

HB

231



ALASKA STATE LEGISLATURE
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MEMORANDUM

April 14, 2003

To: Representative Peggy Wilson, Chair
House: Health, Education and Social Services

From: Representative John ^{JA}Harris

Subject: Hearing request for HB 231

Please schedule a Health, Education and Social Services committee hearing on HB231 as soon as your committee calendar will allow. This bill would allow the court to terminate the parental rights of a noncustodial parent if requested by the custodial parent, and the court finds substantial child support arrearages.

Attached are background materials for the bill. If you have questions or need additional information, please contact Pete Fellman of my staff at 465 4859. Thank you for your consideration of this request to hear HB 231



Alaska State Legislature

REPRESENTATIVE JOHN HARRIS

District 35 - Valdez, Cordova, Whittier, Glennallen, Delta Junction, Tatitlek, Kenny Lake, Paxson, Gakona, Chenega Bay

SPONSOR STATEMENT

House Bill 231: *"An Act relating to termination of the parental rights of a person who owes substantial child support arrearages."*

House Bill 231 is an effort to solve problems single custodial parents have with non-custodial parents who refuse to pay their share of child support. Many custodial parents go for years with no financial support, yet the non-custodial parent maintains parental rights as if they helped provide for the child. Under current law, these non-custodial parents maintain whatever parental jurisdiction the courts allow. However, the custodial parent holds all the financial responsibility.

House Bill 231 would allow custodial parents to petition the court to have the non-custodial parents rights removed. If the court finds that the removal of parental rights is in the best interest of the child, those rights can be removed. This frees the custodial parent from the burden of consulting and involving a deadbeat parent.

This legislation will provide a tool to a parent from having to share parental decisions with non-custodial parents who don't pay their fair share. In addition, this legislation could alleviate the non-custodial parent from having to pay support in the future.



»Chapter««»25.20««. PARENT AND CHILD

Sec. 25.20.010. Age of majority.

A person is considered to have arrived at majority at the age of 18, and thereafter has control of the person's own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute.

Sec. 25.20.020. Arrival at majority upon marriage.

A person arrives at the age of majority upon being married according to law, unless the person is under the marriageable age of consent as defined in AS 25.05.171 (a), in which case the person reaches majority upon reaching the marriageable age of consent.

Sec. 25.20.025. Examination and treatment of minors.

(a) Except as prohibited under AS 18.16.010 (a)(3),

(1) a minor who is living apart from the minor's parents or legal guardian and who is managing the minor's own financial affairs, regardless of the source or extent of income, may give consent for medical and dental services for the minor;

(2) a minor may give consent for medical and dental services if the parent or legal guardian of the minor cannot be contacted or, if contacted, is unwilling either to grant or withhold consent; however, where the parent or legal guardian cannot be contacted or, if contacted, is unwilling either to grant or to withhold consent, the provider of medical or dental services shall counsel the minor keeping in mind not only the valid interests of the minor but also the valid interests of the parent or guardian and the family unit as best the provider presumes them;

(3) a minor who is the parent of a child may give consent to medical and dental services for the minor or the child;

(4) a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease;

(5) the parent or guardian of the minor is relieved of all financial obligation to the provider of the service under this section.

(b) The consent of a minor who represents that the minor may give consent under this section is considered valid if the person rendering the medical or dental service relied in good faith upon the representations of the minor.

(c) Nothing in this section may be construed to remove liability of the person performing the examination or treatment for failure to meet the standards of care common throughout the health professions in the state or for intentional misconduct.

Sec. 25.20.030. Duty of parent and child to maintain each other.

Each parent is bound to maintain the parent's children when poor and unable to work to maintain themselves. Each child is bound to maintain the child's parents in like circumstances.

Sec. 25.20.040. Maintenance and education of minor out of income of the minor's property.

If a minor who has a parent living has property from which income is sufficient for maintenance and education in a manner more expensive than the parent can reasonably afford, considering the situation of the parent's family and all the circumstances of the case, the expenses of the minor's maintenance and education may be defrayed out of the income of the property, in whole or in part, as judged reasonable by the court. The expenses may be allowed accordingly in the settlement of the accounts of the minor's guardian.

Sec. 25.20.045. Legitimacy of children conceived by artificial insemination.

A child, born to a married woman by means of artificial insemination performed by a licensed physician and consented to in writing by both spouses, is considered for all purposes the natural and legitimate child of both spouses.

Sec. 25.20.050. Legitimation by subsequent marriage, acknowledgment in writing or adjudication.

(a) A child born out of wedlock is legitimated and considered the heir of the putative parent when (1) the putative parent subsequently marries the undisputed parent of the child; (2) for acknowledgments made before July 1, 1997, the putative parent acknowledges, in writing, being a parent of the child; (3) for acknowledgments made on or after July 1, 1997, the putative father and the mother both sign a form for acknowledging paternity under AS 18.50.165 ; or (4) the putative parent is determined by a superior court without jury or by another tribunal, upon sufficient evidence, to be a parent of the child. Acceptable evidence includes evidence that the putative parent's conduct and bearing toward the child, either by word or act, indicates that the child is the child of the putative parent. That conduct may be construed by the tribunal to constitute evidence of parentage. When indefinite, ambiguous, or uncertain terms are used, the tribunal may use extrinsic evidence to show the putative parent's intent.

(b) The Bureau of Vital Statistics, as custodian of the original certificates of birth of all persons born in the state, is designated as the depository for such acknowledgment and adjudication. The acknowledgment or adjudication shall be forwarded to the bureau in accordance with appropriate regulations of the bureau, and shall be noted on and filed with the corresponding original certificate of birth.

(c) In case of the birth in this state of a child out of wedlock and the legitimation of the child in accordance with this section, at the written request of the parents, or either of them or of the legal guardian, or of the person when of legal age, the Bureau of Vital Statistics shall prepare and place on file a substitute birth certificate, in accordance with the laws and regulations of the bureau pertaining to new certificates of this type.

(d) The results of a genetic test that is of a type generally acknowledged as reliable by an accreditation body designated by the Secretary of Health and Human Services and performed by a laboratory approved by such an accreditation body shall be admitted and weighed in conjunction with other evidence in determining the statistical probability that the putative parent is a legal parent of the child in question. However, a genetic test described in this subsection that establishes a probability of parentage at 95 percent or higher creates a presumption of parentage that may be rebutted only by clear and convincing

evidence.

(e) Except as provided in (i) of this section, in proceedings in which paternity is contested, the tribunal shall order the parties, including the child, to submit to testing as described in (d) of this section upon request of

(1) the child support enforcement agency created in AS 25.27.010 or the child support enforcement agency of another state; or

(2) a party, including a sworn statement

(A) alleging the paternity of an individual and setting out facts that show a reasonable possibility that the mother and that individual had sexual contact that could have resulted in the conception of the child; or

(B) denying the paternity of an individual and setting out facts that show a reasonable possibility that the mother and that individual did not have sexual contact that could have resulted in the conception of the child.

(f) The child support enforcement agency may recover the costs of testing ordered under (e) of this section from the alleged father unless the testing establishes that the individual is not the father, except that costs may not be recovered from a person who is a recipient of cash assistance or self-sufficiency services under AS 47.27 (Alaska temporary assistance program). For purposes of this subsection, a person who receives a diversion payment and self-sufficiency services under AS 47.27.026 is not considered to be a recipient of cash assistance or self-sufficiency services under AS 47.27.

(g) A default judgment shall be entered against the defendant in an action where paternity is contested upon

(1) a showing that process was served on the defendant as required under applicable state law and court rules;

(2) a showing that the defendant has failed to appear at a hearing in the action or has failed to respond within a reasonable period of time as specified in court rules; and

(3) any additional showing determined necessary by the court.

(h) The tribunal in a paternity action shall give full faith and credit to a determination of paternity made by another state, whether established through voluntary acknowledgment or through administrative or judicial procedures.

(i) If a tribunal finds that good cause exists not to order genetic testing after considering the best interests of the child, the tribunal may not order testing under (e) of this section.

(j) Invoices, bills, or other standard documents showing charges for medical and related costs of pregnancy, childbirth, or genetic testing are admissible in an action to establish paternity without testimony or other evidence from the medical or other provider or third-party payor to provide the foundation for admissibility of the documents. The documents shall constitute prima facie evidence of the amounts incurred for such charges.

(k) Upon the motion of the child support enforcement agency or another party in the action to

establish paternity, the tribunal shall issue a temporary order for support of the child whose paternity is being determined. The order may require periodic payments of support, health care coverage, or both. The order shall be effective until the tribunal issues a final order on paternity and a permanent order for support is issued or the tribunal dismisses the action. The temporary order may only be issued if the tribunal finds clear and convincing evidence of the paternity of the putative father on the basis of the results of the genetic tests and other evidence admitted in the proceeding.

