

SUMMARY OF STATUTORY REQUIREMENTS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

1. GENERAL STANDARDS FOR INVOLUNTARY TPR:

a. CLEAR AND CONVINCING EVIDENCE

To terminate parental rights over a parent's objection, “[t]he trial judge must be satisfied by clear and convincing proof that the [parent] was within the grounds laid out within the statute[.]” *In re V.M.S.*, 938 So.2d 829, 834 (¶ 11) (Miss.2006).

b. STATUTORY GROUNDS FOR TPR - - MCA § 93–15-119 and § 93-15-121.

The party seeking to adopt must “show by clear and convincing evidence that the objecting parent has either abandoned or deserted the child or is mentally, morally or otherwise unfit to rear or train the child.” *Natural Mother v. Paternal Aunt*, 583 So.2d 614, 619–20 (Miss.1991). One or more of the statutory grounds must be proven by clear and convincing evidence.

c. BEST INTEREST OF THE CHILD

1. The “best interest of the child is the paramount consideration.” *In re K.D.G.*, 68 So.3d 748, 751 (¶ 12) (Miss. Ct. App. 2011). The chancellor must definitively adjudicate that the proposed adoption promotes or enhances the child's best interest. *In re M.C.*, 92 So.3d at 1288 (¶ 21) (citing *Ainsworth v. Natural Father*, 414 So.2d 417, 420–21 (Miss.1982)).

2. The law has “never allowed termination of parental rights only because others may be better parents.” *M.L.B. v. S.L.J.*, 806 So.2d 1023, 1029 (¶ 11) (Miss.2000).

3. The chancellor has discretion not to terminate parental rights if doing so would not be in the best interest of the child. Miss. Code Ann. § 93-15-123 (West 2022). This requires findings under one of the factors listed in this statute.

e. TPR RESERVED FOR EXTREME CASES

1. Parental rights can only be terminated in “**extreme cases**,” because this action legally severs the family relationship permanently. The seriousness of such an action demands **clear and convincing** evidence that it is in the best interest of the child. MCA §§ 93-15-119 & 93-15-121. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 747-49 (1982).

f. CHILD ENDANGERED

1. MCA § 93–15-119 may require a showing that TPR is necessary because there is proof that the child is endangered. *Middlebrook v. Fuller*, 349 So.3d 816, 821 (¶16) (Miss. Ct. App. 2022).

h. NO VOLUNTARY SURRENDER OF PARENTAL RIGHTS SOLELY TO AVOID CHILD SUPPORT

It is important to note that courts do not allow parents to give up parental rights simply to avoid paying child support or fulfilling their duties as a parent. This is against public policy. Mississippi courts terminate parental rights in circumstances where the child is benefited the most by the termination. *McCracking v. Champaigne*, 805 So.2d 586, 590 (¶ 13) (Miss. Ct. App. 2001). Therefore, in a voluntary TPR, you may need to consider alleging facts that would support termination such as substantial erosion of the parent-child relationship.

2. WHO CAN FILE:

a. Any person, guardian ad litem, agency or institution holding custody of the child may file a petition in the chancery court of the county where the child lives. Miss. Code Ann. § 93-15-107(1)(a).

3. WHERE TO FILE:

a. JURISDICTION

Miss. Code Ann. § 93-15-105(1) - - Chancery court has original exclusive jurisdiction over TPR, except when a county court sitting as a youth court has acquired jurisdiction of a child in an abuse or neglect proceeding, then the county court has original exclusive jurisdiction to hear petitions for both voluntary and involuntary claims for TPR.

b. VENUE

§ 93-15-105(2)(a)

- in county courts sitting as a youth court, venue may be proper in the county in which the court has jurisdiction of the child in the abuse or neglect proceedings.
- in chancery courts, venue is proper either in the county in which the defendant resides, the child resides, or in the county where an agency or institution having custody of the child is located.

4. NECESSARY PARTIES TO BE JOINED:

a. The mother, legal father and biological father become parties in the action, and the court appoints a guardian to oversee the child's interests temporarily.

