

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 even after the baby is born and up to any age of a child under 18. The Petition to voluntarily terminate her rights by a court proceeding or a consent (an affidavit agreeing to the termination of her rights) can only be signed and filed after the baby is seventy-two (72) hours old.

2. Can the birth mother choose the adoptive parents?

A. Yes, although this is a very personal decision. Ideally, the birth mother and birth father agree upon whom they choose as the adoptive parents. Some birth mothers will want to be involved in that process and others won't.

3. Can the birth mother see and hold the baby after the birth?

A. Yes, she has the perfect right to do that and even if she has entered into an adoption plan, she has the right to change her mind up until she has filed a Petition to Terminate Rights. When such a Petition has been filed, then the issue before the Judge becomes, "what is in the best interest of the child?"

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 in either an agency or an independent adoption. Examples include rent, utilities, and food. Typically, the birth parents must provide documentation to the agency or the attorney and the agency or attorney 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. Yes. A minor birth mother (and/or a minor birth father) must have a "next friend" (anyone over the age of 18 and preferably, but not necessarily, related to the birth parent) sign legal documents in order for parental rights to be terminated. She/He must also have a *guardian ad litem* (GAL) appointed by the Court and the "next friend" and the GAL must be present at a termination of parental rights hearing.

6. When does the birth mother actually sign the legal documents required for the adoption?

A. Initially, it should be noted that there are two procedures that birth parents can choose, both of which will result in the termination of their parental rights. Kentucky law provides for the court ordered termination of parental rights. This procedure involves the birth mother filing a petition for the voluntary termination of her parental rights. If the birth father admits paternity, he would join in that petition. If the birth father denies paternity but his identity is

known, then the birth mother would also file a petition to involuntarily terminate the birth father's rights. Even if the birth father is unknown, Kentucky law provides for the termination of any man's rights to the child if no man has taken certain steps to establish paternity. Those steps must be taken by the birth father within sixty (60) days of the date of birth. The birth parent(s) physically appear in front of the judge and the judge enters an order terminating parental rights.

The other procedure which results in the termination of parental rights is the signing of a Voluntary and Informed Consent to the termination of the birth mother's (and the birth father's, if applicable) parental rights. In that procedure, the document is a "substitute" for the order and judgment terminating parental rights which would result if the first procedure has been chosen. After signing such a Consent, there is a revocation period. That period runs twenty (20) days after signing if the prospective adoptive parents have been approved by Kentucky's Cabinet for Health and Family Services. If they have not been approved yet at the time the birth mother signs the Consent, the 20 days begins to run from the date of the approval letter from the Cabinet.

In either procedure, after the birth of the child, a waiting period of seventy-two (72) hours is required before either of the documents referred to above can be signed. If the termination procedure is chosen, at the court date, if the judge believes the birth mother is knowingly and willingly agreeing to the termination of her parental rights, the judge will sign an order terminating her 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 unless fraud has been involved.

In an independent adoption, the birth mother may go to court and it would be as above. Or another method would be that the birth mother may sign a Voluntary and Informed Consent agreement as referred to above 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 on the order which terminates the parental rights. However, as stated in Section 3, the birth mother has the perfect right to see and hold the baby after birth and even if she has entered into an adoption plan, she has the right to change her mind up until she has filed a Petition to Terminate Rights. When such a Petition has been filed, then the issue before the judge becomes, "what is in the best interest of the child?" and thus the judge could terminate her rights after she has filed the Petition even against her wishes if the judge determined that it was in the child's "best interest."

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 or 20 days after the consent has been signed, whichever last

occurs. The consent to adoption may only be withdrawn if written notification is made by the birth parent prior to those 20 days referred to above. If the written revocation is not made, 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. If the birth parents are not married, there is no legal presumption that the birth father is the birth father and thus he can deny paternity but agree to the termination of his parental rights, if any. 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. However, Kentucky law has provisions for terminating the parental rights of any “unknown” or “unnamed” birth father. There is, on average, a 60 days after birth waiting period in order to accomplish this.

