

HOW TO AVOID A TPR
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- 1. Be upfront and honest with your client from the get-go.**
 - a. If a child has been taken into DSS custody, there is always a possibility that TPR will eventually become the case plan. Keep in mind that a “dirty house” case is almost more likely to go to TPR than others. Most TPRs are avoidable.
 - b. Inform your clients that they do not want to end up on that track and that time is of the essence. The longer it takes for your clients to get their act together, the less chance you will have to fight a TPR down the line.
 - c. Advise them also that whatever they say to their DSS social worker can and will be used against them but also for them. Have them stay in constant communication with their social worker and ask about their children. Assist them if they do not seem able to do it themselves.

- 2. Your clients MUST obtain services ASAP. 7B-1111(a)(2)**
 - a. Begin your case at the non-secure custody hearing. Although this may seem obvious, clients (and often attorneys) are under the delusion of having children returned during a non-secure custody hearing. This almost never happens.
 - b. This is your opportunity to make sure that the case does not go to TPR by agreeing to obtain services and by naming as many relatives for placement as you can possibly think of. Early intervention and activity shows your clients’ motivation in regaining custody.
 - c. Consider voluntary placements.

- 3. If a problem arises with the case plan, alert the Court ASAP. 7B-1111(a)(1) and (2)**
 - a. In some counties, services are not easily accessible or affordable. If DSS insists on a mental health evaluation but your client cannot afford one, raise the issue during a review hearing and request funds to get one. If your client has to participate in a class but that class is not available for several months, pursue the class in other jurisdictions.
 - b. If a review hearing is not coming up, schedule one yourself.
 - c. Document, document, document.

- 4. If you represent a father, consider legitimizing the child. 7B-1111(a)(5)**
 - a. One of the easiest grounds to TPR a father is failure to legitimize a child.
 - b. Have your client take steps to defeat this ground.

5. **Relatives, what are they good for? 7B-1111(a)(2) and (6)**
 - a. Suggest as many relatives for placement as your client can think of. Do not just name them, have them obtain locations and assist them with obtaining contact information.
 - b. ICPC homestudies take months, suggest relatives at the first non-secure custody hearing and follow up during review hearings on the status of the studies.
 - c. If the studies are taking too long, have the court issue an order to expedite them.

6. **Have your client contribute financially. 7B-1111(a)(3) and (2) and (7)**
 - a. There does not have to be a court order in place for your client to contribute financially to the care of their child.
 - b. If DSS will not accept the money on behalf of the child (they have trust accounts for each child), then make sure the court knows about it.
 - c. It does not have to be much, but some token on a regular basis shows your client's willingness to support their child.
 - d. Have them provide clothing, backpacks, school supplies or other necessities if they do not want to give money.

7. **Have your client stay in touch with the child. 7B-1111(a)(7) and (1)**
 - a. Just because DSS says no more visits does not mean that your client cannot have visits, file a motion with the court if you need to obtain them.
 - b. Just because the court says no more visits does not mean that your client should not be calling the social worker and asking how the children are doing and sending them cards.

8. **DSS wants to change the case plan, now what? 7B-907**
 - a. To change the case plan to TPR, DSS has to argue that it is unlikely that the child will return home within 6 months, there are no suitable means other than TPR to achieve permanence, and reasonable efforts have been made to return the children.
 - b. Have reasonable efforts been exhausted?
 - c. Are there services available that DSS has not provided?
 - d. Have all relatives been explored?
 - e. What would have to happen to return the children home and can it really not be accomplished within 6 months?

9. **The case plan has changed to TPR – don't throw in the towel!**

- a. Most cases are changed to TPR because it is unlikely that children will be returned within 6 months – you've still got time!
 - b. A TPR petition is supposed to be filed within 60 days and a hearing held within 90 days. This is potentially 5 months of time for your client to show they are still working on the plan, without the assistance of DSS!
- 10. Consider relinquishing a child for adoption. 7B-1111(a)(9)**
- a. If you feel in your heart of hearts that you will lose the TPR, consider talking to your client about relinquishing. This avoids having an automatic ground for a subsequent TPR if your client is of childbearing age.
 - b. Advise your clients about having future children and how their past DSS history could come to haunt them unless they can show that circumstances have changed.
- 11. If you are at TPR – don't throw in the towel!**
- a. Even if you know that grounds exist to TPR, make DSS prove their case. Do not stipulate that grounds exist, make them go through every step.
 - b. Be vigilant of the rules of evidence.
 - c. Be vigilant of the standard – clear, cogent and convincing.
 - d. Do not let evidence of best interests “slip” in.
 - e. Ask the court whether they will consider staying the best interest hearing for 3 months while your client completes tasks in an effort to win the best interest phase.

Most importantly – document, document, document all your client's efforts at improving their condition and regaining custody.