5. SERVICE OF PROCESS:

1. Rule 81(d)(1), Miss.R.Civ.P. thirty-day Summons is required.
2. Rule 4 plus Rule 81 Summons by Publication for absent parents or necessary parties

6. INDIGENT PARENT MUST BE ADVISED OF RIGHTS, AND MAY BE ENTITLED TO COURT APPOINTED COUNSEL

1. Miss. Code Ann. § 93-15-113.

7. BASIS FOR TERMINATION OF PARENTAL RIGHTS:

a. Miss. Code Ann. § 93-15-119 provides:

(1) A court hearing a petition under this chapter may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:

(a) (i) That the parent has engaged in **conduct constituting abandonment or desertion of the child, as defined in Section 93-15-103,**

OR

is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare;

AND

(ii) That termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome; or

(b) That a parent has committed against the other parent a sexual act that is unlawful under Section 97-3-65 or 97-3-95 ... and that the child was conceived as a result of

the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this paragraph (b).

a. ABANDONMENT - - Several different grounds exist for such action, including repeated abusive acts by the parent or a parent's failure to contact a child under the age of three for six months or over age three for one year. (See MTPRL Definitions)

b. DESERTION - - Abdication of parental responsibilities(See MTPRL Definitions)

c. UNFITNESS - - Parent is mentally morally or otherwise unfit, so that a reunification is not desirable - - **must prove a specific ground for TPR in Miss. Code Ann. § 93-15-121.**

d. CONCEPTION AFTER RAPE

This is a basis for TPR.

8. SPECIFIC CONDUCT THAT WILL JUSTIFY TPR FOR A CHILD IN DCPS CUSTODY

a. Reasonable efforts for reunification required - - Miss. Code Ann. § 93-15-115

b. Reasonable efforts for reunification may not be required because of serious mental or physical abuse of the child - - Miss. Code Ann. § 93-15-117

9. SUMMARY OF SPECIFIC GROUNDS FOR TPR - - Miss. Code Ann. § 93-15-121

a. Mental Incapacity: Rights may be terminated when the parent is medically diagnosed with a severe mental illness or deficiency, making them unable or unwilling to care for the child.

b. Medical Disability: Rights may be terminated when the parent is medically diagnosed with an extreme physical disability or incapacitation that prevents the parent from caring for their child, despite reasonable accommodations.

c. Drug and Alcohol Abuse: Rights may be terminated if there is sufficient evidence to show the parent suffers from habitual alcoholism or drug addiction and has failed to complete court-ordered treatment programs successfully, and this interferes with the parent's ability to provide care for the child.

d. Neglect: Rights may be terminated if a court finds that a parent is unwilling to provide food, clothing, shelter, or appropriate medical care. A parent may also lose his or her parental right if that parent has failed to visit and/or communicate with their child on a regular basis.

e. Abuse: Rights may be terminated if a parent has abused and/or neglected their child and caused a "deep-seated antipathy" by the child or otherwise eroded the relationship.

f. Criminal Acts Involving the Child: Rights may be terminated if a parent has been convicted of committing any of the following crimes against a child, or any other child:

Rape

Sexual battery

Touching for lustful purposes

Exploitation

Felony abuse or battery, or

Carnal knowledge of a step, adopted, or other child.

Criminal Behavior: Rights may be terminated if a parent has been convicted of any of the following crimes:

Murder or voluntary manslaughter of the child's other parent

Attempting, soliciting, conspiring, or aiding murder of the child's other parent

Felony assault causing serious bodily harm to any child. **(It's important to remember that if the parent in question has more than one child, even if the other children are not yours, abusive acts to any child can serve as grounds for terminating parental rights for all children.)**

10. ANTICIPATORY NEGLECT

a. Mississippi follows the doctrine of Anticipatory Neglect. This allows a parent's rights to be terminated, if the parent's rights to other children have previously been terminated, even if the current child has not yet suffered any harm. *Interest of K.M. v. Jackson Cnty. Youth Court*, ___ So.3d ___, 2020 WL 7056087 (Miss. Ct. App. 2020); *In Interest of N.M. v. Miss. DHS*, 215 So.3d 1007 (2017) (remanded for further proceedings because DCPS alleged the child was "in need of supervision," not "abused or neglected").

