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DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF CHILD AND FAMILY SERVICES
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MTL # 1004 – 03282023date

TO: Timothy Burch, Administrator – Clark County Department of Family Services
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FROM: John Bradtke, Deputy Administrator, Division of Child and Family Services

POLICY DISTRIBUTION

Enclosed find the following policy for distribution to all applicable staff within your organization:

1004 Termination of Parental Rights

This policy is/was effective: 3/28/23

- This policy is new. Please review the policy in its entirety
- This policy replaces the following policy(s): MTL # 0514-12162013 Policy Name: 0514 Termination of Parental Rights
- This policy has been revised. Please see below for the type of revision:
 - This is a significant policy revision. Please review this policy in its entirety.
 - This is a minor policy revision: (List page number & summary of change):
 - A policy form has been revised: (List form, page number and summary of change):

NOTE:

- Please read the policy in its entirety and note any areas that are additionally required by your agency to be in compliance with the policy enclosed.
- This is an **ALL STAFF MEMO** and it is the responsibility of the person listed above to disseminate the policy enclosed to appropriate staff within his/her organization and to ensure compliance.
- The most current version of this policy is posted on the DCFS Website at the following address: <http://dcfs.nv.gov/Policies> Please check the table of contents on this page for the link to the chapter you are interested in.

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1004 Termination of Parental Rights

Policy Approval Clearance Record

<input checked="" type="checkbox"/> Statewide Policy	<input type="checkbox"/> New Policy
<input type="checkbox"/> Administrative Policy	<input type="checkbox"/> Modified Policy
<input type="checkbox"/> DCFS Rural Region Policy	<input checked="" type="checkbox"/> This policy supersedes: 0514 Termination of Parental Rights
Date Policy Effective:	3/28/2023
Attorney General Representative Review:	10/12/2022
DCFS Deputy Administrator Review:	03/28/2023
DMG Original Approval	11/20/2009
DMG Review:	03/28/2023

STATEMENT OF PURPOSE

Policy Statement and Purpose: The purpose of this policy is to ensure that permanency-planning decisions involving adoption are made timely, are consistent with state and federal time frames and consider the best interest of the child. Agencies providing child welfare services shall take action to begin freeing a child for adoption, when adoption is identified as a permanency plan and determined to be in the child's best interest.

AUTHORITY

Federal: [Public Law 105-89 Adoption and Safe Families Act \(ASFA\)](#); [45 CFR 1356.21](#); [45 CFR 1356.21\(b\)](#); [25 U.S.C. 1903](#)

NRS: [NRS 126](#); [NRS 126.091](#); [NRS 127.051](#); [NRS 127.052](#); [NRS 128](#); [NRS 128.105](#); [NRS 432B.393](#); [NRS 432B.553](#); [NRS 432B.580](#); [NRS 432B.590](#); [NRS 432B.630](#)

NAC: [NAC 127.042](#); [NAC 127.043](#); [NAC 127.065](#); [NAC 127.245](#); [NAC 127.260](#)

DEFINITIONS

Active Efforts: An action that is required of the state in caring for an Indian Child, mandated under the Indian Child Welfare Act (ICWA). Active efforts are defined as: affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian Child with his or her family. Where an Agency is involved in the child custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan [25 C.F.R. § 23.2](#). Active efforts begin at the onset of the case and continue throughout the life of the case.

Compelling Reasons: Reasons which meet specific criteria documented and submitted for review by the court, as to why a petition to terminate parent rights will not be filed.

Consent to Adoption: The voluntary written agreement by a birth parent, an individual legally recognized as a parent, or an agency that has assumed legal custody of a child, to the adoption of a child. Children 14 years of age and over must provide written consent for his/her adoption. The consent is prepared and filed with the court by the adoptive parent's attorney.

Diligent Search: An ongoing and continuous process to identify, locate, inform and evaluate relatives/non-custodial parents regarding their interest in providing a temporary or permanent placement for or adopting a child prior to or when the child is placed in substitute care.

Indian Child: Any unmarried person under age eighteen (18) who is either a member or citizen of an Indian Tribe or is eligible for membership or citizenship in an Indian Tribe, and is the biological child of a member/citizen of an Indian Tribe pursuant to [25 C.F.R. § 23.2](#); [25 U.S.C. ICWA §§ 1903](#).

