

Frequently Asked Questions About Adoption

MOTHER OF THE BABY: BIRTH MOTHER RELATED

1. When can the pregnant person start the adoption process?

- She may start the adoption process at any time during the pregnancy or after the birth of the baby. The pregnant person cannot make a legal decision until the baby is at least 72 hours old.

2. Can the pregnant person choose the adoptive parents?

- Yes, there is a range of possible involvement. The law states she can specifically name the adoptive family and make a 'direct placement', usually using the service of an attorney to facilitate the adoption. That family still has to be court approved like any other adoptive family. Also, while this is not specified in Arizona law, she may choose the adoptive family from a list of court approved families available through an adoption agency or attorney. She may choose to review non-identifying information and/or she may choose to meet one or more prospective families before selecting one.
- She may want a relative to adopt her child. Close relatives do have an abbreviated approval process though still need to be approved by the court.
- There are two federal laws that have an impact on the selection process. If the child is eligible for tribal membership, the Indian Child Welfare Act (ICWA) dictates the placement preference. The other law, the Multi Ethnic Placement Act (MEPA) dictates that no one may be discriminated against based on their race or ethnicity. This act was written because some minority children were in the foster care system even though there were Anglo families who wanted to adopt them. This law states that any agency that receives federal dollars may not use race as the matching criteria. This does not mean minority children are not adopted by minority families.

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

- Yes, the law does not prohibit the new mother from doing anything any other mother may choose to do. She has not relinquished any of her parental rights at this time. She has the right to see, hold and care for the baby, and name the baby. However, if she doesn't want to do any of these things, she has the right not to and still be treated with respect by hospital staff. In adoption, this is referred to as the birthing plan. She is the parent who signs the birth certificate and may choose any name for the baby, including the name the adopting parents selected, if that is her choice.
- If she has chosen a family to adopt the baby, she may request THEY be the ones to care for the baby in the hospital. She may also request they be in the delivery room.

4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?

- The adoptive parents or agency can pay for reasonable and necessary expenses incurred in connection with the adoption or related to the health and welfare of the baby. These expenses may include costs for prenatal and post partum medical care, infant medical care, counseling fees and legal fees. In addition the court may approve living expenses and any other costs the court finds reasonable and necessary to assure the health and welfare of the unborn child; however the court must approve payments of this type that exceed \$1,000.

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

- Yes, a minor has the right to consent to the adoption of her child regardless of her age. The minor's parents **do not** have to consent to the adoption.

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

- The legal documents cannot be signed before the baby is 72 hours old, and the parents can sign any time after that. A notary and/or two witnesses over the age of 18 sign the papers at the same time. She does not have to go to court.
- When ICWA applies, the baby must be at least 10 days old and the consents (legal documents) are signed in front of a judge.

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

- Yes, the mother can change her mind about the adoption any time BEFORE the consents (legal documents) are signed. She has not made a legal decision yet and there is no deadline for making this decision. Some mothers decide after they have cared for the baby for weeks or months, to place the child for adoption.

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

- No, the mother **cannot** change her mind about the adoption AFTER she has signed the consents (legal documents). In Arizona, once the consents are signed they are irrevocable (cannot be changed). The only exception would be if she could prove in a court of law that she signed under fraud, duress or undue influence. Having no funds to provide for the child, or being in a bad living situation, is not considered duress.

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

- Yes. If the mother chooses an open adoption (where she and the adoptive parents share names and phone numbers and can contact each other directly) or a semi-open adoption (where communication is through a third party, like an agency or attorney), she may participate informally in a mutually agreed upon level of communication which lasts as long as all parties agree to continue the contact.
- The law allows for more formal Communication Agreements which may be included in the adoption paperwork reviewed, approved and filed by the court. Once approved, the law stipulates the adopting parents may discontinue the birth parent's direct contact with the child if they feel it is no longer in the child's best interest. If either party is having problems with the agreement they may petition the court for review. The court may or may not agree to enforce the agreement. The court may choose not to get involved at all. Some courts refer the parties to mediation. This is up to the judge and will vary around the state. The law states an adoption cannot be overturned due to problems with this agreement. When the child is an adult, there are additional options for contact with the birth family, the Confidential Intermediary Program conducts a search or the birth parents may place a consent in the file to be contacted if the adult child requests contact. This release (permission) can be changed at any time by filing a new notarized statement with the court.

