

Frequently Asked Questions About Adoption in Idaho

WARNING: Adoption is a serious legal proceeding that involves the termination of the legal parental rights of birth parents and the assumption of legal parental responsibilities by the adoptive parents. Individuals who are contemplating an adoption should consult legal and child welfare professionals before proceeding. The information contained in this document is only a general summary of Idaho adoption policies and procedures. It is not intended to substitute for legal advice about any particular individual or situation.

BIRTH MOTHER RELATED

- 1. When can the mother of the baby start the adoption process?**
 - At anytime after she is pregnant.

- 2. Can the birth mother choose the adoptive parents?**
 - Yes. The court requires that a licensed child-placing agency complete a study of the prospective adoptive parent(s) and report its findings to the Court, Before the Court will finalize the adoption. In those instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted, such social investigation shall be completed with regard to the prospective adoptive parent only upon order of the court.

- 3. Can the birth mother see and hold the baby after the birth?**
 - There is no specific law addressing this. However, the adoption is not final until the birth mother signs the consents for adoption.

- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
 - Expenses that can be paid for by the law include: Medical, hospital, nursing, or pharmaceutical expenses of a mother before the birth of the child as well as reasonable. Any person or agency, seeking to provide financial assistance in excess of five hundred dollars (\$500) shall do so after informally submitting to a court of competent jurisdiction, a verified financial plan outlining proposed expenditures. The court may approve or amend such a proposal. Only after court approval shall assistance totaling more than five hundred dollars (\$500) becomes available to the birth parent. No financial assistance to a birth parent shall exceed the sum of two thousand dollars (\$2,000) unless otherwise authorized by the court. The financial assistance contemplated by this section shall be considered a charitable gift, not subject to recovery under the terms of section 16-1515, which says that in the case of a birth parent

changing their mind regarding the adoption, they will be responsible for reimbursing those above expenses.

IC 18-1511-1512 & 16-1515

5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?

- A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated. However, judicial practice in certain Idaho Counties requires parental consent for minors.

IC 16-1504

6. When does the birth mother actually sign the legal documents required for the adoption?

- After the birth of the child when the court date has been set. Typically this is at least a week. (Not in State Statute, but implicated by courts.)

7. Can the birth mother change her mind before signing the legal consents to the adoption?

- Yes, nothing is legal until the consent or voluntary releases are signed.

8. Can the birth mother change her mind after signing the legal consents to the adoption?

- No formal number of days for waiting period. Terminations are final when court signs consent of terminations petitions. Fraud or duress would have to be proven in a petition of a rehearing.

IC 16-1512

9. Can the birth mother communicate with the adoptive parents and child after the adoption?

- Only if the adoptive parents are willing and they can change their minds at anytime. There is no legally binding “open” adoption.

10. Can a birth mother anonymously surrender a newborn child?

- Yes, under the “Idaho Safe Haven Act.” Anonymous surrender of a newborn no more than 30 days old to a “Safe Haven.” Safe Haven, being defined as:
 - Hospitals licensed in the state of Idaho;
 - Licensed physicians in the state of Idaho and staff working at their offices and clinics;

- Advanced practice professional nurses including certified nurse-midwives, clinical nurse specialists, nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code;
 - Physician assistants licensed pursuant to chapter 18, title 54, Idaho Code.
 - Medical personnel when making an emergency response to a "911" call from a custodial parent
 - First responders;
 - Emergency medical technicians - basic;
 - Advanced emergency medical technicians - ambulance;
 - Emergency medical technicians - intermediate; and
 - Emergency medical technicians - paramedic.
- In order to claim parental rights to an abandoned child, one must file with vital statistics. To be valid, a claim of parental rights must be filed before an order terminating parental rights is entered by the court. DNA testing will also be required. A petition to terminate parental rights will occur after 30 days.
IC 39-8201-07

11. What happens if the birth parents do not agree that adoption should be the plan?

- Consent, voluntary release or termination of parental rights must occur for both parents before an adoption can be finalized. Therefore, an adoption would not occur until an agreement was made.
IC 16-1506

BIRTH FATHER RELATED

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?

