

## Frequently Asked Questions about Adoption in Tennessee

### BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?
  - A. Legal proceedings cannot begin until at least four (4) days after the birth of the child at the earliest. However, the birth mother may begin the adoption “process” as soon as she wants to. In fact, birth mothers are encouraged to begin the process as early as possible. Early initiation allows the licensed child-placing agency adequate time to find appropriate adoptive parent matches and permits the birth mother the time to evaluate and select an appropriate match for the child.  
  
Further, the sooner that a birth mother begins the process, the sooner that she will be able to take advantage of the many resources that are available to her including: counseling regarding the decision to place the child for adoption, legal counseling regarding the surrender, and reimbursement for legally approved financial expenditures made in connection with the birth of the child.  
  
Additionally, the more time the agency has to prepare for the birth, the more smoothly the transition will occur. A great deal of information must be gathered prior to proceeding with an adoption and all parties are put in a difficult position if the process begins late. Further, to the extent a birth father is able and willing to execute a waiver of interest, such formalities may be completed before birth.
  
2. Can the birth mother choose the adoptive parents?
  - A. Until the surrender occurs, absent some other Court proceeding, the birth mother remains the legal parent of the child and she can choose to whom she wishes to surrender the child. Of course this is limited by the fact that if the birth mother is determined to surrender, she may be limited in the choices of those individuals who are willing to accept the surrender. Generally, the birth mother may choose to surrender directly to a prospective adoptive couple of whom she approves (independent adoption) or the birth mother may choose to surrender to an agency licensed to place children for adoption in the state of Tennessee (agency adoption). In the event that the birth mother surrenders to a licensed child-placing agency, that agency will have the authority to make the decision as to whom to place the child with for adoption.
  
3. Can the birth mother see and hold the baby after the birth?
  - A. This can be a delicate issue for both the birth mother and the adoptive parents. Until the surrender occurs, the birth mother remains the legal mother of the child and retains rights to see the child and hold the child if she should request. Typically, a birth mother who intends to allow the adoptive couple to take a child home from the hospital will sign a general power of attorney for health care decisions allowing the adoptive parents to make health care decisions for the child. While unlikely, if the adoptive parents had such a power of attorney, and could show medically that contact with the birth mother would pose a risk to the health of the child, the adoptive parents could refuse to allow the birth mother contact with the child.
  
4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?

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- A. Tennessee law permits the adoptive parents to pay the following expenses in connection with the birth of a child:
- a) Reasonable charges or fees for hospital or medical services for the birth of the child, or for medical care and other reasonable birth-related expenses for the mother and/or child incident thereto;
  - b) Reasonable counseling fees for the parents or prospective adoptive parents and/or child for up to one year after placement of the child;
  - c) Reasonable legal services or the reasonable cost of legal proceedings related to the adoption of any child; or
  - d) Reasonable, actual expenses for housing, food, maternity clothing, child's clothing, utilities or transportation for a reasonable period not to exceed ninety (90) days prior to or forty-five (45) days after the birth or surrender or parental consent to the adoption of the child (the parties may submit affidavits for Court approval to receive payments for a longer period).

The expenses reimbursed must be incurred directly in connection with the maternity, birth, and/or placement of the child for adoption, or for legal services or for costs of legal proceedings directly related to the adoption of the child, or for counseling for a period of up to one (1) year for the parent who surrenders the child or consents to the adoption of the child.

In an agency adoption, the agency will typically make payments for the necessary expenses of the birth mother. A licensed child-placing agency is not limited by state statute with respect to the payment of expenses. Therefore, unlike an independent adoption, the Court does not need to review and approve expenses reimbursed through an agency adoption. However, such agencies are licensed and regulated by the Department of Children's Services and therefore many only make payment for appropriate expenditures.

5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?
- A. Yes. A minor may independently execute a surrender and consent to adoption without parental consent. However, where a minor parent is involved, the Court has the authority to appoint a guardian to represent the minor's interest in Court if it deems proper.
6. When does the birth mother actually sign the legal documents required for the adoption?
- A. If the birth mother chooses to surrender her child for adoption, she can sign the surrender before a judge as early as four (4) days after the birth of the child. The surrender can occur anytime thereafter although surrenders as a general rule should be executed as early as reasonably possible. If the birth mother terminates her rights by consent, she does so by joining in the Petition for Adoption at the time it is filed.
- A surrender takes place in the judges' chambers. By law, the only people permitted to be present during a surrender are the birth mother, her attorney, and the judge. The process is very private. The judge will ask the birth mother for a copy of her driver's license for identity purposes and then swear the birth mother under oath. The judge will then review the background information provided on

