Legal II: The Court Process Power Point Slides

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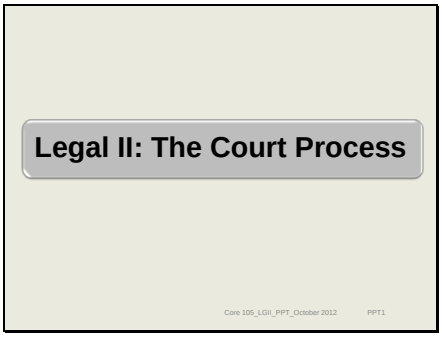

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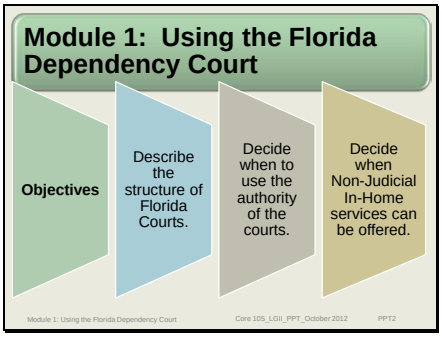

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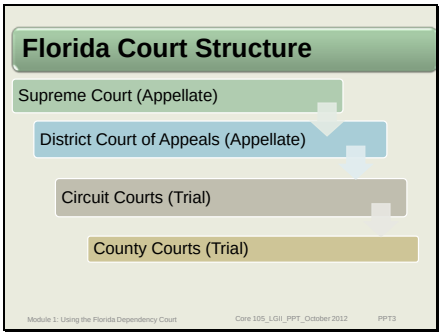

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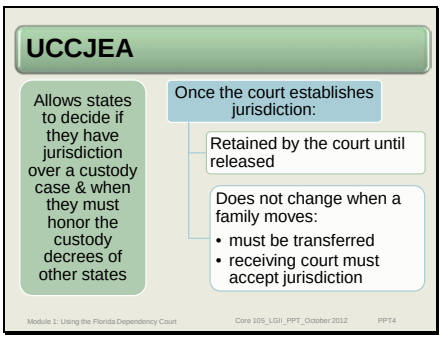

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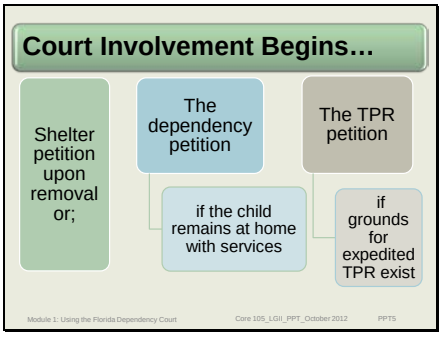

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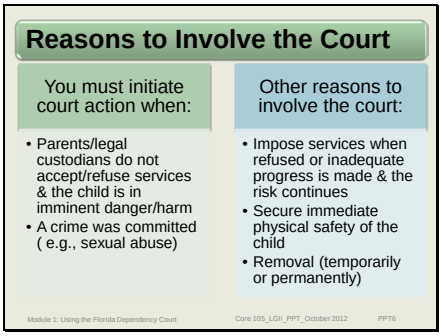

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Findings that must be included in the Shelter Order:

1. Reasonable efforts were made to prevent /eliminate the need to remove the child from home; or

2. If preventive services were not offered due to emergency placement, the lack of services was reasonable under these circumstances; &

3. Leaving the child at home is contrary to their welfare/health

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Considerations Prior to Court Action

Is the child at imminent risk?
Is the caregiver unable/unwilling to take action to protect the child?

Were treatment(s) unsuccessful?
Has the caregiver made little progress toward providing adequate care of the child?

Does the family's failure to cooperate place the child in substantial danger?

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Considerations Prior to Court Action

Is the child in need of non-optional medical or psychiatric care?
Does the caregiver refuse to provide this care?

Does the caregiver refuse to accept services even though the child is in substantial danger?

Is the caregiver incapacitated by drug/alcohol use, physical/mental illness, or incarceration?
Can they provide minimally sufficient care for the child?

