

Termination of Parental Rights

Current through 2007

§ 93-15-101. Short title.

This chapter shall be known and may be cited as the "Termination of Rights of Unfit Parents Law."

Sources: Laws, 1980, ch. 485, § 1, eff from and after July 1, 1980.

§ 93-15-103. Factors justifying adoption; grounds for termination of parental rights; alternatives.

- (1) When a child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time because returning to the home would be damaging to the child or the parent is unable or unwilling to care for the child, relatives are not appropriate or are unavailable, and when adoption is in the best interest of the child, taking into account whether the adoption is needed to secure a stable placement for the child and the strength of the child's bonds to his natural parents and the effect of future contacts between them, the grounds listed in subsections (2) and (3) of this section shall be considered as grounds for the termination of parental rights. The grounds may apply singly or in combination in any given case.
- (2) The rights of a parent with reference to a child, including parental rights to control or withhold consent to an adoption, and the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of the parent and child terminated by the execution of a written voluntary release, signed by the parent, regardless of the age of the parent.
- (3) Grounds for termination of parental rights shall be based on one or more of the following factors:
 - (a) A parent has deserted without means of identification or abandoned a child as defined in Section 97-5-1, or
 - (b) A parent has made no contact with a child under the age of three (3) for six (6) months or a child three (3) years of age or older for a period of one (1) year; or
 - (c) A parent has been responsible for a series of abusive incidents concerning one or more children; or
 - (d) When the child has been in the care and custody of a licensed child caring agency or the Department of Human Services for at least one (1) year, that agency or the department has made diligent efforts to develop and implement a plan for return of the child to its parents, and:
 - (i) The parent has failed to exercise reasonable available visitation with the child; or
 - (ii) The parent, having agreed to a plan to effect placement of the child with the parent, fails to implement the plan so that the child caring agency is unable to return the child to said parent; or
 - (e) The parent exhibits ongoing behavior which would make it impossible to return the child to the parent's care and custody:
 - (i) Because the parent has a diagnosable condition unlikely to change within a reasonable time such as alcohol or drug addiction, severe mental deficiencies or mental illness, or extreme physical incapacitation, which condition makes the parent unable to assume minimally, acceptable care of the child; or
 - (ii) Because the parent fails to eliminate behavior, identified by the child caring agency or the court, which prevents placement of said child with the parent in spite of diligent efforts of the child caring agency to assist the parent; or

- (f) When there is an extreme and deep-seated antipathy by the child toward the parent or when there is some other substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or prolonged imprisonment; or
 - (g) When a parent has been convicted of any of the following offenses against any child:
 - (i) rape of a child under the provisions of Section 97-3-65,
 - (ii) sexual battery of a child under the provisions of Section 97-3-95(c),
 - (iii) touching a child for lustful purposes under the provisions of Section 97-5-23,
 - (iv) exploitation of a child under the provisions of Section 97-5-31,
 - (v) felonious abuse or battery of a child under the provisions of Section 97-5-39(2),
 - (vi) carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, or
 - (vii) murder of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; or
 - (h) The child has been adjudicated to have been abused or neglected and custody has been transferred from the child's parent(s) for placement pursuant to Section 43-15-13, and a court of competent jurisdiction has determined that reunification shall not be in the child's best interest.
- (4) Legal custody and guardianship by persons other than the parent as well as other permanent alternatives which end the supervision by the Department of Human Services should be considered as alternatives to the termination of parental rights, and these alternatives should be selected when, in the best interest of the child, parental contacts are desirable and it is possible to secure such placement without termination of parental rights.
- (5) When a parent has been convicted of rape of a child under the provisions of Section 97-3-65, sexual battery of a child under the provisions of Section 97-3-95(c), touching a child for lustful purposes under the provisions of Section 97-5-23, exploitation of a child under the provisions of Section 97-5-31, felonious abuse or battery of a child under the provisions of Section 97-5-39(2), or carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, notice of the conviction shall be forwarded by the circuit clerk of the county in which the conviction occurred to the Mississippi Department of Human Services, Division of Social Services.
- (6) In any case where a child has been removed from the parent's home due to sexual abuse or serious bodily injury to the child, the court shall treat such case for termination of parental rights as a preference case to be determined with all reasonable expedition.

