Termination Grounds Checklist

Statutory

Involuntary Termination of the Parent-Child Relationship

Tex. Fam. Code § 161.001

☐ In this section, "born addicted to alcohol or a controlled substance" means a child:

- Who is born to a mother who during the pregnancy used a controlled substance, as defined by Tex. Health & Safety Code Chapter 481, other than a controlled substance legally obtained by prescription, or alcohol; and
- Who, after birth as a result of the mother's use of the controlled substance or alcohol:
  - experiences observable withdrawal from the alcohol or controlled substance;
  - exhibits observable or harmful effects in the child's physical appearance or functioning; or
  - exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids. Tex. Fam. Code § 161.001(a)

☐ The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

- That the parent has:
  - voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; Tex. Fam. Code § 161.001(b)(1)(A)
  - voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; Tex. Fam. Code § 161.001(b)(1)(B)
  - voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; Tex. Fam. Code § 161.001(b)(1)(C)
  - knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; Tex. Fam. Code § 161.001(b)(1)(D)
  - engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; Tex. Fam. Code § 161.001(b)(1)(E)
  - failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition; Tex. Fam. Code § 161.001(b)(1)(F)
  - abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; Tex. Fam. Code § 161.001(b)(1)(G)
  - voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; Tex. Fam. Code § 161.001(b)(1)(H)
  - contumaciously refused to submit to a reasonable and lawful order of a court under Tex. Fam. Code Chapter 261 Subchapter D; Tex. Fam. Code § 161.001(b)(1)(I)
  - been the major cause of:
    - the failure of the child to be enrolled in school as required by the Education Code; or
    - the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return; Tex. Fam. Code § 161.001(b)(1)(J)
  - executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Tex. Fam. Code Chapter 161; Tex. Fam. Code § 161.001(b)(1)(K)

Termination Grounds Checklist

continued

Statutory

- been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Tex. Fam. Code Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
  - Tex. Penal Code § 19.02 (murder);
  - Tex. Penal Code § 19.03 (capital murder);
  - Tex. Penal Code § 19.04 (manslaughter);
  - Tex. Penal Code § 21.11 (indecency with a child);
  - Tex. Penal Code § 22.01 (assault);
  - Tex. Penal Code § 22.011 (sexual assault);
  - Tex. Penal Code § 22.02 (aggravated assault);
  - Tex. Penal Code § 22.021 (aggravated sexual assault);
  - Tex. Penal Code § 22.04 (injury to a child, elderly individual, or disabled individual);
  - Tex. Penal Code § 22.041 (abandoning or endangering child, elderly individual, or disabled individual);
  - Tex. Penal Code § 25.02 (prohibited sexual conduct);
  - Tex. Penal Code § 43.25 (sexual performance by a child);
  - Tex. Penal Code § 43.26 (possession or promotion of child pornography);
  - Tex. Penal Code § 21.02 (continuous sexual abuse of young child or disabled person);
  - Tex. Penal Code § 20A.02(a)(7) or (a)(8) (trafficking of persons); and
  - Tex. Penal Code § 43.05(a)(2) (compelling prostitution); Tex. Fam. Code § 161.001(b)(1)(L)
- had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Tex. Fam. Code § 161.001(D) or (E) or substantially equivalent provisions of the law of another state; Tex. Fam. Code § 161.001(b)(1)(M). To proceed under this ground, the petition for termination must be filed before the first anniversary of the date DFPS was granted managing conservatorship in a case where the parent's rights were terminated based on a D or E finding. Tex. Fam. Code § 161.001(d-1)
- constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
  - the department has made reasonable efforts to return the child to the parent;
  - the parent has not regularly visited or maintained significant contact with the child; and
  - the parent has demonstrated an inability to provide the child with a safe environment; Tex. Fam. Code § 161.001(b)(1)(N)
- used a controlled substance, as defined by Tex. Health & Safety Code Chapter 481, in a manner that endangered the health or safety of the child, and:
  - failed to complete a court-ordered substance abuse treatment program; or
  - after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance; Tex. Fam. Code § 161.001(b)(1)(O)
- knowingly engaged in criminal conduct that has resulted in the parent's:
  - conviction of an offense; and
  - confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition; Tex. Fam. Code § 161.001(b)(1)(P)
  - been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription; Tex. Fam. Code § 161.001(b)(1)(Q)

Termination Grounds Checklist

continued

Statutory

- voluntarily delivered the child to a designated emergency infant care provider under Tex. Fam. Code § 262.302 without expressing an intent to return for the child; Tex. Fam. Code § 161.001(b)(1)(R)
- been convicted of:
  - the murder of the other parent of the child under Tex. Penal Code § 19.02 or Tex. Penal Code § 19.03, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code §§ 19.02 or 19.03;
  - criminal attempt under Tex. Penal Code § 15.01, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code § 15.01, to commit the offense described by Tex. Fam. Code § 161.001(b)(1)(S)(i);
  - criminal solicitation under Tex. Penal Code § 15.03, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code § 15.03, of the offense described by Tex. Fam. Code § 161.001(b)(1)(S)(i); or
  - the sexual assault of the other parent of the child under Texas Penal Code §§ 22.011 or 22.021, or under a law of another state, federal law, or the uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code §§ 22.011 or 22.021; Tex. Fam. Code § 161.001(b)(1)(S)
- been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Tex. Penal Code §§ 22.011 or 22.021 or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code §§ 22.011 or 22.021. Tex. Fam. Code § 161.001(b)(1)(T); or
- been convicted of criminal solicitation of a minor under Tex. Penal Code § 15.031, or online solicitation of a minor under Tex. Penal Code § 33.021 or other under a law of another state, federal law, law of a foreign country or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code §§ 15.031 or 33.021. Tex. Fam. Code § 161.001(b)(1)(U); **AND**

- That termination is in the best interest of the child. Tex. Fam. Code § 161.001(b)(2); **AND**
- DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home. Tex. Fam. Code § 161.001(f).

