

HEARING ON THE PETITION CHECKLIST – TPR

- Ask the attorneys: Is there a challenge to the legal sufficiency of the petition?
 1. Name, birth date and address of child.
 2. Name and address of parents.
 3. Grounds supported by facts?
 4. WICWA?

- Determine whether all necessary parties have been given proper notice, including tribe if WICWA.
 1. Default all properly noticed non-appearing parties, subject to evidence being presented supporting the TPR grounds.
 2. Alleged fathers – paternity testing.

- Inform the parties of their rights.
 1. Have they read the petition?
 2. Explain 2 phases:
 - a. Jurisdiction or “grounds” – petitioner/state must prove by clear and convincing evidence what the petition says.
 - b. Dispositional or “best interests” phase.
 3. Right to jury trial or you can ask the judge to decide whether the evidence does or does not support the grounds for termination. If you chose a jury trial, this means that at least 10 out of 12 jurors must be satisfied with the evidence. Jury trial must be requested before the end of the hearing on petition.
 - a. You have the right to testify and subpoena and present witnesses, as well as the right to cross-examine witnesses.
 - b. This is a civil, not a criminal, matter—so while you have the right to remain silent, the finders of fact may use that silence against you.
 4. Right to be represented by an attorney – if cannot afford, public defender appointment may be available, if you qualify.

5. Right to substitute the judge assigned to hear the case. Also must be requested before the end of the hearing on petition.
- Determine whether party wishes to be represented by counsel.
 1. If so, find good cause and adjourn the hearing.
 2. Any non-petitioning party shall be granted a continuance for the purpose of consulting with an attorney on the request for jury trial or substitution of judge.
 3. Refer to public defender, if appropriate.
 4. If waive right to counsel, find whether knowing and voluntary.
 - Inform the parents that they must personally appear at each court hearing and cooperate with counsel/discovery or possible default.
 - If petition is contested, set date for fact-finding hearing within 45 days.
 - Always remember to waive time limits if needed and make sure good cause present and GAL approves. For example:**
 1. Alleged fathers need paternity testing.
 2. Need to properly serve necessary party.
 3. Party requests continuance to consult with an attorney.