

CHAPTER 21. TERMINATION OF PARENTAL RIGHTS

Authority

N.J.S.A. 30:4C-1 et seq., and 30:4C-15 through 23.

Source and Effective Date

R.2016 d.006, effective December 11, 2015. See: 47 N.J.R. 1862(a), 48 N.J.R. 138(a).

Chapter Expiration Date

Chapter 21, Termination of Parental Rights, expires on December 11, 2022.

Chapter Historical Note

Chapter 133J, Termination of Parental Rights, was adopted as R.1997 d.362, effective September 2, 1997. See: 28 N.J.R. 3866(a), 29 N.J.R. 3896(a).

Chapter 133J, Termination of Parental Rights, was readopted as R.2003 d.39, effective December 20, 2002. As a part of R.2003 d.39, Subchapter 4, Involuntary Termination of Parental Rights, was repealed, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Chapter 133J, Termination of Parental Rights, was readopted as R.2008 d.191, effective June 17, 2008. See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 133J, Termination of Parental Rights, was scheduled to expire on June 17, 2015. See: 43 N.J.R. 1203(a).

Chapter 133J, Termination of Parental Rights, was readopted as R.2016 d.006, effective December 11, 2015. See: Source and Effective Date. See, also, section annotations.

Chapter 21, Termination of Parental Rights, was recodified from N.J.A.C. 10:133J, Termination of Parental Rights, by administrative change, effective January 3, 2017. As part of the recodification, attendant technical changes were made to the rule text concerning cross-references, agency names, addresses, etc. See: 49 N.J.R. 98(a).

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SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS

3A:21-1.1 Purpose

(a) The purpose of this chapter is to state:

1. The circumstances under which the Division is required to file or join a petition to terminate parental rights and the exceptions to filing; and
2. The procedures for a parent to surrender parental rights for the purpose of allowing a child to be adopted.

Recodified from N.J.A.C. 10:133J-1.2 and amended by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Rewrote the section. Former N.J.A.C. 10:133J-1.1, Authority, repealed.

3A:21-1.2 Scope

The provisions of this chapter shall apply to all Division representatives and clients receiving services from the Division.

Recodified from N.J.A.C. 10:133J-1.3 by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Former N.J.A.C. 10:133J-1.2, Purpose, recodified to N.J.A.C. 10:133J-1.1.

3A:21-1.3 Definitions

(a) The definitions in N.J.A.C. 3A:11-1.3 are incorporated in this chapter by reference.

Recodified from N.J.A.C. 10:133J-1.4 and amended by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Rewrote the section. Former N.J.A.C. 10:133J-1.3, Scope, recodified to N.J.A.C. 10:133J-1.2.

Amended by R.2010 d.108, effective June 21, 2010. See: 42 N.J.R. 120(a), 42 N.J.R. 1204(a). Deleted (b).

**SUBCHAPTER 2. REQUIREMENTS FOR AND EXCEPTIONS TO
TERMINATION OF PARENTAL RIGHTS****3A:21-2.1 Involuntary termination of parental rights**

(a) The Division shall file or join a petition to terminate the parental rights of a child's parents when one or more of the circumstances stated in N.J.S.A. 30:4C-15 is established, but no later than when the child has been in out-of-home placement for 15 of the most recent 22 months, unless the Division has established an exception to the requirement to seek termination of parental rights pursuant to N.J.S.A. 30:4C-15.3.

(b) The Division representative consults with the Deputy Attorney General on situations that may meet the standards stated in N.J.S.A. 30:4C-15 and 15.1.

(c) The Division representative shall advise each parent whose whereabouts are known to the Division and whose parental rights the Division is seeking to involuntarily terminate, that the parent has the right to a trial and to be represented by legal counsel at any involuntary termination of parental rights court proceeding; and, if the parent is unable to afford an attorney, the right of the parent to ask the court to assign an attorney to represent the parent.

(d) When the Division representative makes a determination to pursue termination of parental rights in accordance with N.J.S.A. 30:4C-15 and 15.1, the Division representative shall consider offering the parent an opportunity to surrender his or her parental rights pursuant to N.J.S.A. 30:4C-23. When a parent is offered an opportunity to surrender parental rights, the Division representative shall advise the parent that if the Division pursues legal action to involuntarily terminate parental rights, the parent has those legal rights stated in (c) above.

