



## Postadoption Contact Agreements Between Birth and Adoptive Families

Postadoption contact agreements are arrangements that allow contact or communication between a child, his or her 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.

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**To find statute information for a particular State, go to**

<https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>

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

- There is wider recognition of the rights of birth parents to make choices for their children.
- Many adopted children, especially older children, such as stepchildren and children adopted from foster care, 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 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 and adopted children for information about the child's medical, social, and cultural histories.<sup>1</sup>

## States With Enforceable Contact Agreements

In general, State law does not prohibit postadoption contact or communication. Because 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 29 States and the District of Columbia currently have statutes that allow written and enforceable agreements

<sup>1</sup> For more information on the issue of postadoption contact, see the Information Gateway publication *Openness in Adoption: Building Relationships Between Adoptive and Birth Families* at <https://www.childwelfare.gov/pubs/f-openadopt/>.

for contact after the finalization of an adoption.<sup>2</sup> The written agreements specify the type and frequency of contact and are signed by the parties to an adoption prior to finalization.<sup>3</sup>

Contact can range from the adoptive and birth parents exchanging information about a child (e.g., cards, letters, and photos via traditional or social media) to the child exchanging information or having visits with the birth parents or relatives.

## Who May Be a Party to an Agreement?

In most States that permit enforceable agreements, an agreement for contact after adoption is permitted for any adoptive child as long as the nature and frequency of contact are deemed by the court to be in the child's best interests and are 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 factors such as the type of adoption, the age of the adoptive child, or the nature of the contact. For example, Utah and Vermont limit agreements to children who have been adopted from foster care. Wisconsin limits such agreements to adoptions by stepparents and relatives. 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. Alabama permits postadoption visiting by a child's birth grandparents only when the child has been adopted by a stepparent or other relative. Oklahoma allows postadoption visitation by a birth relative only when the child has resided with the relative prior to adoption.

<sup>2</sup> The word "approximately" is used to stress the fact that States frequently amend their laws; this information is current through August 2018. States that permit enforceable contracts include Alaska, Arizona, California, Connecticut, Florida, Georgia, Indiana (for children over age 2), Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire (enforceable agreements only in relation to children in the custody of the Department of Health and Human Services), New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin (stepparent and relative adoptions only).

<sup>3</sup> The phrase "parties to an adoption" generally refers to the birth parents (or other person placing the child for adoption) and the adoptive parents; it may include the adoptive child under the laws of some States.

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, and 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. In 13 States, visits between siblings who have been separated by the adoption may be included in an agreement.<sup>4</sup>

## 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 to be included in the agreement 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. In New Mexico, the court must consider the wishes of a child who is age 14 or older. Seven States require the written consent of the adoptive child who is age 12 or older.<sup>5</sup> In seven States and the District of Columbia, consent must be obtained from the adoptive child if he or she is age 14 or older.<sup>6</sup>

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.

<sup>4</sup> Contact agreements may include visits between siblings in California, Connecticut, Georgia, Louisiana, Minnesota, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, and Washington. Courts also may order visitation for siblings outside of contact agreements between the birth and adoptive parents.

<sup>5</sup> California, Connecticut, Indiana, Massachusetts, Pennsylvania, Rhode Island, and Utah.

<sup>6</sup> Delaware, Georgia, Nebraska, New Hampshire, Oregon, Vermont, and Virginia.

## When Do States Use Mediation?

Ten States and the District of Columbia require the parties to participate or attempt to participate in mediation before petitions for enforcement or modification of an agreement are brought before the court.<sup>7</sup> New Hampshire law provides for postadoption contact agreements to be negotiated through a voluntary court-approved mediation program. In Florida, Georgia, 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 five 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.
- Tennessee leaves decisions about contact and visitation with birth relatives to the sole discretion of the adoptive parents.

<sup>7</sup> Arizona, California, Connecticut, Louisiana, Minnesota, Nebraska, New Hampshire, Oklahoma, Oregon, and Texas.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, 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.

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## Alabama

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Code § 26-10A-30**

Postadoption visitation rights may be granted to the natural grandparents of the adopted child.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Code § 26-10A-30**

Postadoption visitation rights for the natural grandparents of the adopted child may be granted when the child is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt, or an uncle and their respective spouses, if any.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Code § 26-10A-30**

Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interests of the child.

### **Are agreements legally enforceable?**

This issue is not addressed in the statutes reviewed.

### **How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

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## Alaska

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Alaska Stat. §§ 25.23.130(c); 47.10.089(d)**

Nothing in this chapter prohibits an adoption that allows visitation between the adopted child and the adopted child's natural parents or other relatives.

A parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child in a voluntary relinquishment to the Department of Health and Social Services. A retained privilege must be in writing and stated with specificity.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Alaska Stat. §§ 25.23.130(c); 47.10.089(d)**

The adopted child and the adopted child's natural parents or other relatives may participate.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Alaska Stat. §§ 25.23.180(j); 47.10.089(e)**

In a relinquishment of parental rights, a parent may retain privileges with respect to the child, such as the ability to have future contact, communication, and visitation, if the privilege is stated in writing with specificity. If the parent has retained privileges, the

court shall incorporate the retained privileges into the termination order with a recommendation that the privileges retained be incorporated in an adoption decree.

**Are agreements legally enforceable?**

**Citation:** Alaska Stat. §§ 25.23.180(k), (l); 47.10.089(f)&(g)

A voluntary relinquishment may not be withdrawn and a termination order may not be vacated on the grounds that a retained privilege has been withheld from the relinquishing parent or that the relinquishing parent has been unable, for any reason, to act on a retained privilege.

Upon a showing of good cause, a person who has voluntarily relinquished parental rights may request a review hearing to seek enforcement.

**How may an agreement be terminated or modified?**

**Citation:** Alaska Stat. §§ 25.23.180(l); 47.10.089(g)&(j)

Upon a showing of good cause, a person who has voluntarily relinquished parental rights may request a review hearing to seek enforcement or modification of or to vacate a privilege retained in the termination order. The court may modify, enforce, or vacate the privilege if doing so would, by clear and convincing evidence, be in the best interests of the child.

After a termination order is entered and before the entry of an adoption decree, the prospective adoptive parent may request that the court decline to incorporate a retained privilege (for future contact, communication, and visitation) that was included in a termination order and was recommended for incorporation in an adoption decree. The court may decline to incorporate a retained privilege if the person who retained the privilege agrees with the request or if the court finds that it is in the child's best interests.

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**American Samoa**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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**Arizona**

*Current Through August 2018*

**What may be included in postadoption contact agreements?**

**Citation:** Rev. Stat. § 8-116.01

The parties to a proceeding under this chapter may enter into an agreement regarding communication with an adopted child, the adoptive parents, and a birth parent.

The agreement shall state that the adoptive parent may terminate contact between the birth parent and the adopted child at any time if the adoptive parent believes that this contact is not in the child's best interests.

The agreement shall contain a clause stating that the parties agree to the continuing jurisdiction of the court to enforce and modify the agreement and that they understand that failure to comply with the agreement is not grounds for setting aside an adoption decree, for revocation of a written consent to an adoption, or relinquishment of parental rights.

**Who may be a party to a postadoption contact agreement?****Citation: Rev. Stat. § 8-116.01**

The court shall not approve an agreement unless the agreement is approved by the prospective adoptive parents, any birth parent with whom the agreement is being made, and, if the child is in the custody of the division or an agency, a representative of the division or agency.

**What is the role of the court in postadoption contact agreements?****Citation: Rev. Stat. § 8-116.01**

The court shall not approve the agreement unless the court finds that the communication between the adopted child, the adoptive parents, and a birth parent is in the child's best interests. The court may consider the wishes of a child who is at least 12 years old.

The court retains jurisdiction after the decree of adoption is entered to hear motions brought to enforce or modify an order entered pursuant to this section. Before filing a motion, the party seeking to enforce or modify an order shall make a good faith attempt to mediate the dispute. The court shall not enforce or modify an order unless the party filing the motion has made a good faith attempt to mediate the dispute.

**Are agreements legally enforceable?****Citation: Rev. Stat. § 8-116.01**

An agreement is not enforceable unless the agreement is in writing and is approved by the court.

An agreement entered into pursuant to this section is enforceable even if it does not disclose the identity of the parties to the agreement.

Failure to comply with an agreement is not grounds for setting aside an adoption decree, for revocation of a written consent to an adoption, or relinquishment of parental rights.

**How may an agreement be terminated or modified?****Citation: Rev. Stat. § 8-116.01**

The court may order a modification of an agreement if it finds that the modification is necessary to serve the best interests of the adopted child, and one of the following is true:

- The modification is agreed to by the adoptive parents.
  - Exceptional circumstances have arisen since the agreement was approved that justify modification of the agreement.
  - The court may consider the wishes of a child who is at least age 12 in determining whether to order a modification.
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**Arkansas***Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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**California***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Fam. Code § 8616.5; Welf. & Inst. Code § 366.29**

The terms of any postadoption contact agreement shall be limited to, but need not include, all of the following:

- Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings, and the child's Indian Tribe if the case is governed by the Indian Child Welfare Act
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- Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both, and in cases governed by the Indian Child Welfare Act, the child's Indian Tribe
- Provisions for the sharing of information about the child in the future
- The terms of any postadoption contact agreement shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

A postadoption agreement shall contain the following warnings in bold type:

- After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent; a birth parent; a birth relative, including a sibling; an Indian Tribe; or the child to follow the terms of this agreement or a later change to this agreement.
- A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.
- A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith mediation or other appropriate dispute resolution proceedings to resolve the dispute.
- When a court orders that a dependent child be placed for adoption, nothing in the adoption laws of this State shall be construed to prevent the prospective adoptive parent or parents of the child from expressing a willingness to facilitate postadoptive sibling contact.

#### **Who may be a party to a postadoption contact agreement?**

**Citation: Fam. Code § 8616.5; Welf. & Inst. Code § 366.29**

The following persons may be parties to a postadoption contact agreement:

- The adopting parent or parents
- The birth relatives, including the birth parent or parents or any siblings
- The child
- In cases governed by the Indian Child Welfare Act, the child's Indian Tribe

The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. A child who is age 12 or older must consent in writing to the terms and conditions of the postadoption contact agreement and any subsequent modifications, unless the court finds by a preponderance of the evidence that the postadoption agreement, as written, is in the best interests of the child.

#### **What is the role of the court in postadoption contact agreements?**

**Citation: Fam. Code § 8616.5; Welf. & Inst. Code § 366.29**

At the time of an adoption decree, the court entering the decree may grant postadoption privileges if an agreement for those privileges has been executed, including agreements entered into pursuant to § 8620(f) (pertaining to agreements between an Indian child and the child's Tribe).

Upon the granting of the adoption petition and the issuance of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption.

The court shall not set aside an adoption decree, rescind a relinquishment, or modify an order to terminate parental rights because of the failure of any party to comply with the original terms of, or subsequent modifications to, the agreement. Exceptions are as follows:

- Prior to issuing the adoption order involving an Indian child and upon a petition of the birth parents; birth relatives, including a sibling; or an Indian Tribe, the court may order the parties to engage in family mediation services to reach an agreement if the prospective adoptive parent fails to negotiate in good faith to execute a postadoption contact agreement.



- Prior to issuing the adoption order involving an Indian child, if the parties fail to negotiate in good faith to execute an agreement during the negotiations entered into pursuant to the above paragraph, the court may modify prior orders or issue new orders as necessary to ensure the best interests of the Indian child are met. This includes, but is not limited to, requiring parties to engage in further family mediation services to reach an agreement, initiating guardianship proceeding in lieu of adoption, or authorizing a change of adoptive placement for the child.

**Are agreements legally enforceable?****Citation: Fam. Code § 8616.5; Welf. & Inst. Code § 366.29**

Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child.

Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

The court may not award monetary damages as a result of the filing of the civil action for enforcement of the agreement.

**How may an agreement be terminated or modified?****Citation: Fam. Code § 8616.5; Welf. & Inst. Code § 366.29**

A postadoption contact agreement may be modified or terminated only if either of the following occurs:

- All parties, including the child if the child is age 12 or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.
- The court finds all of the following:
  - » The termination or modification is necessary to serve the best interests of the child.
  - » There has been a substantial change of circumstances since the original agreement was executed and approved by the court.
  - » The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

If, following entry of an order for sibling contact, the adoptive parent(s) determine that sibling contact poses a threat to the health, safety, or well-being of the adopted child, the adoptive parent(s) may terminate the sibling contact, provided that the adoptive parent(s) must submit written notification to the court within 10 days after terminating the contact. The notification must state to the court the reasons why the health, safety, or well-being of the adopted child would be threatened by continued sibling contact.

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**Colorado***Current Through August 2018*

These issues are not addressed in the statutes reviewed.