(l) The tribunal shall consider a completed and signed form for acknowledging paternity that meets the requirements of AS 18.50.165 (a) as a legal finding of paternity for a child born out of wedlock. For an acknowledgment signed on or after July 1, 1997, the acknowledgment may only be withdrawn by the earlier of the following dates: (1) 60 days after the date that the person signed it, or (2) the date on which judicial or administrative procedures are initiated to establish child support in the form of periodic payments or health care coverage for, or to determine paternity of, the child who is the subject of the acknowledgement. After this time period has passed, the acknowledgment may only be contested in superior court on the basis of fraud, duress, or material mistake. The parent wishing to contest the acknowledgment carries the burden of proof by a preponderance of the evidence. Unless good cause is shown, the court may not stay child support or other legal responsibilities while the action to contest the acknowledgment is pending.

(m) If a parent signs an acknowledgment of paternity under (a) of this section and does not successfully challenge the acknowledgment under (l) of this section, the child born out of wedlock is considered legitimated and the heir of the parent without further action of the tribunal to ratify the acknowledgment of paternity.

(n) Each paternity order or acknowledgment made under this section must include in the records relating to the matter the social security numbers, if ascertainable, of the following persons:

- (1) the father;
- (2) the mother;
- (3) the child.

(o) In this section, unless the context requires otherwise, "tribunal" means a court, administrative agency, or quasi-judicial entity authorized by state law to determine parentage.

Sec. 25.20.055. Early acknowledgement of paternity program.

(a) When a birth occurs to an unmarried woman in a hospital or en route to a hospital to which the woman is later admitted, the hospital shall ensure that a staff member

- (1) meets with the woman before release from the hospital;
- (2) attempts to meet with the father of the unmarried woman's child, if possible;

(3) presents to the mother and, if possible, the father, a pamphlet or statement regarding the rights and responsibilities of a natural parent; the Department of Health and Social Services shall prepare this pamphlet and distribute copies of it to each hospital in the state, to each physician in the state whose practice includes attendance at births, to each nurse-midwife and direct-entry midwife in the state, and to other interested persons in the state who request copies;

(4) provides to the mother and, if possible, the father, all forms, statements, or agreements necessary to voluntarily establish a parent and child relationship, including an acknowledgement of paternity form prepared under AS 18.50.165 ;

(5) on request of the mother and father, assists the father in completing specific forms, statements, or agreements necessary to establish a parent and child relationship between the father and the child; and

(6) on request of the mother and father, mails a completed voluntary acknowledgement of paternity form to the state registrar for filing under AS 18.50.165 .

(b) When a birth occurs to an unmarried woman who is not in a hospital for the birth nor admitted to a hospital immediately after the birth, and the birth is attended by a physician, nurse-midwife, or direct-entry midwife, the physician, nurse-midwife, or direct-entry midwife shall perform the duties described in (a)(2) - (6) of this section or ensure that an agent performs those duties.

(c) When a birth occurs in a situation that is not covered by either (a) or (b) of this section, any adult may, upon request of the father and mother, assist them in filing a voluntary acknowledgement of paternity form with the state registrar under AS 18.50.165 .

(d) Notwithstanding (a) of this section, the Department of Health and Social Services may adopt regulations to establish exceptions for good cause that identify circumstances under which a hospital is not required to comply with (a) of this section. A hospital may be excused from complying with (a) of this section if the hospital meets those regulatory requirements.

Sec. 25.20.060. Petition for award of child custody.

(a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 25.24.150 (c). In a custody determination under this section, the court shall provide for visitation by a grandparent or other person if that is in the best interests of the child.

(b) Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

(c) The court may award shared custody to both parents if shared custody is determined by the court to be in the best interests of the child. An award of shared custody shall assure that the child has frequent and continuing contact with each parent to the maximum extent possible.

(d) If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the proceedings.

Sec. 25.20.061. Visitation in proceedings involving domestic violence.

If visitation is awarded to a parent who has committed a crime involving domestic violence, against the other parent or a child of the two parents, within the five years preceding the award of visitation, the court may set conditions for the visitation, including

(1) the transfer of the child for visitation must occur in a protected setting;

(2) visitation shall be supervised by another person or agency and under specified conditions as ordered by the court;

(3) the perpetrator shall attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by the Department of Corrections under AS 44.28.020 (b), or other counseling; the perpetrator shall be required to pay the costs of the program or other counseling;

(4) the perpetrator shall abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation;

(5) the perpetrator shall pay costs of supervised visitation as set by the court;

(6) the prohibition of overnight visitation;

(7) the perpetrator shall post a bond to the court for the return and safety of the child; and

(8) any other condition necessary for the safety of the child, the other parent, or other household member.

Sec. 25.20.065. Visitation rights of grandparent.

(a) Except as provided in (b) of this section, a child's grandparent may petition the superior court for an order establishing reasonable rights of visitation between the grandparent and child if

(1) the grandparent has established or attempted to establish ongoing personal contact with the child; and

(2) visitation by the grandparent is in the child's best interest.

(b) After a decree or final order relating to child custody is entered under AS 25.20.060 or AS 25.24.150 or relating to an adoption under AS 25.23, a grandparent may petition under this section only if

(1) the grandparent did not request the court to grant visitation rights during the pendency of proceedings under AS 25.20.060, AS 25.23, or AS 25.24; or

(2) there has been a change in circumstances relating to the custodial parent or the minor child that justifies reconsideration of the grandparent's visitation rights.

(c) When determining whether to grant rights of visitation between a grandparent and grandchild under this section, AS 25.20.060, or AS 25.24, and when determining the terms and conditions to be attached to a right of grandparent visitation, the court shall consider whether there is a history of child abuse or domestic violence attributable to the grandparent's son or daughter who is a parent of the grandchild.

Sec. 25.20.070. Temporary custody of the child.

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree

practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.130.

Sec. 25.20.080. Mediation of child custody matter.

(a) Except as provided in (f) and (g) of this section, at any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party has the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences, as determined by the mediator. The parties to the action and a court-appointed representative of the minor children shall attend.

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section a pending child custody proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending custody proceeding remain in effect during the period of mediation.

(e) Costs of mediation shall be paid as ordered by the court by one party, by both parties, or by the state if both parties are indigent.

(f) The court may not order or refer parties to mediation in a proceeding concerning custody or visitation of a child if a protective order issued or filed under AS 18.66.100 - 18.66.180 is in effect. The court may not order or refer parties to mediation if a party objects on the grounds that domestic violence has occurred between the parties unless the court finds that the conditions of (g)(1) - (3) of this section are met. If the court proposes or suggests mediation under this subsection,

(1) mediation may not occur unless the victim of the alleged domestic violence agrees to the mediation; and

(2) the court shall advise the parties that each party has the right to not agree to mediation and that the decision of each party will not bias other decisions of the court.

(g) A mediator who receives a referral or order from a court to conduct mediation under (a) of this section shall evaluate whether domestic violence has occurred between the parties. A mediator may not engage in mediation when either party has committed a crime involving domestic violence unless

(1) mediation is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;

(2) mediation is provided by a mediator who is trained in domestic violence in a manner that protects the safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim; and

(3) the victim is permitted to have in attendance a person of the victim's choice, including an attorney.

Sec. 25.20.090. Factors for consideration in awarding shared child custody.

In determining whether to award shared custody of a child the court shall consider

- (1) the child's preference if the child is of sufficient age and capacity to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered by each parent;
- (4) the education of the child;
- (5) the advantages of keeping the child in the community where the child presently resides;
- (6) the optimal time for the child to spend with each parent considering
 - (A) the actual time spent with each parent;
 - (B) the proximity of each parent to the other and to the school in which the child is enrolled;
 - (C) the feasibility of travel between the parents;
 - (D) special needs unique to the child that may be better met by one parent than the other;
 - (E) which parent is more likely to encourage frequent and continuing contact with the other parent;
- (7) any findings and recommendations of a neutral mediator;
- (8) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (9) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (10) other factors the court considers pertinent.

Sec. 25.20.100. Reasons for denial to be set out.

If a parent or the guardian ad litem requests shared custody of a child and the court denies the request, the reasons for the denial shall be stated on the record.

Sec. 25.20.110. Modification of child custody or visitation.

(a) An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the award of custody or visitation with the child and the modification is granted, the court shall enter on the record its reason for the modification.

(b) When making a determination relating to child custody under (a) of this section, the court shall consider the past history of the parents with respect to their compliance with the child support payment

provisions of temporary or permanent support orders or agreements relating to the child or to other children. Under this subsection, the court may consider a parent's failure to pay child support only if the parent had actual knowledge of the amount of the child support obligation and had funds available for payment of support or could have obtained those funds through reasonable efforts, as determined by the court.