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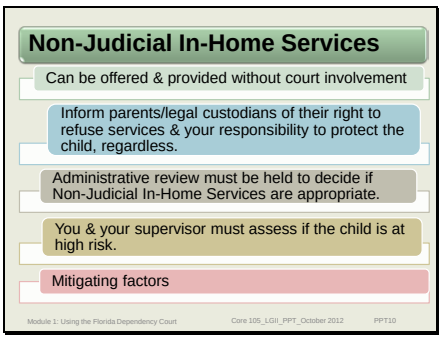

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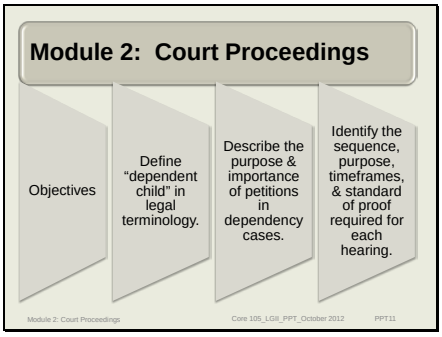

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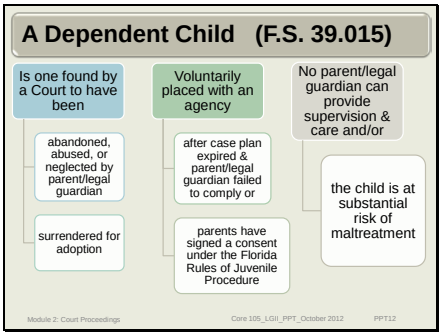

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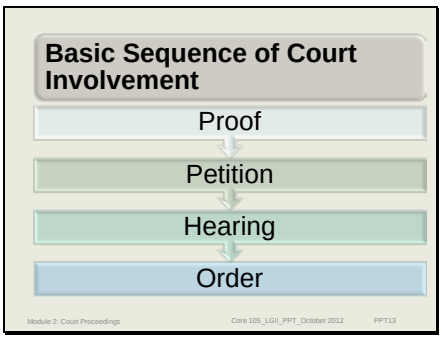

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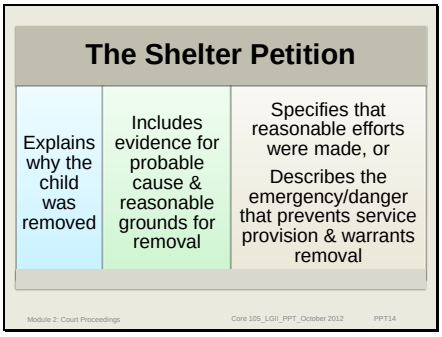

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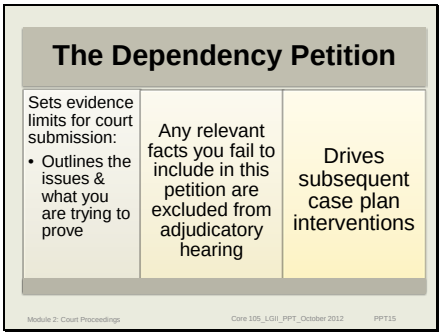

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Contents of Shelter Petition

- Child's name, address, date of birth, & sex
- Parents /legal custodian's name & address (if known) & how each was notified of the shelter hearing
- Removal date/time
- Statement that child is of an age subject to Court's jurisdiction
- Reasons child needs shelter placement
- Reasonable efforts (if any) taken to prevent/eliminate need for removal/continued removal
- Placement recommendation
- Signature of petitioner & CLS

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Contents of Dependency Petition

- Sufficient facts to show the child is legally dependent
- Allegations to the identity & residence of parents/legal custodians (if known)
- The child's age, sex, & name
  Two or more children may be subject of the same petition
- Two or more allegations of dependency may appear in same petition, in separate counts
- Must describe voluntary services &/or dependency mediation offered to parents/legal custodians & the outcome of each
- Signature in good faith

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Grounds for TPR F.S.39.806(1)(a)-(l)

- Voluntary Surrender
- Abandonment
- Severe or Continuing Abuse or Neglect
  - (parents' continued involvement threatens the child irrespective of service provision)
- Incarcerated Parent (under certain circumstances)

