

What is Termination of Parental Rights?

Termination of Parental Rights when the parent/child relationship is severed by order of the court.

What is the process?

The process to terminate parental rights begins by filing a petition asking for termination of parental rights with the court. Either parent may file a petition asking to terminate the rights of the other parent, but a parent cannot terminate their own parental rights. Others who may be allowed to file a petition to terminate parental rights are the guardian or legal custodian of the child, an authorized agency, or any other person with a legitimate interest in the matter, such as adoptive parents or the child's grandparents.

The petition must contain the following information:

- a. The name and address of the petitioner;
- b. The name, sex, date and place of birth, and residence of the child;
- c. The basis for the court's jurisdiction (the child is present in Idaho);
- d. The relationship of the petitioner to the child, or the fact that no relationship exists;
- e. The names, addresses, and dates of birth of the parents; and where the child is illegitimate, the names, addresses and dates of birth of both parents, if known;
- f. Where the child's parent is a minor, the names and addresses of said minor's parents

or guardian of the person; and where the child has no parent or guardian, the relatives of the child to and including the second degree of kindred;

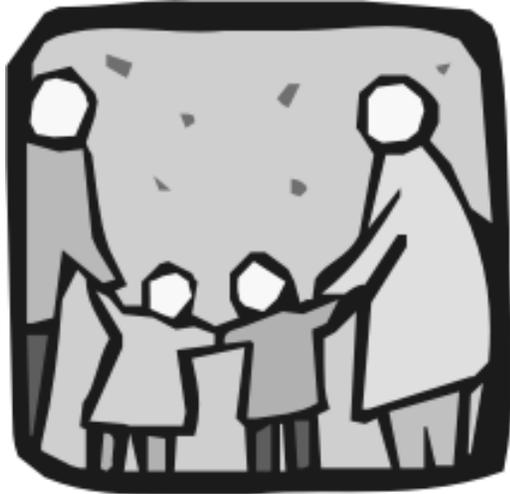
g. The name and address of the person having legal custody or guardianship of the person or acting as parent to the child or authorized agency having legal custody or providing care for the child;

h. The grounds on which termination of the parent and child relationship is sought;

i. The names and addresses of the persons and authorized agency or officer thereof to whom or to which legal custody or guardianship of the person of the child might be transferred;

j. A list of the assets of the child together with a statement of the value thereof.

The Indian Child Welfare Act is a federal law regulating the adoption of an "Indian child". "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43 of the U.S. Code. "Indian child" means any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. If this act is applicable to your case, then the additional requirements of the Indian Child Welfare Act in the U.S. Code must be followed (25 USC, chapter 21). You should contact an attorney for assistance in this area of law.



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Notice of the termination proceeding must be served personally on the parent whose rights are being terminated. Personal service upon an individual is defined in the Idaho Rules of Civil Procedure, Rule 4, which states that service shall be made by an officer authorized by law to serve process, or by some person over the age of eighteen, not a party to the action, by delivering a copy of the summons and complaint (or petition) to the individual personally or by leaving copies at the individual's dwelling house with a person over the age of eighteen years who lives in the same residence.

Consent is required from the terminating parent under Idaho Code section 16-1504. Consent must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides. There are certain conditions that must be satisfied if the consenting parent lives in another state.

A hearing will be held to decide if termination of a parent's rights will occur, only if consent is not given. If the parent whose rights are to be terminated does not consent, but does not contest the matter within the time allowed by law, the petitioner may proceed by default. At this hearing the court may grant an order terminating the relationship where it finds one or more of the following conditions exist:

1. The parent has abandoned the child by having willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact for one year or more. When termination is sought by a grandparent seeking to adopt the child, willful failure of the parent to maintain a normal parental relationship, without just cause, for six months shall constitute evidence of abandonment.

2. The parent has neglected or abused the child.

3. The presumptive parent is not the natural parent of the child.

4. The parent is unable to fulfill parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period and will be injurious to the health or well-being of the child.

5. If termination is found to be in the best interest of the parent and child, where the petition has been filed by a parent or through an authorized agency, or interested party.

6. Where consent to termination has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person(s) proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held.

What happens if consent to terminate rights is given, but the adoption is not completed?

The termination of parental rights is not completed until the judge signs the order terminating the rights. In occasions where the adoption fails, the case is usually dismissed and consent to the termination is withdrawn, unless circumstances support the termination of rights even with out the proposed adoption.

What is the effect of terminating parental rights?

Unless the decree of adoption provides otherwise, the effects of terminating parental rights on the parent is that the parent is relieved of all parental duties toward, and all responsibilities for the child, including support and no longer has any right over it. The effect on the child is that all rights of the child to inherit are terminated unless specifically provided by a will.

The Ada County Court Assistance Office provides this information as a public service. It is not a substitute for legal advice. The laws and court rules are complex. It is always advisable to talk to a lawyer about your situation before filing your action.