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Reconsidering Termination and Reimagining Permanency

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N M L O

No More Legal Orphans

Who are “Legal Orphans”?

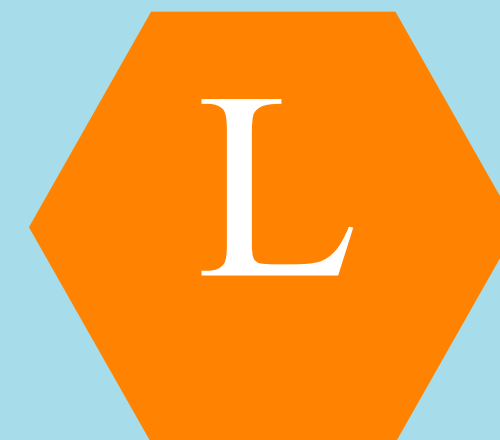
- Legal Orphans are children without legal parents. These children have never been adopted, but their parental rights have been terminated in a dependency court proceeding.¹
- The effect of the child protection's system overutilization of termination of parental rights is that children languish in foster care as legal orphans, and some even reach adulthood without a legal connection to any adult.²



No



More



Legal



Orphans

How Often Does the Termination of Parental Rights Occur?

- Between 2010 and 2015, a period of overall national foster care growth, the child protection system subjected more than 50,000 children each year to termination of parental rights (TPR).³
- Between 2016 and 2019, despite a decline in the national foster care population, that number increased to at least 60,000 children annually.⁴
- In 2019, one in four TPRs occurred within one year of a child's removal.⁵
- TPR does not guarantee adoption.
 - Of the 52,000 children subject to a TPR during the 2010 FFY, 12% were not adopted as of the 2019 FFY.⁶



Issues:

- Terminating a child's relationship with their parent can inflict significant harm on the entire family.⁷
- TPR is the most severe consequence a court can impose on a family during foster care proceedings, as its ramifications are long-term, often final, and can cause irreversible harm and consequences.⁸
- States vary on how often and how quickly they terminate parental rights.⁹
- Unnecessarily terminating a parent's rights can needlessly delay legal permanency for children and drain scarce systemic resources.¹₀
- Terminating a parent's rights, where other less intrusive alternatives exist, raises serious constitutional concerns.¹₁



Most CPS referrals are unsubstantiated

3 million reports each year

75% are for neglect

1 out of 3 children will be subject to an investigation

50% of black children will be subject to an investigation

83% of all reports are unsubstantiated

AFCARS DATA: What do we know about the numbers

600k children pass through the foster care system each year

60k children awaiting adoption at any given time in the US

75% of all foster care entries nationally were for Neglect

What do we know about outcomes of Foster System

MENTAL AND PHYSICAL HEALTH

- 39.0% have at least one mental health diagnosis in the prior year

- 44.1% have had substance abuse or dependence in their lifetime

• EDUCATION AND TRAINING

Less than half have a high school diploma (48.4%)

MARRIAGE, RELATIONSHIPS, AND CHILDREN

- 58.3% have given birth to or fathered a child

- 9.9% of those who have had a child have had a child placed in foster care

CRIMINAL JUSTICE INVOLVEMENT

- 68.0% of males and 40.5% of females have been arrested since leaving foster care

Trauma of Separation and Termination

Research shows that the removal/TPR of children from their parents causes trauma

The National Child Traumatic Stress Network states that chronic separation from a caregiver can be overwhelming and traumatic to a child.

When separated from their caregiver, children may experience:

- Intrusive thoughts
- Nightmares
- Self-destructive thoughts, plans, or actions
- Symptoms of PTSD, anxiety, depression, and other disorders

Cornerstones of Preventive Legal Advocacy

Upstream Referrals

- Families are referred for services before there is a removal

Interdisciplinary Legal Teams

- Attorney Social Worker Parent Partner (LE)

Effective Community Partnerships

- Rapid response & warm handoffs for any needed services

Holistic Representation

- Teams examine the full scope of family need with a prevention focus

Benefits of Early Legal Advocacy

In Summary - The
Benefits of Early Legal
Advocacy:

KEEPS FAMILIES INTACT

PREVENTS
UNNECESSARY
TRAUMA OF
SEPARATION

PROTECTS DUE
PROCESS RIGHTS

REDUCES
OVERREPRESENTATION
OF FAMILIES OF
COLOR

AVOIDS ADVERSARIAL
LEGAL PROCEEDINGS

DECREASES COSTS
ACROSS THE BOARD

Challenging Termination of Parental rights :

