

TAKE-1
ADOPTION AND ILLEGITIMATE
CHILDREN

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



ADOPTION AND ILLEGITIMATE CHILDREN

1. Q. What is adoption?

A. Adoption is the creation by law of the relationship of parent and child between two individuals. Adoption terminates the relationship and all rights and responsibilities previously existing between a natural parent and child. The adoption process is closely regulated by the state.

2. Q. How are children adopted?

A. Children may be placed for adoption in a variety of ways. These are as follows:

An "agency placement" is the procedure for adoption used by county Departments of Social Services or licensed private adoption agencies.

b) A "direct placement" or "independent adoption" is one made by the natural parents directly into an unrelated adoptive home without the assistance of an agency.

A "relative adoption" is one in which a parent's relative (often a spouse) agrees to adopt the child of that parent.

d) An "adoption facilitator" is an individual or nonprofit entity that assists natural parents in locating and evaluating prospective adoptive parents without charge.

Except for relative adoptions, all of these procedures require court approval and a preplacement assessment or home study, as will be explained later in this pamphlet. There is no one method that is better than another for a couple.

3. Q. My wife and I want to adopt a child--what's the difference between agency placement and direct (non-agency) placement?

A. It might seem at first much easier to adopt a child directly from the mother than to apply to a county Department of Social Services or a licensed private adoption agency. Many prospective parents are honestly concerned about fees, waiting lists, background checks and home studies. As a practical matter, however, there may be many more problems (although these can be overcome) with direct placements than with agency adoptions. Direct placement, on the other hand, will require effort on the part of the prospective parents regarding the natural parents of the child (both in finding them and obtaining valid legal consents to the adoption).

4. Q. Where can we find out about adopting a child by agency placement?

A. There are several adoption agencies in North Carolina, including the local county Department of Social Services as well as private agencies. Check with your Department of Social Services or your lawyer for further information.

5. Q. Can we place an advertisement for a child?

A. No one may solicit children for adoptive placement, except a licensed child placement agency, an adoption facilitator, an individual with a completed preplacement assessment finding that the individual is suitable to be an adoptive parent (or that individual's immediate family). Only a licensed agency, Department of Social Services or adoption facilitator may advertise in any periodical or newspaper, or by radio, television, or other public medium. Violation of this provision is a crime in North Carolina.

6. Q. What is a preplacement assessment?

A. A preplacement assessment, formerly known as a home study, is required in all adoptive placements, except where a biological parent places a child with a grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, or great-grandparent of the child. It must be completed or updated within 12 months before the placement occurs. It may be prepared by any licensed child placement agency for a fee. The preplacement assessment must be based on at least one personal interview with each individual being assessed and must occur in the individual's residence. A copy of the completed preplacement assessment must be provided to the prospective adoptive parents and to the biological parent that placed the child for adoption.

7. Q. What legal steps are required for adoption?

A. Here is a checklist of the steps that must be followed:

1. The first step is to obtain a preplacement assessment.
2. Consents will be obtained from the biological parents.
3. The mother completes an affidavit indicating the name, last known address and marital status of the parents.
4. A petition will be filed by the prospective adoptive parents seeking the court's approval of the adoptive placement. The preplacement assessment, consents and affidavit are filed with the petition. A certified copy of the background information about the child's health, social, educational and genetic history provided by the placement agency or parents and a copy of any court order or pleading concerning custody or visitation with the child will also be filed with the petition. The petitioners must also file an affidavit accounting for any payment made in connection with the adoption. Finally, a document is filed with the petition identifying any individual whose consent may be required, but has not been obtained at the time of filing the petition.
5. Once the petition is filed, notice of the petition is served on any person whose consent was necessary but had not been obtained. Notice will also be served on the agency that placed the child for adoption and the agency that prepared the preplacement assessment.

