent has murdered, attempted or conspired to murder, or committed a felony assault that results in serious bodily injury on another child of the parent or other child residing in the home.
8. The parental rights of a parent to another child have been terminated by a court and the parent lacks the ability or willingness to establish a safe home.

**BEST INTEREST ISSUES**

1. Once grounds for termination exist, court must still find that termination is in the child’s best interest.
2. Parental love alone does not preclude a finding of best interest. Child’s best interest prevails over parent’s desire to retain relationship.
3. Does either parent have a substantial relationship with the child? Could the family make enough progress in the near future so that the child could be returned home?
4. Is placement with relatives an appropriate alternative permanent plan for the child?
5. What is the adoption plan?

Sources: N.C.G.S. 7B-1111, Malpass & Thompson, 2000
TERMINATION OF PARENTAL RIGHTS: LEGAL ISSUES

- Have we looked at relatives?
  - Can they adopt?
  - Can they maintain contact?
  - Will they give “blessing” for the adoptive placement?
  - Will siblings remain together? Should they?
- Are there people to whom the child is emotionally attached?
  - How much longer must the child wait for a permanent placement?
  - What percentage of his life has been spent in foster care?
- What will happen if TPR is not granted?
  - Who will “parent” this child when he or she is an adult?
  - Will the child become “nobody’s child” in long-term foster care? (see sidebar, this page)

At the TPR hearing DSS will be required to provide a permanency plan to the court. The grounds for termination in North Carolina are outlined in the sidebar on page 5.

As you look at this sidebar, note that poverty, incarceration, mental illness, substance abuse, and “immoral” behavior are not reasons in themselves to terminate parental rights. If a petition for TPR is to be successful, Malpass and Thompson say, it should clearly demonstrate, as in an “equation,” the relationship between parental behavior and the effect on the child. Thompson says, “I cannot imagine even initiating a TPR petition unless that equation exists and is reflected in court orders.”

An example of such an equation might be: parent repeatedly abandons and neglects child due to a combination of substance abuse and mental illness. This contributes to a level of parental care that is below what is minimally adequate—that is, that negatively affects the child’s safety and development. DSS’s thorough attempts to help the parent have failed. Continuing existence of causal factors (substance abuse and mental illness) supports a decision for TPR.

Thus, the existence of a ground for termination does not guarantee parental rights will be terminated. For example, past abuse or neglect, though grounds for termination, may not successfully support a TPR petition if the court believes the parent has made substantial improvement and can now or in the near future parent the child adequately, or if the court does not find that termination is in the child’s best interest. Appellate court decisions have made it clear, however, that a parent cannot avoid termination by merely making sporadic efforts to improve; those efforts must result in tangible progress in the parent’s present ability to care for his child.

All the North Carolina general statutes are available on the Internet (see <http://www.ncga.state.nc.us/statutes/statutes_in_html/chp007b.html> ). Having a copy of N.C.G.S. Chapter 7B in your office is a good idea.

After termination, the work of DSS is far from over. Permanency plans are subject to court review every six months until the child is placed and an adoption petition filed. Social services is expected to find a permanent home for children, assure the safety of the child in that home, and follow up with the family for an extended period.

Adoption assistance during this phase is critical. To learn more about this topic, consider attending Financial and Legal Aspects of Adoption. Developed by staff at the NC Attorney General’s Office and the NCDSS, this two-day specialized course covers many essential aspects of adoption assistance. To learn more about this course or to register for spring 2001 offerings, consult your NCDSS children’s services training calendar.

References
CONSEQUENCES OF TPR FOR CHILDREN

The consequences of terminating parental rights are impossible to predict precisely. Many consequences will be positive for the child; that's why parental rights are terminated in the first place—to help the child. But some negative consequences are likely in many cases. The balance will be different for every child. Below are some possible consequences of completing the termination procedure and some recommendations for minimizing negative consequences.