(c) In a proceeding involving the modification of an award for custody of a child or visitation with a child, a finding that a crime involving domestic violence has occurred since the last custody or visitation determination is a finding of change of circumstances under (a) of this section.

Sec. 25.20.115. Attorney fee awards in custody and visitation matters.

In an action to modify, vacate, or enforce that part of an order providing for custody of a child or visitation with a child, the court may, upon request of a party, award attorney fees and costs of the action. In awarding attorney fees and costs under this section, the court shall consider the relative financial resources of the parties and whether the parties have acted in good faith.

Sec. 25.20.120. Closure of custody proceedings and records.

At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time.

Sec. 25.20.130. Access to records of the child.

A parent who is not granted custody under AS 25.20.060 - 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent.



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July 7, 1999

To: SRS Transition Oversight Committee
From: Emalene Correll, Research Associate
Re: Guardians *Ad Litem*

Background

The most notable procedural difference between adults and minors as litigants is representation. Because of legal incapacity, minors cannot initiate or defend lawsuits without adult assistance. Historically, a minor as plainiff sued through his "next friend," and when the minor was a defendant, was represented by a guardian *ad litem*. This distinction has been blurred over time and the terms are used almost interchangeably in a majority of the states. Some states use other terminology to refer to the guardian *ad litem*. New York is an example, using the term "law guardians" to refer to those who in other jurisdictions are known as guardians *ad litem*.

In a 1967 case, *In re Gault*, the U.S. Supreme Court ruled for the first time that children involved in juvenile delinquency proceedings are entitled to representation by counsel at state expense. It is this case that has generated activity in most states over the past three decades to attempt to define when children are entitled to representation by counsel or guardians *ad litem* in actions in the state courts. In 1974, Congress enacted the Child Abuse Prevention and Treatment Act which requires that a guardian *ad litem* be appointed "in every case involving an abused or neglected child which results in a judicial proceeding." Since the federal language creates a prerequisite for states to receive federal funds for child abuse and neglect prevention and treatment, the appointment of a guardian *ad litem* in child abuse and neglect cases is almost universal. However, the federal law does not provide any guidance about who should serve as guardians *ad litem*, what their duties or responsibilities are to be, at what stage they are to be appointed, and other issues that states have been wrestling with over the past several decades. Many of the states have followed the federal action in requiring the appointment of a guardian *ad litem* in specific circumstances and in specific types of cases.

It is generally agreed the courts have the inherent power to appoint guardians *ad litem* for minors involved in litigation and have the duty to insure a minor's best interests are adequately represented. It is also generally agreed the appointment of a guardian *ad litem* is to benefit the child, not other parties.

According to *Legal Rights of Children*, while the appointment of a guardian *ad litem* is generally considered to be within the discretionary power of the courts, such appointments are most frequently made in adoption, child custody, child support, paternity, visitation rights, and child abuse cases. Some states have adopted the federal rule, others do not have discretionary appointment provisions, and others have more comprehensive requirements that cover such topics as the ability of a child of a specified age to nominate his own guardian *ad litem* and the financial responsibility of the guardian *ad litem* for litigation-related costs. Some states require such appointments in every instance in certain types of cases. Missouri, for example, requires the appointment of a guardian *ad*

litem in all child custody proceedings that involve allegations of child abuse or neglect, in cases where custody, visitation, or child support is contested, and in contested paternity cases. The Missouri statute (Mo Civ P 507, 190 *et seq.*) is considered to be an example of a broad guardian *ad litem* statute. California requires determinations regarding appointments to be made on a case-by-case basis, but requires the appointment of a guardian *ad litem* if a conflict exists between a minor and a state agency. According to one source, no reported case has ever held that a U.S. district court abused its discretion by appointing a guardian *ad litem*, but it has been held to be a reversible error for a trial court to fail to determine whether a guardian *ad litem* is necessary.

Guardians *ad litem* are usually considered officers of the court, subject to court supervision, and charged with representing the child's best interest. For the past several decades states have been wrestling with what constitutes protecting the child's best interests. It is generally agreed, for example, the guardian *ad litem* should be aggressive in protecting the interests of the child, particularly in custody cases, but how this is to be done is not yet subject to universal agreement.

State Cases and Laws

In an Alaska case, the court directed that the guardian *ad litem* should normally conduct home visits and private interviews with the child when custody is an issue. Since the child's best interest and the child's wishes may be in conflict, the guardian in some states is expected to advocate the child's best interests, while in others the guardian is to present what he or she considers the child's best interest, but make it clear to the court what the child's wishes are (*Hawaii Revised Statutes*, Sec. 587.34(c)). In Wisconsin, if the child is 12 or older, the guardian must present the child's wishes to the court, but if the child is under 12, the guardian is required only to represent the best interests of the child (*Wisconsin Statutes*, Sec. 48.23(3)).

It is not always clear to a guardian *ad litem* exactly what the court may desire in protecting the child's best interest. In a Maryland case (*Leary v. Leary*), the court suggested the appointing judge make it clear whether the guardian is expected primarily to act as a traditional guardian, as an investigator, as an advocate for the child, or in some other protective role.

Payment of fees and expenses is generally decided by the court making the appointment of a guardian *ad litem*. However, fees and expenses for the court appointed guardian is an issue that has been the subject of much study and is generally considered to be a key issue in improving the system. (See recommendations in the *Technical Assistance Bulletin* of the National Council of Juvenile and Family Court Judges supplied to the Committee.)

There is some dispute to whether the guardian *ad litem* is responsible for negligence in representing a minor. Some courts have held that a guardian who is negligent may be held liable for damages. In a recent federal case (*Kohl v. Murphy*), the court held that guardians *ad litem* are not always entitled to absolute immunity for their actions. Most state courts have held the guardian *ad litem* is absolutely immune for his or her actions. This is another issue under study in some states.

Recent State Legislation

A 1997 Arkansas law requires the appointment of an attorney *ad litem* to represent the best interests of juveniles in dependency-neglect proceedings, authorizes court appointment of special advocates who meet specified training requirements, creates a Division of Dependency-Neglect

Representation, and authorizes creation of a statewide court appointed special advocate program within the court system.

A 1997 Connecticut law requires the release of records to attorneys and guardians *ad litem* in any proceedings affecting the best interests of the child.

A 1997 Florida act allows a juror to donate his or her compensation for jury duty to the guardian *ad litem* program or a domestic violence shelter.

1997 Illinois Laws, P.A. 90-28, Sec. 10-20 requires the court appointed guardian *ad litem* in counties of fewer than 3,000,000 people to remain with the same child throughout the entire juvenile trial court process, including permanency and termination of parental rights hearings. The 1997 act also requires a training program for guardians *ad litem*.

Maine, in a 1997 law, requires the appointment of guardian *ad litem* or a "visitor" within two days of appointment of a temporary guardian. The visitor or guardian *ad litem* must visit the child and report to the court within ten days of the appointment. Another 1997 Maine act requires the guardian *ad litem* to have a face-to-face interview with the child.

Chapter 239, 1997 *Minnesota Laws* requires the appointment of a guardian *ad litem* in all child protection cases and allows the court to appoint separate counsel for the guardian if necessary. Any waiver of rights by an unrepresented minor must be made by a guardian *ad litem*, not a parent. The law mandates access to records on the part of counsel representing a child, parent, or guardian *ad litem* in child protection proceedings.

A Nevada statute enacted in 1997 authorizes the appointment of a special master to identify the person most qualified to serve as a guardian for a child determined to be in need of a guardian and requires that a petition for the appointment of a guardian state whether the guardianship is sought as a result of abuse or neglect. The 1997 act also allows for testimony from certain interested persons at hearings to identify a guardian.

A 1997 New Hampshire act requires a guardian *ad litem* appointed in certain child custody proceedings to be subject to the same rules as those in divorce proceedings. The act requires all guardian *ad litem* fees to be paid from a special fund. Another New Hampshire statute enacted in 1997 makes it clear that legal representation of abused or neglected children may include investigative, expert, and other services.

A 1997 Ohio law permits a guardian *ad litem* to bring a civil action against any mandatory reporter of child abuse who fails to report an incident of abuse if the child suffers any injury or harm as a result of the abuse or neglect. The same act eliminated a \$400 compensation limit for guardians *ad litem*.

1997 *Texas General Laws*, Chapter 650, requires an attorney *ad litem* for a child to conduct appropriate investigations, obtain certain records, and interview all parties in a case. Chapter 1294 requires the appointment of a guardian *ad litem* to represent a child in a suit by a governmental entity requesting termination of parental rights or the appointment of the state as a conservator for a child, specifies the powers and duties of a guardian *ad litem*, and requires the Attorney General to adopt standards for local volunteer advocate programs.

