

Termination of Parental Rights

A Handbook for Parents



*Written and published by
Legal Services of New Jersey*

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Introduction

Legal Services of New Jersey (LSNJ) coordinates the Statewide Legal Services system in New Jersey, providing free legal assistance to lower-income people in civil matters. Part of Legal Services' mission is to make people more aware of their legal rights and provide helpful information if they choose to pursue a legal case on their own. Awareness may help you resolve some problems on your own, without

Important notes about using this handbook

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This handbook gives you general information about termination of parental rights. Only a lawyer can give you specific advice about your case and help you protect all of your rights. By providing this information, we are not acting as your lawyer. Always talk to a lawyer, if you can, before taking legal action.

The information in this handbook is accurate as of November 2012, but laws often change. Please check our website, www.LSNJLAW.org, for updates to this handbook, or talk to a lawyer for up-to-date legal advice.

the need for a lawyer, or to make better use of a lawyer if you have one.

LSNJ wrote this handbook to help parents when the Division of Child Protection and Permanency, DCP&P (formerly the Division of Youth and Family Services, DYFS), takes legal action to terminate (end) their rights to their children. This handbook contains information about the law and legal process that apply to you as a defendant parent being sued by DCP&P in a termination of parental rights case. If DCP&P is trying to end your parental rights to your child, reading and becoming familiar with the information discussed in this handbook may be useful to you. In addition, you may use the handbook as a reference, by finding specific topics in the table of contents and searching the glossary on page 48 for a definition of terms mentioned here.

Every termination of parental rights case is different

Every termination of parental rights case is different. Each case involves specific, individual circumstances. The facts of your case may not match the situation the handbook assumes. For example, the handbook is written as if your termination of parental rights case concerns only one child, although DCP&P often seeks to terminate parental rights to more than one child in the same case. For the most part, the handbook is written as if you were the custodial parent of the child (the parent who lives with the child most of the time), although that may not be your situation. DCP&P routinely names both parents, including non-custodial parents or parents who have never lived with their children, as defendants in termination of parental rights cases.

Legal Services Family Representation Project

Through the statewide Family Representation Project (FRP), Legal Services of New Jersey lawyers who are special-

ists in child welfare law provide advice and sometimes extended representation to low-income parents in matters involving DCP&P. If you would like to apply to get advice or to have a Legal Services lawyer represent you, call LSNJ-LAW™, Legal Services of New Jersey's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529). Hotline hours are Monday through Friday, 8 a.m. to 5:30 p.m. You may also apply online at www.lsnjlawhotline.org. If you are not eligible for assistance from Legal Services, the hotline will refer you to other possible resources.

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Comments and suggestions

We hope that this handbook will be helpful to you. Please let us know if you have comments or suggestions that we might use in future editions. You can write to us or email us at:

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What Do Parents Need to Know about Termination of Parental Rights?

Some of the most important things parents need to know about actions to terminate parental rights are summarized below. If you are a parent named in a termination of parental rights case:

You need to get a lawyer to represent you as soon as possible. If you cannot afford to hire a lawyer, you may be eligible to have a lawyer appointed for you. See *How to get a lawyer* on page 17 and *How Can You Make the Best Use of Your Lawyer?* on page 45.

You have the right to ask the Division of Youth and Family Services (DCP&P) for services that will help you solve the problems that may have caused DCP&P to file this lawsuit against you. See *Getting services from DCP&P* on page 23.

You must attend all scheduled visits with your child, and you have a right to request more frequent visits. Visiting with your child is very important. See *Visiting with your child* on page 24.

You should attend all court sessions, evaluations, classes, therapy, or other appointments related to this case. If you miss these scheduled appointments, you may hurt your chances of winning your case. See *Getting services from DCP&P* on page 23.

Get a lawyer to represent you as soon as possible. If you cannot afford to hire a lawyer, you may be eligible to have a lawyer appointed.

You are entitled to a trial to determine whether or not your rights to your child should be terminated. See *What Happens at the Trial?* on page 38.

You will lose all rights to have contact with your child or even to get information about him or her if your parental rights are terminated. However, if you keep current information about yourself in the DCP&P Adoption Registry, it will be there for your child if your child looks for you when he or she grows up. See *DCP&P Adoption Registry* on page 43.



What Does Termination of Parental Rights Mean?

Termination of parental rights is a very serious matter. Termination of parental rights means the end of a legally recognized parent-child relationship. If your parental rights to your child are terminated, you will no longer have the legal right to any contact with the child, in person or by telephone, mail, or computer. You will lose your right to information about your child, including medical and educational records. You will not have access to information about or photographs of the child's progress. You will only be able to have contact with your child if the adoptive parents give you permission.

A note about child support

Your financial responsibility for the child does not stop when parental rights are terminated. That legal responsibility only ends upon the adoption of the child. During the court case, and even after your rights are terminated (but before the child is adopted), DCP&P, your county welfare agency, or a relative caregiver of your child may seek a court order for child support against you.

This case is not a criminal case

A termination of parental rights action is a civil action, not a criminal action. You cannot be put in jail or subjected to any other criminal penalty if you lose this case. Criminal charges may be brought against parents for child abuse or neglect. Parents who are charged with those crimes are usually arrested close to the time DCP&P first removes their children from them.

If your parental rights to your child are terminated, you will no longer have the legal right to any contact with the child.

If you are named as a defendant in a criminal case, or if the prosecutor's office is investigating you as a possible criminal defendant, make sure that the lawyer representing you in your termination of parental rights case knows about your criminal case. Also make sure that the lawyer defending you in the criminal case knows about your termination of parental rights case. When there are two cases, one civil and one criminal, sometimes issues about getting evidence or scheduling visits with the child must be coordinated between the cases.

This handbook does not address criminal law or procedure. 

How Did You Become Involved with DCP&P?

The Division of Youth and Family Services (DCP&P) is the child protection agency in New Jersey. Under the law, there are two ways for DCP&P to remove a child from his or her parents. DCP&P can file a court action against the parents, or the parents may sign an agreement, called a *voluntary placement agreement*, to place the child with DCP&P.

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If you signed a voluntary placement agreement, DCP&P probably got a court order, without filing a complaint or having a trial, approving that placement under a law called *The Child Placement Review Act*.

