

USAACE & Fort Rucker Preventative Law Program

Adoption

THIS PAMPHLET contains basic information on this particular legal topic for your general information. If you have specific questions, contact the Legal Assistance Office.



Legal Assistance Office Client Services Division

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A. INTRODUCTION.

This pamphlet is designed to give you the basic understanding of the adoption process. Although it may contain most of the information you need, you should consult an attorney on this process. While a Legal Assistance Attorney may be able to give you general guidance, a local civilian attorney may be most appropriate to assist with your needs. A referral list of local area attorneys may be obtained at the legal assistance desk, or by calling (334) 255-3482 during duty hours.

B. THE ROLE OF THE LEGAL ASSISTANCE ATTORNEY.

In order to adequately serve our clients, on a broad range of issues, Army Regulation 27-3 limits the role of the Legal Assistance Attorney. Although we are prohibited from representing you in a civilian court, we can provide general guidance and advice.

C. COUNSELING SERVICES.

1. Department of Human Resources

The Alabama Department of Human Resources (DHR) can be a valuable source of information for the adoption process. The DHR specialize in the adoption of children placed in foster homes or who were abandoned. For more information, you may contact the DHR of Coffee County at (334) 347-5823, or Dale County at (334) 445-4900.

2. Civilian Attorneys

Civilian attorneys may specialize in the adoption process and may have other information that may meet the needs of your individual situation. They are also licensed to practice in state court and can file documents for you or appear in court on your behalf. Should you desire, our office can provide you with a referral list for local civilian attorneys.

3. Adoption Placement Agencies

There are several adoption placement agencies in the area, some specializing in different types of adoption. The following agencies may be a good resource for your unique situation:

Adoption Placement Catholic Social Services
(205) 367-8184 (334) 793-3601

Friends of Adoption Resources Agape
(205) 870-7093 (334) 393-1990 / (800) 276-5826

Villa Hope (*assisting in U.S. and Overseas Adoption*)
(205) 870-7359

4. Chaplain

The Chaplain is a great resource for assistance and counseling in all areas of family support. Army Chaplains may counsel the new family during the adjustment period as well as any other issues that may arise. You may contact your Unit Chaplain, or you can call the Fort Rucker Chaplain's office at (334) 255-2989 or (334) 255-2012.





D. ADOPTION

1. Who may adopt. [Alabama Code § 26-10A-5]

(a) Any **adult person** or **husband and wife jointly** who are adults may adopt a **minor**.

(1) **No rule or regulation** of the Department of Human Resources shall prevent an adoption by a person **solely because the person is employed outside the home**, provided however, the Department of Human Resources may exercise sound discretion in requiring the person to remain in the home with a minor for a reasonable period of time when a particular minor requires the presence of that person to ensure his or her adjustment. Provided, however, the reasonable period of time shall not exceed 60 consecutive calendar days.

(2) **No rule or regulation** of the Department of Human Resources or any agency shall prevent an adoption by a **single person** solely because such person is single or shall prevent an adoption **solely because such person is of a certain age**.

(3) Provided however, in cases, **where one who purports to be the biological father** marries the biological mother, on petition of the parties, the **court shall order paternity tests** to determine the true biological father. If the court determines by substantial evidence that the biological father is the man married to the biological mother, then the biological father shall be allowed to adopt the child without the consent of the man who was married to the biological mother at the time of the conception or birth of the child, or both, when the court finds the adoption to be in the best interest of the child.

(b) **Any adult** may petition the court to adopt another **adult** as provided in this chapter.

2. Who may be adopted. [Alabama Code § 26-10A-6]

(1) A **minor**.

(2) An **adult** under any one of the following conditions:

a. He or she is totally and permanently **disabled**.

b. He or she is determined to be mentally **retarded**.

c. He or she **consents** in writing to be adopted and is **related** in any degree of kinship, as defined by the intestacy laws of Alabama, or is a **stepchild** by marriage.

d. He or she **consents** in writing to be adopted by an adult man and woman who are **husband and wife**.

