JUDICIAL CHECKLIST – TPR VOLUNTARY CONSENT

This checklist is designed to highlight key questions that the court should ask when a parent is voluntarily consenting to terminate his/her parental rights to a child. It is not necessarily an exhaustive list and may need to be modified based on the specific circumstances of the case.

PRELIMINARY DETERMINATIONS

❑ Determine whether all necessary parties have been given proper notice:

- Parents
- Alleged fathers
- Any Declaration of Paternal Interest on file with the Department of Children and Families (DCF)?

❑ Determine whether provisions of the Wisconsin Indian Child Welfare Act apply.

- If case involves an Indian child, the consent must be executed in writing, recorded before a judge, and accompanied by judge's certificate. Use circuit court form IW-1637.

❑ Hear testimony supporting the allegations in the petition.

CONSENT

Let the parents know that you will be asking a lot of questions, so they will understand the significance of the decision they are making. Have the clerk swear the parent in and make the following inquiries to determine whether the parent has freely, voluntarily and knowingly consented to a termination of parental rights:

Personal Background

❑ State your name, address and date of birth.

❑ What is your educational background? Were/are you in regular or special education classes? Do you have a learning disability? Did you receive any assistance in school?

❑ Are you employed? Where? How long?

❑ Are you able to read and write in English? Read document/petition? Did you understand it? (*if applicable*) Any questions?

❑ Are you the legal parent of _____?

❑ Do you know where _____is currently living? When was the last time you visited? How often are your visits?

Competency

❑ Have you taken any drugs, medication or alcoholic beverages within the last 24 hours? What and how much?

❑ Are you presently using any drugs or taking any medication? What kind? Have you been prescribed any drugs you are not taking? What? Purpose? Are you aware of any effects these drugs or medication may have on your ability to function in a normal capacity/make decisions?

- ❑ Have you ever been treated for or diagnosed with a mental illness? Have you ever taken or been advised to take medication for a mental illness? Have you ever been treated or been advised to be treated by a psychiatrist? Have you ever been hospitalized for mental or emotional problems? Do you feel you have any mental or emotional problems at this time that are interfering with your ability to understand and answer questions?
- ❑ If applicable, are you aware of the role of the guardian ad litem who has been appointed for you? Do you understand the difference between your guardian ad litem and the attorney retained by you? Can you explain?
- ❑ Have you met with the child's guardian ad litem? Do you need more time to speak to the guardian ad litem?
- ❑ Are you comfortable and confident that you understand what is happening in court today?

WICWA/Religion/SCRA/UCCJEA

- ❑ Do you have a religious preference for the child?
- ❑ Are you, the child's mother/father, or the child enrolled or eligible for enrollment in any American Indian tribe?
- ❑ Are you or the mother/father in the Armed Services? On active duty?
- ❑ Has there been any other court action relating to this child's paternity, legal custody or placement? When? Where? What?

Paternity Issues

Admonishment to Mother: Before I ask you questions related to paternity, I am informing you that making a false statement or misrepresenting a material fact in your testimony may be a violation of criminal law. If you believe that you have a reason for not providing the information requested about your child's father, please inform me, and I will determine if you must answer. §48.42(5).

<u>If no adjudication (Questions for the mother):</u>

- ❑ Did you give birth to a baby _____on _____?
- ❑ Was the child born after a full-term pregnancy?
- ❑ What was the child's birth weight?
- ❑ The law presumes your child was conceived between _____and _____ [240 days to 300 days before the date of birth]. (See Wis. Stat. s. 891.395). During the conceptive period, with whom did you have sexual intercourse? What city? Anyone else?
- ❑ Who do you believe to be the father of the child?
- ❑ What is his last known address? Place of employment? Do you know how to locate him? What is his age? Is he in the service? What does he look like? Who would you talk to if you had to get in contact with him? Do you know any of his relatives? Do you know where they are? (*if applicable*)
- ❑ Did you tell _____ that he may be the father of your baby? If you did not, why not? [*Same question for other alleged fathers.*]

All Cases (Questions for the mother):

- ❑ Has there ever been an adjudication of paternity? When? Where?
- ❑ Has a Voluntary Paternity Acknowledgment (VPA) form been filed with Vital Records in Madison?
- ❑ Has the father expressed any interest in the child in terms of personal contact, monetary support, gifts, cards, etc.?
- ❑ Has the alleged/legal/presumed father ever lived with the child? Did he provide you with any help during the pregnancy? Was he aware of the pregnancy?
- ❑ Has the alleged/legal/presumed father ever requested visitation with the child? How often has he seen the child? Have you ever prevented him from visiting?
- ❑ [If father not found] Are you aware of the father's whereabouts at this time? Do you know how to locate him? Do you know someone who can find him? When did you last see him? Where? Do you know any of his family or friends? Who are they?
- ❑ Are you married? Have you ever been married? Where? When? Were you divorced?

