

TERMINATION OF PARENTAL RIGHTS

Footnotes

Proceedings prior to January 1, 1977; see § 600.25

600A.1 Construction.

This chapter shall be construed liberally. The best interest of the child subject to the proceedings of this chapter shall be the paramount consideration in interpreting this chapter. However, the interests of the parents of this child or any natural person standing in the place of the parents to this child shall be given due consideration in this interpretation.

The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life. Application of this chapter is limited to termination of parental rights proceedings and shall not apply to actions to establish paternity or to overcome established paternity.

[C77, 79, 81, § 600A.1]

94 Acts, ch 1174, §12, 22

600A.2 Definitions.

As used in this chapter:

1. "*Adult*" means a person who is married or eighteen years of age or older.
2. "*Agency*" means a child-placing agency as defined in section 238.2 or the department.
3. "*Biological parent*" means a parent who has been a biological party to the procreation of the child.
4. "*Child*" means a son or daughter of a parent, whether by birth or adoption.
5. "*Court*" means a district court.
6. "*Custodian*" means a stepparent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child, a person who has accepted a release of custody, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child shall be as follows:
 - a. To maintain or transfer to another the physical possession of that child.
 - b. To protect, train, and discipline that child.
 - c. To provide food, clothing, housing, and ordinary medical care for that child.
 - d. To consent to emergency medical care, including surgery.
 - e. To sign a release of medical information to a health professional. All rights and duties of a custodian shall

be subject to any residual rights and duties remaining in a parent or guardian.

7. "*Department*" means the state department of human services or its subdivisions.

8. "*Guardian*" means a person who is not the parent of a minor child, but who has been appointed by a court or juvenile court having jurisdiction over the minor child to make important decisions which have permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the minor child or by operation of law, the rights and duties of a guardian with respect to a minor child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric or surgical treatment.

b. To serve as custodian, unless another person has been appointed custodian.

c. To make reasonable visitations if the guardian does not have physical possession or custody of the minor child.

d. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

9. "*Guardian ad litem*" means a person appointed by a court or juvenile court having jurisdiction over the minor child to represent that child in a legal action. A guardian ad litem appointed under this chapter shall be a practicing attorney.

10. "*Independent placement*" means placement for purposes of adoption of a minor in the home of a proposed adoptive parent by a person who is not the proposed adoptive parent and who is not acting on behalf of the department or of a child-placing agency.

11. "*Juvenile court*" means the juvenile court established by section 602.7101.

12. "*Minor*" means an unmarried person who is under the age of eighteen years.

13. "*Parent*" means a father or mother of a child, whether by birth or adoption.

14. "*Parent-child relationship*" means the relationship between a parent and a child recognized by the law as conferring certain rights and privileges and imposing certain duties. The term extends equally to every child and every parent, regardless of the marital status of the parents of the child. The rights, duties, and privileges recognized in the parent-child relationship include those which are maintained by a guardian, custodian, and guardian ad litem.

15. "*Putative father*" means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of birth of the child.

16. "*Stepparent*" means a person who is the spouse of a parent in a parent-child relationship, but who is not a parent in that parent-child relationship.

17. "*Termination of parental rights*" means a complete severance and extinguishment of a parent-child relationship between one or both living parents and the child.

18. *"To abandon a minor child"* means that a parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

[C77, 79, 81, § 600A.2]

83 Acts, ch 96, § 157, 159; 83 Acts, ch 186, § 10111, 10201; 90 Acts, ch 1271, § 1510; 94 Acts, ch 1046, §19; 94 Acts, ch 1174, §13, 22; 97 Acts, ch 161, §1; 97 Acts, ch 209, §27, 30

600A.3 Exclusivity.

Termination of parental rights shall be accomplished only according to the provisions of this chapter. However, termination of parental rights between an adult child and the child's parents may be accomplished by a decree of adoption establishing a new parent-child relationship.

If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

[C66, 71, 73, 75, § 232.40; C77, 79, 81, § 600A.3]

2003 Acts, ch 153, §17

600A.4 Relationship unaltered release of custody voluntariness of release.