In 1997, the Utah Legislature created a special account to fund recruiting and training of CASA volunteers and to fund the Office of the Guardian *Ad Litem* Director. The 1997 act allows the expenses of a guardian *ad litem* to be assessed against the minor's parents.

1998 Arizona legislation specifies that juveniles in dependency or termination of parental rights proceedings have a right to be represented by counsel.

A 1998 Florida act requires the State Attorney or the Office of the Attorney General to provide child welfare legal services in specified counties.

The Georgia Legislature in 1998 enacted legislation requiring the appointment of a guardian *ad litem* for a child's interests if the child's interests conflict with those of the child's parent, guardian, or custodian. The act allows an attorney or court-appointed special advocate, or both, to be appointed as a child's guardian *ad litem*.

1998 Massachusetts Acts, Chapter 40, directs the committee for public counsel to continue a pilot program serving specified counties that use attorneys to represent children in need of service cases and requires a report to the legislature.


1998 Mississippi Laws, Chapter 516, clarifies the role of a guardian *ad litem*, requires the appointment of an attorney for a child when a layman has been appointed as the guardian *ad litem*, and provides for the payment of fees.

In 1998, the Oklahoma Legislature enacted Chapter 421, 1998 Oklahoma Session Laws, to clarify the rights and duties of court appointed special advocates and guardians *ad litem* for children. A separate act (Chapter 415) clarifies the role of the guardian *ad litem* for the child and the child's attorney in adoption actions.

The 1998 Wyoming Legislature specified the duties and reporting requirements for guardians *ad litem* in Chapter 114, 1998 Wyoming Session Laws.

Recommendations for Improving the Guardian *Ad Litem* System

See excerpt from the Technical Assistance Bulletin: *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice*, prepared as a part of the Permanency Planning for Children Project of the National Council of Juvenile and Family Court Judges, March 1998 distributed to the Committee.



October 22, 1999

99-R-1087

TERMINATION OF PARENTAL RIGHTS IN ABANDONMENT CASES

By: Lawrence K. Furbish, Assistant Director

You asked if a woman could initiate a termination of parental rights (TPR) action against her ex-husband because (1) he does not pay child support and (2) despite being granted supervised visitation by the court, never visits the child.

The woman in the situation you describe can certainly pursue a termination in the courts, whether it will be granted depends on the court's findings and its determination of the child's best interest. She should go to the probate court for the town or district where she lives. She does not need an attorney, and usually the probate court is very "user friendly."

A TPR action must be initiated by a petition to the court, and the mother is one of the parties allowed by statute to initiate such a petition (CGS § 45a-715). The court will schedule and hold a hearing on the petition. If the father's whereabouts are known, he must be served with notice concerning the petition and hearing. Notice will be served personally by the sheriff if he resides in Connecticut and by certified mail if he resides out of state. If his whereabouts are unknown, he will be served by newspaper notice.

The father has the right to appear at the hearing and to be represented by counsel (CGS § 45a-716). If he cannot afford counsel, the court will provide it. He can contest the termination, if he wishes. In some cases when parties contest a termination, the probate court will transfer the case to Superior Court, which is more able to deal with complex and vigorously contested cases.

In order to terminate parental rights the court must find by clear and convincing evidence that (1) the termination is in the child's best interest and (2) one or more of the statutory grounds for termination exists (CGS § 45a-717). There are several grounds for termination in the situation you describe. Probably the most likely is abandonment, which is described in statute as failing to maintain a reasonable degree of interest, concern, or responsibility for the child's welfare. Another would be parental acts of commission or omission that deny the child the care, guidance, or control necessary for his well being.

According to Linda Dow, chief counsel to the Probate Court Administrator, one possible problem might arise concerning child support. In the case you describe the father has not been paying support. If the mother has been supporting the child herself, the court would probably not be concerned about this issue. If, however, she is or has been receiving state public assistance, the Attorney General's Office, which represents the

state in termination cases, might object. Even though the father has not been paying, circumstances might change and he might be able or be forced to pay in the future. If he comes into any money, the state has a lien against it for the amount of past support provided. Once his parental rights are terminated he has no obligation to provide financial support to the child. According to Dow, in such cases the judges will look at this issue in the context of the child's best interest, which they are statutorily required to consider.

LKF:pa

TOP

Child Abuse and Neglect

STATUTES

AT - A - GLANCE

Grounds for Termination of Parental Rights

Every State and the District of Columbia have statutes providing for the termination of parental rights. Termination of parental rights ends the legal parent-child relationship. Once the relationship has been terminated, the child is legally free to be placed for adoption with the objective of securing a more stable, permanent family environment that can meet the child's long-term parenting needs.

Grounds

Some States spell out factors that constitute grounds for termination of parental rights. Other States use general language. The most common statutory grounds for involuntary termination of parental rights include:

- Severe or chronic abuse or neglect.
- Abuse or neglect of other children in the household;
- Abandonment.
- Long-term mental illness or deficiency of the parent(s).
- Long-term alcohol or drug-induced incapacity of the parent(s).
- Failure to support or maintain contact with the child.

Another common ground for termination is a felony conviction of the parent(s) for a crime of violence against the child or other family member, or a conviction for any felony when the term of conviction is such a length as to have a negative impact on the child and the only available provision of care for the child is foster care.

The Adoption and Safe Families Act (ASFA)¹ also requires State agencies to seek termination of the parent-child relationship when:

- A child has been in foster care for 15 of the most recent 22 months.
- A court has determined:
 - A child to be an abandoned infant.
 - That the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter,² or committed a felony assault that

has resulted in serious bodily injury to the child or to another child of the parent.³

In response to ASFA, many States have adopted limits to the maximum amount of time a child can spend in foster care before termination proceedings must be initiated.

Typically, States have adopted the ASFA standard of 15 out of the most recent 22 months in care. Some States, however, specify shorter time limits, particularly for very young children. Most States have also complied with the other termination grounds required under ASFA.

Reasonable Efforts

The above factors become grounds for terminating parental rights when reasonable efforts by the State to prevent out-of-home placement or to achieve reunification of the family after placement have failed to ameliorate the conditions and/or parental behaviors that led to State intervention.

continues

This summary is a product of the Child Abuse and Neglect State Statutes Series, which is produced by the National Clearinghouse on Child Abuse and Neglect Information. The Clearinghouse is a service of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

The *Statutes-at-a-Glance* series highlights specific topics from the Child Abuse and Neglect State Statutes Compendium of Laws, presented in a table format to provide quick comparisons of statutory provisions across the States. The Compendium is a compilation of State laws on different topics related to child maltreatment reporting laws, central registries, permanency planning, and domestic violence.

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We welcome your comments and suggestions about this publication.



Under ASFA, while reasonable efforts to preserve and reunify families are still required, the child's health and safety is the paramount concern in determining reasonable efforts to be made.⁴ ASFA mandates that reasonable efforts to preserve the family are not required under the following circumstances:

- The parent has subjected the child to aggravated circumstances (as defined by State law, which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse).⁵
- The parent has committed murder of another child of the parent.
- The parent has committed voluntary manslaughter of another child of the parent.
- The parent has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter.
- The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent.
- The parental rights of the parent to a sibling have been terminated involuntarily.⁶

Child's Best Interests

Most States consider a child's best interest in termination proceedings. In some States, these statutes use general language mandating that the child's health and safety be paramount in all proceedings, while other States' legislation lists specific factors that must be considered, such as the child's age; the physical, mental, emotional, and moral well-being; cultural and attachment issues; as well as the child's reasonable preferences.

Standard

The U.S. Supreme Court in *Santosky v. Kramer*⁷ set the standard of proof at clear and convincing evidence in termination of parental rights proceedings.

- ¹ ASFA establishes guidelines that States must comply with as a condition for receiving Federal funds.
- ² State statutory information concerning a court determination that the parent has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter is not included in this chart.
- ³ 42 U.S.C.A. § 675(5)(E)(West 1997) Under ASFA, there are three exceptions to the requirement to terminate parental rights: At the option of the State, the child is being cared for by a relative; a State agency has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interest; and the State has not provided to the family, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home.
- ⁴ 42 U.S.C.A. § 671(a)(15)(A) (West 1997).
- ⁵ These "aggravated circumstances" include cases in which a parent has been convicted of murdering another child in the household, severe and aggravated sexual abuse, or single instances of abuse when the abuse is severe enough to be charged as aggravated assault or when there is serious injury to the child.
- ⁶ 42 U.S.C.A. § 671(a)(15)(D) (West 1997).
- ⁷ 455 U.S. 745 (1982).

