Children's Law Center of Indiana

Frequently Asked Questions about Termination of the Parent-Child Relationship in Indiana[1]

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1. **What is the legal effect of termination of the parent-child relationship?**

   Termination of the parent-child relationship is a judicial procedure that permanently ends the legal, social, and financial relationship and responsibilities between the parent and the child. All rights, powers, privileges, immunities, duties, and obligations, including any right to custody, control, visitation or support, pertaining to that relationship, are permanently terminated. Termination of parent rights frees a child to be adopted, although the termination proceeding does not itself include the adoption. An adoption requires a separate legal procedure.

   Any child support obligations accrued by parents before the court orders termination of parental rights are not affected.

2. **Can a parent voluntarily terminate the parent-child relationship with his/her child?**

   Yes. A procedure for voluntary termination of the parent-child relationship is initiated when an adoption agency or the Department of Child Services (DCS) accepts the parent's consent to the termination of the parent-child relationship and files the necessary petition with the juvenile court. A parent does not have the authority to file directly for termination of his/her parental rights because a parent has the duty to support and care for the child until the child is emancipated. Only an adoption agency or DCS can file a voluntary termination petition.

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Before the parent can voluntarily terminate the parent-child relationship, he/she must be fully advised of his/her rights. These rights are listed on the "Voluntary Relinquishment of Parental Rights" form used by DCS or the adoption agency. Neither DCS nor the adoption agency may force or coerce the parent to consent. The rights form should be signed by the parent and notarized by a person authorized by law to take acknowledgements, for example, a notary public. The voluntary termination petition should be filed and legally served on the parent. A formal court hearing will be held, which the parent should attend in order to acknowledge his/her consent. A parent who gives a written consent does not have to appear in court. If the parent does not appear in court, DCS or the adoption agency must prove, and the court must find on the record, that the consent was given before a person authorized to take acknowledgements and that the parent was given notice of his/her rights and the consequences of the termination. The court may require an investigation to determine whether there is any evidence of fraud or duress and whether the parent was competent to give consent.

A parent who is legally incompetent can give consent to terminate the parent-child relationship only with court approval. A parent under the age of eighteen can give consent without court approval if the parent is legally competent except as to his/her age.

3. What if one parent consents to the termination, but the other parent can't be found?

If the court grants the voluntary termination of one parent, but the location of the other parent is unknown, the court may also terminate the absent parent's rights. To do so, DCS or the adoption agency must present evidence that the parent cannot be located despite a good faith effort and that the parent has been served with notice of the proceedings in the most effective manner under the circumstances.

4. May a parent withdraw his/her consent to terminate parental rights?

A parent's ability to withdraw consent is very limited. Consent to termination can be withdrawn upon evidence of fraud, duress, or incompetency. However, Indiana courts do not favor motions to withdraw consent. A parent who executes a voluntary relinquishment of the parent-child relationship is generally bound by the consequences of such actions, unless the relinquishment was procured by fraud or undue influence.

5. Does Indiana recognize "Open Adoptions?"

Indiana courts do not recognize the term "Open Adoption." However, Indiana law contains specific procedures allowing limited post-adoption contact between the birth parent and the child who is over two years of age. An adoption court may grant post-adoption contact, which includes visitation, if it approves the contact agreement between the adoptive parents and the birth parents and finds, among other things, that:

1. There is a significant emotional attachment between the child and the birth parent.
2. The birth parents signed or consented to adoption or signed a voluntary termination of the parent-child relationship.

3. The desired contact is in the child's best interests.
4. Each adoptive parent consents to the contact between the birth parents and the child.
5. The adoptive parents and the birth parents file a post-adoption contact agreement with the court that states: 1) the adoption is irrevocable even if the adoptive parents do not abide by the post-adoption contact agreement, and 2) the birth parents have a right to enforce the post-adoption privileges set out in the agreement.
6. The sponsoring adoption agency and the child's Guardian and Litem or Court Appointed Special Advocate recommends the agreement.
7. The child consents to the agreement if the child is at least 12 years of age.

Post-adoption contact is not an option if the parent's rights were involuntarily terminated. Indiana law allows adoptive and birth parents to agree to post-adoption contact privileges for a child less than two years of age without court approval. The agreement cannot include visitation. The agreement is not enforceable and does not affect the finality of the adoption.

