

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 161. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

SUBCHAPTER A. GROUNDS

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) 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;

(C) 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;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) 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;

(F) 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;

(G) 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;

(H) 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;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) 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;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) 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 adjudicated under 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:

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecent with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering child);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography); and

(xiv) Section 21.02 (continuous sexual abuse of young child or children);

(M) 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 Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months, and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription, as defined by Section 261.001;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child; or

(T) been convicted of the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, 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 Section 19.02 or 19.03, Penal Code; and

(2) that termination is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 65, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [508](#), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [593](#), Sec. 3.30, eff. September 1, 2007.

Sec. 161.002. TERMINATION OF THE RIGHTS OF AN ALLEGED BIOLOGICAL FATHER. (a) 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.

(b) The rights of an alleged father may be terminated if:

(1) after being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Chapter 160;

(2) 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, he has not registered with the paternity registry under Chapter 160, and after the exercise of due diligence by the petitioner:

(A) his identity and location are unknown; or

(B) his identity is known but he cannot be located;

(3) 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 Chapter 160; or

(4) he has registered with the paternity registry under 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.

(c) The termination of the rights of an alleged father under Subsection (b)(2) rendered on or after January 1, 1998, and before January 1, 2008, does not require personal service of citation or citation by publication on the alleged father.

(c-1) The termination of the rights of an alleged father under Subsection (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 Chapter 160.

(d) The termination of rights of an alleged father under Subsection (b)(4) does not require service of citation by publication on the alleged father.

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

(f) The court shall not render an order terminating parental rights under Subsection (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.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 66, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 821, Sec. 2.16, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1090, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 4, eff. September 1, 2007.

Sec. 161.003. INVOLUNTARY TERMINATION: INABILITY TO CARE FOR CHILD. (a) The court may order termination of the parent-child relationship in a suit filed by the Department of Protective and Regulatory Services if the court finds that:

(1) 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;

(2) 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;

(3) the department 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 Subsection (c);

(4) the department has made reasonable efforts to return the child to the parent; and

(5) the termination is in the best interest of the child.

(b) 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.

(c) A hearing on the termination may not be held earlier than 180 days after the date on which the suit was filed.

(d) An attorney appointed under Subsection (b) shall represent the parent for the duration of the suit unless the parent, with the permission of the court, retains another attorney.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 67, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 496, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1090, Sec. 2, eff. Sept. 1, 2001.

Sec. 161.004. TERMINATION OF PARENTAL RIGHTS AFTER DENIAL OF PRIOR PETITION TO TERMINATE. (a) The court may terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship if:

- (1) the petition under this section is filed after the date the order denying termination was rendered;
- (2) 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;
- (3) the parent committed an act listed under Section 161.001 before the date the order denying termination was rendered; and
- (4) termination is in the best interest of the child.

(b) 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.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.005. TERMINATION WHEN PARENT IS PETITIONER. (a) A parent may file a suit for termination of the petitioner's parent-child relationship. The court may order termination if termination is in the best interest of the child.

(b) If the petition designates the Department of Protective and Regulatory Services as managing conservator, the department shall be given service of citation. The court shall notify the department if the court appoints the department as the managing conservator of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 68, eff. Sept. 1, 1995.

Sec. 161.006. TERMINATION AFTER ABORTION. (a) A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the child was born alive as the result of an abortion.

(b) In this code, "abortion" means an intentional expulsion of a human fetus from the body of a woman induced by any means for the purpose of causing the death of the fetus.

(c) The court or the jury may not terminate the parent-child relationship under this section with respect to a parent who:

(1) had no knowledge of the abortion; or

(2) participated in or consented to the abortion for the sole purpose of preventing the death of the mother.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT. The court may order the termination of the parent-child relationship of a parent and a child if the court finds that:

(1) the parent has been convicted of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the commission of the offense by the parent, the victim of the offense became pregnant with the parent's child; and

(3) termination is in the best interest of the child.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [593](#), Sec. 3.31, eff. September 1, 2007.

