

COQUILLE INDIAN TRIBAL CODE
Chapter 642
TERMINATION OF PARENTAL RIGHTS

642.010 Policy. (1) Involuntary termination of parental rights is a serious matter and an action that the Coquille Indian Tribal Court may take only after all remedies have been exhausted in an attempt to maintain the stability of the family or to maintain a minimum level of positive contact between the child and his or her parent.

642.015 Definitions. (1) All definitions in CITC chapter 640, Children Generally, are hereby incorporated into this chapter when not in conflict with a definition under this section.

642.020 Jurisdiction. The jurisdiction of the court to make an adoptive placement is the same as the court's jurisdiction under CITC 640.020 of Children Generally.

642.050 Termination of Parental Rights; who may file a petition. (1) The parental or custodial rights of a parent or custodian to a child within the jurisdiction of the court pursuant to CITC 640.020 of Children Generally may be terminated as provided in this chapter if it is in the best interests of the child. The rights of one parent may be terminated without affecting the rights of another parent.

(2) Only the tribal prosecutor or Human Services may file a termination petition.

642.100 Termination standards; content of the petition. (1) No order terminating parental rights or placing the child for adoption may be entered if proper notice was not provided pursuant to CITC 642.410.

(2) An order terminating parental rights must find that:

(a) the party seeking to remove the child from the custody of the parent or custodian has satisfied the court that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the removal of the child or to allow a return of the child from protective custody, and that these efforts have proven unsuccessful; and

(b) the facts as alleged are proven by clear and convincing evidence that the continued custody of the child by the parent or custodian is likely to result in serious emotional damage or physical damage to the child.

In the absence of such proof, the petition must be dismissed.

(3) A verified petition for termination of parental rights, filed and served pursuant to the Coquille Rules of Civil Procedure, shall state with specificity:

(a) the name, age, sex, and address of the child, and with whom the child has

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resided in the last 12 months; and

(b) the factual allegations that support the termination and the section of this chapter that the court is asked to proceed under; and

(c) the tribal affiliation(s) of the child, parent and custodian by heritage and, if known, their enrollment status; and

(d) the permanent plan for the child and how the termination and adoption meet the child's best interests; and

(e) the remedial services provided to the family and an account of why the services failed to achieve reunification; and

(f) the name, age and address of the parent or custodian, and when there is no parent or custodian, the name, age and address of the nearest relative; and

(g) whether there is any custody proceeding pending in any court and the nature of such a proceeding; and

(h) the name, address and relationship of the petitioner to the child; and

(i) the name and address of the legal custodian or guardian; and

(j) a list of the child's assets.

Provided, that if one or more of the above required facts is not known, the petition shall specifically state that such fact is not known.

(3) The burden of proof is upon the petitioner.

642.200 Termination for extreme conduct; grounds. (1) The rights of a parent or custodian may be terminated under this chapter if the court finds the parent unfit by reason of a single or recurrent incident of extreme conduct toward the child or another child and that continuing the parent-child relationship is likely to result in further incidents of extreme misconduct.

(2) In case of extreme misconduct, no efforts to provide remedial services need to be made by Human Services. However, the court shall consider any remedial services that the parent has engaged in reaching a decision to terminate the parent-child relationship.

(3) Extreme misconduct includes, but is not limited to:

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- (a) rape, sodomy or sexual abuse of any child by the parent; or
- (b) intentional starvation or torture of any child by the parent; or
- (c) abuse or neglect of any child that results in serious physical injury or death; or
- (d) the parental rights of the parent to a sibling have been terminated involuntarily if conditions giving rise to the previous termination have not been ameliorated.

642.350 Termination for abandonment. The rights of a parent or custodian may be terminated if the court finds that the parent or custodian abandoned the child or the child was left under circumstances where the identity of the parent or custodian is unknown, after diligent searching. The court must also find that the parent or custodian has failed to come forward to claim the child within 6 months after the child was made a ward of the court.

642.400 Right to counsel; child's advocate. (1) The parent or custodian who is the subject of a termination proceeding is entitled to a court appointed attorney based on indigence, if the court or the Council has appropriated funds for that purpose. The parent or custodian is entitled to be represented by an attorney or other court approved spokesperson at the parent or custodian's expense.

(2) The child is entitled to an attorney or court approved spokesperson in termination proceedings. When funds are available, the court shall appoint counsel. In the absence of funds, the court shall make efforts to locate a CASA or volunteer guardian ad litem to represent the child. An advocate appointed for the child under this section shall represent the child until such time as an adoption decree is entered.

