Termination of Parental Rights (TPR)

What does termination of parental rights mean?

Termination of Parental Rights means that a person's rights as a parent are taken away. Termination means "to end" something. The person is not legally the child's parent anymore.

- The parent **loses the right** to visit or talk with the child
- The parent **can't decide** how the child is raised and taken care of
- The child **can be adopted** without the parent's permission

Courts take away parental rights to protect children that are in very bad situations with their custodial parent. It is rare that a parent can start a process to take away the parental rights of another parent. (See last section of this fact sheet.)

Termination can be "Voluntary" or "Involuntary"

Voluntary:
Voluntary termination means **you agree** to terminate (end) your rights as a parent. You might decide to do this because it is the best thing for your child and there is a good reason to do it. Like if your child has been in foster care for a long time, or because your ex-partner is married to someone who wants to adopt the child. Or maybe a friend or family member has agreed to take over raising the child.

Note: A court does not let you give up your rights as a parent just because you don't want to pay child support.

Involuntary:
Involuntary termination means **you don't agree** with giving up your rights as a parent, but the court decides they should be terminated anyway.

If a court takes away your parental rights, you don't only lose your rights to the children you have now. If you have more children later, the court could say you won't be a good parent to them either. Social services could petition to terminate your rights as soon as the baby is born.

If my rights are terminated, can I still have contact with my kids?

If there is someone who wants to adopt your children and you agree, you can terminate your rights so the adoption can happen. You and the adoptive parents can talk about and decide if you or another relative can visit or talk to the children.

If your child is in foster care, the foster care agency has to approve the contact agreement. You file this agreement with the court.

How are parental rights terminated?

1) If the county gets a report of neglect or maltreatment, they do an investigation. See our fact sheet *Child Protection*. Depending on what they find, they may refer the case to the county attorney for a CHIPs petition. CHIPS stands for "Child in Need of Protection or Services."

2) If the county attorney files a **CHIPs petition,** they are asking the court to rule that your children are in need of protection or services.

3) If the judge agrees with the petition, a case plan is made. The case plan gives you a chance to fix the problems that the court says need to be fixed so your children can live with you.

4) If you don't follow your case plan or don't make progress in fixing the problems, the county may file a new petition asking to terminate your rights.

Sometimes, in very serious situations, the county skips the CHIPS process and files a petition to terminate your rights. The petition to terminate your rights must give the legal reason for the termination. This is called the "grounds" for termination. (Some examples are given below.)

5) If the county attorney files a petition to Terminate your Parental Rights, you have 2 choices.

- You can admit or agree with the termination of your parental rights. This is also called a voluntary termination. You waive your right to a trial.
- You can disagree with what the county says and have a hearing in court.

6) If you have a hearing in court, the county attorney tries to prove that your rights should be terminated. The county attorney must also prove that the county really tried to reunite you with your children.

They must prove these things by "clear and convincing evidence."

7) After both sides present their evidence, the judge decides if your parental rights should be terminated or not.

8) If your rights are terminated, and there is no other parent, the county looks for an adoptive family for your child. If there are other family members that want to take the child, those family members can file a Motion to Intervene. If the child lived with a grandparent during the past 2 years, the grandparent can file a Motion to Intervene as a Matter of Right. The court has the forms or find them on www.MNcourts.gov under "Get Forms." Click on "Child Protection."

What are my rights at a court hearing?

- You have the right to a trial. You don't have to agree to the termination of your parental rights.
- You have the right to a lawyer. If you can't afford a lawyer, the court MUST give you one. Apply for a court appointed lawyer at www.lawhelpmn.org/self-help-library/legal-resource/apply-court-appointed-lawyer-chips-case.
- You have the right to present evidence that shows the county does not have a legal reason to terminate your parental rights. Or that they have not tried hard enough to reunite you with your children.
- You have the right to call witnesses to testify. You can be a witness for yourself too.
- You have the right to cross examine the county's witnesses. This means you can ask questions to the witnesses that the county calls up to testify.

What are the legal reasons for termination?

There are 8 legal reasons or "grounds" for terminating parental rights in Minnesota.

1) **Abandonment-** Failure to have regular contact with your children or show interest in their wellbeing for 6 months without a good reason.

2) **Neglect-** If you are able to take care of your children's needs but choose not to, that is neglect. "Needs" are things like food, shelter, education, clothing, and other care so that children can grow and be healthy.

3) **Unfit parent-** You are seen as unfit if your behavior shows that you can't or won't take care of the children's physical, emotional, and mental health.

4) **Not fixing the reasons the children were placed in foster care**
   - the children have been out of the home for 12 out of the last 22 months, or for 6 months if they are under 8,
   - there is a court ordered out-of-home placement plan, and you are not following the plan or fixing the problems, and
   - social services have tried to help and reunite your family, but it hasn't worked.

