
ADOPTION

Legal Overview of Adoption

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 162. Adoption

Adoption creates the legal parent-child relationship between the adopted child and adoptive parents for all purposes. [Tex. Fam. Code § 162.017\(a\)](#). The adoptive parents assume the permanent roles of parental care, custody, and control of the child as though the child were the biological child of the parents. [Tex. Fam. Code § 162.017\(b\)](#). Through adoption, the new parents make a commitment to the court and to the child that they will provide for all aspects of the child's well-being, thereby concluding the decision-making and monitoring roles of the court.

A. Petition for Adoption

1. Where Petition Must Be Filed

The Texas Family Code gives authority for a suit in which adoption is requested to be filed in the county in which the child resides or in the county where the petitioners reside, regardless of whether another court has continuing exclusive jurisdiction under [Tex. Fam. Code Chapter 155](#). A court that has continuing exclusive jurisdiction is not required to transfer the suit affecting the parent-child relationship to the court in which the adoption suit is filed. [Tex. Fam. Code § 155.001\(c\)](#) allows an exception to continuing, exclusive jurisdiction for suits for adoption under [Tex. Fam. Code § 103.001\(b\)](#). The petition must include a statement that the court in which the petition for adoption is filed either has continuing jurisdiction or has jurisdiction in the county where the child or petitioner resides under [Tex. Fam. Code § 103.001\(b\)](#). [Tex. Fam. Code § 102.008\(b\)](#). The court of continuing jurisdiction must transfer the proceedings to the court with jurisdiction under [Tex. Fam. Code § 103.001](#) upon a motion showing that the petition for adoption has been filed under [Tex. Fam. Code § 103.001\(b\)](#) and requesting a transfer to that court. [Tex. Fam. Code § 155.201\(a-1\)](#).

2. Spouses Must Join in Petition

If a petitioner is married, both spouses must join in the petition for adoption. [Tex. Fam. Code § 162.002\(a\)](#). If after filing a joint petition for adoption, a married couple divorces, the court shall abate the adoption and dismiss the action unless one party thereafter amends the petition and seeks to adopt individually. [Tex. Fam. Code § 162.013\(c\)](#).

3. When to Proceed

The court has authority to proceed with adoption when all parental rights have been terminated or when a suit for termination is joined with a suit for adoption. [Tex. Fam. Code § 162.001\(b\)\(1\)](#).

Unless waived by the court, the petition for adoption may be heard and the adoption ordered after the child has lived in the adoptive home for six months. [Tex. Fam. Code § 162.009](#).

B. Documentation Required

The following is a list of documents required by the court before an adoption can be granted:

- **Criminal History Reports:** The court shall order each person seeking to adopt the child to obtain their own criminal history reports. The court shall accept a criminal history record for each person seeking to adopt the child provided by DFPS or by a licensed child-placing agency that received the information from DFPS, if the information was obtained not more than one year before the court ordered the record obtained. [Tex. Fam. Code § 162.0085\(a\)](#).
- **Pre-Adoptive Social Study and Post-Placement Social Study:** In a suit for adoption, pre-adoptive and post-placement social studies must be conducted as provided in [Tex. Fam. Code Chapter 107](#). [Tex. Fam. Code § 162.003](#).
- **Health, Social, Educational, and Genetic History (HSEGH) Report:** Unless the adoptive parent is a grandparent, aunt or uncle, or stepparent, a HSEGH Report is required. [Tex. Fam. Code § 162.005\(a\)](#). If the child's biological parents cannot be located, and there is insufficient information to complete the HSEGH report, the court may waive the HSEGH report. [Tex. Fam. Code § 162.008\(c\)](#). [Tex. Fam. Code § 162.005\(c\)](#) requires any Child Placing Agency, Single Source Continuum Contractor, or other person placing a child for adoption to receive a copy of the HSEGH in preparation for the adoption. Also, [Tex. Fam. Code § 162.007\(a\)](#) requires that the child's health history include information, to the extent known by the Department, whether the child's birth mother consumed alcohol during pregnancy and whether the child has been diagnosed with Fetal Alcohol Spectrum Disorder (FASD).
- **Interstate Compact Compliance Statement.** [Tex. Fam. Code § 162.002\(b\)\(2\)](#).
- **Written consent forms signed by the managing conservator, in most cases DFPS, and the child, if age 12 or over.** [Tex. Fam. Code § 162.010](#).
- **A report or response from the child's Indian tribe, if applicable.**
- **Order terminating parental rights if rights have previously been terminated.**

Adoption Order from a Foreign Country

- **An adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of Texas and enforced as if the order were rendered by a court of Texas, unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state.** [Tex. Fam. Code § 162.023\(a\)](#).
- **A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order does not violate the principles of human rights or the laws or public policy of this state, the court shall order the state registrar to register the**

order and file a certificate of birth for the child under [Tex. Health & Safety Code § 192.006](#).
[Tex. Fam. Code § 162.023\(b\)](#).

