



## The Children's Law Center of Indiana

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### Adoption in Indiana

Adoption is the legal process which creates a new permanent parent-child relationship. When an adoption decree is granted, the relationship between the child and the child's birth parents is terminated by operation of law. An exception to this general rule is the case of a stepparent adoption, where the rights of the birth parent who is married to the adopting stepparent are not affected by the stepparent's adoption. A second exception to this general rule involves the situation where the parties have agreed to and the adoption court has approved post adoption visitation or contact privileges.

It is highly recommended that persons who are petitioning for adoption be represented by an attorney who can be certain that all of the legal requirements have been met. The adoption petition must be filed in the court with probate jurisdiction in the county where the petitioners reside, in the child's county of residence, or in the county where the agency which has custody of the child is located. Indiana statutes apply equally to agency adoptions and to private adoptions.

The fee for filing an adoption petition is \$107.00, which is payable to the clerk of the court where the adoption petition is filed. In addition, an adoption history fee of \$20.00 and a putative father registry fee of 50.00 must be paid to the Indiana State Department of Health. The court may order waiver of the fees if the petitioners' income is low. A home study report must be prepared by the office of family and children or a licensed child placing agency in order to complete the adoption. A fee is usually charged to the petitioners by the agency which prepares the home study report.

The written, notarized consent of the child's birth mother and the child's legal or adjudicated father, including a father who has signed a paternity affidavit, is usually required to complete the adoption. There are exceptions to this requirement. The adoption petitioners must prove to the court why a consent is not needed. One exception is when the parent-child relationship has been legally terminated as a result of a Child in Need of Services or delinquency proceeding. A second exception is when the child has been abandoned or deserted for a period of six months immediately before the filing of the adoption petition. Other exceptions include the situation of a child who has been in the custody of another person for a period of at least one year and the birth parent either fails, without justifiable cause, to communicate significantly with the child when able to do so or knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree. There are other exceptions when a parent's consent is not required. The court with jurisdiction over the adoption petition determines whether or not parental consent is needed. Birth parents have the right to notice, court appointed counsel and an evidentiary hearing in most situations when the court determines whether their consent is required. An exception to the notice requirement occurs when a putative father has not complied with the putative father registry statute, and the mother has not provided his name and/or address when she signs the adoption consent.



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Putative fathers of children who have been born out of wedlock and for whom paternity has not been established by paternity affidavit or a court proceeding, may preserve their right to legal notice concerning adoption of a child by registering with the putative father registry of the state department of health. The registry form is available through the state department of health, the local county department of health, and the clerk of the county circuit court. The putative father may register before the child's birth. The putative father may register regardless of whether the father is a minor. He must register no later than thirty days after the child's birth or the date of filing of the adoption petition, whichever occurs later. If a putative father does not register timely, he is not entitled to legal notice of the adoption (unless the birth mother provides his name and address) and his consent to adoption is irrevocably implied. The putative father who has not registered timely will be unable to establish paternity. He will also lose his right to contest the adoption or to challenge his irrevocably implied consent to the adoption. The attorney who represents the adoptive petitioners must provide a copy of the state health department's affidavit regarding whether a man has registered with the putative father registry or whether paternity has been established to the court prior to completing the adoption.

Indiana law allows a pregnant woman to serve the putative father of her unborn child with actual written legal notice that the woman is considering adoptive placement for the child. The father must file a paternity action within thirty days of receipt of the notice. This time period may be before the child's birth. If the putative father fails to file the paternity action within thirty days or fails to establish paternity, he will be legally unable to establish paternity if an adoption is pending. He will also lose his right to contest the adoption or to challenge his irrevocably implied consent to the adoption.

A birth parent or a putative father who receives legal notice of an adoption must respond within thirty days. The person may request court appointed counsel and should file a motion to contest the adoption. A putative father's failure to file a petition to establish paternity within thirty days of receipt of the notice will result in the putative father losing his rights to contest the adoption.

Indiana law states that the consent of the child's legal guardian is required to complete an adoption. The court may determine that the legal guardian's consent is not needed if the guardian's reasons for withholding consent are not in the child's best interests.

