

# Big Bend Community Based Care Policy & Procedure

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**Series:** 600: Legal Issues  
**Policy Name:** Termination of Parental Rights  
**Policy Number:** 600  
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Ch. 63, F.S.  
CFOP 175-15

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## Policy

It is the policy of Big Bend Community Based Care, Inc. (BBCBC), to ensure that the CMO's Dependency Case Managers (DCM) work with the Children's Legal Services (CLS) to effectively and efficiently manage the Termination of Parental Rights (TPR) process.

## Procedure

### A. Petition for TPR.

1. A petition seeking adjudication to terminate parental rights will be initiated by the Guardian ad Litem, CMO through the CLS, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.
2. The form of the petition is governed by the Florida Rules of Juvenile Procedure.
3. The DCM will provide a certified copy of the child's birth certificate and other documents as requested to the CLS attorney to prepare the petition for TPR within the time frame established at the Permanency Staffing.
  - a. The attorney and the DCM will sign the petition which will be filed by CLS.
  - b. A hearing on the TPR Petition will be set by the court.
4. In such cases where extraordinary circumstances are not found, BBCBC and the CLS will file a petition for TPR no later than three (3) months after the date of the previous judicial review hearing.
  - a. If the petition cannot be filed within three (3) months, CLS will provide a written report to the court outlining the reasons for delay, the progress made in the TPR process, and the anticipated date of completion of the process.
  - b. The DCM will provide the CLS attorney with copies of all documentation pertaining to preparation of any such report.
  - c. The DCM and attorney will cooperate fully in preparation of the report.
  - d. The DCM is responsible for submitting an amended case plan with the goal of adoption when the petition is filed.

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- i. The case plan should be submitted no less than thirty (30) days after recommending the goal be changed to adoption and that goal change being accepted by the court.
5. The CMO will file a petition for TPR within sixty (60) days after any of the following if:
  - a. At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
  - b. Prior to the filing of a petition for TPR the child has been in out-of-home care under the responsibility of the state for twelve (12) of the most recent twenty-two (22) months, calculated on a cumulative basis, but not including any trial home visits or time during which the child was a runaway;
  - c. A parent has been convicted of: murder of the other parent, manslaughter of the other parent, aiding or abetting or conspiracy or solicitation to murder the other parent, or a felony battery that resulted in serious bodily injury to the child or to any other child of the parent; or
  - d. A court determines that reasonable efforts to reunify the child and parent are not required.
6. When an expedited TPR petition is filed, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

## **B. Grounds for TPR.**

1. Grounds for the termination of parental rights may be established under any of the following circumstances:
  - a. When the parent or parents have voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the Department for subsequent adoption and the Department is willing to accept custody of the child.
    - i. The surrender document must be executed before two (2) witnesses and a notary public or other person authorized to take acknowledgments.
    - ii. The surrender and consent may be withdrawn after acceptance by the Department only after a finding by the court that the surrender and consent were obtained by fraud or under duress.
  - b. Abandonment as defined in subsection 39.01(1), F.S., or when the identity or location of the parent or parents is unknown and cannot be ascertained by diligent search within sixty (60) days.
  - c. When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.
  - d. When the parent of a child is incarcerated in a state or federal correctional institution and either:

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- i. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;
  - ii. The incarcerated parent has been determined by the court to be a violent career criminal as defined in Section 775.084, F.S., a habitual violent felony offender as defined in Section 775.084, F.S., or a sexual predator as defined in Section 775.21, F.S.; has been convicted of first degree or second degree murder in violation of Section 782.04, F.S., or a sexual battery that constitutes a capital, life, or first degree felony violation of Section 794.011, F.S.; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this Section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or
  - iii. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, which termination of the parental rights of the incarcerated parent is in the best interest of the child.
- e. When a child has been adjudicated dependent, a case plan has been filed with the court, and:
- i. The child continues to be abused, neglected, or abandoned by the parents.
    - a) In this case, the failure of the parents to substantially comply for a period of twelve (12) months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever came first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due either to the lack of financial resources of the parents or to the failure of the Department to make reasonable efforts to reunify the parent and child;
    - b) The 12-month period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the Department or a person other than the parent and the approval by the court of a case plan with a goal of reunification with the parent, whichever came first; or
  - ii. The parent has materially breached the case plan by making it unlikely that he or she will be able to substantially comply with the case plan before the time for compliance expires.
    - a) Time is of the essence for permanency of children in the dependency system.
    - b) In order to prove the parent has materially breached the case plan, the court must find by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before time expires to comply with the case plan.
    - c) The child has been in care for any twelve (12) to twenty-two (22) months and the parents have not substantially complied with the case plan so as to permit reunification under subsection 39.522(2), F.S., unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the Department to make reasonable efforts to reunify the parent and child.
- f. When the parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or