the surrender form (typically filled out by the attorney before the surrender hearing). The judge will ask the birth mother if she is aware of her rights and all resources available to her should she decide to parent the child. Then the judge will confirm that the birth mother understands the consequences of her actions and that she is not acting under duress in signing the surrender. The birth mother will execute the surrender and will indicate whether she wants to initiate a contact veto. The birth mother and her attorney will leave the room and the adoptive parents will then go before the judge to accept the surrender. The process takes about 15 minutes. The birth mother needs to remain for a short period of time after the surrender is complete so that copies of the documents may be made and one given to the birth mother. This copy contains important information regarding the revocation of a surrender should the birth mother elect that option.

7. Can the birth mother change her mind before signing the legal consents to the adoption?
  - A. Yes. The birth mother is under no legal obligation to surrender her child for adoption.
8. Can the birth mother change her mind after signing the legal consents to the adoption?
  - A. If the birth mother executes a surrender, she will have a ten (10) day window (revocation period) during which she has the absolute right to revoke the surrender, although there is no absolute right that the child will be placed back in her custody. A Court hearing may be required to determine if such placement is in the child's best interests. After the ten (10) day revocation period passes, the surrender is irrevocable. If the birth mother executes a consent by joining in the Petition for Adoption, she can revoke that consent at any time up until the final hearing for adoption.
9. Can the birth mother communicate with the adoptive parents and child after the adoption?
  - A. Typically, the parties will agree, prior to the surrender, whether the adoption will be open (one in which communication and contact may be permitted) or closed (one in which there will be no communication or contact from either side). Regardless of the prior agreements of the parties, once the surrender has been executed, there is no binding requirement that the prospective adoptive parents permit contact.
10. Can a birth mother anonymously surrender a newborn child?
  - A. Yes. Under Tennessee law, a mother may surrender her child anonymously by dropping the child off at certain health care facilities within three (3) days of birth.
11. What happens if the birth parents do not agree that adoption should be the plan?
  - A. The termination of both birth parents' rights will be required before an adoption may proceed. If the birth parents do not agree upon the adoption, one parent's rights may be terminated voluntarily and the prospective adoptive parents or licensed child-placing agency may proceed against the other parent to

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involuntarily terminate parental rights, provided that appropriate grounds exist. If both parents' rights to the child are not terminated, the adoption will fail.

12. Will the birth mother be asked to file an affidavit in her adoption papers regarding future contact or the release of identifying information to the adoptee or adoptive parents?

A. Yes. If the birth mother proceeds with a surrender, she will be required to file contact veto information in which she will designate whether she wants to release identifying information to the adoptee or adoptive parents and in what form she wants potential contact to take place (written or oral). In addition, the birth mother will be permitted to designate other members of her family for whom she wishes contact information to be disclosed.

If the birth mother consents to termination by joining in the Petition for Adoption, she will not be required to fill out contact veto information, but identifying information will be contained in the Final Order of Adoption to which the adoptee will have access.

13. Will the birth mother be required to file an affidavit regarding the paternity of the child?

A. The birth mother is required to swear under oath that she has provided the name and all other identifying information relating to the birth father to the Court and prospective adoptive parents. If the birth mother is unsure as to who may be the birth father, she is required to list and identify all potential birth fathers. If the identity of the birth father is unknown, the birth mother must verify that fact. It is illegal in the state of Tennessee for a birth mother to provide false or incomplete information concerning her knowledge of the identity of a birth father.

### **BIRTH FATHER RELATED**

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

A. The birth father's rights must be legally terminated, either voluntarily or involuntarily, prior to final approval of the adoption. In either case, the birth father will receive notice of the adoption plan. While there is no requirement that the birth father receive notice of the birth of the child until there is an attempt to terminate his parental rights, his lack of knowledge of the pregnancy or birth may limit the available grounds for involuntary termination should he not voluntarily consent.

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

A. If the father and mother maintain a good relationship, it is best to allow her to approach the father with her desire to submit to an adoption plan. If the birth mother does not approach the birth father, typically the licensed child-placing agency will approach the birth father concerning the plan and his willingness to voluntarily terminate. If either of these options fails, it will be the duty of the prospective adoptive parents, through their attorney, to approach the birth father regarding termination in order to proceed with the adoption.

