

Section 4 Overview

This section pertains to the policy and procedures necessary when an out-of-home placement of a child is imminent or has occurred.

Chapter 26 Overview

This chapter describes the criteria and process when the Family Support Team has made the recommendation that parental rights be terminated or when the parents wish to voluntarily allow their child(ren) to be adopted.

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Memoranda History:

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26.1 Mandate And Rationale

Section 210.720 requires:

When a child has been placed in the custody of the Children's Division (CD) in accordance with subdivision (17) of subsection 1 of section 207.020, RSMo, or in another authorized agency, by a court, or has been placed in foster care by a court, every six months after the placement, the foster family, group home, agency, or child care institution with which the child is placed shall file with the court a written report on the status of the child. The court shall review the report and shall hold a permanency hearing within twelve months of initial placement and at least annually thereafter. The permanency hearing shall be for the purpose of determining, in accordance with the best interests of the child, a permanent plan for the placement of the child, including whether the child should be continued in foster care, whether the child should be returned to a parent, guardian or relative, or whether proceedings should be instituted by either the juvenile officer or the Division to terminate parental rights to legally free such child for adoption.

Related Subject: Section 4, Chapter 9.2, Administrative Review Process and Section 4, Chapter 9.8 Adoption and Safe families Act
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26.1.1 Considerations Based on Child's Best Interest

When considering whether to terminate the parent-child relationship the court shall consider all relevant factors of the child's best interest including:

1. The emotional ties to the birth parents;
2. The extent to which the parent has maintained regular visitation or other contact with the child;
3. The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that child is in the custody of the division or other child-placing agency;
4. Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within and ascertainable period of time;
5. The parent's disinterest in or lack of commitment to the child;
6. The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of the parental rights;

7. Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.

Related Subject: [211.431 RSMo](#) Section 4, Chapter 9.8.3 Criteria for Compelling Reasons Determinations and Section 4, Chapter 9.8.4 Process for Compelling Reason(s)

The judge shall make written findings of fact and conclusions of law in any order pertaining to the placement of the child.

Section 211.444 allows the court to terminate parental rights of a child if it finds that termination is in the best interest of the child and the parent has consented in writing to the termination.

NOTE: It is imperative to identify any man/all men having/claiming interest in the child. Men having an interest could include alleged father, man named by mother as biological father of child; putative father, man who claims to be biological father of child; and, legal father, man, if applicable, married to mother at time child is conceived. See sections [210.817](#) to [210.853](#) and [193.225](#) to [193.325](#) of the Missouri Revised Statutes for information on establishment of paternity.

Section 211.447 allows any person to make a referral to the juvenile office for the termination of parental rights and establishes grounds for termination.

Section 211.447 requires the juvenile officer or the Division to file a petition for termination of parental rights in certain circumstances. Sections 211.447.3 and 211.447.4 set out grounds when the juvenile officer or the Division may, but is not required to file a petition for termination of parental rights.

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26.2 Definition And Purpose

Termination of parental rights proceedings may be initiated upon the request of the child's parent(s) (voluntary relinquishment) or by any other person, including CD, making a referral to the appropriate juvenile office. In certain circumstances the Division is authorized to file a petition for termination of parental rights without making the request to the Juvenile Officer with the assistance of Division of Legal Services. The Family Support Team, in assessing a child's needs for permanency, should consider termination of parental rights if permanency through reunification with a parent guardianship or placement with an appropriate relative is not feasible and if adoption or other enduring adult relationships is a reasonable expectation and meets the child's needs. Where reunification, guardianship or placement with a fit and willing relative is the primary permanency plan, termination of parental rights and adoption may be an appropriate concurrent permanency goal.

