

CHAPTER 133J
TERMINATION OF PARENTAL RIGHTS

Authority

N.J.S.A. 30:4C-1 et seq. and 30:4C-15 through 23.

Source and Effective Date

R.2008 d.191, effective June 17, 2008.
See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c).

Chapter Expiration Date

Chapter 133J, Termination of Parental Rights, expires on June 17, 2013.

Chapter Historical Note

Chapter 133J, Termination of Parental Rights, was adopted as R.1997 d.362, effective September 2, 1997. See: 28 N.J.R. 3866(a), 29 N.J.R. 3896(a).

Chapter 133J, Termination of Parental Rights, was readopted as R.2003 d.39, effective December 20, 2002. As a part of R.2003 d.39, Subchapter 4, Involuntary Termination of Parental Rights, was repealed, effective January 21, 2003. See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Chapter 133J, Termination of Parental Rights, was readopted as R.2008 d.191, effective June 17, 2008. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 10:133J-1.1 Purpose
- 10:133J-1.2 Scope
- 10:133J-1.3 Definitions

SUBCHAPTER 2. REQUIREMENTS FOR AND EXCEPTIONS TO TERMINATION OF PARENTAL RIGHTS

- 10:133J-2.1 Involuntary termination of parental rights
- 10:133J-2.2 Exceptions to termination of parental rights criteria
- 10:133J-2.3 Factors to consider when filing for termination of parental rights

SUBCHAPTER 3. SURRENDER OF PARENTAL RIGHTS

- 10:133J-3.1 Division responsibilities
- 10:133J-3.2 Additional procedures
- 10:133J-3.3 Surrender executed in other states and other countries

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS

10:133J-1.1 Purpose

- (a) The purpose of this chapter is to state:

1. The circumstances under which the Division is required to file or join a petition to terminate parental rights and the exceptions to filing; and

2. The procedures for a parent to surrender parental rights for the purpose of allowing a child to be adopted.

Recodified from N.J.A.C. 10:133J-1.2 and amended by R.2003 d.39, effective January 21, 2003.

See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Rewrote the section. Former N.J.A.C. 10:133J-1.1, Authority, repealed.

10:133J-1.2 Scope

The provisions of this chapter shall apply to all Division representatives and clients receiving services from the Division.

Recodified from N.J.A.C. 10:133J-1.3 by R.2003 d.39, effective January 21, 2003.

See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Former N.J.A.C. 10:133J-1.2, Purpose, recodified to N.J.A.C. 10:133J-1.1.

10:133J-1.3 Definitions

(a) The definitions in N.J.A.C. 10:133-1.3 are incorporated in this chapter by reference.

(b) The following terms shall have the following meanings within this chapter, unless the context clearly indicates otherwise:

“Child advocate” means a person specializing in the field of child advocacy who demonstrates his or her education and/or experience in that field to the satisfaction of the Division, but is limited to such persons who have had direct involvement in permanency planning for the child. Child advocates include, but are not limited to, Child Placement Review Board members, Court Appointed Special Advocates (CASA) and Law Guardians.

“Expert” means a person duly credentialed in the state in which he or she practices, specializing in the field of pediatric, neurological or psychiatric medicine; nursing; psychology; social work; substance abuse; or other related fields.

“Surrender” means a voluntary relinquishment of all parental rights by a birth parent, adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for purposes of allowing a child to be adopted. “Surrender” includes identified surrenders authorized by N.J.S.A. 9:3-41(d).

Recodified from N.J.A.C. 10:133J-1.4 and amended by R.2003 d.39, effective January 21, 2003.

See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Rewrote the section. Former N.J.A.C. 10:133J-1.3, Scope, recodified to N.J.A.C. 10:133J-1.2.

SUBCHAPTER 2. REQUIREMENTS FOR AND
EXCEPTIONS TO TERMINATION OF PARENTAL
RIGHTS

10:133J-2.1 Involuntary termination of parental rights

(a) The Division shall file or join a petition to terminate the parental rights of a child's parents when one or more of the circumstances stated in N.J.S.A. 30:4C-15 is established, but no later than when the child has been in out-of-home placement for 15 of the most recent 22 months, unless the Division has established an exception to the requirement to seek termination of parental rights pursuant to N.J.S.A. 30:4C-15.3.