If you did not sign a voluntary placement agreement, DCP&P had to file a complaint claiming child abuse or neglect to get a court order for custody and “care and supervision” of your child at the time it removed your child from you.

In a child abuse or neglect court action, the judge must decide whether you abused or neglected your child. You may have stipulated (agreed) to facts upon which the judge based a finding of abuse or neglect against you, or you may have had a fact-finding trial that resulted in a court judgment finding that you abused or neglected your child.

In rare cases, DCP&P is allowed to file a complaint in court to terminate parents’ rights without first getting either a voluntary consent agreement or a court judgment finding that you abused or neglected your child.

Family reunification

When your child was removed from you, DCP&P probably tried to reunify your child with you. In most cases, DCP&P is supposed to first try to work with parents to solve the problems that prevent parents from caring for their children. This is called making “reasonable efforts” to avoid removing the child from your home. DCP&P must also make reasonable efforts to return the child to your home. If a parent needs substance abuse rehabilitation, therapy or counseling, a home health aide, day care, or other services to be able to provide a safe home for his or her children, DCP&P is supposed to help the parent get those things.

In some instances, DCP&P may have successfully convinced the court that it should not be required to make reasonable efforts to help a parent. This can happen to a parent who has been found by a court to have committed or tried to commit a serious crime against one of his or her children, to a parent whose rights to another of his or her children were terminated involuntarily, and to a parent in certain other unusual situations.

DCP&P decided to try to terminate parental rights

At some point, DCP&P made a decision to try to terminate your parental rights. You may have attended a permanency hearing, at which DCP&P presented its plan to terminate your parental rights. Permanency hearings must be held no later than 12 months after your child has been placed in the care of someone else. In situations where the court determines that DCP&P does not have to make reasonable efforts to reunify you and your child, the permanency hearing must be held within 30 days of that determination. Once DCP&P decides not to reunify your family, it is required to make plans for your child to have a

permanent home with the child's current caretakers or with someone else.

A child whose parents are living cannot be adopted unless the parental rights of both the child's birth mother and birth father have been terminated. If DCP&P cannot find one of the child's parents (commonly the father), it can still terminate that parent's rights if it can prove to the court that it tried to identify and find the parent, but was unable to do so.

DCP&P uses the term *foster home adoption* or *resource parent adoption* to describe its plan for a child to be adopted by his or her current caretakers. It uses the term *select home adoption* to describe its plan to find others to adopt your child.

In most cases, DCP&P is required by law to file an action to terminate parental rights after a child has been in foster care for 15 months. There are exceptions to this requirement if:

Your child is living with a relative and a permanent plan for the child may be achieved without termination of parental rights;

DCP&P has written in your case plan a good reason why termination of parental rights is not in the best interests of your child; or

DCP&P believes that, to be a safe parent, you need certain help that it has not provided for you.

DCP&P filed a complaint for guardianship and termination of parental rights

The complaint that DCP&P has filed against you for termination of parental rights is also called a *guardianship complaint* because DCP&P will be awarded guardianship of your child if your parental rights are terminated. This complaint is a very important document. It explains why DCP&P is trying to end your parental rights. To do so, DCP&P must prove that the things it says about you in the complaint are true. The court then de-

The guardianship complaint explains why DCP&P is trying to end your parental rights.

icides if the proof justifies terminating your parental rights under New Jersey law.

The termination of parental rights case filed against you can only be used to terminate your rights to the child or children named in the complaint. If you have other children who are not named in the complaint, the court cannot terminate your

rights to those children through this court action. DCP&P can, however, ask the court's permission to add their names to the complaint.

DCP&P is required to *serve* the complaint on you. To serve you means that DCP&P must give you a copy of it. In addition, DCP&P is required to serve you with a copy of a special order, called an *order to show cause* (OTSC). When DCP&P filed its termination of parental rights complaint against you, it also filed a request that the judge sign an OTSC. An OTSC is a court order that tells you that you must appear in court on a specific date so that the judge can consider and decide your case as soon as possible. It is used in place of a summons. The date for you to appear in court is called the *return date*. It is very important that you appear in court at the time and date described. If you do not go to court, the court will not consider your response to the complaint and will consider only the claims of DCP&P before it enters its order.



Who are the Parties and the Lawyers in Your Case?

The *plaintiff* is the party who begins a civil lawsuit by filing a complaint. DCP&P is the plaintiff in a termination of parental rights action against a parent. The lawyer for DCP&P is a New Jersey state government employee called a *deputy attorney general* (DAG).

The *defendant* is the party who is sued by the plaintiff. In a termination of parental rights case, the parent is the defendant. As the defendant, you need to have a lawyer as soon as possible. If you cannot afford to hire a lawyer, you may be eligible to have a lawyer appointed for you through the Office of Parental Representation (OPR), which is a division of the New Jersey Office of the Public Defender (OPD).

The child or children named in the complaint are represented by a lawyer called a *law guardian*. The OPD also provides law guardians for children who are the subject of DCP&P termination of parental rights cases.

How to get a lawyer

It is very important that you get a lawyer as soon as possible. If you can afford to hire a lawyer, you should do so immediately. Your county bar association's lawyer referral service can suggest names of lawyers who can help you.

If you cannot afford to hire a lawyer, you may qualify to have a lawyer represent you through the OPR. DCP&P is required to provide you with contact information for the OPR office handling matters in the county in which you live. This information is required to be in the papers provided to you when DCP&P files a complaint. You should try to contact the listed OPR

office before the date of the first court hearing. DCP&P is also required to provide notice of any initial court hearing in your case to OPR. This initial hearing is usually called an *application for an order to show cause*.

If DCP&P filed a child abuse or neglect case against you before it filed a termination of parental rights case against you, you may have already been represented by an OPR lawyer. When the new case is filed, you must complete a new application for representation through the OPR. If the court determines that you have income low enough to be eligible for representation through the OPR, you may or may not be assigned the same lawyer who represented you in the child abuse or neglect case. If you were satisfied with the services of the OPR lawyer who has already represented you, you may request that lawyer by name.

