

TN Clerks of the Court Conference
Fall 2021, Pickwick Landing State Park

A Clerk's Guide to Adoptions

TERMINATION OF PARENTAL RIGHTS

A. Jurisdiction: T.C.A. § § 36-1-113, 36-1-111(b)

1. Circuit
2. Chancery OR
3. Juvenile



TERMINATION OF PARENTAL RIGHTS

B. Voluntary Surrenders: A document executed under the provisions of T.C.A. § 36-1-111

1. By whom? Any birthparent or legal guardian, regardless of age
 - Court may appoint GAL for a minor parent – T.C.A. § 36-1-110
2. To whom? T.C.A. § 36-1-111(c)
 - Any prospective adoptive parent, 18 years of age or older
 - TN DCS
 - Licensed child-placing agency

TERMINATION OF PARENTAL RIGHTS

3. When? T.C.A. § 36-1-111(d)(3)

- No sooner than the 4th calendar day after child's birth
- Unless for good cause shown, which is entered in minute book, a court waives the waiting period

TERMINATION OF PARENTAL RIGHTS

4. Where? T.C.A. § 36-1-111(b), (k)(1)(C)(iii)

- Private chambers of court OR
- Another private area
- In presence of surrendering person's legal counsel (if applicable)
- Court has discretion for presence of court's officer or other employee

TERMINATION OF PARENTAL RIGHTS

5. How? 2018 NEW SURRENDER FORMS

Translating Surrender (2018 Amendment)

- T.C.A. § 36-1-111(k)(1)(A)
- Unable to read, read in the English language, see, or comprehend the surrender form
- Documents must be translated
- Accepting party is responsible for costs of translation/interpreter

TERMINATION OF PARENTAL RIGHTS

5. How? 2018 SURRENDER FORMS

- A. Tennessee Surrender signed by birthparent before and attested by Judge or Officiant
- B. Acceptance by Agency or Prospective Adoptive Parents, signed before and attested by Judge or Officiant
- C. Surrendering Party's Pre-Surrender Information Form signed before Notary
 - Do not have Legal Counseling or Social Counseling Forms anymore
 - Contact Veto is easier to understand
- D. Accepting Party's Pre-Acceptance Information Form signed before Notary

Surrender Documents:

- ✓ New Surrender Forms
- ✓ Medical/Social Background Forms
- ✓ Mother's Affidavit
- ✓ Waiver of Interest and/or Denial of Paternity for Legal Father
- ✓ Court Report/Homestudy (if directly to adoptive parents)
- ✓ T.C.A. §36-1-113(d)(6) Affidavit waiving custody (if applicable)
- ✓ Motion for Order of Partial OR Full Guardianship
- ✓ Order of Partial OR Full Guardianship



TERMINATION OF PARENTAL RIGHTS

6. Who Receives Certified Copies of the Surrender Packet? T.C.A. § 36-1-111(p)

- ✓ Surrendering parent
 - Without court report/home study
- ✓ Agency or Adoptive parents
 - Costs can be charged for certified copies
- ✓ Within 5 days to DCS adoption unit in Nashville
- ✓ Upon request:
 - Court where adoption/termination petition is filed
 - Party who is petition for adoption where child was not placed by DCS or licensed agency (costs can be charged)
 - DCS county office, licensed agency, or licensed social worker providing adoption supervision

Original Surrender Documents

T.C.A. § 36-1-111(p)(2)(A), (r)(2)(B)

- ✓ Entered on a special docket, styled “In re: (Child’s Name)”
- ✓ Permanently filed in a separate and confidential file
- ✓ Maintain separate adoption order of guardianship minute book
- ✓ Kept locked and available only upon written approval of the court

TERMINATION OF PARENTAL RIGHTS

7. Revocation of Surrender: T.C.A. § 36-1-112(a)(1)

- (a) For any reason within three (3) calendar days of date of surrender unless any of the three (3) days falls on a Saturday, Sunday, or legal holiday - those days shall not be counted.

