

Good afternoon, everybody.

This is a presentation for foster parents on understanding the court process.

My name is Tiffany R.

I'm an attorney supervisor for the Cabinet for Health and Family Services.

So through this presentation today, we're going to talk about a few different things.

We're going to talk about dependency, neglect and abuse cases in juvenile court.

We're going to talk about termination of parental rights cases and then appeals if they should come up.

And we're also going to talk generally about the adoption process and some of the more frequently asked questions.

So we're going to start with DNA actions, dependency neglect and abuse actions.

So to get a DNA case started, there are a couple different types of petitions.

Petitions are the document that is filed to start the case.

Two main ones are emergency custody petitions and non removal petitions. Emergency custody is when there is an imminent safety risk.

So we file paperwork with the judge to ask that custody be given to the Cabinet immediately, or we can do a non removal petition. And that is where we're going to get the court process started.

But we're not necessarily going to remove children from the

custody of their parents.

Instead, we're going to work with some services to put in the home, and we're going to do our very best to keep the children in the home and safe.

Now, when we talk about DNA actions, keep in mind that these are prosecuted by the County attorneys office in your County.

So it won't be an employee of the Cabinet for Health and Family Services.

There will be social workers involved in this case, but it's the responsibility of the County Attorney's office to prosecute these cases.

So after a petition is filed, the first hearing that we have is called a temporary removal hearing.

If it is an emergency custody order, then that temporary removal hearing has to be held within 72 hours.

If it's a non removal petition, then that hearing has to occur within 10 days.

At that hearing, there's a couple of different outcomes.

The judge could find that temporary custody to the Cabinet is appropriate.

There could be a relative or effective kin that custody could go to, or even custody could be returned to the parent because there's not probable cause to continue on with the case.

Keep in mind that the Cabinet, under Kentucky law, is required to use the least restrictive alternative, and we're required to give preference to appropriate relative placement.

And so those are the types of things that the social worker

is looking at.

If we're removing children from the very beginning, always looking for appropriate relatives.

So when we've got this petition, we're alleging two basic things. We're either alleging that the child is dependent or we're alleging that the child is abused or neglected.

Now, dependent children are children that are at harm or their safety is impacted due to an unintentional Act by the parent. So that could mean that a parent with significant untreated mental health or a cognitively impaired parent, or maybe a parent is just very much so in need of resources.

And so that is what a dependent child is.

And I've got the KRS site up there.

If anybody would like to look it up.

The other allegation can be that the child is abused or neglected.

And there are a lot of different categories that a child, a lot of different definitions of being an abused or neglected child. But this is typically what the allegation will be in the petition when we've had to remove children.

So we've got to a risk of physical or emotional injury that the parents are not meeting the children's needs.

And in my sexual abuse, there's all different kinds of definitions of what an abused or neglected child is.

So at this point, we've got the petition filed, we've had our 72 hour or our 10 day hearing, and now we're coming up on the adjudication hearing.

And so this is a hearing that the court will conduct to determine

the truth or falsity of the allegations and the complaint.

And the standard of proof is what we call a preponderance of the evidence.

So that is about more likely than not about it's a different standard of proof than, say, a criminal action where you've got beyond a reasonable doubt.

At this point, parents can stipulate or admit to some or all of the allegations in the petition, or they can request a full hearing.

If they have a full hearing, there will be witnesses and evidence and cross examination and everything that goes along with having a due process hearing.

Wanted to note for everybody that within Kara 620 is a portion regarding the foster parents having a right to receive notice of a right to be heard in any of these proceedings with respect to the child.

So that is a question that I get a lot.

Am I allowed to attend these hearings?

And the answer is absolutely Yes.

And your right to attend these hearings is right there in the statute.

So after we've had an adjudication and the court has either made a finding or the parents have admitted to the allegations in the petition, we have a disposition hearing.

And this is the hearing where the court and everybody really comes together to decide what needs to be done at this point in order to get the child back into the home.

So a couple of the different options at a disposition hearing, the child can be committed to the cabinet or another person.

So when we're talking about kids in foster care, those kids become committed to the cabinet.

It is possible for a child to be returned to the parent at this position.

It's also possible for an informal adjustment, which is akin to a dismissal of the petition.

This is also the first hearing where the court really gets a good report from the cabinet and the Cabinet makes recommendations about what he or she thinks the parents need to do in order to rectify the risk.

That was initially what brought these children in foster care. So that is where the court is also introduced to the case plan tasks.

