

TIPS FOR LAWYERS

**Termination of Parental Rights**

### Definition

“Termination of parental rights” (TPR) refers to “the complete severance by court order of the legal relationship, with all its rights and responsibilities, between the child and the child’s parent or parents so that the child is free for adoption except it shall not affect the right of inheritance of such child or the religious affiliation of such child.” *C.G.S. § l 7a-93 (5).*

### Standard

The standard of proof in a TPR proceeding is **clear and convincing evidence**, striking “a fair balance between the rights of the natural parents and the State’s legitimate concerns…” *C.G.S. § l7a- 112(j)*; In re Marvin M., 48 Conn.App. 563, 577 (1998); Santosky v. Kramer, 455 U.S. 745 (1982).

### Filing of TPR Petition

In filing a termination petition, the Department must submit an actual petition, with a

summary of the adjudicative facts in support of TPR, and a termination study.

### Findings Generally

To sustain a termination petition, the court must find:

* + DCF made reasonable efforts to locate parent and reunify the child;
	+ A statutory basis for termination exists; AND
	+ Termination is in the best interests of child. *C.G.S. § l7a- 112(j)*

Termination proceedings consist of two phases:

1. Adjudicatory: Are there statutory grounds to terminate parental rights, and did DCF make reasonable efforts?
2. Disposition: Is termination in the child’s best interests?

NOTE: Proceedings are generally *not* bifurcated.

### Statutory Grounds for Termination of Parental Rights (C.G.S. § 17a-112(j))

* Abandonment: Parent “failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the child.” *C.G.S. 16a-112(j)*; In re Juvenile Appeal, 183 Conn. 11 (1981).
* Question parent’s contacts, calls, letters, cards, gifts, payment of financial support. Any “indicia of interest, concern or responsibility” for child, participation in ACR and treatment hearings, and/or participation in court hearings.
* Failure to Rehabilitate after a finding of abuse/neglect in a prior proceeding, OR child has been in DCF custody for at least 15 months and parent has failed to take necessary specific steps provided towards personal rehabilitation.
* Question the parent’s compliance with court expectations/cooperation with services, opinions from providers, whether the age of the child supports allowing further time for parent to rehabilitate.
* In assessing rehabilitation, “[t]he critical issue is whether the parent has gained the ability to care for the particular needs of the child at issue.” (internal quotation marks omitted.) [In re Mariah S., 61 Conn. App. 248, 261 (2000)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000653903&pubNum=162&originatingDoc=Ie61577db32e011d98b61a35269fc5f88&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)); accord, [In re Gary B., 66 Conn. App. 286, 292 (2001)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001866051&pubNum=162&originatingDoc=Ie61577db32e011d98b61a35269fc5f88&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)); [In re Amneris P., 66 Conn. App. 377, 384-385 (2001)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001880440&pubNum=162&originatingDoc=Ie61577db32e011d98b61a35269fc5f88&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)); [In re Sarah Ann K., 57 Conn. App. 441, 448 (2000)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000108072&pubNum=162&originatingDoc=Ie61577db32e011d98b61a35269fc5f88&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)); [In re Shyliesh H., 56 Conn. App. 167, 180 (1999)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1999274918&pubNum=162&originatingDoc=Ie61577db32e011d98b61a35269fc5f88&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)).
	+ But cf. In re Migdalia M., 6 Conn. App. 194 (1986) (A parent’s failure to comply with all of the court’s expectations does not compel a finding of failure to rehabilitate).
* Rehabilitation is assessed as to the needs of the child, not the parent’s overall abilities. In re Christina V., 38 Conn. App. 214 (1995).
* Personal rehabilitation refers to the “restoration of a parent to his or her former constructive and useful role as a parent.” In re Migdalia M., 6 Conn. App. at 203. It does not require “the parent to be able to assume full responsibility for a child without the use of available support programs.” Id. See also In re Shaun B., 97 Conn.App. 203 (2006).
* No Ongoing Parent-Child Relationship: Does the child have any present memories of or feelings for his/her parents? In re Jonathon G., 63 Conn.App. 516, 525 (2001); In re Juvenile Appeal, 181 Conn. 638 (1980).
* The presence or absence of positive feelings on the part of the child is important. “[I]n considering whether an ongoing parent-child relationship exists, the feelings of the child are of paramount importance… The ultimate question is whether the child has no present memories or feelings for the natural parent.” In re Tabitha T.*,* 51 Conn.App. 595, 602 (1999).
* State must show that no relationship exists and that it is not in the best interests of the child to allow more time for establishment of relationship; experts may be necessary for this. *C.G.S. 17a-112(j)*; In re Theresa S., 196 Conn. 18 (1985).
* Commission/Omission: The child has been denied the care necessary for the child’s well-being, including, but not limited to, sexual molestation or exploitation, severe physical abuse, or a pattern of abuse.
* Non-accidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for TPR. In re Cheyenne A*.*, 59 Conn. App. 151, 158 cert denied, 254 Conn. 940 (2000).
* Killed/Attempted to Kill or caused serious bodily injury to another child of the parent.
* Conviction for rape resulting in conception of child, or other statutorily defined sexual assaults.
* Coterminous Petitions
* DCF may simultaneously file a neglect petition and a TPR petition when statutorily defined aggravating circumstances exist. See In re Valerie D., 223 Conn. 492 (1992).

### Necessary Findings (*C.G.S. § 17a-112(k)*)

* + Except where TPR is based on consent, the court must consider and make written findings, known as the seven statutory findings, regarding the following:
1. The timeliness, nature, and extent of services offered, provided, and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent;
2. Whether DCF has made reasonable efforts to reunite the family pursuant to the federal Adoption and Safe Families Act of 1997 (ASFA);
3. The terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order;
4. The feelings and emotional ties of the child with respect to the child’s parents, any guardian of such child, and any person who has exercised physical care, custody, or control of the child for at least one year and with whom the child has developed significant emotional ties;
5. The age of the child;
6. The efforts the parent has made to adjust his/her circumstances, conduct, or conditions, to make it in the best interest of the child to return home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions; and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and
7. The extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.

### Disposition Standard: Is Termination in the Best Interests of the Child?

* + Only considered after the reasonable efforts determination and the statutory grounds for TPR have been established, i.e. the adjudicatory phase. *C.G.S. 17a-112(j)*; In re Valerie D., 223 Conn. 492, 511 (1992).
	+ “The statute does not permit the termination of parental rights on the basis of a generic all-encompassing finding that termination is in the best interest of the child.” In re Baby Girl B., 224 Conn. 263, 293 (1992).
1. **Evidence is permitted past the date of the initial petition**. Court procedure:
	* Pretrial conference and trial dates are assigned. Pretrial date can be used to narrow the issues for trial, exchange witness lists, proposed exhibits, enter into stipulations, and explore possibility of open adoption agreement. The child’s lawyer may structure agreement.
	* Motions for expedited evaluations may be made at the plea hearing.

### Trial Preparation

* + Subpoena witnesses
	+ Consider and collect exhibits
	+ Accessing documents: DCF records, treatment provider records, criminal records.
	+ Consult with independent expert?
	+ Prepare openings, closings, and direct & cross examinations

### Important Evidentiary Issues

* + Adjudication vs. Disposition
	+ Hearsay (may be admissible towards disposition)
	+ DCF reports regarding termination are admissible, subject to the right of the parties to require that the person making it appear as a witness.
	+ Use of expert reports & obligation of disclosure
	+ Adverse inferences drawn from failure of parent to testify