



# Criteria and Procedures for Termination of Parental Rights

Your child has been placed in foster care. The department has an obligation to assist you in reunification with your child unless otherwise provided by law.

BE AWARE THAT YOUR PARENTAL RIGHTS CAN BE TERMINATED IF YOU FAIL TO DO CERTAIN THINGS.

Your rights to your child can be lost or terminated for, among other things:

- 1. Failing to pay child support regularly for four consecutive months if the child is four (4) years of age or more or failing to pay child support regularly for three consecutive months if the child is less than four (4) years of age, or failure to pay more than a small amount of support, unless you establish at the termination hearing that your failure to do so was not willful.**
- 2. Failing to regularly visit your child for four consecutive months if the child is four (4) years of age or more or failing to regularly visit for three consecutive months if the child is less than four (4) years of age, unless you establish at the termination hearing that your failure to do so was not willful.**
- 3. Failing to complete the tasks required of you on the permanency plan.**
- 4. Failing to make changes in your living situation so that the child can be returned to your care.**

These are general guidelines. There are other reasons that the court can take away your parental rights. Please see the remainder of this document for a more thorough explanation. If you have questions, please discuss them with the case manager or attorney. If you don't have an attorney, you may want to seek legal representation. If you cannot afford an attorney, you can fill out a form to see if the court can appoint an attorney for you.

## I. SURRENDER

You may terminate your parental rights **voluntarily** by appearing before a judge, or other official designated by law, and signing a voluntary surrender. You should discuss this option with your attorney or case manager, who will help you complete the forms and make an appointment for you with the appropriate person if that is what you decide and what is best for your child. Arrangements can also be made for parents who are in prison or living in other states or foreign countries to surrender their parental rights voluntarily before officials appropriate to their situation.

## II. INVOLUNTARY TERMINATION

Your parental rights may be terminated against your will if the judge of a chancery, circuit, or juvenile court finds by clear and convincing evidence that there is a legal basis (grounds) for termination and that termination is in the best interest of your child. You must be given notice that the Department of Children's Services (DCS) seeks to terminate your parental rights and there must be a trial where you may be represented by an attorney. If you cannot afford an attorney, you can fill out a form to see if the court can appoint an attorney for you.

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- A. Tennessee law currently lists the following as **grounds for termination** of parental rights:

#### **ABANDONMENT**

A parent has failed to visit, to engage in more than “token” visitation, or to make reasonable child support payments for four (4) consecutive months immediately before the termination petition is filed if the child is four years of age or more or for three (3) consecutive months if the child is less than four years of age, or

An incarcerated parent failed to visit, to engage in more than “token” visitation, or to make reasonable child support payments for four (4) consecutive months immediately preceding the parent's or guardian's incarceration or an aggregation of the first one hundred twenty (120) days of non-incarceration prior to filing the petition if the child is four (4) years of age or more, or for three (3) consecutive months immediately preceding the parent's or guardian's incarceration or an aggregation of the first ninety (90) days of non-incarceration prior to filing the petition if the child is less than four (4) years of age.

A biological or legal father failed to visit or to make reasonable payments toward support of the child's mother during the last four (4) months of her pregnancy.

Note: It is a defense to abandonment for failure to visit or failure to support if the failure to visit or failure to support is not willful.

#### **ABANDONMENT OF NEWBORN**

The child's mother voluntarily left a newborn infant at a designated medical facility and for at least ninety (90) days thereafter failed to seek contact with the infant.

#### **WANTON DISREGARD**

A parent who is now incarcerated “engaged in conduct prior to, during, or after incarceration which exhibits **wanton disregard** for the welfare of the child.”

#### **FAILURE TO PROVIDE A SUITABLE HOME**

The child was removed from the home or custody of a parent or guardian due to allegations of dependency and neglect and placed in foster care, and DCS made reasonable efforts to prevent the removal or the child's situation prevented reasonable efforts from being made, and DCS made reasonable efforts for the four (4) months after the child entered foster care to assist the parent or guardian to establish a suitable home for the child, and the parent or guardian “have **not made reciprocal reasonable efforts** to provide a suitable home and have **demonstrated a lack of concern** for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date.”

#### **SUBSTANTIAL NON- COMPLIANCE WITH THE PERMANENCY PLAN**

The parent was informed of the responsibilities on the plan, and the responsibilities were reasonable and were related to remedying the conditions which necessitated foster care, and the parent has been **substantially noncompliant** with those responsibilities.

## **CONDITIONS WHICH LED TO REMOVAL HAVE NOT BEEN REMEDIED OR OTHER CONDITIONS PREVENT RETURN**

The child has been in foster care for six (6) months prior to the first setting of the petition to terminate parental rights, and the conditions which led to the removal from the home or custody of a parent or guardian persist or other conditions exist which "in all reasonable probability" would cause the child to be subjected to abuse or neglect preventing the child's safe return, and there is little likelihood that the conditions can be remedied at an early date, and continuing the legal parent-child relationship diminishes the child's chances of early integration into a safe, stable, and permanent home.

## **SEVERE CHILD ABUSE**

The parent has committed **severe child abuse** against **any** child. The finding of severe child abuse may be made by the juvenile court, and it is not necessary that there be a criminal court conviction or even a prosecution. If the parent was convicted for conduct found to be severe child abuse and sentenced to **more than two (2) years of confinement or any alternative sentence** that is an independent ground for termination.