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

A. Under Tennessee law, the birth parents have coordinate and equal legal rights to the custody and care of the child. The birth father may participate in the adoption

plan, but if the birth parents disagree on the choice of adoptive parents, then it may be up to the Courts to resolve the issue. As a practical matter, a birth father who does not agree with the adoption plan will not typically assert himself in the process until after the mother has surrendered to an agency or the prospective adoptive parents of her choosing.

4. What is the difference between a legal father and a named birth father? How is the process of voluntary termination different for a legal father and a named birth father?

A. A legal father is any man who has the responsibility for parenting a child by operation of law. The husband of a birth mother when she has the child (whether or not he is the actual biological father), the man named on the birth certificate as father, and any individual confirmed by a Court to be the father are legal fathers. Any individual named by the mother as the potential biological father of the child is a named birth father. Often a named birth father can also be the legal father. Because the legal father does not have to be the actual biological father of the child, there can often be both legal and named birth fathers for one child.

Both the legal father and named birth fathers can voluntarily terminate their parental rights through a surrender or by joining in the Petition for Adoption and giving consent to termination of parental rights. A named birth father may also voluntarily terminate his rights by signing a waiver of interest. By this process, a named birth father acknowledges that he wants to terminate his rights in writing. The waiver is irrevocable at the time of its execution and the named birth father is not entitled to further notice of the adoption proceedings. A named birth father is not required to appear before a judge when executing a waiver. While a waiver is irrevocable at execution, the rights of the named birth father are not actually terminated until the adoption is complete. This process of voluntary termination is not available for legal fathers.

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

A. The mother is charged with providing as much detailed information concerning the biological father as she can. If multiple individuals are identified as potential birth fathers, it will be necessary to terminate the rights of each potential birth father identified or seek paternity testing to identify the appropriate birth father.

In addition, prior to the filing of any Petition for Adoption, the prospective adoptive parents must file notice with the Putative Father Registry and any birth father listed therein with a claim to paternity will be notified.

Further, if no reliable information is available concerning the identity of the birth father, notice will be published in a newspaper of general circulation directed to Unknown Birth Father concerning the potential adoption.

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

A. Knowing refusal to provide information concerning the identity of a birth father constitutes a Class A misdemeanor in the state of Tennessee. The birth father would have the ability to challenge a subsequent adoption in the absence of termination of his parental rights. However, the safeguards listed above concerning notice to the Putative Father Registry and publication may limit the effectiveness of that challenge.

7. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born? What are the steps the birth father must take if he intends to parent the child?
- A. Yes. The birth father is entitled to participate in the planning for the child and should do so either through communication with the birth mother or directly through the licensed child-placing agency. In addition, a potential birth father may file his name with the Putative Father Registry to assure he will receive notice concerning any adoption plan for the child.
- In the event a birth father intends to parent a child, he will first be required to establish paternity through DNA testing. This may be done voluntarily but occasionally requires a court order. Presuming the DNA tests confirm that the birth father is the biological father of the child, the birth father will need to file a Petition with the Court for legal and physical guardianship, if he intends to take the child into his home. If the birth mother has not surrendered her rights, she will have the ability to contest that proceeding. Any other custodian of the child may contest that proceeding if they believe that it is not in the best interests of the child to be physically placed with the birth father. In the event the birth father does not want, or is denied physical custody of the child, a child support order will be entered by the Court establishing how much money in support of the child will be paid monthly by the birth father to the physical custodian of the child. In addition, a parenting plan will be established and entered by the Court establishing what co-parenting time (visitation) the birth father will be permitted to enjoy.
8. Can the birth father change his mind before signing the legal consents to the adoption?
- A. Yes, the birth father has the same rights as the birth mother regarding the execution of a voluntary consent to termination or surrender.
9. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?
- A. Yes. A minor may independently execute a surrender and consent to adoption without parental consent. However, where a minor parent is involved, the Court has the authority to appoint a guardian to represent the minor's interest in Court if it deems proper.
10. Can the birth father change his mind after signing the legal consents to the adoption?
- A. If the birth father executes a surrender, he is entitled to the ten (10) day revocation period to revoke his decision to surrender. If the birth father executes a consent by joining in the Petition for Adoption, he may revoke that consent up until the date of finalization of the adoption. If the birth father executes a waiver of interest, the waiver is irrevocable upon execution.
11. Describe the process for doing an involuntary termination of a legal father's or named birth father's rights.
- A. The involuntary termination of a legal or named birth father's rights requires a legal proceeding and judicial determination that grounds for termination exist and that it is in the best interests of the child that termination occur so that the child may be made available for adoption. The prospective adoptive parents

must file a petition to terminate parental rights or make a request for termination in the adoption petition and that document is served upon the legal or named birth father. The adoptive parents are required to prove by clear and convincing evidence that one of the legal grounds for termination exists.