Indian Child Welfare Act: A federal law that governs jurisdiction over the removal of (Native American) Indian Children from their families. ICWA sets the minimum federal standards for nearly all Indian Child custody proceedings, including adoption, voluntary or involuntary termination of parental rights, removal and foster care placement of Indian Children, but excluding divorce and child delinquency proceedings. Public Law 95-608, 92 Stat. 3069, enacted November 8, 1978 codified at [25 U.S.C. §§ 1901–1963](#).

Indian Custodian: Any person who has legal custody of an Indian Child under Tribal law or custom or under state law; or to whom temporary physical care has been transferred by the child's parent.

Legal or Legally Presumed Father: A person who is recognized as the legally presumed father under [NRS 126.051](#) or a legal father under [NRS 126.053](#). A father is legally presumed if; 1) He and the child's mother are married to each other, and the child is born during the marriage or within 285 days after the marriage is terminated; 2) He and the mother were cohabitating for at least six months prior to conception and continue to cohabitate through the period of conception; 3) Before the child's birth, the parents attempt to marry but the marriage was declared invalid; 4) While the child is under age 18, the father receives the child into his home and openly holds out the child as his natural child; and 5) Blood tests or test for genetic identification show a probability of 99 percent or more that he is the father. A person who signs an affidavit for the voluntary acknowledgement of paternity, which is filed with the Office of Vital Statistics, is a legal father.

Permanency Planning: The process of assessing and preparing a child for a permanent family, through reunification, guardianship, or adoption. A case plan must center on what is in the child's best interests, and therefore requires an ongoing assessment of the child and their needs. The hierarchy of permanency goal options that ensure legal and emotional permanency for a child, which are in descending order of priority: 1) Reunification; 2) Adoption; 3) Legal Guardianship; 4) Permanent placement with a fit and willing relative; and 5) Other Planned Permanent Living Arrangement (OPPLA). Selection of OPPLA requires that the child be at least sixteen (16) years old and compelling reasons be documented to the court explaining why permanency goals 1-4 are not an option.

Putative Father: A person who is named, is alleged or reputed to be the father of a child who has not been determined to be the legal or legally presumed father.

Reasonable Efforts:

The agency must provide reasonable efforts to all identified permanency goal(s):

1. Prevent and eliminate the need to remove the child:
 - a. Maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; and/or
2. Achieve Timely Permanency:
 - a. Effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and/or
 - b. Make and finalize alternate permanency goals in a timely manner when reunification is not appropriate or possible; and/or
 - c. To exercise diligence and care in arranging appropriate, accessible and available services that are designed to improve the ability of a family to provide a safe and stable home for each child in the family; and/or
 - d. Accessible and available services that are designed to improve the ability of a family to provide a safe and stable home for each child in the family.

Relinquishment: A legal process through which a birth or legal parent voluntarily gives up parental rights with the intent that the child will be adopted.

Termination of Parental Rights (TPR): An involuntary court action that permanently ends the legal parent-child relationship. Termination frees the child for adoption.

STANDARDS/PROCEDURES

Timelines for initiating Legal Proceedings for Termination of Parental Rights

1. [Adoptions and Safe Families Act \(ASFA\)](#) is the federal law that provides the guidelines on when adoption should be achieved if it is the appropriate permanency plan for the child. Per this law, adoption should be achieved within 24 months of removal of the child from the home ([42 USC § 675\(5\)\(C\)](#)). In order to meet this timeline, Nevada has enacted various laws and implemented various policies as outlined below.
2. Permanency plan determinations may occur at a noticed permanency hearing any time after an abuse/neglect petition has been adjudicated and must occur no later than 12 months following the initial legal removal of the child from the home. ([NRS 432B.590](#), [NRS 432B.5901](#))
3. In Nevada, when a child has not been returned home for 14 or more of the immediately preceding 20 months, the agency shall include the termination of parental rights in the permanency plan, unless there are compelling reasons not to file a TPR, the child is in a placement with a relative, or the child welfare agency has not consistently provided the family with reunification services. ([NRS 432B.553](#) and [NRS 432B.590](#)). The 14 of the last 22 months only applies to children while they are in foster care, so the count would begin on the date the child entered foster care. When calculating when to have the permanency hearing or the 14 of 22 months, use the earlier of the date of adjudication OR 60 days after the child is removed from the home. Compelling reasons must be considered on a case-by-case basis. For a more detailed list of compelling reasons refer to FPO 1004B – Determining when to File a Termination of Parental Rights.
4. Child welfare agencies are expected to make a referral and send the completed Termination of Parental Rights (TPR) referral to legal counsel to initiate termination of parental rights within 60 days of determination that a permanency plan of adoption is in the best interest of the child AND the agency can prove at least one parental fault factor, or the court orders a permanency plan of adoption.

