



STATE STATUTES
CURRENT THROUGH AUGUST 2018

Postadoption Contact Agreements Between Birth and Adoptive Families

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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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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.¹

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

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.

¹ For more information on the issue of postadoption contact, see the Child Welfare Information Gateway publication, *Helping Children and Youth Maintain Relationships With Birth Families* at <https://www.childwelfare.gov/resources/helping-children-and-youth-maintain-relationships-birth-families/>.

² 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).

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; it may include the adoptive child under the laws of some States.

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.

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.⁴

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.⁵ 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.⁶

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

⁴ 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.

⁵ California, Connecticut, Indiana, Massachusetts, Pennsylvania, Rhode Island, and Utah.

⁶ Delaware, Georgia, Nebraska, New Hampshire, Oregon, Vermont, and Virginia.

agree or circumstances have changed, and the action is determined to be in the best interests of the child.

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.⁷ 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.

⁷ Arizona, California, Connecticut, Louisiana, Minnesota, Nebraska, New Hampshire, Oklahoma, Oregon, and Texas.

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