

Frequently Asked Questions about Adoption in Mississippi

BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?

A. The birth mother can do any number of things to plan for an adoption. However, the most important form, the parents' surrender of parental rights and consent to an adoption, cannot be signed until seventy-two (72) hours after the birth of the child.

2. Can the birth mother choose the adoptive parents?

A. Yes.

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?

A. Adoptive parents can pay legal fees approved by the court, reasonable and actual hospital charges for services rendered in connection with the medical treatment of the child to the physician or the hospital which rendered the services. See Miss. Code Ann. § 43-15-23 (4). There is no specific statute in Mississippi governing the expenses the adoptive parents pay on behalf of the birth mother and child. Reasonable and necessary living expenses are the usual items paid. These expenses are often paid by the adoptive parents into a trust account at the licensed child-placing agency or a trust account at the attorney's office. See Miss. Code Ann. §§ 43-15-23 (2) and (3) (1972).

5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?

A. Birth parents are considered adults for all purposes pertaining to termination of their parental rights and consenting to an adoption. See Miss. Code Ann. § 93-15-103 (2) and Miss. Code Ann. § 93-17-5 (1).

6. When does the birth mother actually sign the legal documents required for the adoption? Describe the process of signing the legal termination documents.

A. The birth mother may sign not before 72 hours after the birth of the child. See Miss. Code Ann. § 93-17-5 (1) and Miss. Code Ann. § 93-17-9.

Once the birth mother signs it must be notarized. Once notarized and signed, there is not a revocation period; the surrender is legally binding.

7. Can the birth mother change her mind before signing the legal consents to the adoption?

A. The birth mother can change her mind any time up to the point she signs the surrender of parental rights and consent to adoption.

8. Can the birth mother change her mind after signing the legal consents to the adoption?

A. Once the consent for an adoption has been signed, birth parents cannot change their mind. The signature is irrevocable except in extreme situations such as fraud. See Miss. Code Ann. § 93-17-9.

9. Can the birth mother communicate with the adoptive parents and child after the adoption?

A. Nothing in Mississippi law prohibits communication between the mother and the child. However, agreements authorizing such communication are not enforceable.

10. Can a birth mother anonymously surrender a newborn child?

A. Yes. Mississippi has a Safe Haven law.

11. What happens if the birth parents do not agree that adoption should be the plan?

A. Both parents need to be in agreement before they make an adoption plan. Both are included in counseling and the planning process. If one or both parents disagree with the adoption, the burden will be on the agency or the adoptive parents to present proof in court sufficient to terminate their parental rights. Once the birth parents have surrendered their parental rights, they have no rights whatsoever regarding the child. Their agreement or disagreement is irrelevant at that point.

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. Birth parents can file an affidavit either authorizing the state to give or prohibit the state from giving identifying information to the adopted child. A Centralized Adoption Registry houses the affidavit and the following information:

- a) The medical and social history of the birth parents, including information regarding genetically inheritable diseases or illnesses and any similar information furnished by the birth parents about the adoptee's grandparents, aunts, uncles, brother and sister;
- b) A report of any medical examination which either birth parent had within one (1) year before the date of the petition for adoption, if available;
- c) A report describing the adoptee's prenatal care and medical condition at birth, if available; and
- d) The medical and social history of the adoptee, including information regarding genetically inheritable diseases or illnesses, and any other relevant medical, social and genetic information.

The birth parent may also file with the bureau at any time any relevant supplemental non-identifying information about the adoptee or the adoptee's birth parents, and the bureau shall maintain this information in the centralized adoption records file.

BIRTH FATHER RELATED

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?

A. There is no requirement in Mississippi law that the birth father be notified of the birth or of the mother's intention to place the child for adoption. However, withholding this information from the birth father could give him a valid defense to determination of his parental rights. Of course, the birth father must be given legal notice of court proceedings once an action is filed for the termination of his parental rights and/or for the adoption of the child.