If you contact the OPR, an OPR lawyer may represent you provisionally. This means that an OPR lawyer will appear on your behalf at the initial court hearing before you have actually applied for an OPR lawyer and before the court determines that your income qualifies you for representation by the OPR. If DCP&P does not provide the OPR with notice of your case, or if you do not contact the OPR directly prior to the scheduled hearing, you will be able to apply for an OPR lawyer at your first court hearing by asking the judge for a lawyer. If you request a lawyer from the OPR as soon as you find out about the case, remember that you may be able to have a lawyer with you at your first court hearing.

To get an OPR lawyer as quickly as possible, go to the family intake or family reception office at the courthouse where your case has been filed as soon as you know that DCP&P has filed an action against you. Tell the court staff that you would like a lawyer to represent you in your case. Bring with you a copy of any court papers you have received and proof of your income. You will have to provide information about your income and

any property you own. The court, not the OPR, is responsible for determining whether, based on income, you qualify for an OPR lawyer.

Give the court a telephone number and an address where you can be reached. Ask to be notified as soon as your lawyer is appointed. If a week goes by and you do not hear anything, call the OPR headquarters in Trenton at 609-341-3832.

After your case is over, the New Jersey Office of the Public Defender (OPD) will send you a bill for the lawyer's legal services. The bill will also include other expenses, such as expert witness fees, that the OPR pays in defending you. If you do not pay those fees, the court will place a lien for a period of 10 years on any property you own or may own in the future (such as a home, a bank account, or a car). You have the right to challenge the amount of the lien or your ability to pay. Even if you cannot pay, you will still receive legal services.

Legal Services of New Jersey's Family Representation Project provides free legal advice and sometimes extended representation to low-income parents in Termination of Parental Rights matters. To apply for these services see *Introduction* on page 5.

Separate lawyers for each defendant

In a termination of parental rights case, the law requires that each parent have his or her own lawyer. This is so, even if both parents are asking that the child be returned to them so that they can raise the child together. Separate lawyers are necessary because the parents involved may disagree or take positions against each other during the case. Separate lawyers give each parent a better opportunity to make the best possible case.

Please also see *How Can You Make the Best Use of Your Lawyer?* on page 45.



What are the Grounds for Terminating Parental Rights?

The law describing what DCP&P must prove to terminate parental rights appears in the New Jersey Statutes at N.J.S.A. 30:4C-15 and 30:4C-15.1. You may get a copy of this law at courthouse law libraries and most public libraries. It describes the five different grounds, listed below, for terminating parental rights. To win the case against you, DCP&P must choose one ground and prove all of the elements of that ground at trial.

1. Best interests of the child

The most common legal basis for terminating parental rights is called *best interests of the child*. In order to terminate your pa-

The most common legal basis for terminating parental rights is called best interests of the child.

rental rights on the ground of best interests of the child, DCP&P must prove that all of the following things are true:

You have harmed or will continue to harm your child.

You are unwilling or unable to end the harm or danger of harm you pose to your child (the harm may be that your child is emotionally at-

tached or bonded to his or her current caretakers and would suffer serious and lasting emotional damage if separated from them), or you are unable or unwilling to provide a safe, permanent home for your child.

The child is being harmed because he or she does not have a permanent home.

DCP&P has done what it was required to do to help you correct your problems and to arrange for you to visit with your child.

There are no reasonable alternatives to termination of parental rights, such as placing the child with a relative.

Terminating your rights will benefit the child more than it will hurt the child, usually because someone is waiting to adopt him or her.

2. Failure to correct problems

Another legal basis for terminating parental rights is a parent's failure to correct problems. To base its termination on this ground, DCP&P must prove that the following things are true:

Within a year from the time of the removal of your child, you have not corrected the problems (such as substance abuse, psychological problems, or dangerous parenting practices) that caused the child to be taken from your home, although you are physically and financially able to correct your problems.

Another legal basis for terminating parental rights is a parent's failure to correct problems.

DCP&P has done what it was required to do to help you correct your problems.

3. Abandonment

Parental rights may be terminated on the ground of abandonment if:

DCP&P does not know who you are, even though it has used all reasonable methods to identify you; or

Without having a good reason, you have had no contact with the child, the child's foster parents, or DCP&P for six

months or more, and DCP&P does not know where you are and has been unable to find you.

4. Conviction of a crime

Another ground for terminating parental rights is if you have been convicted of, or entered a plea of guilty to, abuse, abandonment, neglect, or cruelty to a child in a criminal case.

5. Other court findings

Your parental rights also may be terminated if:

A court has found that you committed or attempted to commit, conspired, helped, or hired someone to commit murder, aggravated manslaughter, or manslaughter of any of your children; or

A court has found that you committed or attempted to commit an assault that resulted or could have resulted in significant bodily injury to any of your children; or

A court has found that you committed some other very serious act that resulted or could have resulted in the death of or serious bodily injury to any of your children. 

What are Your Rights and Responsibilities?

Getting services from DCP&P

This is your final chance to fix the problems that prevent you from caring for your child. If you have a substance abuse problem, you must enroll in a substance abuse treatment program immediately. If you are recovering from substance abuse, this is an important time to get all of the help you need to stay clean and be tested to prove that you are clean.

If there are particular services that you think you need now, tell DCP&P and your lawyer. If DCP&P refuses to give you help at this point, your lawyer can ask the judge to order DCP&P to give you the services you need. If you cannot get DCP&P to give you services, try to find the help you need yourself.

DCP&P is usually required to make “reasonable efforts” to help parents correct their problems. These reasonable efforts include at least the following steps:

- Working with you to develop a plan for services to help you get your child back;

- Providing or referring you to the services you and DCP&P have agreed upon, such as counseling, family therapy, or substance abuse treatment;

- Informing you about the progress, development, and health of your child in foster care; and

- Arranging for you to visit with your child.

If DCP&P is providing therapy, parenting skills classes, or other services to you now, be sure you attend all of the sessions. If you do not participate in the services DCP&P offers, a judge

If DCP&P is providing therapy, parenting skills classes, or other services to you now, be sure you attend all of the sessions.

is likely to think that you are not serious about getting your child back. If you are ordered by a judge to participate in services and you do not participate, the court may penalize you.