## Connecticut

*Current Through August 2018*

### What may be included in postadoption contact agreements?

**Citation: Gen. Stat. § 45a-715(j), (k), (o)**

A cooperative postadoption agreement shall contain the following:

- An acknowledgment by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative postadoption agreement
- An acknowledgment by the adoptive parents that the agreement grants either or both birth parents the right to seek enforcement of the cooperative postadoption agreement

The terms of a cooperative postadoption agreement may include the following:

- Provision for communication between the child and either or both birth parents
- Provision for future contact between either or both birth parents and the child or an adoptive parent
- Maintenance of medical history of either or both birth parents who are a party to the agreement

For any child who is the subject of a petition for adoption under this chapter, the court shall consider the appropriateness of postadoption communication or contact with a sibling of the child, including, but not limited to, visitation, written correspondence, or telephone calls. If the court determines such postadoption communication or contact is in the best interests of the child, the court shall order that such child have access to and visitation rights with such sibling until the child reaches age 18.

### Who may be a party to a postadoption contact agreement?

**Citation: Gen. Stat. § 45a-715(h)**

Either or both birth parents and an intended adoptive parent may enter into a cooperative postadoption agreement regarding communication or contact between either or both birth parents and the adopted child. Such an agreement may be entered into if:

- An order terminating parental rights has not yet been entered.
- Either or both birth parents agree to a voluntary termination of parental rights, including an agreement in a case that began as an involuntary termination of parental rights.

The postadoption agreement shall be applicable only to a birth parent who is a party to the agreement. Such agreement shall be in addition to those under common law.

Counsel for the child and any guardian ad litem for the child may be heard on the proposed cooperative postadoption agreement. There shall be no presumption of communication or contact between the birth parents and an intended adoptive parent in the absence of a cooperative postadoption agreement.

### What is the role of the court in postadoption contact agreements?

**Citation: Gen. Stat. § 45a-715(i)**

If the probate court determines that the child's best interests will be served by postadoption communication or contact with either or both birth parents, the court shall so order, stating the nature and frequency of the communication or contact. A court may grant postadoption communication or contact privileges if:

- Each intended adoptive parent consents to the granting of communication or contact privileges.
- The intended adoptive parent and either or both birth parents execute a cooperative agreement and file the agreement with the court.
- Consent to postadoption communication or contact is obtained from the child, if the child is at least 12 years old.
- The cooperative postadoption agreement is approved by the court.

**Are agreements legally enforceable?****Citation: Gen. Stat. § 45a-715(j), (m)**

A cooperative postadoption agreement shall contain the following:

- An acknowledgment by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative postadoption agreement
- An acknowledgment by the adoptive parents that the agreement grants either or both birth parents the right to seek enforcement of the cooperative postadoption agreement

A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption and shall not serve as a basis for orders affecting the custody of the child.

**How may an agreement be terminated or modified?****Citation: Gen. Stat. § 45a-715(m), (n)**

The court shall not act on a petition to change or enforce the agreement unless the petitioner had participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

An adoptive parent, guardian ad litem for the child, or the court on its own motion may, at any time, petition for review of communication or contact ordered by the court if the adoptive parent believes that the best interests of the child are being compromised. The court may order the communication or contact to be terminated or order such conditions with regard to communication or contact as the court deems to be in the best interests of the adopted child.

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**Delaware***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Ann. Code Tit. 13, § 929**

After the placement selection process has been completed, and prior to the finalization of the adoption, identifying information may be exchanged, including, but not limited to, the exchange of names, addresses, photographs, and face-to-face meetings, provided that:

- The birth parent or parents and adoptive parent or parents request the exchange of identifying information in writing.
- The birth parent or parents and adoptive parent or parents and the Department of Services for Children, Youth and Their Families or licensed agency agree to the exchange of identifying information as specified in writing.
- The birth parent or parents and adoptive parent or parents acknowledge in writing their understanding that no legal right or assurance of continuing contact after finalization of the adoption exists.
- The birth parent or parents and adoptive parent or parents acknowledge in writing and under oath that there has been no violation of § 928 of this title.

**Who may be a party to a postadoption contact agreement?****Citation: Ann. Code Tit. 13, § 929**

Written consent to the exchange of identifying information must be given by the birth parent(s), adoptive parent(s), and any child age 14 or older, unless the department or licensed agency deems it to be in the best interests of the child that such consent be waived.

**What is the role of the court in postadoption contact agreements?**

This issue is not addressed in the statutes reviewed.

**Are agreements legally enforceable?**

This issue is not addressed in the statutes reviewed.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

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**District of Columbia**

*Current Through August 2018*

**What may be included in postadoption contact agreements?**

**Citation: Ann. Code § 4-361**

A written postadoption contact agreement may allow contact after the adoption between the adopted child and a birth parent or other birth relative of the child. Written consent to the agreement must be obtained from an adopted child who is age 14 or older.

**Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Code § 4-361**

The agreement is made between a prospective adoptive parent or an adoptive parent and the birth parent or other birth relative of the adopted child.

**What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Code § 4-361**

The Family Court of the Superior Court of the District of Columbia must enforce an agreement if the court finds that enforcement is in the best interests of the adopted child. In enforcing an agreement, the court shall take into consideration the written consent of an adopted child who is age 14 years or older. For cases involving an adopted child who is a respondent in a child abuse or neglect case, the court finalizing the adoption shall review and approve any postadoption contact agreement based on whether it is in the best interests of the child prior to finalizing the adoption.

**Are agreements legally enforceable?**

**Citation: Ann. Code § 4-361**

Failure to comply with a condition of the postadoption agreement shall not be grounds for revoking consent to or setting aside an order for adoption.

**How may an agreement be terminated or modified?**

**Citation: Ann. Code § 4-361**

If a party to the agreement moves to modify the agreement and satisfies the court that the modification is in the best interests of the child, the court must order that the agreement be modified accordingly.

If a dispute arises between the parties to an agreement, the parties shall certify that they have participated or attempted to participate, in good faith, in mediation or other appropriate dispute resolution proceedings to resolve the dispute prior to seeking judicial resolution. The mediator shall be selected by the adoptive parent.

## Florida

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Stat. § 63.0427**

The court may be asked to consider the appropriateness of postadoption communication or contact, including, but not limited to, visits, written correspondence, or telephone calls.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Stat. § 63.0427**

The child shall have the right to have contact with his or her siblings or, upon agreement of the adoptive parents, the child shall have the right to have contact with the parents who have had their parental rights terminated or other specified biological relatives.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Stat. § 63.0427**

The court shall consider the following in determining the appropriateness of postadoption communication:

- Any orders of the court pursuant to § 39.811(7)
- Recommendations of the Department of Children and Family Services, the foster parents if other than the adoptive parents, and the guardian ad litem
- Statements of the prospective adoptive parents
- Any other information deemed relevant and material by the court

If the court determines that the child's best interests will be served by postadoption communication or contact, the court shall so order, stating the nature and frequency of the communication or contact. This order shall be made a part of the final adoption order, but the continuing validity of the adoption may not be contingent upon such postadoption communication or contact. The ability of the adoptive parents and child to change residence within or outside the State of Florida may not be impaired by such communication or contact.

### **Are agreements legally enforceable?**

This issue is not addressed in the statutes reviewed.

### **How may an agreement be terminated or modified?**

**Citation: Ann. Stat. § 63.0427**

Notwithstanding § 63.162, the adoptive parent may, at any time, petition for review of a communication or contact order if the adoptive parent believes that the best interests of the adopted child are being compromised, and the court may order the communication or contact to be terminated or modified, as the court deems to be in the best interests of the adopted child. However, the court may not increase contact between the adopted child and siblings, birth parents, or other relatives without the consent of the adoptive parent or parents. As part of the review process, the court may order the parties to engage in mediation. The department shall not be required to be a party to such review.

## Georgia

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Code § 19-8-27**

A postadoption contact agreement may provide for privileges regarding a child who is being adopted or who has been adopted, including, but not limited to, visitation with such child, contact with such child, sharing of information about such child, or sharing of information about birth relatives.

A postadoption contact agreement shall contain the following warnings in at least 14-point boldface type:

- After the entry of a decree for adoption, an adoption cannot be set aside due to the failure of an adopting parent, a biological parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.
- A disagreement between the parties or litigation brought to enforce, terminate, or modify this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Code § 19-8-27**

An adopting parent or parents and birth relatives or an adopting parent or parents, birth relatives, and a child who is age 14 or older who is being adopted or who has been adopted may voluntarily enter into a written postadoption contact agreement to permit continuing contact between such birth relatives and such child. A child who is age 14 or older shall be considered a party to a postadoption contact agreement.

The term 'birth relative' includes:

- A parent, biological father who is not a legal father, grandparent, brother, sister, half-brother, or half-sister who is related by blood or marriage to a child who is being adopted or who has been adopted
- A grandparent, brother, sister, half-brother, or half-sister who is related by adoption to a child who is being adopted or who has been adopted

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Code § 19-8-27**

Enforcement, modification, or termination of a postadoption contact agreement shall be under the continuing jurisdiction of the court that granted the petition for adoption. However, the parties to a postadoption contact agreement may expressly waive the right to enforce, modify, or terminate such agreement.

Any party to the postadoption contact agreement may, at any time, file the original postadoption contact agreement with the court that has or had jurisdiction over the adoption, if such agreement provides for the court to enforce such agreement or such agreement is silent as to the issue of enforcement.

### **Are agreements legally enforceable?**

**Citation: Ann. Code § 19-8-27**

In order to be an enforceable postadoption contact agreement, the agreement shall be in writing and signed by all of the parties to such agreement acknowledging their consent to its terms and conditions.

### **How may an agreement be terminated or modified?**

**Citation: Ann. Code § 19-8-27**

A postadoption contact agreement always may be modified or terminated if the parties have voluntarily signed a written modified postadoption contact agreement or termination of a postadoption contact agreement. A modified postadoption contact agreement may be filed with the court, if the agreement provides for the court to enforce the agreement or the agreement is silent as to the issue of enforcement.

With respect to agreements that provide for court enforcement or termination or are silent as to such matters, any party may file a petition to enforce or terminate the agreement with the court that granted the petition for adoption, and the court shall enforce the terms of the agreement or terminate the agreement if the court finds by a preponderance of the evidence that the enforcement or termination is necessary to serve the child's best interests.

With respect to agreements that provide for court modification or are silent as to modification, only the adopting parent or parents may file a petition seeking modification. The petition shall be filed with the court that granted the petition for adoption, and the court shall modify the agreement if the court finds by a preponderance of the evidence that the modification is necessary to serve the child's best interests and there has been a material change of circumstances since the current postadoption contact agreement was executed.

A court may require the party seeking modification, termination, or enforcement of a postadoption contact agreement to participate in mediation or other appropriate alternative dispute resolution.

A court shall not set aside a decree of adoption, rescind a surrender of rights, or modify an order to terminate parental rights or any other prior court order because of the failure of an adoptive parent, a birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, a postadoption contact agreement.

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## **Guam**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## **Hawaii**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## **Idaho**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## **Illinois**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## Indiana

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Code §§ 31-19-16-3; 31-19-16-9**

A postadoption contact agreement must contain the following provisions:

- An acknowledgment by the birth parents that the adoption is irrevocable, even if the adoptive parents do not abide by the postadoption contact agreement
- An acknowledgment by the adoptive parents that the agreement grants the birth parents the right to seek enforcement of the postadoption privileges set forth in the agreement

Postadoption contact privileges are permissible without court approval in an adoption of a child who is younger than age 2 upon the agreement of the adoptive parents and a birth parent. However, postadoption contact privileges under this section may not include visitation. A postadoption contact agreement under this section:

- Is not enforceable
- May include contact through photographs, written and verbal updates, and other forms of communication
- Does not have to be in writing
- Does not affect the validity of a consent to an adoption, a waiver of notice, or the finality of the adoption

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Code §§ 31-19-16-1; 31-19-16.5-1**

At the time an adoption decree is entered, the court entering the adoption decree may grant postadoption contact privileges to a birth parent who has consented to the adoption or voluntarily terminated the parent-child relationship.

At the time an adoption decree is entered, the court may order the adoptive parents to provide specific postadoption contact for an adopted child who is at least age 2 with a preadoptive sibling if:

- The court determines that the postadoption contact would serve the best interests of the adopted child.
- Each adoptive parent consents to the court's order for postadoption contact privileges.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Code §§ 31-19-16-2; 31-19-16.5-2**

A court may grant postadoption contact privileges if:

- The court determines that the best interests of the child would be served.
- The child is at least age 2 and the court finds that there is a significant emotional attachment between the child and the birth parent.
- Each adoptive parent consents to the granting of postadoption contact privileges.
- The adoptive parents and the birth parents execute a postadoption contact agreement and file the agreement with the court.
- The licensed child-placing agency sponsoring the adoption and the child's court-appointed special advocate or guardian ad litem recommends the postadoption contact agreement to the court, or if there is no licensed child-placing agency sponsoring the adoption, the local office or other agency that prepared an adoption report is informed of the contents of the agreement and comments on the agreement in the agency's report to the court.
- Consent to postadoption contact is obtained from the child if the child is at least age 12.
- The postadoption contact agreement is approved by the court.