Adjudication as part of TPR (Questions for the father):

- ❑ Are you asking the court to find you the legal father?
- ❑ Are you aware you could have genetic testing completed?
- ❑ Do you want to admit paternity? Was a Voluntary Paternity Acknowledgment filed with Vital Records in Madison?
- ❑ Did you engage in sexual intercourse with _____between _____and _____ [240 days to 300 days before the date of child's birth]?
- ❑ Do you believe you are the father of _____?

Knowledge and Voluntariness

- ❑ Do you understand the reason for being in court today? Why are you here?
- ❑ Do you understand what termination of parental rights means? What does it mean to you?
- ❑ Do you understand that by voluntarily consenting to a termination of your parental rights, you have the right to have or consult with your own attorney? Are you aware that if you cannot afford one, one would be provided to you? [*Private adoption agency cases only: Are you aware you could hire an attorney and pay the fees yourself or ask that fees be reimbursed by the adoptive parent(s)?*]
- ❑ Do you wish to have an attorney? Do you want a continuance/more time to talk with an attorney? Do you understand that an attorney may discover defenses or mitigating circumstances which would not be apparent to you if you wanted to contest or fight the TPR?
- ❑ Under a termination of parental rights proceeding, you also have the right to substitute the judge. Do you wish to substitute judges? (If not advised previously by the court and waived.) You could also have a continuance/more time to speak to an attorney about substituting the judge. Do you want a continuance/more time?

- ❑ Do you understand that you could have a continuance or adjournment if you felt you needed more time to think about your decision? Do you want a continuance?
- ❑ Do you understand that by voluntarily requesting a termination of your parental rights you are giving up certain rights that would be available to you under an involuntary TPR proceeding? Have you discussed those rights with your attorney? [*For applicable fathers: Do you understand that you will lose these rights, even though you may not have had the opportunity to take responsibility for your child in the past?*]
  - Right to appointed counsel.
  - Right to either a jury trial, where at least 10 of 12 jurors must agree, or a trial to the judge, to decide if legal grounds to terminate your parental rights exist.
  - Right to testify. 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.
  - Right to present and cross-examine witnesses.
  - Right to demand that the Petitioner/State prove TPR grounds and have the court find you unfit.
  - Right to have Petitioner/State prove TPR grounds to a reasonable certainty by evidence that is clear, satisfactory and convincing (phase one).
  - If TPR grounds are found, a right to a contested dispositional hearing where the child's best interests would be the prevailing factor in determining whether to grant or dismiss the TPR petition (phase two).
- ❑ Have you discussed this case with your attorney? Did you understand what you were told? Has your attorney explained that this voluntary termination is just one of the options available to you? Have you been satisfied with your attorney's representation? Has your attorney gone over the petition with you, and explained each of the TPR grounds and what the petitioner would have to prove (if involuntary grounds alleged)? Do you need more time to talk to your attorney?
- ❑ Being aware of the rights that you are giving up by proceeding with a voluntary TPR, do you still wish to proceed today?
- ❑ Do you understand that if a TPR is granted, it will end all legal relationship between you and the child forever? Do you understand you will lose your parental rights forever? Do you understand that you will no longer have any right to visitation; no say in how the child is raised; and have no right to be told of the child's development and progress in the future? Do you understand that the child will not inherit from you or you from your child, unless a will provides for it? Do you understand that you will not have guardianship powers and will not be able to make any decisions regarding the child's life (i.e., religion, education, health)? Do you understand that your relatives will have no legal right to contact or visit with the child? Do you understand that you are giving up your rights to have the child live with you and your responsibilities to care for and support the child?
- ❑ Have you discussed your decision to voluntarily terminate your parental rights with anyone? With whom? Over what period of time? How many contacts did you have with this person? Have you talked with a counselor? Would you like to? Who interviewed you? And were you truthful with them? Do you need to talk to anyone else before making your decision?

- ❑ Have any of those persons or anyone else made any threats, coerced you or promised anything to you that has affected your decision to TPR? Is anyone pressuring you to do this? Have you received any money or promise of money? (*If support person in court*): _____ is in court with you. Is this at your request? Do you feel pressured because_____ is in the courtroom?
- ❑ Do you realize that we cannot guarantee that the current placement/foster home/adoptive resource will adopt your child? Something unforeseen could happen and prevent that person(s) from adopting. If that should happen, you would not be part of selecting a different adoptive home because your parental rights will have been terminated and the agency would have guardianship. Are you still willing to proceed? Even though no one can promise who will adopt your child? And you could not come back to court and change your mind if the adoptive resource changes after today?
- ❑ Are there any agreements regarding future contact/letters/gifts between you and the adoptive parent(s)? Do you understand that these agreements are not legally enforceable? You cannot ask the court to force the adoptive parent(s) to comply with the agreement or to overturn the TPR if they do not follow through.
- ❑ Are you aware of the alternatives available to you, other than TPR? What are they?