642.410 Summons; right to notice. (1) A summons shall issue after the filing of a petition for termination in compliance with CITC 641.310 of Juvenile Dependency. Summons shall also be served on the grandparents.

(2) In addition to the form stated in CITC 641.310 of Juvenile Dependency, the summons shall state that failure to appear shall result in the termination of their parental rights.

642.420 Mediation encouraged. The use of mediation or other informal methods of resolving the long-term placement of the child is encouraged. In appropriate cases, the court may order that mediation occur. However, mediation shall not delay the adjudication of a termination petition for more than 30 days past the time lines set out in CITC 642.450.

642.450 Conduct of hearing. (1) No hearing for the termination of parental rights may

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be held and no order entered until such time as the court is satisfied that the summons has been served pursuant to CITC 642.410 at least 10 days prior to the hearing.

(2) The court shall cause a record of the proceedings to be made by stenographic or electronic means. The matter shall be heard by the Court without a jury. The hearing shall be closed to the public. The judge, in his or her discretion, may allow a non-party having an interest in the matter to attend the proceedings, provided that the person attending shall maintain the names of the parties in confidence.

(3) The court shall hold a hearing on the petition within 6 months after the filing of the petition except for good cause shown. In granting a continuance for good cause, the court shall consider the age of the child, the length of the delay and any consequences that may occur. A continuance shall be granted by written order making specific findings as to the good cause for the delay. After a hearing, the court shall issue its findings of fact and conclusions of law within 30 days.

(4) The court may exclude witnesses on the motion of a party. The court, on its own motion or on motion of a party, may take testimony from a child or determine that it is not in the best interests of the child to testify due to age or mental capacity. If the court determines that the testimony of a child under 11 years of age is needed, the court may take steps to ensure that the testimony is taken in a manner that protects the child's best interests including video testimony or an in chamber interview with the judge that excludes the parent or custodian. If a child's testimony is taken by a process that excludes a party, the party's representative shall be allowed to hear the testimony and a recording of the testimony shall be made.

(5) The Coquille Rules of Evidence shall apply.

(6) When a judge hears a matter in a hearing not subject to the rules of evidence, the judge should carefully consider if it is appropriate to hear the adjudicatory proceeding. When more than one judge is available to hear matters, and one judge has never heard the matter set for adjudication, that judge shall hear the adjudication.

642.500 Effect of termination order. (1) Unless appealed, an order terminating parental rights permanently terminates all parental rights, except as stated below, between the parent and child including the right to appear as a party in any future proceedings.

(2) An order of termination does not affect a child's enrollment status or relationship with any tribe, or the child's degree of Indian blood. An order of termination does not affect a child's right to inherit real property held in trust.

(3) An order of termination does not affect a child's relationship with the extended family unless the court expressly finds that it is in the child's best interests to terminate this

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relationship.

(4) An order terminating parental rights shall not affect a prior order of visitation for a grandparent unless the court, after notice and a hearing, finds that it is in the child's best interests to terminate such contact.

(5) If the court dismisses the termination petition, the parties shall return to their pre-hearing custodial status and the child may be physically placed accordingly.

642.600 Disposition after termination. After the court has entered an order of termination, the court may:

(1) Place the child in the legal custody and guardianship of a tribally approved agency authorized to consent in loco parentis to the adoption of the child; or

(2) Make any other order that it is authorized to make under this chapter or CITC chapter 643, Adoptions, including placing the child with an extended family member as the guardian or legal custodian; or

(3) Return the child to a parent or custodian whose rights were not terminated and whom is found to be a fit parent.

642.610 Report to Court of permanent plan. After the court has entered an order terminating parental rights, it may request a report pursuant to CITC 641.700 of Juvenile Dependency. The court may set a disposition hearing no later than 5 days after the order terminating parental rights, if the court determines that more information is needed to make a proper disposition under CITC 642.600.

642.650 Termination order final. An order terminating parental rights is a final order for purposes of appeal. An appeal may be taken by any party in the termination proceeding pursuant to CITC 641.950 of Juvenile Dependency. An appeal shall not suspend the order terminating parental rights but a final decree of adoption may not be entered until the appeal is concluded. However, the trial court or court of appeals, if and when such court is established, may order that the parent's visitation rights continue during the pendency of the appeal, if such visitation is in the child's best interests.