In making its determination regarding sibling postadoption contact, the court shall consider any relevant evidence, including the following:

- A recommendation made by a licensed child-placing agency sponsoring the adoption
- A recommendation made by the adopted child's court-appointed special advocate or guardian ad litem
- A recommendation made by the local office or other agency that prepared a report of its investigation and its recommendation as to the advisability of the adoption
- The wishes expressed by the adopted child or adoptive parents

#### **Are agreements legally enforceable?**

**Citation: Ann. Code §§ 31-19-16-4; 31-19-16-6; 31-19-16.5-4; 31-19-16.5-5**

A birth parent or an adoptive parent may file a petition with the court entering the adoption decree to compel a birth parent or an adoptive parent to comply with the postadoption contact agreement.

Before the court hears a motion to compel compliance with an agreement, the court may appoint a guardian ad litem or court-appointed special advocate to represent and protect the best interests of the child. However, the court may only appoint a guardian ad litem or court-appointed special advocate for the adopted child if the interests of an adoptive parent differ from the child's interests to the extent that the court determines that the appointment is necessary to protect the best interests of the child.

The following persons may file a petition requesting that the court vacate or modify a postadoption contact order with a preadoptive sibling or to compel an adoptive parent to comply with the postadoption contact order:

- A preadoptive sibling by a next friend, guardian ad litem, or court-appointed special advocate
- The adopted child by a next friend, guardian ad litem, or court-appointed special advocate
- An adoptive parent

#### **How may an agreement be terminated or modified?**

**Citation: Ann. Code §§ 31-19-16-4; 31-19-16-6; 31-19-16.5-4; 31-19-16.5-5**

A birth parent or an adoptive parent may file a petition with the court entering the adoption decree to modify the postadoption contact agreement.

The court may void or modify a postadoption contact agreement at any time before or after the adoption if the court determines after a hearing that the best interests of the child requires the voiding or modifying of the agreement.

Before the court voids or modifies an agreement, the court may appoint a guardian ad litem or court-appointed special advocate to represent and protect the best interests of the child.

The following persons may file a petition requesting that the court vacate or modify a postadoption contact order with a preadoptive sibling:

- A preadoptive sibling by a next friend, guardian ad litem, or court-appointed special advocate
- The adopted child by a next friend, guardian ad litem, or court-appointed special advocate
- An adoptive parent
- The court may vacate or modify a postadoption contact order entered under this chapter at any time after the adoption if the court determines, after a hearing, that it is in the best interests of the adopted child.

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## **Iowa**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

## Kansas

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## Kentucky

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## Louisiana

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Children's Code Art. 1269.3**

Every postadoption contact agreement shall be in writing and signed by the adopting parents and by any adult granted contact. If a sibling granted contact is a minor, his or her parent or legal custodian shall sign the agreement.

If requested by the parties, the court may refer them to mediation to assist them in drafting the agreement. If necessary to ensure that the child's best interests are taken into account, the court may also appoint independent counsel for any child involved in future continuing contact.

A continuing contact agreement may authorize the exchange of information; communication by telephone, mail, email, or other means; and direct visitation in either the adopting parents' home or elsewhere through a mutually agreed upon intermediary.

Every agreement must declare the following:

- The parties have freely and voluntarily entered into the agreement, and it reflects their intent to be bound by its terms, unless later modified by a replacement agreement or by court order.
- The sibling, grandparent, parent, or other relative by blood, adoption, or affinity has been counseled and advised by the Department of Children and Family Services, counsel, or other appropriate professional about the meaning of the terms and the effects of a continuing contact agreement, and each has had the opportunity to have the agreement reviewed by his or her counsel.
- The sibling, grandparent, parent, or other relative has been informed and understands that upon the execution of the agreement, any dispute or litigation regarding its terms shall not affect the validity of any surrender, termination of parental rights, adoption, or custody of the adopted child.
- The adopting parents have been informed and understand that the sibling, grandparent, parent, or other relative by blood, adoption, or affinity may seek enforcement of the terms of the agreement in accordance with Article 1269.8.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Children's Code Art. 1264; 1269.2**

In an agency adoption in which the department is the custodian of the child, the court may approve an agreement providing for continuing contact between the child to be adopted and his or his grandparent, sibling, and any parent, if both of the following conditions are met:

- The child has an established, significant relationship with that person to the extent that its loss would cause substantial harm to the child.
- The preservation of the relationship would otherwise be in the best interests of the child.

If there is no parental relationship that meets the requirements of the paragraph above, the court may approve an agreement providing for continuing contact between the child to be adopted and any other relative by blood, adoption, or affinity whose relationship with the child meets those requirements.

When adoption is approved by the court as the permanent plan for the child, the department shall inform any parent, grandparent, sibling, or any other relative or foster parent who meets the requirements above of the possibility of postadoption contact with the child upon agreement with the adoptive parents.

Notwithstanding any provision of law to the contrary, the natural parents of a deceased person whose surviving child is thereafter adopted and the parents of a person whose parental rights have been terminated may have limited visitation rights to the adopted minor child.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Children's Code Art. 1269.4; 1269.5**

Within 10 days after the petition is filed, the department, attorney for the child, attorney for the parent, or attorney for the prospective adoptive parents shall file an agreement for continuing contact in the court in which the adoption is pending. The agreement may be filed later than 10 days after execution if the court agrees upon a showing of good cause.

If either the department or counsel for the child objects to the agreement, the court may conduct a hearing before approving the agreement.

The court shall review a continuing contact agreement executed in conformity with the requirements of this chapter.

If the court finds that an agreement serves the best interests of the child, the agreement shall be incorporated into a judgment of the court. An agreement reached by the parties and approved by the department and counsel representing the child is presumed to serve the best interests of the child. The judgment shall provide that failure to comply with the terms of the agreement does not constitute grounds for annulling a surrender or the final decree of adoption.

If the court rejects the agreement, it shall make specific findings of fact in support of its conclusion that the best interests of the child would not be served by approval of the agreement. The factors to be considered shall include:

- The duration of the child's relationship with the parent, grandparent, sibling, or other relative by blood, adoption, or affinity seeking continuing contact
- The strength of the psychological attachment between the child and the individual seeking continuing contact
- The resulting harm to the child if the relationship is not preserved

If the child is age 12 or older, the court shall solicit and consider the child's wishes in the matter.

### **Are agreements legally enforceable?**

**Citation: Children's Code Art. 1269.6**

A continuing contact agreement shall be enforceable only if filed with the court and approved in accordance with article 1269.5.

Failure to comply with the terms of an agreement made pursuant to this chapter is not grounds for nullifying a surrender or an adoption decree or revocation by a biological parent of a surrender or consent to an adoption or for any action seeking the child's custody. Failure to include this warning in the judgment as required by article 1269.5 shall not affect the adoption.

### **How may an agreement be terminated or modified?**

**Citation: Children's Code Art. 1269.8**

Unless another court has jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, the court shall retain jurisdiction after the decree of adoption is entered for the purpose of hearing motions brought to enforce, modify, or terminate an agreement entered into pursuant to the provisions of this chapter.

Before hearing such a motion, the court shall refer the parties to mediation. Only if the court finds that the party seeking relief has participated, or attempted to participate in good faith, in mediating the dispute may it proceed to a determination on the merits of the motion.

If the child is age 12 or older, the court shall solicit and consider the child's wishes in the matter.

The court shall order continuing compliance in accordance with the agreement and refuse to modify or terminate it unless it finds that there has been a change of circumstances and the agreement no longer serves the best interests of the child.

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### **Maine**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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### **Maryland**

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Fam. Law § 5-308**

The prospective adoptive parent and the biological parent of a prospective adopted child may enter into a written agreement to allow contact after the adoption between the parent or other relative of the child and the child or adoptive parent.

An agreement made under this section applies to contact with an adopted child only while he or she is a minor.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Fam. Law §§ 5-308; 5-525.2**

The prospective adoptive parent and birth parent may enter into a written agreement to allow contact after the adoption between:

- The parent or other relative of the adopted child
- The adopted child or adoptive parent

An adoptive parent and former parent of an adopted child may enter into a written agreement to allow contact between:

- A relative or former parent of the adopted child
- The adopted child or adoptive parent

Any siblings who are separated due to a foster care or adoptive placement may petition a court, including a juvenile court with jurisdiction over one or more of the siblings, for reasonable sibling visitation rights.

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**What is the role of the court in postadoption contact agreements?****Citation: Fam. Law §§ 5-308; 5-525.2**

If a dispute as to an agreement arises, a court may refer the parties to mediation to try to resolve the dispute.

If a petitioner petitions a court to issue a sibling visitation decree or to amend an order, the court:

- May hold a hearing to determine whether visitation is in the best interests of the children
- Shall weigh the relative interests of each child and base its decision on the best interests of the children, thus promoting the greatest welfare and least harm to the children
- May issue an appropriate order or decree

**Are agreements legally enforceable?****Citation: Fam. Law § 5-308**

A juvenile court or other court of competent jurisdiction shall enforce a written agreement made in accordance with this section unless enforcement is not in the adopted child's best interests.

**How may an agreement be terminated or modified?****Citation: Fam. Law § 5-308**

If a party moves in juvenile court or another court of competent jurisdiction to modify a written agreement made in accordance with this section and satisfies the court that modification is justified because an exceptional circumstance has arisen, and the court finds modification to be in an adopted child's best interests, the court may modify the agreement.

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**Massachusetts***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Ann. Laws Ch. 210, § 6C**

Prior to the entry of an adoption decree, prospective adoptive parents and a birth parent may enter into an agreement for postadoption contact or communication between or among a minor to be adopted, the prospective adoptive parents, and the birth parents.

To be approved by the court, an agreement for postadoption contact or communication must contain the following statements:

- This agreement is entered into pursuant to the provisions of Chapter 210, § 6C.
- Any breach, modification, or invalidation of the agreement or any part of it shall not affect the validity of the adoption. The adoption shall be final.
- The parties acknowledge that either the birth or adoptive parents who have entered into the agreement have the right to seek enforcement.
- The parties have not relied on any representations other than those contained in the agreement.

The agreement shall be signed by the parties and acknowledged before a notary public as the free act and deed of the parties. If the child is older than age 12, the agreement shall contain the written consent of the child. If the child is in the custody of the Department of Children and Families, the agreement shall contain the written approval of the department and the attorney for the child. If the child is in the custody of a licensed child care agency, the agreement shall contain the written approval of the agency.

**Who may be a party to a postadoption contact agreement?****Citation: Ann. Laws Ch. 210, § 6C**

The agreement may be between the prospective adoptive parents and the birth parents.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Laws Ch. 210, § 6C**

The court shall approve an agreement for postadoption contact or communication if the court finds that such agreement is in the best interests of the child, contains terms that are fair and reasonable, and has been entered knowingly and voluntarily by all parties to the agreement.

The requirement that a postadoption contact agreement must be entered knowingly and voluntarily may be satisfied by an affidavit executed by all parties, either jointly or separately, that is filed with the court. The affidavit shall state that the agreement is entered into knowingly and voluntarily and is not the product of coercion or duress.

**Are agreements legally enforceable?****Citation: Ann. Laws Ch. 210, §§ 6C; 6D**

To be enforceable, an agreement for postadoption contact or communication shall be in writing, approved by the court prior to the date for entry of the adoption decree, incorporated but not merged into the adoption decree, and shall survive as an independent contract.

An agreement under this section need not disclose the identity of the parties to be enforceable, but if an identity is not disclosed, the unidentified person shall designate an agent for the purpose of receiving court notices.

An agreement for postadoption contact or communication shall cease to be enforceable on the date the adopted child turns age 18.

A party to a court-approved agreement for postadoption contact or communication may seek to enforce the agreement by commencing a civil action for specific performance. A court order for specific performance of the terms of a postadoption contact agreement shall be the sole remedy for breach of an agreement.

In such proceedings, parties shall not be entitled to the appointment of counsel. However, the court may appoint a guardian ad litem to represent the interests of the child.

If the court finds that an action brought under this section was wholly insubstantial, frivolous, and not advanced in good faith, the court may award attorney's fees to all prevailing parties.

Nothing in the agreement shall preclude a party seeking to enforce an agreement for postadoption contact or communication from utilizing child welfare mediation or permanency mediation before, or in addition to, the commencement of a civil action for specific enforcement.

**How may an agreement be terminated or modified?****Citation: Ann. Laws Ch. 210, § 6D**

In an enforcement proceeding, the court may modify the terms of the agreement if the court finds that there has been a material and substantial change in circumstances and the modification is necessary for the best interests of the child. A court-imposed modification of a previously approved agreement may limit, restrict, condition, or decrease contact between the birth parents and the child, but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parents and the child or place new obligations on adoptive parents.