2. How is the father of the baby notified of the mother's adoption plan?

A. As a practical matter, adoptive parents, attorneys, or social workers are usually seeking out the father to try and obtain his consent to the adoption. Of course, the birth father must be given legal notice of court proceedings once an action is filed for the termination of his parental rights and/or for the adoption of the child.

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

A. There is nothing in Mississippi law that prohibits the birth father from participating in the choice of 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 the man that is married to the birth mother at time of conception or delivery and/or named on the birth certificate of the baby or has filed a paternity action. The named birth father (putative father) is the man that the birth mother names or comes forward and has to prove paternity. Both the legal father and known or unknown putative fathers would have to consent or have their parental rights terminated for the adoption to take place in Mississippi.

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

A. Mississippi law has a specific procedure set out to deal with the parental rights of the father of the child born out of wedlock. Obviously, this would be the situation if the mother does not know the identity of the biological father. This procedure is entitled a Petition for Determination of Rights. In the case of a child born out of wedlock, the father shall not have a right to object to an adoption unless he has demonstrated, within the period ending thirty (30) days after the birth of the child, a full commitment to the responsibilities of parenthood. Determination of the rights of the father of a child born out of wedlock may be made in proceedings pursuant to a petition for determination of rights as provided in Miss. Code Ann. § 93-17-6. A petition for determination of rights may be used to determine the rights of alleged fathers whose identity is unknown or uncertain. In such cases the court shall determine what, if any, notice can be and is to be given such persons. Determinations of rights under the procedure of this section may also be made under a petition for adoption. See Miss. Code Ann. § 93-17-6 (7).

6. What happens if the mother refuses to give the name of the biological father?

- A. There is no specific provision of Mississippi law dealing with this situation. It would likely be handled under Miss. Code Ann. § 93-17-6 (1972) Petition for Determination of Rights as mentioned above.

7. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born? What are the steps that the birth father must take if he intends to parent the child?

- A. There is no legal procedure in place for the father to give such notice. As a practical matter, a father wishing to avoid an adoption can file a request for a restraining order. This is very effective in preventing the adoption from going forward until he has a full opportunity to be heard in court.

The sole matter for determination under a petition for determination of rights is whether the alleged father has a right to object to an adoption as set out in Miss. Code Ann. §§ 93-17-5(3)(4). Proof of an alleged father's full commitment to the responsibilities of parenthood would be, in accordance with his means and knowledge of the mother's pregnancy or the child's birth, that he either:

- a) Provided financial support, including, but not limited to, the payment of consistent support to the mother during her pregnancy, contributions to the payment of the medical expenses of pregnancy and birth, and contributions of consistent support of the child after birth; that he frequently and consistently visited the child after birth; and that he is now willing and able to assume legal and physical care of the child; or
- b) Was willing to provide such support and to visit the child and that he made reasonable attempts to manifest such a parental commitment, but was thwarted in his efforts by the mother or her agents, and that he is now willing and able to assume legal and physical care of the child.

8. Can the birth father change his mind before signing the legal consents to the adoption?

- A. Yes.

9. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?

- A. Yes. Any consent to adoption must be signed at least 72 hours after the birth of the child. See Miss. Code Ann. § 93-17-5 (1).

10. Can the birth father change his mind after signing the legal consents to the adoption?

- A. Once the birth parents have surrendered their parental rights, they have no rights whatsoever regarding the child. Their agreement or disagreement is irrelevant at that point.

11. Describe the process for doing an involuntary termination of a legal father's or named birth father's rights.

- A. Doing a diligent search as described in Question 12 below. Publish in the newspaper the court of jurisdiction uses that rights will be terminated on all known and unknown putative fathers. Submitting to the court the Petition for Termination on all known or unknown putative fathers' rights. Waiting to see if there is a petition for determination

of rights. If the court determines that the alleged father has not met his full responsibilities of parenthood as in Question 7 above, it shall enter an order terminating his parental rights and he shall have no right to object to an adoption under Miss. Code Ann. § 93-17-7.