## **PRISON SENTENCE**

A parent is **sentenced** to incarceration in any type of correctional facility for ten (10) or more years if the child is under eight (8) years old at the time of sentencing or a total effective sentence of six (6) years or more, and one (1) or more other grounds for termination exist regardless of the age of the child. The nature of the parent's crime is irrelevant. The parent does not have to serve the entire sentence for this ground to apply.

## **LIABILITY FOR DEATH OF PARENT**

A criminal or civil court has found a parent responsible (guilty or civilly liable) for the intentional or wrongful death of the other parent.

## **MENTAL INCOMPETENCE**

The parent is mentally incompetent to adequately provide for the care and supervision of the child and it is unlikely that the parent will be able to assume or resume the care of and responsibility in the near future. This standard is not equivalent to the standard for commitment to a mental hospital, appointment of a conservator, or for any determination of incompetence for other purposes, although the court would certainly take such facts into consideration.

## **CONVICTION OF RAPE FROM WHICH THE CHILD IS CONCEIVED**

The parent has been convicted of aggravated rape, rape or rape of a child, and the child was conceived as a result of the criminal act.

## **SEVERE CHILD SEXUAL ABUSE**

The parent has been found to have committed severe child sexual abuse under any prior order of a criminal court, which includes aggravated rape, aggravated sexual battery, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, promoting prostitution, statutory rape, incest, rape, or rape of a child.

## CONVICTION OF SEX TRAFFICKING

The parent has been convicted of trafficking for commercial sex act under Tennessee law or similar laws in another state or sex trafficking of children or by force, fraud, or coercion under federal law.

## FAILURE TO ASSUME CUSTODY OR FINANCIAL RESPONSIBILITY

The parent has failed to show an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

In addition to the grounds listed above, the parental rights of an **alleged biological father** (a man who was not married to the mother and has not signed a voluntary acknowledgment of paternity or petitioned to legitimate the child) may be terminated because he:

1. failed to file a petition to legitimate the child (or to "establish parentage") within thirty (30) days after learning that he might be the biological father;
2. failed to pay child support consistent with the Tennessee child support guidelines;
3. failed to visit or seek reasonable visitation;
4. failed to "manifest an ability and willingness to assume legal and physical custody of the child".
5. Giving him physical custody "would pose a risk of substantial harm to the physical or psychological welfare of the child."

If the court determines that your actions or inactions have resulted in a legal basis for termination of your parental rights, the court must also determine whether termination would be in the **best interest** of your child. In considering the best interest factors, it is presumed that the prompt and permanent placement of a child in a safe environment is presumed to be in the child's best interest. Among other factors, the court will consider:

1. the effect a termination of parental rights will allow the child's critical need for stability to be met and allow for continuity of placement throughout the child's minority.
2. the effect a change of caretakers and physical environment is likely to have a negative effect on the child's emotional, psychological, and medical condition.
3. whether the parent has demonstrated lack of continuity and stability in meeting the child's basic material, educational, housing, and safety needs.
4. whether the parent and the child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment.
5. whether the parent has maintained regular visitation or other contact with the child and whether the parent has used the visitation or other contact to cultivate a positive relationship with the child.
6. whether the child is fearful of living in the parent's home.
7. whether the parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms.
8. whether the child has created a healthy parental attachment with another person or persons in the absence of the parent.
9. whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of

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various available outcomes on these relationships and the child's access to information about the child's heritage.

10. whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner.
11. whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions.
12. whether the Department has made reasonable efforts to assist the parent in making a lasting adjustment.
13. whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest.
14. whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult.
15. whether the parent has ever provided safe and stable care for the child or any other child.
16. whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive.
17. whether the physical environment of the parent's home is healthy and safe for the child.
18. whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive.
19. whether the parent has consistently provided more than token financial support for the child.
20. whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

### **III. ADOPTION & SAFE FAMILIES ACT**

Federal law and Tennessee law require DCS to file a petition to terminate parental rights of any child in foster care if:

1. the child has been in foster care for fifteen (15) of the last twenty-two (22) months;
2. the child is an abandoned infant; or
3. the child's parent has committed murder or voluntary manslaughter of a sibling, half-sibling or other child in the home; or
4. the child's parent has committed severe abuse or a felony assault resulting in serious bodily injury to this child, a sibling, half-sibling or any other child.

Exceptions can be made if:

1. the child is in the care of a relative;
2. there is a compelling reason why filing a termination petition is not in the child's best interest; or
3. DCS has not made reasonable efforts to provide the parents services DCS considers necessary for the safe return of the child to the home.

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**I have received a copy of Criteria & Procedures for Termination of Parental Rights and have been given an explanation of its contents.**

Mother	Date	Witness	Date
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Father	Date	Witness	Date
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I explained the contents of this document to the mother on:

\_\_\_\_\_

Date

\_\_\_\_\_  
Case Manager's Signature

I explained the contents of this document to the father on:

\_\_\_\_\_

Date

\_\_\_\_\_  
Case Manager's Signature

Mother \_\_\_\_\_ refused to sign this document; however, the contents of the document were explained to her on this date.

\_\_\_\_\_  
Case Manager

Date \_\_\_\_\_

Father \_\_\_\_\_ refused to sign this document; however, the contents of the document were explained to him on this date.

\_\_\_\_\_  
Case Manager

Date \_\_\_\_\_

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