Paternity

1. It is best practice to establish paternity early on in a case. Paternity can be established at any time during a 432B proceeding by filing a petition in the abuse/neglect case ([NRS 126.091](#)). The paternity of any named or known, legal, or presumed fathers should be established prior to a completion of a termination of parental rights, relinquishment, or consent for adoption. If there are any unknown fathers, the agency must still complete a Termination of Paternal Rights for any unknown fathers.

Methods for Making a Child Legally Free

1. There are three ways to legally free a child from their parent(s) rights in Nevada:
 - a. Involuntary termination of parental rights by order of a court;
 - b. Voluntary relinquishment of parental rights to a child welfare agency; or
 - c. Parental consent to adopt to a specific person(s).

Involuntary Termination of Parental Rights

1. In order to terminate parental rights involuntarily, in non ICWA cases, the Agency must prove by clear and convincing evidence that it is in the best interest of the child to sever the parent-child relationship and that parental fault exists. [NRS 128.105](#) provides that parental fault includes but is not limited to:
 - a. A finding by the court that the agency does not need to make reasonable efforts to reunify the child with a parent(s) due to aggravated circumstances; and
 - b. The conduct of the parent was the basis for finding made pursuant to [NRS 432B.393\(3\)](#) or demonstrated at least one of the following:
 - i. Abandonment of the child by one or both parents;
 - ii. Neglect of the child;
 - iii. Unfitness of the parent;
 - iv. Failure of parental adjustment;
 - v. Risk of serious physical, mental or emotional injury to the child if returned to parental care;

- vi. Token efforts by the parent to support or communicate with the child, to prevent the neglect of the child, to avoid being an unfit parent, or to eliminate the risk of serious of harm to the child; or
- vii. The child was conceived as a result of sexual assault for which the natural parent was convicted.

In making these determinations there are specific considerations for the court to make outlined in [NRS 128.106](#) – [NRS 128.108](#).

Voluntary Relinquishment of Parental Rights to a Child Welfare Agency

1. Parent(s) may consider relinquishment because it eliminates the adversarial legal proceedings associated with the TPR process, shortens the child's stay in foster care, and permits the child's placement in a permanent home at an earlier time. Parent(s) may be concerned about the consequences of a TPR on their other or future children since the agency may use a prior termination to request the court to waive reasonable efforts. Parent(s) may recognize that their circumstances are such that they cannot care for the child and may want to help the permanency planning process along by considering relinquishment; particularly in cases where the child will be adopted by the current caregiver or a specified relative. The option of relinquishment should be discussed with the child's parents; refer to statewide policy [1005 Voluntary Relinquishment](#) for further information.

Parental Consent to Adopt to a Specific Person

1. Individual Child Welfare Agencies have the discretion to accept consents to adopt or not. For Agencies accepting consents to adopt, a consent to adopt may be used when the parent(s) can identify a specific individual by whom they would like their child to be adopted and the child welfare agency agrees with the parent's choice. The parents' rights are not terminated or severed until the adoption by the specific individual is completed. If the adoption does not finalize with the identified individual, the written consent for adoption is no longer valid and the child welfare agency retains temporary legal and physical custody of the child. The child welfare agency will follow internal procedures to complete a consent for adoption. The child welfare agency may accept a consent to adopt once it is determined that Adoption is in the best interest of the child.

Case Consultation for TPR with Legal Counsel

1. Child welfare agencies should consult with legal counsel and have ongoing discussions to determine if there are sufficient legal grounds to terminate parental rights or to assist with any questions regarding statutory presumptions.
2. Certain statutory presumptions may apply once the requisite time has elapsed. A presumption is something the court must consider but is rebuttable by a preponderance of the evidence. The statutory presumptions in termination proceedings are as follows:
 - a. When a child has been placed outside of the home for 14 of any 20 consecutive months it is presumed:
 - i. That the parents have only demonstrated token efforts to care for the child; and
 - ii. The best interest of the child is served by termination of parental rights.
3. In determining whether these presumptions apply, calculate the total time the child has been removed from the home and subtract any time a child was placed with a parent for a trial home visit/in-home safety plan, and/or period if runaway. If the answer is 14 or more months, then these presumptions apply.
4. Additionally, pursuant to [NRS 128.109](#), if a parent fails to comply substantially with their case plans within 6 months after commencement of the case plan or placement of the child, their failure to comply is evidence of failure of parental adjustment.

