

Voluntary Terminations

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Topics for Voluntary Terminations

- ▶ Surrender of Parental Rights
- ▶ Related Parent Consent
- ▶ Unrelated Consent
- ▶ Waiver of Interest and Notice
- ▶ Denial of Paternity
- ▶ Voluntarily TPR Petitions
- ▶ Post Adoption Contact Agreements



Surrender of Parental Rights

Private Hearing

T.C.A. § 36-1-111(j)(3)(c)

- ▶ (j)(3)(c) The execution of the surrender or parental consent shall occur in private in the chambers of the court or in another private area, and in the presence of the surrendering or consenting person's legal counsel if legal counsel has been requested by the surrendering or consenting person. In the discretion of the court or other person conducting the surrender or parental consent proceeding, the court's officer or other employee may be present.

Surrender of Parental Rights

Jurisdiction and Venue

T.C.A. § 36-1-111(b)(1)

- ▶ Chancery, Circuit, or Juvenile Judge, Magistrate, or Warden
 - ▶ Transport Order
 - ▶ Guardianship
 - ▶ Venue
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- ▶ (b)(1) All surrenders must be made before a judge of the chancery, circuit, or juvenile court except as provided herein, and the court shall advise the person or persons surrendering the child of the right of revocation of the surrender and time for the revocation and the procedure for such revocation. A surrender made under this section may be made in chambers or over a virtual video platform on which the court sees the person or persons surrendering the child. The decision whether to conduct the surrender in chambers or over a virtual video platform is within the court's discretion.

Surrender of Parental Rights

Waiting Period

T.C.A. § 36-1-111(d)(3)

- ▶ Discharged from hospital
 - ▶ 48 hours after the child's birth
 - ▶ Court may waive
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- ▶ **(d)(3)** A surrender is not valid unless made after the earlier of discharge from a hospital or other birthing facility or forty-eight (48) hours following the child's birth; provided, that the court may, for good cause shown, which is entered in an order in the minute book of the court, waive this waiting period.

Surrender Representation

T.C.A. § 36-1-111(d)(4)

- ▶ Parties who should be represented
- ▶ Psychological Counseling
- ▶ Legal Representation
 - ▶ Only surrendering party and their lawyer and court staff
- ▶ **(d)(4)** A surrender is not valid if the surrendering party states a desire to receive legal or social counseling until the request is satisfied or withdrawn.

Surrender of Parental Rights Identification

T.C.A. § 36-1-111(f)

- ▶ In any surrender proceeding, the court or other person authorized herein to conduct a surrender proceeding, and when a parental consent is executed in the adoption petition, the court shall require that the person or persons surrendering the child for adoption or the person or persons giving consent and the person or persons accepting the child through the surrender or receiving parental consent to satisfactorily prove their identities before the surrender is executed or the parental consent is accepted. No surrender or parental consent may be executed in any form in which the identities of the person or persons executing the surrender or parental consent or the person or persons or agencies receiving the surrender or the identity of the child whose name is known are left blank or in any form in which those persons, the child, or agencies are given pseudonyms on the form or in the petition at the time of the execution of the surrender or parental consent.

Surrender of Parental Rights

Physical Custody

T.C.A. § 36-1-111(d)(6)

- ▶ No surrender shall be valid unless the person or persons or entity to whom or to which the child is surrendered or parental consent is given:
- ▶ (A) Has, at a minimum, physical custody of the child;
- ▶ (B) Will receive physical custody of the child from the surrendering parent or guardian within five (5) days of the surrender;
- ▶ (C) Has the right to receive physical custody of the child upon the child's release from a health care facility; or
- ▶ (D) Has a sworn, written statement from the person, the department, the licensed child-placing agency, or child-caring agency that has physical custody pursuant to subdivision (d)(5), which waives the rights pursuant to that subdivision (d)(5).

Surrender of Parental Rights Home Study

T.C.A. § 36-1-116(a)(2)

- ▶ Safety
 - ▶ Background Check
 - ▶ Physician Report
 - ▶ Financial Stability
 - ▶ References
 - ▶ Social History
 - ▶ Education
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- ▶ (a)(2) To be valid for use in response to the order of reference issued pursuant to subsection (e), the home study must have been completed or updated within one (1) year prior to the date of the order of reference. The preliminary home study must have been completed within thirty (30) days prior to the filing of the petition.