TERMINATION OF PARENTAL RIGHTS

(b) After the expiration of the three (3) calendar day revocation period, no surrender may be set aside, unless:

- T.C.A. § 36-1-111(d) - Within thirty (30) days of execution of surrender, an action is brought to set aside the surrender based upon duress, fraud, intentional misrepresentation, or invalidity
 - Clear and convincing evidence standard.
- T.C.A. § 36-1-118 - By order of the court pursuant to dismissal of adoption proceedings. Before order entered, court must give written notice of not less than five (5) days, excluding Saturdays, Sundays, and legal holidays to the following:
 - Person of entity to whom child was surrendered
 - Any parties to proceedings
 - DCS or licensed child-placing agency or licensed clinical social worker who conducted any studies involving placement of the child
 - Parent whose rights were terminated, but only if court will consider reinstatement of that parent's rights

TERMINATION OF PARENTAL RIGHTS

(c) Revocation Disposition

- Original revocation placed with original surrender
- Either personally give or send by certified mail, return receipt requested, certified copies to the following:
 - Child's parents
 - Prospective adoptive parents
 - Agency to whom child has been surrendered, either DCS or licensed child-placing agency
 - Counsel for prospective adoptive parents

TERMINATION OF PARENTAL RIGHTS

Revocation Disposition continued . . .

- Within three (3) days attach a certified copy of revocation to certified copy of surrender OR adoption petition containing parental consent and send by certified mail, return receipt requested to DCS adoption unit in Nashville
- If within five (5) days of receipt of revocation, a complaint is filed with the revocation court to show cause why the child would suffer immediate harm to child's health and safety if returned, then:
 - Preliminary hearing set within three (3) days of filing of complaint for probable cause hearing
 - If probable cause shown, then a final hearing on the merits shall be set within thirty (30) days of preliminary hearing, except for cause shown in a written order of the court entered on the record

TERMINATION OF PARENTAL RIGHTS

8. Surrenders obtained in another state, foreign country, or state or federal penitentiary

- T.C.A. § 36-1-111(q) T.C.A. § 36-1-111(q)
- Party to whom child is surrendered is to file a certified copy in the Chancery, Circuit or Juvenile court of the county in which he or she resides, in which event the clerk is to process the surrender just as if surrender was taken before that clerk's judge.

TERMINATION OF PARENTAL RIGHTS

9. Parental Consents: T.C.A. § 36-1-117(g)(i)

- Parental Consent by Un-related person - procedure used in conjunction with filing adoption petition whereby a person may sign the petition for purpose of giving parental consent.
- An Order Confirming Parental Consent is signed by the judge after person completes parental consent documents pursuant to T.C.A. § 36-1-111 (similar to surrender documents)
- Certified copy of Order Confirming Parental Consent is sent to DCS adoption unit in Nashville

TERMINATION OF PARENTAL RIGHTS

C. Involuntary Termination - T.C.A. § 36-1-113

1. Who may file petition? (separately or part of adoption petition)
 - a. Prospective adoptive parents, including extended family members caring for related children
 - b. Licensed child-placing agency having custody of the child
 - c. Child's GAL
 - d. DCS
 - e. Child's parent under limited circumstance – T.C.A. § 36-1-113(g)(10)

2. Special notice provision to incarcerated person – T.C.A. § 36-1-113(f)

TERMINATION OF PARENTAL RIGHTS

3. Putative Father Registry Requirement (2019 Amendment)

- Only check TN PFR - <https://www.tn.gov/dcs/program-areas/foster-care-and-adoption/fca/adoption-records/alleged-putative-fathers.html>
- Send PFR REQUEST for clearance within 10 days of filing petition OR state that PFR will be consulted within 10 days of filing petition
- Copy of PFR response to be provided upon receipt
- Don't have to check PFR if DNA test confirms biological father and he is identified in petition

ADOPTIONS

A. Jurisdiction: T.C.A. § 36-1-115

1. Chancery OR

2. Circuit



ADOPTIONS

B. Definitions:

1. Order of Reference - T.C.A. § 36-1-102(36)

- The order from the court where the adoption petition is filed that directs DCS, licensed child-placing agency, or licensed social worker to conduct a home study or to complete a report of the status of the child who is the subject of an adoption proceeding
- Clerk to send to DCS or Agency

ADOPTIONS

2. Home Study - T.C.A. § 36-1-102(27)

The process in which individuals or families are assessed by the department or licensed child-placing agency, or a licensed social worker, as to their suitability for adoption and their desires with regard to the child they wish to adopt. The home study conforms to the requirements set by the department and it becomes a written document . . . The home study should be kept confidential, and at the conclusion of the adoption proceeding shall be forwarded to the department to be kept under seal.

