

# TERMINATION OF PARENTAL RIGHTS IN TENNESSEE – PART 1

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Although most people are not aware of it, the relationship between a parent and a child is more than an emotional bond or a practical commitment, in the eyes of the law it is also a legal relationship that comes with duties and responsibilities. That legal relationship can also be severed, in much the same way that the legal relationship between a husband and wife can be terminated. In the State of Tennessee a parent's rights to a child can be terminated voluntarily or involuntarily.

Because of both the importance of the subject matter and the complexity of the law it is wise to consult with an experienced Tennessee family law attorney should you find yourself involved in a termination of parental rights case; however, it may also be helpful to gain a basic understanding of the termination

of parental rights process in the State of Tennessee. For additional information regarding the process of involuntary termination by the Department of Children's Services please see Part 2 in this series.

## Who Has Legal Rights to a Child?



In order for someone's parental rights to be terminated they must first *have* parental rights to a child, or at least have the potential to have parental rights to a child in the case of a "putative" father. A "putative" father is someone who has been identified by the mother as the father of a child, or who has registered

himself as a possible father, but for whom paternity has not yet been legally established. Although most people do not think of parenthood in legal terms, it is necessary for the law to decide who has legal rights to a child for a variety of reasons. Legal rights to a child are necessary, for example, to consent to medical treatment, apply for a passport, or register a child in school. Simple, everyday things that most parents don't think of in terms of the legalities involved; however, if you did not have legal rights to your child you would not be able to do those things. Who, therefore, has parental rights to a child in Tennessee? Parental rights to a child may be established in more than one way, including:

- **Birth** – the birth mother of a child automatically has parental rights to the child at the moment of birth.
- **Marriage** – a man who is married to a woman at the time of the birth of a child is presumed, under the law, to be the father of the child and as such has parental rights to the child.
- **Paternity** – a man who is not married to the mother at the time of birth of the child must legally establish paternity in order to have parental rights to the child.
- **Adoption** – parental rights to a child can also be established by either a man or a woman, or both, through adoption.

## Voluntary Termination of Parental Rights

Sometimes a parent may wish to voluntarily relinquish, or terminate, his or her parental rights. Also referred to as a “surrender”, there are several scenarios in which a parent might wish to voluntarily relinquish his/her parental rights, including:

- **Unrelated to adoption** – Sometimes, a parent simply cannot handle the responsibility of being a parent and/or does not want the financial obligation that goes along with being a parent. In this case, the parent may try and surrender the child to the Department of Children’s Services. Contrary to what people often believe, however, a parent cannot simply decide one day that he/she no longer wants the duties and responsibilities of parenthood. Ultimately, the State of Tennessee decides if a parent is allowed to terminate his or her parental rights. Because the State of Tennessee must always do what is in the best interest of a child, and as a



policy it is believed that having two parents is in the best interest of a child, the State can refuse to accept the surrender of a child.

- **Adoption at birth** – if a pregnant woman has decide to give her child up for adoption at birth, both biological parents are required to consent to the adoption, meaning they will need to terminate the parental rights of both the birth mother and father or putative father.
- **Step-parent adoption** –when either the mother or father of a child remarries and the new spouse wishes to adopt the child, the parental rights of one parent will have to be terminated. For example, if you are the mother of a child and you marry someone who is not the child’s legal father, your new spouse may wish to legally adopt your child. To do that, the child’s legal father would have to relinquish, or terminate, his legal rights to the child first.

## Involuntary Termination of Parental Rights

Sometimes, a parent’s rights to a child are terminated involuntarily by the State of Tennessee. For a court to order the involuntary termination of a parent’s rights the court must find that:

1. There is clear and convincing evidence that grounds for termination of parental rights have been established AND
2. That the termination of the parent’s rights is in the child’s best interest.

## Grounds for Involuntary Termination of Parental Rights

Tennessee Code Annotated § 36-1-113(g) sets for the grounds on which a petition to terminate parental rights may be based in Tennessee. Those grounds are lengthy and complex; however, summaries of the ten potential grounds include:

1. **Abandonment** by the parent or guardian, as defined in § 36-1-102
2. Substantial **noncompliance** by the parent or guardian with the statement of responsibilities in a **permanency plan** or a plan of care pursuant to the provisions of title 37, chapter 2, part 4
3. The child has been **removed from the home** of the parent or guardian by order of a court for a period of **six months** and:
  - a. Conditions that led to the removal still exist AND
  - b. There is little likelihood those conditions will be remedied AND
  - c. Continuation of the parent-child relationship is not in the child's best interest



4. The parent or guardian has been found to have committed **severe child abuse** as defined in § 37-1-102 against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;
5. The parent or guardian has been sentenced to more than **two years' imprisonment for conduct against the child** who is the subject of the petition, a sibling or half-sibling of the child or any other child residing temporarily or permanently in the home.
6. The parent has been **sentenced to ten or more years**, and the child is under eight years of age at the time the sentence is entered by the court;
7. The parent has been convicted of or found civilly liable for the **intentional and wrongful death of the child's other parent** or legal guardian;
8. A chancery or circuit court has determined that the parent is **incompetent** to adequately provide for the further care and supervision of the child because the parent's **mental condition** and that termination of parental or guardian rights is in the best interest of the child;





9. The parental rights of any person who is **not the legal parent** or guardian of such child may also be terminated based upon any one or more of the following additional grounds:

- a. The person has **failed**, without good cause or excuse, to **pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth** of the child;
- b. The person has **failed**, without good cause or excuse, **to make reasonable and consistent payments for the support of the child**;
- c. The person has **failed to seek reasonable visitation with the child**, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102(1)(C);
- d. The person has **failed** to manifest an ability and willingness **to assume legal and physical custody of the child**;
- e. Placing custody of the child in the person's legal and physical custody would pose **child**; or
- f. The person has **failed to file a petition to establish paternity** of the child within 30 days after notice of alleged paternity by the child's mother, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

10. The parent has been **convicted of aggravated rape** pursuant to § 39-13-502 **or rape** pursuant to § 39-13-503, **from which the child was conceived**.

Once a parent's rights have been terminated, voluntarily or involuntarily, the parent-child relationship is severed forever as is the parent's legal obligation to support the child. Whether you are involved in the adoption of a child or are facing an involuntary termination by the Tennessee Department of Children's Services, you should consult with an experienced Tennessee family law attorney as soon as possible to ensure that your rights are protected throughout the proceedings.



For additional information about the Involuntary Termination of Parental Rights process please see Part 2 of this series.

Tennessee Courts, [Rule 39: Termination of Parental Rights](#)

Tennessee Department of Children's Services, [Client Handbook](#)

Justia, [Tennessee Code Annotated § 36-1-113](#)

Childwelfare.gov, [Grounds for Termination of Parental Rights](#)

Findlaw, [Checklist: Grounds for Terminating Parental Rights](#)

## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

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