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# Grounds for Involuntary Termination of Parental Rights

Every State, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes providing for the termination of parental rights by a court. Termination of parental rights ends the legal parent-child relationship. Once the relationship has been terminated, the child is legally free to be placed for adoption, with the objective of securing a more stable, permanent family environment that can meet the child's long-term parenting needs.

Termination may be voluntary or involuntary. Birth parents who wish to place their children for adoption may voluntarily relinquish their rights.<sup>1</sup>

<sup>1</sup> For State-by-State details on voluntary relinquishment, including the right to revoke consent, see Information Gateway's *Consent to Adoption* at [www.childwelfare.gov/systemwide/laws\\_policies/statutes/consent.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/consent.cfm).

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## Grounds for Termination of Parental Rights

When addressing whether parental rights should be terminated involuntarily, most States require that a court:

- Determine, by clear and convincing evidence, that the parent is unfit<sup>2</sup>
- Determine whether severing the parent-child relationship is in the child's best interest

The grounds for involuntary termination of parental rights are specific circumstances under which the child cannot safely be returned home because of risk of harm by the parent or the inability of the parent to provide for the child's basic needs. Each State is responsible for establishing its own statutory grounds, and these vary by State.

The most common statutory grounds for determining parental unfitness include:

- Severe or chronic abuse or neglect
- Abuse or neglect of other children in the household
- Abandonment
- Long-term mental illness or deficiency of the parent(s)
- Long-term alcohol- or drug-induced incapacity of the parent(s)
- Failure to support or maintain contact with the child
- Involuntary termination of the rights of the parent to another child

Another common ground for termination is a felony conviction of the parent(s) for a crime of violence against the child or another family member, or a conviction for any felony when the term of incarceration is so long as to have a negative impact on the child, and the only available provision of care for the child is foster care.

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<sup>2</sup> The U.S. Supreme Court, in *Santosky v. Kramer* (455 U.S. § 745 (1982)), set the standard of proof in termination of parental rights proceedings at clear and convincing evidence.

The Adoption and Safe Families Act (ASFA) requires State agencies to file a petition to terminate parental rights, with certain exceptions, when:<sup>3</sup>

- 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.

The above factors become grounds for terminating parental rights when reasonable efforts by the State to prevent out-of-home placement or to achieve reunification of the family after placement have failed to correct the conditions and/or parental behaviors that led to State intervention.<sup>4</sup>

## Exceptions

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.

<sup>3</sup> ASFA (P.L. 105-89) amended title IV-E of the Social Security Act, which establishes guidelines that States must comply with as a condition for receiving Federal funds.

<sup>4</sup> For more detailed information on the reasonable efforts requirement, see Information Gateway's *Reasonable Efforts to Reunify Families* at [www.childwelfare.gov/systemwide/laws\\_policies/statutes/reunify.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.cfm).

- 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.<sup>5</sup>

## Effects of Termination

A termination action can sever the rights of one parent without affecting the rights of the other parent. If the rights of both parents are terminated, the State assumes legal custody of the child along with the responsibility for finalizing a permanent placement for the child, either through adoption or guardianship, within a reasonable amount of time.

In approximately four States, if a permanent placement has not been achieved within a specific timeframe, a petition may be filed with the court requesting reinstatement of the parent's rights.<sup>6</sup> If the court determines that the parent is now able to provide a safe home for the child, the request may be granted.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

<sup>5</sup> The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current only through June 2007. The States that currently provide for these exceptions include Alabama, Alaska, California, Colorado, Connecticut, Illinois, Indiana, Iowa, Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Tennessee, West Virginia, and Wyoming. In other States, the Federal requirements apply to any child whose foster care maintenance payments are funded through the title IV-E program.

<sup>6</sup> In California, after 3 years, a child who is age 12 or older may petition (Welf. & Inst. Code § 366.26(i)); in Hawaii, after 1 year, the parent or State Department may petition (Rev. Stat. § 571-63); in Nevada, the child or the legal guardian of a child who has not been adopted and is not likely to be adopted may petition (2007 Nev. Ch. 43); and in Washington, after 3 years, a child who is age 12 or older may petition (2007 Wa. HB 1624, § 1).

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