Grounds for Termination of Parental Rights

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 or 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
ALABAMA § 26-18-7	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓					✓	✓	<ul style="list-style-type: none"> Aggravated circumstances.
ALASKA §§ 25.23.180(a), (c), 47.10.011 47.10.080(c)(3), (b), 47.10.088(a)-(h)	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Parent without custody unreasonably withholding consent. Homicide of other parent. Child induced to commit crime.
ARIZONA §§ 8-533 8-846(B)	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Parental identity unknown. Child returned home and removed again. Voluntary relinquishment.
ARKANSAS § 9-27-341(a)-(o)	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Presumptive legal father not the biological father. Voluntary relinquishment. Aggravated circumstances.
CALIFORNIA Welf. & Inst. Code §§ 361 361.5(b), (h), (i) 366.26©(1)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	<ul style="list-style-type: none"> Child suffering from extreme emotional damage. Location of parent(s) unknown. Voluntary relinquishment. Parent has abducted the child. Conception result of sexual abuse.
COLORADO § 19-3-604	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Identity of parent(s) unknown. History of violent behavior.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/ Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
CONNECTICUT §§ 17a-111a 17a-111b(a) 17a-112(i)-(k)	✓	✓				✓	✓	✓	✓				✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Failure to achieve personal rehabilitation. ▪ Aggravated circumstances. ▪ Conception result of sexual abuse. ▪ Voluntary relinquishment. ▪ Emotional ties of child to parent.
DELAWARE Tit. 13 § 1103	✓	✓	✓		✓	✓		✓	✓		✓		✓	✓	✓		<ul style="list-style-type: none"> ▪ Voluntary relinquishment.
DISTRICT OF COLUMBIA §§ 4-1301.09a(d) 16-2353 16-2354(b)	✓	✓	✓	✓			✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Need for continuity and care. ▪ Quality of relationship. ▪ Location of parent(s) unknown.
FLORIDA § 39.806	✓	✓			✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Egregious conduct. ▪ Voluntary relinquishment. ▪ Identity or location of parent(s) unknown.
GEORGIA §§ 15-11-58 15-11-94	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Failure to comply with child support decree. ▪ Aggravated circumstances. ▪ Voluntary relinquishment. ▪ Egregious conduct.
HAWAII §§ 571-61 587-2	✓	✓	✓					✓	✓	✓	✓				✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Aggravated circumstances. ▪ Presumed father not the natural or adopted father.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
IDAHO §§ 16-2005 16-1608(e)	✓	✓	✓		✓	✓	✓	✓	✓				✓		✓	✓	<ul style="list-style-type: none"> ▪ Father not the natural parent. ▪ Murder of child's parent. ▪ Conception result of rape. ▪ Voluntary relinquishment. ▪ Aggravated circumstances.
ILLINOIS 750 ICS 60/1 705 ICS 405/1-2 705 ICS 405/2-13	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Adultery or fornication. ▪ Depravity. ▪ Murder of child's parent. ▪ Aggravated circumstances.
INDIANA §§ 31-35-2-4.5 31-35-3-4 31-35-3-8	✓	✓			✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment.
IOWA §§ 232.111 232.116	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Imminent danger to the child. ▪ Aggravated circumstances.
KANSAS §§ 13-1563(h) 38-1583 38-1585	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Murder of child's other parent. ▪ Aggravated circumstances. ▪ Identity and location of parent(s) unknown.
KENTUCKY §§ 600.020(2) 610.127 625.090	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Aggravated circumstances.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug- induced Incapacity	Felony Conviction/ Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
LOUISIANA Ch. Code Ann. art. 1015	✓	✓			✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	<ul style="list-style-type: none"> ▪ Murder of child's other parent. ▪ Location of parent(s) unknown. ▪ Felony rape by natural parent results in conception of a child.
MAINE III: 22 § 4002 4055 4022(1-B) 4041(A-2)	✓	✓		✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Custody removed from the parent. ▪ Voluntary relinquishment. ▪ Aggravated circumstances. ▪ Heinous or abhorrent behavior.
MARYLAND §§ 5-313 5-525.1(b)(1)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Child continuously out of parental custody. ▪ Identity of parent(s) unknown. ▪ Convicted of crime of violence against other parent.
MASSACHUSETTS Ch. 119 § 26(4) Ch. 210 § 30	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Child has formed strong, positive bond with substitute caretaker.
MICHIGAN § 712A.19b(1), (3), (6)	✓	✓			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Failure to comply with guardianship plan or court-ordered plan. ▪ Risk of harm if returned home. ▪ Voluntary relinquishment. ▪ Identity of parent(s) unknown.
MINNESOTA §§ 260.012 260C.301	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Egregious harm. ▪ Voluntary relinquishment.

Grounds for Termination of Parental Rights

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
MISSISSIPPI §§ 43-21-603© 93-15-103	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Deep-seated antipathy by child. ▪ Voluntary relinquishment. ▪ Aggravated circumstances.
MISSOURI §§ 211.183(6)-(7) 211.447(2)-(7)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Substantial risk of harm to the child. ▪ Conception result of rape.
MONTANA §§ 41-3-609 41-3-423(2)-(3)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Conception result of rape. ▪ Aggravated circumstances. ▪ A history of violent behavior by the parent.
NEBRASKA §§ 43-283.01(4) 43-292 43-292.02	✓	✓	✓	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Aggravated circumstances. ▪ Lewd and lascivious behavior.
NEVADA §§ 128.105 128.106 128.107 128.109 432B.393(3)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Token efforts by parent(s). ▪ Failure of parental adjustment. ▪ Risk of harm if returned home.
NEW HAMPSHIRE §§ 170-C:5 169-C:24-a	✓	✓	✓		✓	✓	✓		✓			✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Risk of harm if returned home.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 or 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
NEW JERSEY §§ 30:4C-15 30:4C-15.1(a),(b) 9:2-19 30:4C-11.2	✓	✓	✓		✓	✓		✓	✓			✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Identity or location of parents unknown. Aggravated circumstances. Parent dead. Failure to discharge responsibilities.
NEW MEXICO §§ 32A-4-28(B)-(E) 32A-4-29 (D) 32A-4-29(K)	✓	✓				✓	✓	✓					✓	✓	✓	✓	<ul style="list-style-type: none"> Child in r... ent for extended period. Aggr... umstances. Chi'... oped relationship wif... family. Pa... used death or injury to c... r parent. Pre'... child.
NEW YORK Soc. Serv. Law §§ 384-b 358-a(3)(b)	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Both... ents dead and guardian not appointed. Aggravated circumstances.
NORTH CAROLINA §§ 7B-101(2) 7B-1111	✓	✓	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Child willfully left in foster care. Aggravated circumstances.
NORTH DAKOTA §§ 27-20-02(3) 27-20-20.1(2)-(4) 27-20-44(1)	✓	✓			✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Aggravated circumstances. Voluntary relinquishment.
OHIO § 2151.414	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Any other factor the court considers relevant.

Grounds for Termination of Parental Rights

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-Induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 or 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
OKLAHOMA lit.10 § 7006-1.1	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Location of parent(s) unknown. ▪ Conception result of rape.
OREGON §§ 419B.500 419B.502 419B.504 419B.506 419B.508	✓	✓	✓	✓		✓	✓	✓	✓	✓			✓		✓	✓	<ul style="list-style-type: none"> ▪ Single or recurrent incident of extreme conduct toward the child. ▪ Criminal conduct of parent. ▪ Identity or location of parent(s) unknown. ▪ Exposure of the child to methamphetamines.
PENNSYLVANIA 25 Pa. §§ 2501(a) 2511(a),(b) 42 Pa. § 6302		✓				✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Conception result of rape. ▪ Voluntary relinquishment. ▪ Identity or location of parent unknown. ▪ Presumptive father not the natural father. ▪ Aggravated circumstances.
RHODE ISLAND §§ 15-7-7(a)-(c) 4C:11-12.2(e)	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Aggravated circumstances.
SOUTH CAROLINA §§ 20-7-1572 20-7-763©,(F)	✓	✓	✓	✓	✓	✓		✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Presumptive father not the biological father. ▪ Aggravated circumstances. ▪ Conviction for domestic violence.
SOUTH DAKOTA §§ 26-8A-21.1 26-8A-26 26-8A-26.1 26-8A-27	✓	✓		✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Inability to protect the child from harm or substantial risk of harm.