## SUBCHAPTER B. PROCEDURES

Sec. 161.101. PETITION ALLEGATIONS. A petition for the termination of the parent-child relationship is sufficient without the necessity of specifying the underlying facts if the petition alleges in the statutory language the ground for the termination and that termination is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.102. FILING SUIT FOR TERMINATION BEFORE BIRTH. (a) A suit for termination may be filed before the birth of the child.

(b) If the suit is filed before the birth of the child, the petition shall be styled "In the Interest of an Unborn Child." After the birth, the clerk shall change the style of the case to conform to the requirements of Section 102.008.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.103. AFFIDAVIT OF VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS. (a) An affidavit for voluntary relinquishment of parental rights must be:

(1) signed after the birth of the child, but not before 48 hours after the birth of the child, by the parent, whether or not a minor, whose parental rights are to be relinquished;

(2) witnessed by two credible persons; and

(3) verified before a person authorized to take oaths.

(b) The affidavit must contain:

(1) the name, county of residence, and age of the parent whose parental rights are being relinquished;

(2) the name, age, and birth date of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) an allegation that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and county of residence of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child has no presumed father;

(8) a statement that the parent has been informed of parental rights and duties;

(9) a statement that the relinquishment is revocable, that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time;

(10) if the relinquishment is revocable, a statement in boldfaced type concerning the right of the parent signing the affidavit to revoke the relinquishment only if the revocation is made before the 11th day after the date the affidavit is executed;

(11) if the relinquishment is revocable, the name and address of a person to whom the revocation is to be delivered; and

(12) the designation of a prospective adoptive parent, the Department of Family and Protective Services, if the department has consented in writing to the designation, or a licensed child-placing agency to serve as managing conservator of the child and the address of the person or agency.

(c) The affidavit may contain:

(1) a waiver of process in a suit to terminate the parent-child relationship filed under this chapter or in a suit to terminate joined with a petition for adoption; and

(2) a consent to the placement of the child for adoption by the Department of Protective and Regulatory Services or by a licensed child-placing agency.

(d) A copy of the affidavit shall be provided to the parent at the time the parent signs the affidavit.

(e) The relinquishment in an affidavit that designates the Department of Protective and Regulatory Services or a licensed child-placing agency to serve as the managing conservator is irrevocable. A relinquishment in any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

(f) A relinquishment in an affidavit of relinquishment of parental rights that fails to state that the relinquishment is irrevocable for a stated time is revocable as provided by Section 161.1035.

(g) To revoke a relinquishment under Subsection (e) the parent must sign a statement witnessed by two credible persons and verified before a person authorized to take oaths. A copy of the revocation shall be delivered to the person designated in the affidavit. If a parent attempting to revoke a relinquishment under this subsection has knowledge that a suit for termination of the parent-child relationship has been filed based on the parent's affidavit of relinquishment of parental rights, the parent shall file a copy of the revocation with the clerk of the court.

(h) The affidavit may not contain terms for limited post-termination contact between the child and the parent whose parental rights are to be relinquished as a condition of the relinquishment of parental rights.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 561, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 561, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1412](#), Sec. 1, eff. September 1, 2007.

Sec. 161.1031. **MEDICAL HISTORY REPORT.** (a) A parent who signs an affidavit of voluntary relinquishment of parental rights under Section 161.103 regarding a biological child must also prepare a medical history report that addresses the medical history of the parent and the parent's ancestors.

(b) The Department of Family and Protective Services, in cooperation with the Department of State Health Services, shall adopt a form that a parent may use to comply with this section. The form must be designed to permit a parent to identify any medical condition of the parent or the parent's ancestors that could indicate a predisposition for the child to develop the condition.

(c) The medical history report shall be used in preparing the health, social, educational, and genetic history report required by Section 162.005 and shall be made available to persons granted access under Section 162.006 in the manner provided by that section.

Added by Acts 2005, 79th Leg., Ch. [1258](#), Sec. 1, eff. September 1, 2005.