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. Sending a certified letter to last known address of the birth father, contacting any known relatives of the birth father, contacting all persons in phone book with same last name, checking with local law enforcement agencies for any known information, outstanding warrants, etc., checking with branches of military services for any information on known father. Then last you would publish in the newspaper the court of jurisdiction uses that rights will be terminated on all known and unknown putative fathers.

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

- A. There is no specific provision of Mississippi law dealing with this situation. But refer to the process described in Question 11 which would be conducted on all unknown fathers.

ADOPTIVE PARENT RELATED

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

- A. Unmarried adults may adopt. Married couples may adopt as long as both of them join in the adoption petition. Same gender couples may not adopt. There is no official selection process in Mississippi. Adoption cases come before the court and the Judge either grants or denies the adoption. The court may or may not require a home study. Many adoptions involve licensed adoption agencies. In that case, there are many other requirements to being approved as adoptive parents. Most adoption agencies allow birth parents to participate in the selection of adoptive parents. Adoption by couples of the same gender is prohibited. See Miss. Code Ann. § 93-17-3 (2).

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

- A. Mississippi law requires that the court be provided with the doctor's certificate, and a sworn statement listing the child's property and a four-page medical and history form. Good practice dictates that the adoptive parents are given as much information as possible, taking into account confidentiality. If an agency receives a report from a physician stating that a birth parent or another child of the birth parent has acquired or may have a genetically transferable disease or illness, the agency shall notify the bureau and the appropriate licensed adoption agency, and the latter agency shall notify the adoptee of the existence of the disease or illness, if he or she is twenty-one (21) year of age or over, or notify the adoptee's guardian, custodian, or adoptive parent if the adoptee is under age twenty-one (21).

If an agency receives a report from a physician that an adoptee has acquired or may have a genetically transferable disease or illness, the agency shall notify the bureau and the appropriate licensed agency, and the latter agency shall notify the adoptee's birth parent of the existence of the disease or illness.

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

A. At any time after the filing of the petition for adoption and completion of process, and before the entering of a final decree, the court may, in its discretion, require an investigation and report to the court to be made by any person, officer, or home as the court may designate and direct concerning the child and shall require in adoptions, other than those in which the petitioner or petitioners are a relative or stepparent of the child, that a home study be performed of the petitioner or petitioners by an adoption agency licensed in this state, at the petitioner's or petitioners' sole expense and at no cost to the state or county. The investigation and report shall give the material facts upon which the court may determine whether the child is a proper subject for adoption, whether the petitioner or petitioners are suitable parents for the child, whether the adoption is to its best interest and any other facts or circumstances that may be material to the proposed adoption. The home study shall be considered by the court in determining whether the petitioner or petitioners are suitable parents for the child. The court may also appoint a *guardian ad litem* in some cases. Miss. Code Ann. § 93-17-11.

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

A. Yes. Birth mothers routinely sign appropriate forms while in the hospital to allow the child to be released to the adoptive parents, even prior to the 72 hour limit.

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

A. Yes. Agreements which specify visitation or communication are not enforceable by law.

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

A. The parties are free to agree to any type communication or visitation. Even if the adoptive parents agree, birth parents cannot force such communication or visitation period.

7. What information must the birth parents provide to the adoptive parents?

A. The medical and social history form must be filed with the adoption and also supplied to the state, but there is no method in forcing a birth parent to giving any substantive information. As a practical matter, birth mothers routinely provide the required information as a service to the court, the adoptive parents, the social worker, and their child.

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

A. There is no requirement for supervision. Certain interstate adoptions require that post placement visits be performed. Adoptions involving licensed adoption agencies typically will require some level of post placement supervision.