Grounds for Termination of Parental Rights

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
TENNESSEE §§ 36-1-113(g)-(h) 37-1-166(g)(4)	✓	✓	✓		✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Risk of substantial harm. ▪ Aggravated circumstances.
TEXAS §§ 161.001 161.003(a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓		✓	✓	<ul style="list-style-type: none"> ▪ Refusal to submit to court order. ▪ Failure to provide education. ▪ Voluntary relinquishment. ▪ Drug or alcohol addicted newborn.
UTAH §§ 78-3a-311(2)-(4) 78-3a-402(2) 78-3a-403(2) 78-3a-407 78-3a-408	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ A history of violent behavior. ▪ Location of parent(s) unknown.
VERMONT Tit. 15A § 3-504(a), (b), (d)					✓				✓	✓	✓		✓				<ul style="list-style-type: none"> ▪ Relationship with another that affects the parent-child relationship. ▪ Risk of substantial harm. ▪ Identity or location of parent unknown. ▪ Failure to assume parental responsibilities.
VIRGINIA § 16.1-283(A), (B)-(E), (G)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Identity or location of parent unknown. ▪ Aggravated circumstances.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
WASHINGTON §§ 13.34.180 13.34.190 13.34.132	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓		✓	✓	<ul style="list-style-type: none"> Identity or location of parent unknown. Parent is a sexually violent predator. Aggravated circumstances.
WEST VIRGINIA §§ 49-6-5(a)(1), (b) 49-6-5b	✓	✓	✓	✓		✓	✓	✓					✓	✓	✓	✓	<ul style="list-style-type: none"> Refusal to cooperate in a reasonable family case plan.
WISCONSIN §§ 48.415 48.355(2d)	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Homicide of child's other parent. Aggravated circumstances. Denials of physical placement. Failure to assume parental responsibility. Incestuous parenthood. Conception result of sexual assault.
WYOMING § 14-2-309	✓	✓			✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> Identity or location of parent unknown. Aggravated circumstances.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

- (i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child;
- (ii) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;
- (iii) Conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship;
- (iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;
- (v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and
- (vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the court shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

- (i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;
- (ii) To provide for the care and support of the child as required by law or judicial decree; and
- (iii) To comply with a court ordered plan designed to reunite the child with the parent or parents.

(c) If the court does not make an order of termination of parental rights, it may grant an order under Code Section 15-11-55 if the court finds from clear and convincing evidence that the child is a deprived child.

◀ PREVIOUS

NEXT ▶

The Statutes posted are current through the 2001 Regular Session of the General Assembly. However, the Statutes posted from the 2001 Regular Session may not yet be in effect. Users of this service should note that the effective date of the Statutes are not listed on this service and are advised to verify the effective date of any Statutes posted on this Web Site. Any person or entity who relies on information obtained solely from this Site does so at his or her own risk.

◀ PREVIOUS

NEXT ▶

15-11-94 G
*** CODE SECTION *** 12/03/01

15-11-94.

(a) In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.

(b) Except as provided in subsections (e) through (h) of Code Section 15-11-96, the court by order may terminate the parental rights of a parent with respect to the parent's child if:

(1) The written consent of the parent, acknowledged before the court, has been given; provided, however, that acknowledgment before the court is not necessary where the parent or parents voluntarily surrender the child for adoption as provided by subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7;

(2) A decree has been entered by a court of competent jurisdiction of this or any other state ordering the parent, guardian, or other custodian to support the child, and the parent, guardian, or other custodian has wantonly and willfully failed to comply with the order for a period of 12 months or longer;

(3) The parent has abandoned the child or the child was left under circumstances that the identity of the parent is unknown and cannot be ascertained despite diligent searching, and the parent has not come forward to claim the child within three months following the finding of the child; or

(4) (A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as such term is defined in Code Section 15-11-2;

(ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied; and

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

CALIFORNIA CODES
FAMILY CODE
SECTION 7660-7670

7660. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has a presumed father under Section 7611, the father shall be given notice of the adoption proceeding and have the **rights** provided under Part 2 (commencing with Section 8600) of Division 13, unless the father's relationship to the child has been previously terminated or determined by a court not to exist or the father has voluntarily relinquished for or consented to the adoption of the child.

7661. If a father relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child, the mother shall be given notice of the adoption proceeding and have the **rights** provided under Part 2 (commencing with Section 8600) of Division 13, unless the mother's relationship to the child has been previously terminated by a court or the mother has voluntarily relinquished for or consented to the adoption of the child.

7662. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have a presumed father under Section 7611, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having physical or legal custody of the child, or the prospective adoptive parent, shall file a petition to terminate the **parental rights** of the father, unless either of the following occurs:

(a) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(b) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

7663. (a) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person by any of the following:

(1) The State Department of Social Services.

(2) A licensed county adoption agency.

(3) The licensed adoption agency to which the child is to be relinquished.

(4) In the case of a stepparent adoption, at the option of the board of supervisors, a licensed county adoption agency, the county department designated by the board of supervisors to administer the public social services program, or the county probation department.

(b) The inquiry shall include all of the following:

(1) Whether the mother was married at the time of conception of the child or at any time thereafter.

(2) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(3) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(4) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) The department or the licensed adoption agency shall report the findings to the court.

7664. (a) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Section 7666, unless he has been served with a written notice alleging that he is or could be the natural father of the child to be adopted or placed or relinquished for adoption and has failed to bring an action pursuant to subdivision (c) of Section 7630 to declare the existence of the father and child relationship within 30 days after service of the notice or the birth of the child, whichever is later. If any of them fails to appear or, if appearing, fails to claim **parental rights**, his **parental rights** with reference to the child shall be terminated.

(b) If the natural father or a man representing himself to be the natural father claims **parental rights**, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his **parental rights**, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child. If the court finds that it is in the best interest of the child that the father should be allowed to retain his **parental rights**, it shall order that his consent is necessary for an adoption. If the court finds that the man claiming **parental rights** is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, it shall order that that person's consent is not required for an adoption. This finding terminates all **parental rights** and responsibilities with respect to the child. Section 3041 does not apply to a proceeding under this chapter.

(c) Nothing in this part changes the **rights** of a presumed father under Section 7611.

7665. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial **rights**, the court shall enter an order terminating the unknown natural father's **parental rights** with reference to the child.

7666. (a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the Code of Civil Procedure for the service of process in a civil action in this state at least 10 days before the date stated in the notice of the proceeding, except that publication or posting of the notice of the proceeding is not required. Proof of giving the notice shall be filed with the court before the petition is heard.

(b) If a person identified as the natural father or possible

natural father cannot be located or his whereabouts are unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person.

7667. (a) Notwithstanding any other provision of law, an action to terminate the **parental rights** of a father of a child as specified in this part shall be set for hearing not more than 45 days after filing of the petition therefor and completion of service thereon or the entry of an order dispensing with notice of the proceedings. The petition shall either specify the date of the hearing or state that a hearing will be held on a date as determined pursuant to this section, which shall be separately noticed.

(b) The matter so set shall have precedence over all other civil matters on the date set for trial, except an action to terminate **parental rights** pursuant to Part 4 (commencing with Section 7800).

7668. (a) The court may continue the proceedings for not more than 30 days as necessary to appoint counsel and to enable counsel to prepare for the case adequately or for other good cause.

(b) In order to obtain an order for a continuance of the hearing, written notice shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.

(c) Continuances shall be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

(d) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

7669. An order requiring or dispensing with a father's consent for the adoption of a child is conclusive and binding upon the father. Nothing in this section limits the right to appeal from the order and judgment.

7670. There shall be no filing fee charged for a petition filed pursuant to Section 7662.

CALIFORNIA CODES
FAMILY CODE
SECTION 8700-8720

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(d) If a relinquishing parent and child reside outside this state and the child will be cared for and will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent, after that parent has satisfied the following requirements:

(1) Prior to signing the relinquishment, the relinquishing parent shall have received, from a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence, the same counseling and advisement services as if the relinquishing parent resided in this state.

(2) The relinquishment shall be signed before a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence whenever possible or before a licensed social worker on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(e) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(f) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(g) Notwithstanding subdivision (e), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72

hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(h) The relinquishing parent has 30 days from the date on which the notice described in subdivision (g) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

8701. At or before the time a relinquishment is signed, the department or licensed adoption agency shall advise the birth parent signing the relinquishment, verbally and in writing, that the birth parent may, at any time in the future, request from the department or agency all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following:

(a) Whether the child has been placed for adoption.

(b) The approximate date that an adoption was completed.

(c) If the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

8702. (a) The department shall adopt a statement to be presented to the birth parents at the time a relinquishment is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parents of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parent keep the department or licensed adoption agency to whom the child was relinquished for adoption informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department or licensed adoption agency to whom the child was relinquished for adoption in order to permit a

response to inquiries concerning medical or social history.

(3) Section 9203 of the **Family Code** authorizes a person who has been adopted and who attains the age of 21 years to request the department or the licensed adoption agency to disclose the name and address of the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department or to the licensed adoption agency that joined in the adoption petition.

(5) The relinquishment will be filed in the office of the clerk of the court in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the relinquishment is signed, which shall provide as follows:

"Section 9203 of the **Family Code** authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:
 YES NO UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE."