- Based not on statute, but judicial practice, attorney or agency must provide legal notice to putative fathers prior to the termination of parental rights and adoption finalizations. According to State of Idaho Code, it is the duty of an unmarried birth father to protect his parental rights by registering with the registrar of vital statistics of possible fatherhood. The assumption should be made that if an unmarried man has relations with a woman, a baby could be conceived of that union and he should register with vital statistics at that time.

2. How is the father of the baby notified of the mother's adoption plan?

- The father, either legal or putative is notified via personal service or publishing (agency or lawyer's responsibility). Based not on statutes, but judicial practice.

3. Can the father of the baby choose the adoptive parents?

- In a private adoption, the father can choose the adoptive parents. The court requires that a licensed child-placing agency conduct a home study of the prospective adoptive family and file its report with the Court, before the Court will rule on the adoption.
- If the father surrenders to a licensed child-placing agency, the agency selects the adoptive parents.

4. What happens if the biological father of the baby is not the baby's legal father?

- There is a legal necessity to identify the father of children born out of wedlock, or whose biological father may be some one other than the mother's husband. Once identified the father is entitled to notice, as described above.
IC 16-1501A, 16-1504, 16-1513

5. What happens if the husband (legal father) is not the biological father?

- Same as #4 above.

6. What happens if the mother does not know who the biological father is?

- The courts would hold a hearing to determine who the father is. Reasonable efforts would be made to locate the putative father and proceed with termination of parental rights.
IC 16-1501A, 16-1504, 16-1513, & judicial practice

7. What happens if the mother refuses to give the name of the biological father?

- The legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.
IC 16-1501A (4)

8. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?

- Yes, a person claiming under oath to be the father of the child can file a verified notice of intend to claim paternity with the court in any county before the birth of a child born out of wedlock. Notice will be held with the Department of Public Health Vital Records Division. The person will be presumed to be the father unless the mother states otherwise.

IC 16-1504, 16-1513

9. Can the birth father change his mind before signing the legal consents to the adoption?

- Yes, nothing is legal and or binding till the consents/voluntary releases are signed.

10. Can the birth father communicate with the adoptive parents and child after the adoption?

- Only if the adoptive parents are willing and they can change their minds at anytime. There is no legally binding “open” adoption.

11. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?

- A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

IC16-1504

However, judicial practice in certain Idaho Counties requires parental consent for minors.

12. Can the birth father change his mind after signing the legal consents to the adoption?

- No formal number of days for waiting period. Terminations are final when court signs consent petitions. Fraud or duress would have to be proven in a petition of a rehearing.
- An appeal may be taken to the district court of the county from an order of the magistrates division of the district court granting or refusing to grant an order of adoption or from any other intermediate order in adoption proceedings.
- After the order of adoption by the court becomes final, no party to an adoption proceeding, nor anyone claiming under such party, may later question the validity or the adoption proceedings by reason of any defect or irregularity therein, jurisdiction or otherwise, but shall be fully bound by the order, except for such appeal as may be allowed in subsection (1) of this section. In no

event, for any reason, other than fraud on the part of the party adopting a child, shall an adoption be overturned by any court or collaterally attacked by any person or entity after six (6) months from the date the order of adoption becomes final. This provision is intended as a statute of repose.

IC 16-1512

13. Can a birth father anonymously surrender a newborn child?

- Yes, the Safe Haven Act provides for a “parent” to surrender the child and does not exclude a birthfather from surrendering a child. See Question #10 under birth mother questions.

14. What happens if the birth parents do not agree that adoption should be the option?

- An adoption cannot be finalized without the consent of the birth parents, unless their rights have been terminated by a court.