ADOPTIONS

3. Final court report - T.C.A. § 36-1-102(21)

A written document completed by DCS, licensed child-placing agency, or licensed social worker after submission of any prior court reports in response to the court's order of reference. It gives information concerning the status of the child in the home of the prospective adoptive parents and gives a full explanation to the court of the suitability of the prospective adoptive parent(s) to adopt the child. The final court report is designed to bring the status of the proposed adoptive home and the child up to date immediately prior to finalization of the adoption and should be the last report the court receives before finalization of the adoption.

ADOPTIONS

4. Consent- T.C.A. § 36-1-102(15)

- The permission of a child fourteen (14) years of age or older given to the court, in chambers, before the entry of an order of adoption of such child.
- Process by which a parent co-signs the adoption petition, with the adoptive parents (including stepparent or relative adoptions), for the purpose of agreeing to the adoption and permits the court to enter an order of guardianship

ADOPTIONS

C. Putative Father Registry Requirements IN Adoptions (2019 Amendment)

- ✓ TN PFR - <https://www.tn.gov/dcs/program-areas/foster-care-and-adoption/fca/adoption-records/alleged-putative-fathers.html>
- ✓ PFR of state where the child was born
- ✓ PFR of state where child's mother was living or present (or have reason to believe was living or present) at the time of conception
- Send PFR REQUEST for clearance within 10 days of filing petition OR state that PFR will be consulted within 10 days of filing petition - Copy of PFR response to be provided upon receipt and prior to adoption finalization
- Don't have to check PFR if DNA test confirms biological father and he is identified in petition
- Must provide a statement in petition if the State does not have a PFR
- If State does not permit access, does not provide a response in 30 days, or requires an unreasonable fee and diligent efforts are made to identify father, then court can waive PRF requirement

ADOPTIONS

D. Types of Adoptions

1. Agency Placement
2. Private Placement
3. Relative
4. Step-Parent

ADOPTIONS

AGENCY & PRIVATE

- Putative Father Response – T.C.A. § 36-1-116(b)(13)(A)
- Within 3 business days after filed petition, certified copy sent to DCS adoption unit AND to local DCS OR agency/social worker doing supervision
- Home Study Required – T.C.A. § 36-1-116
- Order of Reference issued w/in 5 days of filed petition

ADOPTIONS

AGENCY & PRIVATE

- Certified copy of surrender documents to be made party of adoption record, kept confidential, placed in sealed envelope and remain under seal – T.C.A. § 36-1-116(e)(2)(A)
- Consent of Minor, if 14 or over
- Final Court Report

ADOPTIONS

AGENCY & PRIVATE

- Final Order of Adoption
 - T.C.A. § § 36-1-119, 36-1-120
 - Petition on file or child has been in home for at least 6 months, then 6 month waiting may be waived
- Adoption proceeding must be completed or dismissed within 2 years of filing petition, unless good cause shown why final order should not be entered

ADOPTIONS

RELATIVE & STEP-PARENT

All Same Requirements EXCEPT:

- Home study may be waived - T.C.A. § 36-1-119(b)
- Order of Reference may be waived - T.C.A. § 36-1-119(b)
- Final Court Report may be waived - T.C.A. § 36-1-119(b)
- Final Order of Adoption waiting period may be waived - T.C.A. § 36-1-119(b)

Final Order of Adoption:

- ✓ Attorney Affidavit disclosing fees and expenses
- ✓ Agency Affidavit disclosing fees and expenses
- ✓ Final Order of Adoption with specific information included
- ✓ Certified copy of Final Order and affidavits sent to DCS adoption unit in Nashville
- ✓ Certified copies of Final Order to adopted person, adoptive parents or their attorney, upon their request at any time AND . . .



Final Order of Adoption:

Copy of certified Final Order with

- ✓ Application for Certificate of Birth OR
- ✓ Application or Report of Foreign Birth AND
- ✓ Fees to Registrar of Division of Vital Records of TN Department of Health in Nashville
 - <https://www.tn.gov/assets/entities/health/attachments/PH-1248.pdf>
 - <https://www.tn.gov/assets/entities/health/attachments/PH-2591.pdf>



ADOPTIONS

D. Re-Adoptions: T.C.A § 36-1-106

- Law provides a distinction on re-adoption procedures depending on whether the adopted child:
 1. Has an IR-3 stamp on his/her visa (child is a US citizen) OR
 2. Has an IR-4 stamp (child is not a US citizen)