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- physical, mental, or emotional health of the child or the child's sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child's sibling is not required.
- i. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.
  - ii. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct of the parent or parents that is deplorable, flagrant, or outrageous by a normal standard of conduct
  - iii. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.
- g. When the parent or parents have subjected the child to aggravated child abuse as defined in Section 827.03, F.S., sexual battery or sexual abuse as defined in Section 39.01, F.S., or chronic abuse.
  - h. When the parent or parents have committed murder or voluntary manslaughter of another child, or a felony assault that results in serious bodily injury to the child or another child, or aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter or felony assault.
  - i. When the parental rights of the parent to a sibling have been terminated involuntarily.
  - j. The parent or parents have a history of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child, and have refused or failed to complete available treatment for such use during the 3-year period immediately preceding the filing of the petition for the termination of parental rights. Ministered to the mother or the newborn.
  - k. A test administered at birth indicated the child's blood, urine, or meconium contained any amount of alcohol or controlled substance or metabolites such substance, the presence which was not the result of medical treatment administered to the mother or the newborn infant and the biological mother of the child is the biological mother of at least one (1) other child who was adjudicated dependent after a finding of harm to the child's health or welfare due to exposure to a controlled substance or alcohol as defined in Section 39.01, F.S., after which the biological mother had the opportunity to participate in substance abuse treatment.
  - l. On three (3) or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.
  - m. The court determines by clear and convincing evidence that the child was conceived as result of an act of sexual battery made unlawful pursuant to Section 794.011, F.S., or pursuant to a similar law or another state, territory, possession, or Native American tribe where the offense occurred. It is presumed that termination or parental rights is in the best interest of the child if the child was conceived as result of the unlawful sexual battery. A petition for termination of parental rights may be filed at any time. The court must accept a guilty plea of conviction of unlawful sexual battery pursuant to Section 794.011, F.S., as conclusive proof that the child was conceived by a violation of criminal law.

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- n. The parent is convicted of an offense that requires the parent to register as a sexual predator under Section 755.21, F.S.
2. Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described *in paragraphs B.1.b.—d. or B.1.f.—m.*, above, have occurred.
3. When a petition for termination of parental rights is filed under *subsection B.1.*, a separate petition for dependency need not be filed and the Department need not offer the parents a case plan with a goal of reunification, but may instead file with the court a case plan with a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.
4. When an expedited termination of parental rights petition is filed, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

## **C. Advisory Hearing.**

1. An advisory hearing on the petition to terminate parental rights must be held as soon as possible after all parties have been served with a copy of the petition and a notice of the date, time, and place of the advisory hearing for the petition.
2. At the hearing the court shall inform the parties of their rights under Section 39.807, F.S., shall appoint counsel for the parties in accordance with legal requirements, and shall appoint a guardian ad litem to represent the interests of the child if one has not already been appointed.
3. The court shall set a date for an adjudicatory hearing to be held within forty-five (45) days after the advisory hearing, unless all of the necessary parties agree to some other hearing date.
4. An advisory hearing is not required if a petition is filed seeking an adjudication for termination of parental rights based on a voluntary surrender of parental rights. Adjudicatory hearings for petitions for voluntary termination must be held within twenty-one (21) days after the filing of the petition. Notice of the use of this subsection must be filed with the court at the same time as the filing of the petition to terminate parental rights.
5. Not less than ten (10) days before the adjudicatory hearing on a petition for involuntary termination of parental rights, the court shall conduct a pretrial status conference to determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing to prevent any undue delay in the conduct of the adjudicatory hearing.

## **D. Appeal.**

1. Any child, any parent or guardian ad litem of any child, any other party to the proceeding who is affected by an order of the court, or the Department may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure. The district court of appeal shall give an appeal from an order terminating parental rights priority in docketing and shall render a decision on the appeal as expeditiously as possible. Appointed counsel shall be compensated as provided in subsection 27.5304(5), F.S.

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2. An attorney for the Department shall represent the state upon appeal. When a notice of appeal is filed in the circuit court, the clerk shall notify the attorney for the Department, together with the attorney for the parent, the guardian ad litem, and any attorney for the child.
3. The taking of an appeal does not supersede in any case unless the court so orders. However, a termination of parental rights order with placement of the child with a licensed child-placing agency or the Department for subsequent adoption is suspended while the appeal is pending, but the child shall continue in an out-of-home placement under the order until the appeal is decided.
4. The case on appeal must be docketed and any papers filed in the appellate court must be titled with the initials, but not the name, of the child and the court case number, and the papers must remain sealed in the office of the clerk of the appellate court when not in use by the appellate court and may not be open to public inspection. The decision of the appellate court must be likewise titled and may refer to the child only by initials and court case number.
5. The original order of the appellate court, with all papers filed in the case on appeal, must remain in the office of the clerk of the appellate court, sealed and not open to inspection except by order of the appellate court. The clerk of the appellate court shall return to the circuit court all papers transmitted to the appellate court from the circuit court, together with a certified copy of the order of the appellate court.