Indiana law also provides, in some circumstances, for post-adoption sibling contact if the adoptive parents agree.

6. Who makes the decision to seek an involuntary termination of the parent-child relationship?

An involuntary termination petition may be filed by the attorney for DCS or the Guardian ad Litem/Court Appointed Special Advocate. In considering the appropriateness of filing an involuntary termination of parental rights petition, the petitioner will consult with service providers, foster parents, relatives, child advocates, and all others involved with the child to consider both the potential benefits and the potential harm of termination. Neither the parent nor the child has legal standing to file an involuntary termination petition.

7. In an involuntary termination proceeding, is a parent entitled to a free court appointed attorney?

Yes. Under Indiana law, the parent has a right to be represented by counsel in the termination proceeding. If the parent does not hire an attorney, nor specifically waive the right to an attorney, then the court must appoint an attorney to represent the parent.

8. May the same judge who presided over the CHINS case also preside over the termination of parental rights?

Yes. There is no provision that the juvenile court judge who heard the CHINS case may not hear the termination case involving the same children and the same parents. The law presumes that the judge is unbiased, and the judge's knowledge of the prior CHINS proceeding does not show bias in the absence of evidence that the judge had personal prejudice for or against a party. (Note, however, that the judge who heard an underlying *criminal* case against a parent may not hear the termination case based on that criminal charge.)

Legal parties to a termination case can avoid having the same judge preside over the termination proceeding. All parties have a right to ask for a change of judge in the termination case without having to show cause, providing they comply with the necessary trial rules.

9. Who are the parties to an involuntary termination case?

The parties to a termination case would be the same as those for a CHINS case: the child; the child's parents, guardian, or custodian; DCS, and the Guardian and Litem/Court Appointed Special Advocate. (If the parent contests the termination of parental rights petition, the court must appoint a Guardian ad Litem/Court Appointed Special Advocate to represent and protect the best interests of the child. The Guardian ad Litem/ Court Appointed Special Advocate will independently examine and monitor the case and advocate on the child's behalf. The Guardian ad Litem/ Court Appointed Special Advocate will attend the termination trial and may testify, especially about the child's best interests and the child's wishes.

10. Are alleged fathers and non-custodial parents also legal parties to an involuntary termination case?

Under Indiana law, a "parent" includes both biological and adoptive parents, regardless of their marital status. Thus, an alleged father and a parent who is divorced from or who never married the custodial parent both qualify as parents under the Juvenile Code. Both would have parental rights. All parties must be named in the termination petition and given notice and the opportunity to participate in the termination case.

11. What must DCS or the Guardian ad Litem/ Court Appointed Special Advocate prove in order to win a termination of parental rights case?

To win an involuntary termination of parental rights case, the following must be proven:

A. The child has been adjudicated a CHINS

B. One of the following is true:

   i. the child has been removed from the parent at least six months under a dispositional decree;

   ii. a court has entered a finding that reasonable efforts for family preservation or reunification are not required; or

   iii. the child has been removed from the parent and under the supervision of DCS for at least 15 of the most 22 months;

C. That one of the following is true:

   i. there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

ii. there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child; or

iii. the child has, on two separate occasions, been adjudicated a CHINS

D. Termination is in the best interests of the child; and

E. There is a satisfactory plan for the care and treatment of the child.

Because of the permanent nature of an involuntary termination order, Indiana law requires the petitioner to prove each of the above elements by "clear and convincing" evidence—the most difficult civil standard to meet.

12. In an involuntary termination case, what is the legal effect of a parent's conviction of certain crimes against children?

If a parent is convicted of a heinous crime against his/her biological or adopted child or the child of his/her spouse, and the child victim was less than sixteen, that criminal conviction is prima facie evidence against the parent that the conditions which resulted in the removal of the child from the parent will not be remedied or that continuation of the parent-child relationship poses a threat to the well-being of the child. These heinous crimes include: murder, causing suicide, voluntary manslaughter, involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, sexual misconduct with a minor, and incest.

13. Is a parent entitled to a free court appointed attorney to appeal the court's order which terminates the parent-child relationship?

Yes, but only if the parent keeps in touch with and cooperates with the court appointed attorney who represented him/her in the termination trial and makes a timely request for an appeal. The parent's attorney has only a short time (within 30 days) to file a Notice of Appeal. If the notice is not timely filed, the parent loses the opportunity to appeal.