You typically what happens in this hearing is that the case plan tasks that have been negotiated with the parent become orders of the court.

So the court orders the parents to participate in case planning tasks. Under the statute, this disposition hearing must take place within 45 days of the removal, unless that's waived by parties.

Realistically, it's very difficult with the courts calendars to get through the temporary removal, the adjudication, and the disposition within 45 days.

So you're more likely for the time period to be waived and have a disposition outside of the 45 days.

After you've got a disposition hearing, you're going to have a series of review hearings and then eventually a permanent hearing. The family court rules and the statutes require the court to hold six months and 12 month permanency reviews.

And what the court is looking for typically is an update on the progress of the parents.

How close we are, how far we are.

Is there an opportunity for visits to increase?

So the court is really monitoring the progress that the parents are making.

Not only are there court reviews going on, but there are also internal cabinet reviews going on.

These cases are being staffed by our permanency specialist.

And once we get a case that has, I would say about nine to 12 months on it, the Office of Legal Services starts to look at these cases, and we start to hold what's called a pre permanency conference or a pre perm.

And we start to have these conferences when we're considering whether or not to change the child's permanency goal.

All children that are removed from care start off with a return to parent goal because the job of the Cabinet and the job of our social workers are to get these kids back into the home.

But at some point, if parents are not successful with their case plan tasks, we have to make a decision about when it's time to change from return to parent to adoption.

And so that decision is made in conjunction with the Office

of Legal Services.

Some of the things that Alternatively could happen other than changing a goal from return to parent to adoption, is, are we at a point where this case could close with permanent custody to a relative?

Have we found an appropriate relative or effective can that this child could be placed with?

We're also the court, and internally, we're looking to find out if the Cabinet has provided reasonable efforts.

Are there services out there that social workers could refer parents to that would make a difference in the issues that are still here?

Is the Cabinet keeping up with the parents?

Is the Cabinet continuing to provide that visitation all of those things are taken into consideration.

We're looking at reasonable efforts, a huge number, a very a significant question that I get when a case is in the review and permanent piece is, why does this take so long?

There can be many, many reviews before we get to a permanency decision, and it can take this long for a couple different reasons. We get parents that are making progress, slow progress, but still making progress.

We can also be waiting for different services.

We can be taking a look at different relatives.

There's a lot of different reasons that are incredibly case specific, but this is the part of the DNA case that does take the longest.

So Let's talk some more about the goal changes again.

This is children that are in out of home care always have a goal of return to parent until the court changes it.

And the Cabinet does not change a goal until it has been pre firm'd with the Office of Legal Services.

So we have regular meetings.

Different counties depend on how frequently where the Office of Legal Services, one of our regional attorneys staff the case to make a decision if it's time for the social worker to request a goal change to adoption.

So when we have pre perms, there is a couple of different things that we're looking at.

When we talk through this case, I want to know that we identified all of the parties.

Sometimes in DNA cases, we have a parent that maybe we don't quite know everything about.

Maybe it's a parent that we haven't had a good address on, or maybe it's a parent that we have been in contact with but hasn't participated in case planning services.

Either way, even if they haven't participated in the DNA case. If we're looking to change the goal, we need to make sure who all these parties are.

I also want to know what kind of services we've been able to offer and what kind of progress have parents made?

Sometimes it's a lot of progress, and sometimes it's not a lot of progress, but we have to make sure that the level of services that we have offered has been consistent across



the board.

Another thing I want to take a look at is where are the children and how are they doing in foster care?

We're going to talk about later on in the termination section when we get there about how the best interest of the children is part of the termination case.

So when I'm talking about changing the goal, I want to know, are we doing these children a service by terminating parental rights? Are they in an adoptive home?

All pieces of information that are important before we certify a case for a goal change, I've got a slide here that talks about a few different elements that may come up at disposition or those review hearings or the permanency hearings, just really kind of a miscellaneous group of things.

There are different drug screen orders.

Again, that's dependent on the County that you're in and how often they have parents required to drug screen.

There are certain circumstances where the court can waive the cabinet's obligation to provide reasonable services to parents. There's also paternity testing and legal fathers.

Legal fathers come up when the mother is married at the time the child is born or within 10 months.

Those legal fathers, even though they may be legal fathers, they're not always biological fathers, but they are entities, parties that we have to deal with.

A lot of times an ICC comes up, and this is when we identify a potential placement for a child out of state.

When that happens, we have to work through our ICC office in Frankfurt, and that office communicates with the ICC office in the state in which we're looking for placement.