POSSIBLE POSITIVES

- Child is safe from abuse or neglect
- Adoption becomes possible, giving the child a chance to be claimed and to develop a sense of worth and to secure a sense of positive identity
- Confusion of multiple caretakers is minimized
- Child does not have to make court appearances
- Energy of caretakers and social workers can be focused on helping child with emotional and behavioral issues, instead of finding a placement, protecting child, etc.
- Child and others involved have clearer vision of future

POSSIBLE NEGATIVES

- Severe behavior problems due to loss of parents
- Unable to see siblings and other relatives from birth family
- Failure to attach to new caretakers
- If new placement is unsafe, trauma of past abuse can be rekindled
- May be very difficult for child to trust anyone
- Disrupted eating and sleeping habits
- Difficulty adjusting to new rules in new home
- Identity crises, feeling like an outsider, embarrassment around peers due to these feelings
- Depression, anger, anxiety, or poor, confusing, or inconsistent boundaries with new family

MINIMIZING THE NEGATIVES

There is no magic pill to minimize negative consequences. Children in new families need many of the same things that all children need: love, attention, clear limits on behavior, open communication, and safety and security. But after TPR children need these things in greater quantity and with greater frequency.

Talk with children about their past and their parents. Without belittling or harshly criticizing their biological parents, social workers and new caretakers should explain as often as necessary that their old home was not safe for them, and their new home will be safe. Children may respond, “I don’t care,” but in most cases, a safe home that is nurturing and supportive will win them over eventually.

Help foster and adoptive parents prepare for a range of behaviors. Caretakers need to understand that difficult or upsetting behavior is common, and not take it personally.

Newly placed children may want a lot of time alone, and then suddenly need extreme amounts of reassurance about their place in the family. It is okay to indulge these needs. Parents may worry about “spoiling” children, but the greater concern with newly adopted children who have been abused or neglected is their sense of trust and security.

On the other hand, behavior such as aggression, stealing, or sexual acting out should be responded to clearly and quickly. How parents choose to respond is up to them, but there must be consistent and firm limits on unacceptable behavior. However, physical punishment will only reinforce the child’s sense of being unsafe, insecure, and distrustful.

Give foster and adoptive parents honest and complete information about the child. An important way to minimize the negatives of TPR is to be sure that we know everything possible there is to know about the child, and to share this information accurately with the potential adoptive parents. It is counterproductive to sugarcoat the negative behavior and just hope adoptive parents will learn to live with it. We must also learn what the adoptive parents think they can tolerate. A bed wetter might not be tolerated in one home, but might thrive in a home where this is simply “no big deal.”

Make sure adoptive parents know about the resources available to them. Adoption is a lifelong process. At the very least all adoptive special needs children (and the vast majority of children in DSS custody are special needs) are entitled to post-adoption services.

In addition there is adoption subsidy—a basic entitlement that can help minimize the negatives for kids who have been through TPR. Subsidy not only allows for post adoption services, but also provides cash payments, vendor payments, Medicaid, and financial assistance known as nonrecurring expenses reimbursement. Medicaid will pay for mental health appointments for adopted children, and there are additional incentives for special needs children that can help pay for residential treatment, covers the cost of psychiat-
CONSEQUENCES OF TPR  from page 7

Connecting adoptive parents to subsidies and assistance is one way to reduce the negative consequences TPR can have on children.

Finally, research suggests that children who continue to visit their families of origin (with supervision, of course, when safety is an issue) or are placed in new families along with a sibling are much more successful. If this can be arranged, it should be.

References

NEW TPR RESOURCE
Beginning in March, the North Carolina NCDSS Children’s Services Statewide Training Partnership will begin offering Emotional Aspects of Termination of Parental Rights, a two-day, competency-based course developed by the Jordan Institute for Families at the UNC-Chapel Hill School of Social Work. Emotional Aspects of TPR will be offered:

- **March 26–27, Greensboro Training Center**
  Registration opens: Jan. 15, 2001
  Registration closes: Feb. 19, 2001
- **May 8–9, Asheville Training Center**
  Registration opens: Feb. 27, 2001
  Registration closes: April 3, 2001

To register, fax your registration to Judy Prophet at 704/573-4802. For a blank registration form consult your agency’s copy of the latest NCDSS children’s services training schedule or visit <http://childrensservices.dhhs.state.nc.us/policy_and_planning/forms/regform2.pdf>

Have questions related to the training content? Call the Jordan Institute for Families’ Selena Berrier at 919/962-4363. For questions related to registration call Judy Prophet (704/573-9632).

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