Amended by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Rewrote the section.

Amended by R.2008 d.191, effective July 21, 2008. See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c). In (b) and throughout (d), inserted "representative".

3A:21-2.2 Exceptions to termination of parental rights criteria

(a) Whereas adoption is the preferred permanency alternative for a child who cannot safely return to the care of either biological parent, the Division may decide not to file for termination of parental rights when adoption of the child is neither feasible nor likely.

(b) The Division representative is not required to file for termination of parental rights if the case circumstances meet at least one of the following three exceptions set forth in N.J.S.A. 30:4C-15.3:

1. The child is being cared for by a relative and a permanent plan for the child can be achieved without termination of parental rights;
2. The Division representative has documented in the case plan, which shall be available for court review, a compelling reason for determining that filing the petition would not be in the best interests of the child; or
3. The Division representative is required to provide reasonable efforts to reunify the family but the Division representative has not provided to the family of the child, consistent with the time period in the case plan, such services as the Division representative deems necessary for the safe return of the child to his or her home.

(c) The Division representative shall document in the case plan the details of the case circumstances meeting the requirements for an exception in (a) or (b) above. The documentation shall include the reasons why adoption is neither feasible nor likely for this child, and is not the most appropriate case goal for this child when the exception is made pursuant to N.J.S.A. 30:4C-15.3b.

New Rule, R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Former N.J.A.C. 10:133J-2.2, Voluntary or involuntary termination of parental rights, recodified to N.J.A.C. 10:133J-2.1(d).

Amended by R.2008 d.191, effective July 21, 2008. See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c). Added new (a); recodified former (a) as (b); deleted former (b); in the introductory paragraph of (b) and in (b)2 and throughout (b)3, inserted "representative"; and in (c), substituted "for an exception in (a) or (b)" for "of N.J.S.A. 30:4C-15.3 and (a)", inserted "neither feasible nor likely for this child, and is" and deleted "and (a)2 above" from the end.

3A:21-2.3 Factors to consider when filing for termination of parental rights

(a) The Division representative considers many factors when deciding to file for termination of parental rights or to document a compelling reason in the best interests of the child not to file for a termination of parental rights. Decisions must be made on a case-by-case basis, based on the individual circumstances of the child and the family. The factors considered may include, but are not limited to:

1. The child's age;
2. The child's level of maturity;
3. The child's developmental level and needs;
4. The child's opinion regarding the permanent plan;
5. The placement history, including the length of time the child has been in placement;
6. The progress that each parent has made toward return of his or her child;
7. The relationship between this child and his or her parents;
8. The child's relationship to siblings, if any;
9. The case goal for each of the child's siblings, if any;
10. Expert opinions in respect to permanency planning for the child;
11. The opinions of child advocates in respect to permanency planning for the child;
12. The appropriateness and feasibility of all the various permanency options for this child;
13. The out-of-home placement provider's commitment to the child and commitment and capacity to meet the child's needs currently and in the future;

14. The relationship between the child and the out-of-home placement provider and the out-of-home placement provider's family;
15. The potential permanent caregiver's ability and willingness to assure safety, permanency, and well-being for the child; and
16. Each parent's role in potential permanency plans for this child.

New Rule, R.2008 d.191, effective July 21, 2008. See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c).

SUBCHAPTER 3. SURRENDER OF PARENTAL RIGHTS

3A:21-3.1 Division responsibilities

(a) The Division representative shall counsel the parent regarding the meaning, finality and consequences of surrendering parental rights in accordance with N.J.A.C. 3A:50-5.4 when surrendering parental rights is being considered. For all cases in litigation, surrenders of parental rights must go through appropriate court proceedings.

(b) The Division representative shall advise the parent that he or she may stop the surrender of parental rights at any point in the procedure.

(c) The Division is not obligated to accept a surrender of parental rights from a parent.

