The Children's Law Center of Indiana

Frequently **A**sked **Q**uestions
About
Termination of Parental Rights in Indiana

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Question: ***What legal effect does a termination of parental rights have?***

Answer: Termination of the parent-child relationship is a judicial procedure that permanently severs 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 parental rights frees a child to be adopted, although the termination proceeding does not itself include the adoption. An adoption requires a separate legal procedure in probate court.

Please note that any child support obligations accrued before the termination of parental rights are not affected.

Question: ***Can a parent voluntarily terminate the parental rights to his/her children?***

Answer: Yes. A procedure for voluntary termination of the parent-child relationship is initiated when a child placing agency or the office of family and children 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.

Before the parent can voluntarily terminate the parent-child relationship, he/she must be fully advised of his statutory rights. These rights are listed on the "Voluntary Relinquishment of Parental Rights" form used by the county office of family and children. (The county office of family and children may advise a parent about the possibility of a voluntary termination, but must not say or do anything to coerce a parent to consent.) The rights form should be signed by the parent and notarized by a person authorized by law to take acknowledgements (a notary public). The voluntary termination petition should be filed and legally served on the parent. A formal court hearing will be held at 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, the office of family and children must prove, and the court must find on the record, that the consent was given before a notary public and that the parent was given notice of his rights and the consequences of the termination. The court may further require an investigation to determine whether there is any evidence of fraud or duress and whether the parent was competent to give consent.

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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.

Question: ***What if one parent consents to the termination, but the other parent can't be found?***

Answer: If the court grants the voluntary termination as to one parent, but the location of the other parent is unknown, the court can enter a default judgment of termination as to the absent parent. To do so, the office of family and children 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. Since 1999, it must also be shown that the absent parent consented to the termination of the parent- child relationship. This new requirement appears to refer to the paternity statutes, which may, under some circumstances, imply consent or simply not require consent.

Question: ***May a parent withdraw his/her consent to terminate parental rights?***

Answer: 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, undue influence or other consent-vitiating factors.

Question: ***Does Indiana recognize "Open Adoptions"?***

Answer: Indiana courts do not recognize the term "Open Adoption." However, Indiana statutory law contains specific procedures allowing limited post-adoption contact between the birth parent and the child. Regarding children over two years of age, a 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 sufficient 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 agency and the child's guardian ad litem recommend the agreement.
7.) The child consents to the agreement if the child is at least 12 years of age.

Indiana statutory law allows adoptive and birth parents to agree to post-adoption contact privileges for a child <u>less than two years of age</u> without court approval. The agreement cannot include visitation. The agreement is not enforceable and does not affect the finality of the adoption.

Indiana statutory law also provides, in some circumstances, for post-adoption sibling contact.

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Question: ***Who makes the decision to seek an involuntary termination of parental rights?***

Answer: An involuntary termination petition may be filed by the prosecutor, the attorney for the county office of family and children, or the guardian ad litem/CASA. 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 a termination of parental rights petition.

Question: ***In an involuntary termination proceeding, is a parent entitled to an attorney if he/she cannot afford one?***

Answer: Yes. Under Indiana statutory 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 counsel, then the court must appoint counsel for the parent.

Question: ***May the same judge who presided over the CHINS case also preside over the termination of parental rights case?***

Answer: 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 trial judge in 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 based on that criminal charge.)

Procedurally, 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.

Question: ***Who are the parties to an involuntary termination case?***

Answer: Given the general rule that termination cases follow the same procedures statutorily set forth for CHINS cases, the parties to a termination case would be the same as those for a CHINS case: the child; the child's parent, guardian, or custodian; the office of family and children, and the guardian ad litem/CASA. (If the parent contests the termination of parental rights petition, the court must appoint a guardian ad litem to represent and protect the best interests of the child. The guardian ad litem will independently examine and monitor the case and advocate on the child's behalf. The guardian ad litem will often attend the termination trial and testify as to the child's best interests and the child's wishes.)

Question: ***What about alleged fathers and non-custodial parents?***

Answer: Under Indiana law, a "parent" includes both biological and adoptive parents, regardless of their marital status. Thus, a father who was not married to the mother at the time of the child's birth but who later established paternity, and a parent who is divorced from the custodial parent both qualify as parents under the Juvenile Code. Both would have parental rights. It would be hoped that these persons were included in the underlying CHINS proceeding. In any case, they must be named in the termination petition and given notice if all parental ties are to be terminated so that the child is free for adoption.

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The more difficult question is raised by alleged fathers who have never established paternity. Again, it is hoped that the office of family and children gave these individuals notice of the CHINS proceeding. If the alleged father becomes involved with the child, then clearly he must be given notice of the termination proceeding. If the alleged father does not appear at the CHINS proceeding or does not take an active role in the child's life, he still, arguably, has some rights, so it would still be necessary to file a termination proceeding against him and to give him proper notice.

Question: ***What must the petitioner prove to prevail on a termination of parental rights petition?***

Answer: To prevail in an involuntary termination of parental rights action, the petitioner must prove that:

A.) One of the following exists:

(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 the county office of family and children for at least 15 of the most recent 22 months;

B.) There is a reasonable probability that:

(i) 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) the continuation of the parent-child relationship poses a threat to the well-being of the child

C.) Termination is in the best interests of the child; and
D.) 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 stringent civil standard.

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

Answer: 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.

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