1. A parent shall not permanently alter the parent-child relationship, except as ordered by a juvenile court or court. However, custody of a minor child may be assumed by a stepparent or a relative of that child within the fourth degree of consanguinity or transferred by an acceptance of a release of custody. A person who assumes custody or an agency which accepts a release of custody under this section becomes, upon assumption or acceptance, the custodian of the minor child.

2. A release of custody:

a. Shall be accepted only by an agency or a person making an independent placement.

b. Shall not be accepted by a person who in any way intends to adopt the child who is the subject of the release.

c. Shall be in writing.

d. Shall contain written acknowledgment of the biological parents that after the birth of the child three hours of counseling have been offered to the biological parents by the agency, the person making an independent placement, an investigator as defined in section 600.2, or other qualified counselor regarding the decision to release custody and the alternatives available to the biological parents. The release of custody shall also contain written acknowledgment of the acceptance or refusal of the counseling. If accepted, the counseling shall be provided after the birth of the child and prior to the signing of a release of custody or the filing of a petition for termination of parental rights as applicable. Counseling shall be provided only by a person who is qualified under rules adopted by the department of human services which shall include a requirement that the

person complete a minimum number of hours of training in the area of adoption-related counseling approved by the department. If counseling is accepted, the counselor shall provide an affidavit, which shall be attached to the release of custody, when practicable, certifying that the counselor has provided the biological parent with the requested counseling and documentation that the person is qualified to provide the requested counseling as prescribed by this paragraph. The requirements of this paragraph do not apply to a release of custody which is executed for the purposes of a stepparent adoption.

e. Shall contain a notice to the biological parent that if the biological parent chooses to identify the other biological parent and knowingly and intentionally identifies a person who is not the other biological parent in the written release of custody or in any other document related to the termination of parental rights proceedings, the biological parent who provides the incorrect identifying information is guilty of a simple misdemeanor.

f. Shall be accompanied by a report which includes, to the extent available, the complete family medical and social history of the person to be adopted including any known genetic, metabolic, or familial disorders and the complete medical and developmental history of the person to be adopted, and a social history of the minor child and the minor child's family but which does not disclose the identity of the biological parents of the person to be adopted. The social history may include but is not limited to the minor child's racial, ethnic, and religious background and a general description of the minor child's biological parents and an account of the minor child's prior and existing relationship with any relative, foster parent, or other individual with whom the minor child regularly lives or whom the child regularly visits.

A biological parent may also provide ongoing information to the adoptive parents, as additional medical or social history information becomes known, by providing information to the clerk of court, the department of human services, or the agency which made the placement, and may provide the current address of the biological parent. The clerk of court, the department of human services, or the agency which made the placement shall transmit the information to the adoptive parents if the address of the adoptive parents is known.

A person who furnishes a report required under this paragraph and the court shall not disclose any information upon which the report is based except as otherwise provided in this section and such a person is subject to the penalties provided in section 600.16, as applicable. A person who is the subject of any report may bring a civil action against a person who discloses the information in violation of this section.

Information provided under this paragraph shall not be used as evidence in any civil or criminal proceeding against a person who is the subject of the information.

The department shall prescribe forms designed to obtain the family medical and social history and shall provide the forms at no charge to any agency or person who executes a release of custody of the minor child or who files a petition for termination of parental rights. The existence of this report does not limit a person's ability to petition the court for release of records in accordance with other provisions of law.

g. Shall be signed, not less than seventy-two hours after the birth of the child to be released, by all living parents. The seventy-two-hour minimum time period requirement shall not be waived.

h. Shall be witnessed by two persons familiar with the parent-child relationship.

i. Shall name the person who is accepting the release.

j. Shall be followed, within a reasonable time, by the filing of a petition for termination of parental rights under section 600A.5.

k. Shall state the purpose of the release, shall indicate that if it is not revoked it may be grounds for

termination, and shall fully inform the signing parent of the manner in which a revocation of the release may be sought.