E. ADOPTION PROCEDURES

1. Person Whose Consents or Relinquishments is Required

(a) The **adoptee** (if 14 years or older, unless court finds he or she lacks capacity to consent)

(b) The adoptee's **mother**;



(c) The adoptee's **presumed father**, *regardless of paternity*, if:

1. He and the adoptee's mother are or have been married to each other and the adoptee was **born during the marriage**, or **within 300 days** after the marriage was terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation was entered by a court; or

2. Before the adoptee's birth, he and the adoptee's mother have **attempted to marry** each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

i. If the attempted marriage **could be declared invalid only by a court**, the adoptee was born **during the attempted marriage**, or **within 300 days** after its termination by death, annulment, declaration or invalidity, or divorce; or

ii. If the attempted marriage is **invalid without a court order**, the adoptee was born **within 300 days** after the termination of cohabitation; or

3. After the adoptee's birth, he and the adoptee's mother **have married**, or **attempted to marry** each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

i. With his knowledge or consent, he was named as the adoptee's father on the adoptee's **birth certificate**; or

ii. He is **obligated to support** the adoptee pursuant to a **written voluntary promise or agreement** or by **court order**; or

4. He **received the adoptee into his home** and openly held out the adoptee **as his own child**;

(4) The **agency to which the adoptee has been relinquished** or which holds permanent custody and which has placed the adoptee for adoption, except that the court may grant the adoption without the consent of the agency if the adoption is in the best interests of the adoptee and there is a finding that the agency has unreasonably withheld its consent; and

(5) The **putative father** if made known by the mother or is otherwise made known to the court provided he complies with Section 26-10C-1 and he responds within 30 days to the notice he receives under Section 26-10A-17(a)(10).

*A **petition to adopt an adult** may be granted only if written consent to adopt has been executed by the adult seeking to adopt and his or her spouse or by the guardian or conservator of the adult sought to be adopted pursuant to the requirements of Sections 26-10A-6 and 26-10A-11.*

2. **Implied Consent.** [Alabama Code § 26-10A-9]

(a) A consent or relinquishment **may be implied** by any of the following acts of a parent:

(1) **Abandonment of the adoptee.** Abandonment includes, but is not limited to, the failure of the father, with reasonable knowledge of the pregnancy, to offer financial and/or emotional support for a period of six months prior to the birth.





(2) Leaving the adoptee **without provision for his or her identification** for a period of **30 days**

(3) Knowingly **leaving the adoptee with others** without provision for support and without communication, or not otherwise maintaining a significant parental relationship with the adoptee for a period of **six months**.

(4) **Receiving notification** of the pendency of the adoption proceedings under Section 26-10A-17 and **failing to answer** or otherwise respond to the petition within 30 days.

(5) Failing to comply with Section 26-10C-1.

(b) Implied consent under subsection (a) may not be withdrawn by any person.

(c) A person whose consent is not required. [Alabama Code §26-10A-10]

(1) A parent **whose right** with reference to the adoptee **have been terminated** by operation and in accordance with the **Alabama Child Protection Act**.

(2) A parent who has been **adjudged incompetent** pursuant to law or a parent whom the court finds to be **mentally incapable of consenting** of relinquishment and whose mental ability is likely to continue for so long a period that it would be detrimental to the adoptee to delay adoption until restoration of the parent's competency or capacity. The court must appoint independent counsel or a guardian ad litem for and incompetent parent for whom there has been no such prior appointment;

(3) A person who has **relinquished his or her minor child** to the Department of Human Resources or a licensed child-placing agency for an adoption;

(4) A **deceased parent** or one who is presumed to be deceased under Alabama law;

(5) An alleged father who has signed a **written statement denying paternity**; or

(6) The natural father where the natural mother indicates the natural father is unknown, unless the natural father is otherwise made known to the court.

