

Legal Risk Placement Q & A

In general terms, children can be placed in an adoptive home when the court has terminated the birth parents' parental rights. There are times when this can not occur because of legal complications or when there are other extenuating circumstances. When this happens, CPS may consider a foster placement with potential adoptive parents who are willing to take the risk that parental rights may not be terminated or who are willing to wait for the extenuating circumstances to be resolved. In "legal risk" placements, CPS has little reassurance the child will return to birth parents or extended family. The children are placed into a foster/adopt home as a foster placement with the intention of the home moving forward with the adoption as soon as the child's case is ready.

1. What is a "legal risk" placement?

A legal risk placement is a placement of a child/children into a foster/adopt home as a foster placement. Care is taken to see that the home will commit to adopting said child/children prior to this foster to adopt placement. During such time, CPS will move forward to complete the final order to terminate parental rights. However, if termination of parental rights has already taken place and the biological parents have appealed the termination to an appeals court, placement is made as a foster placement with the plan to move to adoptive placement as soon as the extenuating circumstances are resolved.

2. Why does CPS utilize legal risk placements?

This is a good question because some would suggest that no child be placed for adoption until potential legal obstacles have been cleared. CPS chooses to go ahead with a legal risk placement when the agency is reasonably confident that termination will occur. It has been CPS's experience that the wait for all court action to be finalized has created devastating consequences to the children in custody. In order to minimize the period of uncertainty in the child/children's life CPS may proceed with a legal risk placement. CPS does all that they can to expedite (or speed up) the legal process and reduce the risk of the placement being overturned. Nevertheless, there can be no guarantees. CPS recognizes that if something goes wrong the child and the family may face heartbreak and emotional trauma. CPS is very cautious about utilizing legal risk placement prior to termination of parental rights. Therefore, CPS will not consider making a legal risk placement unless it believes it has a good, solid case for termination.

Legal risk placements usually occur when a child/children needs to be moved from a foster home near the time the parental rights are to be terminated. This move would only be made if it were CPS' assessment that the child/children are ready to start bonding with the potential adoptive family.

3. What requirements must a home meet in order to be considered for a legal risk placement?

A home must be licensed as a foster/adopt home, until termination of parental rights occur, and follow all rules and regulations that apply to foster parents. The foster/adopt home will have a Pathways worker assigned to them to monitor the placement and assist in maintaining requirements for the foster home.

4. Should an Attorney be consulted prior to entering into a legal risk placement?

By consulting an attorney, the home may be able to obtain an assessment of the legal risk.

5. Children who would be appropriate for legal-risk placements could include the following:

- Abandoned infants;
- Children for whom one or both parents have signed relinquishment of their parental rights;
- Cases in which DFPS has filed a petition to terminate the parental rights of the parents and the attorney representing DFPS advises that the probability of being granted termination on both parents is very good;
- Cases where termination of parental rights has been achieved, but the parents have filed an appeal to the termination;
- Children for whom termination is dependent upon selection of an adoptive family prior to termination;
- Children whose siblings have been placed in adoption and for whom the permanent plan is adoption; and
- Cases where parents have consistently abandoned the child who has been in the permanent or temporary managing conservatorship of DFPS for not less than six months and:
 - DFPS has made reasonable efforts to reunite the child to the parent;
 - The parent has not visited or maintained contact with the child;
 - The parent has demonstrated an inability to provide the child with a safe environment; and
 - Termination is in the best interest of the child.

6. What risks must a prospective adoptive home consider?

The greatest risk is that a prospective adoptive home will have to return a child/children. There are other factors a prospective adoptive home must consider. For example, the prospective adoptive parent might have to accommodate continuing visits between the child and the birth parents until termination takes place. In addition, the prospective adoptive parent will not be able to tell the child/children that they are their adoptive family until parental rights have been terminated.

Finally, the prospective adoptive parent must recognize that the legal system can operate at a slow, unpredictable rate. The termination hearing may be set and postponed time and time again.

7. How long will the process take?

Because, very case is different, this is an impossible question to answer. Because of the legal process, it sometimes takes a year or longer for parental rights to be terminated. After the court has approved the termination of parental rights parents or grandparents may file and appeal. If granted appeals can take up to another 12 months. If not retried, the child/children could be returned to the parent or extended family.

8. When does a legal risk placement become an adoptive placement?

The adoptive placement occurs after parental rights are terminated, the record is de-identified, the child is prepared for adoption, the HSEGH report is complete and the appear window has expired. These are all requirements that must be met before any adoptive placement is made. If there is an appeal, the placement can be made into an adoptive placement; however, the adoption should not be approved in court until the appeal is resolved.

9. What happens if a termination order is appealed?

Should the birth parent appeal the termination, they obtain an attorney who may challenge the termination order. This appeal goes to an appellate court, which can take six months to two years to hear the case. If the termination order is overturned, the case will again go to trial and the child could be returned to the birth parents or extended family.

10. What happens if a child is court ordered to return to a parent or extended family member?

In the rare occasion a child in a legal risk placement is court ordered to be returned to a parent or extended family member, the legal risk parent will need to help that child move in a manner that ensures the child's emotional health and well being.