5) **Egregious harm-** The children were hurt badly in your care.

6) **Absent birth father-** This is a father who:
   - Was not married to the mother at the time of birth or conception
   - Is not listed on the birth certificate
   - Is not involved with the child
   - Is not supporting the child, and
   - Has not registered with the father's adoption registry

7) **Neglected and in foster care-** This means that your children are in foster care and can't go home because you have not fixed the problems or used the resources given to you.

   It can also mean that you won't visit or support your children financially while they are in foster care.

8) **Serious criminal conviction-** You have been convicted of killing a child or serious assault or sexual abuse against your children.

Can my rights be terminated just because things in my life are hard?

Your rights can't be terminated just because you physically or financially can't provide for your children. This means that having a disability, being homeless, or being poor are not good enough reasons to terminate your rights. A social worker can work with you to find resources to help you.

What if I am in jail or prison?

Being in jail or in prison is not a good enough reason to terminate your rights. BUT it can be looked at along with other things to show you are not a part of your children's lives. It is important to have as much contact as you can with your children to protect you from losing your rights. Save copies of letters and keep records of calls and visits with your children.

Note: If you have been convicted of certain serious crimes, you may have to prove that it is in your children's best interest to visit you.

Do I need a lawyer?

This is a serious matter. You have a right to a lawyer, and it is a really good idea to get a lawyer. You can get a free, court-appointed lawyer if you can't afford to pay for one. Apply for a court appointed lawyer at www.lawhelpmn.org/self-help-library/legal-resource/apply-court-appointed-lawyer-chips-case.

Or you can fill out a form called **"**Affidavit for Court-Appointed Attorney**."** You can get the form at your local court or online at www.mncourts.gov under "Get Forms" then "Child Protection."

It is up to the court to decide if they think you really can't afford a lawyer so make sure you show good proof.

Or you can hire a private lawyer.

Are my rights any different if I am the parent of an "Indian child"?

If your children are members of an American Indian tribe or eligible for tribal membership, the rules about termination are different because of the Indian Child Welfare Act (ICWA).

The ICWA says that a court can't terminate your parental rights unless a tribal representative or a tribal liaison is at your hearing. Or that they have filed a Qualified Witness Expert Affidavit and agrees to the termination. In order to terminate your parental rights, the judge must be convinced "beyond a reasonable doubt" that letting your children stay with you is "likely to result in serious emotional or physical damage."

This means that the judge can't take away your parental rights unless they are **completely sure** that letting you keep them will hurt your children. See our fact sheet, *Your Rights Under the Indian Child Welfare Act.*

For more information contact the ICWA Law Center at 1-866-879-0123 or visit their website at http://www.icwlc.org.

My children were put in foster care. How soon can the county try to terminate my rights?

Usually, the county must offer services to help you take care of the issues that led to placement in foster care. The Judge, or the social worker, may refer to this as "making reasonable efforts." For a child covered by the Indian Child Welfare Act, it's called "making active efforts."

If your child is in foster care, there has to be a court review hearing within 6 months to look over your progress on your case plan.

BUT, if you have been working on your case plan and visiting your child, the court can give you extra time. They can give you an extra 6 months to complete your case plan before the hearing. After that hearing, the court may order the county to file a permanency petition.

Once your child has been in foster care for 12 months, the county files a petition. This petition asks the court to decide where your child will live if they can't return home. Those "permanency" options are usually:

- termination of parental rights so the child is free to be adopted, or
- transfer of legal custody to a relative

In some cases, the county doesn't have to make reasonable efforts to return the child to your care. Like if your rights to children were involuntarily terminated before or if you seriously injured your child. They can file the permanency petition right away.

Different rules apply when a child has been placed by the parent for care or treatment.

If I agree to put my kids in foster care because they need out of home placement for care or treatment, can my parental rights still be terminated?

Yes, but it has to be for one of the legal reasons listed above in "What are the legal reasons for termination?"

→ If you agree to put your child in foster care to get treatment, AND
→ the child remains in care 13 months from the date of the voluntary foster care agreement, OR
→ has been in placement for 15 of the last 22 months, **the agency must:**

1. return the child to your care OR
2. decide that there are very good reasons to keep the child in the voluntary placement and ask a judge to approve that decision OR
3. file a petition to terminate your parental rights

The court must have a hearing to decide where your child is going to live. They may:

1. Return the child to you

2. Decide to keep the child in the voluntary placement arrangement or

3. Decide that keeping them in voluntary placement is not in your child's best interests. Then the agency asks the county to file a petition seeking permanency for your child.