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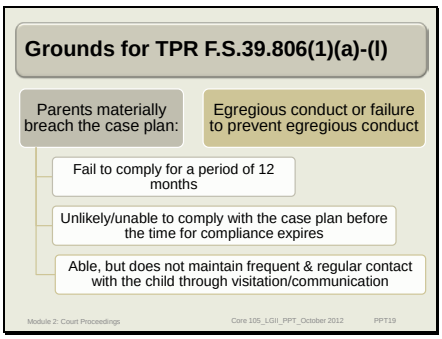

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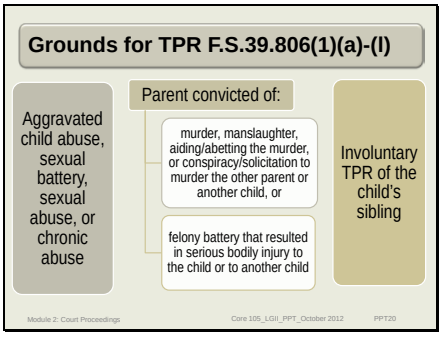

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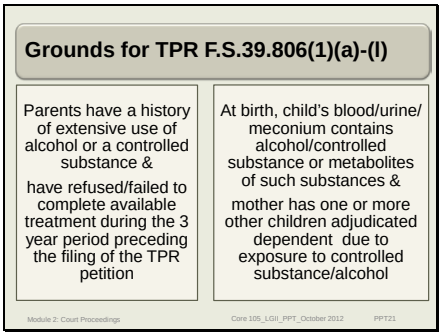

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Grounds for TPR F.S.39.806(1)(a)-(l)

On 3 or more occasions:

- This child or another child of the parent(s) has been placed in out-of-home care, &
- The parent(s) caused the conditions that led to the placement

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F.S. 39.8055

A TPR petition must be filed w/n 60 days after:

The child is not returned to the physical custody of the parent(s) 12 months after sheltered or adjudicated dependent, whichever comes first.	The child has been in out-of-home care for 12 of the most recent 22 months	Parent convicted of murder, manslaughter, aiding/abetting the murder or conspiracy/solicitation to murder the other parent or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or to another child of the parent	Court finds that reasonable efforts to reunify child & parent are not required

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TPR Petition

- Presents evidence for the grounds for TPR listed in 39.806
- When expedited TPR filing occurs, replaces the petition for dependency
- Establishes that obvious best interests of the child are served by granting the petition
- If court finds TPR is in the best interests of the child, it must also find TPR is the *least restrictive means* of protecting the child

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Expedited TPR 39.806(1)(b)-(d) or (f)-(l)

- Abandonment
- Incarceration of a parent, when significant part of child minority will be spent incarcerated
- Conduct of parent demonstrates continued involvement would threaten safety and well-being of child.
- Egregious conduct or failure to prevent egregious conduct

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Expedited TPR

- Egregious conduct or failure to prevent egregious conduct
- Aggravated child abuse/sexual battery/sexual abuse/chronic abuse
- Parent convicted of murder/manslaughter, aiding/abetting murder, conspiracy/solicitation to murder the other parent or another child, or a felony battery resulting in serious bodily injury to the child/another child
- Involuntary TPR of the child's sibling

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Expedited TPR

- Parents have a history of extensive alcohol/controlled substance use & have refused/failed to complete available treatment during the 3 year period before the filing of the TPR petition.
- At birth, the child's blood/urine/meconium contains any amount of alcohol/controlled substance/metabolites of such substances & at least one other child of mom was exposed to a controlled substance/alcohol & adjudicated dependent.
- On 3 or more occasions the child/another child of the parent(s) has been placed in out-of-home care & conditions that led to the placement were caused by the parent(s).