6. The court will order the preparation and filing of a report by the agency that placed the child or prepared the preplacement assessment. The report is to provide information to assist the court in determining whether the adoptive placement is in the best interest of the child and must be completed within 60 days of the receipt of the order by the agency.

8. Q. When is the adoption final?

A. No later than 90 days after the petition has been filed, the court will set a date for a hearing or disposition of the petition. The hearing or disposition will occur no later than six months after the petition is filed, unless the court extends the time. If the petition is not contested, a hearing will not be required. If a hearing is required because the petition is contested, the court will determine whether the adoption is in the best interest of the child.

9. Q. When may a parent's consent be obtained?

A. A father's consent may be obtained before the birth of the child. A mother's consent may not be obtained until after the birth of the child. There is no waiting period. A foreign order of adoption may be accepted in lieu of the consent of the biological parents or guardian.

10. Q. Once a parent gives consent, can he/she change his/her mind?

A. Yes. The individual who gave the consent may revoke it by giving written notice to the person specified in the consent. The prospective adoptive parents must immediately, upon request, return the child to the person who gave consent.

A consent to the adoption of an unborn child or a child who is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.

A consent to the adoption of any child over age three months may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays.

When the placement occurred before a preplacement assessment was completed and provided to the birth parent who placed the child for adoption, the revocation period is extended to five business days after that person receives the preplacement assessment, or the remainder of the revocation period, whichever is longer.

If a second consent is obtained, it is irrevocable.

The consent of a child over age 12 or of an adult adoptee may be revoked at any time before entry of the final order.

11. Q. Can we have a contract or binding agreement for a private adoption?

A. No. A written agreement would not be enforceable because:

- 1) North Carolina law does not recognize adoption contracts; and
- 2) Such a contract would violate the birth mother's legal right to revoke consent within thirty days of signing the consent form.
- 3) In addition, no such contract could ever anticipate the situation at birth--twins, triplets, healthy single infant, stillbirth or child with birth defects. As a result, you cannot rely on an agreement or contract in private adoptions. Nothing can require the birth parents to give up the child at birth or abide by their consent to the adoption. Nothing can guarantee that the prospective adoptive parents will accept and keep the child offered for adoption.

12. Q. Is independent placement adoption really an "open adoption," or can the names of the parties be hidden from each other?

A. Confidentiality is not an issue in independent adoption since, by law, the biological parents must be parties to the adoption and, therefore, must give informed consent. This means that the names of the adopting parents appear on the Consent to Adoption forms at the time the biological parents sign the forms. Also, since by law only the parents may place their child for adoption (unless the child has been released to a county Department of Social Services or a licensed private child-placing agency), the biological parents and adoptive parents obviously would have face-to-face contact with each other. The biological parents have every right to know the people with whom they plan to place their child, and should be encouraged to know enough about them to feel comfortable with their assuming a parental role through adoption. Quite candidly, there is nothing to stop either parent from telephoning the birth parents (before or after the adoption is final), writing to the child or following the adoptive family at the local park or shopping mall.

13. Q. What if the biological parents want to visit the baby?

A. Adoption arrangements which include plans for continuing contact between natural and adoptive parents or allow natural parents to have continuing contact with adopted children are called open adoptions. North Carolina does not favor open adoption arrangements. In North Carolina such arrangements are invalid. They cannot be a precondition to the adoptive placement. The consent of the biological parents must be unconditional. Such arrangements also will not invalidate an adoptive placement. Generally, the biological parents become legal strangers to the child once the adoption is final. They have no legal right to any further contact. However, they will know the names and addresses of the adoptive parents. There is no guarantee that they will not attempt to make unwanted contact. If so, they may be treated just like any other stranger. They are subject to civil and criminal laws which limit unwanted intrusions.