The grounds for termination may be found in the Tennessee Code and parties seeking to terminate or defend against termination should consult an attorney. However, those grounds generally include abandonment, noncompliance with permanency plans, removal of the child from the home of a legal or birth father with little likelihood that the cause of removal will be cured, severe child abuse, where the legal or named birth father has been sentenced to incarceration for two years or more for conduct against the child who is the subject of the petition or their siblings, where the legal or named birth father has been incarcerated for ten years or more and the child is under the age of eight at the time of sentencing, where the legal or named birth father has been found guilty of killing the child's other parent or guardian, and mental impairment rendering a person incapable of caring for a child. In addition, a named birth father's rights may be terminated for failure to support (both pre-natal and after birth) and failure to visit, failure to demonstrate a willingness and ability to parent, posing a risk of substantial physical or psychological harm to the child, and failure to timely seek to establish paternity.

Typically, actions to involuntarily terminate parental rights, when contested, are harshly contested and end up in long, drawn out, and often expensive litigation.

**12.** Describe the process for making a diligent effort to find the birth father if the birth mother knows the identity of the birth father but he cannot be located.

A. The birth mother is required to give any identifying information she can to the adoptive parents in order to locate the birth father. The adoptive parents must then make a diligent search for the birth father (usually including the retention of a private investigator).

If, after diligent search, the birth father cannot be found, the adoptive parents may ask the Court for permission to publish notice of the termination action in the newspaper in the county where the birth father was last known to reside or where the child was conceived if no last known residence is available.

In addition, a search of the Putative Father Registry will be made for any individual claiming a paternity interest in the child. If no individual claims interest and the birth father does not respond timely to the publication notice, his parental rights will be terminated by default.

**13.** Describe the process for terminating the rights of the birth father in the event of a rape.

A. There are no special considerations given to the termination of the parental rights of a birth father in the event of rape. The same process utilized for other birth father terminations is used in these cases although it is much less likely that the birth father will step forward to assert his rights (subjecting himself to possible criminal prosecution) and it is unlikely the Court will have much sympathy for his plight.

A legal action for involuntary termination must still be filed with the Court and a search of the Putative Father Registry must be made. The birth mother will likely have no information regarding the birth father and therefore a notice to "Unknown Birth Father" will be published, with approval from the Court, in a newspaper in the county where the rape occurred. Presuming the birth father does not respond timely

to that notice, the Court will terminate his parental rights by default. If the birth father does respond, he will have to defend the action for termination and likely will be subject to criminal prosecution.

### **ADOPTIVE PARENT RELATED**

1. Who can be an adoptive parent and who selects them?
  - A. An adoptive parent must be at least eighteen (18) years of age and a resident of Tennessee for at least six (6) months prior to the filing of the Petition for Adoption. If a person seeking to adopt has a spouse competent to join in a Petition for Adoption, the spouse must join in the Petition. A single person may file to adopt a child. Petitioners for adoption need not be citizens of the United States. A person petitioning for adoption, unless a relative or step-parent, must have a valid home study prepared by a licensed clinical social worker. Gay and lesbian partners are not prohibited from filing for adoption. However, legislation is currently pending which would prohibit gay and lesbian partners from adopting a child. Based upon prior Court decisions, even if such legislation were to pass the General Assembly, there would likely be a challenge to its constitutionality.
2. What information about the birth parents and the child must be provided to the adoptive parents?
  - A. The adoptive parents are entitled to detailed information concerning the medical and social history of the birth parents and child.
3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?
  - A. Adoptive parents must have a valid home study performed by a licensed child-placing agency, prior to filing a Petition for Adoption. This home study will address the circumstances of the adoptive parents and their fitness for adopting a child. Further, pending final approval of the adoption, the Court will enter an Order of Reference and a licensed clinical social worker will be charged with making follow-up in-home visits. At the time of the adoption, a final court report will be submitted by the licensed clinical social worker. The Court will review the initial home study as well as the final court report prior to granting an adoption.
4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?
  - A. Yes. With the consent of the biological parents, physical custody may be placed with the adoptive parents immediately upon birth. The adoptive parents will need to obtain a power of attorney to provide for the medical needs of the child. An Order of Guardianship will be submitted in the initial Court proceedings to grant the potential adoptive parents legal custody of the child to go with the physical custody.
5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?
  - A. Yes. The adoptive parents, after adoption, are in all respects the legal parents of the child and can, as any parent could, prohibit contact with the child while the child is a minor.

