



TITLE 13

Domestic Relations

CHAPTER 11. TERMINATION AND TRANSFER OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS

§ 1103. Grounds for termination of parental rights.

(a) The procedure for termination of parental rights for the purpose of adoption or, if a suitable adoption plan cannot be effected, for the purpose of providing for the care of the child by some other plan which may or may not contemplate the continued possibility of eventual adoption, may be initiated whenever it appears to be in the child's best interest and that 1 or more of the following grounds exist:

(1) The parent or parents of a child, or the person or persons or organization holding parental rights over such child, desires to relinquish such parental rights for the purpose of adoption;

(2) The child has been abandoned.

a. The Court may order a termination of parental rights based upon abandonment if the Court finds that the following occurred and that the respondent intended to abandon the child:

1. In the case of a minor who has not attained 6 months of age at the time a petition for termination of parental rights has been filed, and for whom the respondent has failed to:

A. Pay reasonable prenatal, natal and postnatal expenses in accordance with the respondent's financial means;

B. Visit regularly with the minor; and

C. Manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent;

2. In the case of a minor who has attained 6 months of age at the time a petition for termination of parental rights is filed, the respondent, for a period of at least 6 consecutive months in the year preceding the filing of the petition, has failed to:

A. Communicate or visit regularly with the minor; and

B. Manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent; or

3. In the case of a minor who has not attained 6 years of age at the time a petition for termination of parental rights has been filed, and for whom the respondent has manifested the

unwillingness to exercise parental rights and responsibilities, as evidenced by the respondent's placing the minor in circumstances which leave the minor in substantial risk of injury or death.

b. In cases in which no finding of intent to abandon has been made, the Court may order a termination of parental rights based upon abandonment if the Court finds that the respondent, for a period of at least 12 consecutive months in the 18 months preceding the filing of the petition, has failed to:

1. Communicate or visit regularly with the minor;
2. File or pursue a pending petition to establish paternity or to establish a right to have contact or visitation with the minor; and
3. Manifest an ability and willingness to assume legal and physical custody of the minor, if during this time, the minor was not in the physical custody of the parent;

and if the Court finds that one of the following grounds exists:

1. If the minor is not in the legal and physical custody of the other parent, the respondent is not able or willing promptly to assume legal and physical custody of the minor, and to pay for the minor's support, in accordance with the respondent's financial means;
2. If the minor is in the legal and physical custody of the other parent and a stepparent, and the stepparent is the prospective adoptive parent, the respondent is not able or willing promptly to establish and maintain contact with the minor and to pay for the minor's support, in accordance with the respondent's financial means;
3. Placing the minor in the respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well-being of the minor because the circumstances of the minor's conception, the respondent's behavior during the mother's pregnancy or since the minor's birth, or the respondent's behavior with respect to other minors, indicates that the respondent is unfit to maintain a relationship of parent and child with the minor; or
4. Failure to terminate would be detrimental to the minor. In determining whether a failure to terminate would be detrimental to the minor, the Court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the minor, the role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the minor, the age of the minor, the quality of any previous relationship between the respondent and the minor and between the respondent and any other minor children, the duration and suitability of the minor's present custodial environment and the effect of a change of physical custody on the minor.

c. The respondent's act of abandonment cannot be cured by subsequent conduct.

d. Abandonment of a baby as provided in § 907A of Title 16 shall be final 30 days after such abandonment, and such abandonment shall be: (i) the surrendering person's irrevocable consent to the termination of all parental rights, if any, of such person on the ground of abandonment; and (ii) the surrendering person's irrevocable waiver of any right to notice of or opportunity to participate in any termination of parental rights proceeding involving such child, unless such surrendering person has manifested an intent to exercise parental rights and responsibilities within 30 days of such abandonment.

(3) The parent or parents of the child or any person or persons holding parental rights over such child are found by the Court to be mentally incompetent and, from evidence of 2 qualified psychiatrists selected by the Court, found to be unable to discharge parental responsibilities in the foreseeable future. The Court shall appoint a licensed attorney as guardian ad litem to represent the alleged incompetent in the proceeding; or

(4) The respondent has been found by a court of competent jurisdiction to have:

a. Committed a felony level offense against the person, as described within subchapter II of Chapter 5 of Title 11, in which the victim was a child; or

b. Aided or abetted, attempted, conspired or solicited to commit an offense set forth in paragraph (a)(4)a. of this section; or

c. Committed or attempted to commit the offense of Dealing in Children, as set forth in § 1100 of Title 11; or

d. Committed the felony level offense of endangering the welfare of a child as set forth in § 1102 of Title 11.

(5) The parent or parents of the child, or any person or persons holding parental rights over the child, are not able, or have failed, to plan adequately for the child's physical needs or mental and emotional health and development, and 1 or more of the following conditions are met:

a. In the case of a child in the care of the Department or a licensed agency:

1. The child has been in the care of the Department or licensed agency for a period of 1 year, or for a period of 6 months in the case of a child who comes into care as an infant, or there is a history of previous placement or placements of this child; or

2. There is a history of neglect, abuse or lack of care of the child or other children by the respondent; or

3. The respondent is incapable of discharging parental responsibilities due to extended or repeated incarceration, except that the Court may consider postconviction conduct of the respondent; or

4. The respondent is not able or willing to assume promptly legal and physical custody of the child, and to pay for the child's support, in accordance with the respondent's financial means; or

5. Failure to terminate the relationship of parent and child will result in continued emotional instability or physical risk to the child. In making a determination under this paragraph, the Court shall consider all relevant factors, including:

A. Whether the conditions that led to the child's placement, or similar conditions of a harmful nature, continue to exist and there appears to be little likelihood that these conditions will be remedied at an early date which would enable the respondent to discharge parental responsibilities so that the child can be returned to the respondent in the near future;

B. The respondent's efforts to assert parental rights of the child, and the role of other persons in thwarting the respondent's efforts to assert such rights;

C. The respondent's ability to care for the child, the age of the child, the quality of any previous relationship between the respondent and the child or any other children;

D. The effect of a change of physical custody on the child; and

E. The effect of a delay in termination on the chances for a child to be placed for adoption.

b. In the case of a child in the home of a stepparent, guardian, permanent guardian or blood relative:

1. The child has resided in the home of the stepparent, guardian, permanent guardian or blood relative for a period of at least 1 year, or for a period of 6 months in the case of an infant; and

2. The Court finds the respondent is incapable of discharging parental responsibilities, and there appears to be little likelihood that the respondent will be able to discharge such parental responsibilities in the near future.

(6) The respondent's parental rights over a sibling of the child who is the subject of the petition have been involuntarily terminated in a prior proceeding.

(7) The parent has subjected a child to torture, chronic abuse, sexual abuse, and/or life-threatening abuse.

(8) A child has suffered unexplained serious physical injury, near death or death under such circumstances as would indicate that such injuries, near death or death resulted from the intentional or reckless conduct or wilful neglect of the parent.

(b) Unless adoption is contemplated, the termination of 1 parent's rights shall not be granted if the effect will be to leave only 1 parent holding parental rights, unless the Court shall find the continuation of the rights to be terminated will be harmful to the child.

(c) Nothing in this chapter shall be construed to authorize any court to terminate the rights of a parent to a child, solely because the parent, in good faith, provides for his or her child, in lieu of medical treatment, treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination. However, nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his or her health and welfare.

(d) The Department is not required to perform, but is not prohibited from performing, reunification and related services as outlined in Chapter 90 of Title 29 when the grounds for termination of parental rights are those stated in paragraph (a)(2), (4), (6), (7) or (8) of this section.