3. Notwithstanding the provisions of subsection 2, an agency or a person making an independent placement may assume custody of a minor child upon the signature of the one living parent who has possession of the minor child if the agency or a person making an independent placement immediately petitions the juvenile court designated in section 600A.5 to be appointed custodian and otherwise petitions, either in the same petition or within a reasonable time in a separate petition, for termination of parental rights under section 600A.5. Upon the custody petition, the juvenile court may appoint a guardian as well as a custodian.

4. Either a parent who has signed a release of custody, or a nonsigning parent, may, at any time prior to the entry of an order terminating parental rights, request the juvenile court designated in section 600A.5 to order the revocation of any release of custody previously executed by either parent. If such request is by a signing parent, and is within ninety-six hours of the time such parent signed a release of custody, the juvenile court shall order the release revoked. Otherwise, the juvenile court shall order the release or releases revoked only upon clear and convincing evidence that good cause exists for revocation. Good cause for revocation includes but is not limited to a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact which was material to its execution. In determining whether good cause exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child including avoidance of a disruption of an existing relationship between a parent and child. The juvenile court shall also give due consideration to the interests of the parents of the child and of any person standing in the place of the parents.

[S13, § 3260-c; C24, § 3665; C27, 31, 35, § 3661-a82, -a83, -a86; C39, § **3661.096, 3661.097, 3661.100**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 238.25, 238.26, 238.29; C77, 79, 81, § 600A.4]

92 Acts, ch 1192, § 1, 5; 94 Acts, ch 1174, §14, 15, 22; 99 Acts, ch 138, §6

600A.5 Petition for termination.

1. The following persons may petition a juvenile court for termination of parental rights under this chapter if the child of the parent-child relationship is born or expected to be born within one hundred eighty days of the date of petition filing:

- a. A parent or prospective parent of the parent-child relationship.
- b. A custodian or guardian of the child.

2. A petition for termination of parental rights shall be filed with the juvenile court in the county in which the guardian or custodian of the child resides or the child, the biological mother or the pregnant woman is domiciled. If a juvenile court has made an order pertaining to a minor child under chapter 232, division III, and that order is still in force, the termination proceedings shall be conducted pursuant to the provisions of chapter 232, division IV.

3. A petition for termination of parental rights shall include the following:

- a. The legal name, age and domicile, if any, of the child.
- b. The names, residences, and domicile of any:
 - (1) Living parents of the child.
 - (2) Guardian of the child.

- (3) Custodian of the child.
- (4) Guardian ad litem of the child.
- (5) Petitioner.
- (6) Person standing in the place of the parents of the child.

c. A plain statement of the facts and grounds in section 600A.8 which indicate that the parent- child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs "a" and "b" of this subsection.

e. The signature and verification of the petitioner.

[C66, 71, 73, 75, § 232.42, 232.43; C77, 79, 81, § 600A.5]

94 Acts, ch 1046, §20; 95 Acts, ch 49, §21; 95 Acts, ch 182, § 25

600A.6 Notice of termination hearing.

1. A termination of parental rights under this chapter shall, unless provided otherwise in this section, be ordered only after notice has been served on all necessary parties and these parties have been given an opportunity to be heard before the juvenile court except that notice need not be served on the petitioner or on any necessary party who is the spouse of the petitioner. "*Necessary party*" means any person whose name, residence, and domicile are required to be included on the petition under section 600A.5, subsection 3, paragraphs "a" and "b", and any putative father who files a declaration of paternity in accordance with section 144.12A, or any unknown putative father, if any, except a biological parent who has been convicted of having sexually abused the other biological parent while not cohabiting with that parent as husband and wife, thereby producing the birth of the child who is the subject of the termination proceedings.

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or if the interests of the guardian conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection 1 of this section.

A person who is appointed as a guardian ad litem for a minor child shall not also be the attorney for any party other than the minor child in any proceeding involving the minor child. The guardian ad litem may make an independent investigation of the interest of the child and may cause witnesses to appear before the court to provide testimony relevant to the best interest of the minor child.

3. Notice under this section may be served personally or constructively, as specified under subsections 4 and 5. This notice shall state:

a. The time and place of the hearing on termination of parental rights.

b. A clear statement of the purpose of the action and hearing.

