



# TERMINATION OF PARENTAL RIGHTS

## Reasons for Termination of Parental Rights

A person's parental rights are not terminated against his or her will unless there are sufficient reasons that are proven by clear and convincing evidence in court. (Clear and convincing evidence means very strong proof – more than that required in a civil lawsuit but somewhat less than a criminal case.) Not being a good parent may be a good reason to deny a parent legal custody, but by itself is usually not a sufficient reason to terminate parental rights.

Often parental rights are terminated because the parent(s) have been guilty of abuse or neglect that endangered the child's life or health; and, that it is not reasonably likely the problem can be resolved so that the child can continue to be cared for and raised by the parent. Sometimes parental rights are terminated after the parent abandoned the child. And sometimes parental rights are terminated after the Department of Social Services (DSS) has removed the child from the home and placed the child in foster care.

Some of the reasons the judge may decide it's unlikely the problems can be resolved, and thus may decide to terminate parental rights, are: 1) habitual abuse or addiction to drugs or alcohol, and the parent has not followed through with treatment that could have improved their capacity to function as a parent; 2) the parent has a mental or emotional illness or intellectual disability of such severity that there is no reasonable expectation they'd be able to care for the child; 3) the parent has failed to follow through with rehabilitative efforts to reduce, eliminate, or prevent their abuse or neglect of the child; or 4) if the child was placed in foster care by DSS, the parent has failed to communicate with the child or to cooperate with DSS's plan for the parent to work towards regaining custody of the child.

Regardless of the circumstances that led to the point of terminating parental rights, the court will not do so unless it is in the best interests and welfare of the child. The judge will make an

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appropriate order as to who should have legal custody and care of the child after the parental rights are terminated. That may include DSS, for placement in foster care.

If you think a child is being abused or neglected by a parent and you have done all you can to stop the abuse or neglect, you should call the local Department of Social Services and speak to a Child Protective Services Worker about the situation.

## **Consequences of Termination of Parental Rights**

Termination of parental rights also terminates parental responsibilities. As long as you are a parent, you still have the legal responsibility to pay child support and care for your child until the child reaches adulthood. However, if parental rights are terminated, the parent will have no obligation to ever pay support again. Likewise, the parent will have no right to be involved in the child's life.

A termination of parental rights might mean that the child no longer has any involvement with brothers and sisters from another marriage. It means that the parent, who is no longer considered to be the parent, has no legal rights to influence the child's religion, schooling, healthcare or anything else, which is why the laws make it very difficult to terminate parental rights.

## **Court Procedure**

Petitions for the termination of parental rights are filed in the Juvenile and Domestic Relations Court. A guardian *ad litem* is appointed to represent the best interests of the child. A parent whose rights may be terminated is entitled to have an attorney. If the parent is indigent, that attorney should be appointed and paid for by the court.

If you disagree with the decision by the judge in Juvenile and Domestic Relations Court, you may appeal to the Circuit Court within 10 days after the J&DR decision.

## **Voluntary Termination of Rights**

Virginia law does not allow you to voluntarily terminate your own parental rights, except when you are consenting to the adoption of your children by someone else. If you think you are not able to properly care for your children right now, one of your options is to petition the Juvenile and Domestic Relations Court for someone else to have legal and physical custody, with visitation rights for you. A court order for custody and visitation can be changed if your circumstances change. If you feel you are struggling with your ability to properly care for your children, you may wish to call DSS to see if they have educational or other support services for you to improve your parenting capacity and skills. Another option, if you already have legal custody, is for you to ask to be relieved of the care and custody of your children, so that DSS can place them in foster care. That is not the same as termination of your parental rights. You can call DSS to ask about this option.

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You cannot voluntarily terminate your parental rights to get out of paying child support. If you can't afford to keep up with your monthly child support obligation, you can make a motion to the court to reduce your monthly support obligation. Contact the clerk of Juvenile and Domestic Relations Court for the forms and procedure to amend child support. If the child support is being handled by the Division of Child Support Enforcement (DCSE), contact that office to discuss your options.

## **Voluntary Delegation of Powers**

Parents or custodians are allowed to temporarily delegate by power of attorney their powers regarding the care, custody, or property of a child for no more than 180 days (6 months). The power of attorney must be signed by all persons with authority to make decisions concerning the child, the person to whom the powers are delegated, and a representative of a licensed child-placement agency.

## **Restoration of Parental Rights**

If a child is over age 14, has been in foster care for 2 or more years, and does not have any prospective adoptive parents, at the annual foster care review, the Judge must ask if the child is interested in having the parents' rights restored. If so, the Court will order the GAL or DSS to investigate and file a petition for restoration, if appropriate.

***THIS INFORMATION IS NOT LEGAL ADVICE.*** *Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

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