Since it is difficult to do an involuntary termination in Kentucky, if the birth father is contesting the adoption, then the termination of his rights, and thus the adoption, will be difficult to accomplish, unless the court finds that he is “unfit.”

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 “Biological Parent Consent Form” (DPP-192 form), which is provided by the Commonwealth of Kentucky. In this two part form, the birth mother either consents, or does not consent, to her records being made available to the child once the “child” reaches 21 years of age. Also, the birth mother either consents, or does not consent, to the 21 year old or older child having personal contact with her. These choices, unlike the termination of her right or the adoption, may be revoked or altered at any time prior to the 21 plus year old “child” making the inquiry through the Cabinet for Health and Family Services.

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, or she may truly not know the identity of the birth father. However, birth mothers are encouraged to advise the agency or the attorney of the identity of the birth father in order 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. Some birth mothers prefer not to have contact with the birth father and the agency or attorney will attempt to make that contact. If the birth father is known and identified, but the birth mother is unsure of his present location, the court will also appoint a Warning Order

Attorney to send a letter and attempt to notify the birth father of the pendency of the termination proceedings or the pendency of the adoption proceedings. If the birth father is unknown or unnamed, the best procedure is to wait 60 days after birth to terminate his parental rights.

3. Can the father of the baby choose the adoptive parents?

- A. Ideally, the birth mother and birth father agree upon whom they choose as the adoptive parents; however, much more often than not, the birth mother makes that choice.

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 named (putative) father could be the birth father, or there could be multiple putative fathers.

In any termination of parental rights case, the parental rights of both the birth father and the legal father must be terminated in order to allow a subsequent adoption. Occasionally, it may be necessary to take that step in the adoption case rather than in the termination case. If DNA testing shows that the putative father is the biological father, DNA testing can overcome the presumption of paternity to the husband. If there is no DNA test, both the putative and the legal fathers can sign an entry of appearance and a Voluntary and Informed Consent Agreement or they can voluntarily terminate their parental rights in court or both could sign a Waiver and Disclaimer denying paternity and an Entry of Appearance.

However, there is a recent Kentucky case that holds that the marriage creates a legal presumption of paternity no matter if DNA testing proves that a man who is not the husband is the father and that case held that the unmarried biological father had no rights.

5. What happens if the mother does not know who the biological father is?

- A. This would be a legal risk adoption unless the birth father's rights are terminated.

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 and any putative birth father (literally, any man). 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 sixty (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. If he intends to parent he can, and should, memorialize his intent to the birth mother or to the agency or attorney. If he does not plan to parent and denies paternity, he can sign a waiver and disclaimer of paternity at any time prior or subsequent to birth
- 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. Yes. A minor birth father must have a "next friend" (anyone over the age of 18 and preferably, but not necessarily related to the birth parent sign legal documents) in order for parental rights to be terminated. He must also have a *guardian ad litem* (GAL) appointed by the court and the "next friend" and the GAL must be present at a termination of parental rights hearing.
- 10. Can the birth father change his mind after signing the legal consents to the adoption?**
 - A. For an agency adoption, the birth father can change his mind at any point before the judge signs the Order terminating his parental rights.

In an independent adoption, the consent to adoption signed by the birth father is final and irrevocable 20 days after the Cabinet for Health and Family Services approves the adoption placement or 20 days after the consent has been signed, whichever last occurs. The consent to adoption may only be withdrawn if written notification is made by the birth father prior to those 20 days referred to above. If the written revocation is not made, it becomes final and irrevocable.
- 11. Describe the process for doing an involuntary termination of a legal father's or named birth father's rights.**
 - A. The birth mother would file a Petition to Involuntarily Terminate the rights of either. If either can be "served" (by the sheriff or by certified mail) with a Summons and a copy of the Petition, he has 20 days from that date to file an Answer. If he denies that his rights should be terminated, then a hearing is held and the judge decides. If he agrees his rights should be terminated, then they will be. If the address of either is unknown or service cannot be had upon either, the legal or named birth father would be notified of the proceedings by a court appointed Warning Order Attorney. If he does not file an Answer and he meets the statute requirements (he doesn't live with the birth mother; they don't marry; he himself has not placed his name on the birth certificate; he has not paid any medical bills by statute; and he has not asserted his rights within 60 days), it is assumed that he has no rights and the court would involuntarily terminate 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. However, contacting others who might know his whereabouts, sending letters to his relatives' homes, doing internet searches, and such would be examples. If he is still not found, 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 and report back to the court of the efforts made (when and where the letter to him had been sent, internet searches, etc.) It is incumbent upon the birth mother and the agency or attorney to provide a last known address as best possible. Failure to make that good faith effort could jeopardize the termination of his rights and thus the adoption. If he cannot be located, the court would then terminate his rights.

