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STATE
STATUTES
SERIES

*Current Through
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Postadoption Contact Agreements Between Birth and Adoptive Families

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

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

- There is wider recognition of the rights of birth parents to make choices for their children.

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To find statute information for a particular State, go to www.childwelfare.gov/systemwide/laws_policies/search/index.cfm

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States With Enforceable Contract Agreements

- Many adoptions involve older children, such as stepchildren and children adopted from foster care; these children frequently have attachments to one or more birth relatives with whom ongoing contact may be desirable and beneficial.
- Contact or communication with birth relatives can be a resource to adoptive parents for information about their child's medical, social, and cultural history.¹

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

A written contractual agreement between the parties to an adoption can clarify the type and frequency of the contact or communication and can provide a mechanism for enforcement of the agreement. Approximately 22 States currently have statutes that allow written and enforceable contact agreements.² The written agreements specify the type and frequency of contact and are signed by the parties to an adoption prior to finalization.³

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

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

² The word *approximately* is used to stress the fact that States frequently amend their laws; this information is current only through December 2005. The States that permit enforceable contracts include Arizona, California, Connecticut, Florida, Indiana (for children over age 2), Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Vermont (stepparent adoptions only), Washington, and West Virginia.

³ The phrase "parties to an adoption" generally refers to the birth parents (or other person placing the child for adoption) and the adoptive parents.

Who May Be a Party to an Agreement?

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

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

The Court's Role in Establishing or Enforcing Agreements

For the agreements to be enforceable, they must be approved by the court that has jurisdiction over the adoption. All parties wishing to be included in the agreements must agree in writing to all terms of the agreement prior to the adoption finalization. The court may approve the agreement only if all parties, including a child over the age of 12, agree on its provisions, and the court finds the agreement is in the best interests of the child.

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

When Are States Using Mediation?

Nine States require the parties to participate in mediation before petitions for enforcement or modification of an agreement are brought before the court.⁴ In no case can disputes over the postadoption agreement be used as grounds for setting aside an adoption or relinquishment of parental rights. In Florida and Maryland, the court, at its discretion, may refer the parties to mediation. Any party seeking to enforce an agreement may voluntarily choose mediation in Massachusetts.

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 eight other States address the issue but do not provide for enforceable agreements. For example, Alaska's statute states that contact agreements are not prohibited. In Vermont, agreements for contact are enforceable only in cases involving stepparent adoptions. North Carolina also permits agreements by mutual consent, but specifies that they are not enforceable, and failure to comply is not grounds to invalidate consent to the adoption. Ohio, South Carolina, and South Dakota specifically state that mutual agreements for contact are nonbinding and nonenforceable. Missouri and Tennessee leave decisions about contact and visitation with birth relatives to the sole discretion of the adoptive parents.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. 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 in agency regulations, case law, and informal practices and procedures.

⁴ Arizona, California, Connecticut, Louisiana, Minnesota, New Hampshire, Oklahoma, Oregon, and Texas.