

Legal Process for Involuntary Termination of Parental Rights

Filing a Petition

The process for involuntary termination of parental rights starts with the filing of a [Petition for Termination of Parental Rights](#) (TPR). A TPR petition can be filed by an agency (e.g. the Department of Health and Family Services), district attorney, Guardian ad Litem, or interested person (e.g. the other parent, a guardian, a relative). The petition must include a statement of the grounds for the involuntary termination of parental rights. See article on [grounds for involuntary TPR](#).

Wisconsin law requires officials to file a TPR petition in certain situations:

- If a child has been placed outside of their home by court order for 15 of the last 22 months
- If a child was abandoned when they were under 1 years old.
- If a parent has murdered, attempted to murder, or paid someone else to murder the child's other parent.
- If a parent has committed a felony resulting in great bodily harm to the child or another child of the parent.

The petition is usually filed with several other forms, including:

- [Summons \(Termination of Parental Rights\)](#)
- [Order Appointment Guardian ad Litem or Attorney](#)
- [Uniform Child Custody Jurisdiction and Enforcement Act Affidavit](#)
- [Order Concerning Termination of Parental Rights \(Involuntary\)](#)

The person filing the TPR petition may also ask the court for a temporary order and an injunction stopping the parent(s) from visiting or contacting the child. The person must show that not allowing visitation or contact would be in the child's best

interest. The court may issue a temporary order without holding a hearing, but eventually (on or before the date of the TPR hearing) the court must hold a hearing on whether to issue the injunction. If granted, the injunction would remain in effect until the court either dismissed the petition for TPR or issued an order terminating parental rights.

Once a TPR petition is filed, the court will appoint a Guardian ad Litem (GAL) for the child [link to GAL article?]. A GAL is an attorney appointed by the Court to represent the interests of the child only, rather than the interests of either parent. The person who filed the TPR petition is responsible for paying the GAL fees. A parent who has been named in an involuntarily TPR petition is eligible for an attorney appointed by the State Public Defender's Office.

Fact-Finding Hearing (Trial)

The hearing on the TPR petition must be held within 30 days after the petition is filed unless time periods are waived or extended. At this hearing, the court determines whether the parent(s) object to the termination of their parental rights and must tell the parent(s) of their right to a jury trial. If the parent(s) object to the termination of their parental rights, the court must set a date for a fact-finding hearing within 45 days, unless everybody agrees to start the hearing immediately.

The purpose of the fact-finding hearing is to determine whether grounds exist for terminating parental rights. The hearing may exclude the child and is closed to the public. If the hearing is to a jury, the jury may decide only whether any grounds for TPR have been proven. In the end, the court must always make the final decision as to whether or not parental rights should be terminated.

If grounds for TPR are found by the court or jury, the court must find the parent unfit. However, that doesn't mean parental rights will definitely be terminated. Despite jury findings that grounds for termination exist, the court may still dismiss a TPR petition if evidence does not support the jury's finding or if the evidence of unfitness is not so shocking as to justify termination of parental rights.

Final Hearing

The court's final hearing, to determine whether it is in the child's best interest to terminate parental rights, may be held the same day as the fact-finding hearing or within 45 days, depending on circumstances. At this hearing, the court may give certain foster parents, relatives or other custodians of the child a right to be heard. The court must make a decision within 10 days of the hearing.

In evaluating the best interests of the child, the court must consider the following:

1. The likelihood of the child's adoption after termination of parental rights.
2. The age and health of the child, both at the time of the decision and, if applicable, at the time the child was removed from the home.
3. Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to break off these relationships.
4. The wishes of the child.
5. The length of time the parent and the child have been separated.
6. Whether the child will be able to enter into a more stable and permanent family relationship as a result of terminating parental rights, considering the child's current placement, the likelihood of future placements and the results of prior placements.

Appeals/Rehearings

Parents whose rights are terminated may have a right to appeal the judgment to the Court of Appeals. Appeal rights may be lost if the party does not act very quickly (thirty days or less) following a judgment terminating parental rights, although some rights may continue for a longer period of time (see below). Parents may request representation by the state public defender in their appeal.

Within 1 year of the rights termination, the child, parent, guardian, or GAL may ask the court for a rehearing based on new relevant evidence being found. If the child is adopted in that year, the time to ask for a rehearing is limited to the time before the adoption is granted.

Conclusion

Involuntary termination of parental rights in Wisconsin is a legal action taken only under severe circumstances to protect the welfare of the child. The legal process ensures that parents are given notice and an opportunity to be heard, and that the best interests of the child are the greatest concern.

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