## Michigan

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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## Minnesota

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Stat. § 259.58**

Adoptive parents and a birth relative or foster parents may enter an agreement regarding communication, contact, or visitation with or between a minor adopted child, adoptive parents, and a birth relative or foster parents.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Stat. § 259.58**

An agreement may be entered between:

- Adoptive parents and a birth parent
- Adoptive parents and any other birth relative or foster parent with whom the child resided before being adopted
- Adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents

For purposes of this section, 'birth relative' means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a minor adopted child. This relationship may be by blood, adoption, or marriage. For an Indian child, birth relative includes members of the extended family as defined by the law or custom of the Indian child's Tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Stat. § 259.58**

An agreement regarding communication with or contact between minor adopted child, adoptive parents, and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section.

An order may be sought at any time before a decree of adoption is granted. The order must be issued within 30 days of being submitted to the court or by the granting of the decree of adoption, whichever is earlier.

The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents, a birth relative, or foster parent who desires to be a party to the agreement and, if the child is in the custody of or under the guardianship of an agency, a representative of the agency.

A birth parent must approve in writing an agreement between adoptive parents and any other birth relative or foster parent, unless an action has been filed against the birth parent by a county under chapter 260.

An agreement under this section need not disclose the identity of the parties to be legally enforceable.

The court shall not enter a proposed order unless the court finds that the communication or contact between the minor adopted child, the adoptive parents, and a birth relative as agreed upon and contained in the proposed order would be in the minor adopted child's best interests.

**Are agreements legally enforceable?****Citation: Ann. Stat. § 259.58**

An agreement regarding communication with or contact between minor adopted children, adoptive parents, and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section.

An agreed-upon order entered under this section may be enforced by filing a petition or motion with the family court that includes a certified copy of the order granting the communication, contact, or visitation, but only if the petition or motion is accompanied by an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification. The prevailing party may be awarded reasonable attorney's fees and costs.

Failure to comply with the terms of an agreed-upon order regarding communication or contact that has been entered by the court under this section is not grounds for:

- Setting aside an adoption decree
- Revocation of a written consent to an adoption after that consent has become irrevocable

**How may an agreement be terminated or modified?****Citation: Ann. Stat. § 259.58**

The court shall not modify an agreed-upon order unless it finds that the modification is necessary to serve the best interests of the minor adopted child, and:

- The modification is agreed to by the parties to the agreement.
- Exceptional circumstances have arisen since the agreement order was entered that justify modification of the order.

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**Mississippi***Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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**Missouri***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Ann. Stat. § 453.080(4)**

Before the completion of an adoption, the exchange of information among the parties shall be at the discretion of the parties. Prospective adoptive parents and birth parents may enter into a written postadoption contact agreement to allow contact, communication, and the exchange of photographs after the adoption between the adoptive parents and the birth parents. The agreement shall include all of the following:

- An acknowledgment by the birth parents that the adoption is irrevocable, even if the adoptive parents do not abide by the postadoption contact agreement
- An acknowledgment by the adoptive parents that the agreement grants the birth parents the right to seek to enforce the provisions of the postadoption contact agreement
- An acknowledgment that the postadoption contact agreement shall be filed with and approved by the court in order to be enforceable

- An acknowledgment that the birth parents' consent to the adoption was not conditioned on the postadoption contact agreement and that acceptance of the agreement is fully voluntary

**Who may be a party to a postadoption contact agreement?****Citation: Ann. Stat. § 453.080(4)**

Prospective adoptive parents and birth parents may enter into a written postadoption contact agreement.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Stat. § 453.080(4)**

The court shall not order any party to enter into a postadoption contact agreement. The agreement shall be filed with and approved by the court at or before the finalization of the adoption. The court shall approve an agreement only if the agreement is in the best interests of the child.

Upon completion of an adoption, further contact among the parties shall be at the discretion of the adoptive parents or in accordance with a postadoption contact agreement executed under this subsection. The court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.

**Are agreements legally enforceable?****Citation: Ann. Stat. § 453.080(4)**

Remedies for a breach of the agreement shall include specific performance of the terms of the agreement, provided that nothing in the agreement shall preclude a party seeking to enforce the agreement from utilizing child welfare mediation before, or in addition to, the commencement of a civil action for specific enforcement.

The court may enforce an agreement made under this subsection, unless such enforcement is not in the best interests of the child.

**How may an agreement be terminated or modified?****Citation: Ann. Stat. § 453.080(4)**

The court may modify an agreement made under this subsection, unless such modification is not in the best interests of the child.

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**Montana***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Ann. Code § 42-5-301**

Except as otherwise provided in this title, a decree of adoption terminates any existing order or written or oral agreement for contact or communication between the adopted child and the birth parents or family.

An express written agreement entered into between the placing parent and the prospective adoptive parent after the execution of a relinquishment and consent to adoption is independent of the adoption proceedings.

**Who may be a party to a postadoption contact agreement?****Citation: Ann. Code § 42-5-301**

The agreement may be entered into between the placing parent and the prospective adoptive parent.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Code § 42-5-301**

Any express written agreement entered into between the placing parent and the prospective adoptive parent after the execution of a relinquishment and consent to adoption is independent of the adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the agreement for contact or communication is later performed. Failure to perform an agreement is not grounds for setting aside an adoption decree.

**Are agreements legally enforceable?****Citation: Ann. Code § 42-5-301**

The court may order that an agreement for contact or communication entered into under this section may not be enforced upon a finding that:

- Enforcement is detrimental to the child.
- Enforcement undermines the adoptive parent's parental authority.
- Due to a change in circumstances, compliance with the agreement would be unduly burdensome to one or more of the parties.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

**Nebraska**

*Current Through August 2018*

**What may be included in postadoption contact agreements?****Citation: Rev. Stat. §§ 43-155; 43-156; 43-157; 43-158; 43-166**

When planning the placement of a child for adoption, the Department of Health and Human Services may determine whether the best interests of such child might be served by placing the child in an adoption involving exchange of information. In an adoption involving exchange of information one or both of the child's biological parents contract with the department for information about the child obtained through his or her adoptive family. An exchange-of-information contract is a 2-year, renewable obligation voluntarily agreed to and signed by both the adoptive and biological parent(s) and the department.

When the department determines that an adoption involving exchange of information would serve a child's best interests, it may enter into agreements with the child's proposed adoptive parent(s) for the exchange of information. The nature of the information promised to be provided shall be specified in an exchange-of-information contract and may include, but shall not be limited to, letters by the adoptive parent(s) providing information regarding the child's development or photographs of the child at specified intervals.

In a private adoption, a communication and contact agreement may include provisions for future contact or communication between the relinquishing parent(s) and the adoptee or the adoptive parent(s), or both; sharing information about the adoptee; or other matters related to communication or contact agreed to by the parties.

The agreement shall state the following: No adoption shall be set aside due to the failure of the adoptive parent(s) or the relinquishing parent(s) to follow the terms of this agreement or a later order modifying or terminating this agreement. Disagreement between the parties or a subsequent civil action brought to enforce, modify, or terminate this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

**Who may be a party to a postadoption contact agreement?****Citation: Rev. Stat. §§ 43-156; 43-162; 43-166**

An exchange-of-information contract is a 2-year, renewable obligation voluntarily agreed to and signed by both the adoptive and biological parent or parents as well as the department.

If the prospective adopted child is in the custody of the department, the prospective adoptive parent or parents and the birth parent or parents of a prospective adopted child may enter into an agreement regarding communication or contact after the adoption between or among the prospective adopted child and his or her birth parent or parents.

In private adoptions or agency adoptions for adoptees not in the custody of the department, the adoptive parent(s) and the parent(s) relinquishing a child for adoption may enter into a written agreement to permit continuing communication and contact between the adoptive parent(s) and the relinquishing parent(s) after the placement of an adoptee.

In private adoptions, parents who relinquish a child for adoption shall be provided legal counsel of their choice who is independent from that of the adoptive parent(s) and at the expense of the adoptive parent(s) prior to the execution of a written relinquishment and consent to adoption or a communication and contact agreement, unless specifically waived in writing.

If the adoptee is age 14 or older at the time of placement, a communication and contact agreement shall not be valid unless consented to in writing by the adoptee.

**What is the role of the court in postadoption contact agreements?****Citation: Rev. Stat. §§ 43-163; 43-166**

Before approving an agreement for postadoption contact, the court shall appoint a guardian ad litem to represent the best interests of the child concerning such agreement.

The court may enter an order approving the agreement upon motion of one of the child's birth parents or one of the prospective adoptive parents if the terms of the agreement are approved in writing by the prospective adoptive parents and the birth parents and if the court finds, after consideration of the recommendations of the guardian ad litem, the department, and other factors, that such communication with the birth parent or parents and the maintenance of birth family history would be in the best interests of the child.

In determining if the agreement is in the best interests of the child, the court shall consider the following factors as favoring communication with the birth parent or parents:

- Whether the child and birth parent or parents lived together for a substantial period of time
- Whether the child exhibits attachment or bonding to the birth parent or parents
- Whether the adoption is a foster parent adoption with the birth parent or parents having relinquished the prospective adopted child due to an inability to provide him or her with adequate parenting

A court may approve a communication and contact agreement entered into under § 43-166 by incorporating such agreement by reference and indicating the court's approval of such agreement in the decree of adoption.

Enforceability of a communication and contact agreement is not contingent on court approval or its incorporation into the decree of adoption.

**Are agreements legally enforceable?****Citation: Rev. Stat. §§ 43-160; 43-162; 43-165; 43-166**

The parties to an exchange-of-information contract shall have the authority to bring suit in a court of competent jurisdiction for the enforcement of any agreement entered into pursuant to § 43-158.

Any such agreement shall not be enforceable unless approved by the court pursuant to § 43-163.

An agreement that has been approved pursuant to § 43-163 may be enforced by a civil action, and the prevailing party may be awarded reasonable attorney's fees as part of the costs of the action.

A communication and contact agreement entered into under § 43-166 may be enforced by a civil action. The court shall not award monetary damages as a result of the filing of a civil action pursuant to this section.

Neither the existence of nor the failure of any party to comply with the terms of a communication and contact agreement entered into under this section shall be grounds for (a) setting aside an adoption decree, (b) revoking a written relinquishment of parental rights or written consent to adoption, (c) challenging the adoption on the basis of duress or coercion, or (d) challenging the adoption on the basis that the agreement retains some aspect of parental rights by the relinquishing parent(s).

**How may an agreement be terminated or modified?****Citation: Rev. Stat. §§ 43-159; 43-165; 43-166**

After placement of a child for adoption, the department may enter into an agreement with the biological parent or parents to alter the original contract made between the department and the biological parent or parents when it is determined by the department, in consultation with the adoptive parent or parents, that certain or all exchanges of information are no longer in the best interests of the child.

The court shall not modify an order issued under § 43-163 unless it finds that the modification is necessary to serve the best interests of the adopted child as well as the following:

- The modification is agreed to by the adoptive parent or parents and the birth parent or parents.
- Exceptional circumstances have arisen since the order was entered that justify modification of the order.

A court in which a civil action is filed may enforce, modify, or terminate a communication and contact agreement entered into under § 43-166 if the court finds the following:

- Enforcing, modifying, or terminating the agreement is necessary to serve the best interests of the adoptee.
- The party seeking to enforce, modify, or terminate the agreement participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition.
- When seeking to modify or terminate the agreement, a material change in circumstances has arisen since the parties entered into the agreement that justifies modifying or terminating the agreement.

The court shall not act on a petition to enforce, modify, or terminate the agreement unless the petitioner has participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition.

## Nevada

*Current Through August 2018*

### What may be included in postadoption contact agreements?

**Citation: Rev. Stat. § 127.187**

An agreement for postadoptive contact is enforceable if all of the following apply:

- The agreement is in writing and signed by the parties.
- The agreement is incorporated into an order or decree of adoption.
- In the case of an agreement that concerns a child who was in the custody of a child welfare agency before being adopted, either of the following is true:
  - » The child welfare agency has determined that the agreement is in the best interests of the child.
  - » After a hearing, the court has determined that the agreement is in the best interests of the child.
  - » The identity of a natural parent is not required to be included in the agreement. If such information is withheld, an agent who may receive service of process for the natural parent must be provided in the agreement.

A natural parent or adoptive parent who enters into a postadoptive contact agreement shall include in the agreement an address at which the natural parent or adoptive parent may receive service of a petition filed pursuant to § 127.1885. If a natural parent or adoptive parent refuses or fails to include an address in the agreement, the court may, on the date on which the court enters an order or decree of adoption that incorporates the agreement, order the child welfare agency to provide the court with the contact information of the natural parent or adoptive parent who refused or failed to include his or her address.