TPR Referral

1. Each child welfare agency is responsible for establishing their own internal process for completing a TPR referral to legal counsel. This referral process must include a referral which is to be submitted within 60 business days, from receipt of the court order, ordering a permanency plan of adoption.

However, based on case circumstances, the agency may submit a TPR referral to legal counsel when the agency makes a determination that adoption is in the best interest of the child.

2. The child welfare agency is responsible for establishing and providing the TPR referral to legal counsel. The referral must include, but is not limited to:
 - a. Information verifying paternity (birth certificate, test, including marriage/divorce certificates)
 - b. Any known relative contact information
 - c. Any relevant case information
 - d. Diligent search information, refer to [1001 Diligent Search](#) for more information
 - e. Court reports and/or orders, and all field discovery
 - f. Relative and tribal contact information or any other information needed to initiate termination proceedings
 - g. Recruitment information if the child is not in an adoptive placement.

The Court Process

1. The child welfare agency refers the case to legal counsel, who will draft the TPR petition/motion and file it with the district court which initiates the formal legal proceeding to terminate parental rights. After the petition/motion has been filed the court clerk then issues the notice of hearing through proper service. The assigned agency worker should attend any court hearings and assist legal counsel as needed. While the number and time of hearings vary from jurisdiction to jurisdiction, the termination of parental rights process may include the following:
 - a. Initial Termination of Parental Rights Hearing: If paperwork to Terminate Parental Rights is filed, an Initial Hearing is set. The parent can ask for a trial or a mediation, whether or not they indicate that they wish to relinquish parental rights. If the parent does not have an attorney, one may be appointed. If a parent fails to appear for the Initial Termination of Parental Rights Hearing, their rights may be terminated through a default hearing.
 - b. Mediation or Informal Settlement Conference: Both Mediations and Informal Settlement Conferences can be helpful in resolving problems prior to going to court. Either can occur at any phase of a case, whether at the beginning or in the final stages to discuss the possibility of a relinquishment of parental rights, consent to adopt and/or an open adoption agreement (if applicable).
 - i. Mediation is a voluntary informal meeting with a court-appointed mediator who is present to ensure all parties are heard and remain respectful. The mediator helps guide the parties in negotiating a resolution to many different issues in the case. (A judge will not be at the mediation.) Mediations are confidential in nature and participants may be asked to sign a confidentiality agreement.
 - ii. Informal Settlement Conference is an informal meeting between all parties and their attorneys to discuss or negotiate resolutions for some or all of the issues in a case. (Neither a judge nor mediator will be at the meeting).
 - c. Termination of Parent Rights Trial: At a Termination of Parental Rights Trial, or the Evidentiary Hearing, all parties have the opportunity to testify, call witnesses, question all witnesses and present relevant evidence to the court. The Agency must show by clear and convincing evidence that it is in the best interest of the child for parental rights to be terminated, and that at least one parental fault ground exists (NRS 128.105). At the conclusion of the trial, the court may issue a decision immediately, or take the matter "under advisement" and issue a written decision at a later date ("under advisement" means the court may take some time to review the evidence and issues a subsequent order.)
2. The court is required to use its best efforts to ensure that the termination proceedings are completed within 6 months from when the legal action is initiated. When a court issues a written order terminating parental rights, the child is free from the custody and control of his or her parent(s) and the agency is vested with custody and control of the child including the authority to place and consent to the child's adoption.

3. Once the order is issued, a party has 30 days to file a notice of intent to appeal. If a parent has filed a notice of intent to appeal, agencies should continue to complete tasks to proceed towards adoption. The agency and pre-adoptive parents will in conjunction make the decision to set the adoption for finalization based on individual cases considerations. Agencies should consult with their legal counsel regarding the appellate process for each specific case.
 - a. If an appeal is filed, the resource parent must be fully advised of the child's legal status and the appeal process.

