

## 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.1997 d.362, effective September 2, 1997.  
See: 28 N.J.R. 3866(a), 29 N.J.R. 3896(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 133J, Termination of Parental Rights, expires on September 2, 2002.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 10:133J-1.1 Authority

Pursuant to N.J.S.A. 30:4C-1 et seq. and 30:4C-15 through 23, the Division is authorized to seek termination of parental rights.

## 10:133J-1.2 Purpose

The purpose of this chapter is to describe the factors considered when the Division makes a determination that termination of parental rights is necessary to offer a child a permanent relationship with a family through adoption or to provide a child with long-term protection.

## 10:133J-1.3 Scope

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

## 10:133J-1.4 Definitions

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

SUBCHAPTER 2. GENERAL CONSIDERATIONS  
REGARDING TERMINATION OF PARENTAL RIGHTS

## 10:133J-2.1 Factors to consider when making a determination to pursue termination of parental rights

(a) The Division shall consider pursuing termination of parental rights when the child needs a long-term legal relationship with an adult that provides stability, predictability and the least amount of government intervention and:

1. Reasonable and diligent efforts to return the child home in accordance with N.J.A.C. 10:133I-4.1 and 4.2 have failed to enable the child to return home, and the Division's search for and assessment of relatives pursuant to N.J.S.A. 30:4C-12.1 indicate there are no known relatives who are able and willing to meet the needs of the child;

2. The parent is unknown or missing as described in N.J.S.A. 30:4C-15.1; or

3. The parent has requested voluntary termination of his or her rights and:

i. The parent is competent to voluntarily terminate his or her rights in accordance with N.J.A.C. 10:133J-3;

ii. The Division has counseled the parent regarding the meaning, finality and consequences of voluntary termination of parental rights and alternatives to voluntary termination of parental rights in accordance with N.J.A.C. 10:121A-5.4; and

iii. Available services to preserve the relationship between the parent and the child, in accordance with N.J.A.C. 10:133I-2.2, were either unsuccessful or refused;

4. The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm. Such harm may include evidence that separating the child from his

foster parents would cause serious and enduring emotional or psychological harm to the child;

5. Termination of parental rights is necessary to meet the psychological, medical, physical or educational needs of the child; or

6. The parent has abandoned the child pursuant to N.J.S.A. 30:4C-15(e).

### 10:133J-2.2 Voluntary or involuntary termination of parental rights

When the Division makes a determination to pursue termination of parental rights in accordance with N.J.S.A. 30:4C-23 and N.J.A.C. 10:133J-2.1, the Division shall consider offering the parent an opportunity to voluntarily terminate his or her rights. When a parent is offered an opportunity to voluntarily terminate parental rights, the Division shall advise the parent that if the Division pursues legal action to involuntarily terminate parental rights, the parent has the right to be represented in court by an attorney. If the parent is unable to afford an attorney, the parent may ask the court to assign an attorney to represent the parent.

## SUBCHAPTER 3. VOLUNTARY TERMINATION OF PARENTAL RIGHTS

### 10:133J-3.1 Division responsibilities

(a) The Division shall advise the parent that he or she may stop the voluntary termination of parental rights procedure at any point in the procedure.

(b) The Division is not obligated to accept a voluntary termination of parental rights from a parent.

(c) The Division representative shall determine that the parent is competent to voluntarily terminate his or her parental rights and has a full opportunity to understand the meaning and consequences of voluntary termination of parental rights by:

1. Questioning and observing the parent and reviewing evaluations, professional opinion or reports, as necessary, to determine that there are no obvious or overt indicators that the parent has a diminished capacity to understand the meaning, consequences and finality of voluntarily terminating parental rights because of alcohol or drug use, psychological disorder or mental deficiency;

2. Reading aloud to the parent the full contents of voluntary termination of parental rights documents;

3. Providing a verbal explanation to the parent of the contents of the voluntary termination of parental rights documents including an explanation of the meaning, consequences and finality of the act of voluntarily terminating parental rights;

4. Providing an opportunity for the parent to ask questions about voluntarily terminating parental rights; and

5. Asking the parent to explain, in his or her own words, the meaning, consequences and finality of voluntarily terminating parental rights.

(d) The Division shall make documents related to voluntary termination of parental rights available in a language which the parent understands, or the Division shall provide competent verbal or sign translation of the voluntary termination of parental rights procedure into a language which the parent understands.

(e) The Division shall attempt to determine, through questions and observation, any duress, undue pressure or coercion which has been brought to bear on the parent in order to induce him or her to voluntarily terminate parental rights.

1. The Division shall not coerce the parent in order to induce him or her to voluntarily terminate parental rights; and

2. The Division shall attempt to ascertain the cause of any duress, undue pressure or coercion on the parent and counsel the parent regarding services to help the parent cope with the duress.

(f) The voluntary termination of parental rights shall be witnessed by at least one individual who is not the Division representative assigned to the case, who is 18 years of age or older and who is not notarizing the signature.

(g) The witness shall make a determination, to the best of his or her ability, that:

1. The parent understands the meaning, consequences and finality of the voluntary termination of parental rights;

2. The parent is competent to voluntarily terminate parental rights; and

3. The Division attempted to determine and mitigate any duress on the parent in accordance with N.J.A.C. 10:133J-3.1(e) and that the parent is voluntarily terminating parental rights of his or her own free will.

(h) The witness shall sign an affidavit regarding his or her role and observations in the voluntary termination of parental rights.

(i) Unless the person is disruptive to the procedure or is a source of duress on the parent, the parent may have a friend, relative or representative present at the voluntary termination of parental rights procedure. The friend, relative or representative may sign an affidavit regarding his or her role and observations in the voluntary termination of parental rights but shall not be the witness to the procedure identified in (f) above.

(j) The Division or the witness shall stop any procedure regarding voluntary termination of parental rights if the parent appears to be under duress or incompetent to voluntarily terminate parental rights in accordance with (c) or (e) above.

#### **10:133J-3.2 Additional procedures**

(a) The Division shall give the parent a copy of all documents signed by the parent and those documents read to the parent during the voluntary termination of parental rights procedure.

(b) The Division shall document the voluntary termination of parental rights for the child's case record including the questions asked by the parent along with the answers provided by the Division or by any of the witnesses present.

(c) The Division shall obtain, to the extent possible or necessary, each birth certificate, marriage certificate, divorce decree, death certificate, affidavit and document related to the voluntary termination of parental rights.

(d) The Division shall advise the parent of the Division Adoption Registry and of any laws or procedures regarding the confidentiality of records related to voluntary termination of parental rights or adoption.

#### **10:133J-3.3 Voluntary termination in other states**

The Division shall give full faith and credit to voluntary termination of parental rights executed in any other state if the procedures for the voluntary termination of parental rights complied with that state's applicable statutes and regulations.

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### **SUBCHAPTER 4. INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

#### **10:133J-4.1 Pursuing involuntary termination of parental rights**

(a) The Division shall initiate a petition to terminate parental rights in accordance with N.J.S.A. 30:4C-15 and 30:4C-15.1 or applicable case law.

(b) The Division shall consider pursuing an involuntary termination of parental rights if the parent fails to follow through on a plan to voluntarily terminate parental rights and shall move forward if termination is in the child's interest and there are adequate grounds for terminating parental rights in accordance with N.J.S.A. 30:4C-15 et seq.

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