

ARIZONA ADOPTION LAWS

Note: These answers are based on Arizona law and Arizona practice. Adoption laws are different in each state and when the adoptive parents live in another state, that state's law will need to be taken into consideration as well as Arizona's laws.

BIRTH MOTHER PAPERS FOR ADOPTION (CONSENTS)

When does the mother sign the papers for adoption? When does she make up her mind, for sure?

The mother signs consents to the adoption when the baby is at least 72 hours old. 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 the Indian Child Welfare Act applies (if the child is eligible for tribal membership in a federally recognized Indian tribe) the baby must be at least ten days old and the consents are signed in front of a judge.

How long does she have to change her mind?

In Arizona, once 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.

If ICWA applies, the parent may revoke the consent until the adoption finalizes or until the parental rights are terminated in court.

How long does she have to make her decision?

There is no deadline for making this decision. Papers cannot be signed sooner than 72 hours after the birth, but she can wait longer. Some mothers decide after they have cared for the baby for weeks or months, then decide on a placement.

How does adoption effect what happens at the hospital? Can she see the baby? Can she name the baby?

She should be treated the same way at the hospital as any mother. She has the right to see, hold and care for the baby, just as any mother does. However, if she doesn't want to, she should have the right not to and still be treated with respect by hospital staff. Since most discharges are done earlier than 72 hours after birth, when she and the baby leave the hospital – provided everyone is healthy and discharge follows normal time lines – the adoption has not occurred at the time of discharge. If she has chosen a family to adopt the baby, they *may* be allowed to visit at the hospital, but it's only with the mother's permission. If an adoption plan is in place, the baby may be released (depending on hospital policy) to an adoption agency, an attorney or sometimes, the prospective adoptive parents. They are not, however, adoptive parents at that time, and will be caretakers who take the risk of a placement that might not happen. They may be considered foster parents for that duration of time, or they may have a limited power of attorney to act on behalf of the child.

ARIZONA ADOPTION LAWS

What if she wants the baby adopted by a friend?

The friend must be approved by the court where they live, just as any adoptive parents do. When the plan is not made far enough in advance, the court can issue a temporary custody order pending certification.

What if someone in the family wants to adopt the baby? Or raise it until the mother is old enough or able enough to take care of the baby?

Birth parents may select a family member to adopt their child. The law allows close relatives to have a streamlined procedure to adopt more easily. In some cultures, there is an 'informal placement' but it is often difficult to get the child onto medical insurance plans, or to register in school, if the process has not gone through the courts for either adoption or guardianship.

What if the mother is not a legal resident?

Arizona laws still apply; there is no requirement that she be a legal resident.

What if the baby is not a legal resident?

Arizona adoption law does not apply if the baby is an illegal alien.

Safe Baby (Abandoned Baby or Safe Haven) Law

This law was passed in 2001, allowing mothers to anonymously drop off their baby without fear of criminal prosecution IF the baby is unharmed, is no more than 72 hours old and 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 their involvement. This was passed to hopefully save the lives of abandoned infants.

In Pima County there is a very organized program with a centralized hotline number (cards available). When clients appear to be extremely distraught, this program, as well as a behavioral health referral, may be appropriate.

Statewide: www.safehaven.org or 1-866-707-BABY (2229)

Pima County: www.tucsonsafebaby.org or 520-872-7233

ARIZONA ADOPTION LAWS

INDIAN CHILD WELFARE ACT

This law was established in 1978 to preserve the culture of Native Americans whose children had too often been taken from the reservations and placed in non-Indian homes. ICWA applies if the mother or her husband is an enrolled member of a federally recognized Indian tribe and the child will be eligible for membership. If the father is Native American but he is not her husband, he must establish paternity for ICWA to apply (unless the mother is Native American).

When ICWA applies, the tribe must be notified of a pending adoption and has the option of finding a placement within the tribe; the tribal court might then handle the adoption. It is imperative for an attorney or agency that knows ICWA to be involved, to protect the rights of all members in an ICWA adoption.

ICWA lists a preference for who can adopt a Native American child: first is relatives within the same family system, second preference is with extended family, third is within the same tribe, fourth is with members of another tribe, and last is a non-Indian placement. Different tribes and even different counties/judges may interpret ICWA in subtly different ways. There are cases where the mother's wishes may override the placement preference list.

