

Frequently Asked Questions About Adoption in Texas

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 Texas 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 birth mother may consent no sooner than 48 hours after the child's birth.
 - A man may sign an affidavit disclaiming any interest at any time after the first trimester.
 - If a man is the biological father and married to the mother, he may not consent until 48 hours after the child's birth.

- 2. Can the birth mother choose the adoptive parents?**
 - Birthmother and birthfather are allowed to choose the adoptive parents of their baby.

- 3. Can the birth mother see and hold the baby after the birth?**
 - Yes. Birthmother has all the rights and privileges of a parent until she signs relinquishments.

- 4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?**
 - Legal and medical expenses in connection with birth and pregnancy.
 - Adoptive counseling services in a private adoption if ordered by a physician.

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

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

- The mother may sign the documents anytime after 48 hours after the birth of the child. This can be done at the hospital or at the agency.
 - § 161.103. Affidavit of Voluntary Relinquishment of Parental Rights
 - (a) An affidavit for voluntary relinquishment of parental rights must be:
 - (1) signed after the birth of the child, but not before 48 hours after the birth of the child, by the parent, whether or not a minor, whose parental rights are to be relinquished;
 - (9) a statement that the relinquishment is revocable, that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time;
 - (10) if the relinquishment is revocable, a statement in boldfaced type concerning the right of the parent signing the affidavit to revoke the relinquishment only if the revocation is made before the 11th day after the date the affidavit is executed;
 - (e) The relinquishment in an affidavit that designates the Department of Protective and Regulatory Services or a licensed child-placing agency to serve as the managing conservator is irrevocable. A relinquishment in any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.
 - (f) A relinquishment in an affidavit of relinquishment of parental rights that fails to state that the relinquishment is irrevocable for a stated time is revocable as provided by Section 161.1035.

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

- Yes, the birth mother can change her mind until she signs relinquishments.

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

- Depending upon the situation, the legal consents can be either revocable or irrevocable. In general, the mother cannot change her mind after the relinquishments and waivers have been signed.
 - § 162.103 (10)(e) The relinquishment in an affidavit that designates the Department of Family and Protective Services or a licensed child-placing agency to serve as the managing conservator is irrevocable.
 - § 162.1035 An affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child that fails to state that the relinquishment is irrevocable for a stated time is:

(1) revocable only if the revocation is made before the 11th day after the date the affidavit is executed; and

(2) irrevocable on or after the 11th day after the date the affidavit is executed.

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

- Texas law does not restrict contact nor does it provide for a legally binding contact. Common practice involves “trust agreements”.

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

- Yes, provided that she surrenders the child to a safe haven. The child cannot be more than 60 days old.
- Protection for Relinquishing Parent Statute: Penal Code § 22.041(h); Fam. Code §262.303
 - The parent may remain anonymous. Relinquishment to a safe haven is an affirmative defense to prosecution for abandoning or endangering a child.

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

- Adoption requires termination of both birthparents’ rights. Both must agree to either a voluntary relinquishment or waiver.
- The Texas Family Code has provisions for involuntary termination of parental rights under certain circumstances.

BIRTH FATHER RELATED

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

- Yes. The birthfather must be notified of birthmother’s plans to place baby for adoption, either personally, by service or publication. Reasonable efforts must be made to locate the father. In Texas, there is a “paternity registry” where a putative father can assert paternity.
- Registry/Paternity Requirements to Receive Notice Statute: Fam. Code §§160.402(a); 160.312
 - The putative father may file before the child's birth, but no later than the 31st day after the child's birth.
 - Registration requires a completed Bureau of Vital Statistics form, signed and acknowledged by the putative father.
- § 161.002. Termination of the Rights of an Alleged Biological Father