Surrender of Parental Rights

Social and Medical History

T.C.A. § 36-1-111(a)(4)

- ▶ (a)(4) A surrendering party shall complete a social and medical history form as promulgated by the department of children's services, or a substantially similar form, and attach the completed and executed form to the surrendering party's pre-surrender information form.
- ▶ Social and Medical History Form
- ▶ Form completed under oath prior to surrender or confirmation of the parental consent.
- ▶ When being completed by birth parents, a form is required to be completed by each.
- ▶ When one birth parent is completing the form, information about the other birth parent should be completed if that parent is unavailable or refuses to complete the form.
- ▶ The legal parents of the child should complete information based on the birth family.
- ▶ Kept in a separate, confidential file designated until it is forwarded to the adoption court.
- ▶ Confidential and shall not be inspected by any person without written approval of the court.

Surrender of Parental Rights

Indian Child Welfare Act (ICWA)

25 U.S.C. § 1903 (1978)

- ▶ ICWA protects Native American and Alaska Native children who are tribal members or eligible for membership in a tribe.
- ▶ There must be a finding based on clear and convincing evidence that the court does not know or have reason to know that the child is an Indian child as defined by 25 U.S.C. § 1903(4).

Surrender of Parental Rights

Birth Mother Expenses

T.C.A. § 36-1-109(a)(1)(B)

▶ (a)(1)(B)(i)

(a) Hospital or medical services for the birth of the child;

(b) Medical care and other reasonable birth-related expenses for the mother or child;

(c) Counseling fees for the parents or prospective adoptive parents or child;

(d) Legal services or the reasonable costs of legal proceedings ...; or

(e) Actual expenses for housing, food, maternity clothing, child's clothing, utilities, or transportation for a reasonable period not to exceed... ninety (90) days after the birth, surrender, or parental consent to the adoption of the child.

▶ (a)(1)(B)(iv) Reasonable, actual expenses for housing, food, maternity clothing, child's clothing, utilities, or transportation do not include expenses incurred prior to the birth mother... entering into an adoption plan. These expenses must, whenever possible, be documented by receipts, invoices, rental agreements, or other written verification of expense...

Surrender of Parental Rights Motion and Order for Full or Partial Guardianship

T.C.A. § 36-1-102(27)(C)(ii) Complete guardianship entitles the guardian to the right to care for the child ... or as otherwise provided by the court order, and permits the guardian to place the child for adoption and consent to the adoption, or to be granted an adoption of the child, without further termination of parental or guardian rights;

T.C.A. § 36-1-102(27)(D)(ii) Partial guardianship entitles the guardian to provide care, supervision, and protection... or to the extent permitted by the court order granting partial guardianship, and permits the guardian to place the child for adoption and consent to that adoption; it does not authorize the court to enter an order of adoption until all remaining parental or guardianship rights have been terminated by surrender, consent, waiver of interest, or court order;

Surrender of Parental Rights Motion and Order for Full or Partial Guardianship Continued

- ▶ T.C.A. § 36-1-111(o)(6)(c) If the person, the department, or the licensed child-placing agency to whom the child is surrendered... then the court shall, contemporaneously with the surrender or the filing of an adoption petition, immediately upon written motion by the person or the person's attorney, or by the department or the licensed child-placing agency, enter an order giving the person, the licensed child-placing agency, or the department guardianship or partial guardianship of the child.
- ▶ Must obtain guardianship of the surrendered child through a court order within thirty (30) days of the date of the surrender.

Surrender of Parental Rights Literacy/Interpreter/Translator T.C.A. § 36-1-111(j)(1)

- ▶ (j)(1) When a person executing a surrender is unable to read, read in the English language, see, or otherwise unable to review and comprehend the surrender form and attachments offered for the person's signature or provided on the person's behalf, the person shall be provided with appropriate and sufficient assistance to make the documents and attachments understandable to the person both before and during the surrender hearing. The accepting party shall be responsible for payment of the cost of such interpreter or assistance if the surrendering party requires such assistance.

Surrender of Parental Rights Virtual Procedure—as of 2023 T.C.A. § 36-1-111(b)(1)

- ▶ Sign in front of the Judge virtually
- ▶ Overnight original to Attorney
- ▶ Revocation Period

- ▶ (b)(1)... A surrender made under this section may be made in chambers or over a virtual video platform on which the court sees the person or persons surrendering the child. The decision whether to conduct the surrender in chambers or over a virtual video platform is within the court's discretion.