### Who may be a party to a postadoption contact agreement?

**Citation: Rev. Stat. § 127.187**

The natural parent or parents and the prospective adoptive parent or parents of a child to be adopted may enter into an enforceable agreement that provides for postadoptive contact between:

- The child and his or her natural parent or parents
- The adoptive parent or parents and the natural parent or parents
- Any combination thereof

### What is the role of the court in postadoption contact agreements?

**Citation: Rev. Stat. §§ 127.187; 127.1875; 127.188**

A court that enters an order or decree of adoption that incorporates an agreement for postadoptive contact shall retain jurisdiction to enforce, modify, or terminate the agreement for postadoptive contact until the child reaches age 18, the child becomes emancipated, or the agreement is terminated.

The establishment of an agreement for postadoptive contact does not affect the rights of an adoptive parent as the legal parent of the child.

Each prospective adoptive parent of a child to be adopted who enters into an agreement for postadoptive contact shall notify the court of the existence of the agreement as soon as practicable after the agreement is established, but no later than the time at which the court enters the order or decree of adoption of the child.

Before a court may enter an order or decree of adoption of a child, the court must address, in person, each prospective adoptive parent, the director of the licensed child-placing agency involved in the adoption proceedings, and any attorney representing a prospective adoptive parent, the child, or the agency involved in the adoption proceedings and inquire whether the person has actual knowledge that the prospective adoptive parent or parents of the child and the natural parent or parents of the child have entered into an agreement for postadoptive contact. The court may address a prospective adoptive parent by telephone.



If the court determines that the prospective adoptive parent or parents and the natural parent or parents have entered into an agreement for postadoptive contact, the court shall order the prospective adoptive parent or parents to provide a copy of the agreement to the court and incorporate the agreement into the order or decree of adoption.

### **Are agreements legally enforceable?**

**Citation: Rev. Stat. §§ 127.187; 127.1885**

A natural parent who has entered into an agreement for postadoptive contact may, for good cause shown, do the following:

- Petition the court that entered the order or decree of adoption of the child to prove the existence of the agreement for postadoptive contact and to request that the agreement be incorporated into the order or decree of adoption
- During the period set forth below, petition the court to enforce the terms of the agreement for postadoptive contact if the agreement complies with the requirements of § 127.187

An adoptive parent who has entered into an agreement for postadoptive contact may:

- During the period set forth below, petition the court that entered the order or decree of adoption of the child to enforce the terms of the agreement for postadoptive contact if the agreement complies with the requirements of § 127.187
- Petition the court to modify or terminate the agreement for postadoptive contact in the manner set forth in § 127.1895
- Any action to enforce the terms of an agreement for postadoptive contact must be commenced no later than 120 days after the date on which the agreement was breached.

### **How may an agreement be terminated or modified?**

**Citation: Rev. Stat. § 127.1895**

An agreement for postadoptive contact may only be modified or terminated by an adoptive parent petitioning the court that entered the order of decree that included the agreement. The court may grant a request to modify or terminate the agreement only if:

- The adoptive parent petitioning the court for the modification or termination establishes that:
  - » A change in circumstances warrants the modification or termination.
  - » The contact provided for in the agreement is no longer in the best interests of the child.
- Each party to the agreement consents to the modification or termination.

If an adoptive parent petitions the court for a modification or termination of an agreement pursuant to this section:

- There is a presumption that the modification or termination is in the best interests of the child.
- The court may consider the wishes of the child involved in the agreement.

Any order issued to modify an agreement for postadoptive contact:

- May limit, restrict, condition, or decrease contact between the parties involved in the agreement
- May not expand or increase the contact between the parties involved in the agreement or place any new obligation on an adoptive parent

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## **New Hampshire**

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Rev. Stat. § 170-B:14**

Nothing in this chapter shall be construed as encouraging, discouraging, or prohibiting arrangements or understandings reached between prospective adoptive parents, birth parents, or the child-placing agency with respect to the postsurrender exchange of identifying or nonidentifying information, communication, or contact.

In adoptions involving a child who is under the legal custody of the Department of Health and Human Services, a voluntarily mediated agreement shall be enforceable as provided in this paragraph. The purpose of this paragraph is to facilitate the timely achievement of permanency for children who are in the custody of the department by providing an option for the parties to enter into a voluntarily mediated agreement for ongoing communication or contact that is in the best interests of the child, that recognizes the parties' interests and desires for ongoing communication or contact, that is appropriate given the role of the parties in the child's life, and that is legally enforceable by the courts.

An affidavit made under oath shall accompany the agreement affirmatively stating that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress.

To be approved by the court, the agreement shall contain the following statements:

- The agreement is entered into pursuant to the provisions of § 170-B:14.
- Any breach, modification, or invalidation of the agreement, or any part of it, shall not affect the validity of the surrender of parental rights or the decree of adoption.
- The parties acknowledge that both the birth and prospective adoptive parents who have entered into the agreement have the right to seek enforcement.
- The parties have not relied on any representations other than those contained in the agreement.

The agreement shall be signed by the parties and acknowledged before a notary public as the free act and deed of the parties.

#### **Who may be a party to a postadoption contact agreement?**

**Citation: Rev. Stat. § 170-B:14**

Prior to the entry of any adoption decree, the department, prospective adoptive parents, and birth parents may voluntarily participate in a court-approved mediation program in order to reach a voluntarily mediated agreement.

If the department is the only party unwilling to participate in mediation, the department shall provide a written explanation of its position to the court, the birth parents, and the prospective adoptive parents.

Other people may be invited to participate in the mediation by mutual consent of the department, birth parents, and prospective adoptive parents. However, these invitees shall not be parties to any agreement reached during that mediation.

If the child who is the subject of the agreement is age 14 or older, the agreement also shall contain the written assent of the child.

#### **What is the role of the court in postadoption contact agreements?**

**Citation: Rev. Stat. § 170-B:14**

The court shall approve the voluntarily mediated agreement if the court determines that:

- The agreement is in the best interests of the child. In making this determination, the court may consider:
  - » The length of time that the child has been under the actual care, custody, and control of any person other than a birth parent
  - » The desires of the child's birth parents and the child as to the child's custody or residency
  - » The interaction and interrelationship of the child with birth parents, siblings, and any other person who may significantly affect the child's best interests
  - » The adjustment to the child's home, school, and community
  - » The willingness and ability of the birth parents to respect and appreciate the bond between the child and the adoptive parents
  - » The willingness and ability of the adoptive parents to respect and appreciate the bond between the child and the birth parents
  - » Any evidence of abuse or neglect of the child
  - » The recommendations of any guardian ad litem

- An affidavit made under oath shall accompany the agreement stating that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress.

The court issuing final approval of the agreement shall have continuing jurisdiction over enforcement of the agreement until the child reaches his or her 18th birthday.

### **Are agreements legally enforceable?**

**Citation: Rev. Stat. § 170-B:14**

Except in cases involving the department, no such arrangement or understanding shall be binding or enforceable. In adoptions involving a child who is under either the legal custody or guardianship of the department, a voluntarily mediated agreement shall be enforceable as provided in this paragraph.

Any breach, modification, or invalidation of the agreement, or any part of it, shall not affect the validity of any surrender of parental rights or the interlocutory or final decree of adoption.

To be enforceable, a voluntarily mediated agreement shall be in writing, approved by the court prior to the date for entry of any adoption decree, incorporated but not merged into any adoption decree, and shall survive as an independent agreement.

A voluntarily mediated agreement need not disclose the identity of the parties to be enforceable, but if an identity is not disclosed, the unidentified person shall designate a resident agent for the purpose of service of process.

A voluntarily mediated agreement shall cease to be enforceable on the date the child turns age 18.

### **How may an agreement be terminated or modified?**

**Citation: Rev. Stat. § 170-B:14**

A party to a court-approved, voluntarily mediated agreement may seek to modify, enforce, or discontinue the agreement by commencing an equity action in the court that approved the agreement. However, before a court may enter an order requiring modification of, compliance with, or discontinuance of the agreement, the moving party shall certify that he or she has participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the action. A court order for modification, enforcement, or discontinuance of the terms of the voluntarily mediated agreement shall be the sole remedies for breach of the agreement.

The court may modify the terms of the voluntarily mediated agreement if the court finds by a preponderance of the evidence that there has been a material and substantial change in the circumstances and that the modification is in the best interests of the child.

A court-imposed modification of a previously approved agreement may limit, restrict, condition, decrease, or discontinue the sharing of information and/or contact between the birth parents and the child, but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parents and the child or place new obligations on the parties to the agreement. The court also may impose appropriate sanctions consistent with its equitable powers but not inconsistent with this section, including the power to issue restraining orders.

Nothing in this section shall be construed so as to abrogate the rights of the adoptive parents to make decisions on behalf of the child, except as provided in the court-approved voluntarily mediated agreement.

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## **New Jersey**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

## **New Mexico**

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Stat. § 32A-5-35**

An agreement for postadoption contact shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption.

The agreement may include contact between siblings and the adopted child on a finding that it is in the best interests of the adopted child and the adopted child's siblings and a determination that the siblings' parent, guardian, or custodian has consented.

The contact may include exchange of identifying or nonidentifying information or visitation between the parents, the parents' relatives, or the adopted child's siblings and the petitioner or visitation between the parents, the parents' relatives, or the adopted child's siblings and the adopted child. An agreement entered into pursuant to this section shall be considered an open adoption.

Every such agreement shall contain a clause that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption, or the custody of the adopted child.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Stat. § 32A-5-35**

The parents of the adopted child and the petitioner may agree to contact between the parents and the petitioner or contact between the adopted child and one or more of the parents or contact between the adopted child and relatives of the parents.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Stat. § 32A-5-35**

The court may appoint a guardian ad litem for the child, particularly when visitation between the birth family and the child is included in an agreement. The court shall adopt a presumption in favor of appointing a guardian ad litem for the adopted child. However, this requirement may be waived by the court for good cause shown.

If the child is age 14 or older, the court may appoint an attorney for the child. In determining whether the agreement is in the child's best interests, the court shall consider the child's wishes, but the wishes of the child shall not control the court's findings as to the child's best interests.

### **Are agreements legally enforceable?**

**Citation: Ann. Stat. § 32A-5-35**

The court shall retain jurisdiction after the decree of adoption is entered if the decree contains an agreement for contact, for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section.

### **How may an agreement be terminated or modified?**

**Citation: Ann. Stat. § 32A-5-35**

The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the child's best interests.

## **New York**

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Soc. Serv. Law § 383-c(2)(b); Dom. Rel. Law § 112-b**

If a child surrender instrument designates who will adopt a child, such person or persons, the child's birth parents, the authorized agency having care and custody of the child, and the child's attorney may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties.

If the surrender instrument does not designate who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child, and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed to by the parties.

Such agreement may provide terms and conditions for communication with or contact between the child and the child's biological siblings or half-siblings, if any.

Nothing in this section shall be construed to prohibit the parties to a proceeding under this chapter from entering into an agreement regarding communication with or contact between an adoptive child, adoptive parent or parents, and a birth parent or parents and/or the adoptive child's biological siblings or half-siblings.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Soc. Serv. Law § 383-c(2)(b); Dom. Rel. Law § 112-b**

The parties to the adoption may enter into an agreement regarding communication with or contact between an adoptive child, adoptive parent or parents, and a birth parent or parents and/or the adoptive child's biological siblings or half-siblings.

If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child, and the child's legal guardian may enter into the agreement. If a surrender instrument does not designate a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child, and the child's law guardian may enter into the agreement.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Soc. Serv. Law § 383-c(2)(b); Dom. Rel. Law § 112-b**

If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless approve the surrender--provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw the surrender instrument.

The court shall not incorporate an agreement regarding communication or contact into an order unless the terms and conditions of the agreement have been set forth in writing and consented to in writing by the parties to the agreement, including the law guardian representing the adoptive child. The court shall not enter a proposed order unless it has found that the communication with or contact between the adoptive child, the prospective adoptive parent or parents, and a birth parent or parents and/or biological siblings or half-siblings, as agreed upon and as set forth in the agreement, would be in the adoptive child's best interests.

**Are agreements legally enforceable?****Citation: Soc. Serv. Law § 383-c(2)(b); Dom. Rel. Law § 112-b; Fam. CRT. Act § 1055-a**

Enforcement of any agreement prior to the adoption of the child shall be in accordance with § 1055-a(b) of the Family Court Act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with § 112-b of the Domestic Relations Law.

Agreements regarding communication or contact between an adoptive child, adoptive parent or parents, and a birth parent or parents and/or biological siblings or half-siblings of an adoptive child shall not be legally enforceable unless the terms of the agreement are incorporated into a written court order. Failure to comply with the terms and conditions of an approved order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of written consent to an adoption after that consent has been approved by the court as provided in this section.

An order incorporating an agreement regarding communication or contact entered under this section may be enforced by any party to the agreement or the law guardian by filing a petition in the family court in the county where the adoption was approved.