(b) The Division representative consults with the Deputy Attorney General on situations that may meet the standards stated in N.J.S.A. 30:4C-15 and 15.1.

(c) The Division representative shall advise each parent whose whereabouts are known to the Division and whose parental rights the Division is seeking to involuntarily terminate, that the parent has the right to a trial and to be represented by legal counsel at any involuntary termination of parental rights court proceeding; and, if the parent is unable to afford an attorney, the right of the parent to ask the court to assign an attorney to represent the parent.

(d) When the Division representative makes a determination to pursue termination of parental rights in accordance with N.J.S.A. 30:4C-15 and 15.1, the Division representative shall consider offering the parent an opportunity to surrender his or her parental rights pursuant to N.J.S.A. 30:4C-23. When a parent is offered an opportunity to surrender parental rights, the Division representative shall advise the parent that if the Division pursues legal action to involuntarily terminate parental rights, the parent has those legal rights stated in (c) above.

Amended by R.2003 d.39, effective January 21, 2003.
See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Rewrote the section.

Amended by R.2008 d.191, effective July 21, 2008.
See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c).

In (b) and throughout (d), inserted "representative".

10:133J-2.2 Exceptions to termination of parental rights criteria

(a) Whereas adoption is the preferred permanency alternative for a child who cannot safely return to the care of either biological parent, the Division may decide not to file for termination of parental rights when adoption of the child is neither feasible nor likely.

(b) The Division representative is not required to file for termination of parental rights if the case circumstances meet at least one of the following three exceptions set forth in N.J.S.A. 30:4C-15.3:

1. The child is being cared for by a relative and a permanent plan for the child can be achieved without termination of parental rights;

2. The Division representative has documented in the case plan, which shall be available for court review, a compelling reason for determining that filing the petition would not be in the best interests of the child; or

3. The Division representative is required to provide reasonable efforts to reunify the family but the Division representative has not provided to the family of the child, consistent with the time period in the case plan, such services as the Division representative deems necessary for the safe return of the child to his or her home.

(c) The Division representative shall document in the case plan the details of the case circumstances meeting the requirements for an exception in (a) or (b) above. The documentation shall include the reasons why adoption is neither feasible nor likely for this child, and is not the most appropriate case goal for this child when the exception is made pursuant to N.J.S.A. 30:4C-15.3b.

New Rule, R.2003 d.39, effective January 21, 2003.

See: 34 N.J.R. 1241(a), 35 N.J.R. 405(b).

Former N.J.A.C. 10:133J-2.2, Voluntary or involuntary termination of parental rights, recodified to N.J.A.C. 10:133J-2.1(d).

Amended by R.2008 d.191, effective July 21, 2008.

See: 40 N.J.R. 587(a), 40 N.J.R. 4320(c).

Added new (a); recodified former (a) as (b); deleted former (b); in the introductory paragraph of (b) and in (b)2 and throughout (b)3, inserted "representative"; and in (c), substituted "for an exception in (a) or (b)" for "of N.J.S.A. 30:4C-15.3 and (a)", inserted "neither feasible nor likely for this child, and is" and deleted "and (a)2 above" from the end.

10:133J-2.3 Factors to consider when filing for termination of parental rights

(a) The Division representative considers many factors when deciding to file for termination of parental rights or to document a compelling reason in the best interests of the child not to file for a termination of parental rights. Decisions must be made on a case-by-case basis, based on the individual circumstances of the child and the family. The factors considered may include, but are not limited to:

1. The child's age;
2. The child's level of maturity;
3. The child's developmental level and needs;
4. The child's opinion regarding the permanent plan;
5. The placement history, including the length of time the child has been in placement;
6. The progress that each parent has made toward return of his or her child;
7. The relationship between this child and his or her parents;
8. The child's relationship to siblings, if any;