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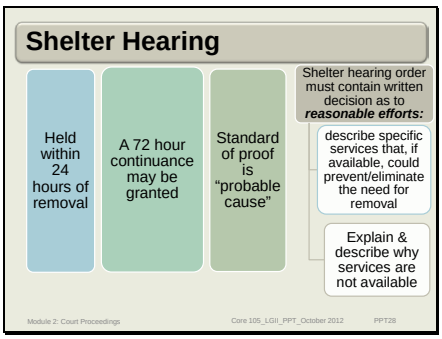

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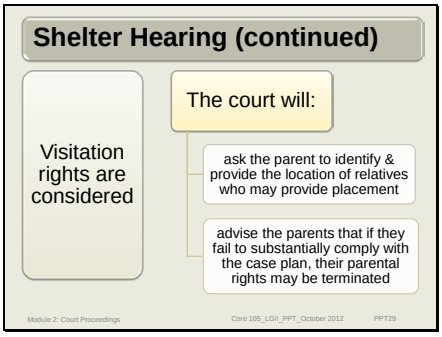

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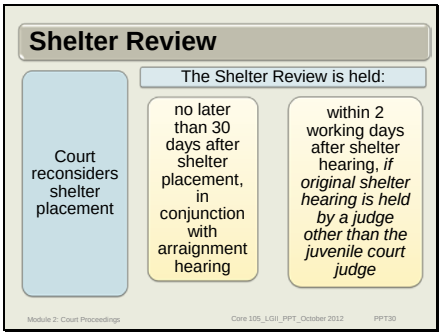

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Dependency Petition

- Filed within 21 days of Shelter hearing or within 7 days after any party files a demand for early filing, whichever comes first
- Parents must be served w/ a copy at least 3 business days before arraignment hearing
- Presents maltreatment evidence
- Addresses legal definitions of the specific maltreatments
- Serves as notice to the parents of what is being alleged
- Affects the case plan and TPR
- Case plans cannot be used to force parents to correct behavior not admitted to or found by the court to have been committed

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Arraignment Hearing

- Present allegations - Parents admit, consent or deny
- If parents admit/consent, disposition hearing is held within 15 days
- If parents deny, adjudicatory hearing (trial) is held within 30 days
- Failure to appear at arraignment when served with notice constitutes consent to the adjudication of dependency
- No evidence is presented; therefore there is no burden of proof

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Stipulation

Not a hearing

Agreement signed by all parties that prevents the need for many subsequent court proceedings

Reduces trial time

Frequently part of **mediated** settlement

Must always include a case plan

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Adjudicatory Hearing

- Held within 30 days of arraignment hearing
- Trial conducted by a judge without a jury
- Standard of proof: "preponderance of the evidence"
- When the court adjudicates a child who is in out-of-home care, they must again ask parent(s) about relatives to consider for placement
- Court must advise parents that parental rights may be terminated if they fail to substantially comply with case plan
- Only one order can be entered for each dependent child in the case
- Court must find if each parent maltreated the child in later evidentiary hearing

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Adjudicatory Hearing

- Adjudicatory order establishes child's legal status & may be based on the conduct of one parent, both parents, or legal custodian.
- Subsequent evidentiary hearing may be held regarding the conduct of one parent, both parents or a custodian.
- Supplemental findings made beyond a preponderance of the evidence may be entered.
- Child's dependency status may not be re-tried or re-adjudicated.

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Disposition Hearing

- Purpose: to find & order protections, services, & placement of a dependent child
- Occurs within 15 days of arraignment hearing if "consent" or "admit" or within 30 days after adjudicatory hearing if "deny"
- Case plan, PDS, (home study & diligent search) must be filed 3 business days prior to the disposition hearing, but no later than 60 days after removal

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Disposition Hearing (continued)

The court may grant an exception to predisposition study requirement by separate order with the judge's order of disposition upon finding that all family and child information is available in other documents filed with the court.

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Disposition Hearing (continued)

Case plan must be served on all parties at least 3 business days prior

Judicial approval of the case plan often occurs at this hearing

If the court does not approve the case plan at the disposition hearing, or if amendments/revisions need to be made, the court must set a hearing (Judicial Approval of Case Plan) within 30 days after disposition to review & approve the case plan.