Termination of parental rights may be a simple legal process when both/all parents to the child are identified, located and voluntarily relinquish their parental rights. Conversely, termination of parental rights may be a time consuming and complex legal matter if one or both parents object to his/her parental rights being terminated. In all cases the facts and grounds for termination must be proven by legally admissible evidence in a court of law. Grounds for termination of parental rights must be proven to the court by clear, cogent and convincing evidence. This is the highest standard of proof known to the civil law. It is essential, that all of the facts supporting a termination of parental rights are carefully and thoroughly documented. Individual courts may interpret the involuntary termination statutes differently or be reluctant to pursue premature termination of parental rights. Staff may consult with the Division of Legal Services in addition to the juvenile officer on all cases where involuntary termination of parental rights is being considered by the Family Support Team.

When considering a petition for termination of parental rights the court must apply a two part analysis: first, the court must determine whether there are statutory: "grounds" for termination in the case under consideration: and second, if the petitioner proves that the statutory grounds exist, whether termination of parental rights is in the best interests of the child. The court may deny a petition for termination of parental rights if the court finds that TPR is not in the best interest of the child even if there are statutory grounds for termination. However, the court **cannot** grant a petition to terminate parental rights if the petitioner failed to prove by clear, cogent and convincing evidence that the statutory grounds for TPR exist.

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26.3 Guidelines for Determining Grounds or Triggering Events for Termination of Parental Rights (TPR)

A petition to terminate the paternal rights of the child's parent(s) shall be filed by the juvenile officer or the Children's Division (CD) or if the petition is filed by another party, the Juvenile Officer or CD shall seek to be joined as a party to petition when the following grounds are present:

1. Child has been in foster care for at least fifteen (15) of the most recent twenty-two (22) months; or
2. A court of competent jurisdiction has determined the child to be an abandoned infant:
 - a. The parent has left the child under circumstances that the identity of the child was unknown and could not be ascertain, despite diligent searching, and the parent has not come forward to claim the child; or
 - b. The parent has, without good cause, left the child without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so; or
3. A court of competent jurisdiction has determined that the parent has:
 - a. Committed murder of another child of the parent; or
 - b. Committed voluntary manslaughter of another child of the parent; or
 - c. Aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or
 - d. Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent.
4. The juvenile officer or the division may file a petition to terminate the parental rights of the child's parent when it appears that one of the following exists:
 - a. The child has been abandoned for the purposes of this subdivision a 'child' means any child over one year of age at the time of filing of the petition. The court shall find that the child has been abandoned if, for a period of six (6) months or longer:
 1. The parent has left the child under such circumstance that the identity of the child was unknown and could not be ascertained, despite diligent searching, and the parent has not come forward to claim the child; or

2. The parent has, without good cause, left child without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so;
- b. The child has been abused or neglected. In determining whether to terminate parental rights pursuant to this subdivision, the court shall consider and make findings on the following conditions or acts of the parent:
1. A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control;
 2. Chemical dependency which prevents the parent from consistently providing the necessary care, custody and control of the child which cannot be treated to enable the parent to consistently provide such care, custody and control;
 3. A severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family by parent, including an act of incest, or by another under circumstances that indicate that the parent knew or should have known that such acts were being committed toward the child or any child in the family; or
 4. Repeated or continuous failure by the parent, although physically or financially able to provide the child with adequate food, clothing, shelter, or education as defined by law, or other care and control necessary for the child's physical, mental, or emotional health and development.
 5. Nothing in this section shall be construed to permit discrimination on the basis of disability or disease;
- c. The child has been under the jurisdiction of the juvenile court for a period of one (1) year, and the court finds that the conditions which led to the assumption of jurisdiction still persist, or condition of a potentially harmful nature continue to exist, that there is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in near future, or the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home. In determining whether to terminate parental rights

under this subdivision, the court shall consider and make findings on the following:

1. **Treatment Plan Compliances:** The terms of a Written Service Agreement (WSA) plan entered into by the parent and the division and the extent to which the parties have made progress in complying with those terms;
 2. **Efforts:** The success or failure of the efforts of the juvenile division or other agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to provide a proper home for the child
 3. **Mental Condition:** A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control;
 4. **Chemical Dependency:** such dependency which prevents the parent from consistently providing the necessary care, custody and control over the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control, or
- d. The parent has been found guilty or pled guilty to a felony violation of chapter 566, RSMo, when the child or any child in the family was victim, or a violation of section 568.020, RSMo, when the "child or any child in the family was victim. As used in this subdivision, a 'child' means any person who was under eighteen years of age at the time of the crime and who resided with such parent or was related within the third degree of consanguinity or affinity to such parent' or;

