

**IC 31-35**

**ARTICLE 35. JUVENILE LAW: TERMINATION OF PARENT-CHILD RELATIONSHIP**

**IC 31-35-1**

Chapter 1. Voluntary Termination of Parent-Child Relationship by Parents

**IC 31-35-1-1**

**Application of chapter**

Sec. 1. This chapter applies to the voluntary termination of the parent-child relationship by parents.

*As added by P.L.1-1997, SEC.18.*

**IC 31-35-1-2**

**Law governing proceedings**

Sec. 2. Proceedings under this chapter are governed by the procedures prescribed by:

- (1) IC 31-32-1, IC 31-32-4 through IC 31-32-10, and IC 31-32-12 through IC 31-32-15;
- (2) IC 31-34; and
- (3) IC 31-37;

but are distinct from proceedings under IC 31-34 and IC 31-37.

*As added by P.L.1-1997, SEC.18.*

**IC 31-35-1-3**

**Jurisdiction**

Sec. 3. The probate court has concurrent original jurisdiction with the juvenile court in proceedings on a petition filed under this chapter for the voluntary termination of the parent-child relationship.

*As added by P.L.1-1997, SEC.18.*

**IC 31-35-1-4**

**Petition; verification and contents**

Sec. 4. (a) If requested by the parents:

- (1) the county office of family and children; or
- (2) a licensed child placing agency;

may sign and file a verified petition with the juvenile or probate court for the voluntary termination of the parent-child relationship.

(b) The petition must:

- (1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of \_\_\_\_\_, a child, and \_\_\_\_\_, the child's parent (or parents)"; and

(2) allege that:

- (A) the parents are the child's natural or adoptive parents;
- (B) the parents, including the alleged or adjudicated father if the child was born out of wedlock:

- (i) knowingly and voluntarily consent to the termination of the parent-child relationship; or
- (ii) are not required to consent to the termination of the

- parent-child relationship under section 6(c) of this chapter;
- (C) termination is in the child's best interest; and
- (D) the petitioner has developed a satisfactory plan of care and treatment for the child.

*As added by P.L.1-1997, SEC.18. Amended by P.L.200-1999, SEC.25; P.L.146-2007, SEC.12.*

#### **IC 31-35-1-4.5**

##### **Putative father's consent to termination irrevocably implied**

Sec. 4.5. The putative father's consent to the termination of the parent-child relationship is irrevocably implied without further court action if the father:

(1) fails to file a paternity action under IC 31-14 or in a court located in another state that is competent to obtain jurisdiction over the paternity action, not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether:

(A) the child is born before or after the expiration of the thirty (30) day period; or

(B) a petition for adoption or for the termination of the parent-child relationship is filed; or

(2) files a paternity action:

(A) under IC 31-14; or

(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;

during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-9.2 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.

*As added by P.L.200-1999, SEC.26. Amended by P.L.1-2010, SEC.126.*

#### **IC 31-35-1-5**

##### **Notice of hearing; waiver**

Sec. 5. (a) Except as provided in subsection (b), the parents shall be notified of the hearing in accordance with IC 31-32-9.

(b) A parent who has made a valid consent to the termination of a parent-child relationship may waive the notice required by subsection (a) if the waiver:

(1) is in writing either:

(A) in the parent's consent to terminate the parent-child relationship; or

(B) in a separate document;

(2) is signed by the parent in the presence of a notary public; and

(3) contains an acknowledgment that:

(A) the waiver is irrevocable; and

- (B) the parent will not receive notice of:
  - (i) adoption; or
  - (ii) termination of parent-child relationship; proceedings.

*As added by P.L.1-1997, SEC.18. Amended by P.L.146-2007, SEC.13.*

### **IC 31-35-1-6**

#### **Consent; written denial of paternity or consent to termination of relationship before birth of child bars challenge to adoptions or termination of parental rights**

Sec. 6. (a) Except as provided in subsection (c), the parents must give their consent in open court unless the court makes findings of fact upon the record that:

- (1) the parents gave their consent in writing before a person authorized by law to take acknowledgments; and
- (2) the parents were:
  - (A) advised in accordance with section 12 of this chapter; and
  - (B) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary.

(b) If:

- (1) the court finds the conditions under subsection (a)(1) and (a)(2) have been met; and
- (2) a parent appears in open court;

a court may consider only the issue of whether the parent's consent was voluntary.

(c) The consent of a parent to the termination of the parent-child relationship under this chapter is not required if:

- (1) consent to the termination of the parent-child relationship is implied under section 4.5 of this chapter, if the parent is the putative father;
- (2) the parent's consent to the adoption of the child would not be required under:
  - (A) IC 31-19-9-8;
  - (B) IC 31-19-9-9; or
  - (C) IC 31-19-9-10;
- (3) the child's biological father denies paternity of the child before or after the birth of the child if the denial of paternity:
  - (A) is in writing;
  - (B) is signed by the child's father in the presence of a notary public; and
  - (C) contains an acknowledgment that:
    - (i) the denial of paternity is irrevocable; and
    - (ii) the child's father will not receive notice of adoption or termination of parent-child relationship proceedings; or

(4) the child's biological father consents to the termination of the parent-child relationship before the birth of the child if the consent:

- (A) is in writing;
- (B) is signed by the child's father in the presence of a notary public; and
- (C) contains an acknowledgment that:
  - (i) the consent to the termination of the parent-child relationship is irrevocable; and
  - (ii) the child's father will not receive notice of adoption or termination of parent-child relationship proceedings.

