

Frequently Asked Questions about Adoption in Kansas (Good Practice Standards)

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 Kansas 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 becomes pregnant including after the birth.

- 2. Can the birth mother choose the adoptive parents?**
 - Yes. A parent or guardian of a child who has legal and physical custody may make a direct placement of the child for adoption and selects the prospective adoptive parent(s).
K.S.A. 59-21-29

 - Under an agency placement, a birth mother can choose the adoptive parents but the agency retains the placing authority.
K.S.A. 59-2124(a)

 - The Court requires that a licensed child-placing agency or a court approved licensed social worker complete a study of the prospective adoptive parent(s) and report its findings to the Court, before the Court will finalize the adoption. If it is a grandparent direct adoption, the courts can waive the home study.
K.S.A. 59-2132

- 3. Can the birth mother see and hold the baby after the birth?**
 - Yes, the mother can see and hold the baby after the birth. It is her child. The consent/relinquishment is not signed until at least 12 hours after the birth, at which time it is irrevocable.
K.S.A. 59-2116

- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
 - Actual medical expenses of the mother attributable to pregnancy and birth; actual medical expenses of the child; reasonable living expenses which are incurred during or as a result of the pregnancy; and her attorney's fees.

Expenses do not need to be repaid if the birth family decides to parent.
K.S.A. 59-2121 (1)(4)(5)(6)

- 5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?**
 - A Minor mother can independently sign legal documents placing the child for adoption. However, the minor parent must have the advice of independent legal counsel as to the consequences of the consent or relinquishment. Independent legal counsel must be present at the signing.
K.S.A. 59-2115; 59-2143

- 6. When does the birth mother actually sign the legal documents required for the adoption?**
 - A consent or relinquishment may not be given by the mother or accepted until 12 hours after the birth of the child.
K.S.A. 59-2116

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

- 8. Can the birth mother change her mind after signing the legal consents to the adoption?**
 - Once a birth mother has signed a consent or relinquishment it is irrevocable upon execution, unless she can prove by clear and convincing evidence that it was not freely and voluntarily given. The burden of proof is hers to establish this.
K.S.A. 59-2114(a)

- 9. Can the birth mother communicate with the adoptive parents and child after the adoption?**
 - Yes, if the adoptive parents are willing, but 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, a parent or other person having legal custody of the child, 45 days old or younger, may surrender physical custody of the infant to a fire station, health department or medical facility.
K.S.A. 38-15,100

- 11. What happens if the birth parents do not agree that adoption should be the plan?**
 - 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 or until the Court acted on a Petition and terminated the father’s rights without relinquishment or consent. K.S.A. 59-2136(e)

BIRTH FATHER RELATED

- 1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?**
 - The putative father does not have to be notified of the birth. The attorney must provide legal notice to putative father prior to termination of parental rights.
K.S.A. 59-2133(b)

- 2. How is the father of the baby notified of the mother's adoption plan?**
 - The father, either presumed or putative, is notified via personal service, certified mail, Return Receipt Requested or any other manner as the court may direct.
K.S.A. 59-2136(f)

- 3. Can the father of the baby choose the adoptive parents?**
 - In a private or agency adoption, the father can, in concert with the mother, help choose the adoptive parents.

- 4. What happens if the biological father (putative) of the baby is not the baby's legal (presumed) father?**
 - Under Kansas law, there is no "legal" father or "biological" father. Fathers are identified as Presumed, Putative or Possible

 - 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 putative father is entitled to notice, as described above. The presumed father must also receive notice.
K.S.A. 2136(e)

- 5. What happens if the husband (presumed father) is not the biological (putative) father?**
 - Same as #4 above. He is not given special consideration because they are married. That is only one issue for the Court to consider.

- 6. What happens if the mother does not know who the biological father is?**
 - The Court will make every effort to identify the father. Notice shall be given to every possible father. If the court cannot identify the putative father, it will appoint an attorney to represent the "unknown" father's rights and notice will be published in the last known area of residence of the unknown father.

- 7. What happens if the mother refuses to give the name of the biological father?**
 - Same as #6

- 8. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?**
 - There is no putative father's registry in the State of Kansas. He would need to provide support for the birth mother prior to the birth.

- 9. Can the birth father change his mind before signing the legal consents to the adoption?**
 - Yes, nothing is legal and or binding until the consents/relinquishments are signed.

- 10. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?**
 - A minor can consent to the adoption. However, he must have independent legal counsel who explains the consequences of the consent/relinquishment prior to its execution and must be present at the signing
K.S.A. 59-2115

- 11. Can the birth father change his mind after signing the legal consents to the adoption?**
 - The consent/relinquishment is irrevocable upon signature unless the birth father can show by clear and convincing evidence that it was not his free and voluntary act.
K.S.A. 59-2114

- 12. Can a birth father anonymously surrender a newborn child?**
 - Yes, a parent or other person having legal custody of the child, 45 days old or younger, may surrender physical custody of the infant to a fire station, health department or medical facility.
K.S.A. 38-15,100

- 13. What happens if the birth parents do not agree that adoption should be the plan?**
 - 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 or until the Court acted on a Petition and terminated the father's rights without relinquishment or consent.
K.S.A. 59-2136(e)

ADOPTIVE PARENT RELATED

- 1. Who can be an adoptive parent and who selects them?**
 - Any adult, or husband and wife jointly, may adopt, except that one spouse cannot do so without the consent of the other.
K.S.A. 59-2113

- 2. What information about the birth parents and the child must be provided to the adoptive parents?**
 - Prospective adoptive parents should receive genetic, social and medical background information, medical releases, identifying information about the biological parents, birth verification.
K.S.A. 59-2130
- 3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?**
 - A Home Study is completed by a court approved social worker licensed to practice social work or a licensed child placing agency. The statute details the requirements for prospective adoptive parents.
K.S.A. 59-2132(a)
- 4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?**
 - Yes, the child can be placed temporarily with the prospective adoptive family.
K.S.A. 59-2131
- 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.
K.S.A. 59-2118
- 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 request their original birth certificate from the Kansas Department of Vital Statistics, access their adoption file through the Department of Social and Rehabilitation Services or get their court file from the county in which the adoption case was filed.
- 7. What information must the birth parents provide to the adoptive parents?**
 - The attorney/agency worker should 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. However, specific requirements are not addressed in the statutes.
K.S.A. 59-2130
- 8. Who supervises the adoptive placement and for how long?**
 - While Kansas law does not require supervision after placement, Agency Licensing Regulations encourage two post placement visits prior to finalization.

9. When is the adoption final?

- The adoption is final not less than 30 days nor more than 60 days after filing the Petition for Adoption.

K.S.A. 59-2133

COURT SPECIFIC PROCEDURES

1. Who initiates the adoption process?

- The prospective adoptive parents, the person or agency having custody of the child or the agency to which the child has been relinquished initiates the court procedures. The mother may file the petition to terminate the parental rights of the father if done separately.

K.S.A. 59-2136(e)

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

- The adoption papers will be filed no more than six months from the signing of the consent form. A consent is valid for 6 months.

K.S.A. 59-2114

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

- A consent or relinquishment may not be given by the mother or father or accepted until 12 hours after the birth of the child. If done before 12 hours it is voidable until the decree of adoption is entered.

K.S.A. 59-2116

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

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

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

- Consent must be provided by both parents in order for the adoption to proceed unless the court determines consent may be dispensed with.

K.S.A. 59-2129; 59-2136

MISCELLANEOUS QUESTIONS

1. What is the process for accessing adoption files, including identifying information?

- 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.

- 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.
- If the adoptee is a minor, the decision would be made by the adoptive parents. As an adult adoptee, the individual may request their original birth certificate from vital statistics. Because Kansas has open records, there is no Central Registry. In Kansas, adult adoptees may access their adoption court records in the county where their adoption was finalized or by contacting the Kansas Department of Social and Rehabilitation services or by contacting the adoption agency where the adoption was completed.
- 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.

2. What is considered a kinship adoption? How is kinship adoption handled? Are home studies necessary? Who can conduct them? Is there a fee?

- In Kansas, relative means an individual related to the child within the fifth degree by marriage, blood, or adoption.
- Kinship or relative adoptions are a permanent and legal arrangement that is intended to last forever, like all other adoptions.
 - Relative or Kinship through Court
 - Birth parents choose adoptive family
 - Court conducts relative home study

3. Are contracts or binding agreements between birth and adoptive families regarding openness allowed?

- In Kansas, any ancillary agreements, such as an openness plan or an openness agreement are **NOT** legally binding.
- Most agencies will prepare a written agreement and the parties will sign the agreement, but that is to use a guide should there be disagreements in later years about the level of openness.
- Birth parents are advised by the agencies, and also are told by the Court, that any agreements are not legally binding. Many judges expound upon this further in the hearings, to clearly tell the birth parents that any agreements they may have signed with the adoptive family are not legally enforceable.
- Adoptive parents are also told by the agencies that the agreements are not legally binding, but are "good faith" agreements.

Upon release of parental rights or upon consent to adoption by the birth parents, the parental rights of the birth parents are terminated, which then ends any legal rights of the birth parents to the child, including the right to visitation. The legal rights are then vested with the adoptive parents, including the right to determine who has access to their child.