Sources: Laws, 1980, ch. 485, § 2; Laws, 1993, ch. 475, § 1; Laws, 1998, ch. 516, § 10; Laws, 2003, ch. 359, § 2, eff from and after July 1, 2003.

§ 93-15-105. Petition for termination of parental rights; setting cause for hearing; service of process; determination of rights of father of child born out of wedlock in certain cases; waiver of 30-day service in adoptions of children from foreign countries.

- (1) Any person, agency or institution may file for termination of parental rights in the chancery court or the family or county court sitting as the youth court of the county in which a defendant or the child resides, or in the county where an agency or institution holding custody of the child is located. The chancery court, or the chancellor in vacation, or the family court, or the family court judge in vacation, or the county court when sitting as the youth court, or such county court judge in vacation, may set the cause for hearing in termtime or in vacation. The petition shall be triable either in termtime or in vacation, thirty (30) days after personal service of process, and in case of nonresident defendants, or defendants whose addresses are unknown after diligent search, thirty (30) days after completion of publication; such publication to be otherwise as provided in the Mississippi Rules of Civil Procedure.

- (2) In all cases involving termination of parental rights, minor parents may be served with process as an adult.
- (3) In the event that one (1) parent voluntarily releases his child for adoption, a copy of the summons served on the child shall not be required to be served on the releasing parent.
- (4) In an appropriate case, determination of the rights of the father of a child born out of wedlock may be made in proceedings pursuant to a petition for determination of rights as provided in Section 93-17-6.
- (5) In the event that an adoptive child was born in a foreign country, the child was put up for adoption in the birth country, and the child has been legally admitted into this country, the thirty (30) days' service of process required by subsection (1) of this section, whether by personal service or publication, may be waived by the controlling court.

Sources: Laws, 1980, ch. 485, § 3; Laws, 1996, ch. 396, § 1; Laws, 2003, ch. 359, § 1; Laws, 2005, ch. 426, § 1, eff from and after July 1, 2005.

§ 93-15-107. Proceedings to terminate parental rights; parties; initiation of proceedings; payment of costs.

- (1) In an action to terminate parental rights, the mother of the child, the legal father of the child, and the putative father of the child, when known, shall be parties defendant. A guardian ad litem shall be appointed to protect the interest of the child in the termination of parental rights. A child may be made party plaintiff, and any agency holding custody of a minor shall act as party plaintiff.
- (2) The Department of Human Services shall initiate proceedings to terminate parental rights in accordance with Section 93-15-101 et seq. in cases where a child has been placed in the physical custody of a relative and the department has been given legal custody of the child. The department may provide necessary funds to defray the costs and attorney fees for any adoption proceedings brought by the relative of such child in cases where the relative is unable to pay such costs and fees based on criteria established by the department in compliance with federal law and the availability of funds to the department to pay such costs and fees.

Sources: Laws, 1980, ch. 485, § 4 subd (1); Laws, 1998, ch. 516, § 11, eff from and after July 1, 1998.

§ 93-15-109. Termination of parental rights.

After hearing all the evidence in regard to such petition, if the chancellor, family court judge or county court judge is satisfied by clear and convincing proof that the parent or parents are within the grounds requiring termination of parental rights as set forth in this chapter, then the court may terminate all the parental rights of the parent or parents regarding the child, and terminate the right of the child to inherit from such parent or parents. The termination of the parental rights of one (1) parent may be made without affecting the parental rights of the other parent, should circumstances and evidence ever so warrant.

Sources: Laws, 1980, ch. 485, § 4(2); Laws, 1984, ch. 318; Laws, 1996, ch. 396, § 2, eff from and after July 1, 1996.

§ 93-15-111. Placing child in custody of suitable person, institution or agency; adoption.

Should the court terminate the parental rights of the parents or only one (1) of the parents (if they both be living), then the court shall place the child in the custody of some suitable person, agency or institution, and such person, agency or institution shall have full power to enter a petition under Section 93-17-5, consenting to adoption, and no further notice shall be given in the adoption proceeding to such parent or parents.

Sources: Laws, 1980, ch. 485, § 4 subd 3, eff from and after July 1, 1980.