And basically, it's an agreement for the two social workers to social service offices to work together.

In order for the Cabinet to place a child out of state, we have to have an approved ICC, which means that a social worker has gone out to the home and done a home evaluation and assess the safety of that home.

This is the CPC is a piece that can take a little bit of time. So oftentimes we have children that are in foster care that we're just waiting on an approved ICC to move them to relatives. Sometimes we also have pretty complex cases.

This can come up when parents have participated in case planning services, but there is concern about whether or not they have protective capacity or there can be all kinds of different concerns. So we need something a little bit more significant to assess the safety of the situation.

So we can ask for a parental capacity evaluation from a mental health professional.

Sometimes.

Also, we have cases that are reviewed by our RCC counsel.

So regional case consultation.

And this is a group of seasoned social workers and specialists.

And sometimes there's community mental health experts that sit on RCC.

But it's basically an opportunity for us to talk through

significantly complex cases and get some new ideas, some new eyes on the case.

And finally, there is a putative father registry, and you can find more about that if you want to look up the KRS.

But it's an opportunity for fathers to register if they believe that they could possibly be a father of a child in our state.

And so this is just a quick visual of all the different hearings that we talked about in our DNA actions, starting with the emergency custody orders and all the way down to those permanency reviews. Okay, Let's switch gears a little bit and talk about termination of parental rights hearings.

So this is where we have gotten to the point where the Office of Legal Services has certified this case for a goal change.

Typically, we have asked the court to change the goal to adoption, and the court has agreed and change that goal.

So that means that it's time for the Cabinet to move forward with a termination of parental rights.

We're talking about involuntary termination in volunteer, termination of parental rights and that style in Kara 6 25

Couple of different things that I want to point out about termination of printer, right.

First of all, these are brand new actions filed by the Office of Legal Services.

Whereas with those DNA cases, the County Attorney's office handled them.

Now we've switched over to someone like me, an attorney for the Cabinet.

All the parties must be named in a termination of parental rights. Just because we have a father or a mother that wasn't involved in the DNA action, we can't leave that person out.

We need to get anybody that could have any legal rights to the child.

Everybody has to be served.

And this is something that can add more time to the process.

They have to be either personally served, which is getting proof that they've been served by Sheriff, or sometimes we have to have a warning order attorney when we don't really know where the person is.

And that's an attorney that has that is charged solely with the task of letting the person know that an action has been filed against them.

And typically, what happens is they send a letter to the last known address, and they have 50 days to file a report with the court, letting the court know whether or not they have been able to make contact with that parent, whether they make contact or not.

The action can still move forward, but it does add some time.

This action is also filed in circuit court, but in any family court jurisdiction, it's going to be the same judge.

There are still jurisdictions in our state that has district court and circuit court, but these termination actions are always filed in circuit court.

The child does get a Guardian Aline, and the parents get appointed Council if they can't afford it.

And it should be, for the most part, the same people that were involved in the DNA action.

Now, remember, we talked about that standard of proof in the DNA action being a preponderance of the evidence in termination cases. It's a higher standard approved.

It's clear and convincing evidence, which is about so if we think about preponderance of the evidence being clear and convincing being and beyond a reasonable doubt being, so it's higher than a DNA action, what do we have to prove in a termination of Rome?

Right.

So this is a really simplified explanation of it, one that the child has already been a judge to be a neglected child, or during the termination action, we prove that generally that the issues that brought the child into foster care have not been fixed and that termination of parent, it is going to be in the best interest of this child.

There is also a relatively new piece of the statute of the termination statute that allows foster parents to become a party in a TPR.

What that means is that a foster parent is allowed to intervene and become a party to the termination of parental rights action. You can intervene anonymously.

So that means that you, as a foster parent, are filing a motion to become a party to the TPR.

When a TPR is filed, a foster parent is automatically sent a courtesy copy of the petition.

So you'll automatically get that from the Office of Legal Services so that you will have the case number.

If you decide that intervening in a TPR is something that you want to do, that is a step that you have to take on your own, and you should consult an attorney before you do it or have an attorney represent you.

The social worker involved in the case can't file this for you, can't really give you legal advice, and the Office of Legal Services represents the Cabinet.

So on this next slide, I've got some different factors that are considered in the termination of parental rights action.

And I'm sure that you have heard about a couple different pieces of this, especially the child being in foster care for 15 cumulative months out of the most recent 48.

But these are just some different things that the statute has the judge consider during these types of hearings.

Not every factor is applicable in a case, but as you can see that there's a lot of different pieces that go along with what the judge needs to take a look at got some more factors that that come into play.