One problem many parents face in termination of parental rights cases is having to miss work or

school to attend evaluations, court, parenting classes, substance abuse programs, or therapy sessions. If you work or go to school during the day, make sure that the caseworker and your lawyer know your schedule for work and school. Ask the caseworker or service provider to schedule appointments that do not conflict with these obligations or with other appointments for services. If the services you need cannot be provided at a time when you can go, consider changing your work or school schedule or looking for a different job or school program that will allow you to be where you are required to be. Try to arrange your schedule so that you can miss work or school when you have to do the things you must do to try to get your child back. Let your employer or teachers know that you sometimes will have to be away during the day.

Discuss any barriers to your full participation in the services with your lawyer to get help finding a solution.

Visiting with your child

Regular visits are a very important part of trying to get your child returned and maintaining your parental rights. You should have as much contact with your child as possible. Regular visits help maintain and strengthen your relationship with your child and allow your child to have consistent and reliable contact with you. It is very important that you do not miss visits with your child.

If DCP&P is not letting you visit with your child, you may ask the court to order visits. If DCP&P argues that visits with you could be psychologically or physically dangerous for your child, the judge may require psychological evaluations to help decide whether to permit visits. Another possibility is that the judge might order that visits take place in the presence of a therapist or counselor.

In many cases, visits are held at the DCP&P office and are supervised by a caseworker. If you are not satisfied with how often you visit, where your visits take place, or how long they last, ask your lawyer to try to get you a better visitation plan.

You may make a request to the court that visits be more often, for a longer period of time, held in a different location, and supervised by a relative, friend, or community member. New Jersey's visitation regulations recognize that frequent and lengthy family visits are "beneficial for most children." The regulations state that the goal for most children is to have lengthy weekly visits with parents in the most comfortable setting possible.

New Jersey's visitation regulations recognize that frequent and lengthy family visits are "beneficial for most children."

You may also ask that visits be unsupervised. Unsupervised visits are more likely to be granted if you are making progress in the completion of the services offered to you or if the claims DCP&P makes against you do not raise safety issues. For example, a parent charged with educational neglect may not require supervision during a visit. If your visits must be supervised, you or your lawyer may suggest that a friend or relative be the supervisor.

You may ask DCP&P and the judge to allow your visits with your child to take place at your home; at the home of a friend or relative; or at a park, restaurant, or other public place.

What are Your Rights and Responsibilities?

Sometimes visits can be arranged for a parent who is in prison or jail, a hospital, or a substance abuse treatment program.

In addition to parent-child visits, you may ask DCP&P and the judge for contact by telephone, letters, or e-mail. You may also ask to participate in or attend the child's extracurricular activities, such as attending a "back-to-school night," a school play, or an organized team sport.

Make the most of your time with your child. Try to take healthy snacks for your child to eat and drink at the visits. Take games to play or books to read. Sharing pictures can help reinforce your child's relationship with the family.

If you have no way to get to your visits, ask DCP&P to provide you with transportation. If DCP&P does not agree to provide transportation, your lawyer may ask the court to order DCP&P to provide it.



What Options Do You Have?

Because the consequences to you and your child are so serious, you must give a great deal of thought to your response to the court action to terminate your parental rights. You have the following options:

1. Attempt to regain custody of your child

You are entitled to a trial at which you will have the opportunity to defend against termination of your parental rights and try to convince the judge to return your child to you.

The fight to keep your parental rights and regain custody of your child is a difficult one. To have a chance of winning, you must work closely with your lawyer and be ready to devote a lot of time and energy to the case.

You must work closely with your lawyer and be ready to devote a lot of time and energy to the case.

2. Place your child in the custody of a relative or friend

An alternative to termination of your parental rights is to try to have your child placed with a relative or friend. When DCP&P first removes a child, it is required to look for relatives who might be able to care for the child. Now that DCP&P has begun its action to terminate your parental rights, it probably will oppose moving your child to the home of a relative if the child's current caretakers want to adopt the child and can be approved as adoptive parents. However, whether or not DCP&P wants to move your child, you should tell DCP&P and your lawyer about a relative or friend who could provide a good home for your child. DCP&P is less likely to agree to place your

child with a friend than with a relative, but you have the right to request that DCP&P investigate the possibility of placement with both.

DCP&P may place your child with a friend or relative from either side of the child's family. If DCP&P is considering a friend or relative with whom you do not want your child to live, tell your lawyer and DCP&P.

Generally, DCP&P will require foster parent training and a home study of any potential caretaker, including a relative or family friend. A home study includes criminal and DCP&P records checks. Some people do not qualify to be certified as foster parents due to certain criminal history, prior DCP&P involvement, or other facts that may be revealed by the home study. Even if DCP&P does not approve, you may present your plan to place your child with your relative or friend to the judge at your trial as an alternative to termination of your parental rights. The judge must at least consider your plan.

Sometimes DCP&P will agree to end a case by giving a relative or friend custody without terminating parental rights. If the case is closed by placing the child in the custody of a relative or friend, the parent may be able to work out visitation arrangements with the relative or friend. Sometimes, however, DCP&P will not consent to the parent having any contact with the child or will place conditions on visits. Also, DCP&P will usually get the right to have advance notice and the opportunity to oppose any attempt by one or both of the parents to get back custody of the child from the relative or friend in the future.

However, as long as parental rights are not terminated, a parent has a right to go back to court at a later time to try to change the visitation and custody arrangements. The court will allow

DCP&P to argue against any changes it believes would be unsafe for the child.

Even if your first choice is return of custody of your child to you, consider suggesting that custody of your child be given to a relative or friend as a fallback alternative to termination of your parental rights.

A relative or friend who takes custody of your child might be able to get money to support the child from DCP&P, as a certified foster parent, or from the welfare department. You also may be required to pay child support.

3. Kinship legal guardianship

Kinship legal guardianship is a legal alternative to termination of parental rights that is more permanent than placing a child in the custody of a relative or friend. However, it allows a parent to keep some parental rights to his or her child. In most cases, this includes the right to have visits and the right to decide whether to allow the child to be adopted or to change his or her name.

Only someone who has taken care of a child in his or her home for a year can be granted kinship legal guardianship. The caretaker's home will be approved only after criminal history and DCP&P records checks, a home inspection, and the completion of foster parent training. The court must determine that a parent has an incapacity that makes him or her unwilling or unable to take care of a child. Kinship legal guardianship cannot be awarded unless DCP&P has made reasonable efforts to reunify a parent with a child and adoption of that child is not likely.