Sec. 161.1035. **REVOCABILITY OF CERTAIN AFFIDAVITS.** An affidavit of relinquishment of parental rights that fails to state that the relinquishment or waiver is irrevocable for a stated time is:

(1) revocable only if the revocation is made before the 11th day after the date the affidavit is executed; and

(2) irrevocable on or after the 11th day after the date the affidavit is executed.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 10, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 6, eff. September 1, 2007.

Sec. 161.104. **RIGHTS OF DESIGNATED MANAGING CONSERVATOR PENDING COURT APPOINTMENT.** A person, licensed child-placing agency, or authorized agency designated managing conservator of a child in an irrevocable or unrevoked affidavit of relinquishment has a right to possession of the child superior to the right of the person executing the affidavit, the right to consent to medical, surgical, dental, and psychological treatment of the child, and the rights and duties given by Chapter 153 to a possessory conservator until such time as these rights and duties are modified or terminated by court order.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 70, eff. Sept. 1, 1995.

Sec. 161.106. AFFIDAVIT OF WAIVER OF INTEREST IN CHILD. (a) A man may sign an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit filed or to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit may be signed before the birth of the child.

(c) The affidavit shall be:

(1) signed by the man, whether or not a minor;

(2) witnessed by two credible persons; and

(3) verified before a person authorized to take oaths.

(d) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(e) An affidavit of waiver of interest in a child may be used in a suit in which the affiant attempts to establish an interest in the child. The affidavit may not be used in a suit brought by another person, licensed child-placing agency, or authorized agency to establish the affiant's paternity of the child.

(f) A waiver in an affidavit under this section is irrevocable.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1283, Sec. 13, eff. September 1, 2007.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1283, Sec. 13, eff. September 1, 2007.

(i) A copy of the affidavit shall be provided to the person who executed the affidavit at the time the person signs the affidavit.

(j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1283, Sec. 13, eff. September 1, 2007.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 561, Sec. 11, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 13, eff. September 1, 2007.

Sec. 161.107. MISSING PARENT OR RELATIVE. (a) In this section:

(1) "Parent" means a parent, as defined by Section 160.102, whose parent-child relationship with a child has not been terminated. The term does not include a man who does not have a parent-child relationship established under Chapter 160.

(2) "Relative" means a parent, grandparent, or adult sibling or child.

(b) If a parent of the child has not been personally served in a suit in which the Department of Family and Protective Services seeks termination, the department must make a diligent effort to locate that parent.

(c) If a parent has not been personally served and cannot be located, the department shall make a diligent effort to locate a relative of the missing parent to give the relative an opportunity to request appointment as the child's managing conservator.

(d) If the department is not able to locate a missing parent or a relative of that parent and sufficient information is available concerning the physical whereabouts of the parent or relative, the department shall request the state agency designated to administer a statewide plan for child support to use the parental locator service established under 42 U.S.C. Section 653 to determine the location of the missing parent or relative.

(e) The department shall be required to provide evidence to the court to show what actions were taken by the department in making a diligent effort to locate the missing parent and relative of the missing parent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 71, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 9, eff. September 1, 2007.

Sec. 161.108. **RELEASE OF CHILD FROM HOSPITAL OR BIRTHING CENTER.** (a) Before or at the time an affidavit of relinquishment of parental rights under Section 161.103 is executed, the mother of a newborn child may authorize the release of the child from the hospital or birthing center to a licensed child-placing agency, the Department of Protective and Regulatory Services, or another designated person.

(b) A release under this section must be:

(1) executed in writing;

(2) witnessed by two credible adults; and

(3) verified before a person authorized to take oaths.

(c) A hospital or birthing center shall comply with the terms of a release executed under this section without requiring a court order.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 12, eff. Sept. 1, 1997.

Sec. 161.109. REQUIREMENT OF PATERNITY REGISTRY CERTIFICATE. (a) If a parent-child relationship does not exist between the child and any man, a certificate from the bureau of vital statistics signed by the registrar that a diligent search has been made of the paternity registry maintained by the bureau and that a registration has not been found pertaining to the father of the child in question must be filed with the court before a trial on the merits in the suit for termination may be held.

