



# Florida Guardian ad Litem Termination of Parental Rights Checklist

## TPR = Statutory Ground (+) MBI (+) LRM

Termination of Parental Rights: Must prove by Clear and Convincing evidence grounds for TPR under §39.806 and TPR is in the child's Manifest Best Interest (MBI) under §39.810, and TPR is the Least Restrictive Means (LRM) of protecting the child from harm

### Contents of Petition

TPR Petition must contain facts supporting the following allegations

- That at least one of the **grounds** for TPR has been met (*See Grounds for TPR*)
- That the parents were informed of their **right to counsel** at all hearings they attended
- That a dispositional order adjudicating the **child dependent** was entered
- That the **manifest best interests** of the child would be served by the granting of the petition; See § 39.802(4); Rule 8.500(b).

The petition shall also contain:

- allegations as to the identity and residence of the parents, if known; and
- the age, sex and child's name; and
- a certified copy of the birth certificate of each child named in the petition; and
- When required by law, a showing that the parents were offered a case plan and have not substantially complied with it; See Rule 8.500(b)

### Grounds for Termination of Parental Rights (TPR)

- Voluntary Surrender §39.806 (1)(a)
  - **Written** (2 witnesses & notary), **consented** to order, **department will take custody**, and not under **fraud or duress**
- Abandonment (*Does not include abandoned infants*) § 39.806(1)(b)
  - (While being able) No effort to support + No effort to communicate or "marginal efforts at parenting"= "sufficient to evince a willful rejection of parental obligation" §39.01(1); OR
  - Location or identity of parent is unknown and cannot be ascertained by diligent search w/in 60 days § 39.806(1)(b)
  - Note: Incarceration does not, as a matter of law, constitute abandonment. However, incarceration is a *factor* to be considered "together with other facts" when determining if abandonment
- When the parent or parents engaged in **conduct** toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship **threatens the life, safety, well-being**, or physical, mental, or emotional health of the child **irrespective of the provision of services** §39.806(1)(c); often used with §39.806(1)(e)
  - **Conduct** towards child or other children; AND
  - Provision of services (can be from case plan but doesn't have to be); AND
  - **Harm** to child irrespective of services; AND
  - **No reasonable basis to believe parent would improve**
  - *Do not need dependency adjudication or 12 months*
- Incarceration §39.806(1)(d)
  - For **significant portion** of child's minority considering child's age and need for stable, permanent home (time starts date of incarceration) §39.806(1)(d)1; OR
  - Incarcerated for **certain crimes** §39.806(1)(d)2; OR
  - Court determines the continued parent child **relationship would be harmful to the child** §39.806(1)(d)3
- A case plan has been filed with the court and approved, and the **child continues to be abused, neglected, or abandoned by the parents** §39.806(1)(e)
  - Adjudicated dependent; AND
  - Case plan filed; AND
  - 12 or more months (not if material breach); AND

- **Parent failed to substantially comply** (not due to lack of parent’s resources or department’s failure to make reasonable effort to reunify) Substantial compliance “means circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child’s remaining with or being returned to the child” §39.01(73); **OR**
- **Parent materially breached the case plan** (do not need 12 months) Clear and convincing evidence that parent is unlikely or unable to substantially comply with the case plan before the time expires to comply §39.806 (1)(e)2
- When a parent engaged in **egregious conduct** or had the opportunity and capability to prevent and knowingly **failed to prevent egregious conduct** that threatens the life, safety, or physical, mental or emotional health of the child **or the child’s sibling** §39.806(1)(f)
  - Egregious conduct – can be on incident if so severe as to endanger the life of the child
  - Harmed child or placed child at imminent risk of harm (must be a nexus between harm and conduct)
  - Knowingly failed to protect
  - OR CHILD’s SIBLING –Prospective Risk of **Harm** (prior abuse) + Nexus
  - No case plan required, can file petition at any time
  - Definitions
    - Sibling means another child who resides with or is cared for by the parent *regardless of whether the child is related*.
    - Egregious conduct means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.
- When a parent has subjected the child to **aggravated child abuse** as defined in §827.03, **sexual battery or sexual abuse** as defined in §39.01, or **chronic abuse** §39.806(1)(g)
- Committed **murder or voluntary manslaughter** of a child §39.806(1)(h)
- Involuntary TPR of sibling §39.806(1)(i)
  - Prior sibling TPR + substantial risk of significant harm + MBI + LRM
- **Child who tests positive at birth for controlled substance/ alcohol** has the **same biological mother** who has had at least one **other child who was adjudicated dependent** after a finding of harm to the child’s health or welfare **due to exposure to controlled substance or alcohol** as defined in §39.01(32)(g). §39.801(k)
- **On three or more occasions the child or another child of the parent has been placed in out-of-home care**, and the conditions that led to the child’s out-of-home placement were caused by the parents. §39.801(l)
- **Clear and convincing evidence** exists to support a finding that the **child was conceived as the result of a sexual battery**. §39.801(m)
  - Guilty plea or conviction of unlawful sexual battery is conclusive proof that the child was conceived in this manner

**Single Parent Termination Requirements** The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances: §39.811(6), Fla. Stat. (2013)

- the child has only one surviving parent
- the identity of prospective parent unknown
- the parent whose rights are being terminated became a parent through single-parent adoption
- the protection of the child demands termination of one parent, or
- the parent whose rights are being terminated meet any of the criteria in §§39.806(d) and (f)-(m), Fla. Stat.

**Manifest Best Interest (MBI)** Court **must** make specific findings that TPR is in child’s best interest §§39.810(1)-(11)

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| <ul style="list-style-type: none"> <li>□ Any suitable permanent custody arrangement short of adoption with a relative of the child. §39.810(1)</li> <li>□ The ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child. §39.810(2)</li> <li>□ The capacity of the parent or parents to care for the child to the extent that the child’s safety, well-being, and physical, mental, and emotional health will not be endangered upon the child’s return home. §39.810(3)</li> <li>□ The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child. §39.810(4)</li> <li>□ The love, affection, and other emotional ties existing between the child and the child’s parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties. §39.810(5)</li> </ul> | <ul style="list-style-type: none"> <li>□ The likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child. §39.810(6)</li> <li>□ The child’s ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties. §39.810(7)</li> <li>□ The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity. §39.810(8)</li> <li>□ The depth of the relationship existing between the child and the present custodian. §39.810(9)</li> <li>□ The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference. §39.810(10)</li> <li>□ The recommendations for the child provided by the child’s guardian ad litem or legal representative. §39.810(11)</li> </ul> |
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**Least Restrictive Means (LRM)** In addition to considering whether termination of parental rights is in the manifest best interest of the child, the court must consider whether termination of parental rights is the least restrictive means of protecting the child from serious harm.