

Procedure and review checklist for Termination of Parental Rights

Resources: Squaxin Island Code Chapter 10.16

Critical path:

- Petition is filed.**
- Hearing is scheduled within 60 days.**
- Court Clerk provides notice of hearing at least 20 days prior to the hearing.**
- ICW prepares preliminary pre-termination report.**
- ICW seeks recommendations of social service professionals.**
- ICW seeks recommendations, if any, from Tribal Council.**
- ICW serves pre-termination report at least 10 days prior to the hearing.**
- Anyone else may serve their own pre-termination report at least 10 days prior to the hearing.**
- Determine if consent will or will not be given.**
- Conduct hearing.**
- Prior to entry of any final order terminating rights, file, if necessary, any enrollment application.**
- Enter order terminating parental rights.**
- If termination occurs, determine, up to date of adoption, that consent was not revoked.**

1. Beginning – prepare and file a petition to terminate parental rights.

To start an action for the termination of parental rights, a petition must be prepared. A petition should be prepared by the person promoting the termination of rights. The petition must include:

- The name, birth date, residence, and tribal status of the youth who is the subject of the petition;
- The name, birth date, residence, and tribal status, if known, of the youth's parent(s), guardian or custodian;
- If the youth is residing with someone other than a parent, the location and length at that location; and
- A concise statement of the facts and reasons supporting request that parental rights be terminated. An example might be: "The birth mother of Youth X was recently incarcerated in the Washington State Penitentiary and is not scheduled for release for 5 years. Youth X is now 12 years old and has not had any contact with her mother for 9 years, the child moving from foster care to foster care home since birth. The birth mother voluntarily chose to stop seeing for the child soon after birth. The birth mother has provided no emotional, cultural or financial support to the child."
- The petition should be signed and verified by the applicant. For example, "I have read the foregoing petition and to the best of my knowledge it is true and accurate."

2. Once the petition is filed – notice is given.

File the petition with the Court.

When the petition is received, the Court Clerk shall immediately notify the ICW.

When the petition is received, the Court Clerk shall set a date no more than 60 days from the date the petition was received, unless the Court extends the date.

When the Court date is set the Court Clerk shall give notice of the hearing date to the following people, at least 20 days before the hearing:

- The youth;
- The youth's parent(s), guardian or custodian;
- Any person the Court deems necessary for proper adjudication;
- Any person the parties believe necessary for the hearing;
- The Indian Child Welfare Office; and
- The Squaxin Island Tribe's presenting ICW officer or, if none is assigned then the Squaxin Island Legal Department.

The notice must include the date, time, and place of the hearing, and a copy of the petition.

3. The Pre-termination Report.

ICW must prepare a Pre-Termination report. The time period is short. The hearing will be less than 60 days away, and needs to be filed at least 10 days prior. Thus, ICW will have 40 days or less to complete its work.

When the petition or notice of a petition is received by the ICW, ICW shall immediately begin preparation of a pre-termination report.

ICW shall consult with social services staff.

ICW shall consult with the youth's parents, guardian and or custodian.

ICW shall consult with all social services, health, and education personnel who have had prior professional contacts with the youth and or his or her parent(s), guardian or custodian to determine if termination is in the best interests of the youth.

ICW may review any of the youth's prior court record.

ICW shall present its preliminary findings and recommendations to Tribal Council and receive from Tribal Council its recommendations, if any.

Thereafter, ICW shall prepare and finalize a written Pre-Termination Report including the professional opinions of all personnel consulted, the recommendation of Tribal Council, if any, and the recommendation of ICW.

10 days prior to the hearing, the Pre-termination Report shall be submitted by the ICW to:

- The youth;
- The youth's parent(s), guardian or custodian;
- Any person the Court deems necessary for proper adjudication;
- Any person the parties believe necessary for the hearing;
- The Squaxin Island Court Clerk;
- The Indian Child Welfare Office; and
- The Squaxin Island Tribe's presenting ICW officer or, if none is assigned then the Squaxin Island Legal Department.

The Court Clerk may receive additional reports from any party which include his or her recommendation.

4. The Pre-Termination Hearing.

The Pre-Termination hearing is conducted consistent with the Youth Code. The Court shall consider all pre-termination reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the pre-termination reports.

The grounds for termination and the burden of proof are set by statute. The Pre-Termination Report should consider and speak to the following standards:

The Court may terminate a person's parental rights only when the following conditions have been proved beyond a reasonable doubt:

- That termination of parental rights is in the best interest of the youth;
- That guardianship, rather than termination of parental rights, is not in the youth's best interest;
- That an appropriate adoptive home is available and that adoption proceedings have been filed in conjunction with the termination proceedings; and
- That the parent has consented to the termination of his or her parental rights under the terms of this chapter; or
- That the parent is responsible for abuse of the youth as defined in this section.

ICW shall include in the Pre-Termination Report whether the petition is based on the consent or abuse elements. The Pre-Termination Report should speak to the elements noted below for each.

3.1 Consent. A consent of the parent to terminate parental rights is not valid unless:

- It is in writing;
- The parent has received counseling from the Squaxin Island social services staff

on alternatives to termination such as guardianship, parental support services, and so on;

- The parent orally explains his or her understanding of the meaning of termination of parental rights and its consequences to the Youth Court judge and the judge certifies that the terms and consequences of the consent were fully explained and were fully understood by the parent; and
- The consent was given no sooner than thirty (30) days after the birth of the youth.

Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for terminating parental rights, the child shall be returned to the parent.

3.2 Abuse. Abuse as a condition of termination of parental rights means:

- Willful and repeated physical injuries which cause or create a substantial risk of death, disfigurement or impairment of bodily functions; or
- Willful and repeated acts of sexual abuse.

4. Prior to Entry of Final Order. Two matters need to be checked.

4.1 Enrollment. If a youth is eligible for enrollment in the Squaxin Island Tribe, the Indian Child Welfare worker shall submit an application for enrollment of the youth to the Squaxin Island enrollment clerk prior to any final order terminating parental rights.

4.2 Revocation of Consent. If the petition is based on the consent of a parent, the parent can revoke that consent at any time up to the adoption. Check for a revocation prior to entry of a final order.

5. Post Entry.

If the Order terminating parental rights was based on the consent of a parent, the parent can revoke that consent at any time up to the adoption. Check, prior to adoption, for a revocation.