(d) The Division representative shall determine that the parent is competent to execute a surrender and has a full opportunity to understand the meaning and consequences of surrendering parental rights by:

1. Questioning and observing the parent and reviewing evaluations, professional opinions or reports, as necessary, to determine that there are no obvious or overt indicators that the parent has a diminished capacity to understand the meaning, consequences and finality of surrendering parental rights because of alcohol or drug use, psychological disorder or mental deficiency;

2. Reading aloud to the parent the full contents of surrender of parental rights documents;

3. Providing a verbal explanation to the parent of the contents of the surrender of parental rights documents including an explanation of the meaning, consequences and finality of the act of surrendering parental rights;

4. Providing an opportunity for the parent to ask questions about surrendering parental rights; and

5. Asking the parent to explain, in his or her own words, the meaning, consequences and finality of surrendering parental rights.

(e) The Division representative shall make documents related to surrendering parental rights available in a language, which the parent understands, or the Division shall provide competent verbal or sign translation of the surrender of parental rights procedure into a language, which the parent understands.

(f) The Division representative shall attempt to determine, through questions and observation, any duress, undue pressure or coercion which has been brought to bear on the parent in order to induce him or her to surrender parental rights.

1. The Division representative shall not coerce the parent in order to induce him or her to surrender parental rights; and

2. The Division representative shall attempt to ascertain the cause of any duress, undue pressure or coercion on the parent and counsel the parent regarding services to help the parent cope with the duress.

(g) The surrender of parental rights shall be witnessed by at least one Division representative who is not assigned to the case, who is 18 years of age or older and who is not notarizing the signature.

(h) The witness shall make a determination, to the best of his or her ability, that:

1. The parent understands the meaning, consequences and finality of surrendering parental rights;

2. The parent is competent to surrender parental rights; and

3. The Division representative attempted to determine and mitigate any duress on the parent in accordance with (f) above and that the parent is surrendering parental rights of his or her own free will.

(i) The witness shall sign an affidavit regarding his or her role and observations in the surrender of parental rights.

(j) Unless the person is disruptive to the procedure or is a source of duress on the parent, the parent may have a friend, relative or representative present at the surrender of parental rights procedure. The friend, relative or representative may sign an affidavit regarding his or her role and observations during the surrender of parental rights but shall not be the witness to the procedure identified in (g) above.

(k) The Division representative or the witness shall stop any procedure regarding the surrender of parental rights if the parent appears to be under duress or incompetent to surrender parental rights in accordance with (d) or (f) above.

Amended by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Rewrote the section.

Amended by R.2008 d.191, effective July 21, 2008. See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c). In (a), inserted the second sentence; in (d)1, substituted "opinions" for "opinion"; and in (e), inserted "representative" and inserted a comma following both occurrences of "language".

3A:21-3.2 Additional procedures

(a) The Division representative shall give the parent a copy of all documents signed by the parent and those documents read to the parent during the surrender of parental rights procedure.

(b) The Division representative shall document the surrender of parental rights for the child's case record including the questions asked by the parent along with the answers provided by the Division representative or by any witness present.

(c) The Division representative shall obtain, to the extent possible and necessary, each birth certificate, marriage or civil union certificate, domestic partnership affidavit, divorce or dissolution of a civil union or domestic partnership decree, death certificate, affidavit and document related to the surrender of parental rights.

(d) The Division representative shall advise the parent of the Division's Adoption Registry, the document of contact preference which may be submitted to the State Registrar of Vital Statistics pursuant to N.J.S.A. 26:8-40.34, and of any laws or procedures regarding the confidentiality of records related to surrender of parental rights or adoption, including, but not limited to, N.J.S.A. 9:3-52 and 26:8-40.1.

Amended by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Inserted "representative" following "Division" and substituted "surrender" for "voluntary termination" throughout.

Amended by R.2008 d.191, effective July 21, 2008. See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c). In (b), substituted "witness" for "of the witnesses"; and in (c), inserted "or civil union", "domestic partnership affidavit," "or dissolution of a civil union" and "or domestic partnership".

Amended by R.2016 d.006, effective January 19, 2016. See: 47 N.J.R. 1862(a), 48 N.J.R. 138(a). Rewrote (d).

3A:21-3.3 Surrender executed in other states and other countries

Pursuant to N.J.S.A. 9:3-41, the Division shall give full faith and credit to a surrender of parental rights executed in any other state or foreign country if the procedures for the surrender of parental rights complied with that state's or country's applicable statutes and regulations, and was taken more than 72 hours after the birth of the child.

Amended by R.2003 d.39, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b). Rewrote the section.

SUBCHAPTER 4. (RESERVED)