- Termination of parental rights may be taken of the alleged father only if all efforts have been made to the satisfaction of the court to engage the father in planning and or waiving his rights.
2. **How is the father of the baby notified of the mother's adoption plan?**
 - The "father" of the baby is notified of the adoption plan through personal contact, service or publication.
 3. **Can the father of the baby choose the adoptive parents?**
 - This is not addressed in statute.
 - Birthfather and birthmother are able to choose the adoptive parents.
 4. **What happens if the biological father of the baby is not the baby's legal father?**
 - Rights of the biological father of the baby must be terminated regardless of whether or not he is the legal father. Refer to above statute.
 5. **What happens if the husband (legal father) is not the biological father?**
 - The legal father must sign a waiver of interest and the putative father asserts his paternity via the registry.
 6. **What happens if the mother does not know who the biological father is?**
 - § 161.107. Missing Parent or Relative
 - (e) The department shall be required to provide evidence to the court to show what actions were taken by the department in making a diligent effort to locate the missing parent and relative of the missing parent.
 7. **What happens if the mother refuses to give the name of the biological father?**
 - Diligent efforts must be made to determine the name and whereabouts of the biological father.
 8. **Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?**
 - The birthfather can work on an adoption plan at any time during the pregnancy.
 9. **Can the birth father change his mind before signing the legal consents to the adoption?**
 - Yes, the birthfather can change his mind at any time before signing legal documents.

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

- Texas law does not restrict contact nor does it provide for a legally binding contact. Common practice involves “trust agreements”.

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

- Yes.

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

- In general the answer is no, the father cannot change his mind after he has signed the consent/relinquishment/waiver for adoption purposes.
- § 162.103 (10)(e) The relinquishment in an affidavit that designates the Department of Family and Protective Services or a licensed child-placing agency to serve as the managing conservator is irrevocable.
- § 162.1035 An affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child that fails to state that the relinquishment is irrevocable for a stated time is:
 - 1) revocable only if the revocation is made before the 11th day after the date the affidavit is executed; and
 - (2) irrevocable on or after the 11th day after the date the affidavit is executed.

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

- Yes

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

- Adoption requires consent from both birthparents. If, birthfather is unavailable, the process can only move forward within the boundaries of the law i.e. service, publication, or searching on paternity registry for birthfather

ADOPTIVE PARENT RELATED

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

- Statute: Texas Family Code § 162.001
An adult. For married couples, both parties must petition for adoption.

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

➤ 162.005. Preparation of Health, Social, Educational, and Genetic History Report

(b) Before placing a child for adoption, the Department of Protective and Regulatory Services, a licensed child-placing agency, or the child's parent or guardian shall compile a report on the available health, social, educational, and genetic history of the child to be adopted.

(c) The report shall include a history of physical, sexual, or emotional abuse suffered by the child, if any.

(f) The department, licensed child-placing agency, parent, guardian, person, or entity who prepares and files the original report is required to furnish supplemental medical, psychological, and psychiatric information to the adoptive parents if that information becomes available and to file the supplemental information where the original report is filed. The supplemental information shall be retained for as long as the original report is required to be retained.

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

➤ § 162.003. Pre-adoptive Home Screening and Post Placement Report

- In a suit for adoption, a pre-adoptive home screening and post-placement report must be conducted as provided in Chapter 107.

➤ § 162.0085. Criminal History Required

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order each person seeking to adopt the child to obtain that person's own criminal history record information. The court shall accept under this section a person's criminal history record information that is provided by the Department of Protective and Regulatory Services or by a licensed child-placing agency that received the information from the department if the information was obtained not more than one year before the date the court ordered the history to be obtained.

(b) A person required to obtain information under Subsection (a) shall obtain the information in the manner provided by Section 411.128, Government Code.

➤ § 162.104. Approval of Placement

- The executive director may not approve the placement of a child in this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed.