3. Court Proceeding

(a) **Filing a petition** [Alabama Code §26-10A-16]

(1) A petition for adoption shall be filed with the clerk of the court within 30 days after the minor is placed with the prospective adoptive parent or parents for purposes of adoption unless the minor is in custody of the Department of Human Resources or a licensed child placing agency except that a petition for good cause shown may be filed beyond the 30-day period. The petition shall be signed, and verified by each petitioner

(2) The petition shall be accompanied by a copy of the child's birth certificate or affidavit stating that the application has been made except in cases where the child has been abandoned.

(b) **Acquire Consent**, if necessary. [Alabama Code §26-10A-11]



Refer of Page 3 and 4 of this handout to determine which type of consent may be needed, if any. Normally, consent of the natural parents is required for a child to be adopted. In some states, a child over a certain age, such as 14 (in Alabama), must also consent to his or her own adoption.

(c) **Investigation process.** [Alabama Code §26-10A-19]

The investigation shall include a criminal background investigation and any other circumstances which might be relevant to the placement of an adoptee with the petitioners.

(d) **Adoptive parents receive the child temporarily.**

Upon completion of the investigation, a temporary court order may be issued giving the adoptive parents custody of the child, until the finalization of the adoption is complete.

The final decree and the responsibility for the care, maintenance and support of the adoptee, including any necessary medical or surgical treatment shall be pending further court order.

(e) **Finalization of the adoption.** [Alabama Code §26-10A-25]

The final step in the adoption process is the final decree or dispositional hearing. The court **may grant** a final decree of adoption if it finds **clear and convincing evidence** that:

(1) The adoptee has been in the **actual physical custody** of the petitioners for a period of **60 days**, unless for good cause shown, this requirement is waived by the court;

(2) All **necessary consents, relinquishments, terminations or waivers** have been **obtained** and if appropriate, have been filed with the court;

(3) Service of the notice of pendency of the adoption proceedings has been made or dispensed with as to all persons **entitled to receive notice** under [Alabama Code §26-10A-17];

(4) **All contests** brought under [Alabama Code §26-10A-24] **have been resolved** in favor of the petitioner;

(5) Each petitioner is a **suitable adopting parent** and desires to establish a **parent and child relationship** between himself and the adoptee;

(6) The **best interest of the adoptee** is served by the adoption; and

(7) All other requirements have been met.

4. Withdrawal of consent. [Alabama Code §26-10A-14]

The consent or relinquishment may not be withdrawn except;

(a) Within 5 days of signing petition as stated in §26-10A-13 of the Alabama Code.

(b) At the time until the final decree upon showing the consent or relinquishment was obtained by fraud, duress, mistake, or undue influence on the part of the petitioner or his agent or agency to whom the benefit it was given.





5. Placing children for adoption.

- (a) Only a parent,
- (b) A parent of a deceased parent or certain other relatives,
- (c) The Department of Human Resources or a licensed child placing agency, or
- (d) An agency of an approved by the Department of Human Resources may place a child for adoption.

FREQUENTLY ASKED QUESTIONS

1. Q. What is adoption?

A. Adoption is the procedure by which a child born to one set of parents becomes the legal child of another parent or couple, who then assume all the parental rights and duties concerning the child. The word “child” does not mean only infants - it refers to one who is under eighteen years of age. The legal result is that the child ceases to be the legal obligation of the natural parents and become the responsibility of the adoptive parents. In certain cases, an adult can also be adopted.

2. Q. How are children adopted?

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

- a. An “agency placement” is the procedure for adoption used by licensed adoption agencies.
- b. A “direct placement” or “independent adoption” is one made by the natural parents directly into a related adoptive home without the assistance of an agency.
- c. A “step-parent adoption” is one in which the new spouse of a parent agrees to adopt the child of that parent born before the marriage of the spouses.

All of these procedures require court approval and a home study, as will be explained later in this pamphlet. There is no one form of adoption that is “right,” since different procedures may be better for one couple or another.