When ICWA applies, the parents' consents have to be signed in front of a judge, in court, at least ten days after the birth of the child. The judge tells the parent they can change their mind, for any reason, until the adoption is final in court or their parental rights are terminated.

| ARIZONA REVISED STATUTES | INDIAN CHILD WELFARE ACT |
|--|--|
| Most adoption laws are state laws and therefore the procedure is different in every state. The following information will only apply to Arizona. | The Indian Child Welfare Act applies when the parent is an enrolled member of a tribe and the baby is eligible for enrollment. ICWA applies in all states. This chart shows the primary differences. |
| Child must be at least 72 hours hold when parents sign consents. | Child must be at least 10 days old when parents consent. |
| Consent must have 2 witnesses or a notary. | Consent must be signed in front of a judge. |
| Consent is immediately irrevocable. | Consent is revocable until adoption finalizes or rights are terminated in a court. |
| No one except the father of the child must be notified of an impending adoption. | The tribe must also be notified and may take jurisdiction. |
| Parents have power to select adoptive parents (with exception of MEPA). | Tribe must be satisfied that placement preferences were given in the following order: family, tribe, other tribe. |

ARIZONA ADOPTION LAWS

BIRTH FATHER LAWS (ARIZONA REVISED STATUTE 8-106)

Does she have to tell who the father is, even if she is not married to him?

The mother is required to *identify all potential fathers*. Each one must then be served with a *Potential Father Notice*. This notice that he is given, by a process server, tells him that 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 or withhold support for the adoption plan. He may also seek custody of the child. In order to object to the adoption plan, he has thirty days from the time he is served notice to complete a paternity action and serve notice to the mother that he has done so.

Does he have to sign adoption papers, too, like the mother does?

The father has the option to participate in the adoption plan and to sign consents like the mother does. However, he is not **REQUIRED** to sign consents unless he has established paternity and notified the mother within 30 days of receiving notice.

What if she doesn't know where the father is?

Notice may be served by publication, but only after diligent efforts to locate him so that he could be served in person. A diligent effort means actively trying to find the father by following up on all leads. The notice is published in the newspaper, including his name and the mother's. The notice is published once a week for four weeks. His thirty days within which he must complete a paternity action starts after the first publication.

What if she doesn't know the father's name?

Then the publication names him John Doe, but her name is included in the publication.

Isn't it better if she just says she doesn't know who the father is?

If she lies about the father, she commits perjury, and may be prosecuted for it. This can also put the adoption at risk. If she refuses to name the father, the law does not allow the adoption, even if she refuses to name him because she fears him.

How does the father's name get put on the birth certificate?

If the mother is married, the husband's name automatically gets put on the birth certificate. If she does not want to put the husband's name it is documented "husband's information refused" on the birth certificate. If she is not married the father has to acknowledge paternity (show identification and complete paternity affidavit). This often can be done at the hospital. If she is married, the father of the baby is not the husband, and the father wants to be put on the birth certificate, paternity needs to be established through a blood test (court procedure) or mutual consent of both "fathers."

ARIZONA ADOPTION LAWS

What if a man is trying to find out if a baby is being placed without his knowledge?

Vital Records maintains a Putative Father's Registry, where any man who believes he may have fathered a child that might be placed for adoption can sign up and request he be notified if his child is placed for adoption. He 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.

Can the father come back years later to claim the baby?

No, the Putative Father's Registry gives an opportunity to any man to prevent an adoption, and offers safety to adoptive parents. To prevent an adoption, the father must be registered prior to the child being 30 days old OR if he was served a notice, he must establish paternity within 30 days of the date he was served.

What if she is married?

A husband is considered the legal father even if he is not the biological father, and 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.

Is there any way to do an adoption without the required consents?

There are grounds for terminating a parent's rights. The most frequently used grounds is abandonment, which can only be done after six months of time (three months in limited cases of pure abandonment) when he did not have any contact with the child or provide for the child or mother emotionally or financially. Other grounds include inability to discharge parental responsibilities due to mental illness, mental deficiency or chronic abuse of dangerous drugs, controlled substances or alcohol and there is reason to believe the problem will continue for a long indeterminate period, and the conviction of a felony that will keep the person incarcerated for a very long time. If a termination is sought, often the child is with the prospective adoptive family as a foster child while that legal issue is addressed.

What if the father wants an adoption but the mother does not?

The mother has to consent unless there are grounds to terminate her parental rights in court.

MINORS RIGHTS

Who does the mother have to tell?

The mother will have to tell the father of the child and the Indian tribe, if ICWA is applicable.

ARIZONA ADOPTION LAWS

What if the mother is under age 18? Do her parents have to sign permission?

No, a minor has the right to consent to the adoption of her child regardless of her age. ONLY the baby's mother and legal father have to consent; not THEIR parents.

What if the minor's parents want to adopt her child (or his child, if the father is a minor)?

The minor must consent to the adoption, so they may choose someone inside or outside the family.

COMPETENCY

What if the mother or father is cognitively delayed or mentally ill?