Only someone who has taken care of a child in his or her home for a year can be granted kinship legal guardianship.

Financial assistance is usually available from DCP&P to help a kinship legal guardian take care of a child. However, a parent may be required to pay ongoing child support.

If kinship legal guardianship of your child is awarded, getting your child back in the future may be very difficult. To undo the kinship legal guardianship of your child, you would have to prove by “clear and convincing” evidence that your incapacity no longer exists and that returning your child to you is in your child’s best interests.

If you decide that kinship legal guardianship would be a good thing in your case, you should tell your lawyer and request that DCP&P and the court consider that option. If you oppose having your child placed in kinship legal guardianship, even as a way to settle your case, you should make that clear to your lawyer, to DCP&P, to the law guardian, and to the court. You are entitled to a trial to defend against awarding kinship legal guardianship.

4. Voluntary surrender of parental rights and denial of paternity

Deciding to surrender your parental rights is a very serious decision that should be discussed with your lawyer. Surrendering your parental rights means that you agree to end your legal relationship with your child. A surrender of your parental rights ends your relationship with your child in the same way as a judge’s decision terminating your parental rights. The only remaining legal connection you will have to your child after surrendering your parental rights is your ongoing responsibility to pay child support. That duty will end if and when the child is adopted.

DCP&P is supposed to provide you with counseling before it allows you to surrender your rights to your child.

If the court and DCP&P accept the surrender of your parental rights, there will not be a trial. Once you surrender your rights, you cannot change your mind or appeal your surrender.

You can surrender your parental rights in two ways: a *general surrender*, which ends the parent-child relationship and allows DCP&P to find an adoptive home, or an *identified surrender*, which ends the parent-child relationship but names a specific person to adopt the child. If the specific person you identify is not able to adopt the child, your parental rights will be reinstated and DCP&P may begin termination proceedings again or ask you to make a general surrender.

If you have been named as a defendant father in this case, but you believe that you are not the father of the child and you do not want to get or keep any rights to the child, you can tell the judge that you deny paternity. If your denial of paternity is accepted, you can be dismissed from the case without a trial and formal termination of parental rights. If the judge does not accept your denial of paternity, you may be ordered to be tested for paternity.

Once you surrender your rights, you cannot change your mind or appeal your surrender.



What Will Happen When You Go to Court?

First court appearance in your termination of parental rights case

Sometimes parents are able to appear in court when DCP&P applies to the judge for the order to show cause that starts their termination of parental rights case. However, in most instances, the first time a parent goes to court in a termination of parental rights case will be the *return date*, the date on which the order to show cause says the parent must appear.

If English is not your native language and you do not understand English well enough to know what is being said, ask for an interpreter to be present each time you are in court.

Discovery

Beginning at the first court appearance, both sides will gather information for the trial. This process of information gathering before a trial is called *discovery*. Under the discovery rules, DCP&P is required to give your lawyer copies of all of the reports and other papers it is relying on to make its case against you. Your lawyer is allowed to look at the DCP&P file about you and your children. The DCP&P reports and file are very important. You should discuss the information in the reports and the file with your lawyer. If your lawyer wants more information from DCP&P or other sources that refuse to provide it, your lawyer will need the court's permission to get it.

Expert psychological and other evaluations

Psychological evaluations are very important in parental rights termination cases. DCP&P is likely to convince the court

to order you to be evaluated by a psychologist or other mental health expert it selects. The court may also order you to go to substance abuse evaluations or physical examinations. If you do not attend and cooperate with these court-ordered evaluations and examinations, you will almost certainly lose your parental rights. A DCP&P expert may also observe you and your child together to determine what kind of relationship you and your child have and how emotionally attached your child is to you. If one of DCP&P's claims is that your parental rights should be terminated because the child has become emotionally bonded or attached to foster parents who want to adopt him or her, the foster parents' relationship with the child must also be evaluated. The DCP&P expert will try to determine if separation from them will cause your child "serious and enduring harm."

An evaluation by a potential expert witness is not a private therapy session. There is no doctor-patient privilege or confidentiality. The expert evaluator will prepare a report for DCP&P that may be used in court against you. The report will describe significant events and conversations that occurred during your evaluation.

Sometimes lawyers agree on joint experts, but you probably will want to have your own defense expert in this case. Part of your lawyer's job is to arrange for an expert to help in your defense. After your expert has evaluated you, your child and, in some cases, the foster parents, the expert may be able to testify to positive things about you. Your expert also may be able to testify that he or she disagrees with negative testimony DCP&P's experts may give about you. If your own expert reaches conclusions that would hurt rather

In most cases, if DCP&P's experts decide that you are capable of caring for your child and that your child is attached to you emotionally, your chances of getting the child back are good.

than help your case, your lawyer does not have to call the person to testify at your trial.

In most cases, if DCP&P's experts decide that you are capable of caring for your child and that your child is attached to you emotionally, your chances of getting the child back are good. On the other hand, if the DCP&P experts decide that your child might be harmed if he or she is returned to you, DCP&P will use their evaluations as evidence against you.

If you are financially eligible to be represented by a lawyer through the Office of Parental Representation (OPR) of the Public Defender's Office, even if you are represented by a private lawyer or a Legal Services lawyer, your lawyer can apply to the OPR for money to pay your defense expert fees.

Always be on time for the expert evaluations you are to attend. Be polite, and follow the instructions of whoever is evaluating you. Remember that, at trial, the experts who have evaluated you will be telling the judge what they think of you.

How you act while your case is pending is important

Always keep in mind that DCP&P, the law guardian, and the judge are forming opinions about you based on your behavior. Try not to express anger toward DCP&P workers, foster parents, therapists, the judge, other court officials, any of the lawyers, or anyone else. Angry, aggressive behavior will probably hurt your chances of winning your case. Be courteous, respectful, and calm in the following situations: in court, at visits with your child, in your treatment program, at your therapy, at parenting classes, and when anyone from DCP&P or the law guardian's office visits with you. When you have the opportunity to do so, show that you are willing to cooperate and do all of the reasonable things you may be asked to do. Show that you care about and love your child very much.

What you say may be used against you

Things you say to DCP&P workers may be used against you in your termination of parental rights case and also may be used against you in a criminal case. The same is true of things you say to other people, including therapists or anyone who is evaluating or investigating you. Only things that you tell your lawyer are confidential.