ADOPTIONS

D. Re-Adoptions: Petition with IR-4 child

- Petition
- Evidence of foreign adoption, with certified translation
- No putative father response
- No court report
- No 6 month waiting period
- Attorney affidavit
- Agency affidavit
- Final hearing and Order

ADOPTIONS

D. Re-Adoptions: Petition with IR-3 child

- Petition
- Evidence of foreign adoption (decree, order or certificate of adoption)
- Certified translation of evidence
- Proof of full and final adoption for U.S. Government (IR-3 Visa stamp or Certificate of Citizenship)
- With above documents, assign a docket number, file and enter documents, obtaining Order recognizing foreign adoptions
- NO hearing required, Only Order

ADOPTIONS

D. Adult Adoptions

- Petition
- Adult being adopted to co-sign petition with adoptive parent
- Attorney affidavit
- Final hearing and Final Order

APPEALS

III. Appeals

T.R.A.P. 8A provides for expedited appeals in termination of parental rights cases

RECORDS

IV. Adoption Records

A. Confidentiality of Records: T.C.A. § 36-1-125

1. All documents filed in the context of a surrender or adoption action, and the information contained in those documents are confidential and may not be disclosed, except in the following situations:
 - By the judge, clerk, DCS, licensed child-placing agency, or licensed social worker in any act necessary for the adoption, custody or guardianship proceedings
 - By the above individuals for the placement, study, or supervision of a person for whom an adoption, custody or guardianship proceeding is pending
 - By the above individuals to carry out their duties consistent with the law.

RECORDS

2. The use of these records for any legal proceeding other than the adoption proceeding or termination of parental rights proceeding are only permitted in conjunction with a protective order restricting further disclosure or dissemination.

3. Unauthorized disclosure is a Class A misdemeanor.

4. An unauthorized disclosure for “personal gain or for a malicious purpose” is a Class E felony.

RECORDS

B. Sealing of Records: T.C.A. § 36-1-126

1. All court records are to be sealed

- (i) after the entry of a final order of adoption;
- (ii) after the entry of a final order dismissing the adoption;
- (iii) after the entry of an order revoking a surrender or parental consent;
- (iv) after the entry of an order dismissing a termination of parental rights proceeding filed in conjunction with an adoption proceeding; OR
- (v) upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding

RECORDS

2. In the event of an appeal of any ruling of the trial court in an adoption proceeding, records remain confidential “and shall not be open to inspection by anyone other than the trial or appellate courts, the clerk, the parties to the proceeding, or the licensed child-placing agencies or the licensed clinical social worker....that have been involved in the case.”

RECORDS

C. Access to Records: T.C.A. § 36-1-127

1. Pre-March 16, 1951 Records - All pre-March 16, 1951 adoption records and all records of adoptions involving the Tennessee Children's Home Society are open to adoptive persons and birth relatives and relatives by adoption.
2. Post-March 16, 1951 Records
 - 1996 legislation
 - For adoptive persons 21 years of age or older
 - Records not open if the birth mother was a victim of rape or incest (unless she consents to the disclosure)
 - No home study information is to be provided
3. Any person who is eligible to receive record access must submit a request for access through the DCS post-adoption unit in Nashville in order to obtain written authorization to access the record.

RECORDS

D. Court-ordered Release of Records:

T.C.A. § 36-1-138

Under specific guidelines, and for specific grounds that must be shown to the court, a movant may file a written, sworn motion to obtain access to information in files or records of adoption proceedings, or in an adoption record, sealed adoption record, sealed record, post-adoption record or adoption assistance record.

RECORDS

The motion must be filed in:

- Court of original jurisdiction of adoption proceeding; or
- If no adoption proceeding has been filed, in Chancery or Circuit court of county where record is located or in Chancery or Circuit court of any county with population of 100,000 or greater, according to 1990 federal census; or
- If original court of jurisdiction no longer exists, then the Chancery court for the county in which such court was established or in Circuit or Chancery court in county with 100,000 or greater population, as of the 1990 federal census or subsequent census
- Only in Chancery court for Davidson county for those who have requested records under specific sections of the statute and claim to have been improperly denied access to information by DCS or Department of Health.

RECORDS

E. Breathe Easy Provision: T.C.A. § 36-1-122

This provision, among other things, provides that “...failure of the clerk of the court...to perform any of the duties or acts within the time requirements of this part shall not affect the validity of any adoption proceeding.”