



Postadoption Contact Agreements Between Birth and Adoptive Families

Postadoption contact agreements are arrangements that allow for some kind of contact between a child's adoptive family and members of the child's birth family or other persons with whom the child has an established relationship, such as a foster parent, after the child's adoption has been finalized. These arrangements, sometimes referred to as cooperative adoption or open adoption agreements, can range from informal, mutual understandings between the birth and adoptive families to written, formal contracts.

Agreements for postadoption contact or communication have become more prevalent in recent years, due to several factors:

Electronic copies of this publication may be downloaded at

www.childwelfare.gov/systemwide/laws_policies/statutes/cooperative.cfm

To find statute information for a particular State, go to

www.childwelfare.gov/systemwide/laws_policies/state/index.cfm

To find information on all the States and territories, order a copy of the full-length PDF by calling 800.394.3366 or 703.385.7565, or download it at

www.childwelfare.gov/systemwide/laws_policies/statutes/cooperativeall.pdf



- There is wider recognition of the rights of birth parents to make choices for their children.
- Many adoptions involve older children, such as stepchildren and children adopted from foster care; these children frequently have attachments to one or more birth relatives with whom ongoing contact may be desirable and beneficial.
- Birth parents who participate in selecting the adoptive family may have a wide range of adoptive parent choices available and may base their selection on the willingness of the adoptive parent(s) to allow postadoption contact.
- Contact or communication with birth relatives can be a resource to adoptive parents for information about their child’s medical, social, and cultural history.¹

States With Enforceable Contact Agreements

In general, State law does not prohibit postadoption contact or communication. Since adoptive parents have the right to decide who may have contact with their adopted child, they can allow any amount of contact with birth family members, and such contacts often are arranged by mutual understanding without any formal agreement.

A written contractual agreement between the parties to an adoption can clarify the type and frequency of the contact or communication and can provide a way for the agreement to be legally enforced. Approximately 23 States currently have statutes that allow written and enforceable contact agreements.² The written agreements specify the type and frequency of contact and are signed by the parties to an adoption prior to finalization.³

¹ For more information on the issue of postadoption contact, see the Information Gateway publications *Openness in Adoption: A Bulletin for Professionals*, available online at www.childwelfare.gov/pubs/f_openadoptbulletin.cfm, and *Openness in Adoption: A Factsheet for Families*, at www.childwelfare.gov/pubs/f_openadopt.cfm.

² The word *approximately* is used to stress the fact that States frequently amend their laws; this information is current only through August 2008. The States that permit enforceable contracts include Alaska, Arizona, California, Connecticut, Florida, Indiana (for children over age 2), Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Vermont (stepparent adoptions only), Washington, and West Virginia.

³ The phrase “parties to an adoption” generally refers to the birth parents (or other person placing the child for adoption) and the adoptive parents, although it may include the adoptive child under the laws of some States.

The modes of contact can range from an exchange of information about the child between adoptive and birth parents to the exchange of cards, letters, and photos to personal visits with the child by birth family members.

Who May Be a Party to an Agreement?

In most States that permit enforceable agreements, an agreement for adoption with contact is permitted for any adoptive child as long as the nature and frequency of contact is deemed by the court to be in the child's best interests and designed to protect the safety of the child and the rights of all the parties to the agreement. Some States limit the enforceability of such agreements based on such factors as the type of adoption, the age of the adoptive child, or the nature of the contact. For example, Connecticut and Nebraska limit agreements to children who have been adopted from foster care. Indiana limits enforceable contact agreements to children ages 2 and older. For children under age 2, nonenforceable agreements are permitted as long as the type of contact does not include visitation.

Most statutes permit postadoption contact or communication for birth parents. Some States also allow other birth relatives who have significant emotional ties to the child to be included in the agreement, including grandparents, aunts, uncles, or siblings. Minnesota permits former foster parents to petition for contact privileges. In California, Minnesota, and Oklahoma, when the case involves an Indian child, members of the child's Tribe are included among the eligible birth relatives. California, Florida, Indiana, Louisiana, and Maryland have provisions for sibling participation in an agreement.

The Court's Role in Establishing and Enforcing Agreements

For the agreements to be enforceable, they must be approved by the court that has jurisdiction over the adoption. Generally, all parties wishing to be included in the agreements must agree in writing to all terms of the agreement prior to the adoption finalization. The court may approve the agreement only if all parties agree on its provisions, and the court finds the agreement is in the best interests of the child. In Arizona and Louisiana, the court must obtain and consider the wishes of

the child if he or she is age 12 or older. Five States require the written consent of the child who is age 12 or older.⁴

Disputes over compliance and requests for modification of the terms also must be brought before the court. Any party to the agreement may petition the court to modify, order compliance with, or void the agreement. The court may do so only if the parties agree or circumstances have changed, and the action is determined to be in the best interests of the child.

When Do States Use Mediation?

Nine States require the parties to participate in mediation before petitions for enforcement or modification of an agreement are brought before the court.⁵ New Hampshire law provides for postadoption contact agreements to be negotiated through a voluntary court-approved mediation program. In Florida and Maryland, the court, at its discretion, may refer the parties to mediation. In Massachusetts, any party seeking to enforce an agreement may voluntarily choose mediation. In no case can disputes over the postadoption agreement be used as grounds for setting aside an adoption or relinquishment of parental rights.

Laws in States Without Enforceable Agreements

In most States without enforceable agreements, the statutes are silent about the issue of postadoption contact or communication. Approximately six other States address the issue but do not provide for enforceable agreements:

- North Carolina's statute, while providing that such agreements may be entered into by a person giving adoption consent and a prospective adoptive parent, specifically states that contracts are not enforceable and cannot be a condition for consent to the adoption.
- Ohio, South Carolina, and South Dakota specifically state that mutual agreements for contact are nonbinding and nonenforceable.

⁴ California, Connecticut, Indiana, Massachusetts, and Rhode Island.

⁵ Arizona, California, Connecticut, Louisiana, Minnesota, New Hampshire, Oklahoma, Oregon, and Texas.

- Missouri and Tennessee leave decisions about contact and visitation with birth relatives to the sole discretion of the adoptive parents.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway in cooperation with the National Center for Adoption Law and Policy. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.