The court shall not enforce an order under this section unless it finds that the enforcement is in the child's best interests. If an agreement for continuing contact and communication pursuant to § 383-c(2)(b) of the social services law is approved by the court, and the child who is the subject of the approved agreement has not yet been adopted, any party to the approved agreement may file a petition with the family court in the county where the agreement was approved to enforce such agreement. A copy of the approved agreement shall be annexed to such petition. The court shall enter an order enforcing communication or contact pursuant to the terms and conditions of the agreement unless the court finds that enforcement would not be in the best interests of the child.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

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**North Carolina**

*Current Through August 2018*

**What may be included in postadoption contact agreements?****Citation: Gen. Stat. § 48-3-610**

If a person executing consent and the prospective adoptive parent or parents enter into an agreement regarding visitation, communication, support, and any other rights and duties with respect to the minor, this agreement shall not be a condition precedent to the consent itself, and failure to perform shall not invalidate a consent already given.

**Who may be a party to a postadoption contact agreement?****Citation: Gen. Stat. § 48-3-610**

The person executing consent and the prospective adoptive parent or parents may enter into the agreement.

**What is the role of the court in postadoption contact agreements?**

This issue is not addressed in the statutes reviewed.

**Are agreements legally enforceable?****Citation: Gen. Stat. § 48-3-610**

The agreement itself shall not be enforceable.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

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**North Dakota**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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**Northern Mariana Islands**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

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**Ohio**

*Current Through August 2018*

**What may be included in postadoption contact agreements?****Citation: Rev. Code § 3107.65**

Subject to divisions (A) and (B) of this section, an open adoption may provide for the exchange of any information, including identifying information, and have any other terms. No open adoption shall do any of the following:

- Provide for the birth parent to share with the prospective adoptive parent parental control and authority over the child placed for adoption or in any manner limit the adoptive parent's full parental control and authority over the adopted child
- Deny the adoptive parent or child access to forms pertaining to the social or medical histories of the birth parent if the adoptive parent or child is entitled to them under § 3107.17
- Deny the adoptive parent or child access to a copy of the contents of the child's adoption file if the adoptive parent or child is entitled to them under § 3107.47
- Deny the adoptive parent, adopted child, birth parent, birth sibling, or other relative access to nonidentifying information that is accessible pursuant to § 3107.66, or to materials, photographs, or information that is accessible pursuant to § 3107.68
- Provide for the open adoption to be binding or enforceable
- An open adoption may provide for the exchange of any information, including identifying information, and have any other terms.

**Who may be a party to a postadoption contact agreement?****Citation: Rev. Code § 3107.63**

A birth parent who voluntarily chooses to have the birth parent's child placed for adoption may request that the agency or attorney arranging the child's adoptive placement provide for the birth parent and prospective adoptive parent to enter into an open adoption with terms acceptable to the birth parent and prospective adoptive parent. Except as provided below, the agency or attorney shall provide for the open adoption if the birth parent and prospective adoptive parent agree to the terms of the open adoption.

An agency or attorney arranging a child's adoptive placement may refuse to provide for the birth parent and prospective adoptive parent to enter into an open adoption. If the agency or attorney refuses, the agency or attorney shall offer to refer the birth parent to another agency or attorney the agency or attorney knows will provide for open adoption.

**What is the role of the court in postadoption contact agreements?****Citation: Rev. Code § 3107.65**

A probate court may not refuse to approve a proposed placement pursuant to § 5103.16(D)(1) to issue a final decree of adoption or interlocutory order of adoption under § 3107.14 on the grounds that the birth parent and prospective adoptive parent have entered into an open adoption, unless the court issues a finding that the terms of the open adoption violate the law or are not in the best interests of the child.

A probate court may not issue a final decree of adoption or interlocutory order of adoption that nullifies or alters the terms of an open adoption, unless the court issues a finding that the terms violate the division above or are not in the best interests of the child.

**Are agreements legally enforceable?****Citation: Rev. Code §§ 3107.62; 3107.65**

An agency or attorney arranging a child's adoptive placement shall inform the child's birth parent and prospective adoptive parent that the birth parent and prospective adoptive parent may enter into a nonbinding open adoption in accordance with § 3107.63.

All terms of an open adoption are voluntary. Any person who has entered into an open adoption may withdraw from the open adoption at any time. An open adoption is not enforceable.

At the request of a person who has withdrawn from an open adoption, the court with jurisdiction over the adoption shall issue an order barring any other person who was a party to the open adoption from taking any action pursuant to the open adoption.

**How may an agreement be terminated or modified?****Citation: Rev. Code § 3107.65**

All terms of an open adoption are voluntary and any person who has entered into an open adoption may withdraw from the open adoption at any time.

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**Oklahoma***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Ann. Stat. Tit. 10, § 7505-1.5**

If a child has resided with a birth relative before being adopted, the adoptive parents and that birth relative may enter into an agreement regarding communication with, visitation of, or contact between the child, adoptive parents, and the birth relative after or during pendency of the adoption proceedings.



**Who may be a party to a postadoption contact agreement?****Citation: Ann. Stat. Tit. 10, § 7505-1.5**

The adoptive parents and the birth relative may enter into the agreement.

For purposes of this section, 'birth relative' means a parent, stepparent, grandparent, great-grandparent, brother, sister, uncle, or aunt of the child. This relationship may be by blood or marriage.

For an Indian child, birth relative includes members of the extended family as defined by the laws or customs of the Indian child's Tribe or, in the absence of laws or customs, shall be a person who is age 18 or older and who is the Indian child's great-grandparent, grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece, nephew, first or second cousin, or stepparent, as provided in the Indian Child Welfare Act.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Stat. Tit. 10, § 7505-1.5**

The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents and the birth relative who desires to be a party to the agreement.

The court shall not enter a proposed order unless the court finds that the communication, visitation, or contact between the child, the adoptive parents, and the birth relative as agreed upon and contained in the proposed order would be in the child's best interests and poses no threat to the safety of the child or integrity of the adoptive placement.

**Are agreements legally enforceable?****Citation: Ann. Stat. Tit. 10, § 7505-1.5**

An agreement regarding communication with, visitation of, or contact between the child, adoptive parents, and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section.

An order must be sought and shall be filed in the adoption action.

Failure to comply with the terms of an agreed-upon order regarding communication, visitation, or contact that has been entered by the court pursuant to this section shall not be grounds for:

- Setting aside an adoption decree
- Revocation of a written consent to an adoption after that consent has become irrevocable
- An action for citation of indirect contempt of court

The prevailing party may be awarded reasonable attorney fees and costs.

**How may an agreement be terminated or modified?****Citation: Ann. Stat. Tit. 10, § 7505-1.5**

An agreed-upon order entered pursuant to the provisions of this section may be enforced or modified by filing a petition or motion with the court that includes a certified copy of the order granting the communication, contact, or visitation, but only if the petition or motion is accompanied by an affidavit with supporting documentation that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.

The court shall not modify an agreed-upon order pursuant to this section unless it finds that the modification is necessary to serve the best interests of the child, and:

- The modification is agreed to by the adoptive parent and the birth relative.
- Exceptional circumstances have arisen since the agreed-upon order was entered that justify modification of the order.

## Oregon

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Rev. Stat. § 109.305**

An adoptive parent and a birth parent may enter into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or adoptive parents.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Rev. Stat. § 109.305**

An adoptive parent and a birth relative may enter into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or adoptive parents.

As used in this subsection, the term 'birth relatives' includes birth parents, grandparents, siblings, and other members of the child's birth family. A birth relative that enters into an agreement under this subsection must have established emotional ties creating an ongoing personal relationship, as defined in § 109.119, with the child. If the child is under age 1, the ongoing personal relationship between the birth relative and the child must have continued for at least half of the child's life.

If the child is age 14 or older, an agreement made under this section may not be entered into without the consent of the child.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Rev. Stat. § 109.305**

The written agreement must be approved by the court.

The court may show approval of an agreement made under this section by incorporating the agreement by reference and indicating the court's approval of the agreement in the adoption judgment.

### **Are agreements legally enforceable?**

**Citation: Rev. Stat. § 109.305**

An agreement made under the subsection above may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.

Failure to comply with the terms of an agreement made under this section is not grounds for setting aside an adoption judgment or revocation of a written consent to adoption.

### **How may an agreement be terminated or modified?**

**Citation: Rev. Stat. § 109.305**

The court may modify an agreement if the court finds that the modification is necessary to serve the best interests of the adopted child and that:

- The party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement.
- The modification is agreed to by all parties to the original agreement.
- Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement.

## Pennsylvania

*Current Through August 2018*

### What may be included in postadoption contact agreements?

**Citation: Cons. Stat. Tit. 23, § 2731**

The purpose of this subchapter is to provide an option for adoptive parents and birth relatives to enter into a voluntary agreement for ongoing communication or contact that:

- Is in the best interests of the child
- Recognizes the parties' interests and desires for ongoing communication or contact
- Is appropriate given the role of the parties in the child's life
- Is subject to approval by the courts

### Who may be a party to a postadoption contact agreement?

**Citation: Cons. Stat. Tit. 23, §§ 2733; 2734**

A prospective adoptive parent of a child may enter into an agreement with a birth relative of the child to permit continuing contact or communication between the child and the birth relative or between the adoptive parent and the birth relative. If there are siblings who are free for adoption through the termination of parental rights following a dependency proceeding, and the prospective adoptive parent is not adopting all of the siblings, each such sibling who is younger than age 18 shall be represented by a guardian ad litem in the development of an agreement.

An agency or anyone representing the parties in an adoption shall provide notification to a prospective adoptive parent, a birth parent, and a child who can be reasonably expected to understand that a prospective adoptive parent and birth relative of a child have the option to enter into a voluntary agreement for continuing contact or communication.

If the child is age 12 years or older, an agreement may not be entered into without the child's consent.

### What is the role of the court in postadoption contact agreements?

**Citation: Cons. Stat. Tit. 23, § 2735**

An agreement shall be filed with the court that finalizes the adoption of the child. The court shall approve the agreement if the court determines that:

- The agreement has been entered into knowingly and voluntarily by all parties. An affidavit made under oath affirmatively stating that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress must accompany the agreement. The affidavit may be executed jointly or separately.
- The agreement is in the best interests of the child. In making that determination, the court may consider the following:
  - » The circumstances of and length of time that the child has been under actual care, custody, and control of a person other than a birth parent
  - » The interaction and relationships of the child with birth relatives and other persons who routinely interact with the birth relatives who may significantly affect the child's best interests
  - » The adjustment to the child's home, school, and community
  - » The willingness and ability of the birth relative to respect and appreciate the bond between the child and prospective adoptive parent
  - » The willingness and ability of the prospective adoptive parent to respect and appreciate the bond between the child and the birth relative
  - » Any evidence of abuse or neglect of the child

**Are agreements legally enforceable?****Citation: Cons. Stat. Tit. 23, §§ 2734(b); 2738; 2736**

An agreement shall not be legally enforceable unless approved by the court.

Any party to an agreement, a sibling, or a child who is the subject of an agreement may seek enforcement of an agreement by filing an action in the court that finalized the adoption. That party may request only specific performance in seeking to enforce an agreement and may not request monetary damages or modification of an agreement.

For an agreement to be enforceable, it must be in writing and approved by the court on or before the date for any adoption decree. If the child is age 12 or older when the agreement is executed, the child must consent to the agreement at the time of its execution.

Before the court may enter an order enforcing an agreement, it must find all of the following:

- The party seeking enforcement of the agreement is in substantial compliance with the agreement.
- By clear and convincing evidence, enforcement serves the needs, welfare, and best interests of the child.

An agreement shall cease to be enforceable on the date the child turns age 18, unless the agreement stipulates otherwise or is modified by the court. The court issuing final approval of an agreement shall have continuing jurisdiction over enforcement of the agreement until the child turns age 18, unless the agreement stipulates otherwise or is modified by the court.

This section constitutes the exclusive remedy for enforcement of an agreement. No statutory or common law remedy is available for enforcement or damages in connection with an agreement. Failure to comply with the terms of an agreement that has been approved by the court pursuant to this subchapter shall not be grounds for setting aside an adoption decree.

**How may an agreement be terminated or modified?****Citation: Cons. Stat. Tit. 23, §§ 2737; 2739**

Only the adoptive parent or a child who is age 12 or older may seek to modify an agreement by filing an action in the court that finalized the adoption. Before the court may enter an order modifying the agreement, it must find by clear and convincing evidence that modification serves the needs, welfare, and best interests of the child.

A party to an agreement or a child who is at least age 12 may seek to discontinue an agreement by filing an action in the court that finalized the adoption. Before the court may enter an order discontinuing an agreement, it must find by clear and convincing evidence that discontinuance serves the needs, welfare, and best interests of the child.