One thing I definitely want to point out is the reasonable efforts provided by the Cabinet.

Again, that was a huge factor in the DNA case, and it's a huge factor again, in the termination of parental rights cases. And this is something that I'm looking at in my pre perm conferences.

This is something that the judge is always looking at.

And sometimes this is what causes delay in some of these cases, because we've got to make sure that we are providing those reasonable efforts.

I also want to point out that the factors that were on these last two slides, for the most part, we are facing multiple factors. It's really not usually just one.

And we've got a mix of different things.

Generally speaking, the TPR action is a much more formal proceeding. When we've got an action going on in DNA court, there's usually many different cases scheduled for the same day. The judge is hearing the different DNA cases, but not at length and not on their own.

Tprs are different.

They're much more formal, and they're almost as close to a TV trial as you can imagine.

There's many more legal arguments.

Typically, we talk about what the statute requires in different case law.

We we present evidence, and then the parents present a defense and there are what we call different witnesses.

The witnesses can be cross examined, there are exhibits that are entered.

So it's much like I said, it's a much more formal proceeding.

So at the end of the trial, once the Cabinet has presented all its evidence and the parents have presented all their evidence, there's a couple of different options.

One circuit court can terminate the parental rights of the

parents, or it can dismiss the petition.

If the court dismisses the petition, it can choose to leave the children in foster care or return them home immediately.

Returning the children home immediately is a very rare occurrence.

If the Cabinet is not successful in its termination trial, then usually that's a signal that the Cabinet needs to provide more services and that the parents should have more time to work through some things.

So generally, what happens is the circuit court will dismiss the petition, and then we'll send the case back to the DNA case to work through more reviews.

If the court does terminate parental rights, then it has 30 days to enter a judgment from the close of proof.

So a judgment is the official document terminating the printer.

Right.

And the judge signs off on it, and it gets entered into the court record.

Foster parents roles in TPR, especially when we're talking about contested TPRs, foster parents have a lot of knowledge, a lot of first hand knowledge about the changes and improvements in children.

And so because of that, foster parents can be used as a witness.

When I'm looking at who I'm going to have as a witness at a termination trial, I really look at who's going to be able to give me evidence on the pieces of the termination statute that I need to prove.

And usually when we're talking about foster parents, that



comes in on the best interest of the child.

So if we've got a lot of different witnesses and we've got parents or contesting, then I will reach out to a foster parent and talk to them about being a witness because they have that knowledge about how a child does during the day, how they're doing at school, what kind of relationships do they have?

All those important pieces.

But if you're not asked to be a witness in a termination trial, that's okay, too.

And that means that we don't necessarily need that piece of evidence.

It doesn't have anything to do with what kind of foster pair you are or whether you've been very involved in the court process or you've decided not to be very involved in the court process.

It doesn't have anything to do with that.

It's very much so.

What does the case look like?

And what kind of witnesses do I need?

Foster parents are entitled to be present during that termination hearing. The only time that you can't be present is if you're going to be a witness, you can't be present before you testify.

You're allowed to be present after you've given your testimony and watch everything else.

But if you're not going to be a witness, then you have the opportunity to view the hearing.

Okay, appeals are another piece that I get a ton of questions about. Parents have 30 days to appeal the termination judgment. So when we say 30 days, that 30 days starts to run the day after the judge signs the actual judgment and it's sent out by the clerk.

Sometimes there are motion filed after the termination judgment is entered.

And if there are motion filed, then the clock starts to run after those motions are resolved.

But generally, it's a 30 day window.

If there is an appeal, then the case moves from circuit court to the court of appeals.

And it's a very different process.

There is no second trial.

There is no more evidence that comes on it's.

The court of appeals reviewing the evidence that was that was laid out during that initial trial.

When it goes up to the court of appeals, it gets assigned to a three judge panel.

And so what the court of appeals is looking at is, were there any errors of law?

Did the trial judge make a mistake on the law that was applied?

And if there was sufficient evidence for the trial court to make the decision that it made, this is not an opportunity for the court of appeals to substitute its judgment for the trial court.

But just to make sure that there was enough evidence, parents,

if they had appointed counsel during the termination case, then that attorney is obligated to represent a parent on an appeal.

And like I said, there's no new trial, no new evidence.

Everything is done through briefing, through written arguments.

Everything is also on an expedited briefing schedule.

Now, expedited in TPR appeals really means it's going to take about a year for an appeal to work all the way through from the notice of appeal that starts the case through a final opinion.