   Those "permanency" options are usually:
   - termination of your parental rights so the child is free to be adopted, or
   - giving legal custody to a relative

What can I do to keep my parental rights from being terminated?

→ **If a request for termination hasn't been filed:** If your children are in foster care or a CHIPS case has been filed, the best thing to do is **follow your case plan**. If you don't understand what you are supposed to do, ask your lawyer or the social worker involved in your case to explain it to you. Work with the social services agency to get the services you need to keep your children or to get your children back home as soon as possible.

→ **If a petition to terminate your rights has already been filed**: work with your lawyer to show the court that keeping your parental rights is the best thing for your children. Show the court that you are working hard to do what is best for your children. **Show what you are doing to fix the problems.**

→ **If there is a good chance the court will terminate your parental rights:** you can ask for a permanent transfer of legal and physical custody to a friend, family member or the foster family instead. Talk with your lawyer and the social worker about doing a transfer of custody.

- A **transfer of custody** lets you keep your parental rights while making sure your children have a permanent place to live. Your children won't live with you. Someone else will make important decisions for them. But you will still be able to see and talk to them if the person who has custody says it is okay or if the court orders parenting time. The court may order supervised visits.

- Even if you have a court ordered plan, the person with custody of your children can stop you from seeing them if you are drunk, high, or behaving dangerously when you show up.

- The court can change the visitation plan if things in your life change. It can decide if you should get more or less time with your children.

- If the custodian is not taking good care of the children and you have gotten your life and home stable enough, you can go to court and ask for custody to be given back to you. The judge decides who should have custody based on what the judge thinks is best for your children.

Can I have the rights of the other parent terminated?

Probably not. Courts generally think children should have 2 parents and don't want to terminate the rights of one parent unless there is a very good reason. This is true even if both parents agree to the termination.

It's important to remember that terminating parental rights also stops all child support obligations. Mostly, the only reason to

terminate the rights of the other parent is if your current spouse wants to adopt the children. If the other parent agrees to the stepparent adoption, you can file a petition with the local Juvenile Court asking the court to terminate the other parent's rights and let your spouse adopt your children. Your children's other parent needs to give their permission in writing.

But it is almost impossible to do if:

- you are not remarried, or
- you are but your spouse doesn't want to adopt, or
- the other parent doesn't agree with the termination, or
- you or your children get any sort of public benefits. Taking away a parent's rights also takes away their responsibility to support the children. If there is any chance they can afford support, the state won't be willing to end their parental rights if it means you or the children need public benefits.

If you think your children are not safe with the other parent, go to Family Court and ask for an order changing or limiting the other parent's time with the children. You can also ask for supervised visits. For more information on parenting time orders see fact sheet *Parenting Time and Parenting Plans.*

What if my rights were just terminated?

You can appeal the court's decision. An appeal is when you ask to have the judge's order reviewed by a higher court. Appeals need to be made within 20 days of the date the order was made.

More information about how to file an appeal can be found on the Court of Appeals website at https://mncourts.gov/courtofappeals/coahelptopics.

In some cases, with older children, the county can ask the court to re-establish parental rights. See our fact sheet *Can I Ever Go Home Again if my Parents' Rights were Taken Away?*

Can I get my parental rights back after they are terminated?

You may be able to get your parental rights back in certain circumstances.

Before starting the process to reestablish your terminated parental rights, you must:

- Have had parental rights to your child terminated before under a court order under Minnesota Statutes, section 260C.317
- Have fixed the things that led to the termination
- Be willing and able to care for your child day-to-day. And able to maintain their health, safety, and welfare.

For parental rights to be re-established, their child must:

- Have been in foster care for at least 48 months after the court issued an order terminating parental rights
- Not have been adopted (see the MN DHS link below for more specific information on this requirement)

- Not be named in a written adoption placement agreement

Re-establishing terminated parental rights is NOT allowed when:
The parent had their rights terminated before based on a legal finding of either sexual abuse or other conduct that resulted in the death of a minor

or

has been convicted of any crime listed in MN statutes section 260C.007, subdivision 14. Go to www.revisor.mn.gov/statutes/ and type that in the search bar.

If you are trying to re-establish your parental rights, you need to let the child's social service agency know. You need to use Department of Human Services form DHS-7949-ENG, at least 45 days before filing a petition.

To find the form go to https://mn.gov/dhs/.

→ In the "How do I?" search drop down choose "eDocs and forms"
→ Type DHS-7949-ENG in the search bar

The petition must also meet the requirements listed in Minnesota Statute 260C.329.

This is a really hard process that MUST BE DONE CORRECTLY. Talk to a lawyer before trying to re-establish your parental rights if they were terminated.

Fact Sheets are legal information NOT legal advice. See a lawyer for advice.
Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.

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