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Initial Judicial Review Hearing

Purpose: Review the child's permanency goal
- Occurs 4-6 months after removal
- Reviews progress made toward case plan goal, objectives & tasks
- JRSS/CPU & case plan update are submitted

Held whichever is earlier, but *no later than 6 months after removal date:*
- w/n 90 days of disposition or
- hearing that approves the case plan

If reunification is unlikely within 12 months
- must file motion within 10 business days of receiving written finding to amend the case plan & use concurrent case planning

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Second Judicial Review Hearing

- Decides if permanency plan is appropriate for the child
- Must be held within 6 months of the first review, but no later than 12 months after removal
- If held at 12 months, review must present the permanency plan for the child

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Judicial Review Hearing for Children Awaiting Adoption

- Must be conducted every 6 months to review the current placement & progress towards adoptive placement
- If child is already placed in an adoptive home, reviews progress toward finalization

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Judicial Review Hearing Prior to Child's 18th Birthday

- Must be held within 90 days after the child's 17th birthday
- Reviews the child's progress
- Must give the court specific information about independent living services
- Must submit updated case plan and JRSS/CPU

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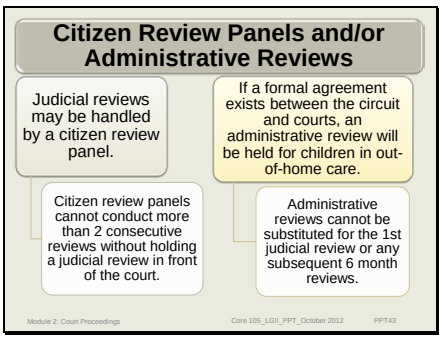

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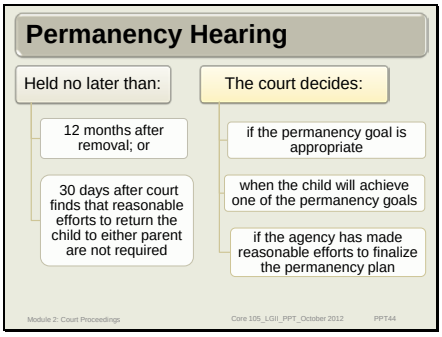

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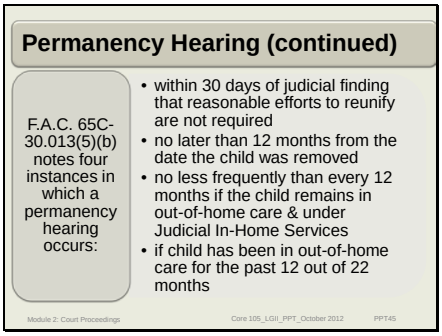

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Permanency Hearing (continued)

- Prepare by conducting a permanency planning staffing.
- JRSS/CPU must be filed with the court at least 3 business days prior & copies served on all parties.
- When the court finds reunification inappropriate, adoption is the primary permanency option.
- If a child becomes available for adoption & their sibling has already been adopted, the sibling's adoptive parents must be given the chance to adopt the child with the same consideration as a relative.

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Termination of Parental Rights

A petition to terminate parental rights must be filed within 60 days if:

The child is not returned to the physical custody of the parent(s) 12 months after sheltered or adjudicated dependent, whichever comes first.	TPR petition has not been filed & child was in out-of-home care under state responsibility for 12 of the most recent 22 months.	A parent has been convicted of certain crimes.	A court finds that reasonable efforts to reunify the child and parent are not required.

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Termination of Parental Rights Petition – s.39.806(1)(a)-(l)

Can file at any time when one of the grounds for TPR exist

Presents evidence

- shows that parents were informed of their right to counsel
- & offered a case plan (unless expeditious filing);
- & the child was adjudicated dependent

Establishes the manifest (obvious) best interests of the child is served by granting the petition

If court finds TPR in the child's manifest best interests, it must also find that TPR is the *least restrictive means* of protecting the child

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Expedited TPR

No requirements for reasonable efforts to preserve & reunify the family apply, if any events in F.S. 39.806(1)(b)-(d) or (f)- (l) have occurred.

TPR petition is filed, the case plan will have a goal of adoption.

Case plan goal of reunification does NOT have to be offered to the parents.

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Termination of Parental Rights Hearing

A trial with its own advisory hearing, adjudicatory hearing & disposition held specifically for TPR cases

- Purpose: decide if parental rights should be terminated so the child can be adopted
- Standard of proof: "clear and convincing"

Advisory hearing takes place before TPR hearing

Adjudicatory hearing occurs within 45 days after TPR advisory hearing

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