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**Puerto Rico***Current Through August 2018*

These issues are not addressed in the statutes reviewed.

## Rhode Island

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Gen. Laws § 15-7-14.1**

Postadoption privileges may include postadoption visitation, contact, and/or conveyance of information.

A postadoption privileges agreement must contain the following provisions:

- An acknowledgment by the birth parents that the adoption is irrevocable, even if the adoptive parents do not abide by the postadoption privileges agreement
- An acknowledgment by the adoptive parents that the agreement grants the birth parents the right to seek to enforce the postadoption privileges set forth in the agreement

### **Who may be a party to a postadoption contact agreement?**

**Citation: Gen. Laws § 15-7-14.1**

The adoptive parents and the birth parents may jointly negotiate and execute a postadoption privileges agreement that is approved and filed with the family court.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Gen. Laws § 15-7-14.1**

At the time an adoption decree is entered, the court entering the decree may grant postadoption visitation, contact, and/or conveyance of information privileges (hereinafter referred to as 'postadoption privileges') to a birth parent who has consented to an adoption, voluntarily terminated the parent-child relationship, or has had his or her parental rights involuntarily terminated.

A court may grant postadoption privileges if:

- The court determines that the best interests of the child would be served by granting postadoption privileges.
- The court finds there is a significant emotional attachment between the child and the birth parent.
- The adoptive parents and the birth parents jointly negotiate and execute a postadoption privileges agreement that is approved and filed with the family court.
- The Department of Children, Youth, and Families and the child's court-appointed special advocate or the guardian ad litem recommend that the postadoption privileges agreement be approved by the court; or if the adoption petition is being sponsored by a licensed child-placing agency other than the department, the licensed child-placing agency sponsoring the adoption recommends that the postadoption privileges agreement be approved by the court.
- Consent to the postadoption privileges is obtained from the child if the child is at least 12 years of age.
- The postadoption privileges agreement is approved by the court.

### **Are agreements legally enforceable?**

**Citation: Gen. Laws § 15-7-14.1**

A birth parent or an adoptive parent may file a petition with the court entering the adoption decree to compel a birth parent or adoptive parent to comply with the postadoption privileges agreement.

Before the court hears a motion to compel compliance with an agreement, the court shall give notice and an opportunity to be heard to the licensed, child-placing agency that sponsored the adoption and to the child's court-appointed special advocate or court-appointed guardian ad litem, if one had been appointed prior to the finalization of adoption.

The court may not award monetary damages as a result of the filing of a petition under the above section.

A court may not revoke a decree of adoption because a birth parent or an adoptive parent fails to comply with a postadoption privileges agreement approved by the court.

**How may an agreement be terminated or modified?**

**Citation: Gen. Laws § 15-7-14.1**

A birth parent or an adoptive parent may file a petition with the court entering the adoption decree to modify the postadoption privileges agreement.

The court may void or modify a postadoption privileges agreement at any time before or after the adoption if the court determines after a hearing that the best interests of the child require the voiding or modification of the agreement.

Before the court voids or modifies an agreement, the court shall give notice and an opportunity to be heard to the licensed, child-placing agency that sponsored the adoption and to the child's court-appointed special advocate or court-appointed guardian ad litem, if one had been appointed prior to the finalization of adoption.

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**South Carolina**

*Current Through August 2018*

**What may be included in postadoption contact agreements?**

**Citation: Ann. Code § 63-9-760(D)**

The validity of the final decree of adoption is not affected by an agreement entered into before the adoption between adoptive parents and biological parents concerning visitation, exchange of information, or other interaction between the child and any other person. Such an agreement does not preserve any parental rights with the biological parents and does not give to them any rights enforceable in the courts of this State.

**Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Code § 63-9-760(D)**

An agreement may be made between adoptive parents and biological parents before the entry of a decree.

**What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Code § 63-9-760(D)**

The validity of the final decree of adoption is not affected by an agreement entered into before the adoption between adoptive parents and biological parents concerning visitation, exchange of information, or other interaction between the child and any other person.

**Are agreements legally enforceable?**

**Citation: Ann. Code § 63-9-760(D)**

Such an agreement does not preserve any parental rights with the biological parents and does not give to them any rights enforceable in the courts of this State.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

## South Dakota

Current Through August 2018

### What may be included in postadoption contact agreements?

Citation: Codified Laws § 25-6-17

The natural parents of an adopted child shall retain no rights or privileges to visitation or other postadoption contact with the child, except in cases where a natural parent consents to the adoption of a child by the child's stepfather or stepmother who is the present spouse of the natural parent, or in cases of voluntary termination where there is a written preadoption agreement between the natural parent or parents and the adoptive parents.

### Who may be a party to a postadoption contact agreement?

Citation: Codified Laws § 25-6-17

In cases where the natural parent consents to an adoption by the child's stepparent, or where there is a voluntary termination of the natural parent(s)' rights, the natural parents may enter into a written preadoption agreement with the adoptive parents.

### What is the role of the court in postadoption contact agreements?

Citation: Codified Laws § 25-6-17

The courts do not have jurisdiction over the agreements. The South Dakota Supreme Court decision, *People in Interest of S.A.H.*, 537 N.W.2d 1 (S.D. 1995), is abrogated by the South Dakota Legislature insofar as the case gave circuit courts the option to order an open adoption or posttermination visitation. This section does not apply to preadoption agreements entered into before July 1, 1997.

### Are agreements legally enforceable?

Citation: Codified Laws § 25-6-17

Enforcement is not specifically addressed in the statutes reviewed.

Postadoption visitation is an extraordinary remedy that may be exercised only by the adoptive parents when in the child's best interests.

### How may an agreement be terminated or modified?

This issue is not addressed in the statutes reviewed.

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## Tennessee

Current Through August 2018

### What may be included in postadoption contact agreements?

Citation: Ann. Code § 36-1-121(f)

No conditions shall be placed on the adoption of the child by the adoptive parents. However, nothing under this part shall be construed to prohibit 'open adoptions' where the adoptive parents permit, in their sole discretion, the parent or guardian of the child who surrendered the child or whose rights to the child were otherwise terminated, or the siblings or other persons related to the adopted child, to visit or otherwise continue or maintain a relationship with the adopted child.

**Who may be a party to a postadoption contact agreement?****Citation: Ann. Code § 36-1-121(f)**

The adoptive parents have the sole discretion to permit the parent or guardian of the child, or the siblings or other persons related to the adopted child, to visit or otherwise continue or maintain a relationship with the adopted child.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Code § 36-1-121(f)**

The adoptive parents of a child shall not be required by any order of the adoption court to permit visitation by any other person, nor shall the order of the adoption court place any conditions on the adoption of the child by the adoptive parents. Any provision in an order of the court or in any written agreement or contract between the parent or guardian of the child and the adoptive parents requiring visitation or otherwise placing any conditions of the adoption shall be void and of no effect whatsoever; provided that nothing under this part shall be construed to prohibit 'open adoptions' where the adoptive parents permit, in their sole discretion, the parent or guardian of the child who surrendered the child or whose rights to the child were otherwise terminated, or the siblings or other persons related to the adopted child, to visit or otherwise continue or maintain a relationship with the adopted child.

**Are agreements legally enforceable?****Citation: Ann. Code § 36-1-121(f)**

The permission or agreement to permit visitation or contact shall not, in any manner whatsoever, establish any enforceable rights in the parent or guardian, the siblings, or other related persons.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

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**Texas***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Fam. Code §§ 161.2061; 161.2062**

An order terminating the parent-child relationship may include terms that allow the biological parent to:

- Receive specified information regarding the child
- Provide written communications to the child
- Have limited access to the child

The order of termination may not require that a subsequent adoption order include terms regarding limited posttermination contact between the child and a biological parent.

The inclusion of a requirement for posttermination contact in a termination order does not affect the finality of a termination or subsequent adoption order or grant standing to a parent whose parental rights have been terminated to file any action under this title after the court renders a subsequent adoption order with respect to the child.

**Who may be a party to a postadoption contact agreement?****Citation: Fam. Code § 161.2061**

The agreement shall be between the biological parent and the Department of Family and Protective Services.



**What is the role of the court in postadoption contact agreements?****Citation: Fam. Code § 161.2061**

If the court finds it to be in the best interests of the child, the court may provide in an order terminating the parent-child relationship that the biological parent who filed an affidavit of voluntary relinquishment of parental rights under § 161.103 shall have limited posttermination contact with the child on the agreement of the biological parent and the department.

**Are agreements legally enforceable?****Citation: Fam. Code § 161.2061**

The terms of an order of termination regarding limited posttermination contact may be enforced only if the party seeking enforcement pleads and proves that, before filing the motion for enforcement, the party attempted in good faith to resolve the disputed matters through mediation.

The terms of an order of termination under this section are not enforceable by contempt.

The inclusion of a requirement for posttermination contact in a termination order does not:

- Affect the finality of a termination or subsequent adoption order
- Grant standing to a parent whose parental rights have been terminated to file any action under this title after the court renders a subsequent adoption order with respect to the child

**How may an agreement be terminated or modified?****Citation: Fam. Code § 161.2061**

The terms of an order of termination regarding limited posttermination contact may not be modified.

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**Utah**

*Current Through August 2018*

**What may be included in postadoption contact agreements?****Citation: Ann. Code § 78B-6-146**

A 'postadoption contact agreement' is a document, agreed upon prior to the finalization of an adoption of a child in the custody of the division, that outlines the relationship between an adoptive parent, birth parent, or other birth relative and an adopted child after the finalization of adoption.

A postadoption contact agreement shall:

- Describe:
  - » Visits, if any, that shall take place between the birth parent, other birth relative, adoptive parent, and adopted child
  - » The degree of supervision, if any, that shall be required during a visit between a birth parent or other birth relative and the adopted child
  - » The information, if any, that shall be provided to a birth parent or other birth relative about the adopted child and how often that information shall be provided
  - » The grounds, if any, on which the adoptive parent may decline to permit visits or cease providing the information described above
- State that following the adoption, the court shall presume that the adoptive parent's judgment about the best interests of the child is correct in any action seeking to enforce, modify, or terminate the agreement

A postadoption contact agreement may not limit the adoptive parent's ability to move out of State.

**Who may be a party to a postadoption contact agreement?****Citation: Ann. Code § 78B-6-146**

If a child in the custody of the division is placed for adoption, the prospective adoptive parent and birth parent or other birth relative may enter into a postadoption contact agreement as provided in this section. The term 'other birth relative' means a grandparent, stepparent, sibling, stepsibling, aunt, or uncle of the prospective adoptive child.

A birth parent is not required to be a party to a postadoption contact agreement in order to permit an open adoption agreement between a prospective adoptive parent and another birth relative of the child.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Code § 78B-6-146**

The court that approves a postadoption contact agreement retains jurisdiction over modification, termination, and enforcement of an approved postadoption contact agreement.

Violation of an open adoption agreement is not grounds to set aside an adoption or for an award of money damages.

Nothing in this section shall be construed to mean that an open adoption agreement is required before an adoption may be finalized. Refusal or failure to agree to a postadoption contact agreement is not admissible in any adoption proceeding.

**Are agreements legally enforceable?****Citation: Ann. Code § 78B-6-146**

In order to be legally enforceable, a postadoption contact agreement shall be:

- Approved by the court before the finalization of the adoption, with the court making a specific finding that the agreement is in the best interest of the child
- Signed by each party claiming a right or obligation in the agreement
- Approved by the child, if the adopted child is age 12 or older

In an action seeking enforcement of a postadoption contact agreement, an adoptive parent's judgment about the best interests of the child is entitled to a presumption of correctness. If the party seeking to enforce the postadoption contact agreement successfully rebuts that presumption, the court shall consider whether:

- The parties performed the duties outlined in the open adoption agreement in good faith.
- There is a reasonable alternative that fulfills the spirit of the open adoption agreement without ordering mandatory compliance with the open adoption agreement.
- Enforcement of the open adoption agreement is in the best interests of the adopted child.

The court shall order the parties to attend mediation if the presumption of the correctness of the adoptive parent's judgment is successfully rebutted, and mediation is in the child's best interests.

An open adoption agreement that has been found not to be in the best interests of the adopted child shall not be enforced.

**How may an agreement be terminated or modified?****Citation: Ann. Code § 78B-6-146**

A postadoption contact agreement may be modified only with the consent of the adoptive parent.

