

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 12, 2011

Opinion No. 11-33

Termination of Parental Rights Under Tenn. Code Ann. § 36-1-113(g)(6)

QUESTION

Can Tenn. Code Ann. § 36-1-113(g)(6) be used to terminate the parental rights of a parent who has already served his or her sentence and been released?

OPINION

Yes, Tenn. Code Ann. § 36-1-113(g)(6) authorizes the termination of parental rights even if the parent has already served his or her sentence and been released.

ANALYSIS

In order to terminate parental rights, a court must find clear and convincing evidence of two separate elements. *In the Matter of M.L.P.*, 281 S.W.3d 387, 392 (Tenn. 2009). First, the petitioning party must prove one of the statutory grounds for termination enumerated in Tenn. Code Ann. § 36-1-113(g). *Id.* Second, the petitioning party must show that termination is in the best interests of the child. *Id.*

You have questioned the use of the statutory ground provided in Tenn. Code Ann. § 36-1-113(g)(6) to terminate a parent's rights when a parent is no longer incarcerated. This statute provides for termination of parental rights when:

[t]he parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court.

Tenn. Code Ann. § 36-1-113(g)(6).

The Tennessee Court of Appeals has previously held that this statute applies regardless of whether the parent has already been released from incarceration when the petition to terminate parental rights is filed. *In the Matter of D.M.*, No. M2009-00340-COA-R3-PT, 2009 WL

2461199 (Tenn. Ct. App. 2009). As the Court noted, the clear language of this statute does not contain limiting language requiring the parent actually to be incarcerated when the termination petition is filed. *Id.* at *3. Rather, the ground exists to terminate parental rights if the parent has been confined in a facility of any type under a criminal sentence of ten years or more that was entered when the child was under eight years of age. *Id.* It does not matter if the parent may actually serve less than the ten-year sentence or that the termination is not effectuated during the parent's incarceration. *Id.* Accordingly, it is our opinion that Tenn. Code Ann. § 36-1-113(g)(6) authorizes the termination of parental rights even if the parent has already served his or her sentence and been released.

ROBERT E. COOPER, JR.
Attorney General and Reporter

BARRY TURNER
Deputy Attorney General

DIANNE STAMEY DYCUS
Deputy Attorney General

Requested by:

Honorable Mike Bell
State Senator
302 War Memorial Building
Nashville, TN 37243