Defaults

If you miss any court hearing or any court-ordered evaluation, a *default* can be entered against you. Defaults are dangerous if you want to defend against termination of parental rights. Once a default is entered, DCP&P can ask for a *proof hearing* instead of a regular trial. At a proof hearing, DCP&P will still have to prove all of the facts the law requires for termination of parental rights, and your lawyer (or you, yourself, if you have no lawyer) will be allowed to cross-examine the witnesses presented by DCP&P or the law guardian. Objections to evidence offered against you will also be permitted at the proof hearing. However, no defense experts or other witnesses or any other evidence on your behalf will be allowed.

You may be able to undo a default that has been entered against you by explaining your reason for not going to the court hearing or evaluation you missed and asking the judge to vacate the default. If your default is vacated, your right to a complete trial will be given back to you. Be prepared to give your lawyer and the court evidence of a serious event or circumstance that prevented your attendance, such as an emergency room discharge form if you were in a car accident on the way to court.

You need to contact your lawyer as soon as possible if you miss court or an evaluation. Your lawyer will know or can find out if a default has been entered and can try to vacate it, with your cooperation.

The Child Placement Review Board (CPRB) hearings

The Child Placement Review Board (CPRB) reviews cases within 45 days of a child being removed from his or her family. Because termination of parental rights cases are usually filed long after the child is removed, the CPRB will probably not be involved in your case. If you get a letter telling you that a hearing about your child is scheduled before the CPRB, make sure you review the information in this section.

The CPRB is a group of volunteers who review cases of children in foster care. The CPRB gathers information about the parents; the visitation schedule; the status of relative searches; the children's vital information, as well as educational and medical background; and the services provided by DCP&P. The CPRB reports the information gathered and makes recommendations to the judge. If your child has been removed from you, the CPRB in your county should review your case within 45 days of your child's removal. Parents, relatives, foster parents, and other interested people are allowed to attend the CPRB hearing to present their views.

You should attend the CPRB hearing about your child and ask your lawyer to come with you, if possible.

You should attend the CPRB hearing about your child and ask your lawyer to come with you, if possible. DCP&P makes written reports to the CPRB members in each case. You and your lawyer should ask to see the report before your hearing, so that you can respond to what DCP&P is saying about you. You should give the CPRB copies of reports or other papers you want the CPRB to see. You can ask the CPRB to make recommendations about:

Placement of your child with relatives;

Visitation that is unsupervised, longer, more frequent, or that includes the child's siblings or other relatives; and
Specific services to help you to be a better parent.

After reading the DCP&P report and any papers you provide and listening to the people who come to the hearing, the CPRB will make recommendations to the judge about what should happen in your case. You and your lawyer should get a copy of the CPRB's recommendations in the mail. You should let the judge know, in writing, if you disagree with the recommendations. The judge may hold a hearing before deciding whether to approve the recommendations. If no objections are submitted, the judge will usually sign an order with the CPRB recommendations.



What Happens at the Trial?

Unless your case is settled before trial, your trial is the most important event in your termination of parental rights case. It will probably last a number of days, which may not be one right after the other. You need to be present in court every day of your trial. You should dress neatly to make a good impression on the judge. You should wear the same kind of dressy clothes you would wear to an important occasion, such as a wedding or funeral.

Unless your case is settled before trial, your trial is the most important event in your termination of parental rights case.

A trial in a termination of parental rights case usually begins with opening statements by the lawyer for DCP&P, the law guardian, and the lawyers for the parents. Opening statements introduce the facts the lawyers will try to prove and explain how those facts are related to the laws that control termination of parental rights.

After the opening statements, the DCP&P lawyer will call witnesses to testify against you. The DCP&P witnesses probably will be your caseworkers and the experts DCP&P hired to evaluate you. Other witnesses against you may be visiting nurses, home health aides, substance abuse rehabilitation counselors, neighbors, or relatives who have negative things to say about you. Even though you may be angry at some things these witnesses say, you must remain quiet and calm. However, if something a witness says is wrong, inconsistent, or reminds you of something important, you may silently write a note to your lawyer.

After the DCP&P lawyer questions each of his or her witnesses (this is called *direct examination*), your lawyer will have a chance to ask the witnesses questions that bring out your side of

the story (*cross-examination*). Your child's law guardian will also get to cross-examine the DCP&P witnesses.

When the direct examination and cross-examination of DCP&P witnesses have been completed, your lawyer will call witnesses to testify for you. Long before your trial, you should discuss with your lawyer your ideas about who might testify on your behalf. When your lawyer presents your case, he or she may call experts, therapists and counselors, neighbors, friends, members of the clergy, and family members who can say positive things about you and your ability to care for your child. The lawyer for DCP&P and the law guardian will have an opportunity to cross-examine the witnesses called by your lawyer.

If you believe that your child is old enough to talk to the judge and that the child does not want his or her relationship with you ended, you should discuss with your lawyer the possibility of having the judge interview the child. Children rarely testify in court in termination of parental rights cases. Instead, the judge can interview the child in his or her office, which is called the judge's *chambers*. In most cases, all of the lawyers are allowed to submit questions for the judge to ask the child. Sometimes the judge allows the law guardian to be present during the interview. Generally, the lawyers are allowed to hear a tape or read a transcript of the interview later. In some instances, they may be able to listen to the interview from the courtroom.

It is important for you and your lawyer to decide if you will testify at the trial.

It is important for you and your lawyer to decide if you will testify at the trial. Usually, a parent fighting against termination of parental rights will want to testify. If you do not testify, the judge may think that you have something to hide or that you have no defense to the evidence against you. However, in making your decision about testifying, you must remember that you

will be cross-examined by the lawyers for DCP&P and your child. They are likely to try to get you to say things that will hurt your chances of keeping your parental rights.

Preparing your testimony is very important. You should spend as much time as possible with your lawyer in order to get ready to answer the questions your lawyer will ask you on direct examination and the questions he or she thinks you will be asked on cross-examination.

Your child's law guardian also has the right to call witnesses to testify at the trial. Again, your lawyer will have the chance to ask those witnesses questions on cross-examination.