14. Q. What expenses may we pay for in connection with the adoption?

A. Effective July 1, 1996, adoptive parents may pay for the "reasonable and actual fees and expenses." These expenses include:

- 1) Services of an agency in connection with an adoption;

- 2) Medical, hospital, nursing, pharmaceutical, traveling, or other similar expenses incurred by a mother or her child incident to the pregnancy and birth or any illness of the adoptee;
- 3) Counseling services for a parent or the adoptee;
- 4) Ordinary living expenses of a mother during the pregnancy and for no more than six weeks after the birth;
- 5) Expenses incurred in ascertaining the background information about an adoptee and the adoptee's biological family;
- 6) Legal services, court costs, and traveling or other administrative expenses connected with an adoption; and
- 7) Preparation of the preplacement assessment and the report to the court.

15. Q. What cannot be paid by us?

A. Payments may not be made for:

- 1) Placement of a child;
- 2) Consent for adoption;
- 3) Relinquishment of a child to an agency; or
- 4) Assisting a parent or guardian in locating a prospective adoptive parent, or transferring custody of a child to an adoptive parent.

An affidavit of accounting identifying all expenditures made in connection with the adoption must be made at least ten days before the entry of the final order.

Violation of this section is a Class 1 misdemeanor subject to punishment in the court's discretion. Any subsequent violation is a Class H felony and may be punished by a fine of not more than ten thousand dollars (\$10,000).

16. Q. What about our legal expenses and medical expenses for the baby?

A. Medical expenses incident to the birth of the child should be covered by your medical insurance policy. Check your policy for specific provisions. Generally, all legal expenses are the responsibility of the adopting parents. Legal expenses are reimbursable up to varying limits under some corporate benefits packages. Beginning in 1997, there is an individual income tax credit available for the payment of qualified adoption expenses up to \$5,000 per child (and up to \$6,000 for special needs children). Expenses include adoption fees, court costs, attorney fees, and other costs. The credit is available through the year 2001.

17. Q. Once my child is adopted, do I have any further legal rights or obligations to the child?

A. No. Once the child has been adopted, the natural parents cease to have any legal rights or obligations toward the child. If a natural parent owed a child support obligation, that obligation would stop once the child was adopted.

18. Q. I am not married and have a child out of wedlock. If I do not want to place the child for adoption, can I obtain support for the child from his father if I keep the child?

A. Yes--the law makes no distinction in support obligations between parents who are married when the child is born and parents of illegitimate children. Likewise, the law allows the courts to determine custody and visitation rights of parents of legitimate, as well as illegitimate children, and there are no distinctions or preferences given to either mothers or fathers under the North Carolina General Statutes concerning who is entitled to custody of a child or what type of visitation should be allowed. Mothers are not automatically granted custody of illegitimate children, for example, and neither are fathers of illegitimate children barred from visitation rights with the children. It may be necessary, however, to obtain the services of a private attorney and file a complaint or motion for a hearing as to custody or visitation rights. Child support can be obtained with the assistance of the County Child Support Enforcement Agency.

19. Q. How can I prove to the court who is the father of my illegitimate child?

A. Anyone involved in a paternity/child support case can file a motion in court asking for a hearing and paternity tests (which involve the mother, child and alleged father). The results are reported back to the court for further proceedings to determine paternity. The tests used most often to "prove" paternity are the "Red Cell" test and the "HLA" (Human Leukocyte Antigen) test. These tests will take two to four weeks for the results to be reported. There are several laboratories in the state that can perform these tests, and the resulting report will be accurate enough to exclude 99 out of 100 falsely accused men. DNA testing, which is more expensive than the HLA/Red Cell tests, but is much more accurate. The person making the motion for paternity testing is usually required to pay for the testing, but the male can be ordered to pay back the cost of the tests if he is found to be the father of the child. DNA testing can be performed immediately after birth or before birth. Blood samples are no longer required. A cell sample may be taken from a swab of the mouth. The typical DNA testing fee is \$475.00 and results are available in three weeks. Testing can be arranged by the County Child Support Enforcement Agency at a lower cost of around \$150.00 and results take six to eight weeks.