

Termination of Parental Rights

Termination of parental rights (TPR) means that all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed pursuant to a court order. Parental rights may be terminated either voluntarily or involuntarily. The court does not terminate parental rights for the convenience of the parent(s). It is usually for the purpose of allowing adoption of a child.

NOTE: Establishing one or more of the statutory grounds for termination is not sufficient to obtain an order terminating parental rights. The court must also find that termination is in the best interests of the **child**. Termination of a parent's rights cannot be done to advance the interests of the parents, whether emotional or financial. In most cases, it is in a child's best interests to have two parents. As a rule, termination of parental rights is not found by the court to be in the child's best interest unless the child will be adopted or the parent has a negative affect on or is a danger to the child. If it is not likely that the child will be adopted, parties are strongly advised to consult an attorney prior to filing a petition for termination of parental rights.

VOLUNTARY TPR

The juvenile court may terminate parental rights with the parent's consent. The court may accept voluntary consent to TPR only under the following conditions:

1. The parent appears at the hearing on the TPR petition and gives his or her consent. Before accepting the consent, the judge must explain the effect of TPR and question the parent to ensure that the consent is informed and voluntary.
2. If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing on the TPR petition, the court may accept written consent as given before an embassy or consul official, a military judge or a judge of court in another county or state or in a foreign jurisdiction.
3. A person who may be the father of a non-marital child may also consent to TPR by signing a written, notarized statement that he has been informed of and understands the effect of TPR and voluntarily disclaims any rights to the child, including the right to notice of TPR proceedings.
4. If the TPR proceeding is held prior to a proceeding for adoption by the child's stepparent, or if the child's birth parent is a resident of a foreign jurisdiction, the parent may also consent to the TPR by filing an affidavit with two witnesses' signatures stating that the parent has been informed of and understands the effect of a TPR order and voluntarily disclaims all rights to the child, including the right to notice of TPR proceedings.
 - The capacity of a parent to give voluntary and informed consent may be an issue in a voluntary TPR proceeding. This issue may be raised by a guardian ad litem (GAL) representing the child's best interest, who must inform the court of any reason to doubt the parent's capacity. The court must then determine whether the parent is capable of giving informed and voluntary consent. If the court finds that the parent is incapable of knowingly and voluntarily consenting, the court must dismiss the TPR proceeding. Such a dismissal, however, does not preclude an involuntary TPR, pursuant to WI state §48.41.

INVOLUNTARY TPR

Under WI state §48.415, the grounds for involuntary TPR are as follows:

- Abandonment
- Relinquishment
- Continuing need of protection or services
- Continuing parental disability
- Continuing denial of periods of physical placement or visitation
- Child Abuse
- Failure to assume parental responsibility
- Incestuous parenthood
- Homicide or solicitation to commit homicide of parent
- Parenthood as a result of sexual assault
- Commission of a serious felony against one of the person's children
- Prior involuntary TPR to another child

TPR PROCEDURE

Forms for initiating a TPR case are available for purchase or on the WI courts system website:

<http://www.wicourts.gov/forms1/circuit.htm> .

If a TPR petition is for an involuntary TPR, the petitioner may also petition the court for a temporary order prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child. In doing so, the petitioner must allege facts that show that prohibiting visitation or contact would be in the child's best interest. The court may issue a temporary order ex parte or hold a hearing on whether to issue an injunction. A temporary order remains in effect until an injunction hearing may be held and suspends any similar orders under a CHIPS or juveniles in need of protection or services (JIPS) order.

The court must hold the hearing on or before the date of the hearing on the TPR petition. The court may grant the injunction if it finds it would be in the best interest of the child. Current law further provides that the court must issue a temporary order and injunction prohibiting visitation or contact if the parent has been convicted of first- or second-degree intentional homicide of the child's other parent. This provision does not apply if the court determines by clear and convincing evidence that visitation or contact would be in the child's best interests. The court must consider the child's wishes in making that determination.

