

STANDARD: DETERMINING PATERNITY, TERMINATION OF PARENTAL RIGHTS AND NOTICE OF TERMINATION AND ADOPTION PROCEEDINGS

PURPOSE

The purpose of this standard is to provide direction and guidance to the Child and Family Services (CFS) programs regarding termination of parental rights of men who may have a legal relationship with a child. CFS standards are intended to achieve statewide consistency in the development and application of CFS core services and will be implemented in the context of all applicable laws, rules, and policies. Standards will also provide a measurement for program accountability.

INTRODUCTION

Before a child can be adopted, the parental rights of anyone with possible legal standing must be terminated. In recent years, changes have been made to the Idaho adoption statute, Section 16-1501, Idaho Code, that removes the requirement to provide notice of termination and adoption proceedings to unmarried fathers unless they satisfy several requirements, including filing a paternity action and registering with Vital Statistics.

This modification of Idaho law has set a different standard for legal notice to fathers regarding termination of their parental rights than what Children and Family Services has established as best practice. CFS will continue to identify all possible fathers, determine their paternity or other legal standing and terminate any parental rights in order for a child to be legally free for adoption.

It is clearly in the best interests of children that all diligent and reasonable efforts be made to identify and terminate the rights of all men who may be a child's father.

Definitions

Legal Father: a man who has been declared to be the father by court order, or who has filed a voluntary acknowledgement of paternity with the Bureau of Vital Statistics after 1996, per Section 7-1106, Idaho Code (Voluntary acknowledgments prior to 1996 create a presumption of paternity that must be determined by a court). A man who is married to the child's mother at the time of conception or birth, or a man named on the birth certificate is presumed to be the legal father, until a court determines otherwise.

Biological Father: the man who is the genetic father of the child. If the mother and man agree that the man is the father, and it is reasonable to believe it is true, in these circumstances, no genetic testing is required. However, without proof of genetic testing there is a possibility that the man may not be the child's biological father. Therefore, the social worker/clinician shall be

alert to the potential of other possible fathers and continue to ask, through the life of the case, if there could be other men who could be the child's father.

“John Doe”: a man who has not been identified by name, but by report, as the father of a given child. For example, a woman may state she conceived the child with a man whose name is unknown to her. Notification of a “John Doe” is done by publication in the newspaper(s) most likely to give notice to the person being served, per Section 16-2007, Idaho Code.

Establishment of Paternity: the process by which a man is established as a child's legal father through court order, or through filing an acknowledgement of paternity.

STANDARD

The practice standard for Children and Family Services is to terminate the parental rights of all possible fathers of a child being considered for adoption, whether or not the father's identity is known. The parental rights of all legal fathers, unmarried biological fathers and any potential “John Doe” fathers must be terminated. The Practice standard is that CFS staff work diligently to identify all men who could be the father of the child prior to proceeding to a “John Doe” termination.

Identifying Possible Fathers:

The social worker should begin the process of determining paternity as soon as a child enters foster care. Establishment of paternity broadens the circle of support for a child and is part of the concurrent planning process in working toward the permanency goal of adoption or legal guardianship. Prior to filing a petition for termination of parental rights, the social worker must determine the identities of all possible fathers of the child. Discussion regarding the identity of family members, including the child's father, should be held early and as needed throughout the life of the case. There are several points during the life of the case during which there is specific opportunity to discuss possible fathers with the mother or other sources. Examples of times to discuss the paternity of a child include:

- At the beginning of the case - a discussion with the child's mother should be held early in a case to identify who is or who might be the father of the child;
- In family group decision making meetings;
- During the development of the genogram and ecomap;
- Preparation for permanency review hearings- a discussion regarding paternity is especially critical in preparing for permanency review hearings if there remains any question regarding the identity of the child's father.
- Regional permanency committee meeting - the identity of all possible fathers is pertinent to the decision to pursue termination of parental rights.

Establishing Paternity:

If more than one possible father is identified or if paternity is otherwise in question, paternity must be determined as conclusively as possible. A referral should be made to Child Support Services as soon as it becomes evident that paternity needs to be established. CSS has 90 days from a “good locate” to establish paternity, which makes a timely referral critical. A “good

locate” is when the identified man has been found. CSS has 90 days from that point to establish paternity.

If the social worker is unsuccessful in identifying the child’s father, termination of parental rights must occur on all possible legal and biological fathers.

Once the publication of notice to a “John Doe” father has been accomplished, the parental rights of the unnamed father can be terminated by the court. A true “John Doe” is a man whose name is unknown at the time the termination is filed. It is not adequate effort to file a “John Doe” termination without a diligent search of all information, including file information, to identify any man who may be the legal or biological father.

If the child's father is identified by name after a “John Doe” publication, there is no legal requirement to also terminate the parental rights of the newly identified individual. However, if adequate efforts were not made by Children and Family Services’ staff to identify all possible fathers prior to the termination of parental rights, the Department shall petition to terminate rights of any newly identified man. For example, if a man was named in a case file as a possible legal or biological father and, through Department error, no efforts were made to notify him of his rights to the child, a separate termination action should be initiated even if a “John Doe” termination has been completed.

County Prosecutors may be reluctant to proceed with termination of parental rights after a “John Doe” publication has occurred. In cases where the potential father was mentioned in the case record and/or CFS staff made inadequate efforts to locate or notify a possible father, TPR on the newly identified man must be completed, even if a “John Doe” publication and TPR has occurred. In these situations, the regional Deputy Attorney General may be asked to file a petition for termination of parental rights on cases involving a “John Doe” father. However, if the father could not be identified from the record and diligent efforts were made to identify, locate, and establish paternity on all possible fathers, permanency for the child should not be delayed even if the child's father is identified after a "John Doe" termination has been completed.

Publication of Notice to Terminate Parental Rights:

After a petition to terminate parental rights has been filed with the court, notice shall be provided to the parents of the child and others, which may include the guardian of the child, any person standing in loco parentis to the child, the Guardian Ad Litem of any party, or the nearest blood relative of the parent or guardian, if they cannot be located. (Section 16-1513, Idaho Code) If notice cannot be personally served, notice will be made by registered or certified mail to the last known address of the person and by publication once a week for three successive weeks in a newspaper or newspapers most likely to give notice to the person being served. (Section 16-2007, Idaho Code)

Any variance to these standards will be documented and approved by Division Administration, unless otherwise noted.