After all of the witnesses have testified and been cross-examined, the lawyers will make closing arguments to the judge, either orally or in writing. Your lawyer will argue that DCP&P has not proven clearly and convincingly the specific things required under New Jersey law to terminate parental rights. DCP&P will argue that it has proven its case by *clear and convincing evidence*. Clear and convincing evidence is proof that is very strong. The law guardian will also be allowed to make closing arguments.

The judge's decision

The judge must decide, based on the evidence presented at your trial and the law, whether or not to terminate your parental rights. The judge may announce the decision right after your trial ends or may take some additional time before making the decision. If the judge decides in your favor and orders your child returned to you, you and your child probably will be reunified gradually, after daylong and then overnight visits. Other possibilities are that the judge may not terminate your parental rights, but may decide that your child should be placed in the custody of a

If you disagree with the judge's decision at the end of your trial, you have a right to appeal it.

relative or family friend. It is also possible that the judge will decide that the case should become a kinship legal guardianship case.

Appeal

If you disagree with the judge's decision at the end of your trial, you have a right to appeal it. Appeals that challenge what the judge determined were the facts in a case are rarely successful. Most appeals challenge whether the trial judge applied the law correctly. DCP&P and the law guardian also have a right to appeal if they disagree with the decision. Your lawyer should let the judge know if you wish to appeal and should start the appeal process for you. The time limit for filing an appeal is 45 days from the date the judge signs the order. It may take many months for your appeal to be decided. If you appeal, your lawyer may request that visits with your child continue while the appeal is pending.



Will You Have Contact with Your Children after Termination of Parental Rights?

Final visit

If you voluntarily surrender your parental rights or the court decides to terminate them, you may ask your lawyer to request a final visit, which may be very important for both you and your child. The final visit is a time to say good-bye.

At the final visit, you can take pictures of your child and give your child pictures of you and other members of your family. Even if you do not have a final visit, you may request permission to write a final letter to your child, including pictures, if you wish.

Asking for continued contact

In some cases, the people who adopt your child may allow you to keep in touch through visits, telephone calls, or letters. If you want continued contact with and information about your child, ask the adoptive parents whether they will agree to it. If you do not know your child's adoptive parents well enough to speak directly with them, you can ask your DCP&P worker to discuss the matter with them. If you are considering surrendering your parental rights by doing an identified surrender, ask for a meeting or mediation with the adoptive parents so that you can make your request for continued contact before you decide whether to do the surrender. Be specific about the type of contact you would like to maintain with your child: telephone calls, in-person visitation, e-mails, letters or cards exchanged (maybe by using a post office box), and/or periodic pictures of the child or updates sent to you.

Current New Jersey law does not permit courts to enforce open adoption agreements. This means that if the adoptive parents break any promises they make to you or the court about continued contact with your child after the adoption, you will not be able to ask the court for assistance.

Some courts have relied upon future adoptive parents' promises to continue visitation or other contact with the parents in deciding to terminate parental rights. In open adoptions, biological parents keep the right to have some ongoing contact with their children, even after parental rights have been terminated and the children have been legally adopted.

The decision to allow you any contact with or information about your child after your parental rights are terminated is completely up to the adoptive parents. They can also refuse to meet with you or consider your requests. Many adoptive parents do not want to allow the children they adopt to have continued contact with their birth parents.

The decision to allow you any contact with or information about your child after your parental rights are terminated is completely up to the adoptive parents.

DCP&P Adoption Registry

DCP&P keeps an Adoption Registry that your child can use to try to find you when he or she turns 18, or earlier if the adoptive parents allow it. In addition, without identifying you, the Registry can provide your child and your child's adoptive family with important information, including health histories of you and your family. Such information may become very important to your child as he or she grows up.

Will You Have Contact with Your Children after Termination of Parental Rights?

You can place information about yourself and your family in the Registry by filling out a DCP&P Adoption Registry application form. When your child becomes old enough or has permission to use the Registry and contacts the Registry, the Registry staff will try to find you by using the information you have provided. If it locates you and you provide identification and written permission, the Registry will release the information it has about you to your child or arrange contact between you and the child.

For more information about the Registry and to obtain a Registry application form, speak to your DCP&P worker or call or write the DCP&P Adoption Registry office in Trenton:

DCP&P Adoption Registry
P.O. Box 717
Trenton, NJ 08625-0717
609-292-8816 or 609-984-6800

Remember that the Registry staff may not be able to find you in the future if you do not report changes in your name, address, and telephone number. 

How Can You Make the Best Use of Your Lawyer?

Your relationship with your lawyer is very important. Following is a list of things you can do to make the relationship work to your advantage:

Make sure you show your lawyer all of the papers you have, including all psychological or medical reports and all court papers relating to this case and all past cases concerning you and your child.

Go over the complaint filed against you with your lawyer. Let your lawyer know whether each statement is true or false. Give your lawyer a complete explanation of everything that has happened; complete information about your current situation; and the names, addresses, and telephone numbers of any friends or relatives who may be of help.

Be honest. Remember that your lawyer can advise and represent you best when he or she knows all of the facts. If you tell your lawyer something you do not want the court or DCP&P to know, make sure the lawyer knows that you do not want that information disclosed. Your lawyer cannot tell anyone things that you want kept confidential, unless the information reveals that a crime will be committed or that a child has been abused.

*Be honest.
Remember that your lawyer can advise and represent you best when he or she knows all of the facts.*

Always make sure that your lawyer knows where to reach you, and always respond as soon as possible when your lawyer tries to contact you. Even if your lawyer does not call

you, check with him or her every other week about your case.

Make copies of all letters or other papers you give to DCP&P, and be sure to give a copy of each to your lawyer. Starting now, make a list of every phone call and meeting you have with DCP&P. Write down what was said and what happened. In addition, write down the date and time whenever you try to reach your DCP&P worker but are unable to contact him or her. Leave recorded messages when you cannot reach DCP&P workers, evaluators, therapists, or other people involved in your case.

Get a calendar and keep track of all court and visitation dates and all evaluation, counseling, and therapy appointments that are scheduled for you by your lawyer, DCP&P, or the court. If you are required to call ahead to confirm your visits with your child in advance, write that down in your calendar, too.

Ask your lawyer to explain anything that you do not understand.