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

- A. If the assailant is known, the process is no different. If the assailant is not known, the safest procedure would be to wait sixty (60) days after birth and then terminate his rights by setting out the facts of a rape in the Petition. Sometimes under the circumstances of a rape, the proceedings will progress more rapidly and the court may not even require the wait of the 60 days.

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, based upon similar statutes and regulations. There is a formula to determine in an independent adoption whether the Cabinet will do the birth parent interview and the prospective adoptive parent home study for free. A rule of thumb is if the prospective adoptive parents have no children and their combined gross income is under \$40,000.00 per year, the Cabinet will provide this service for free. Otherwise, the prospective adoptive parents must employ a licensed Kentucky adoption agency to do the birth parent interview and the home study. Birth parents may choose 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 DPP-191 form 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 of the birth parents and relatives, 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 must be able to provide for a child financially and emotionally and they can't have any serious criminal violations.

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

- A. Yes, in an agency adoption; 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

In an independent adoption, the child may go to the prospective adoptive parents once the Cabinet has approved the prospective adoptive parents, or in the alternative, if the prospective adoptive parents are in the process of being approved, the attorney can file a lawsuit and secure a Temporary Custody Order Pending Adoption.

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 and even through a Court Order if that would become necessary until the child is of legal age.

6. Under what circumstances can an adopted child communicate with the birth parents?

- A. Usually those arrangements are agreed upon as part of the adoption plan and prior to birth. However, as stated, birth parents have no rights to that “communication” once their rights have been terminated, no matter what has been the prior agreement. 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 DPP-191 as described in answer to Question 2.

8. Who supervises the adoptive placement and for how long?

- A. In an agency adoption, 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 that 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 must be filed with the court prior to the adoption hearing.

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 (with an agency) and when the Court Report has been filed in an independent adoption. The prospective adoptive parents go to court and the judge enters a Judgment of Adoption.

OTHER ADOPTION RELATED QUESTIONS

1. Who initiates the adoption process?

- A. Either a birth parent or prospective adoptive parents may initiate the adoption process by contacting an agency, or by contacting an individual, such as an attorney, in an independent placement.

- 2. When are the legal adoption papers filed with the court?**
 - A. After the consents are signed by the birth parents and the revocation period has expired or after termination of parental rights has occurred by a court order if a Petition for Voluntary Termination has previously been filed.
- 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. In an involuntary termination, the birth parent(s)' rights may be terminated without their consent if the child has been abandoned, injured by the birth parent, failed to provide for the child, or has allowed the child to be sexually abused.
- 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 are the only entities or people who may charge a fee for bringing birth parents and adoptive parents together.
- 6. Is the use of a non-licensed facilitator, non-licensed child-placing agencies, permitted to match adoptive families and birth families?**
 - A. Not in Kentucky.
- 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 may have personal contact to initiate an adoption plan. The birth parents may sign a Voluntary and Informed Consent to adoption rather than file a Petition to Voluntarily Terminate their parental rights and appear in court to terminate their parental rights. The DPP-187 form initiates the independent adoption process. For an independent adoption, refer to 922 Kentucky Administrative Regulations (KAR) 1:010.
- 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 as described previously herein, but only after the adoptee has reached 21 years of age. The information will only be provided to such an "adult adoptee" if the birth parent has consented to that being done.