

Frequently Asked Questions about Adoption in Kentucky

BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?
 - A. The birth mother can start the adoption process at any time.
2. Can the birth mother choose the adoptive parents?
 - A. Ideally, the birth mother and birth father agree upon who they choose as the adoptive parents.
3. Can the birth mother see and hold the baby after the birth?
 - A. Yes.
4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child? Are there any differences in the payment of expenses in agency and independent adoptions?
 - A. Reimbursable expenses are based upon actual need. Examples include rent, utilities, and food. Typically, the birth parents must provide documentation to the agency and the agency will pay expenses directly to the provider. (Some agencies choose not to reimburse expenses.)

There are no differences in the particular expenses that can be paid in an agency and in an independent adoption. In an independent adoption, the parents may be asked to place money into escrow for the attorney to use for the birth mother's benefit. In an agency adoption, the adoptive parents may pay a services fee that covers all expenses paid.
5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?
 - A. A minor birth mother must have a "next friend" in order for parental rights to be terminated. If the birth mother's parents are not present during court proceedings, a Guardian at Litem will be present.
6. When does the birth mother actually sign the legal documents required for the adoption?
 - A. After the birth of the child, a waiting period of 72 hours is required. The birth mother may sign a petition to voluntarily terminate her parental rights after the 72 hours has passed. At a subsequent court date, the judge's signature is required to terminate the parental rights.

In an agency adoption, the birth mother may sign prior to the 72 hours, but the paperwork may not be filed in court until 72 hours after the birth. After appearance in court and the signing and entry of the order, the birth mother can no longer revoke or change her mind.

In an independent adoption, the birth mother may go to court and it would be as above. Or she may sign a consent no sooner than 72 hours after the birth. After signing, there is a revocation period. That period runs 20 days after signing. In the case of an interstate adoption the period runs 20 days after signing or 20 days after ICPC approval, whichever comes later.

7. Can the birth mother change her mind before signing the legal consents to the adoption?
 - A. The birth mother can change her mind anytime prior to the judge's signature which terminates the parental rights.

8. Can the birth mother change her mind after signing the legal consents to the adoption?
 - A. For an agency adoption, the birth mother can change her mind at any point before the judge signs the Order terminating her parental rights. In an independent adoption, the consent to adoption signed by the birth mother is final and irrevocable 20 days after the Cabinet for Health and Family Services approves the adoption placement. The consent to adoption may only be withdrawn if written notification is made prior to 20 days after the Cabinet for Health and Family Services approves the adoption placement; i.e., before it becomes final and irrevocable.

9. Can the birth mother communicate with the adoptive parents and child after the adoption?
 - A. Yes. In Kentucky, open adoptions are agreements only and are not legally binding. In Kentucky, open adoptions are simply a "word of honor."

10. Can a birth mother anonymously surrender a newborn child?
 - A. Yes.

11. What happens if the birth parents do not agree that adoption should be the plan?
 - A. Both birth parents must agree to a voluntary adoption plan. Parental rights of both the birth mother and the birth father must be terminated in order for the child to be made available for adoption.
Since it is difficult to do an involuntary termination in Kentucky, if the birth father is contesting the adoption, the adoption will probably not take place.

12. Will the birth mother be asked to file an affidavit in her adoption papers regarding future contact or the release of identifying information to the adoptee or adoptive parents?
 - A. The birth mother is asked to sign a DSS-192 form, which is provided by the Commonwealth of Kentucky.

BIRTH FATHER RELATED

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?
 - A. No. In Kentucky, a birth mother can choose not to name the birth father. However, birth mothers are encouraged to notify the birth father of the adoption plan.
2. How is the father of the baby notified of the mother's adoption plan?
 - A. The birth mother is encouraged to talk with the birth father about a potential adoption plan.
If the birth father is known and identified, the court will also appoint a Warning Order Attorney to send a letter and attempt to notify the birth father of the adoption proceedings.
3. Can the father of the baby choose the adoptive parents?
 - A. Ideally, the birth mother and birth father agree upon who they choose as the adoptive parents.
4. What is the difference between a legal father and a named birth father? How is the process of voluntary termination different for a legal father and a named birth father?
 - A. A legal father is a man who is married to the birth mother. He may or may not be the biological father, and may or may not be identified on the birth certificate. The birth certificate, while a necessary item, is not necessarily the full truth. A putative father could be the birth father, or there could be multiple putative fathers.
In an agency case, the parental rights of both the birth father and the legal father must be terminated in order to allow an adoption. If DNA shows the putative father is the biological father, DNA can overcome the presumption of paternity to the husband. If there is no DNA, both the putative and the legal fathers can sign an entry of appearance or a consent or can voluntarily terminate parental rights in court or both could sign an entry of appearance, denying paternity.
5. What happens if the mother does not know who the biological father is?
 - A. The birth mother would be asked to identify potential biological fathers. Testing of DNA on behalf of the child and potential biological father could be obtained. If positive identification of the biological father cannot be determined, the birth mother is allowed to terminate her parental rights. This would be a legal risk adoption
In a case without an identified birth father, the attorney or agency may choose to wait a full 60 days before going to court to terminate the rights of the mother. Should a father assert his rights after 60 post-partum days, it would be a very difficult challenge and would probably not be successful. Five criteria might allow him a successful challenge: if they have lived together, have married, he put his name on the birth certificate, paid medical bills, or he asserts his rights within those first 60 days.

6. What happens if the mother refuses to give the name of the biological father?
 - A. The birth mother can terminate her parental rights. This would be a legal risk adoption. (Some adoption agencies choose not to work with birth mothers who refuse to name the biological father.)