11. IMPUTED RESPONSIBILITY FOR ABUSE OR NEGLECT

a. Mississippi allows the court to impute responsibility for injuries or harm suffered by a child to the parent who has responsibility for the child at the time the injuries were sustained, even if the parent claims that others were actually caring for the child. *Coulter v. Dunn*, 312 So.3d 713, 718 (¶17) (Miss. 2021)

12. GUARDIAN AD LITEM

a. Under 2023 amendments to the YC Act, the child is considered a "party" to cases involving abuse or neglect, and the mandatory GAL may serve in a "dual role" as both the "best interest attorney" (and an investigator and "arm of the court"), and the "child's attorney," which is the same role as the attorney for an adult. **(2023 Amendments, HB 1149). Miss. Code Ann. § 43-21-201(1)(c) & (4) (West 2023).**

b. Under the 2023 Amendments to the statute, if a conflict arises between the GAL's recommendations and the child's preference, the Court must appoint another attorney as the "child's attorney."

c. However, this statute conflicts with **Rule 13(c), URYCP** which provides that in abuse/neglect cases, at the beginning of the case, **the GAL must advise the child and parents that the GAL is serving in the role of a "best interest" attorney for the child and an investigatory arm of the Court, and NOT AS AN ATTORNEY FOR THE CHILD. This appears to preclude service by the GAL in a "dual role."**

d. A GAL is required for TPR, except the Court may waive the GAL, if there is a voluntary surrender of parental rights. Miss. Code Ann. § 93-15-107(1)(D)

13. PRIORITY CASE ASSIGNMENT

a. Under the old version of Miss. Code Ann. § 93-15-129, TPR Petitions involving sexual abuse or serious bodily injury treated as preference case

14. TIME FOR HEARING:

a. **Under the 2023 Amendments to Miss. Code Ann. § 93-15-107(5) - - the clerk must docket ALL TPR CASES AS PRIORITY CASES.**

b. **The Clerk notifies the trial judge of the need for expedited proceedings.**

c. **Hearings must be conducted WITHIN 120 DAYS AFTER SERVICE OF PROCESS ON PARENTS**

See Miss. Code Ann. § 93-15-107(5) and Miss. Code Ann. § 93-17-3(10).

15. APPLICABLE VERSION OF THE STATUTES

Apply the version of the statutes that existed at the time the Petition was filed. This applies even if the applicable statutes are amended before the final hearing is conducted. *J.P. v. L.S.*, 290 So.3d 345, 357 (¶39) (Miss. Ct. App. 2019)

16. DURABLE LEGAL CUSTODY IN YOUTH COURT

a. In 2023, HB 1115 amended Miss. Code Ann. § 43-21-609(b):

(b) "... After granting durable legal custody of a minor child, **the youth court shall retain original and exclusive jurisdiction of all matters related to durable legal custody, including, but not limited to, petitions to modify the durable legal custody.**"

b. This may require a Motion to Transfer Jurisdiction, if the YC action is pending before an attorney referee, and a TPR action is filed in Chancery Court. A separate form for a "Motion to Transfer Jurisdiction" is included in this packet.

17. ICWA

a. If the child is a member of a Native American tribe, or eligible for membership, then the parties must comply with the Indian Child Welfare Act. 25 USC § 1901 et seq. (2023).

b. If ICWA does not apply, the Petition must comply with the Miss. Termination of Parental Rights Law (TPRL) Miss. Code Ann. § 93-15-101, et seq. (West 2022). **A Petition for TPR must certify that ICWA DOES NOT apply. MCA § 93-15-125.**

18. TPR STATUTES AS OF July 1, 2023

- § 93-15-101. Short title
- § 93-15-103. Definitions
- § 93-15-105. Jurisdiction and venue
- § 93-15-107. Commencement of proceedings; parties; summons
- § 93-15-109. Surrender of a child to the Department of Child Protection Services or a home
- § 93-15-111. Termination by written voluntary release
- § 93-15-113. Conduct of hearing for involuntary TPR; counsel for parent
- § 93-15-115. Involuntary termination when child in care and custody or under the supervision of the Department of CPS pursuant to youth court proceedings and reasonable efforts for reunification are required; standard of proof
- § 93-15-117. Involuntary termination when child in care and custody or under supervision of the Department of CPS pursuant to youth court proceedings and reasonable efforts for reunification are not required; standard of proof
- § 93-15-119. Involuntary termination in chancery court for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof
- § 93-15-121. Grounds for termination
- § 93-15-123. Court discretion not to terminate
- § 93-15-125. Compliance with Indian Child Welfare Act
- § 93-15-127. Effect on another parent's rights
- § 93-15-129. Petitions involving sexual abuse or serious bodily injury treated as preference cases
- § 93-15-131. Post-judgment proceedings
- § 93-15-133. Review by Supreme Court