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6. Under what circumstances can an adopted child communicate with the birth parents?
  - A. Where a birth parent has filed a request with the Contact Veto Registry allowing contact from the child, the child will have access to identifying information concerning the birth parent and may attempt to contact that parent. In addition, after the age of twenty-one (21), upon written request and the payment of a fee, an adopted child may request clearance from the registry to contact his/her birth parents.
7. What information must the birth parents provide to the adoptive parents?
  - A. The only absolute requirements are the medical and social history of the birth parents and child.
8. Who supervises the adoptive placement and for how long?
  - A. An Order of Reference will be filed with the Petition for Adoption directing a licensed child-placing agency to supervise the adoptive placement and report to the Court regarding the same during the time period the adoption petition is pending. Once the adoption is finalized, there is no further supervision.
9. When is the adoption final?
  - A. Upon the final Court hearing, which cannot take place until at least six (6) months have passed from the date of the filing of the Petition for Adoption.

### **OTHER ADOPTION RELATED QUESTIONS**

1. Who initiates the adoption process?
  - A. Either the birth parents or the potential adoptive parents may initiate contact to develop the adoption plan. Typically, this is done through a licensed child-placing agency. The actual Petition for Adoption will be filed by the potential adoptive parents who will initiate the process. Surrenders and waivers may be, and typically are, executed by birth parents before the Petition for Adoption is filed.
2. When are the legal adoption papers filed with the court?
  - A. The potential adoptive parents must file the Petition for Adoption within thirty (30) days of the execution of the surrender. Even if a surrender is not utilized, a Petition for Adoption may not be filed prior to the birth of the child.
3. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?
  - A. If the birth parents do not consent or voluntarily terminate their parental rights, the adoptive parents must seek to terminate those rights involuntarily prior to approval of the adoption.
4. What happens if the birth parents do not agree on the adoption plan?
  - A. The termination of both birth parents' rights will be required before an adoption may proceed. If the birth parents do not agree upon the adoption, one parent's rights may be terminated voluntarily and the prospective adoptive parents or licensed child-placing agency may proceed against the other parent to involuntarily terminate parental rights, provided that appropriate grounds exist. If both parents' rights to the child are not terminated, the adoption will fail.
5. Who can charge a fee for bringing birth parents and adoptive parents together?

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- A. Only a licensed child-placing agency under the supervision of the Tennessee Department of Children's Services may charge a fee for placing a child. Other entities charging such a fee, and individuals paying such a fee, commit a Class C felony in Tennessee.
6. Is the use of a non-licensed facilitator, non-licensed child-placing agencies, permitted to match adoptive families and birth families?
  - A. Yes, provided there is no fee charged. If a fee is charged, it constitutes a Class C felony.
7. Are independent adoptions allowed?
  - A. Yes.
8. How are independent and agency adoptions different?
  - A. In an independent adoption, surrender of the child is made directly to the adoptive parents. In an agency adoption, the Tennessee Department of Children's Services or a licensed child-placing agency acts as an intermediary.
9. How does an adoptee go about requesting access to their adoption file?
  - A. The adoption records are sealed upon finalization. Certified copies of the order granting adoption will be provided to the prospective adoptive parents upon finalization. An adoptee over the age of eighteen (18) may request non-identifying information about the birth parents upon written request to the Tennessee Department of Children's Services. The adoptive parents of an adoptee under the age of eighteen (18) may also request such information through written request. In addition, the Tennessee Department of Children's Services may provide medical updates to an adopted person.  
An adoptee over the age of twenty-one (21) may make a request for identifying information upon proof of identification, payment of a fee and a written acknowledgement of the contact veto rules. When an adoptee wants to make contact with a person eligible for contact veto, the adoptee must obtain clearance from the contact veto registry prior to making contact. If a person for whom a contact veto exists is contacted by an adoptee without clearance, the person contacted has the right to sue the adoptee for damages (including punitive), injunctive relief, court costs, and attorney's fees.