Related Subject: Section 7, Chapter 34 Laws Relating to Custody, Placement and Visitation of Children under the Jurisdiction of Juvenile Court
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- e. The child was conceived and born as a result of forcible rape. When the biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such a plea or conviction shall be conclusive evidence supporting the termination of the biological father's parental rights; or
- f. The parent is unfit to be a party to the parent and child relationship because of a consistent pattern of committing a specific abuse, including but not limited to, abuses as defined in section 455.010, RSMo, child abuse or drug abuse before the child or of specific conditions directly

relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed that to a parent is unfit to be a party to the parent-child relationship upon a showing that within a three-year period immediately prior to the termination adjudication, the parent's parental rights to one or more other children were involuntarily terminated pursuant to section 211.447 subsection 2 or 3 or section 211.447 subdivisions (1), (2), (3) or (4) of subsection 4 or similar laws of other states.

- g. The juvenile court may terminate the rights of a parent to a child upon a petition filed by the juvenile officer or the division, or to adoption case, by a prospective parent, if the court finds that the termination is in the best interest of the child and when it appears by clear, cogent and convincing evidence that grounds exist for termination pursuant to 211.447 subsection 2, 3 or 4.
5. Pursuant to 211.447.7, when considering whether to terminate the parent-child relationship, the court shall evaluate and make findings on the following factors, when appropriate and applicable to the case:
 - (1) The emotional ties to the birth parent;
 - (2) The extent to which the parent has maintained regular visitation or other contact with the child;
 - (3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;
 - (4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;
 - (5) The parent's disinterest in or lack of commitment to the child;
 - (6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;
 - (7) Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.

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6. The disability or disease of a parent shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parent rights without a specific showing that there is a causal relation between the disability or disease and harm to the child.

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26.426.4 Procedures For Pursuing Voluntary Termination Of Parental Rights (TPR)

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A request for voluntary termination of parental rights may arise in many different circumstances. It may come from expectant mothers who wish to place their infant for adoption or parent(s) of one or more children. It may come from parents involved in a child abuse neglect case. It may come from parents involved in private child custody or child support case. When a birth parent approaches the worker about executing a voluntary consent to termination of parental rights the Children Services Worker should determine the basis for the parent(s) request. The worker should inform the parent(s) of the full range of alternatives for providing for the child including services available through the Children's Division and other agencies and community resources. The worker should explain to the birth parent that deciding whether to sign consent to TPR is a very significant step which has and permanent legal and social consequence for the birth parents, the child and the extended family. The worker should inform the parent(s) that the worker would be happy to explain the Children's Division process and procedure for processing consents to termination of parental rights **but the worker shall not give legal advice about whether or not it is in the birth parent's legal interests to sign consent to TPR form.** The worker should advise the parent to consult with an attorney before the parent makes a decision to agree to a voluntary termination of parental rights. If the parent does not have an attorney the worker should refer the parent to the legal aid office which covers the area and to the Missouri Bar Lawyer's Referral Service. Information on how to access these services is available on line at www.mobar.org and then click on "Find a Lawyer". The worker should carefully document in the record what information was provided to the parent and that the worker advised the parent to seek independent legal advice before signing the consent. The parents should be given sufficient time to carefully think through their decision and to consult with an attorney.