Revocation of Surrender

T.C.A. § 36-1-112(a)(1)

- ▶ **(a)(1)(A)** A person who executed a surrender may revoke the surrender at any time within three (3) calendar days of the date of the surrender. The three-day period shall be calculated using the method for computation of time established in the Tennessee Rules of Civil Procedure Rule 6.01.
- ▶ **(a)(1)(B)** The surrender shall be revoked by appearing before the judge who accepted the surrender or that judge's successor or substitute, or another judge of a court with jurisdiction to accept a surrender in the absence of the judge who accepted the surrender or that judge's successor or substitute, or by appearing before the person, or that person's successor, pursuant to § 36-1-111(g), (h) or (i) before whom the surrender was executed and by executing the revocation of surrender form.

Waiver of Interest and Notice

T.C.A. § 36-1-111(s)

- ▶ (s)(1) Notwithstanding any other law to the contrary, a waiver of interest and notice, when signed under oath by the alleged biological father, shall serve to waive the alleged biological father's interest in the child and the alleged biological father's rights to notice of any proceedings with respect to the child's adoption, custody or guardianship. The alleged biological father who executes the waiver shall not be required to be made a party to any adoption proceedings, custody or guardianship proceedings with respect to the child and shall not be entitled to receive notice thereof, and the court in any adoption proceeding, notwithstanding any law to the contrary, shall have jurisdiction to enter a final order of adoption of the child based upon the waiver, and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes. The waiver may not be revoked.
- ▶ (s)(3) The waiver shall not be valid for use by a legal father as defined under § 36-1-102 or for any man listed as the father of a child on the child's birth certificate.

Waiver of Interest and Notice Continued

- ▶ Potentially multiple waivers for the same child
- ▶ Examples
 - ▶ Pre-birth: Paternity affidavit naming putative father as possible biological father
 - ▶ Post-birth: No paternity affidavit required to be provided to the father
- ▶ Irrevocable
- ▶ Social and medical history not required
- ▶ Same-sex couples
 - ▶ Anonymous sperm donor—no legal or putative father
 - ▶ Known sperm donor—statutory form or any “statement comparable”

Denial of Paternity

T.C.A. § 36-1-111(t)

- ▶ **(t)(1)** Notwithstanding any other law to the contrary, a denial of paternity and notice of a child, when signed under oath by the child's legal father claiming not to be the child's biological father, who is not the child's adoptive father, and when accompanied by credible proof that the legal father is not the father of the child, shall waive the legal father's parental rights and all parental interests with respect to the child. No further notice to the legal father or termination of the legal father's parental rights is necessary for the child to be placed in guardianship or adopted. "Credible proof" includes the written sworn statement of the child's mother.
- ▶ **(t)(4)** A denial of paternity and notice under this section may be executed at any time after conception of the child who is the subject of the denial, and may not be revoked by the father unless the adoption plan is abandoned. A father who executes a denial of paternity and notice under this section relinquishes any right to petition to have the father's legal or biological relationship to the child determined by a court.

Denial of Paternity Continued

- ▶ Legal fathers who are not biological father
- ▶ Irrevocable consent to terminate parental rights
- ▶ Rights terminate upon finalization of the adoption
- ▶ Notarized statutory form plus credible proof that the legal father is not the biological father
- ▶ Credible proof:
 - ▶ Paternity affidavit
 - ▶ DNA excluding the legal father
 - ▶ DNA testing verifying another man is biological father
- ▶ No further notice
- ▶ Adultery
- ▶ Estrangement
- ▶ Avoids surrender
- ▶ Executed at any time after conception

Alternative to Denial of Paternity: Rebuttal of Presumption of Parentage

- ▶ Respondent in TPR may also include involuntary grounds and best interest
- ▶ Court order rebutting the presumption of parentage also removes him as a party
- ▶ Standard of proof: preponderance of the evidence
- ▶ Agreed Order of Divorce (without DNA testing) is insufficient to exclude someone as a parent

Related Consent

T.C.A. § 36-1-117(f)

- ▶ (f) When the child is related to one (1) of the petitioners or is the stepchild of the petitioner, and the legal or biological parent or parents or guardian or guardians of the child signs the adoption petition as a co-petitioner for the specific purpose, as stated in the petition, of giving consent to the adoption, no further surrender, parental consent, or termination of parental rights shall be required as to that parent or guardian, as the act of joining in the adoption petition shall be deemed a complete surrender, notwithstanding subsection (g), and no further notice or service of process need be made to that person; provided, that where the stepparent of a stepchild seeks to adopt a stepchild, the co-signing of the petition by the child's parent who is the spouse of the petitioner shall not affect the existing parent/child legal relationship between that parent and the parent's child who is the subject of the adoption petition by the stepparent of the child.