## Vermont

*Current Through August 2018*

### What may be included in postadoption contact agreements?

**Citation: Ann. Stat. Tit. 33, § 5124**

A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement. There may be separate agreements for each parent. The agreement shall specify:

- The form of communication or contact to take place
- The frequency of the communication or contact
- If visits are agreed to, whether supervision shall be required, and if supervision is required, what type of supervision is required
- If written communication or exchange of information is agreed upon, whether that will occur directly or through the Vermont Adoption Registry
- If the Adoption Registry shall act as an intermediary for written communication, that the signing parties will keep their addresses updated with the Adoption Registry
- That failure to provide contact due to the child's illness or other good cause shall not constitute grounds for an enforcement proceeding
- That the right of the signing parties to change their residence is not impaired by the agreement
- An acknowledgment by the intended adoptive parents that the agreement grants either or both parents the right to seek to enforce the postadoption contact agreement
- An acknowledgment that the adoptive parent's judgment regarding the child is in the child's best interests
- The finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption contact agreement
- A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption

### Who may be a party to a postadoption contact agreement?

**Citation: Ann. Stat. Tit. 33, § 5124**

Either or both parents and each intended adoptive parent may enter into a postadoption contact agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent or parents who are parties to the agreement. Such an agreement may be entered into if:

- The child is in the custody of the Department for Children and Families or a nonparent pursuant to § 5318(a)(2) or (a)(7), or § 5232(b)(2) or (b)(3) of this title.
- An order terminating parental rights has not yet been entered.
- Either or both parents agree to a voluntary termination of parental rights, including an agreement in a case that began as an involuntary termination of parental rights

### What is the role of the court in postadoption contact agreements?

**Citation: Ann. Stat. Tit. 33, § 5124**

The court shall approve the postadoption contact agreement if:

- It determines that the child's best interests will be served by postadoption communication or contact with either or both parents.

- It has reviewed the following:
  - » A sworn affidavit by the parties to the agreement that affirmatively states that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress
  - » A written acknowledgment by each parent that the termination of parental rights is irrevocable, even if the intended adoption is not finalized, the adoptive parents do not abide by the postadoption contact agreement, or the adoption is later dissolved
  - » An agreement to the postadoption contact or communication from the child to be adopted, if he or she is age 14 or older
  - » An agreement to the postadoption contact or communication in writing from the department, the guardian ad litem, and the child's attorney

In making a best interests determination, the court may consider:

- The age of the child
- The length of time that the child has been under the actual care, custody, and control of a person other than a parent
- The desires of the child, the child's parents, and the adoptive parents
- The child's relationship with and the interrelationships between the child's parents, the adoptive parents, the child's siblings, and any other person with a significant relationship with the child
- The willingness of the parents to respect the bond between the child and the child's adoptive parents
- The willingness of the adoptive parents to respect the bond between the child and the parents
- The adjustment to the child's home, school, and community
- Any evidence of abuse or neglect of the child
- The recommendations of any guardian ad litem, a therapist or mental health care provider working directly with the child, and the department

#### **Are agreements legally enforceable?**

**Citation: Ann. Stat. Tit. 15A, § 1-109**

When a decree of adoption becomes final, except as provided in title 33, § 5124, any order or agreement for visitation or communication with the minor shall be unenforceable.

#### **How may an agreement be terminated or modified?**

**Citation: Ann. Stat. Tit. 33, § 5124**

The order approving a postadoption contact agreement shall be a separate order issued before and contingent upon the final order of voluntary termination of parental rights.

The executed postadoption contact agreement shall become final upon legal finalization of an adoption under title 15A, Article 3.

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### **Virgin Islands**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.

## Virginia

*Current Through August 2018*

### **What may be included in postadoption contact agreements?**

**Citation: Ann. Code § 63.2-1220.2**

A postadoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parents, and the adoptive parents and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare.

Any postadoption contact and communication agreement shall include acknowledgment by the birth parents that the adoption of the child is irrevocable, even if the adoptive parents do not abide by the postadoption contact and communication agreement, and acknowledgment by the adoptive parents that the agreement grants the birth parents the right to seek to enforce the provisions set forth in the agreement. The petitioner for adoption shall file the agreement with other documents filed in the circuit court having jurisdiction over the child's adoption.

### **Who may be a party to a postadoption contact agreement?**

**Citation: Ann. Code §§ 16.1-283.1; 63.2-1220.2**

In any case in which a child has been placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent(s), or other voluntary relinquishment by the parent(s), the child's birth parent(s) may enter into a written postadoption contact and communication agreement with the preadoptive parent(s).

In any proceeding for adoption pursuant to Chapter 12, the birth parent(s) and the adoptive parent(s) of a child may enter into a written postadoption contact and communication agreement.

### **What is the role of the court in postadoption contact agreements?**

**Citation: Ann. Code §§ 16.1-283.1; 63.2-1220.3; 63.2-1220.4**

The court may consider the appropriateness of a written postadoption contact and communication agreement at the permanency planning hearing and, if the court finds that all of the requirements of § 16.1-283.1(A) and § 63.2-1220.2, et seq., have been met, shall incorporate the written postadoption contact and communication agreement into an order entered at the conclusion of the hearing.

The circuit court may approve a postadoption contact and communication agreement authorized pursuant to § 16.1-283.1 and filed with the court for a petition for adoption if:

- The court determines that the child's best interests would be served by approving the postadoption contact and communication agreement.
- The adoptive parent or parents and birth parent or parents have consented to a postadoption contact and communication agreement filed with the court.
- The agency authorized to consent to the child's adoption and the child's guardian ad litem have recommended that the postadoption contact and communication agreement be approved as being in the best interests of the child, or, if there is no agency sponsoring the adoption, the agency that prepared the adoption report has been informed of the postadoption contact and communication agreement and has recommended in the agency's report to the circuit court that the postadoption contact and communication agreement be approved.
- The adoptive child who is age 14 or older consents to the postadoption contact and communication agreement.

The circuit court shall not require execution of a postadoption contact and communication agreement as a condition for approving any adoption.

Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in which the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of a postadoption contact and communication agreement.

**Are agreements legally enforceable?****Citation: Ann. Code §§ 63.2-1220.3; 63.2-1220.4**

To be enforceable, any agreement under this section shall be approved by the circuit court and incorporated into the final order of adoption.

A birth parent or adoptive parent who has executed a postadoption contact and communication agreement may file a petition with the circuit court of the jurisdiction in which the final order of adoption was entered to compel a birth or adoptive parent to comply with the postadoption contact and communication agreement. The court may not award monetary damages as a result of the filing of a petition for compliance with the agreement.

Before the court hears a motion to compel compliance, the court may appoint a guardian ad litem to represent the child's best interests.

The court may not award monetary damages as a result of the filing of a petition for modification of or compliance with the agreement.

**How may an agreement be terminated or modified?****Citation: Ann. Code § 63.2-1220.4**

Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in which the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of a postadoption contact and communication agreement.

A birth parent or parents or adoptive parent or parents who have executed a postadoption contact and communication agreement may file a petition with the court to modify the postadoption contact and communication agreement or compel a birth or adoptive parent to comply with the postadoption contact and communication agreement.

The court may not award monetary damages as a result of the filing of a petition for modification of the agreement. The court may modify the agreement at any time before or after the adoption if the court, after notice and opportunity to be heard by the birth parent or parents and the adoptive parent or parents, determines that the child's best interests require the modification of the agreement. Before the court modifies an agreement or hears a motion to compel compliance, the court may appoint a guardian ad litem to represent the child's best interests.

The court shall not grant a request to modify the terms of a postadoption contact and communication agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the child's best interests. No modification shall affect the irrevocability of the adoption.

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**Washington***Current Through August 2018***What may be included in postadoption contact agreements?****Citation: Rev. Code §§ 26.33.295; 26.33.420; 26.33.430**

Nothing in this chapter shall be construed to prohibit the parties to a proceeding under this chapter from entering into agreements regarding communication with or contact between adopted children, adoptive parents, siblings of adopted children, and a birth parent or parents.

An agreement under this section need not disclose the identity of the parties to be legally enforceable.

The legislature intends to promote a greater focus, in permanency planning and adoption proceedings, on the interests of siblings separated by adoptive placements and to encourage the inclusion in adoption agreements of provisions to support ongoing postadoption contact between siblings.

To the extent feasible, and when in the best interests of the adopted child and siblings of the adopted child, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption.

**Who may be a party to a postadoption contact agreement?**

**Citation: Rev. Code §§ 26.33.295; 26.33.430**

An agreement may be entered into between the adoptive parents and the birth parents.

The court, in reviewing and approving an agreement under § 26.33.295 for the adoption of a child from foster care, shall encourage the adoptive parents, birth parents, foster parents, kinship caregivers, and the Department of Social and Health Services or other supervising agency to seriously consider the long-term benefits to the adopted child and siblings of the adopted child of providing for and facilitating continuing postadoption contact between siblings.

**What is the role of the court in postadoption contact agreements?**

**Citation: Rev. Code §§ 26.33.295; 26.33.430**

The court shall not enter a proposed order unless the terms of such order have been approved in writing by the prospective adoptive parents, any birth parent whose parental rights have not previously been terminated, and, if the child is in the custody of the department or a licensed child-placing agency, a representative of the department or child-placing agency. If the child is represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child-custody proceeding, the terms of the proposed order also must be approved in writing by the child's representative. An agreement under this section need not disclose the identity of the parties to be legally enforceable.

The court shall not enter a proposed order unless the court finds that the communication or contact between the adopted child, the adoptive parents, and a birth parent or parents as agreed upon and as set forth in the proposed order would be in the adopted child's best interests.

If the adopted child or known siblings of the adopted child are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact.

**Are agreements legally enforceable?**

**Citation: Rev. Code § 26.33.295**

Agreements regarding communication with or contact between adopted children, adoptive parents, and a birth parent or parents shall not be legally enforceable unless the terms of the agreement are set forth in a written court order entered in accordance with the provisions of this section.

An agreement may be enforced by a civil action, and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees.

An agreement under this section need not disclose the identity of the parties to be legally enforceable.

Failure to comply with the terms of an agreed-upon order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of a written consent to an adoption after that consent has been approved by the court as provided in this chapter.

**How may an agreement be terminated or modified?****Citation: Rev. Code § 26.33.295**

The court shall not modify an agreed-upon order under this section unless it finds that the modification is necessary to serve the best interests of the adopted child, and that:

- The modification is agreed to by the adoptive parent and the birth parent or parents.
  - Exceptional circumstances have arisen since the agreed-upon order was entered that justify modification of the order.
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**West Virginia***Current Through August 2018***What may be included in postadoption contact agreements?**

This issue is not addressed in the statutes reviewed.

**Who may be a party to a postadoption contact agreement?**

This issue is not addressed in the statutes reviewed.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Code § 48-22-704**

A decree or order entered under this article may not be vacated or set aside upon application of a person alleging that there is a failure to comply with an agreement for visitation or communication with the adopted child.

**Are agreements legally enforceable?****Citation: Ann. Code § 48-22-704**

The court may hear a petition to enforce the agreement, in which case the court shall determine whether enforcement of the agreement would serve the best interests of the child. The court may, in its sole discretion, consider the position of a child of the age and maturity to express such position to the court.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

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**Wisconsin***Current Through August 2018***What may be included in postadoption contact agreements?**

This issue is not addressed in the statutes reviewed.

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**Who may be a party to a postadoption contact agreement?****Citation: Ann. Stat. § 48.925(1), (3)**

Upon petition by a relative who has maintained a relationship similar to a parent-child relationship with a child who has been adopted by a stepparent or relative, the court may grant reasonable visitation rights to that person if the petitioner has maintained such a relationship within 2 years prior to the filing of the petition.

This section applies to every child in this State who has been adopted by a stepparent or relative, regardless of the date of the adoption.

**What is the role of the court in postadoption contact agreements?****Citation: Ann. Stat. § 48.925(1)-(2)**

The adoptive parent or parents, or, if a birth parent is the spouse of an adoptive parent, the adoptive parent and birth parent, shall have notice of the hearing. The court will determine all of the following:

- That visitation is in the best interests of the child
- That the petitioner will not undermine the adoptive parent(s) relationship with the child
- That the petitioner will not act in a manner contrary to parenting decisions related to the child's physical, emotional, educational, or spiritual welfare made by the adoptive parent(s)

The court may not grant visitation rights to a relative if the relative has been convicted of the intentional homicide of a parent of the child, and the conviction has not been reversed, set aside, or vacated. If a relative who is granted visitation rights with a child is convicted of the intentional homicide of a parent of the child, and the conviction has not been reversed, set aside, or vacated, the court shall issue an order prohibiting the relative from having visitation with the child on petition of the child or the parent, guardian, or legal custodian of the child, or on the court's own motion, and on notice to the relative. These provisions do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

Whenever possible, in making a determination of visitation with a relative, the court shall consider the wishes of the adopted child.

**Are agreements legally enforceable?****Citation: Ann. Stat. § 48.925(4)**

Any person who interferes with visitation rights granted under this section may be proceeded against for contempt of court, except that a court may impose only the remedial sanctions against that person.

**How may an agreement be terminated or modified?**

This issue is not addressed in the statutes reviewed.

**Wyoming**

*Current Through August 2018*

These issues are not addressed in the statutes reviewed.



U.S. Department of Health and Human Services  
Administration for Children and Families  
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