Make sure that your lawyer knows what outcome you want him or her to try to achieve in this case, as well as your “fallback” position.

Never sign any papers related to your case without consulting your lawyer first.



Conclusion

If you decide to fight to keep your parental rights, you will have the best chance of winning if you get a lawyer right away. You must give your lawyer all of the information you can, stay in touch and work with your lawyer, and carefully follow his or her advice. You must attend all court dates, evaluations, and scheduled visits with your child, as well as any therapy and substance abuse counseling sessions, meetings, medical appointments, and parenting classes DCP&P asks you to attend. You must keep proof of your attendance and the progress you have made in solving the problems that led to the removal of the child for your lawyer, DCP&P, and the court.

If you decide to fight to keep your parental rights, you will have the best chance of winning if you get a lawyer right away.

Defeating an action by DCP&P to terminate your parental rights requires a lot of time and hard work. You may lose your case even if you work very hard and do everything that you are asked to do. You must be willing and able to commit your best efforts to defending your parental rights, or you will almost surely lose. The trial, alone, is likely to require you to be in court a number of days.

Being the defendant in a termination of parental rights action is frightening, stressful, and very difficult emotionally. However, you must not become discouraged or refuse to deal with the situation. You must start from where you are at this moment and do your very best to keep your family together, if that is what you want.



Glossary

Best interests of the child: The most common legal basis for terminating parental rights, where DCP&P must prove a number of reasons why it is best that your parental rights be ended.

Chambers: The judge’s office.

Child Placement Review Board (CPRB): A volunteer group of community members, acting on the court’s behalf, that makes recommendations to the court about children who are in DCP&P custody and have been placed outside of their homes.

Clear and convincing evidence: The highest level of proof required in a civil case—the civil equivalent of the “beyond a reasonable doubt” standard in criminal cases.

Cross-examination: An attorney’s questioning of a witness called to testify by the other side in the case. Cross-examination questions are asked in order to check or discredit the testimony, knowledge, or credibility of the witness.

DCP&P: Division of Child Protection and Permanency.

Defendant: The party who is sued by the plaintiff. In a termination of parental rights case, the parent is a defendant.

Default: A default can be entered against you if you fail to appear or respond to court orders or miss any court hearing or any court-ordered evaluation. If a default is entered, DCP&P can ask for a proof hearing.

Deputy attorney general (DAG): The lawyer for DCP&P in a termination of parental rights complaint.

Direct examination: The questions that a lawyer asks each of his or her client’s witnesses.

Discovery: The process of requesting and providing information before a trial.

Doctor-patient privilege: Special protection is given to the things you tell a doctor who treats you as a patient regularly. The same is *not* true for an expert doctor who evaluates you for your trial.

Foster home adoption: DCP&P's plan for a child to be adopted by his or her current caretakers.

Guardianship complaint: Another name given to the complaint filed by DCP&P against the birth parents of a child or children in order to terminate their parental rights. This term refers to the fact that, if DCP&P wins its case, it takes temporary legal guardianship of the child or children until they are adopted by someone else.

Identified surrender of parental rights: An agreement to end your parent-child relationship, which names a specific person to adopt the child.

General surrender of parental rights: An agreement to end your parent-child relationship, which allows DCP&P to find an adoptive home.

Kinship legal guardianship: A legal alternative to termination of parental rights that is designed to be more permanent than placing a child in the custody of a relative or friend. However, it allows you to keep some parental rights to your child.

Law guardian: The lawyer who represents the child named in a termination of parental rights complaint.

Office of Parental Representation (OPR): A branch of the Office of the Public Defender that represents low-income parents who cannot afford lawyers in termination of parental rights hearings.

Open adoption: An adoption where biological parents keep the right to have some ongoing contact with their children, even after parental rights have been terminated and the children have been legally adopted. However, current New Jersey law does not permit courts to enforce open adoption agreements.

Order to show cause: A special court order that tells you that you must appear in court on a specific date so that the judge can consider and decide your case as soon as possible.

Permanency hearing: A hearing at which DCP&P presents to the court its permanency plan for the child.

Plaintiff: The party who begins a civil lawsuit by filing a complaint. DCP&P is the plaintiff in a termination of parental rights action against a parent.

Proof hearing: If a default is entered, DCP&P can ask for a proof hearing. DCP&P will still have to prove all of the facts the law requires for termination of parental rights, and your lawyer will be allowed to cross-examine the witnesses presented by DCP&P or the law guardian.

Return date: The date on which you must return to court.

Select home adoption: DCP&P's plan to find others to adopt your child.

Vacate: The process of undoing a default judgment that has been entered against you is called vacating a judgment. To do this, you must file papers explaining your reason for not going to a court hearing or evaluation and asking the judge to vacate the default. If your default is vacated, your right to a complete trial will be given back to you.

Voluntary placement agreement: An agreement signed by parents to voluntarily place their child with DCP&P.



New Jersey Legal Services Programs

State Coordinating Program

Legal Services of New Jersey

100 Metroplex Drive, Suite 402

Edison, NJ 08817

732-572-9100

LSNJLAWSM, statewide, toll-free legal hotline:

1-888-LSNJ-LAW (1-888-576-5529)

Apply for help online: www.lsnjlawhotline.org

www.LSNJ.org / www.LSNJLAW.org

Regional Legal Services Programs

Central Jersey Legal Services

Mercer County (609) 695-6249

Middlesex County—New Brunswick (732) 249-7600

Middlesex County—Perth Amboy (732) 324-1613

Union County (908) 354-4340

Essex-Newark Legal Services (973) 624-4500

Legal Services of Northwest Jersey

Hunterdon County (908) 782-7979

Morris County (973) 285-6911

Somerset County (908) 231-0840

Sussex County (973) 383-7400

Warren County (908) 475-2010

Northeast New Jersey Legal Services

Bergen County (201) 487-2166

Hudson County (201) 792-6363

Passaic County (973) 523-2900

South Jersey Legal Services

Atlantic County (609) 348-4200

Burlington County (609) 261-1088

Camden County (856) 964-2010

Cape May County (609) 465-3001

Centralized intake 1-800-496-4570

Cumberland/Salem Counties (856) 691-0494

Gloucester County (856) 848-5360

Monmouth County (732) 414-6750

Ocean County (732) 608-7794