  <u>CHIPS-Based Cases only:</u>

  - If you prevail after a trial or the judge decides not to terminate your rights after a dispositional hearing, you could continue to try to meet the conditions for return of your child. Then, after meeting them, you could ask to have your child returned. You could also file a petition asking the court to return your child to you. Are you aware of these alternatives?
  - Relative placement (*if applicable*)
  - Transfer of guardianship (*if applicable*)

  <u>Private Adoption Agency Cases only:</u>

  - Continued foster care with services provided toward eventual return
  - Placement with relatives
  - Return of the child with after care services provided (if appropriate)
  - Public benefits, such as W-2, food stamps, rental assistance, Title-19, Badger Care, energy assistance, WIC
  - Paternity/child support order
  - Parenting classes, other services
  - (*If father*) Could pursue custody and placement
- ❑ Being aware of these alternatives do you still wish to voluntarily terminate your parental rights?
- ❑ Have you considered each of these options?
- ❑ What are your reasons for wanting to TPR? How long have you wanted to do this? Have you ever changed your mind?

- ❑ *(If mother and father are still an unmarried couple)* Do you understand that if you marry in the future, you cannot come back and ask the court to return your child to you?

Private Agency/Independent Cases Only

- ❑ Have you selected an adoptive parent(s)? How? Have you met them? How often? Are you satisfied with the information provided about them?
- ❑ Have you had an opportunity to review the home study? Do you want to?
- ❑ Have you reviewed the affidavit of expenses (if applicable)? Did you sign it? What influence does the fact that your expenses are being paid have on your decision? Have you received or been promised anything in addition to these expenses?
- ❑ Do you realize that we cannot guarantee that the current foster home/ adoptive resource will adopt your child? Something unforeseen could happen and prevent that person(s) from adopting. If that should happen, you would not be part of selecting a different adoptive home because your parental rights will have been terminated and the agency would have guardianship. Are you still willing to proceed? Even though no one can promise who will adopt your child? And you could not come back to court and change your mind if the adoptive resource changes after today?

Appeal Process

- ❑ Are you aware that if a TPR is granted, you may appeal the decision of the court within 30 days of that decision? This does not mean 30 days to think about the decision and change your mind. Do you understand that an appeal must be based on legal error or new evidence? (*With voluntary consent or no contest*: Are you aware a motion can be filed with the court within 30 days after TPR based on a claim of mistake, new evidence, fraud?)
- ❑ If you choose to appeal the court's decision, do you understand that you must personally sign the Notice of Intent to Pursue Postdisposition Relief (CA-100) and file it within 30 days of the court's order terminating your parental rights?
- ❑ While this appeal process exists, do you understand that it would be very difficult to overturn the decision of the court?

Conclusions

- ❑ In your own words, why have you decided to terminate your parental rights to _____?
- ❑ Do you have any questions, or are you unclear about anything?
- ❑ Do you feel you have everything you need to make this decision?
- ❑ Are you satisfied with the representation provided by your attorney? (*if applicable*)
- ❑ Is your decision being made freely and voluntarily?
- ❑ Do you believe you fully understand what termination of your parental rights means? Do you need more time? Is there anything more that you need to make your decision?
- ❑ Are you asking the court to terminate your parental rights and transfer custody and guardianship of your child to for the purpose of adoption?

AGENCY SOCIAL WORKER

- ❑ (*If alleged or unknown father*): Have you checked with DCF for a Declaration of Paternal Interest?
- ❑ (*If alleged or unknown father*): Have you checked with Vital Records in Madison for a Voluntary Paternity Acknowledgment? (social workers can check KIDS system AVPA@ or Child Support Enforcement)
- ❑ Did you prepare the report, dated _____? If sworn regarding that information, would you provide the same answers and information today? Is it accurate? Are there any supplements?
- ❑ Please testify regarding compliance with the Interstate process (*if applicable*)
- ❑ Have you met with the mother? The father? How many times? Did you discuss the options with them? Do you believe the mother/father understood the options and considered them? What was their intention regarding the child? Do you believe their consent is informed and voluntary? Did you go over their alternatives and rights? Is their testimony today consistent with the information provided?
- ❑ Where is the child? Is the child healthy? Adoptable? Established relationship with mother or other family members? Is the agency willing to assume custody and guardianship for purposes of adoptive placement? Is this in the best interests of the child?
- ❑ Have you had contact with the (alleged) father? Have you made any efforts to find him?
- ❑ Has a home study been completed? By whom? Was the proposed adoptive resource approved?
- ❑ Did you review the affidavit of expenses (if applicable)? Any other expenses not listed?

