



The Children's Law Center of Indiana

Termination of Parent-Child Relationship

In Indiana termination of the parent-child relationship can be ordered only by a court with juvenile or probate jurisdiction. Termination permanently ends all legal, social and financial responsibility between the child and the parent. Termination makes the child available to be adopted by those who can provide a stable, suitable permanent home. Termination may be voluntary or involuntary.

Voluntary Termination

A voluntary termination petition may be filed only by the office of family and children or a licensed child placing agency. The child need not be an adjudicated CHINS or delinquent to file a voluntary termination petition. A parent does not have the right to file his own voluntary termination petition because a parent has the duty to support and care for his child until the child is emancipated.

A parent must be fully advised of his rights before signing a voluntary termination of parent-child relationship. These rights are listed on the voluntary termination form used by the county office of family and children. The form is referred to as a "Voluntary Relinquishment of Parental Rights". The office of family and children caseworker, a private adoption agency social worker or a judge or commissioner most often accepts a voluntary termination. The parent's attorney should be involved in the voluntary termination process. The document should be signed by the parent and notarized or accepted by a person who is authorized by law to take acknowledgements.

A voluntary termination petition should be filed and legally served on the parent. There will be a formal court hearing which the parent should attend and acknowledge the parent's consent. The court, after a hearing, can enter an order terminating the relationship in certain circumstances even if the parent does not attend the hearing. If the court has ordered the voluntary termination of one parent's rights, the court can, in certain circumstances, order the termination of the rights of the child's other parent. A good faith effort must be made to locate and serve the absent parent with legal notice of the termination petition. Notice may be made by publication if the other parent cannot be located.

Involuntary Termination

A child must first have been adjudicated a Child in Need of Services or a delinquent child by the juvenile court before a petition for involuntary termination may be filed. An involuntary termination proceeding is an adversarial proceeding because the county office of family and children is seeking to terminate the parent's rights without the parent's agreement to terminate. Because of the permanent nature of an involuntary termination order, Indiana law provides additional rights to the child and parent. In an involuntary termination proceeding, the parent has the right to be represented by court appointed counsel unless the parent has waived counsel. The petitioner must prove the case by the most stringent civil



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standard, the “clear and convincing” standard. If the parent contests the involuntary termination petition, the court must appoint a guardian ad litem (GAL) or court appointed special advocate (CASA) to represent and protect the child’s best interest. The GAL or CASA will research, examine, advocate, facilitate and monitor the child’s case. The GAL or CASA will usually be present at the involuntary termination trial and often will testify concerning the child’s best interests and the child’s wishes.

An involuntary termination petition is a separate and distinct case from the CHINS or delinquency case which preceded it. The parents are legally served with a copy of the petition. The petition may be filed by the county office of family and children, the county prosecutor, or the GAL/CASA. Neither the parent nor the child may file the petition. The petition must be verified and allege the following:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under I.C. 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (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.

A specific termination law applies when a parent has been convicted of the crime of murder, causing suicide, voluntary or involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, sexual misconduct with a minor, or incest and the victim is the



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parent's child or stepchild who was under sixteen years of age at the time of the offense. The law states that the criminal conviction is prima facie evidence of one of the elements which must be proven in a termination petition: (1) the conditions that resulted in the child's removal or the reasons for placement outside the parent's home will not likely be remedied; or (2) continuation of the parent-child relationship poses a threat to the child's wellbeing. Prima facie evidence, if uncontradicted, is sufficient to establish a given fact.

Involuntary termination trials are complicated civil proceedings in which the Indiana Trial Rules apply. The legal parties to the involuntary termination trial include both parents, the office of family and children, and the GAL/CASA. Other people have the right to a notice of the termination hearing ten days prior to the hearing and may give recommendations and written statements in the termination hearing. These persons include prospective adoptive parents named in an adoption petition in certain situations; any person whom the caseworker knows is currently providing care for the child; any other suitable relative or person whom the caseworker knows has had a significant or caretaking relationship to the child; any emergency medical services provider who has taken custody of an abandoned infant; the child's foster parents. These additional persons are not legal parties to the termination proceeding. Sometimes the court will allow interested persons to intervene in the case and become legal parties to the case if a motion to intervene has been filed.

There is an extensive body of case law from the Indiana Court of Appeals and the Indiana Supreme Court regarding involuntary termination cases. These published cases set precedent for the trial courts in making decisions on involuntary termination cases. Trial courts have granted involuntary termination petitions which have been affirmed by the Appellate and/or Supreme Courts in a variety of situations. Among these situations are: a parent has been convicted and incarcerated or has a pattern of criminal activity; a parent has a mental illness or disability that negatively impacts the parent's ability to improve parental skills; a parent has sexually abused the child or failed to protect the child from sexual abuse; a parent has not remedied alcohol or substance abuse; a parent has failed to cooperate with court ordered service providers or visit the child; a parent has failed to obtain and maintain safe, stable housing; a parent has demonstrated an inability to meet a child's special needs.

After the court hears all of the witnesses and evidence the court may grant or deny the termination petition. If the court denies the termination, the child remains under the jurisdiction of the juvenile court and may continue in foster care or another out of home placement subject to the court's ongoing review hearings. If the court grants the termination petition, the parent loses all rights, powers, privileges, immunities and duties regarding the child. The parent's ongoing child support obligation is ended, but any child support arrearage must still be paid.