

A GUIDE TO ADOPTION

Is adoption an option?

A child can be adopted by a nonparent through a *kinship* or *custodial* adoption when:

- The individual(s) looking to adopt the child are *eligible* to adopt
- The child is *available* for adoption
- The adoption is in the best interests of the child

A ***kinship adoption*** can be filed by a grandparent, sibling, aunt, uncle or first cousin. A ***custodial adoption*** can be filed by a person who has a court order to be the child's caregiver, usually through a guardianship or allocation of parental responsibilities (APR) case.

Am I eligible to adopt?

In order to adopt a child, you must have:

- Physical custody of the child for at least one year
- A family or legal (custodial) relationship to the child, depending upon the type of adoption
- No disqualifying criminal convictions or child welfare history

If you are married, you must adopt a child with your spouse unless you are legally separated.

What makes a child "available" for adoption?

A child is available for adoption if:

- The child is less than 18 years old, or between 18 and 21 with court approval
- The child consents to the adoption if he/she is over 12 years old
- One of the following is true for each of the parents:
 - The parent's rights have been *terminated* or *relinquished*;
 - The parent is deceased and the guardian consents to the adoption; and/or
 - The parent has *abandoned* the child in the twelve months prior to the adoption.

You should talk to a lawyer for legal advice about your rights, options, and next steps based on your individual situation. This material provides legal information only and does not constitute legal advice or create an attorney-client relationship with the reader.

What is abandonment?

A child can be available for adoption if they have been *emotionally abandoned* by their parent. This depends upon a parent's action (or inaction) and the nature of the relationship between the child and their parent. A judge must decide whether, *under the totality of the circumstances*, the parent intended over the course of the preceding year to abandon the child. Think about these things in deciding whether a legal finding of emotional abandonment can be made in your case:

- How often did the parent see the child?
- Did the parent try and have calls with the child or otherwise try and communicate?
- Was the parent given an opportunity to interact with the child?
- Did the parent know where the child was?
- Did the parent try to form a relationship or exercise their parental rights?

A child can be available for adoption if they have been *financially abandoned* by their parent. A judge must decide whether (1) the parent failed, without cause, to pay reasonable support during the course of the preceding year and (2) there is any likelihood that the parent will pay child support in the next year. What is reasonable is different in every case. Think about these things in deciding whether a legal finding of financial abandonment can be made in your case:

- What financial resources did the parent have? What resources do they have now?
- Has the parent helped pay for food, clothing, child care, diapers, and other necessities?
- Has the parent paid any child support (even if this is less than the court-ordered amount)?
- How often has financial or material support for the child been received?
- Has the parent made an effort to support the child, regardless of their income?

What if one or both parents consent to the adoption?

A parent can agree to an adoption. Their consent must be in writing, signed, notarized, and filed with the court. Even if a parent consents, be aware that a parent can change their mind and decide to oppose the adoption before it is finalized.

There still must be a legal basis (reason) that the child is available for adoption even if the parent consents. If a parent has not abandoned a child but still wishes to surrender his or her parental rights, a relinquishment case should be filed instead of an adoption.

Is "relinquishment" the same as consent?

Relinquishment and adoption are different types of court cases with different procedures. Only a parent can file a case to give up (*relinquish*) their parental rights. A nonparent does not have the legal right (*standing*) to start a relinquishment case. When a case is filed by a parent, they will be ordered to attend relinquishment counseling and meet other requirements before the case is finished. A parent should talk to an attorney about this process if they wish to give up their parental rights.

What is the legal effect of an adoption?

After a child is adopted, they legally become your child as much as a natural born child. Your legal relationship with the child is final and cannot be changed. The child will receive a new birth certificate with the name(s) of the adoptive parent(s) and, if requested, the child's new name.

How do I get started?

Before you file your adoption case, you must get your fingerprint-based background checks from the FBI and CBI as well as a report of prior child welfare involvement from the TRAILS database. Look at the results you receive carefully because each report must be current (dated within the last 90 days) when you file your adoption case.