Best interest of the child

- You harmed your child
- You are unable or won't stop harming your child or remove the risk of harm to your child
- Your child is being harmed by not having a permanent home
- The Child Welfare Agency has followed protocol for doing what it can to help your family stay together and helping you visit with your child
- There are no reasonable alternative options for the placement of your child (e.g. sending your child to a relative's), and
- Terminating your parental rights will help your child more than it would harm him or her

Statutory test for termination of parental rights

Exceptions to seeking TPR

Defaulting to TPR is Untenable

- TPR is neither necessary nor sufficient to achieve legal permanency and is therefore an ill-fitted “solution” in child welfare.¹²
- Given the harms created by TPR and the research establishing the security of alternative custodial arrangements, a legal framework defaulting to TPR whenever reunification is ruled out is untenable.¹³



NMILO Goals

Challenge the idea that TPR serves children and their families.

Provide legal research and policies that show the court created trauma, poor outcomes, and damage of TPR to families.

Provide resources for trial and appellate advocates to utilize in litigation and policy work.

Create a national movement for eliminating TPR.

Outline and detail what states should be doing for families.

Create a database on solutions for keeping families together without TPR.



We are gathering information through:

BRIEFS, MEMOS,
AND CASE LAW

LAW REVIEW
ARTICLES

STATE & FEDERAL
POLICY

STATUTES

DATA & STATISTICS
FROM GOVERNMENT
REPORTS

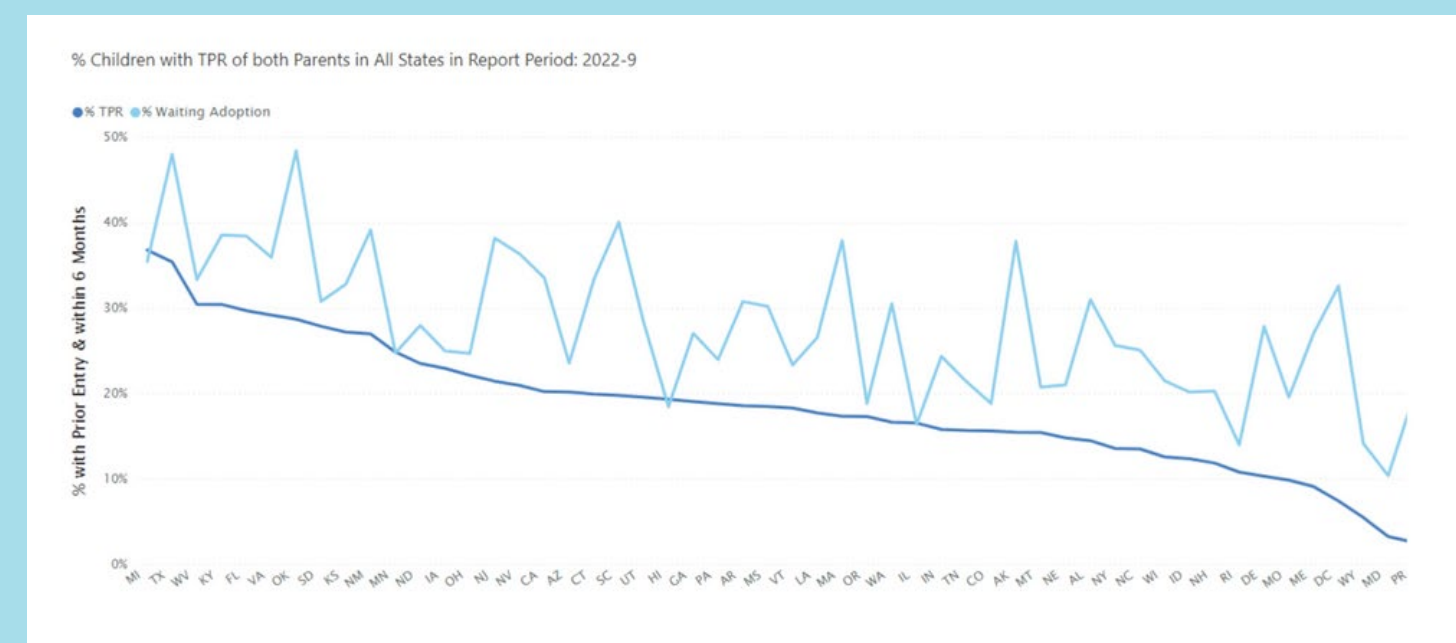
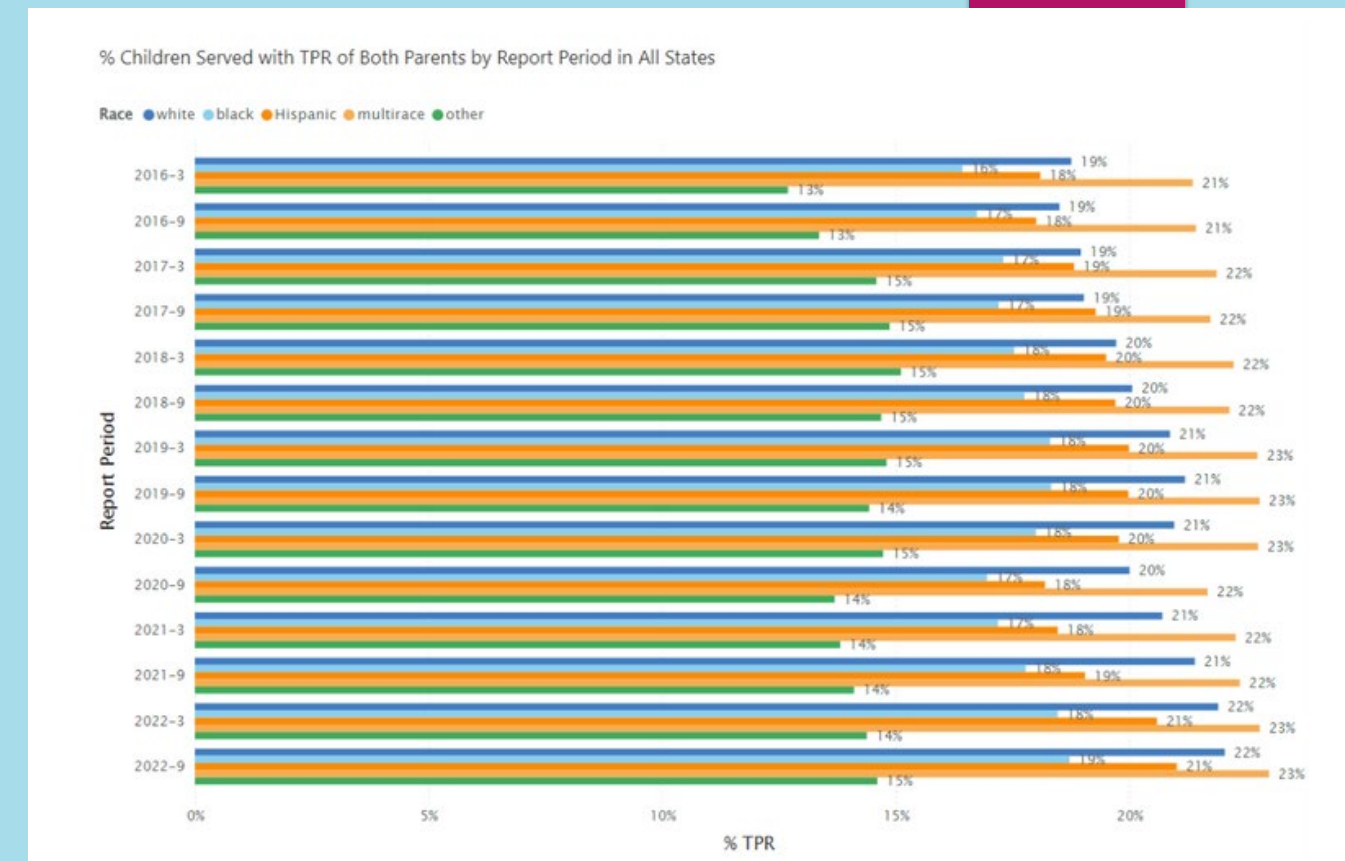
and more...



NMLO is dedicated to keeping families together

This Includes:

- Gathering information and research on the poor outcomes for children and their families and identifying what policies and laws require or encourage unnecessary TPR in certain situations.
- Spreading awareness of the concept of termination of parental rights and how it has been shaped under state and federal law.



Resources and Citations

- ▶ Martin Guggenheim, The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care-an Empirical Analysis in Two States, 29 Fam. L.Q. 121, 137 (1995).
- ▶ Vivek S. Sankaran & Christopher E. Church, The ties that bind us: An empirical, clinical, and constitutional argument against terminating parental rights, 61 Family Court Rev. 1, 9 (2023).
- ▶ <https://www.propublica.org/article/six-months-or-less-parents-lose-kids-forever>.

Why it's important to think about how to challenge TPR