8703. When the **parental rights** of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 or Part 4 (commencing with Section 7800) of Division 12, or pursuant to Section 366.25 or 366.26 of the **Welfare and Institutions Code**, the department or licensed adoption agency responsible for the adoptive placement of the child shall send a written notice to the birth parent, if the birth parent's address is known, that contains the following statement:

(a) "You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating **parental rights**.

(b) Section 9203 of the **Family Code** authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency, that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

() YES

() NO

() UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE"

8704. (a) The department or licensed adoption agency to which a

child has been freed for adoption by either relinquishment or **termination of parental rights** is responsible for the care of the child, and is entitled to the exclusive custody and control of the child until an order of adoption is granted. Any placement for temporary care, or for adoption, made by the department or a licensed adoption agency may be terminated in its discretion at any time before the granting of an order of adoption. In the event of **termination** of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the department or licensed adoption agency.

(b) No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either or both birth parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the adoption petition has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the court may nevertheless order the adoption if it finds that the refusal to consent is not in the child's best interest.

8705. (a) Where a child is in the custody of a public agency or licensed adoption agency, if it is established that the persons whose consent to the adoption is required by law are deceased, an action may be brought by the department or a licensed adoption agency requesting the court to make an order establishing that the requesting agency has the right to custody and control of the child and the authority to place the child for adoption. The department or agency bringing the action shall give notice in the form prescribed by the court to all known relatives of the child up to and including the third degree of lineal or collateral consanguinity.

(b) This section does not apply where a guardian of the person of the child has been appointed pursuant to nomination by a will.

8706. (a) An agency may not place a child for adoption unless a written report on the child's medical background and, if available, the medical background of the child's biological parents so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) (1) The biological parents may provide a blood sample at a clinic or hospital approved by the State Department of Health Services. The biological parents' failure to provide a blood sample shall not affect the adoption of the child.

(2) The blood sample shall be stored at a laboratory under contract with the State Department of Health Services for a period of 30 years following the adoption of the child.

(3) The purpose of the stored sample of blood is to provide a blood sample from which DNA testing can be done at a later date after entry of the order of adoption at the request of the adoptive

parents or the adopted child. The cost of drawing and storing the blood samples shall be paid for by a separate fee in addition to the fee required under Section 8716. The amount of this additional fee shall be based on the cost of drawing and storing the blood samples but at no time shall the additional fee be more than one hundred dollars (\$100).

(d) (1) The blood sample shall be stored and released in such a manner as to not identify any party to the adoption.

(2) Any results of the DNA testing shall be stored and released in such a manner as to not identify any party to the adoption.

8707. (a) The department shall establish a statewide photo-listing service to serve all licensed adoption agencies in the state as a means of recruiting adoptive families. The department shall adopt regulations governing the operations of the photo-listing service and shall establish procedures for monitoring compliance with this section.

(b) The photo-listing service shall maintain child specific information that, except as provided in this section, contains a photograph and description of each child who has been legally freed for adoption and whose case plan goal is adoption. Registration of children with the photo-listing service and notification by the licensed adoption agency of changes in a child's photo-listing status shall be reflected in the photo-listing service within 30 working days of receipt of the registration or notification.

(c) The photo-listing service shall be provided to all licensed adoption agencies, adoption support groups, and state, regional, and national photo-listings and exchanges requesting copies of the photo-listing service.

(d) All children legally freed for adoption whose case plan goal is adoption shall be photo-listed, unless deferred as provided in subdivision (e) or (f). Licensed adoption agencies shall send a recent photograph and description of each legally freed child to the photo-listing service within 15 working days of the time a child is legally freed for adoption. When adoption has become the case plan goal for a particular child, the licensed adoption agency may photo-list that child before the child becomes legally freed for adoption.

(e) A child shall be deferred from the photo-listing service when the child's foster parents or other identified individuals who have applied to adopt the child are meeting the licensed adoption agency's requests for required documentation and are cooperating in the completion of a home study being conducted by the agency.

(f) A child who is 12 years old or older may be deferred from the photo-listing service if the child does not consent to being adopted.

(g) Within 15 working days following a one-year period in which a child is listed in the photo-listing service, the licensed adoption agency shall submit a revised description and photograph of the child.

(h) Licensed adoption agencies shall notify the photo-listing service, by telephone, of any adoptive placements or of significant changes in a child's photo-listing status within two working days of the change.

(i) The department shall establish procedures for semiannual review of the photo-listing status of all legally freed children whose case plan goal is adoption, including those who are registered with the photo-listing service and those whose registration has been deferred.

8708. Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may do any of the following:

(a) Categorically deny to any person the opportunity to become an adoptive parent, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(b) Delay or deny the placement of a child for adoption, or otherwise discriminate in making an adoptive placement decision, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(c) Delay or deny the placement of a child for adoption solely because the prospective, approved adoptive family resides outside the jurisdiction of the department or the licensed adoption agency. For purposes of this subdivision, an approved adoptive family means a family approved pursuant to the California adoptive applicant assessment standards. If the adoptive applicant assessment was conducted in another state according to that state's standards, the California placing agency shall determine whether the standards of the other state substantially meet the standards and criteria established in California adoption regulations.

8709. The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective adoptive parent to meet the needs of a child of this background as one of a number of factors used to determine the best interest of a child. The child's religious background may also be considered in determining an appropriate placement.

As used in this section, "placement decision" means the decision to place, or to delay or deny the placement of a child, in an adoptive home, and includes the decision to seek termination of parental rights or otherwise make a child legally available for adoptive placement.

8710. Where a child is being considered for adoption, the department or licensed adoption agency shall first consider adoptive placement in the home of a relative. However, if a relative is not available, if placement with an available relative is not in the child's best interest, or if placement would permanently separate the child from other siblings who are being considered for adoption or who are in foster care and an alternative placement would not require the permanent separation, the foster parent or parents of the child shall be considered with respect to the child along with all other prospective adoptive parents where all of the following conditions are present:

(a) The child has been in foster care with the foster parent or parents for a period of more than four months.

(b) The child has substantial emotional ties to the foster parent or parents.

(c) The child's removal from the foster home would be seriously detrimental to the child's well-being.

(d) The foster parent or parents have made a written request to be considered to adopt the child.

This section does not apply to a child who has been adjudged a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

8710.1. If there is not an adoptive placement plan for a child with an approved adoptive family, as defined in subdivision (c) of

Section 8708, within the department's or the licensed adoption agency's jurisdiction, then the department or licensed adoption agency shall register the child with the exchange system described in Section 8710.2.

8710.2. In order to preclude the delays or denials described in subdivision (c) of Section 8708, the department shall establish a statewide exchange system that interjurisdictionally matches waiting children and approved adoptive families. The department may create a new statewide exchange system, modify an existing statewide exchange system, such as the photo-listing service described in Section 8707, or designate an existing exchange system, such as the Adoption Exchange Enhancement Program, as the statewide exchange system for purposes of this section.

8710.3. If the department or licensed adoption agency has approved a family for adoption pursuant to subdivision (c) of Section 8708 and that family may be appropriate for placement of a child who has been adjudged a dependent child of the juvenile court, the department or agency shall register the family with the statewide exchange system established pursuant to Section 8710.2, except in either of the following circumstances:

- (a) The family refuses to consent to the registration.
- (b) A specific child or children have already been identified for adoptive placement with the family.

8710.4. (a) The department shall ensure that information regarding families and children registered with the statewide exchange system described in Section 8710.2 is accessible by licensed adoption agency personnel throughout the state. Provision shall be made for secure Internet, telephone, and facsimile access by authorized licensed adoption agency personnel.

(b) Information regarding children maintained by the statewide exchange system described in Section 8710.2 shall be confidential and shall not be disclosed to any parties other than authorized adoption agency personnel, except when consent to disclosure has been received in writing from the birth parents or the court that has jurisdiction.

8711. Sections 8708 to 8710.4, inclusive, apply only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody and control of the birth parents.

8711.5. The department shall adopt regulations to administer the provisions of Sections 8708 to 8711, inclusive.

8712. (a) The department or licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or licensed adoption agency may also secure the person's full criminal record, if any.

- (b) The criminal record, if any, shall be taken into consideration

when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The department or licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

8713. (a) In no event may a child who has been freed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the department or licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or licensed adoption agency responsible for the child. If the department or licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the department or licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the birth parent or birth parents resided when the relinquishment of parental rights for the purpose of adoption was signed. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the clerk of the court shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

(h) For purposes of this section, "relative" means an adult who is related to the child or the child's half-sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

8714.7. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(1) Except as provided in paragraph (2), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(C) Provisions for the sharing of information about the child in the future.

(2) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Section 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to

come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested **termination** or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The **termination** or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the **termination** or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed **termination** or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate **parental rights** or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

8715. (a) The department or licensed adoption agency, whichever is a party to, or joins in, the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half siblings.