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 licenses 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. In some states, for example, the hospital will not release an infant to someone other than a natural parent without a valid approval by the county or state Department of Social Services (DSS), or its equivalent. This approval must be done well in advance of the baby’s birth. In some states it is a criminal misdemeanor to separate a child under six (6) months of age from his or her natural parents without such approval of county or state authorities. In many states, it is also a crime for the new set of parents (or anyone else) to pay for expenses associated with the direct



placement of the child and this includes legal fees, medical expenses, home care arrangements, and any other costs. Direct placement, on the other hand, will require considerable effort on the part of the prospective parents regarding the natural parents of the child (both in finding them and obtaining valid and legal consents to the adoption).

4. Q. Are there more problems with direct placement than with placement through an agency?

A. Yes - the problems are greater with independent or direct placement (without an agency) than with agency placement. In addition to the legal problems outlined above, there are many practical difficulties. Couples who wish to adopt should ask themselves:

- a. What do we know about the child's background, medical history, and birth parents?
- b. How do we know that the legal procedures have been followed, that the proper consent forms have been obtained from the birth parents, and that the child is legally available for adoption?
- c. How can we guarantee privacy and security for ourselves and for the child after the adoption and avoid interference by one or both of the birth parents?
- d. How can we and the child be best protected for the future?

When an agency placement is done, every effort is made to make sure that the child is placed in a suitable adoptive home with parents well matched to the child's background, capabilities, and medical history. The adoptive parents will be told enough about the child to inform them of these factors but not enough to identify the birth parents. The child is placed with a couple where there is no danger of recognition by the natural parents or their friends or relatives. The adoptive parents are assured that the child can legally be adopted. Their home environment and backgrounds are checked and studied thoroughly to make sure that they are ready and able to adopt the child and provide adequately for him or her. An agency placement means that every available protection has been given to the natural parents, the child, and the adoptive parents under state law.

5. Q. What are the legal steps to be taken in adopting a child?

A. In adopting a child, it is necessary to file certain papers in court and, in most cases, to retain a private attorney for assistance. The procedures will vary in individual cases, depending on whether the proposed adoption is based on abandonment, consent by the other parent, or placement by an agency. If you have a question about whether you will need a private attorney, you should consult a Legal Assistance Attorney

In general, procedures for adoptions are handled by a local court in the county where the adoption is to take place. There is generally a filing fee required with the petition.

The basic steps for adoption are as follows:

- a. The first step is the filing of the petition for adoption. It is signed by the adoptive parents and is filed in the county where the child is living, the county in which the adoption agency is located, or the county in which the adoptive parents live.
- b. If the adoption is by consent (either a step-parent adoption or an agency placement, for example), the next step is the filing of the consent to the child's adoption by the natural parent or



parents who would give such consent. In some states, a child over a certain age, such as twelve, for example, must also consent to his or her own adoption.

c. Next is the order of reference and the home study. The order of reference is involved in referring the case to the adoption agency or, in the case of a step-parent adoption by consent, to the county Department of Social Services, or its equivalent, for the completion and filing of a home study of the adoptive parent or parents, their background and home situation, and how the child and parents are adjusting to each other. Reports of recent medical examinations of the child and parents, as well as any other pertinent information, are also included in the home study.

d. Once the home study is completed, an interlocutory decree may be issued. This is a temporary court order giving the adoptive parents custody of the child until the final order is issued. The interlocutory decree is not a final order. It will usually take up to a year between the interlocutory decree and the final decree of adoption, but this varies from state to state.

e. The final step is the filing of the final order of adoption. This makes the child legally one of the family, just as if he or she had been born to the adoptive parents. The child is able to inherit real and personal property just as a natural child would. After the final decree, the birth certificate is amended and the new certificate will show the adoptive parents as the birth parents of the child.

6. Q. If I give consent to have my child adopted, can I change my mind later?

A. The laws of each state permit a natural parent to withdraw his or her consent to the adoption proceedings only in very limited circumstances. Basically the consent can be withdrawn only within certain time limits, such as within 3 months of giving consent. Again, the rules vary from state to state.

7. Q. If my child is adopted, do I have any legal rights or obligations towards 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.

*** For possible reimbursement of certain adoption expenses, be sure to see your Legal Assistance Office when you are first thinking of the idea of adoption.**



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