Termination of Parental Rights in ICWA Cases

1. Termination proceedings involving Indian Children have several differences from other termination proceedings. A court must determine that a child is an Indian child through the IWCA determination. Notice must be provided to the child's parent, including the putative father, or Indian custodian, and tribe(s) via registered or certified mail at least 10 days prior to a hearing. For all identified ICWA children/cases the Agency workers must ensure the following efforts (successful or unsuccessful) are completed and documented in the court report:
 - a. All *active efforts* to provide services to prevent the separation of the family,
 - b. Efforts to ensure the parent or Indian Custodian understood the case plan, especially if English is not the primarily used language.
 - c. Whether there is *evidence beyond a reasonable doubt*, including testimony of a qualified expert witness, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
 - d. Any other state statutory grounds supporting termination of parental rights, e.g., parental fault and best interest of the child.
 - e. Any request that is made to transfer the case to tribal court, and whether or not the case will be transferred.
2. If the parent or Indian guardian is voluntarily terminating parental rights via a voluntary relinquishment or consent, efforts must be made to ensure the parent or Indian guardian fully understood the explanation of the terms and consequences of the relinquishment/consent to termination of parental rights, in a language that the parent or Indian custodian understood. A relinquishment/consent cannot be given prior to or within 10 days after the birth of the child, cannot be obtained through fraud or duress, and all alternative to termination of parental rights were explained. The relinquishment/consent must be witnessed by a judge.
3. Agency workers should consult with legal counsel to ensure all legal requirements are met. Refer to policy [0504 Indian Child Welfare Act \(ICWA\)](#) for additional requirements.

Restoration of Parental Rights

Pursuant to [NRS 128.170](#), If the natural parent(s) have had their parental rights terminated or have relinquished their parental rights, and the child has not been adopted, the child or the legal custodian/guardian of the child, may petition a court for the restoration of the parental rights of the natural parent(s) of the child. The natural parent(s) for whom restoration of parental rights is sought to be restored must consent in writing to the petition. Prior to a restoration of parental rights hearing, the agency should conduct an assessment on the natural parent(s) to determine if the parent(s) and/or environment are no longer a safety risk for the child. Pursuant to [NRS 128.190](#), the restoration must be in the best interest of the child, the child must not have an identified caregiver with whom permanency can be achieved, and if the child is over the age of 14 the child must consent to the restoration of parental rights. Refer to [204 Permanency and Case Planning Policy attachment FPO 0204B – Restoration of Parental Rights](#).

Timeline:

Requirement	Starting Date	Deadline	Responsible Party	Actions to be Taken
Include the termination of parental rights in the child's permanency plan	Date of removal	When a child has not been returned home for 14 or more of the immediately preceding 20 months.	Caseworker and Supervisor	Consult with legal counsel regarding the appropriateness of termination of parental rights given case circumstances.
Decision to file or not to file TPR	Date of decision	5 days	Caseworker	Document decision to file TPR or compelling reason not to file a TPR in a UNITY case note.
TPR Referral	Date the court orders the TPR process to begin or when the agency determines adoption is in the best interest of the child.	60 days	Child Welfare Agency	Complete a TPR referral to send the information to agency legal counsel.

Documentation:

Upon the agency's decision to file or not file a TPR, the assigned agency worker must document the decision in a UNITY case note within five business days. The case note must provide the reason to move forward with TPR or not to move forward with TPR including other reasons such as a relative placement, grounds do not exist to terminate parental rights, or necessary services to reunify the family have not been offered. Furthermore, the agency will document with the court any compelling reason not to move forward with a TPR. This information and the compelling reason will be identified within the court findings.

JURISDICTIONAL ACTION

Development of Internal Policies: Agencies which provide child welfare services shall develop internal policies and procedures as necessary to implement the provisions of Federal and State law and this policy.

Supervisory Responsibility: Ensure agency's workers are adhering to the ASFA timelines, and the TPR process timelines to avoid a delay in permanency. Supervisors should be involved in the conversations with legal counsel to ensure the agency has enough information to move forward with a TPR and/or identify any compelling reasons not to move forward with TPR.

STATE RESPONSIBILITIES

The State will provide technical assistance regarding program development and implementation to the child welfare agencies.

POLICY CROSS REFERENCE

Policies: [204 Permanency and Case Planning Policy attachment FPO 0204B – Restoration of Parental Rights](#)
[0504 Indian Child Welfare Act \(ICWA\)](#)
[1001 Diligent Search](#)
[1005 Voluntary Relinquishment](#)

History and Updates: The Termination of parental rights policy was established 9/25/2009, amended on 12/16/2013 and on 3/28/2023.

ATTACHMENTS

- FPO 1004A - TPR Checklist
- FPO 1004B – Determining when to File a Termination of Parental Rights
- FPO 1004C – Field Practice Guide – Termination of Parental Rights
- FPO 1001A - Diligent Search Handbook