

USLegal Guide to Giving Up and Signing Over Parental Rights



INTRODUCTION

Parents do not cease to be parents when there is a divorce or separation between them. The ongoing obligations of a parent to provide for the emotional and physical well-being of a child only ends with the emancipation of the child, the death of a parent or child, or the formal termination of parental rights.

Termination of parental rights is a court order that severs the rights, powers, privileges, immunities, duties and obligations between a parent and child. A termination of parental rights may be voluntary or involuntary. Even if the statutory grounds for termination of parental rights are established, the court need not terminate parental rights if such action is not in the child's best interests.

The parents, either parent, or a surviving parent who desires to

relinquish parental rights to any natural or adopted child and make the child available for adoption or re-adoption, may petition the family court in the county in which they, he, she, or the child resides or was born, for an order terminating parental rights.

The petition must be in the format followed by the court in that area. The petition may often be filed during the mother's pregnancy, however, the judgment terminating parental rights will usually not be issued until after the birth of the child; the petitioner or petitioners have filed a written reaffirmation of their desires as expressed in the petition, and the petitioner or petitioners have been given notice of a proposal for the entry of judgment and an opportunity to be heard in connection with the proposal.

REASONS FOR TERMINATING PARENTAL RIGHTS

Biological fathers might choose to give up (relinquish) parental rights for a number of reasons. For example, if a couple decides to place

a baby for adoption, a court will first need to terminate the parental rights of both biological parents before an adoption can be finalized. If a woman remarries and wants her husband to adopt her child, the biological father might choose to relinquish his parental rights. Some fathers choose not to be active in a parental role. By giving up parental rights, they can be relieved of the duty of child support for the children. However, a court will not grant a relinquishment when it is solely to avoid child support obligations. In some cases, a father might continue to be held responsible for financially supporting his biological child even after he gives up his paternal rights. For example, if the mother must seek governmental assistance in order to support the child, a judge has the authority to terminate parental rights, but can still require the father to pay child support until the child reaches adulthood. This results in the father still being financially responsible for the child without having any

visitation rights or say in how the child is raised.

TIME PERIOD FOR TERMINATING PARENTAL RIGHTS

The time frame for giving up parental rights varies. If a father signs a document stating his desire to terminate his parental rights, then the time frame depends on whenever he can get a court date before a judge. In the case of giving up parental rights by default through a putative father registry, the state generally specifies how much time the father has to assert his parental rights after the baby is born. If the father fails to act, a judge will terminate his parental rights after the specified time period has elapsed.

DUE PROCESS RIGHTS IN TERMINATION OF PARENTAL RIGHTS HEARINGS

Because termination of parental rights proceedings affect the fundamental liberty interest of natural parents in the care, custody and management of their children, they raise both procedural and substantive due process concerns. The U.S. Supreme Court has identified a fundamental privacy interest in raising one's children. Besides being given notice of the proceedings, the parents must also have an opportunity to be heard. Courts have found that a parent who is unable to attend the hearing must have the right to "meaningful participation" in the hearing. After reviewing the state's evidence, the parent must be able to present evidence by deposition or by telephone and to challenge the state's evidence through additional cross-examination or rebuttal testimony.

PROVING WHY TERMINATION OF RIGHTS IS PROPER

State laws vary in the factors used to determine whether parental rights should be

terminated. The overall consideration for the court is the best interests of the child. The constitutional guarantee of due process of law requires that the statutory grounds for termination of parental rights be established by 'clear and convincing evidence,' not merely a 'fair preponderance of the evidence'.

Supporting evidence in termination hearings is required to substantiate the claims and evidence that led a case to legally qualify for the termination petition to be filed. Qualified expert witnesses may submit testimony on the diagnosis and prognosis of any physical or mental health concerns of the parents and the child, as well as on the history of prior treatment. Testimony may be provided by family members or other individuals involved in the case regarding the behavior of the parents toward the child.

In Texas, for example, a court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

1); that the parent has:

- (A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to; return
- (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months
- (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
- (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
- (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
- (F) failed to support the child in accordance with the parent's ability during a period of one

year ending within six months of the date of the filing of the petition;

- (G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
- (H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
- (I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
- (J) been the major cause of
 - (i) the failure of the child to be enrolled in school as required by the education Code
 - (ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length

of time or without the intent to return;

- (K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
- (L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
 - (i) Section 19.02 (murder)
 - (ii) Section 19.03 (capital murder)
 - ; (iii) Section 19.04 (manslaughter)
 - ; (iv) Section 21.11 (indecency with a child)
 - (v) Section 22.01 (assault)
 - (vi) Section 22.011 (sexual assault)
 - (vii) Section 22.02 (aggravated assault)
 - (viii) Section 22.021 (aggravated sexual assault)

- | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(ix) Section 22.04
(injury to a child, elderly or disabled individual,</p> <p>(x) Section 22.041
(abandoning or endangering child)</p> <p>(xi) Section 25.02
(prohibited sexual conduct)</p> <p>(xii) Section 43.25
(sexual performance by a child) and;</p> <p>(xiii) Section 43.26
(possession or promotion of child pornography)</p> <p>
(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;</p> <p>(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than six months, and:</p> <p>(i) the department or authorized agency has made reasonable efforts to; return the child to the parent;</p> | <p>(ii) the parent has not regularly visited or maintained significant contact with the child and</p> <p>(iii) the parent has demonstrated an inability to provide the child with a safe environment</p> <p>
(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;</p> <p>(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:</p> <p>(i) failed to complete a court-ordered substance abuse treatment program or</p> <p>(ii) after completion of a court-ordered substance abuse treatment program, continued to</p> | <p>abuse a controlled substance;</p> <p>
(Q) knowingly engaged in criminal conduct that has resulted in the parent's:</p> <p>(i) conviction of an offense;; and</p> <p>(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;</p> <p>(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription, as defined by Section 261.001 or</p> <p>(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child; and</p> <p>
(2) that termination is in the best interest of the child.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

STATE INVOLVEMENT IN TERMINATING PARENTAL RIGHTS

The Adoption and Safe Families Act (ASFA) requires State agencies to file a petition to terminate parental rights, with certain exceptions, when:

A child has been in foster care for 15 of the most recent 22 months.

A court has determined:

A child to be an abandoned infant.

That the parent has committed murder or voluntary manslaughter of another child of the parent; aided, abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent.

In response to ASFA, many states have adopted limits to the maximum amount of time a child can spend in foster care before termination proceedings can be initiated. Typically, states have adopted the ASFA standard of 15 out of the most recent 22 months in care. Some states, however, specify shorter time limits, particularly for very young children. The laws in most states are consistent with the other termination grounds required under ASFA.

ASFA requires that proceedings to terminate parental rights be initiated when the child has been in foster care for 15 of the most recent 22 months. An exception may be made under some circumstances, including:

The child has been placed under the care of a relative.

The state agency has documented in the case plan a compelling reason to believe that terminating the parent's rights is not in the best interests of the child.

The parent has not been provided with the services required by the service plan for reunification of the parent with the child. Approximately 20 states and the District of Columbia confirm these requirements in their statutes.

Federal regulations provide that compelling reasons for not filing a petition to terminate parental rights include:

-Adoption is not the appropriate permanency goal for the child;

-No grounds to file a petition to terminate parental rights exist;
-The child is an unaccompanied refugee minor as defined in 45 Code of Federal Regulations 400.111; or
-There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights.