

Frequently Asked Questions About Adoption in Oklahoma

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 Oklahoma 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?

- The mother may start the adoption planning process during the pregnancy by filing a “Notice of Plan for Adoption” with the help of her adoption agency or attorney. This Notice of Plan for Adoption provides legal notice to the putative father that an adoption plan is being considered and informs him of his legal rights. The mother is not obligated to file such a notice nor is she obligated to follow through with the adoption plan if she changes her mind before the child is born or before she goes to court to give legal consent for the adoption.(Title 10 O.S. Section7503-3.1).
- The mother shall not give a valid legal consent to the adoption of her child prior to the birth of the child (Title 10 O.S. Section 7503-2.2). She must appear before a judge, who witnesses and approves her consent after the child has been born (Title 10 O.S. Section 7503-2,4). The mother of a child who is eligible for membership in a federally recognized Indian tribe may not sign a valid legal consent to adoption until ten days after the birth of the child (25 U.S.C. 1913a).

2. Can the birth mother choose the adoptive parents?

- It is common practice in Oklahoma for the birth mother to participate in the selection of the adoptive parents if she wishes to do so. While this issue is not addressed in statutes, nothing prohibits it. This is common practice in private infant adoptions. Birth parents of Indian children may choose the adoptive parents but must also follow federal placement preferences.

3. Can the birth mother see and hold the baby after the birth?

- Yes, she can see, hold, feed, and care for the baby as much as she wishes – if she has not yet surrendered her rights to the child. She can also decline to see the child, if she wishes, but no one may deny her the opportunity.

- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
- Anyone person desiring to pay costs and expenses to or on behalf of a birth parent is authorized to expend an initial amount not to exceed Five Hundred Dollars (\$500.00) for such costs and expenses without first obtaining court approval (Title 10 O.S. Section 7505-3-2 C). These payments for living expenses may include assistance with rent, food, transportation, and utilities as approved by the judge. These payments may begin at the time the birth mother contacts the agency or attorney and may extend no longer than 2 months after the child's birth (Title 10 O.S. Section 7505-3.2B). The law also allows payment of customary and reasonable medical and legal expenses as well as adoption agency expenses (Title 10 O.S. Section 7505-3.2B).
 - It is a felony in Oklahoma to offer, solicit, accept or pay any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition of a minor child, except as ordered by the court or except as otherwise provided by the Oklahoma Adoption Code. Actions as described above constitute the crime of "trafficking in children" (Title 21 O.S. 866 A,1, a).
- 5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?**
- Yes, a birth mother who is age 16 or older may sign a legal consent for adoption without the need for permission or a legal consent from her parent or guardian. If the birth parent of a child born out of wedlock is under 16 years of age, then the legal consent of the birth parent must be accompanied by the written consent of the parent, guardian, or custodian of the minor parent (Title 10 O.S. 7503-2.1).
 - The birth mother may sign a legal consent for adoption with or without the consent from the birth father, but an adoption may not be completed until the court acts on his rights by either accepting his consent, ruling to terminate his parental rights, or rules that his consent is not required (Title 10 O.S. 7503-2.1 and 7505-4.2).
- 6. When does the birth mother actually sign the legal documents required for the adoption?**
- The birth mother may begin making a plan for adoption prior to the birth of her child, but she may not sign valid consent documents until after the child is born (Title 10 O.S. 7503-2.2). The birth mother must appear in front of a judge, who witnesses and approves her signing of the consent documents and makes sure she understands her rights. A birth mother of an Indian child may not give her consent until after the child is ten days old (25 U.S.C. 1913).
- 7. Can the birth mother change her mind before signing the legal consents to the adoption?**

- Yes, a birth mother may change her mind at any time and for any reason prior to signing the consent in front of the judge.

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

- After signing the legal consent documents in front of the judge, the birth mother's consent is irrevocable. She will not be able to revoke her consent unless she can convince the judge that it would be in the child's best interest and she can prove that the consent was obtained by fraud or duress, that the court did not terminate the birth father's rights, or that no petition for adoption has been filed within 9 months (Title 10 O.S. Section 7503-2.7 B).
- A birth mother of an Indian child may revoke her consent, even after it has been signed in front of the judge, at any time for any reason until the court has entered an order terminating parental rights or an order of a final decree of adoption (25 U.S.C. 1913).

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

- The birth mother and adoptive parents may develop a voluntary plan for on-going communication after the adoption is finalized. However, the final decree of adoption acts to completely sever all legal rights she had as a parent, including any right to communicate, contact, or visit with the child. Most adoptive parents are willing to follow through on the voluntary plans that have been made, but if they later fail to allow contact then the adoption can not be set aside nor the visitation plan enforced.
- Only if the child resided with the birth mother or other birth relatives after the birth of the child and prior to the adoption, can an agreement for visitation and contact between the birth relative and adoptive parents and the child be approved by an order of the court. In such limited circumstances, the court can order visitation. However any disputes must be first submitted to mediation before court action. The court can only modify such an agreed plan for contact if the adoptive parents agree or if there are "extraordinary circumstances." (Title 10 O.S. 7505-1.5).

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

- During court, birth mothers may sign a form keeping birth records confidential, thus maintaining confidentiality. A birth mother may also remain anonymous and will not be prosecuted for abandonment if she chooses to leave her child with a "medical provider" or "child rescuer" before the child is 7 days of age and indicates no intention of returning or resuming care of the child (Title 10 O.S. Section 7115.1). Oklahoma law prefers for the birth mother to follow the legal process for relinquishing her child or consenting to adoption rather than abandoning the child under what is sometimes referred to

as the “Safe Haven” law. Birth mothers are strongly encouraged in the law to provide non-identifying medical and social history information about the child (Title 10 O.S. Section 7504-1.1).

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

- If the birth mother consents but the birth father is not in agreement or can not be located, an application must be filed with the court to either terminate the other parent’s rights or the court must enter a ruling that the consent of the other parent is not required. The court may rule the birth father’s consent is not necessary if the court finds that he failed to show that “he has exercised parental rights or duties” toward the child by providing financial support during the pregnancy to the extent of his financial ability (Title 10 O.S. 7505-4.1 and 7505-4.2). No adoption can take place without the rights of both parents being addressed, either through a voluntary consent or by court action to issue an order terminating parental rights or finding the other birth parent’s consent is not required.

BIRTH FATHER RELATED

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

- The Oklahoma Adoption Code places responsibility on the birth father to learn if a pregnancy resulted from the sexual relationship with the birth mother (Title 10 O.S. Section 7501-1.2 (5)). While the birth mother does not have an obligation to inform the birth father of the pregnancy, she must not conceal or hide the fact from the birth father that he has fathered a child. If the birth father can prove to the court he made sufficient attempts to learn of the child or made sufficient attempts to exercise parental duties toward the child, then the court may require his consent and allow him to withhold such consent to the adoption (Title 10 O.S. 7505-4.2 D).
- If the birth mother develops an adoption plan during the pregnancy, she may serve the birth father with a “Notice of Plan for Adoption,” but she is not required to do so (Title 10 O.S. 7503-3.1).
- Before an adoption may be completed, any husband or any potential or “putative” father of the child must be given proper legal notice of the adoption proceedings, including any court hearing to terminate his parental rights. Such legal notice must be made by in-hand personal service, by certified mail with return receipt, or by publication with court approval (Title 10 O.S. Section 7503-3.1 and 7505-4.1 C).

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

- See the answer to # 1 above (Title 10 O.S. Section 7503-3.1 and 7505-4.1 C). Any man who was married to the birth mother within 10 months of the birth or any other man who might be the biological father of the child must be given proper notice in the manner prescribed in the law of any hearings for adoption or for termination of his parental rights.
- If the identity or whereabouts of the birth father are unknown, then the court must determine if he can be identified or located and provided with proper notice of the legal proceedings for adoption (Title 10 O.S. Section 7505-4.1 C, 3).

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

- Although not addressed in statute, this is common practice, especially if the father and the birth mother are working together to develop the adoption plan.

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

- Whoever is the biological father of the child will have potential legal rights, which must be addressed during the legal process leading to an adoption. In order to protect these potential legal rights, the possible unwed father or "putative" father must act to establish his rights by acting on his parental responsibilities (Title 10 O.S. Section 7505-4.2). Any man who believes he is the father of a child born out of wedlock may register with the "Paternity Registry" maintained by the Department of Human Services. By registering, the man is acting to protect his legal rights as a father and to ensure that he receives notice of any court hearings (Title 10 O.S. Section 7506-1.1). He may later revoke his intent to claim paternity or the court may remove his name from the registry if it determines he is not the father (Title 10 O.S. Section 7506-1.2).
- If the unwed father receives a "Notice of Plan for Adoption" either before or after the child's birth, the man must follow one of the options outlined in the notice or his lack of response will be seen by the court as denial of interest in the child and as grounds for terminating his parental rights (Title 10 O.S. Section 7503-3.1 B, 3).
- Tit. 10, sec 7503-2.6. A putative father who is 16 years old who is not the parent of an Indian child may execute an extrajudicial consent before a notary public in which the putative father waives any legal interest in the minor, disclaims any legal rights with respect to the minor, and consents to the adoption of the minor. Tit 10, Sec 7505-3.2. Consent to adoption is not required from a father or putative father of a minor born out of wedlock if the minor is placed for adoption within 90 days of birth, and the father or putative father fails to show he has exercised parental rights or duties toward the minor, including, but not limited to failure to contribute to the support of the mother of the child to the extent of his ability, or the minor is placed for adoption within 14 months of birth, and the father or putative father fail to

show that he has exercised parental rights or duties toward the minor including failure to contribute to the support of the mother of the child during her term of pregnancy.

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

- Oklahoma law assumes that a husband is the father of any child born during the marriage or within 10 months of the termination of the marriage (Title 10 O.S. Section 2, A). Even if the husband is not the biological father of the child, his consent must be obtained, or he may sign a Waiver of Notice and allow the court to terminate any parental rights (Title 10 O.S. 7505-4.2). A husband may also sign an extrajudicial consent to adoption after November 1, 2005 (House Bill 1416).

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

- If at any time in a proceeding for adoption or termination of parental rights the court finds that an unknown father or putative father may not have received notice, the court shall determine whether he can be identified. They shall hold an inquiry in which they review if the woman was cohabitating with a man at the probably time of conception of the child, if the woman received payments or promises of support, if the woman named any individual as the father on the birth certificate of the child or in connection with applying for or receiving public assistance, and if any individual formally or informally acknowledged or claimed paternity of the child in a jurisdiction in which the woman resided during or since her pregnancy, or in which the child has resided or resides, at the time of the inquiry (Title 10 O.S. Section 7505-4.3). See additional information below.

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

- If the woman who gave birth to the child fails to disclose the identity of a possible father or reveal his whereabouts, she must be advised that the lack of information about the father's medical and genetic history may be detrimental to the child. She should also be advised that any false statement that she might make under oath regarding her knowledge of the identity or whereabouts of a possible father, if she knows or believes that the statement is not true or intends to thereby obstruct the ascertainment of the truth, could constitute grounds for a criminal prosecution for perjury (Title 10 O.S. Section 7505-4.3).

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

- Yes, see the information in #4 above about the Paternity Registry with DHS. A man may register before the birth of the child. He may also respond to a "Notice of Plan for Adoption" if the birth mother uses this process and if the

child is not Indian. If he wishes to participate in the adoption plan, he may give his permission for the adoption prior to the birth of the child by either signing an “Extrajudicial Consent” (if age 16 or older) in front of a Notary or by appearing in front of a judge to execute a legal “Consent for Adoption” (Title 10 O.S. Section 7503-2.2, C and 7503-2.6).

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

- Yes, the birth father can change his mind at any time before signing consents before a judge, and he has 15 days in which he may change his mind if he signs an “Extrajudicial Consent before a Notary (Title 10 O.S. Section 7503-2.6). The birth father of an Indian child may change his mind at any time prior to the court issuing an order terminating his parental rights or a final decree of adoption (25 U.S.C. 1913).

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

- The birth father may voluntarily participate with the birth mother in developing a plan for communication with the adoptive family and the child. After the adoption has been finalized, any legal rights the birth father had toward the child will have been severed. The plans for open adoption communication are generally voluntary and not court enforceable in Oklahoma, except in very limited cases.

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

- If the birth father is 16 years of age or above, he may independently sign the legal documents for adoption without needing the approval of a parent or guardian. If he is under the age of 16, he must also obtain the written consent of his parent, guardian, or custodian in order to give his consent to the adoption. However, a birth father can not act alone to place a child for adoption without the consent of the birth mother, who also must give her legal consent to the adoption (Title 10 O.S. Section 7503-2.1).

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

- No, not unless, as a putative father, he signed an “Extrajudicial Consent” before a Notary, which may be revoked within 15 days for any reason. Also, if the child is an Indian child, he may revoke his consent as described above in answer # 9. Also, see answer # 8 in the birth mother section of the FAQ.

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

- While it would be legal for a birth father to place a child anonymously under the Safe Haven law, he could not do so without the agreement of the birth mother. He could not remove the child from the birth mother's custody and then leave the baby at a safe place under the Safe Haven law without the birth mother being able to regain custody.

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

- Generally, the birth father will not be able to force the birth mother to place her child for adoption against her wishes. If he believes adoption is best for the child, he would have to work cooperatively with the birth mother to develop an adoption plan.

ADOPTIVE PARENT RELATED

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

- A husband and wife may jointly adopt a child if both are at least age 21. A married person who is at least age 21 and who is legally separated may adopt as a single individual. A single, unmarried person who is at least age 21 may adopt as an individual. A stepparent may adopt the child of the spouse. Title 10 O.S. Section 7503-1.1.
- In an independent adoption, the adoptive parents are usually selected by the birth mother or by both birth parents together. In an adoption through an adoption agency, the birth parent may select the adoptive parent or may ask the agency to select the adoptive parents for the child. In the adoption of a child in custody of a public agency, either the public agency such as the Department of Human Services or the court may select the adoptive family for the child. In the latter two types of adoptions, the adoption agency may have to give its legal consent before the adoption can be finalized (Title 10 O.S. 7503-2.1).

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

- The Oklahoma Adoption Code requires that a complete Medical and Social History Report be completed and provided to the prospective adoptive parents (Title 10 O.S. 7504-1.1). This Medical and Social History Report is to be provided to the prospective adoptive parents "as soon as practicable" before the first meeting with the child and before they accept physical custody of the child (7504-1.2 B).
- This report contains non-identifying medical, dental, and psychological records and a medical history of any illnesses of the birth parent and

biological relatives. This report also includes information about consumption of drugs or alcohol by the mother and exposure to toxic substances and infectious diseases during the pregnancy as well as educational and social background information. This information is compiled by the adoption agency or by the attorney handling the adoption and must be filed with the court before the adoption is finalized (Title 10 O.S. 7505-6.2). The Oklahoma State Department of Health prescribes a form # ODH-347, on which this information is to be collected. The birth parent or the adoption agency may later file with the court additional information about the social and medical history of the child.

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

- Prospective adoptive parents must have a home study which includes information about their suitability as adoptive parents and which contains a positive recommendation by the adoption agency or home study provider. This home study must be completed prior to the prospective adoptive parents receiving physical custody of the child. The home study must include verification of marital status, employment, finances, health, access to health care, and that the home is a safe environment for a child. Every adult over the age of 18 residing in the home must have a criminal background check and a child abuse registry check. The court may require any additional information deemed appropriate. Title 10 O.S. 7505-5.1 to 5.4).
- If a prospective adoptive parent has been convicted of certain felonies within the five years preceding the adoption, then they can only adopt if they can provide clear and convincing evidence that the child will not be at risk by such placement and must receive a positive recommendation by the home study provider. No one who is subject to being registered with the Oklahoma Sex Offenders Registry may be allowed to adopt a child (Title 10 O.S. 7505-5.1).

4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?

- Yes, it is possible with the permission of the birth mother. In some instances, a court order can be obtained for temporary custody, but this is not required (Title 10 O.S. 7503-4.1). Most adoption agencies and many attorneys require adoptive parents to sign a form acknowledging the risk that they might have to return the child if the parent changes their mind. If it is an interstate placement and the adoptive family lives outside of Oklahoma, the adoptive family may have physical custody but must not remove the child from Oklahoma until permission and approval of the Interstate Compact on the Placement of Children (Title 10 O.S. 571).

5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?

- See the answer # 9 in the birth mother section of this FAQ. It is common for the adoptive parents to make informal promises to the birth parents regarding future communications, and they should honor any such promises they have made. However, under the Oklahoma Adoption Code all legal rights of the birth parents, including the right to communication and contact, are extinguished by the final decree of adoption. After the adoption is finalized, the adoptive parents have total control over who has contact with the child (Title 10 O.S. 7505-6.5).
- The only exception to the absolute control by the adoptive parents is if the child has resided with the birth parent or a birth relative after birth and the court issued an order approving the voluntary plan agreed to between the adoptive parents and the birth parent or birth relatives (Title 10 O.S. 7505-1.5).

6. Under what circumstances can an adopted child communicate with the birth parents?

- See the answer to #5 above. Once the child becomes 18 years of age and has no adopted siblings under the age of 18, he or she may request a copy of their original birth certificate, unless a birth parent has filed an unrevoked Affidavit of Non-Disclosure (Title 10 O.S. Section 7503-2.5 and 7505-6.6). This may provide information to identify and locate the birth parents and initiate communication. The Oklahoma Department of Human Services also maintains a Voluntary Reunion Registry and a Confidential Intermediary program to assist adult adoptees with reunions and searches (Title 10 O.S. 7508-1.2 and 1.3).

7. What information must the birth parents provide to the adoptive parents?

- Tit. 10 sec. 7504-1.1 states that information about the birth parent must include medical, social, and psychological history, gynecological and obstetric history of the mother, consumption of drugs or alcohol by the mother, exposure to toxic substances and physical characteristics. Also to be included is medical and psychological history of relatives, hereditary predispositions, whether the parents are related, and a history of sexually transmitted diseases. Circumstances leading to the adoption, criminal conviction of abuse, neglect, abandonment of the adoptee, sibling, or other biological parents must also be included. The Department prescribes a form regarding everything that must be included in the Medical and Social History Report. The adoption agency or attorney is required to seek to obtain this information but the law does not force the birth parent to provide it, and the identifying information in the

cover page to the report is not provided to the adoptive parents but only to the court.

8. Who supervises the adoptive placement and for how long?

- There is normally an “interlocutory” period of six months between the filing of the adoption petition and the issuing of the final decree of adoption. During this period the adoption agency or the home study provider must make a visit to the home, observe the child, and make a report to the court (Title 10 O.S. 7505-5.3, F). This interlocutory period may be waived in whole or part if the court determines it is in the best interest of the child (7505-6.3, B). If the birth mother has “relinquished” her parental rights to an adoption agency instead of a “consent” to adoption, then the agency will supervise the placement during the interlocutory period, and the agency must give its legal consent to the adoption before it can be finalized (Title 10 O.S. 7503-2.1 and 2.2.).

9. When is the adoption final?

- The adoption becomes final when the judge executes or issues a final decree of adoption. This is usually not before six months following the filing of the petition for adoption (Title 10 O.S. Section 7505-6.5). From the date of the final decree of adoption, the child is the legal child of the adoptive parents and shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with statutes of descent and distribution.
- Following the final decree, the adoption agency or attorney must complete a Certificate of Adoption which is sent to the State Registrar of Vital Statistics. Based upon the information in the Certificate of Adoption, the State Registrar of Vital Statistics shall cause a supplemental birth certificate to be issued with the new name of the adopted child and the names of the adoptive parents (Title 10 O.S. Section 7505-6.6).

COURT SPECIFIC PROCEDURES

1. Who initiates the adoption process?

- The adoption agency or attorney for the adoptive parents may initiate court action. A petition may be filed before birth to request the court’s approval of financial assistance to the birth mother during the pregnancy. If the birth father decides before the child is born to sign a consent before a judge or decides to execute an extrajudicial consent before a notary, these documents may be filed with the court. A Petition for Adoption is signed by the adoptive parents and filed by their attorney after the birth mother alone or both birth parents have given consent.

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

- The legal adoption papers are most commonly filed with the court at the time the Petition for Adoption is filed following the birth of the child.

- 3. When do the birth parents actually sign the legal documents for adoption?**
 - The birth mother must wait until after the child is born to sign her consent before a judge. An father may sign an extrajudicial consent before the child is born. The parent of an Indian child must wait until ten days following the birth of the child.

- 4. What happens if the birth parents do not agree on the adoption plan?**
 - In some cases, a lack of agreement between the birth parents can make it impossible for an adoption to legally occur. It is up to the court to determine if the consent of the other birth parent is required. The court may rule that the adoption can proceed without the consent of the other birth parent, especially if it has been proved to the court that the other parent has not established their parental rights. See Below for information regarding: Title 10, Section 7505-4.1 and 4.2.

- 5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?**
 - A baby can only leave the hospital with the adoptive parents upon the written permission of the birth mother. Such written permission is revocable until she goes to court and executes her consent to adoption. See answer # 4 under the adoptive parent section of the FAQ. An adoption can not be legally completed without the proper legal consent of both the birth mother and birth father or a ruling by the court to terminate parental rights or finding the consent of a parent is not required (Title 10 O.S. Section 7503-2.1 and 2.3 and 2.4).

MISCELLANEOUS QUESTIONS

- 1. What is the process for accessing adoption files, including identifying information?**
 - Oklahoma allows adult adoptees over the age of 18 and who were adopted after 11-01-97 to be able to obtain a copy of their original birth certificate, as long as a birth parent has not filed a form requesting it to be closed. Oklahoma also has a voluntary Reunion Registry and a Confidential Intermediary program operated by DHS.

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

- The Oklahoma Adoption Code does not specify a definition of kinship adoptions. Indian adoptions subject to the ICWA may follow the broader tribal definitions of kin.

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

- Birth parents have no legal rights to contact with the child after placement. In open adoption contact is continued due to the trusting relationship all parties have developed.