



# Reunification, TPR & Adoption Judicial Considerations

## **Judge Marcus Vanover**

Family Court Judge, 28<sup>th</sup> Judicial Circuit (Lincoln, Pulaski, Rockcastle)

## **Judge Elise Spainhour**

Family Court Judge, 55<sup>th</sup> Judicial Circuit (Bullitt)

# Troxel v. Granville: Parental rights



## 530 U.S. 57 (2000)

- **Parents have a fundamental liberty interest in the care, custody, and control of their children.**
- Cautions against state interference based merely on a judicial preference for a different family arrangement.
- Reunification analysis should identify the specific safety concerns, what has changed, and whether safe return is realistically achievable.
- A strong foster placement or bond does not, standing alone, replace the statutory and constitutional requirements for TPR.
- **Bottom line:** court should not treat reunification versus adoption as simply a contest between two homes; there must be a legally sufficient basis for continued state intervention and TPR requires the protections supplied by Kentucky law.



## Adoption and Safe Families Act of 1997

- ASFA shifted federal policy toward timely, permanent outcomes rather than prolonged foster-care stays.
- 42 U.S.C. § 675(5)(E) generally requires States to initiate TPR proceedings when a child has been in foster care for 15 of the most recent 22 months, subject to exceptions.
- ASFA creates a permanency timeline; it does not itself establish a Kentucky TPR ground or automatically terminate parental rights.
- For a child age 5 or under, time in care can represent a substantial portion of the child's life, making delay important evidence in permanency analysis.

# Grounds for Involuntary Termination



## **KRS 625.090(2) • Clear and convincing evidence**

- The court must find at least one statutory ground for involuntary termination by clear and convincing evidence.
- Grounds include abandonment; abuse/neglect; specified serious injuries or convictions; failure/substantial inability to provide essential parental care and protection; sexual abuse/exploitation; failure to provide essential necessities; prior TPR circumstances; and other specified statutory circumstances.
- Several grounds expressly incorporate the child's age when assessing parental capacity or likelihood of improvement.
- Includes a specific foster-care-duration ground tied to 15 cumulative months in the preceding 48 months

# KRS 625.090(3): Best-Interest Factors



- Parental capacity: mental illness, intellectual disability, or disability when it affects the parent's ability to meet the child's needs.
- Abuse or neglect toward the child or another child in the family.
- Whether CHFS made reasonable efforts toward reunification, unless reasonable efforts were not required.
- Parent's efforts and adjustments to the circumstances causing removal, considering the age of the child.
- Child's physical, emotional, and mental health and prospects for improvement if TPR is granted.
- Financial support when the parent was financially able, and evidence concerning whether additional services could produce lasting parental adjustment.

# Reasonable Efforts & Likelihood of Change



## CHFS Efforts / Parental Adjustment / Child's Timeframe

- **CHFS:** Were services reasonably calculated to address the conditions that caused removal?
- **CHFS:** Were services timely, accessible, and appropriately tailored? Was meaningful visitation facilitated?
- **Parent:** Did the parent make sustained behavioral changes—not merely complete services?
- **Parent:** Can the parent demonstrate safe parenting, recognize the child's needs, and maintain stability outside a controlled service setting?
- **Likelihood of change:**
  - Is there a reasonable expectation that the parent can achieve necessary change within a timeframe that serves this child's needs?
  - Will additional services likely produce last adjustment—or whether continued delay create a greater permanency/development concern?

# 15 Month Permanency Clock



## ASFA + 922 KAR 1:140

- Kentucky's 922 KAR 1:140 defines concurrent planning as planning simultaneously for reunification and another permanency goal if return to the parent is not achieved within 15 of the last 22 months
- Under 922 KAR 1:140, adoption becomes the permanency goal when CHFS pursues involuntary TPR, including when the child has been in foster care for **15 of the most recent 22 months**.
- CHFS must consider involuntary TPR at each applicable permanency hearing or case review. There are regulatory exceptions, including secured relative/fictive-kin placement, a compelling documented best-interest reason, or failure to provide a necessary service within the case-plan timeframe.
- KRS 625.090: The **15-of-48-month** calculation is a separate Kentucky TPR ground under KRS 625.090.
- The 15-of-48-month ground is part of the Kentucky statutory analysis of whether a basis for involuntary TPR has been established. Even when a statutory ground is established, the court must still conduct the required best-interest analysis and apply the applicable clear-and-convincing-evidence standard.

# Putting It Together: Judicial Sequence



1. **CONSTITUTIONAL CONTEXT:** Respect the parent's fundamental liberty interest while recognizing the State's protective authority.
  2. **SAFETY:** What conditions caused removal, and what danger exists today?
  3. **REASONABLE EFFORTS:** What did CHFS provide, and were those efforts adequate and targeted?
  4. **PARENTAL CHANGE:** Has meaningful, sustained change occurred? Is further change reasonably likely?
  5. **PERMANENCY TIMELINE:** How long has the child been in care, including the ASFA 15-of-22-month framework?
  6. **TPR REQUIREMENTS:** Is a statutory ground established by clear and convincing evidence?
  7. **BEST INTEREST:** Considering age, health, relationships, development, and permanence, is TPR in this child's best interest?
- THE CENTRAL QUESTION:** Can safe, lasting reunification realistically occur within a timeframe that serves **THIS** child's needs?

# Legislative Impact on Adoption & Permanency: HB 476 (2024)



- **Creates a new voluntary TPR pathway:** During a pending **KRS Chapter 620 dependency, neglect, and abuse proceeding**, a parent may voluntarily terminate parental rights by signing and filing the AOC-prescribed consent form. **Consent must be voluntary and informed.**
- **Court approval remains required:** The court must find that termination is **in the best interest of the child** before entering the termination order.
- **Impact:** Allows a case to move from **reunification/TPR litigation to permanency through adoption more directly** when a parent voluntarily elects to relinquish parental rights during the DNA proceeding.
- Where the child is already placed with a foster family that intends to adopt, voluntary TPR may eliminate the need for a contested involuntary TPR proceeding, but **the court must still determine that TPR is in the child's best interest.**