4. A necessary party whose identity and location or address is known shall be served in accordance with rule of civil procedure 1.305 or sent by certified mail restricted delivery, whichever is determined to be the most effective means of notification. Such notice shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice pursuant to rule of civil procedure 1.305 shall be served not less than seven days prior to the hearing on termination of parental rights.

Notice by certified mail restricted delivery shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by certified mail restricted delivery which is refused by the necessary party being noticed shall be sufficient notice to that party under this section. Acceptance of notice by the necessary party shall satisfy the requirements of this subsection.

5. A necessary party whose identity is known but whose location or address is unknown or all unknown putative fathers, if any, shall be served by published notice in the form provided in this subsection. If the identity of a necessary party is known but the location of the necessary party is unknown, notice by publication shall also include the name of the necessary party. The child's actual or expected date of birth and place of birth shall also be stated in the notice. Notice by publication shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by publication shall be published once a week for two consecutive weeks in a medium which is reasonably expected to provide notice to the necessary party, the last publication to be not less than three days prior to the hearing on termination of parental rights. The notice shall be substantially in the following form: TO: (OR) ALL PUTATIVE FATHERS OF A CHILD (EXPECTED TO BE) BORN ON THE DAY OF , IN IOWA.

You are notified that there is now on file in the office of the clerk of court for county, a petition in case number which prays for a termination of your parent-child relationship to a child (expected to be) born on the day of For further details contact the clerk's office. The petitioner's attorney is

You are notified that there will be a hearing on the petition to terminate parental rights before the Iowa District Court for County, at the Courthouse in Iowa, atM. on the day of
CLERK OF THE ABOVE COURT

6. Proof of service of notice in the manner prescribed shall be filed with the juvenile court prior to the hearing on termination of parental rights.

[C66, 71, 73, 75, § 232.44, 232.45; C77, 79, 81, § 600A.6]

94 Acts, ch 1046, §21; 94 Acts, ch 1174, §1618, 22; 96 Acts, ch 1174, § 8; 97 Acts, ch 173, §15

600A.7 Termination hearing forum non conveniens.

1. The hearing on termination of parental rights shall be conducted in accordance with the provisions of sections 232.91 to 232.96 and otherwise in accordance with the rules of civil procedure. Such hearing shall be held no earlier than one week after the child is born.

2. Relevant information, including that contained in reports, studies or examinations and testified to by interested persons, may be admitted into evidence at the hearing and relied upon to the extent of its probative value. When such information is so admitted, the person submitting it or testifying shall be subject to both direct and cross-examination by a necessary party.

3. If a putative father files a declaration of paternity pursuant to section 144.12A, the putative father or the mother of the child may request that paternity be established pursuant to section 600B.41 prior to the granting of a dismissal of the petition to terminate parental rights.

[C66, 71, 73, 75, § 232.42, 232.46; C77, 79, 81, § 600A.7]

94 Acts, ch 1174, §19, 22

600A.8 Grounds for termination.

The juvenile court shall base its findings and order under section 600A.9 on clear and convincing proof. The following shall be, either separately or jointly, grounds for ordering termination of parental rights:

1. A parent has signed a release of custody pursuant to section 600A.4 and the release has not been revoked.
2. A parent has petitioned for the parent's termination of parental rights pursuant to section 600A.5.
3. A parent has abandoned the child.

4. If the termination of parental rights relates to a putative father and the putative father has abandoned the child. For the purposes of this subsection, a putative father is deemed to have abandoned a child as follows:

a. (1) If the child is less than six months of age when the termination hearing is held, a putative father is deemed to have abandoned the child unless the putative father does all of the following:

(a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.

(b) Takes prompt action to establish a parental relationship with the child.

(c) Demonstrates, through actions, a commitment to the child.

(2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:

(a) The fitness and ability of the putative father in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated.

(b) Whether efforts made by the putative father in personally assuming custody of the child are substantial enough to evince a settled purpose to personally assume all parental duties.

(c) Whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.

(d) Whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.

(e) Any measures taken by the putative father to establish legal responsibility for the child.

