

# TERMINATION OF PARENTAL RIGHTS

## *Bench Card*

### **PURPOSE**

1. Provide for voluntary and involuntary severance of the parent and child relationship.
2. Provide permanency for the child(ren).<sup>1</sup>

### **WHEN**

1. A petition may be filed at any time after the entry of a decree finding that the child is within the jurisdiction of the court under the CPA.<sup>2</sup>
2. A petition to terminate parental rights must be filed:
  - a. Within thirty (30) days of a judicial determination that an infant has been abandoned or reasonable efforts are not required because aggravated circumstances were present, unless there are compelling reasons why it would not be in the best interests of the child; or,<sup>3</sup>
  - b. Within thirty (30) days of an order approving a permanency plan with a permanency goal of termination of parental rights and adoption.<sup>4</sup>
  - c. Thirty (30) days after a child is delivered to a safe haven, or as soon as practicable thereafter;<sup>5</sup> or,
  - d. If the child has been in the temporary and/or legal custody of the department for fifteen (15) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the fifteenth month, a petition to terminate parental rights, unless the court finds that: (i) the child is placed permanently with a relative; (ii) there are compelling reasons why termination of parental rights is not in the best interests of the child; or (iii) the department has failed to provide reasonable efforts to reunify the child with his family.<sup>6</sup>

### **WHO MAY BE PRESENT**

1. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case.<sup>7</sup>
2. The Department shall provide notice of the termination of parental rights hearing to: 1) the foster parents; 2) pre-adoptive parents; 3) a relative who is providing care to a child who is in the custody of the Department; and 4) children age eight (8) and older. The Department shall confirm to the court that this notice was given.<sup>8</sup>
3. A child eight (8) or older and the foster parents have the right to be heard.<sup>9</sup> The child may be excluded from hearings at any time in the discretion of the court. If the child testifies, a counselor, friend, or other person shall be permitted to remain in the courtroom at the witness stand as the child testifies.<sup>10</sup>

### **EVIDENCE**

1. The Rules of Evidence apply.<sup>11</sup>
2. Standard is clear and convincing.<sup>12</sup>
3. Privileges in effect at the termination of parental rights hearing are the lawyer/client privilege and the clergy privilege. There is no other privilege as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child.<sup>13</sup>

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### REQUIRED FINDINGS

Any order terminating parental rights must be in writing and must recite the findings upon which the order is based.<sup>14</sup>

1. The court has jurisdiction and the venue is proper.<sup>15</sup>
2. Grounds:
  - a. In the best interests of the child and any one or more of the following:<sup>16</sup>
    - i. The parent has abandoned the child;<sup>17</sup> or
    - ii. The parent has neglected the child: (1) as defined in I.C. §16-1602 (26) or (2) the parent(s) has failed to comply with the court's orders or the case plan in a child protective act case and: (i) The department has had temporary or legal custody of the child for fifteen (15) of the most recent twenty-two (22) months; and (ii) reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary or legal custody of the department<sup>18</sup> or
      - i. The parent has abused the child;<sup>19</sup> or
      - ii. The presumptive parent is not the biological parent; or
    - iii. The parent is unable to discharge his/her parental responsibilities and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period of time and will be injurious to the child's health, morals, or well-being; or
    - iv. The parent is incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.
  - b. The court may grant an order terminating the relationship and may rebuttably presume that such termination of parental rights is in the best interests of the child where:<sup>20</sup>
    - i. The parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor under the age of 16, or sexual abuse of a minor under the age of 16; or
    - ii. The following circumstances are present: (a) abandonment, chronic abuse or chronic neglect of the child; (b) sexual abuse against a child of the parent; (c) torture of a child; any conduct described in the code sections listed in section 18-8303(1), Idaho Code; battery or an injury to a child that results in serious or great bodily injury to a child; voluntary manslaughter of a child, or aiding or abetting such voluntary manslaughter, soliciting such voluntary manslaughter or attempting or conspiring to commit such voluntary manslaughter; or (d) the parent has committed murder, aided or abetted a murder, solicited a murder or attempted or conspired to commit murder; or
    - iii. The child is an abandoned infant except in a parental termination action brought by one (1) parent against another parent.
  - c. The court may grant termination of parental rights where it finds that termination is in the best interests of the parent *and* the child.<sup>21</sup>
  - d. The parent(s) has voluntarily consented to the termination of the relationship. Voluntary terminations cannot be used as a basis for a subsequent finding of aggravated circumstances.<sup>22</sup>
3. Appoint authorized agency as a guardian and vest legal custody in such agency.<sup>23</sup>

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### REQUIRED FINDINGS, continued

4. Fix responsibility for child support as appropriate.<sup>24</sup>
5. Set review hearings every six (6) months and permanency every twelve (12) months until adoption or final placement.<sup>25</sup>
6. **In an ICWA case**, findings must include the testimony of a qualified Indian expert witness:
  - a. That continued custody of the child by the parent or Indian custodian is, beyond a reasonable doubt, likely to result in serious emotional or physical damage to the child; and
  - b. That the Department has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful.<sup>26</sup>

### ENDNOTES

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<sup>1</sup> IC §16-2001(1)(a) and (b).

<sup>2</sup> IJR 48(a).

<sup>3</sup> IC §16-1624 (3); IC §16-1602(5).

<sup>4</sup> IC §16-1624(2); IJR 46(b).

<sup>5</sup> IC §39-8205(5).

<sup>6</sup> IC §16-1622(g); 42 U.S.C. §675(5)(e).

<sup>7</sup> IC §16-2009; IJR 52(a).

<sup>8</sup> IJR 40(a) and (b).

<sup>9</sup> IJR 40(a) and (b).

<sup>10</sup> IC §16-1613(1) and (2); IJR 52(a).

<sup>11</sup> IRE 101(e)(6); IC §16-2009; IJR 51(c).

<sup>12</sup> IC §16-2009.

<sup>13</sup> IRE 502, IRE 505 *See also* IRE 504(d)(1) Husband/wife privilege; b) IRE 503(d)(4) Physicians and psychotherapists; c) IRE 516(d)(3) School counselors; d) IRE 517(d)(3) Licensed counselors; and e) IRE 518(d)(5) Licensed social workers.

<sup>14</sup> IC §16-2010(1).

<sup>15</sup> IC §16-2010(1); §16-2003.

<sup>16</sup> IC §16-2005(1).

<sup>17</sup> IC §16-2002(5).

<sup>18</sup> IC §16-2002(3)(b).

<sup>19</sup> IC §16-1602(1).

<sup>20</sup> IC §16-2005(2).

<sup>21</sup> IC §16-2005(3).

<sup>22</sup> IC §16-2005(4), §16-1602(5).

<sup>23</sup> IC §16-2010(2)(a)(iii).

<sup>24</sup> IC §16-2010(2)(b).

<sup>25</sup> IC §16-2010(4); IC 16-1622(1)(a).

<sup>26</sup> 25 U.S.C. §1912(d) and (f).