9. When is the adoption final?

A. The adoption is final when the judge signs a Final Decree of Adoption. It is theoretically possible for an adoptive family who meets the requirements to adopt in Mississippi to finalize an adoption 72 hours and a few minutes after the birth of the child. They are usually done 5 or 6 days after the birth of the child if both parents consent.

Mississippi law provides for a six (6) month waiting period prior to finalization, but may be waived/reduced by the judge. This waiting period is routinely waived, especially in infant adoptions. Interstate placements will often necessitate a longer period of time to deal with the appropriate paper work.

OTHER ADOPTION RELATED QUESTIONS

1. Who initiates the adoption process?

A. Adoption agencies and attorneys can conduct adoption in Mississippi. Adoption Facilitators are allowed to arrange adoptions in Mississippi, but not collect a fee. Many adoptive parents and even birth parents will find each other and arrange an independent adoption with an adoption attorney.

2. When are the legal adoption papers filed with the court?

A. Typically, the defining event is obtaining consent from one or both parents. An adoption is typically filed after the consents are obtained.

3. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?

A. Yes. The most common situation would be where the child has been taken away from the natural parents by the Department of Human Services or placed at a private residential facility by the parent. Then, a separate action can be instituted against the natural parents to terminate their parental rights. The child can be placed with potential adoptive parents at some point during this process. Often, in cases involving the Department of Human Services, foster parents adopt a child that has been placed in their care months or years previously.

4. What happens if the birth parents do not agree on the adoption plan?

A. Presumably, an adoption agency or the potential adoptive parents have filed a Termination of Parental Rights procedure, or an adoption. If one or both parents disagree with the adoption, the burden will be on the agency or the adoptive parents to present proof in court sufficient to terminate their parental rights.

5. Who can charge a fee for bringing birth parents and adoptive parents together?

A. Only adoption agencies licensed by the Mississippi Department of Human Services are authorized to charge a fee for this service. See Miss. Code Ann. § 43-15-23 (2).

6. Is the use of a non-licensed facilitator, non-licensed child-placing agencies, permitted to match adoptive families and birth families?

A. There are no restrictions on who can match adoptive families and birth parents. However, only licensed agencies can charge a fee for providing these services (see Question 5 above).

7. Are independent adoptions allowed?

A. Yes.

8. How are independent and agency adoptions different?

A. Agency adoptions involve a lengthy and relatively expensive screening procedure for potential adoptive parents. Agencies typically offer a much higher level of services to

birth parents, including counseling, medical care or even room and board at a maternity care center.

Independent adoptions, by definition, are simply adoptions that do not involve an adoption agency. These range from very simple adoptions to very complicated and expensive interstate adoptions. A simple independent adoption might involve the adoption of a child by their grandparents where both natural parents consent. The entire court file might only contain 12 or 15 pages. There is no home study, no waiting period, and very little investigation into the situation. An example of a complicated independent adoption would involve an interstate placement where the adoptive parents travel to another state, pick up the child from the hospital, wait for approval from both states before traveling home (the Interstate Compact for the Placement of Children) and finalize the adoption in their home state. Attorneys from both states will likely have to be hired. ICPC approval would require that a home study be done and many other documents provided.

9. How does an adoptee go about requesting access to their adoption file?

- A. The Mississippi Bureau of Vital Records maintains adoption records. Birth parents can file affidavits authorizing or prohibiting contact with the adopted child. A procedure is set out in the Mississippi Confidentiality Act. Miss. Code Ann. § 93-17-201 et seq. specifies how an adopted child goes about attempting to contact a natural parent.

If the bureau does not have on file an affidavit either authorizing release of identifying information or prohibiting such release and any further contact from each known birth parent for whom information is sought, or a notice that such birth parent has been contacted once and has refused to authorize the release of confidential information, then the adoptee may request the agency to undertake a search for the birth parent who has not filed an affidavit or who has not been contacted. The licensed agency shall not inform any person other than the birth parents of the purpose of the search. The licensed agency may charge the adoptee a reasonable fee for the cost of the search.