(b) In a proceeding to terminate parental rights in which the alleged or probable father has not been personally served with citation or signed an affidavit of relinquishment or an affidavit of waiver of interest, the court may not terminate the parental rights of the alleged or probable father, whether known or unknown, unless a certificate from the bureau of vital statistics signed by the registrar states that a diligent search has been made of the paternity registry maintained by the bureau and that a filing or registration has not been found pertaining to the father of the child in question.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 12, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1283](#), Sec. 10, eff. September 1, 2007.

## SUBCHAPTER C. HEARING AND ORDER

Sec. 161.2011. CONTINUANCE; ACCESS TO CHILD. (a) A parent whose rights are subject to termination in a suit affecting the parent-child relationship and against whom criminal charges are filed that directly relate to the grounds for which termination is sought may file a motion requesting a continuance of the final trial in the suit until the criminal charges are resolved. The court may grant the motion only if the court finds that a continuance is in the best interest of the child. Notwithstanding any continuance granted, the court shall conduct status and permanency hearings with respect to the child as required by Chapter 263 and shall comply with the dismissal date under Section 263.401.

(b) Nothing in this section precludes the court from issuing appropriate temporary orders as authorized in this code.

(c) The court in which a suit to terminate the parent-child relationship is pending may render an order denying a parent access to a child if the parent is indicted for criminal activity that constitutes a ground for terminating the parent-child relationship under Section 161.001. The denial of access under this section shall continue until the date the criminal charges for which the parent was indicted are resolved and the court renders an order providing for access to the child by the parent.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 61, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 3, eff. Sept. 1, 2001.

Sec. 161.202. PREFERENTIAL SETTING. In a termination suit, after a hearing, the court shall grant a motion for a preferential setting for a final hearing on the merits filed by a party to the suit or by the amicus attorney or attorney ad litem for the child and shall give precedence to that hearing over other civil cases if:

(1) termination would make the child eligible for adoption; and

(2) discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 133, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [172](#), Sec. 19, eff. September 1, 2005.

Sec. 161.2021. MEDICAL HISTORY REPORT. (a) In a termination suit, the court shall order each parent before the court to provide information regarding the medical history of the parent and the parent's ancestors.

(b) A parent may comply with the court's order under this section by completing the medical history report form adopted by the Department of Family and Protective Services under Section 161.1031.

(c) If the Department of Family and Protective Services is a party to the termination suit, the information provided under this section must be maintained in the department records relating to the child and made available to persons with whom the child is placed.

Added by Acts 2005, 79th Leg., Ch. [1258](#), Sec. 2, eff. September 1, 2005.

Sec. 161.203. DISMISSAL OF PETITION. A suit to terminate may not be dismissed nor may a nonsuit be taken unless the dismissal or nonsuit is approved by the court. The dismissal or nonsuit approved by the court is without prejudice.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 4, eff. Sept. 1, 2001.

Sec. 161.204. TERMINATION BASED ON AFFIDAVIT OF WAIVER OF INTEREST. In a suit for termination, the court may render an order terminating the parent-child relationship between a child and a man who has signed an affidavit of waiver of interest in the child, if the termination is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 5, eff. Sept. 1, 2001.

Sec. 161.205. ORDER DENYING TERMINATION. If the court does not order termination of the parent-child relationship, the court shall:

- (1) deny the petition; or
- (2) render any order in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1090, Sec. 6, eff. Sept. 1, 2001.

Sec. 161.206. ORDER TERMINATING PARENTAL RIGHTS. (a) If the court finds by clear and convincing evidence grounds for termination of the parent-child relationship, it shall render an order terminating the parent-child relationship.

(b) Except as provided by Section 161.2061, an order terminating the parent-child relationship divests the parent and the child of all legal rights and duties with respect to each other, except that the child retains the right to inherit from and through the parent unless the court otherwise provides.