10. Can the mother place the baby anonymously? Safe Baby (Abandoned Baby or Safe Haven) Law

- Yes. This law was passed in 2001, to hopefully save the lives of abandoned newborn babies. It allows mothers to anonymously drop off their newborn baby without fear of criminal prosecution **IF** (1) the baby is unharmed, (2) is no more than 72 hours old, and (3) is brought to a designated drop off site. Certain places (hospitals, clinics, fire stations, churches, adoption agencies) are allowed to be drop off sites and they must identify themselves with a sign. An adoption process will proceed without the birth parents involvement. When patients appear to be **extremely** distraught, information about this program, as well as a behavioral health referral, may be appropriate.
- Statewide: www.arizonasafebabyhaven.org or 1-866-707-BABY (2229)
- Pima County: www.tucsonsafebaby.org or 520-872-7233

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

- A single woman does not need the consent of the father unless he has established paternity and becomes a 'legal' parent. Any legal parent, including a husband of the mother, must consent to the adoption. The only way an adoption can happen without consent of both legal parents is to have "grounds" for the court to terminate the parent's rights involuntarily. Grounds include, but are not limited to: abandonment for at least 6 months of the child's life, abuse or neglect of the child. If there are no grounds to terminate and the father does not allow the adoption, the mother will not be able to place the baby for adoption. If the father wants to gain full custody of the baby, the mother needs to be in agreement or he will have to convince the court that she is 'unfit.'

12. Can a child born to undocumented parents be placed for adoption?

- Yes, there is no requirement that the parents be legal residents as long as the baby was born in the United States. If the baby was not born in the United States, international adoption procedures would have to be completed not just Arizona's procedures.

13. What rights do birth grandparents have in their child's decision to place a child for adoption?

- In Arizona, grandparents have no legal rights regarding their child's voluntary decision to place a child for adoption. If the grandparents want to adopt the baby, the birth parents (whether minor or adult) must agree. The mother is required only to notify the father of the baby if she is planning an adoption. If ICWA applies, the Indian Nation must also be notified, by the person/agency facilitating the adoption, and they do have rights under the placement preference guidelines.

14. What if the mother is mentally ill or cognitively delayed?

- Someone who can make an objective evaluation as to competency should do so prior to taking consents to adoption. That could be a mental health professional. If the parent has a guardian assigned for this reason, the guardian would need to sign consents on her behalf.

FATHER OF THE BABY: BIRTH FATHER RELATED

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

- Yes, the mother is required to identify all potential fathers before an adoption can proceed. If she is married, the husband is notified that he has the same rights as the mother. If the father is not her husband the notice explains what he must do in order to have rights in the adoption decision.

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

- The Potential Father Notice is handed to any potential father who lives in Arizona, or it is sent certified mail if he lives out of state. The notice informs him he has been identified as a possible father of the child and outlines his rights and responsibilities. It states he may support the adoption plan, withhold support for the adoption plan and he may also seek custody of the child. In order to have any rights regarding the adoption, he has thirty (30) days from the time he is served notice to complete a paternity action and serve notice to the mother that he has done so. After that time period he cannot come back to claim interest in the baby, unless he can show he was unable to respond within 30 days. When this time has elapsed, and he has not established paternity, the adoption may proceed without his consent.

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

- Yes. He has the legal right to participate in the adoption plan if he has established paternity, and he has the option of participating even without paternity if the mother supports his involvement.

4. What happens if the husband (legal father) is not the biological father?

- If the mother is married, her husband is considered the legal father even if he is not the biological father. He must consent to the adoption or his rights must be terminated in court **UNLESS** his paternity is excluded or another man's paternity is established.

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

- The Potential Father Notice may be served by publication (i.e. published in the newspaper) but only after diligent efforts to locate him have been made to serve him in person. A diligent effort means actively trying to find the father by following up on all leads. The notice, including his name and the mother's, is published once a week for four consecutive weeks. His thirty days within which he must complete a paternity action starts after the fourth and last publication. If the mother does not know the father's name then the publication names him as John Doe. (and see #7)

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

- The law requires she provide all information she has about the potential fathers so she must name him. If the mother lies about the father, she commits perjury and may be prosecuted for it. This can also put the adoption at risk. (and see #7)

7. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?

- Yes, if a potential father does not know whether the mother has named him or not and fears he will not be notified, he can be assured of notification about a pending adoption by registering with the Putative Father Registry. Vital Records maintains the Registry, and any man who believes he may have fathered a child that might be placed for adoption can register at any time during the pregnancy and up to thirty days after the birth. Agencies and attorneys must obtain a clearance from the registry before an adoption can be finalized. After that period of time, he cannot come back to claim the baby.