If the parent of the child is a minor, or the worker has information which would indicate that the parent is under a disability which may make it difficult for the parent to understand the legal and social consequences of signing a consent to termination of parental rights the consent to termination of parental rights may be invalid unless additional procedures are followed. If any of these circumstances apply the worker should refer the matter to DLS for legal advice on what legal procedures may be appropriate. Once voluntary relinquishments become the plan, the following steps should be completed:

- A. Written consent forms, authorized by the local juvenile court, should be completed and signed in accordance with court policy. It is preferable that the parent's attorney be present when the forms are signed.
- B. If a custody order is required, follow local juvenile court requirements for obtaining one.
- C. Cooperate with local juvenile court requirements for letter/report, interrogatories, depositions, appearances, testimony, etc.

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- D. Collect parental background information, i.e., ethnic/cultural/religious heritage, citizenship or immigration status, physical description, health, education, etc. It is also important to determine whether the child may have Native American ancestry and whether notice to the tribe is required by the federal Indian Child Welfare Act.
- E. Once case is concluded, obtain copy of any orders entered.

Outcome Of TPR:

1. Granted TPR: If the Court grants TPR, then CD must implement the permanency plan.
2. If the Court denies the petition the worker should evaluate the reasons the court gave for the denial and take appropriate actions, including reevaluating the permanency plan for the child. The worker should promptly schedule an FST to determine an appropriate case plan. Such discussions in the FST should include evaluation of appropriateness of the concurrent plan. If the Court denies the petition and the child was in the custody of the Children's Division the Division may have the right to appeal the decision to the Court of Appeals or the Supreme Court. The decision whether or not to file an appeal must be made in conjunction with the Circuit Manager and the Division of Legal Services. An appeal must be filed within 40 days of the date of the Court's order denying the petition. To pursue an appeal the Division of Legal Services must prepare and submit a referral to the Attorney General's Office. If the Division wishes to consider pursuing an appeal the Division must refer the matter to DLS no later than 10 days from the date of the entry of the Court's order. If the appeal is not filed with the court in a timely manner the judgment becomes final and, in most circumstances, cannot be appealed further.

If costs are assessed costs or attorney fees, against the Division, payment must be processed within 30 days. If there is a question about whether the Court has the authority to assess the costs or attorney fees against the Division, or whether the amount charged to the Division is reasonable the worker should initiate a referral for legal advice to the Division of Legal Services (DLS). Court rules impose time limits on the ability of the Division to challenge such orders once they are entered. In most cases challenges must be filed with the court within 30 days of the date of the entry of the Court's order. The worker and the supervisor must therefore process such DLS referrals on an expedited basis.

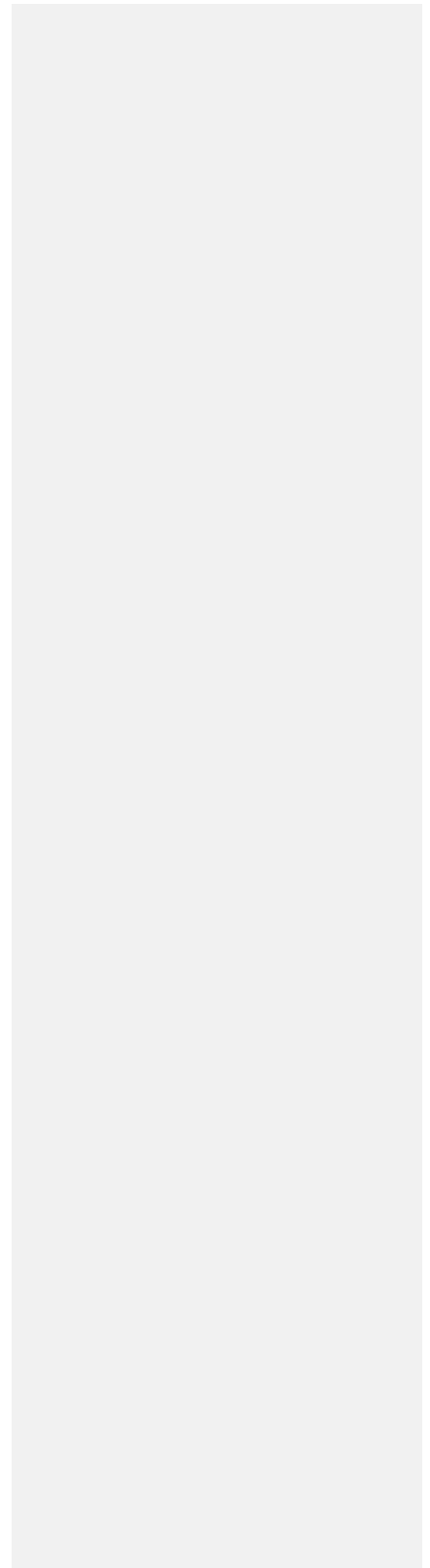
NOTE: [Section 211.444](#), RSMo, states: "The written consent required by subsection 1 of this section shall be valid and effective only after the child is at least forty-eight hours old and if it complies with the other requirements of [Section 453.030](#), RSMo."