(c) Nothing in this chapter precludes or affects the rights of a biological or adoptive maternal or paternal grandparent to reasonable access under Chapter 153.

(d) An order rendered under this section must include a finding that:

(1) a request for identification of a court of continuing, exclusive jurisdiction has been made as required by Section 155.101; and

(2) all parties entitled to notice, including the Title IV-D agency, have been notified.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 72, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 561, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [972](#), Sec. 44, eff. September 1, 2007.

Sec. 161.2061. TERMS REGARDING LIMITED POST-TERMINATION CONTACT. (a) If the court finds it to be in the best interest of the child, the court may provide in an order terminating the parent-child relationship that the biological parent who filed an affidavit of voluntary relinquishment of parental rights under Section 161.103 shall have limited post-termination contact with the child as provided by Subsection (b) on the agreement of the biological parent and the Department of Protective and Regulatory Services.

(b) The order of termination may include terms that allow the biological parent to:

- (1) receive specified information regarding the child;
- (2) provide written communications to the child; and
- (3) have limited access to the child.

(c) The terms of an order of termination regarding limited post-termination contact may be enforced only if the party seeking enforcement pleads and proves that, before filing the motion for enforcement, the party attempted in good faith to resolve the disputed matters through mediation.

(d) The terms of an order of termination under this section are not enforceable by contempt.

(e) The terms of an order of termination regarding limited post-termination contact may not be modified.

(f) An order under this section does not:

- (1) affect the finality of a termination order; or
- (2) grant standing to a parent whose parental rights have been terminated to file any action under this title other than a motion to enforce the terms regarding limited post-termination contact until the court renders a subsequent adoption order with respect to the child.

Added by Acts 2003, 78th Leg., ch. 561, Sec. 2, eff. Sept. 1, 2003.

Sec. 161.2062. PROVISION FOR LIMITED CONTACT BETWEEN BIOLOGICAL PARENT AND CHILD. (a) An order terminating the parent-child relationship may not require that a subsequent adoption order include terms regarding limited post-termination contact between the child and a biological parent.

(b) The inclusion of a requirement for post-termination contact described by Subsection (a) in a termination order does not:

- (1) affect the finality of a termination or subsequent adoption order; or

(2) grant standing to a parent whose parental rights have been terminated to file any action under this title after the court renders a subsequent adoption order with respect to the child.

Added by Acts 2003, 78th Leg., ch. 561, Sec. 2, eff. Sept. 1, 2003.

Sec. 161.207. APPOINTMENT OF MANAGING CONSERVATOR ON TERMINATION. (a) If the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult, the Department of Protective and Regulatory Services, a licensed child-placing agency, or an authorized agency as managing conservator of the child. An agency designated managing conservator in an unrevoked or irrevocable affidavit of relinquishment shall be appointed managing conservator.

(b) The order of appointment may refer to the docket number of the suit and need not refer to the parties nor be accompanied by any other papers in the record.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.208. APPOINTMENT OF DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES AS MANAGING CONSERVATOR. If a parent of the child has not been personally served in a suit in which the Department of Protective and Regulatory Services seeks termination, the court that terminates a parent-child relationship may not appoint the Department of Protective and Regulatory Services as permanent managing conservator of the child unless the court determines that:

(1) the department has made a diligent effort to locate a missing parent who has not been personally served and a relative of that parent; and

(2) a relative located by the department has had a reasonable opportunity to request appointment as managing conservator of the child or the department has not been able to locate the missing parent or a relative of the missing parent.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.209. COPY OF ORDER OF TERMINATION. A copy of an order of termination rendered under Section 161.206 is not required to be mailed to parties as provided by Rules 119a and 239a, Texas Rules of Civil Procedure.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.210. SEALING OF FILE. The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a suit for termination.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 161.211. DIRECT OR COLLATERAL ATTACK ON TERMINATION ORDER. (a) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who has been personally served or who has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child or whose rights have been terminated under Section 161.002(b) is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(b) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(c) A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

Added by Acts 1997, 75th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 601, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, Sec. 19, eff. Sept. 1, 1999.