A consent to adoption may be withdrawn by order of the court prior to the granting of the adoption, after notice to the parties and hearing. Some of the reasons for withdrawal of consent include that the consent was obtained through fraud or duress or that the adoption is not in the child's best interests. The person who wants to withdraw the consent has the burden of proving why the consent should be withdrawn.

Indiana law requires written approval of a licensed child placing agency or county office of family and children before a child may be placed in an adoptive home. Exceptions



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to this statute include stepparent and relative adoptions, placement by an agency outside of Indiana, and a court ordered waiver of the prior approval requirement.

Indiana's adoption history law requires a person, a licensed child placing agency, or a county office of family and children which places a child for adoption to provide a report to the adoptive parents at the time of the child's adoptive placement or within thirty days after the placement with the adoptive parents' consent to the delay. The report shall summarize non-identifying available medical, psychological and educational records concerning the birth parents. All available non-identifying social, medical, psychological and educational records of the adoptive child shall be provided to the adoptive parents, along with a summary of known existing records which are not in the possession of the placement person or agency. Upon the adoptive parents' request, an attempt shall be made to secure copies of these additional records. A period of supervision of the child's placement in the adoptive home by a licensed child placing agency or the office of family and children is also required by law. The court determines the length of the supervision period. In addition, an agency report concerning the former environment and antecedents of the child, the suitability of the adoptive home, the fitness of the child for adoption, whether the child is hard to place, and the adoptive petitioners' criminal history information must be filed with the court before the adoption petition may be granted.

After all of the legal documents have been prepared and filed, the court will hold a formal adoption hearing. The court must determine whether all necessary consents have been given, whether adoption is in the child's best interests, and whether the other legal requirements have been met. The adoption petitioners will testify. If the court determines that the adoption should be granted, a written decree of adoption is entered and a new birth certificate which shows the adoptive parents as the child's legal parents may be issued by the state department of health.

Indiana law allows for post adoption contact privileges for the birth parents if so agreed in writing by all parties, including the child who is over the age of twelve, and the child's guardian ad litem. Such agreements must be in the child's best interest and must be approved by the court. The post adoption agreements may be modified by the court and may be enforced by the court after the adoption. Indiana law allows for similar post adoption birth sibling contact agreements. All post adoption agreements must be approved by the court before the adoption decree is entered.

Indiana law provides for post adoption financial assistance for hard-to-place children via adoption subsidies. A hard-to-place child is a child who is disadvantaged because of ethnic background, race, color, language, physical, mental or medical disability, age or because the child is a member of a sibling group which should be placed in the same home. Adoption subsidy must be requested in the adoption petition and ordered by the court. A subsidy may be ordered for the child's financial support and for the child's health care expenses which existed before the adoption petition was filed. A court ordered subsidy does



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not affect the legal status of the child nor the legal rights and responsibilities of the adoptive parents.

Federal Adoption Assistance payments may be available for some children, usually children who are wards of the county office of family and children. Not all children who are wards are eligible for Adoption Assistance. Some children who are not wards may be eligible for Adoption Assistance. The county office of family and children can provide the adoption petitioners with an application for Adoption Assistance. The application may be granted or denied by the office of family and children. If the application is denied, the adoption petitioners may request an administrative hearing at which they may be represented by an attorney at the petitioners' expense. Adoption Assistance is not court ordered. It is a federal contractual program based on strict eligibility criteria, including whether the birth parents would have been eligible for Assistance to Families with Dependent Children at the time the child was removed from the birth parents' care. It is critical that the Adoption Assistance be granted prior to the completion of the adoption. Some children are eligible for both Indiana adoption subsidy and Federal Adoption Assistance.

Many children who have been abused or neglected and are wards of the county office of family and children are available for adoption in Indiana. The state government provides a website of available children at [www.adoptachild.in.gov](http://www.adoptachild.in.gov). The Adoption Initiative program is administered by the Indiana Foster Care and Adoption Association, Inc. whose website is [www.ifcaa.org](http://www.ifcaa.org).