(f) Any other factors evincing a commitment to the child.

b. If the child is six months of age or older when the termination hearing is held, a putative father is deemed to have abandoned the child unless the putative father maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the putative father's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person

having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself out to be the father of the child.

c. The subjective intent of the putative father, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph "a" or "b" manifesting such intent, does not preclude a determination that the putative father has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the putative father to perform the acts specified in paragraph "a" or "b". In making a determination, the court may consider the conduct of the putative father toward the child's mother during the pregnancy. Demonstration of a commitment to the child is not met by the putative father marrying the mother of the child after adoption of the child.

5. A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.

6. A parent does not object to the termination after having been given proper notice and the opportunity to object.

7. A parent does not object to the termination although every reasonable effort has been made to identify, locate and give notice to that parent as required in section 600A.6.

8. An adoptive parent requests termination of parental rights and the parent-child relationship based upon a showing that the adoption was fraudulently induced in accordance with the procedures set out in section 600A.9, subsection 3.

9. Both of the following circumstances apply to a parent:

a. The parent has been determined to be a chronic substance abuser as defined in section 125.2 and the parent has committed a second or subsequent domestic abuse assault pursuant to section 708.2A.

b. The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

[C66, 71, 73, 75, § 232.41; C77, 79, 81, § 600A.8]

92 Acts, ch 1192, § 2, 5; 95 Acts, ch 182, § 26; 97 Acts, ch 161, §2; 97 Acts, ch 209, §27, 30

600A.9 Termination findings and order vacation of order.

1. Subsequent to the hearing on termination of parental rights under this chapter, the juvenile court shall make a finding of facts and shall:

a. Order the petition dismissed; or,

b. Order the petition granted. The juvenile court shall appoint a guardian and a custodian or a guardian only. An order issued under this paragraph shall include the finding of facts. Such finding shall specify the factual basis for terminating the parent-child relationship and shall specify the ground or grounds upon which the termination is ordered.

2. If an order is issued under subsection 1, paragraph "b" of this section, the juvenile court shall retain

jurisdiction to change a guardian or custodian and to allow a terminated parent or any putative biological parent to request vacation or appeal of the termination order which request must be made within thirty days of issuance of the granting of the order. The period for request by a terminated parent or by a putative biological parent for vacation or appeal shall not be waived or extended and a vacation or appeal shall not be granted after the expiration of this period. The juvenile court shall grant the vacation request only if it is in the best interest of the child. The supreme court shall prescribe rules to establish a period of thirty days, which shall not be waived or extended, in which a terminated or putative biological parent may request a vacation or appeal of a termination order.

3. If an order is issued under subsection 1, paragraph "b", the juvenile court shall have jurisdiction to allow an adoptive parent to request termination of the adoptive parent's parental rights and of the parent-child relationship based upon a showing that the adoption was fraudulently induced and to request that the order issued under subsection 1, paragraph "b", be vacated. The juvenile court shall grant the termination and vacation requests only after the parent whose rights have been terminated is given an opportunity to contest the vacation of the termination order and only if the termination of the adoptive parent's parental rights and the vacation of the termination order are in the best interest of the child.

4. A copy of any order made under this section shall be sent by the clerk of the juvenile court to:

a. The department.

b. The petitioner.

c. The parents whose rights have been terminated if they request such copies.

d. Any guardian, custodian, or guardian ad litem of the child.

[S13, § 254-a21; C24, 27, 31, 35, 39, § 3638; C46, 50, 54, 58, 62, § 232.22; C66, 71, 73, 75, § 232.47232.50; C77, 79, 81, § 600A.9]

92 Acts, ch 1192, § 3, 5; 94 Acts, ch 1174, §20, 22

600A.10 Termination procedures penalty for violation.

1. Any biological parent who chooses to identify the other biological parent and who knowingly and intentionally identifies a person who is not the other biological parent in the written release of custody or in any other document related to the termination of parental rights proceedings is guilty of a simple misdemeanor.

2. Any person who accepts a release of custody under section 600A.4 prior to the expiration of the seventy-two-hour period required is guilty of a serious misdemeanor.

94 Acts, ch 1174, §21, 22