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

- Yes, a father making an adoption plan can change his mind about the adoption **BEFORE** the consents (legal documents) are signed. He has not made a legal decision yet and there is no deadline for making this decision. The legal documents cannot be signed sooner than 72 hours after the birth, but he can wait longer.

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

- Yes, a minor has the right to consent to the adoption of his child regardless of his age. The minor's parents **do not** have to consent to the adoption.

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

- No, the father **cannot** change his mind about the adoption **AFTER** he has signed the consents (legal documents). In Arizona, once the consents are signed they are irrevocable (cannot be changed). The only exception would be if he could prove in a court of law that he signed under fraud, duress or undue influence. Having no funds to provide for the child or being in a bad living situation is not considered duress.

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13. What if the father is mentally ill or cognitively delayed?

- Someone who can make an objective evaluation as to competency should do so prior to taking consents to adoption. That could be a mental health professional. If the parent has a guardian assigned for this reason, the guardian would need to sign consents on his behalf.

ADOPTIVE PARENT RELATED

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

- Any adult resident of this state, whether married, unmarried or legally separated is eligible to qualify to adopt children. A husband and wife may jointly adopt. A gay or lesbian couple may adopt, but only one parent may be the legal parent because they cannot be legally married in Arizona.
- All eligible applicants must have an investigation by a licensed agency and be approved by the court.
- The expectant parent(s) may choose not to know anything and ask an agency/attorney to select a family. Some expectant parent(s) want to select from non-identifying information or want to meet prospective adoptive parents.

2. What if the adopting family lives in another state?

- The Interstate Compact on the Placement of Children (ICPC) guides the interstate adoption process. The 'sending' state and the 'receiving' state need to give approval before the child crosses state lines. The receiving state, where the adopting family lives, will assure there is prior approval of the adoptive family's home study and will supervise the placement until the adoption is finalized.

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

- Even in a closed adoption, it is Arizona law that the prospective adoptive parents receive detailed, written non-identifying information about the baby and both sides of the birth family, including their medical and social history.

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

- In Arizona, the court where the prospective adoptive parent(s) reside certifies them as acceptable to adopt, based on the home study and recommendation of a state-licensed agency or court-appointed worker. The prospective parents are fingerprinted, a Child Protective Service clearance is obtained, and they submit financial reports, medical reports, and references by family and friends. A social worker interviews them and visits their home.
- Close relatives may have an abbreviated homestudy process and the court may approve them at the final hearing rather than prior to placement, as is the case with non-relatives.
- Arizona agencies may have additional requirements, such as preparation classes to learn about adoption issues and how they affect the child's life. Agencies may have additional eligibility requirements, such as religion, age, or marital restrictions.

5. Can the potential adoptive parents have the child placed with them prior to the completion of the consents to adoption?

- Yes, the prospective adoptive parent(s) may have the baby with them prior to the birth parents signing consent to adoption. The mother may request they may be allowed to visit at the hospital and the baby may be discharged (depending on hospital policy) directly to an adoption agency, an attorney or sometimes, the prospective adoptive parents. They are not, however, adoptive parents at that time, and they acknowledge this is a temporary placement PENDING consent of the parents. Should the parents decide not to consent to the adoption, the baby is returned to them. Once the birth parents consent to the adoption, the child resides with the adopting family while the court procedures are initiated.

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

- Yes, even if both parties entered into a formal agreement regarding communication, the law states that the adoptive parents may terminate contact between the birth parent and the adoptive child at anytime if the adoptive parent believes that this contact is not in the child's best interests.

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

- As long as the child is a minor, it is up to the adoptive parents to determine whether contact occurs with the birth parents.
- Once the child reached the age of 21, he/she may use the Confidential Intermediary Program to initiate contact with birth family.

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

- The law does not require the birth parent(s) receive information about the adopting parent(s). The amount of information provided will vary depending on the wishes of the birth parents, the wishes of the adopting parents, and the policies of the agency or attorney.

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

- After the child is placed in a certified adoptive home, the adopting parents file a petition for the adoption to be granted or finalized. A hearing is set for 60 to 180 days later, depending on the specific situation. During the waiting period, an agency or court-appointed worker makes home visits to assess the adjustment of the parents and child. That person then submits a report to the court that helps the judge decide whether to grant the adoption.

10. When is the adoption final?

- If after the hearing and consideration of all the evidence, the court is satisfied that the requirements have been met and the adoption is in the best interests of the child, the court shall order the adoption. The adoption is now final. The court also orders the child's name be changed, when applicable. The family will later receive a notice that they may apply for the new birth certificate, which is revised to show them as the parents.