Prohibited Findings

☐ Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to make a finding under Tex. Fam. Code § 161.001(b) and order termination of the parent-child relationship. Evidence that the parent:

- Homeschooled the child;
- Is economically disadvantaged;
- Has been charged with a nonviolent misdemeanor offense other than:
  - an offense under Tex. Penal Code Title 5;
  - an offense under Tex. Penal Code Title 6; or
  - an offense that involves family violence, as defined by Tex. Fam. Code § 71.004;
- Provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Tex. Occ. Code Chapter 169; or
- Declined immunization for the child for reasons of conscience, including a religious belief;

Termination Grounds Checklist

continued

Statutory

- Sought a second opinion for a child's medical care or transferred a child's medical care to a new provider or facility;
- Allowed a child to engage in appropriate independent activities;
- Refused to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, unless the refusal:
  - Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
  - Results in an observable and material impairment to the growth, development, or functioning of the child; or
- Chose a recognized alternative health care treatment or therapy for the child that could be considered as new, emerging, or nonstandard, unless the treatment or therapy:
  - Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
  - Results in an observable and material impairment to the growth, development, or functioning of the child. Tex. Fam. Code § 161.001(c)

This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter. Tex. Fam. Code § 161.001(e)

Termination of an Alleged Biological Father

☐ Except as otherwise provided by this section, the procedural and substantive standards for termination of parental rights apply to the termination of the rights of an alleged father. Tex. Fam. Code § 161.002(a)

☐ The rights of an alleged father may be terminated if:

- After being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Tex. Fam. Code Chapter 160; Tex. Fam. Code § 161.002(b)(1)
- The child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, and he has not registered with the paternity registry under Tex. Fam. Code Chapter 160, and after the exercise of due diligence by the petitioner:
  - his identity and location are unknown; or
  - his identity is known but he cannot be located; Tex. Fam. Code § 161.002(b)(2)
- The child is under one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed and he has not registered with the paternity registry under Tex. Fam. Code Chapter 160 or Tex. Fam. Code § 161.002(b)(3);
- He has registered with the paternity registry under Tex. Fam. Code Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner. Tex. Fam. Code § 161.002(b)(4)

☐ The termination of the rights of an alleged father under Tex. Fam. Code § 161.002(b)(2) or (3) rendered on or after January 1, 2008, does not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry under Tex. Fam. Code Chapter 160. Tex. Fam. Code § 161.002(c-1)

☐ The termination of rights of an alleged father under Tex. Fam. Code § 161.002(b)(4) does not require service of citation by publication on the alleged father. Tex. Fam. Code § 161.002(d)

☐ The court shall not render an order terminating parental rights under Tex. Fam. Code § 161.002(b)(2) or (3) unless the court receives evidence of a certificate of the results of a search of the paternity registry under Tex. Fam. Code Chapter 160 from the vital statistics unit indicating that no man has registered the intent to claim paternity. Tex. Fam. Code § 161.002(e)

Termination Grounds Checklist

continued

Statutory

☐ The court shall not render an order terminating parental rights under Tex. Fam. Code § 161.002(b)(4) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to obtain personal service of citation on the alleged father and considering any evidence submitted by the attorney ad litem for the alleged father, has found that the petitioner exercised due diligence in attempting to obtain service on the alleged father. The order shall contain specific findings regarding the exercise of due diligence of the petitioner. Tex. Fam. Code § 161.002(f)

Involuntary Termination: Inability to Care for Child

☐ The court may order termination of the parent-child relationship in a suit filed by DFPS if the court finds that:

- The parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
- The illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;
- DFPS has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with Tex. Fam. Code § 161.003(c);
- DFPS has made reasonable efforts to return the child to the parent; and
- The termination is in the best interest of the child.

Tex. Fam. Code § 161.003(a)

☐ Immediately after the filing of a suit under this section, the court shall appoint an attorney ad litem to represent the interests of the parent against whom the suit is brought. Tex. Fam. Code § 161.003(b)

☐ A hearing on the termination may not be held earlier than 180 days after the date on which the suit was filed. Tex. Fam. Code § 161.003(c)

☐ An attorney appointed under Tex. Fam. Code § 161.003(b) shall represent the parent for the duration of the suit unless the parent, with the permission of the court, retains another attorney. Tex. Fam. Code § 161.003(d)

After Denial of Prior Petition to Terminate

☐ The court may terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship if:

- The petition under Tex. Fam. Code § 161.004 is filed after the date the order denying termination was rendered;
- The circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date that the order was rendered;
- The parent committed an act listed under Tex. Fam. Code § 161.001 before the date the order denying termination was rendered; and
- Termination is in the best interest of the child.

Tex. Fam. Code § 161.004(a)

☐ At a hearing under this section, the court may consider evidence presented at a previous hearing in a suit for termination of the parent-child relationship of the parent with respect to the same child. Tex. Fam. Code § 161.004(b)