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26.5 Procedures For Involuntary Termination Of Parental Rights (TPR)

A plan for involuntary termination of parental rights may be appropriate when there is clear and convincing evidence that one or more of the specified legal grounds for filing a TPR exist in the case and termination of parental rights is in the best interests of the child. When the Family Support Team determines that the child's best interest would be served by pursuing involuntary termination of parental rights, the Family Children's Service Worker should take the following steps:

- A. Review termination of parental rights statutes (Section 211.440 – 211.487) and determine if case information is consistent with TPR grounds for an involuntary action. In cases where the worker or supervisor are uncertain about whether there is a legal or factual basis for filing a TPR petition they should refer the case to the Division of Legal Services for a legal consultation through the usual DLS referral process. DLS lawyers may also be available to staff these cases at the quarterly meeting with the circuit manager. CD workers should not be consulting the Juvenile Officer, Juvenile Officer's attorney, the GAL or other private attorneys for legal advice.
- B. Advise the parents of such and explore with them the prospects of voluntary relinquishment of their rights. If the parent is represented by an attorney, the worker should not discuss this issue with the parent without first notifying the attorney and asking whether the attorney has any objection to the worker discussing the prospects of voluntary relinquishment of their rights. If the attorney has objections then the worker should work through the attorney. If the worker is represented by DLS the worker should request that the DLS attorney initiate this process. If the parent does not have an attorney the worker should refer the parent to the legal aid office which covers the area and to the Missouri Bar Lawyer's Referral Service information on how to access these services is available on line at www.mobar.org and click on "Find a Lawyer".
- C. Seek a staffing with local juvenile court officials to fully assess case prior to submitting a formal written request for involuntary termination of parental rights.

Related Subject: Section 4, Chapter 9.2, Administrative Review Process, Section 4, Chapter 9.5, Tasks to Support Plan and Section 4, Chapter 8.8.3, Criteria for Compelling Reasons Determination

- D. If a staffing cannot be arranged, prepare a formal written request for involuntary termination of parental rights setting forth the basis for recommending termination of parental rights, pursuant to section 211.447, RSMo, i.e., abandonment, failure to rectify, recurrent acts of abuse along with any supportive documentation that may be on file.

- E. Notify parents in person, if possible, and by registered mail of Division's recommendation to juvenile court to pursue involuntary termination of parental rights.
- F. Submit a written report in accordance with local juvenile court policy. The Family Children's Service Worker should document:

- Efforts expended to identify and locate parents,

Related Subject: Section 4, Chapter 4, Attachment A; Locating the Non-custodial Parent

- Services provided to each parent, i.e., intensive in-home services, drug/alcohol assessment, counseling and/or group meetings, parent aid services, family and/or individual counseling, parent training;
- Response of parent(s) to services, i.e., did parent attend as required, did parent actively participate, has parent demonstrated improved abilities or skills as a result of services;
- Assessment of child's needs, i.e., is continuing relationship with birth parent positive or negative for child, prospects for adoption; and,
- Rationale for recommendation, i.e., even if given more time and more services, parents will not in foreseeable future be in position to assume care and custody of child.