Someone who can make an objective evaluation as to competency should do so prior to consents being taken. That could be a mental health professional. If the parent has a guardian (and thus is unable to act on his/her own) that guardian may sign on their behalf.

ADOPTIVE PARENT LAWS

How does the mother know that the adoptive parents are good people?

In Arizona, the court where the prospective adoptive couple resides certifies them as acceptable to adopt, based on the recommendation of a State-licensed adoption agency or court-appointed worker, which is done through a home study. The prospective parents must be legal residents of the United States and of Arizona. They must be adults and can be married, single or legally separated. A gay or lesbian couple may adopt, but only one parent may be the legal parent because they cannot be legally married in Arizona.

If a family gets a baby and they were not certified to adopt, they go to court and get a temporary custody order pending certification.

Arizona agencies may have additional requirements, such as preparation classes to learn about adoption issues and how they affect their children's lives. Agencies may also have additional eligibility requirements, such as religion, age or marital restrictions. 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 both together and individually and visits the home at least once.

In Arizona, first-degree relatives (*grandparents*, aunt, uncle or sibling of the child) can petition to adopt the baby without having a court certification. Though they are still fingerprinted and interviewed, the legal process is a little shorter and easier.

ARIZONA ADOPTION LAWS

Does anyone check on the baby before adopted?

After an option placement with parents who are certified, the parents file a petition for the adoption to be granted. 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.

How will the mother know if the baby turns out OK?

If the mother chooses an open adoption (where she and the adoptive parents share names and addresses 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 in a mutually agreed upon level of communication which can last as long as they agree to.

Can she ever see the baby again after she places it for adoption?

If the mother chooses an open adoption, there are various levels of contact between the birth parents and adoptive parents that can be agreed upon. One paper the mother signs at the time she consents to the adoption, is a statement about how she feels about contact in the future. She must choose whether she wants the child, when he or she turns 21, to examine the adoption records, to learn her name and whether she would want to be notified if the child dies. That paper is filed with the court, and she can decide to change that decision by issuing a notarized statement recording the change, through the years.

Who selects the adoptive parents and how much do the birth parents know about them?

The birth parents have a range of possible involvement in the process. A birth parent may choose not to know anything and ask the agency/attorney to select a family. Some want to select from non-identifying information, some may meet several families before selecting one, and to possibly having a full relationship with the family. Identifying information can only be shared if the parties give permission in writing.

There are two federal laws that have an impact on the selection process. If the child is eligible for tribal membership, then ICWA dictates the placement preference. If an agency that receives federal dollars is handling the adoption, there is a federal law, called the Multi Ethnic Placement Act (MEPA) which was written because some minority children were in the foster care system even though there were Anglo families who wanted to adopt them. So 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, but it is not to be THE SOLE reason one family is selected and another is not. And, of course, race is not to be a reason a child is put into foster care. This would also apply for a birth parent that wants to select a family through one of these agencies. The birth parent's criteria cannot be based on "race, color or national origin."

ARIZONA ADOPTION LAWS

Can they be in the delivery room?

If the mother consents, the adoptive parents can be in the delivery room.

How much will the adoptive parents know about the birth parents?

Even in a closed adoption, it is Arizona law that the adopting parents get written non-identifying information about the baby and baby's family, including medical and social history.

What if the adopting family is in another state?

An interstate compact on the placement of the child must be conducted. This is an agreement between all 50 states which controls the movement of children from one state to another for the purpose of adoption. The sending state and receiving state need to give approval before a child leaves one state to be adopted by a family in another state.

What if the mother does drugs during the pregnancy or the baby is born with problems? Do these babies end up in foster care because there are no families available to adopt them?

Many families are interested in adopting infants with special needs. Families who are interested but might be afraid of the related expenses can apply for assistance.

Adoption subsidy is available for agency adoptions. Adoption subsidy is state and federally funded (cash or services) to cover pre-existing conditions the family's own insurance does not cover. The purpose is to prevent inappropriate stays in foster care.

Do minority or mixed race infants end up in foster care because there are no families available to adopt them?

No baby must automatically go to foster care. There are adoptive families of every race and ethnicity, as well as mixed race families available and there is usually one available for a minority baby for the mother to consider. Also, the Multi Ethnic Placement Act (MEPA) which 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 but it is not THE SOLE reason for the match and the child's race should never be a reason they are in foster care.

ARIZONA ADOPTION LAWS

BIRTH PARENT EXPENSES

What if she doesn't have money for medical care, legal fees or counseling?

The adoptive parents or agency can pay for the mother's medical bills, legal fees and counseling.

What if she cannot pay her bills or is even homeless?

The adoptive parents or agency can pay expenses that assure the health and welfare of the unborn child. The court must approve payments of this type that exceed \$1,000.