A child's father who denies paternity of the child under subdivision (3) or consents to the termination of the parent-child relationship under subdivision (4) may not challenge or contest the child's adoption or termination of the parent-child relationship.

(d) A child's mother may not consent to the termination of the parent-child relationship before the birth of the child.

*As added by P.L.1-1997, SEC.18. Amended by P.L.200-1999, SEC.27; P.L.130-2005, SEC.12; P.L.146-2007, SEC.14; P.L.58-2009, SEC.31.*

### **IC 31-35-1-7**

#### **Inquiry on parents' absence; investigation of fraud, duress, and competency to consent; order for child's care pending outcome of case**

Sec. 7. (a) Before the court may enter a termination order, the court:

- (1) must inquire about the reasons for the parents' absence; and
- (2) may require an investigation by a probation officer to:
  - (A) determine whether there is any evidence of fraud or duress; and
  - (B) establish that the parents were competent to give their consent.

(b) An investigation conducted under subsection (a) must be entered on the record under oath by the person responsible for making the investigation.

(c) If there is any competent evidence of probative value that:

- (1) fraud or duress was present when the written consent was given; or
- (2) a parent was incompetent;

the court shall dismiss the petition or continue the proceeding.

(d) The court may issue any appropriate order for the care of the child pending the outcome of the case.

*As added by P.L.1-1997, SEC.18.*

### **IC 31-35-1-8**

#### **Advice to parents**

Sec. 8. Before consent may be given in court, the court must advise the parents of:

- (1) their constitutional and other legal rights; and
- (2) the consequences of their actions under section 12 of this chapter.

*As added by P.L.1-1997, SEC.18.*

### **IC 31-35-1-9**

#### **Consent by incompetent or minor parent**

Sec. 9. (a) Except as provided in subsection (b), a parent who is incompetent may give consent to termination only with the approval of the court or of the parent's guardian.

(b) A person who is less than eighteen (18) years of age and who is a parent may give the person's consent without the approval of the court or of the parent's guardian if the person is competent except for the person's age.

*As added by P.L.1-1997, SEC.18.*

### **IC 31-35-1-10**

#### **Determination**

Sec. 10. (a) If:

(1) the court determines that the allegations in the petition described in section 4 of this chapter are true; and

(2) the other requirements of this article are met;

the court shall terminate the parent-child relationship.

(b) Except as provided in section 11 of this chapter, if the requirements of subsection (a)(1) or (a)(2) are not met, the court shall dismiss the petition.

*As added by P.L.1-1997, SEC.18.*

### **IC 31-35-1-11**

#### **Default judgment; waiver of notice**

Sec. 11. (a) If the court makes findings of fact upon the record that:

(1) one (1) parent has made a valid consent to the termination of the parent-child relationship;

(2) the other parent:

(A) is required under this chapter to consent to the termination of the parent-child relationship;

(B) cannot be located, after a good faith effort has been made to do so, or has been located but fails to appear at the termination hearing; and

(C) has been served with notice of the hearing in the most effective means under the circumstances; and

(3) the investigation that may be required by section 7 of this chapter has been completed and entered on the record;

the court may enter a default judgment against the unavailable parent and terminate as to both parents.

(b) A parent may waive the notice required by subsection (a)(2)(C) if the waiver:

(1) is in writing;

(2) is signed by the parent in the presence of a notary public; and

(3) contains an acknowledgment that:

(A) the waiver is irrevocable; and

(B) the parent will not receive notice of:

(i) adoption; or

(ii) termination of parent-child relationship;  
proceedings.

(c) A parent who waives notice under subsection (b) may not challenge or contest:

- (1) the termination of the parent-child relationship; or
- (2) the child's adoption.

*As added by P.L.1-1997, SEC.18. Amended by P.L.200-1999, SEC.28; P.L.130-2005, SEC.13.*

### **IC 31-35-1-12**

#### **Contents of advice to parents**

Sec. 12. For purposes of sections 6 and 8 of this chapter, the parents must be advised that:

- (1) their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress or unless the parent is incompetent;
- (2) when the court terminates the parent-child relationship:
  - (A) all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support pertaining to the relationship, are permanently terminated; and
  - (B) their consent to the child's adoption is not required;
- (3) the parents have a right to the:
  - (A) care;
  - (B) custody; and
  - (C) control;

of their child as long as the parents fulfill their parental obligations;

- (4) the parents have a right to a judicial determination of any alleged failure to fulfill their parental obligations in a proceeding to adjudicate their child a delinquent child or a child in need of services;
- (5) the parents have a right to assistance in fulfilling their parental obligations after a court has determined that the parents are not doing so;
- (6) proceedings to terminate the parent-child relationship against the will of the parents can be initiated only after:
  - (A) the child has been adjudicated a delinquent child or a child in need of services and removed from their custody following the adjudication; or
  - (B) a parent has been convicted and imprisoned for an offense listed in IC 31-35-3-4 (or has been convicted and imprisoned for an offense listed in IC 31-6-5-4.2(a) before its repeal), the child has been removed from the custody of the parents under a dispositional decree, and the child has been removed from the custody of the parents for six (6) months under a court order;
- (7) the parents are entitled to representation by counsel, provided by the state if necessary, throughout any proceedings to terminate the parent-child relationship against the will of the

parents; and

(8) the parents will receive notice of the hearing, unless notice is waived under section 5(b) of this chapter, at which the court will decide if their consent was voluntary, and the parents may appear at the hearing and allege that the consent was not voluntary.

*As added by P.L. 1-1997, SEC. 18. Amended by P.L. 68-2005, SEC. 56; P.L. 146-2007, SEC. 15.*