- G. Receive written decision from juvenile officer regarding intent to file TPR petition:

- Follow up with a letter requesting decision if written decision is not received within 30 calendar days.

NOTE: All Ordered Evaluations And Reports Shall Be Made Available To The Court 15 Days Prior To The Dispositional Hearing Or As Ordered By The Court.

- H. If juvenile officer declines to file petition for involuntary termination of parental rights, cases should be reviewed through supervisory channels for referral to Division of Legal Services for review and action as appropriate:

- Continue services to family and child.

- I. If petition for involuntary termination of parental rights is filed, cooperate with local juvenile court requirements for interrogatories, depositions, appearances, testimony, etc.

NOTE: Pursuant to section 210.145, RSMo; "16 In any judicial proceeding involving the custody of a child the fact that a report may have been made pursuant to sections 210.109 to 210.183 shall not be admissible. However, nothing in this subsection shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made." This means that the fact that the Division has substantiated a hotline report is not admissible in evidence as grounds to support a TPR petition and it should not be a stated ground for filing a TPR petition. The statute, however, expressly permits the use of the underlying evidence to support the allegations which may have caused a report to have been made. This means, for example, that the fact that the division may have a substantiated finding that a parent sexually abused the child is not admissible to prove the child was sexually abused. It is proper, however, for the party to plead and introduce evidence on the fact that the child was sexually abused from independent evidence such as the child's statements, witness testimony, medical evidence and evidence from the counselor or the therapist. This provision of the law is to limit harassment reports. However, as a result, staff may be denied the ability to enter some evidence. If this becomes an issue, staff may consult with DLS.

- J. Collect parental background information, i.e., ethnic/cultural/religious heritage, physical description, health, education, etc.
- K. Once case is concluded, obtain copy of any orders entered.

Outcome of TPR Hearing:

1. Granted TPR: If the court grants TPR then CD must implement the Permanency Plan.

NOTE: If the decision of the court is to terminate the parents rights, it will be necessary to inform the parents of their right to consent to release of identifying information to the child, at age 21 and over, by filing an affidavit with the court which grants the adoption or to indicate their willingness for contact by the child, at age 21 or over, by registration with the Missouri Adoption Registry.

2. If the Court denies the petition the worker should evaluate the reason the court had for the denial and take appropriate actions, including reevaluating the permanency plan for the child. The worker should promptly schedule an FST to determine an appropriate case plan. Such discussion in the FST should include evaluation of appropriateness of the concurrent plan. If the Court denies the petition and the child was in the custody of the Children's Division the Division may have the right to appeal the decision to the Court of Appeals or the Supreme Court. The decision whether or not to file an appeal must be made in conjunction

with the Circuit Manager and the Division of Legal Services. An appeal must be filed within 40 days of the date of the Court's must prepare and submit a referral to the Attorney General's Office. If the Division wishes to consider pursuing an appeal the Division must refer the matter to DLS no Later than 10 days from the date of the entry of the courts order. If the appeal is not filed with the court in a timely manner the judgment becomes final and in most circumstances, cannot be appealed further.

If the court assesses costs or attorney fees against the Division, in the Termination of Parental Rights case referral for payment must be made within 30 days. If there is a question about whether the court has the authority to assess the costs or attorney fees against the Division, or whether the amount charged to the Division is reasonable the worker should initiate a referral for legal advice to the Division of Legal Services (DLS). Court rules impose time limits on the ability of the Division to challenge such orders once they are entered. In most cases challenges must be filed with the court within 30 days of the date of the entry of the Court's order. The worker and the supervisor must therefore process such DLS referrals on an expedited basis.

- L. Supervisors are to consult and review with the Children's Service Worker on a monthly basis all cases that have not resulted in a permanent placement for a child, and in the case of infants, reviews, shall occur weekly. Narrative reports on the progress of care shall occur every 30 days until: Continue reporting progress of care until:
 - Child is placed in an adoptive placement; or
 - Custody is transferred to adoptive family including foster families.
- M. If costs are assessed by court order against the Division, payment must be processed.

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