- 4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?**
- Yes. Adoptive parents may request a legal risk placement meaning placement before a termination hearing.
- 5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?**
- Yes the adoptive family has all of the rights upon finalization of the adoption. They may change the “trust agreement” at any time without repercussion from the court.
 - § 161.2061. Terms Regarding Limited Post-Termination Contact
 - § 161.2062. Provision for Limited Contact between Biological Parent and Child
 - (a) An order terminating the parent-child relationship may not require that a subsequent adoption order include terms regarding limited post-termination contact between the child and a biological parent.
- 6. Under what circumstances can an adopted child communicate with the birth parents?**
- A child may communicate with their biological parents via a Trust Agreement or upon adulthood, and through the Voluntary Adoption Registry where the biological parents have agreed to participate.
- 7. What information must the birth parents provide to the adoptive parents?**
- At the least, non-identifying social and medical history must be shared.
 - § 162.018. Access to Information
 - (a) The adoptive parents are entitled to receive copies of the records and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption.
 - (b) The adoptive parents and the adopted child, after the child is an adult, are entitled to receive copies of the records that have been edited to protect the identity of the biological parents and any other person whose identity is confidential and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption.
 - (c) It is the duty of the person or entity placing the child for adoption to edit the records and information to protect the identity of the biological parents and any other person whose identity is confidential.
 - (d) At the time an adoption order is rendered, the court shall provide to the parents of an adopted child information provided by the bureau of vital

statistics that describes the functions of the voluntary adoption registry under Subchapter E. The licensed child-placing agency shall provide to each of the child's biological parents known to the agency, the information when the parent signs an affidavit of relinquishment of parental rights, affidavit of status of child, or affidavit of waiver of interest in a child. The information shall include the right of the child or biological parent to refuse to participate in the registry. If the adopted child is 14 years old or older the court shall provide the information to the child.

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

- The placement is supervised by a licensed child placing agency for 6 months.

9. When is the adoption final?

- § 162.009. Residence with Petitioner
 - (a) The court may not grant an adoption until the child has resided with the petitioner for not less than six months.
 - (b) On request of the petitioner, the court may waive the residence requirement if the waiver is in the best interest of the child.
- The adoption is finalized at the final court hearing.

COURT SPECIFIC PROCEDURES

1. Who initiates the adoption process?

- Either the biological parents and or the adoptive parents can initiate the adoption.
- § 162.002. Prerequisites to Petition
 - (a) If a petitioner is married, both spouses must join in the petition for adoption.
 - (b) A petition in a suit for adoption or a suit for appointment of a non-parent managing conservator with authority to consent to adoption of a child must include:
 - (1) a verified allegation that there has been compliance with Subchapter B ; or
 - (2) if there has not been compliance with Subchapter B, a verified statement of the particular reasons for noncompliance.

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

- Not addressed in statute. In general, the legal documents are signed by the biological parents after 48 hours of the birth and then they are sent to the courts. The adoption can not be finalized for 6 months while the adoption agency supervises the placement.

- 3. When do the birth parents actually sign the legal documents for adoption?**
 - Birthmother cannot sign legal documents until 48 hours after the birth of the child. Birthfather, unless married to the birthmother, may sign after the first trimester of the pregnancy.

- 4. What happens if the birth parents do not agree on the adoption plan?**
 - Both birthparents must agree to voluntary termination of parental rights unless certain conditions exist (see #5 below). If birthfather is unable to be located, Texas Family Code in Section 161 has provision for termination of his rights.

- 5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?**
 - When Parental Consent is not needed Statute: Fam. Code §§ 161.003; 161.005; 161.006; 161.007
 - The parent has voluntarily terminated parental rights.
 - The parent has no right of consent after an abortion where the child survives.
 - The parent is unable to care for the child due to mental illness.
 - A person is convicted of a crime resulting in the birth of a child.
 - The parent's rights have been terminated on the grounds of abandonment, nonsupport, endangerment, abuse, or neglect.

MISCELLANEOUS QUESTIONS

- 1. What is the process for accessing adoption files, including identifying information?**
 - In Texas, records are sealed, but courts in some areas will open these records upon request.
 - A child may communicate with their biological parents via a Trust Agreement or upon adulthood, and through the Voluntary Adoption Registry where the biological parents have agreed to participate.

- 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 Texas, relatives may adopt kin by petitioning the court to do so. Records are stored in the county in which the adoption took place.

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.