Related Consent Continued

- ▶ Consenting parent joins in the Petition
- ▶ Paternity affidavit can be included in Petition
- ▶ Must be notarized
- ▶ T.C.A. § 36-1-102(46): Definition of Related
 - ▶ (46) “Related” means grandparents or any degree of great-grandparents, aunts or uncles, or any degree of great-aunts or great-uncles, or stepparent, or cousins of the first degree, or first cousins once removed, or any siblings of the whole or half degree or any spouse of the above listed relatives;
- ▶ Home study is waivable
- ▶ Waiting period waivable - newborns in surrogacy cases or relatives with adoption plan can finalize shortly after birth
- ▶ No in-court appearance for birth parent(s)
- ▶ Post-Adoption Contact Agreement (PACA)
- ▶ Revocable until finalization
- ▶ Consent should include statutory language

Unrelated Consent

T.C.A. § 36-1-117

- ▶ Deferred Surrender T.C.A. § 36-1-117(g)(1)
 - ▶ **(g)(1)** A parent may sign a petition for adoption as provided by § 36-1-102 for the purpose of giving parental consent to the adoption of the parent's child by unrelated persons. The petition must state that the parent understands that the entry of an order confirming the parental consent, without revoking the parental consent prior to the entry of such order, will terminate that parent's parental rights to the child forever and that the parent will have no legal rights to custody or control of the child in the future.
- ▶ Proceed with caution!
- ▶ Surrender required prior to finalization/Confirmation hearing requires appearance by consenting party—if they don't appear, amend petition to include involuntary TPR
- ▶ Order of Partial Guardianship
- ▶ Home Study required—even if relative adoption
- ▶ Revocable at any time--Consenting party entitled to withdraw consent and compete for custody of the child and child is returned to pre-consent status
- ▶ Surrendering party's rights could be reinstated based on discretion of the Court
- ▶ Waiting Period - 48 hours of birth or discharge from hospital

Contents for Petition T.C.A. § 36-1-116(b)

- ▶ (1) Petition must be verified and state:
 - ▶ Birth date, state, and county or country of birth of the child
 - ▶ Physical custody
 - ▶ Establish parent-child relationship
 - ▶ Name change
 - ▶ Personal and real property
 - ▶ Putative Father Registry (PFR)
 - ▶ Notice to PFR if child is less than 30 days old
 - ▶ ICPC
 - ▶ Expenses
 - ▶ Etc.

Necessary Documents/Filings

- ▶ Petition for Adoption and TPR or Petition for Adoption
- ▶ Order of Reference
- ▶ Home Study - Agency Must File
- ▶ Birth Certificate
- ▶ Marriage Certificate
- ▶ Divorce Decree(s)
- ▶ Putative Father Registry Response(s)
- ▶ Surrender/TPR/Consent/Relinquishment
- ▶ Social and Medical History for Surrender
- ▶ Order of Full or Partial Guardianship
- ▶ Waiver of Interest/Denial of Paternity
- ▶ Client Fee Affidavit
- ▶ Attorney Fee Disclosure
- ▶ Motion to Waive Home Study
- ▶ Motion to Set
- ▶ Order to Set
- ▶ Prep: Certificate of Adoption - Original Signatures

Post-Adoption Contact Agreements

T.C.A. § 36-1-145

- ▶ T.C.A. § 36-1-145(e) A contract for post-adoption contact must contain the following warnings in at least fourteen (14) point boldface type:
 - ▶ (1) After the entry of an order of adoption, an adoption cannot be set aside due to the failure of an adoptive parent, a biological parent, or the child to follow the terms of this contract or a later change to this contract; and
 - ▶ (2) A disagreement between the parties or litigation brought to enforce or modify this contract shall not affect the validity of the adoption and cannot serve as a basis for orders affecting the custody of the child.
- ▶ Notice
- ▶ Psychological opinion as to the child's needs
- ▶ Share opinion with other parties
- ▶ Mediation
- ▶ Court enforcement



Family Matters