(c) If a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement has been entered into voluntarily, and whether it is in the best interests of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

(e) If a petitioner is a resident of a state other than California, an updated and current homestudy report, conducted and approved by a licensed adoption agency or other authorized resource in the state in which the petitioner resides, shall be reviewed and endorsed by the department or licensed adoption agency, if the standards and criteria established for a homestudy report in the other state are substantially commensurate with the homestudy standards and criteria established in California adoption regulations.

8716. Where a petition is filed for the adoption of a child who has been placed for adoption by a licensed county adoption agency or the department, the agency or department may, at the time of filing a favorable report with the court, require the petitioners to pay to the agency, as agent of the state, or to the department, a fee of five hundred dollars (\$500). The agency or department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, if the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

8717. When any report or findings are submitted to the court by the department or licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

8718. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and 8613.

8719. If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action.

8720. (a) If the department or licensed adoption agency finds that the home of the petitioners is not suitable for the child or that the required agency consents are not available and the department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or licensed adoption agency, the petitioners, and, if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The department or licensed adoption agency shall appear to represent the child.

CALIFORNIA CODES
FAMILY CODE
SECTION 7800-7810

7800. The purpose of this part is to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life.

7801. This part shall be liberally construed to serve and protect the interests and welfare of the child.

7802. A proceeding may be brought under this part for the purpose of having a minor child declared free from the custody and control of either or both parents.

7803. A declaration of freedom from parental custody and control pursuant to this part terminates all parental rights and responsibilities with regard to the child.

7804. In a proceeding under this part, the court may appoint a suitable party to act in behalf of the child and may order such further notice of the proceedings to be given as the court deems proper.

7805. (a) A petition filed in a proceeding under this part, or a report of the probation officer or county department designated by the board of supervisors to administer the public social services program filed in a proceeding under this part, may be inspected only by the following persons:

- (1) Court personnel.
- (2) The child who is the subject of the proceeding.
- (3) The parents or guardian of the child.
- (4) The attorneys for the parties.
- (5) Any other person designated by the judge.

(b) In a proceeding before the court of appeal or Supreme Court to review a judgment or order entered in a proceeding under this part, the court record and briefs filed by the parties may be inspected only by the following persons:

- (1) Court personnel.
- (2) A party to the proceeding.
- (3) The attorneys for the parties.
- (4) Any other person designated by the presiding judge of the court before which the matter is pending.

(c) Notwithstanding any other provision of law, if it is believed that the welfare of the child will be promoted thereby, the court and the probation officer may furnish information, pertaining to a petition under this part, to any of the following:

- (1) The State Department of Social Services.
- (2) A county welfare department.
- (3) A public welfare agency.
- (4) A private welfare agency licensed by the State Department of Social Services.

7806. There shall be no filing fee charged for a proceeding brought under this part.

7807. (a) Sections 3020, 3022, 3040 to 3043, inclusive, and 3409 do not apply in a proceeding under this part.

(b) All proceedings affecting a child under Divisions 8 (commencing with Section 3000) to 11 (commencing with Section 6500), inclusive, and Parts 1 (commencing with Section 7500) to 3 (commencing with Section 7600), inclusive, of this division shall be stayed pending final determination of proceedings to declare the minor free from parental custody and control under this part.

(c) Nothing in this section may limit the jurisdiction of the court pursuant to Part 3 (commencing with Section 6240) and Part 4 (commencing with Section 6300) of Division 10 with respect to domestic violence orders.

7808. This part does not apply to a minor adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, the exclusive means for the termination of parental rights are provided in the following statutes:

(a) Section 366.26 of the Welfare and Institutions Code.

(b) Sections 8604 to 8606, inclusive, and 8700 of this code.

(c) Chapter 5 (commencing with Section 7660) of Part 3 of this division of this code.

7810. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

CALIFORNIA CODES
FAMILY CODE
SECTION 8500-8548

8500. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

8502. (a) "Adoption service provider" means any of the following:

- (1) A licensed private adoption agency.
- (2) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years of experience providing professional social work services while employed by a licensed California adoption agency or the department.
- (3) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state.
- (4) An individual who has presented satisfactory evidence to the department that he or she is a licensed marriage and family therapist who has a minimum of five years of experience providing professional adoption casework services while employed by a licensed California adoption agency or the department. The department shall review the qualifications of each individual to determine if he or she has performed professional adoption casework services for five years as required by this section while employed by a licensed California adoption agency or the department.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in the case of a birth parent located outside of California who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. "Reasonably available" means that an adoption service provider is all of the following:

- (1) Available within five days for an advisement of **rights** pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.
- (2) Within 100 miles of the birth mother.
- (3) Available for a cost not exceeding five hundred dollars (\$500) to make an advisement of **rights** and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of **rights** and to witness the signing of the placement agreement shall not exceed five hundred dollars (\$500).

8503. "Adoptive parent" means a person who has obtained an order of adoption of a minor child or, in the case of an adult adoption, an adult.

8506. "Agency adoption" means the adoption of a minor, other than an intercountry adoption, in which the department or a licensed adoption agency is a party to, or joins in, the adoption petition.

8509. "Applicant" means a person who has submitted a written application to adopt a child from the department or a licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.

8512. "Birth parent" means the biological parent or, in the case of a person previously adopted, the adoptive parent.

8514. "Days" means calendar days, unless otherwise specified.

8515. "Delegated county adoption agency" means a licensed county adoption agency that has agreed to provide the services described in Chapter 3 (commencing with Section 8800) of Part 2.

8518. "Department" means the State Department of Social Services.

8521. (a) "Full-service adoption agency" means a licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

(b) Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

8524. "Independent adoption" means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the adoption petition.

8527. "Intercountry adoption" means the adoption of a foreign-born child for whom federal law makes a special immigration visa available. Intercountry adoption includes completion of the adoption in the child's native country or completion of the adoption in this state.

8530. "Licensed adoption agency" means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.

8533. (a) "Noncustodial adoption agency" means any licensed entity

engaged in the business of providing adoption services, which does all of the following:

- (1) Assesses the prospective adoptive parents.
 - (2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved prospective adoptive parents.
 - (3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.
- (b) Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

8539. "Place for adoption" means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents and the completion of an adoptive placement agreement on a form prescribed by the department by the birth parent or parents placing the child with prospective adoptive parents.

This section shall become operative on January 1, 1995.

8542. "Prospective adoptive parent" means a person who has filed or intends to file a petition under Part 2 (commencing with Section 8600) to adopt a child who has been or who is to be placed in the person's physical care or a petition under Part 3 (commencing with Section 9300) to adopt an adult.

8543. "Qualified court investigator" means a superior court investigator with the same minimum qualifications as a probation officer or county welfare worker designated to conduct stepparent adoption investigations in stepparent adoption proceedings and proceedings to declare a minor free from parental custody and control.

8545. "Special-needs child" means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group that should remain intact, mental, physical, medical, or emotional handicaps, or age of three years or more.

8548. "Stepparent adoption" means an adoption of a child by a stepparent where one birth parent retains custody and control of the child.

CALIFORNIA CODES
FAMILY CODE
SECTION 7850-7852

7850. Upon the filing of a petition under Section 7841, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the child and the circumstances which are alleged to bring the child within any of the provisions of Chapter 2 (commencing with Section 7820).

7851. (a) The juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, or the county department shall render to the court a written report of the investigation with a recommendation of the proper disposition to be made in the proceeding in the best interest of the child.

(b) The report shall include all of the following:

(1) A statement that the person making the report explained to the child the nature of the proceeding to end parental custody and control.

(2) A statement of the child's feelings and thoughts concerning the pending proceeding.

(3) A statement of the child's attitude towards the child's parent or parents and particularly whether or not the child would prefer living with his or her parent or parents.

(4) A statement that the child was informed of the child's right to attend the hearing on the petition and the child's feelings concerning attending the hearing.

(c) If the age, or the physical, emotional, or other condition of the child precludes the child's meaningful response to the explanations, inquiries, and information required by subdivision (b), a description of the condition shall satisfy the requirement of that subdivision.

(d) The court shall receive the report in evidence and shall read and consider its contents in rendering the court's judgment.

7851.5. The petitioner shall be liable for all reasonable costs incurred in connection with the **termination of parental rights**, including, but not limited to, costs incurred for the investigation required by this article. However, public agencies and nonprofit organizations are exempt from payment of the costs of the investigation. The liability of a petitioner for costs under this section shall not exceed nine hundred dollars (\$900). The court may defer, waive, or reduce the costs when the payment would cause an economic hardship which would be detrimental to the welfare of the child.

7852. "Qualified court investigator," as used in this article, has the meaning provided by Section 8543.