IC 16-1504, 16-1504

ADOPTIVE PARENT RELATED

1. Who can be an adoptive parent and who selects them?

- Foster parents must be 21 years of age or older. A person 15 years older than the adoptee or 25 years or older, either married or single, who has been assessed as suitable by a licensed adoption agency.

IC 16-0602-402, 16-1501, 1502, 1503

2. What information about the birth parents and the child must be provided to the adoptive parents?

- Before placing a child for adoption, the department, agency or court must provide the prospective adoptive parents with a written document containing all non-identifying information that is not confidential under State or Federal law and that is reasonably obtainable.

IC 16-1506 (3)

3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?

- A Home Study is completed by a licensed adoption agency. The statute details the requirements for prospective adoptive parents.

IC 16-1506

- 4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?**
 - Yes, the child can be placed temporally with the adoptive family prior to the consents or the releases by the birthparents within certain timeframes.
IDAPA 16-06-800

- 5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?**
 - Yes, once the adoption is finalized, the adoptive parents have full rights in decision making for that child, regardless of what may have been discussed or agreed upon prior to the adoption until the child becomes an adult.

- 6. Under what circumstances can an adopted child communicate with the birth parents?**
 - If the adoptee is a minor, the decision would be made by the adoptive parents. As an adult adoptee, the individual may seek out their birth parents via the Idaho Voluntary Adoption Registry and the birth parents have provided releases to provide identifying information.
IC 39-259A

- 7. What information must the birth parents provide to the adoptive parents?**
 - The attorney/agency worker must make reasonable efforts to obtain non-identifying information, which includes health and genetic family history, any medical, psychological or psychiatric evaluations available at the time of the adoption.
IC 16-1506 (3)

- 8. Who supervises the adoptive placement and for how long?**
 - A children's agency social worker or service worker shall provide post placement supervision to the adoptive family at the family's home at least once every three (3) months after the placement of a child and before the final order of adoption.
IC 16-0602-676

- 9. When is the adoption final?**
 - When the Court grants the adoption petition and enters a final decree of adoption.
IC 16-1512

COURT SPECIFIC PROCEDURES

1. Who initiates the adoption process?

- Either the birth parents or the prospective adoptive parents can initiate adoption proceeding through an adoption agency or an attorney.

2. When are the legal adoption papers filed with the court?

- The petitioners shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition is filed with the consents. In addition, the child must have resided with the prospective adoptive family for at least six months.

IC 16-1506, code 676 in IDAPA standards

3. When do the birth parents actually sign the legal documents for adoption?

- Consent must be executed before any authorized officer, district judge, or magistrate, on a form found in the Idaho Code. The worker or attorney would either at the same time or later file the petition for adoption the appropriate county court.

IC 16-2005, 16-1506

4. What happens if the birth parents do not agree on the adoption plan?

- An adoption cannot be finalized without the consent of the birth parents, unless their rights have been terminated by a court.

IC 16-1504, 16-1504

5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?

- No, consent must be provided by the parents except as noted with absent or unknown fathers or in cases of involuntary termination in the child's best interest.

IC 16-20005, 16-2009

Per Judicial Practice

MISCELLANEOUS QUESTIONS

- 1. What is the process for accessing adoption files, including identifying information?**
 - a.** In some states, an adoptee can access the adoption file upon adulthood. This means that they will be able to learn their birth parents identity. These states typically have a provision to address the issue of future contact. Specifically Idaho has the "Idaho Voluntary Registry" which is through Vital Statistics.

- 2. What is considered a kinship adoption? How is kinship adoption handled? Are home studies necessary? Who can conduct them? Is there a fee?**
 - Culturally, many more relatives, and even non-biological relatives, may be considered kin by the parents; however, every state defines a relative adoption differently. Specifically Idaho uses the example of instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted.

- 3. Are contracts or binding agreements between birth and adoptive families regarding openness allowed?**
 - Only if the adoptive parents are willing and they can change their minds at anytime. There is no legally binding "open" adoptions in Idaho.