In a case without an identified birth father, the attorney or agency may choose to wait a full 60 days before going to court to terminate the rights of the mother. Should a father assert his rights after 60 post-partum days, it would be a very difficult challenge and would probably not be successful. Five criteria might allow him a successful challenge: if they have lived together, have married, he put his name on the birth certificate, paid medical bills, or he asserts his rights within those first 60 days.
7. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?
 - A. The biological father can make known his intentions to make an adoption plan. However, he must follow the procedure(s) outlined by law to terminate his parental rights.
8. Can the birth father change his mind before signing the legal consents to the adoption?
 - A. The birth father can change his mind anytime prior to the judge's signature terminating parental rights.
9. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?
 - A. A minor birth father must have a "next friend" in order for parental rights to be terminated. If his parents are not present, there is typically a Guardian ad Litem present.
10. Can the birth father change his mind after signing the legal consents to the adoption?
 - A. The birth father cannot change his mind after the judge signs the Order terminating his parental rights.
11. Describe the process for doing an involuntary termination of a legal father or named birth father's rights.
 - A. The agency or attorney would wait 90 days before filing in court. The legal or named birth father would be notified of the proceedings by a court appointed Warning Order Attorney. If he does not show and he meets the statute requirements (he doesn't live with the birth mother, they don't marry, his name is not on the birth certificate, he has not paid any medical bills and he has not asserted his rights within 60 days), it is assumed that he has no rights and the court would do an involuntary termination of his parental rights.
12. Describe the process for making a diligent effort to find the birth father if the birth mother knows the identity of the birth father but he cannot be located.

A. The term “diligent effort” is not a phrase in Kentucky law. The agency or attorney would ask the court to appoint a Warning Order Attorney. The Warning Order Attorney has 50 days after the date of appointment to notify the birth father. If he cannot be located, the court would terminate.

13. Describe the process for terminating the rights of the birth father in the event of a rape.

A. The process is no different.

ADOPTIVE PARENT RELATED

1. Who can be an adoptive parent and who selects them?

A. A Kentucky licensed adoption agency approves adoptive parents based upon KRS 199.640 and 905 KAR 1.310 and the Cabinet for Health and Family Services regulations. Birth parents may choose the adoptive parents. In an independent adoption, the Cabinet for Health and Family Services issues final approval of the adoptive parents.

2. What information about the birth parents and the child must be provided to the adoptive parents?

A. Non-identifying information found on the DSS-191 must be provided to the adoptive parents. Examples include childhood developmental history, hobbies, height, weight, hair and eye color, education, reason for adoption plan, medical history, and drug use (if applicable).

3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?

A. The adoptive parents must be in Compliance with KRS 199.640 and 905 KAR 1.310 and the Cabinet for Health and Family Services regulations. For example, personal references, credit references, criminal records checks, child abuse/neglect clearance, physically and mentally healthy. They can't be on welfare, can't believe in physically punishing a child and they can't have a criminal background.

4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?

A. Yes. If the adoptive parents are also approved as foster parents for the adoption agency, the child may be voluntarily committed to the custody of the adoption agency. The agency can make the foster/adoptive placement prior to termination of parental rights

They can't be on welfare, can't believe in physically punishing a child and they can't have a criminal background.

5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?

- A. The birth parents have no legal rights after termination of their parental rights. Communication could be prevented by the adoptive parents until the child is of legal age.
6. Under what circumstances can an adopted child communicate with the birth parents?
- A. In an open adoption agreement, the adopted child can communicate with the birth parents.
7. What information must the birth parents provide to the adoptive parents?
- A. The birth parents are encouraged to fill out all the information on the DSS-191.
8. Who supervises the adoptive placement and for how long?
- A. The adoption agency supervises the adoptive placement. This is called post-placement supervision. In an agency adoption, a minimum of two post-placement visits must be made prior to finalization. The law states post-placement visits must be made on a monthly basis, so they will take place until the adoption is finalized. In an independent adoption only one post-placement visit must be made and a court report filed.
9. When is the adoption final?
- A. There is no minimum time frame to wait for the adoption to be finalized provided the birth parents no longer have legal rights to the child and two post-placement visits have been made.

OTHER ADOPTION RELATED QUESTIONS

1. Who initiates the adoption process?
- A. A birth parent may initiate the adoption process.
2. When are the legal adoption papers filed with the court?
- A. After the consents are signed by the birth parents or termination occurs.
3. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?
- A. For a known birth mother and birth father, they must both agree to the termination of parental rights, except in the case of involuntary termination of parental rights.
4. What happens if the birth parents do not agree on the adoption plan?
- A. The birth mother and birth father must agree on the adoption plan, except in the case of involuntary termination of parental rights.
5. Who can charge a fee for bringing birth parents and adoptive parents together?

- A. Licensed adoption agencies may charge a fee.
- 6. Is the use of a non-licensed facilitator, non-licensed child-placing agencies, permitted to match adoptive families and birth families?
 - A. No.
- 7. Are independent adoptions allowed?
 - A. Yes.
- 8. How are independent and agency adoptions different?
 - A. In an independent adoption, the birth parents and adoptive parents have personal contact to initiate an adoption plan. The birth parents may sign a consent to adoption rather than appear in court to terminate their parental rights. The DSS-187 initiates the independent adoption process. For an independent adoption, refer to 922 KAR 1:010. Typically, the birth parent does not receive the support and counseling provided by an adoption agency.
- 9. How does an adoptee go about requesting access to their adoption file?
 - A. The adoptee must contact the Cabinet for Health and Family Services to make an Open Records Request.