That's an expedited schedule.

So imagine if you were appealing something else, it would be much longer.

And sorry, the case does not move forward until the appeal has been completed.

So any adoptions, anything that comes after the termination can't move forward with any of that until the appeal has been completed.

But Let's say that we've either got to the end of the appeal or there was no appeal.

Either way, once all the appeals are done, then the case proceeds through the adoption process.

First, a presentation summary is drafted.

And this is basically a big report on everything that has occurred with a child while they have been in foster care.

It contains information about from medical records about biological families, basically anything about the child.

And once that presentation summary is compiled and drafted and approved, your RNC worker will also start to talk to you about the adoption contract in subsidy terms, but your RNC worker will notify you when it's time for you to get an attorney and start working into the court process.

Because the adoption is another court process, another action that has to be filed, so it will be the responsibility of the foster parent to find an attorney and file the adoption petition with the court.

The Cabinet does offer legal fee assistance to folks when they do retain an attorney.

Adoptions get filed in the County where the adopting parent resides or the County where the juvenile case took place.

So that could be significant, because if you had the same judge in your DNA case and then you had the same judge with your TPR case, then sometimes having your adoption in front of that same judge does make sense.

Petitioners are either a single person or a married couple.

Kentucky law does not allow two people that aren't married to be petitioners on an adoption petition.

A Gal is appointed again, a Guardian ad litem to represent the child.

And if it's in the same County where the DNA case took place, then it's probably going to be the same attorney that represented the child through the DNA and the termination case.

Once that petition is filed, the Cabinet will conduct a home study and file a report within 90 days.

And as a foster parent, these home studies tend to go pretty quickly because the Cabinet has been closely involved with your family since placing the child.

Once that Cabinet's report is filed, the Guardian Ad Litem also files a report, and the attorney will ask the court for a final hearing date.

This is the good hearing.

This is the hearing where you get to invite family and friends and we get to take pictures.

And it's a very brief hearing, but it's an exciting hearing.

The judge will enter the judgment of adoption, and within that judgment is how a child name gets changed.

If it's requested, it's not a requirement.

But if you're going to change the child's name or if you're just going to change the last name, that it happens within that judgment.

Once that judgment is signed, the clerk sends off the request for the new birth certificate and that gets issued by vital statistics in our state.

If the birth certificate is from out of state, then the request has to go to that out of state place.

Adult adoptions are available.

You can adopt, especially when it comes to recommitment youth.

Some of our kids that have turned 18 or 19 that aren't necessarily in the custody of the Cabinet any longer.

But you can do an adult adoption, and it would work pretty similar to how we've got going, minus the Cabinet report

and things like that.

But you would want to consult an attorney for that.

Are there appeals in an adoption appealing an adoption is a legal possibility?

I can't tell you that it never happens, and I can't tell you that it's impossible, but I will say that it is incredibly rare. And if it's happening, then there are some pretty unique facts to a case that you've got going on.

But in the vast majority of adoptions, there is no appeal.

I wanted to end our presentation with a couple general thoughts on everything that we've gone through.

Please remember that the law is the same in every County in our state, but every judge does things a little bit differently. So you may things may be happening the same way, but every judge has their own little style.

I also want to point out that Kentucky Revised Statute 623 60 has a listing of the rights and responsibilities of foster parents.

So as foster parents, you have the right to receive training, to have access to Cabinet support, to have information on the on the child that's going to be placed with you before placement. And you also have a right to the information on the child while that child is in your home, especially when we're talking about teachers and therapists and health care professionals. You have the right to all of that information.

You also have the right to be priority consideration for previous placement.

So if a child is placed with you and is returned home to the biological family or to a relative and comes back into care, then you have the right to have priority to consider placement. You also have the right, again, to receive notice, to know about hearings, and to be able to be present with for any hearing that involves that child.

As a foster parent, your responsibilities are to maintain an orderly and clean home, to provide adequate resources for clothing, hygiene, recreation, spiritual everything that has to do with that child.

You have to abide by the Cabinet policies relating to discipline. So no physical discipline.

And you have the responsibility, discipline, or the involvement of a foster child biological family whenever that's possible.

So I hope that this presentation gives you a good overview of the different pieces of the court process when it comes to having a child placed in your home.

I've got some information up here with my email address and phone numbers.

Anybody is always welcome to reach out to me to shoot me a question.

If there's a piece of this presentation that you are unsure of, myself and all the other regional attorneys are always available to help answer your questions.

Thank you very much.