- FBI: fbi.gov/services/cjis/identity-history-summary-checks
- CBI: colorado.gov/pacific/cbi/employment-background-checks
- TRAILS: coloradoofficeofearlychildhood.force.com (Background Checks)

Prepare the forms you need to get started. You can find instructions and court forms at the courthouse in the county where you live or on the Colorado Judicial Branch website. The forms you need to file will depend upon your case and will likely include:

- Petition for Kinship Adoption or Petition for Custodial Adoption
- Petition to Terminate the Parent-Child Legal Relationship
- Affidavit of Abandonment
- Verified Statement of Fees
- Motion to Waive Home Study
- Notice and Summons
- Findings of Fact & Decree
- Final Decree of Adoption

An adoption case can only include one child. If you are seeking to adopt more than one child, you will need to fill out copies of the paperwork for each child so that multiple cases can be filed.

When your paperwork is complete, file your case in the county where you live with the child. There is a filing fee of \$167. You can file a motion to request that the fee be waived based on your income. If you are filing cases for siblings, you should only have to pay the filing fee one time.

What do I have to tell the child's parents?

Before starting your case, you do not have to tell the parents or anyone else that you are filing an adoption case. In many cases, it is best to not tell the parents anything about the adoption – even if they may give their consent – because they might decide to act differently and have contact with the child, which could make it difficult to show they have abandoned the child.

After the case is started, you are required to provide (*serve*) a copy of the court filings to the parents. This must be done by an adult (not you) who is at least 18 years old and not involved in the case. That person will need to give the court paperwork to the parent in person and sign an affidavit confirming how and when the parent received the paperwork. You can also ask a process server or local sheriff to serve the parents, but they will charge a fee and mileage. The notarized affidavit will need to be filed with the court after the parents are served. If a parent is cooperative, they can also accept the paperwork informally and sign a waiver of service.

What if I do not know how to find one or both of the parents?

You must try to find a parent you don't know or can't locate by trying all reasonable options available to you. This includes:

- Asking friends, relatives, the parent, or the child (if appropriate) about the parent
- Trying old phone numbers, addresses, or employers to find the parent
- Searching for the parent online, including on social media
- Locating public records involving the parent, including court and real estate records
- Getting help from a professional investigator or process server

It's important to keep track of what you do to try and locate each parent. If you are still unable to locate them, you must file a motion explaining to the court what reasonable efforts you have tried and asking for permission to serve the parent(s) by publication of a notice in the local newspaper. There are court forms and instructions about how to do this.

What about paternity or unknown fathers?

Paternity is a tricky legal issue. The law recognizes several situations where someone may be a *presumed father* even if a biological father is identified on child's birth certificate. When multiple people are presumed to be a child's father, a judge will have to make a paternity determination. You need to tell the court any information you have about:

- Any person who claims to be the child's father
- Any person who was in a legal or intimate relationship with the child's mother before or when the child was born
- Any person who is identified on the child's birth certificate or other records

If you have no information about the child's father, you should explain this to the court and include "Unknown Father" or "John Doe" as a party in your case.

What happens next?

Be sure to file all required paperwork and follow any instructions you are given by the judge or court staff. Contact the court to set your case for a hearing. Be sure to ask the court staff if they will send a notice to the parents or if you need to send it.

If the parents do not object, you should attend the uncontested hearing with the child. Even though the parents do not object to the adoption, the judge will still ask you questions to make sure the legal requirements for the adoption are met in your case.

If the parents do not agree to the adoption, the judge will set a date for a contested hearing or other court hearings. You should attend this hearing without the child. The judge may appoint attorneys to represent the parents as well as an attorney for the child (*Guardian ad litem*). You will be required to prove your case at a contested hearing through evidence, including witness testimony and documents. The length of a contested adoption depends on the facts and issues in that case.