Unless time periods are waived or extended, the hearing on the TPR petition must be held within 30 days after the petition is filed. At this hearing, the court must determine whether any party wishes to contest the petition and must inform the parties of their right to a jury trial and the rights of a putative party to paternity. If the petition is contested, the court must set a date for a fact-finding hearing that is within 45 days after the hearing on the petition, unless all of the parties agree to commence with the hearing immediately.

Before accepting an admission of the alleged facts in a petition, the court must do all of the following:

1. Address the parties present and determine that the admission is voluntary, with understanding of the nature of the acts alleged and the potential dispositions.
2. Establish whether any promises or threats were made to elicit an admission and alert all unrepresented parties that a lawyer may discover defenses or mitigating circumstances, which would not be apparent to them.
3. Establish whether a proposed adoptive parent of the child has been identified.
4. Make inquiries to satisfactorily establish that there is a factual basis for the admission.

Fact-Finding Hearing

The purpose of the fact-finding hearing is to determine whether grounds exist for TPR in those cases in which the termination is contested.

- The hearing may exclude the child and is closed to the public.
- If the hearing is to a jury, the jury may only decide whether any grounds for TPR have been proven. The court must decide whether or not termination should be granted.
- If grounds for TPR are found by the court or jury, the court must find the parent unfit; however, such a finding does not preclude dismissal of the petition. The court must then proceed immediately to hear evidence and motions relating to the disposition. The court may consider disposition or schedule the dispositional hearing within 45 days if either of the following conditions exist:
 1. All parties to the proceeding agree.
 2. The court has not yet received a report on the child's history from an agency and now directs the agency to prepare this report.
- If the court delays making a disposition, it may transfer temporary custody of the child to an agency for placement of the child until the dispositional hearing. [WI States §48.424]

Factors

In considering the best interests of the child, the court must consider the following:

1. The likelihood of the child's adoption.
2. The age and health of the child, both at the time of the disposition and, if applicable, at the time of removal from the home.
3. Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
4. The wishes of the child.
5. The duration of the separation of the parent from the child
6. Whether the child will be able to enter into a more stable and permanent family relationship as a result of the TPR, considering the child's current placement, the likelihood of future placements and the results of prior placements. [WI Statutes §48.426]

Dispositions

At the dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations. After receiving evidence, the court must enter a disposition within 10 days.

The court may enter any of the following dispositions:

1. Dismiss the petition if the evidence does not warrant the TPR.
2. Order TPR of one or both parents.
3. If the rights of both parents or of the only living parent are terminated and if a guardian has not been appointed either:
 - (a) Transfer guardianship and custody of the child pending adoptive placement to a county department; a licensed child welfare agency; DHFS; a relative with whom the child resides, if the relative has filed a petition to adopt the child or is a kinship care relative; or an individual who has been appointed guardian of the child by a court of a foreign jurisdiction; or
 - (b) Transfer guardianship of the child to an agency and custody of the child to an individual in whose home the child has lived for at least 12 consecutive months immediately prior to the TPR or to a relative.

If the court enters a TPR order, the court must do all of the following:

1. Inform each birth parent whose rights have been terminated of current law permitting access for medical and other information regarding a child's birth parent following TPR.
2. Forward to the DHFS:
 - (a) The name and date of birth of the child whose birth parent's rights have been terminated;
 - (b) The names and current addresses of the child's birth parent, guardian and legal custodian; and
 - (c) The medical and genetic information obtained [WI States §48.427]

Appeals

Parents whose rights are terminated may have a right to appeal the judgment to the Court of Appeals or file a motion in the trial court for a new trial. Appeal rights may be lost if the party does not act very quickly (thirty days or less) following a judgment terminating parental rights, although some rights may continue for a longer period of time. Grounds for appeal are limited, consult Wisconsin Statutes §48.46. A parent wishing to appeal should immediately consult an attorney regarding filing a notice of appeal (or motion for new trial) as quickly as possible.