STEP-PARENT ADDITIONAL QUESTIONS

Petitioning Parent

- ❑ Have you read the report?
- ❑ Are you aware of the adoption petition filed by your husband/wife?
- ❑ Do you believe that TPR and adoption is in the best interests of the child?
- ❑ What is your husband's/wife's relationship with the child? How long has s/he known the child?
- ❑ What is the child's relationship with your husband/wife?
- ❑ Do you understand that if you and your husband/wife were to divorce that you could each petition the court for custody/placement rights? Do you understand that in the event of a divorce, you may be ordered to pay child support to your husband/wife for support of your child?

Step-father or Step-mother

- ❑ Please state your name, address and date of birth
- ❑ What is your occupation/employment?
- ❑ What is your health status?
- ❑ Are you financially able to care for child/family?

- ❑ Are you married? When?
- ❑ Have you ever been arrested and/or convicted?
- ❑ Have you (or your children) ever been the subject of a referral to Department of Human Services or Child Protective Services?
- ❑ Have you ever had issues or problems related to drug or alcohol use and/or domestic violence? Ever arrested for OWI or domestic battery?
- ❑ Have you filed an adoption petition?
- ❑ What is the child's name? How old?
- ❑ Do you understand that if the petition is granted, you will become the child's legal father/mother?
- ❑ Are you willing to assume legal obligations such as support, providing necessities, and making major decisions in the child's life? Do you understand this child will then have a legal right to inherit as your heir?
- ❑ Do you realize that adoption is irrevocable? Even if you are divorced in the future, for example, you would still be the child's father/mother and legally responsible?
- ❑ How long have you known the child?
- ❑ What is your relationship with the child? What is the child's relationship to you?
- ❑ Do you believe it is in the child's best interests to adopt?
- ❑ Do you want the child's name changed?
- ❑ (*If you have other children*) Do you realize this child would be legally equal to your other children?

Social Worker

- ❑ (*If applicable)* Did you check with DCF regarding Declaration of Paternal Interest? When?
- ❑ (*If applicable*) Did you check regarding a Voluntary Paternity Acknowledgment?
- ❑ Did you prepare the report, dated _____? If sworn regarding that information, would you provide the same answers and information today? Is it accurate? Are there any supplements? Any recommendations?

COURT TO INFORM BIRTH PARENT(S)

- Medical/genetic information. Use the Notice of Medical Information and Birth/Adoptive Parent Identifying Information Disclosure form (JC-1631).
- The child's right to search.
- Sec. 48.41(2): Judge has explained the effect of TPR and is satisfied that consent is informed and voluntary.

FINDING

- ❑ If after inquiry you are satisfied that the parent(s) have freely, voluntarily and knowingly consented to a termination of parental rights AND the GAL believes it is in the child's best interests, make the following finding:

  [State the person's name], you have made a difficult but loving decision for your child. I find that:

  - You have the capacity to consent.
  - I find you have made a free, informed, voluntary, and intelligent waiver of your rights to:
    - ✓ A jury trial
    - ✓ A court trial
    - ✓ Substitution of judges
    - ✓ If applicable, right to counsel
  - You understand the nature of the proceedings, the allegations in the petition, and the consequences of the termination of your parental rights.
  - You believe that termination is in your child's best interests.
  - You are aware of alternatives to the termination of your parental rights.
  - You understand the role of the GAL and social worker.
  - You understand your right to appeal the findings of this court within 30 days if a legal error has been made.

- ❑ Any Native American heritage?
- ❑ Have proposed adoptive parents been identified?
- ❑ ACCEPT THE PARENT'S VOLUNTARY TERMINATION OF PARENTAL RIGHTS

BEST INTERESTS

- ❑ Determine if it is in the best interests of the child that the rights of the parent(s) be terminated. Hear testimony on the following factors:

  1. The likelihood of the child's adoption after termination.
  2. The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
  3. Whether the child has a substantial relationship with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
  4. The wishes of the child.
  5. The duration of the separation of the parent from the child.
  6. Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

- ❑ What is the recommendation of the GAL?
- ❑ If you believe that it is in the best interests of the child to terminate, make the following orders:
  - Make specific findings of fact as to why it is, discussing all six of the factors listed above.
  - The parental rights of [state name(s)] are terminated.
  - Guardianship and custody of the child are transferred to [agency] pending adoption.
- ❑ If you believe it is not in the best interests of the child to terminate, dismiss the petition.
- ❑ If applicable, set for review date and/or Permanency Hearing.