



# **Adoption in New York Courts**

## **WHAT IS ADOPTION?**

Adoption is a process which terminates the parental rights of the biological parents and gives those rights to the adoptive parent(s). At the end of the adoption process, an adoptive parent will receive a court order and the child's new birth certificate, replacing the birth parents' information with the adoptive parents' names. Adoption ends the legal relationship between a child and his or her birth parents. Some caregivers may want to create a stable relationship to care for a child without terminating the biological parents' rights. In those cases, the caregiver should speak with an attorney about getting an order of custody, guardianship or KinGap (a permanency option for some children in kinship foster care) for the child. Also, some people raising undocumented children can address the child's immigration concerns without having to legally adopt the child.

## **HOW CAN A CHILD BE ADOPTED?**

The adoptive parent(s) must file an adoption "packet" to start the process. The packet includes a petition and many other forms that describe the child and adoptive parent's personal history and living situation. It also contains statements prepared by medical professionals and character references for the adoptive parent. This adoption petition must be served on the child's biological mother and, in many cases, the biological father. They may object to the proceeding and have a right to be heard. The court will run a background check on the adoptive parent and all other household members over 18, and a social worker will conduct a "home study" to assess whether the court should move forward with the proceeding. Generally, New York courts require adoptive parents to be represented by an attorney in adoption proceedings.

## **WHO CAN ADOPT?**

Married couples and single persons can adopt children. Unmarried couples as well as individuals who have been legally separated from their spouses for three or more years may also become adoptive parents as a single parent. Children can be adopted from the foster care system, called "agency adoptions," or from private arrangements in which children live with non-parents outside of the foster care system, called "private placement adoptions." Relatives who are not kinship foster parents who care for children removed during abuse and neglect investigations through "direct placements" may also adopt.

## **DO THE BIOLOGICAL PARENTS NEED TO CONSENT?**

The law treats biological mothers and fathers differently. An adoptive parent always needs to serve a copy of the adoption papers on the child's biological mother. However, only certain biological fathers are required to have notice of the proceeding. Even if the parent has a right to receive *notice*, a judge may decide that the parent's *consent* is not required to move forward with the adoption. Parents who fail to

communicate with or financially support a child may be deemed to have abandoned the child under New York law. If a judge believes that the parents have abandoned their children under the law, those parents do not have a right to prevent the child from being adopted.

If you want to adopt a child who is in foster care the process is a little different. The foster care agency will have to consent to your adoption. The agency will also have to get an order terminating the parental rights of the child's birth mother and father to "free" the child for adoption.

### **WHAT OTHER STEPS MUST I TAKE IN ORDER TO ADOPT?**

Adoptions require a great deal of paperwork. A social worker must conduct a home study, and every adult in the household must be fingerprinted in order to complete a criminal background check. The Department of Probation provides home studies free of charge, but there may be a long waiting list. Private social workers may charge \$500-\$1,000 for a home study. An adoptive parent will also need Statewide Central Register clearance. This provides information about investigations conducted by the Administration for Children's Services. If you are adopting your foster child or a relative who was placed with you by the Administration for Children's Services, the foster care agency will be responsible for conducting these background checks.

### **IF I HAVE A CRIMINAL HISTORY, CAN I STILL ADOPT A CHILD?**

It depends. You can adopt a child if you have been arrested but have not been convicted of a crime. You probably can adopt a child if you were convicted of only misdemeanor charges or of non-violent felonies that occurred a long time ago. You cannot adopt if you were convicted of certain violent felonies, crimes involving children or recent drug offenses.

### **HOW LONG DOES AN ADOPTION TAKE?**

A typical adoption may take anywhere from 1-2 years once you begin the process. It will take longer if you do not know where the child's birth parents live or if the parents contest the adoption. Also, there may be a backlog of cases in court and you may have to wait for a judge to hear the adoption.

### **WHO CAN I CONTACT IF I NEED HELP OR HAVE QUESTIONS?**

Contact MFY Legal Services, Inc.'s Kinship Caregiver Law Project for advice and possible free legal representation. You can speak with an attorney on Wednesdays and Fridays between 10 a.m. and 5 p.m. by calling 212-417-3850.

Other sources of assistance include [www.lawhelp.org](http://www.lawhelp.org), a website that includes information on free legal services providers or contact Legal Information for Families Today (LIFT) at 212-343-1122 or [www.liftonline.org](http://www.liftonline.org).

**DISCLAIMER: This fact sheet gives general information for NYC residents; it is NOT legal advice.**