Outgoing Convention Adoption Cases

- An outgoing Convention adoption involves the adoption of a child resident in the United States by an individual or individuals residing in a Convention country when, in connection with the adoption, the child has moved or will move between the United States and the Convention country.
- An outgoing Convention adoption must comply with processes established by the Intercountry Adoption Act of 2000 (IAA) and its implementing regulations that afford adoptees the recognition of their adoption in another Convention country. Such compliance is also key to the adoptee's ability to enter and permanently reside in another Convention country.
- An outgoing Convention adoption will involve a State court's issuance of either a final adoption decree or an order granting custody for the purpose of adoption in another Convention country.
- For more information, please see the U.S. Department of State Office of Children's Issues [Guide for State Authorities on Outgoing Adoption Cases from the United States to another Convention Country](#).

C. Hearing

1. Persons Who Should Always Be Present at an Adoption Hearing

- Adoptive parents;
- Assigned caseworker; and
- Legal advocate for the child and/or guardian ad litem/Court Appointed Special Advocate (CASA).

Attendance at the Adoption Hearing by the petitioner is required. If joint petitioners are spouses, and it would be unduly difficult for one of the petitioners to appear at the hearing, the court may waive the attendance of that petitioner if the other spouse is present. [Tex. Fam. Code § 162.014\(a\)](#).

A child to be adopted who is 12 years old or older shall attend the hearing. The court may waive this requirement in the best interest of the child. [Tex. Fam. Code § 162.014\(b\)](#).

2. Additional Persons Who May Be Present at a Contested Adoption Hearing

- Agency attorney;
- Parties contesting the adoption; and
- Attorneys for all parties.

Special Issue: In a contested adoption, enough time must be set aside for the careful completion of the hearing. Each court must determine the time required for contested hearings and establish a docket to accommodate such hearings without the need for postponements and delays.

3. Adoption Hearing Takes Precedent Over Other Settings

If the social studies and criminal history records are filed, the adoption hearing is to be set and heard preferentially to any other civil case not given preference by other law. [Tex. Fam. Code § 162.0045](#).

Special Issue: A number of judges have developed a special ceremony for consummating an adoption, including letting the child bang the gavel, the judge descending from the bench to join the family in pronouncement, and including all extended family members and guests in the proceedings. Most families will want to take photos with the judge when the hearing is concluded.

4. Additional Information

The court may not delay or deny an adoption because a petitioner is a member of military or on the basis of race or ethnicity. [Tex. Fam. Code § 162.0025](#) and [Tex. Fam. Code § 162.015](#).

If a petition requesting termination has been joined by a petition requesting adoption, the court shall also terminate the parent-child relationship at the same time the adoption order is rendered. The court must make separate findings that the termination is in the best interest of the child and that the adoption is in the best interest of the child. [Tex. Fam. Code § 162.016 \(a\)](#).

Special Issue: Some jurisdictions prefer to utilize the same court which handled the termination of parental rights case for the adoption proceedings involving the same child. If the proceeding is a combined termination and adoption, courts may want to explicitly and thoroughly set forth the conditions and circumstances under which parental termination and consent to adoption is obtained, including determining whether the consent was voluntary and informed and that all alternatives to adoption were explained. A thorough record protects the court and adoptive parents if there is a later attempt to set aside the termination and/or adoption.

The Department of Family and Protective Services is required to provide information to each person seeking to adopt a child placed for adoption by the department regarding the right of a child's sibling to file a suit for access to the child. [Tex. Fam. Code § 162.0086 \(a\)](#).

Special Issue: Although the Family Code attempts to provide finality for children by limiting the time for appeals and restricting direct or collateral attacks on a judgment of termination of parental rights, the Texas Legislature has also recognized the countervailing interest of the child's family. [Tex. Fam. Code § 162.0086](#) (Information Regarding Sibling Access) requires DFPS to provide to each person

seeking to adopt a child information regarding the right of a child's sibling to file suit for access to that child under [Tex. Fam. Code §102.0045](#) and [Tex. Fam. Code § 153.551](#).

The sibling of a child who is separated from the child because of an action taken by DFPS may request access to the child by filing an original suit or a suit in modification as provided by [Tex. Fam. Code Chapter 156](#), and the court shall order reasonable access to the child by the child's sibling if the court finds that access is in the best interest of the child. [Tex. Fam. Code § 153.551](#).

Upon granting the adoption, the court may order the sealing of the court's file. [Tex. Fam. Code § 162.021\(a\)](#).

5. Rehoming

The Regulated Custody Transfer of Adopted Child under the Family Code prohibits and criminalizes the practice of "rehoming" a child. A parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child to any person who is not a relative or stepparent of the child or an adult who has a significant and long-standing relationship with the child unless: (1) the parent, managing conservator, or guardian files a petition with a court of competent jurisdiction requesting a transfer of custody; and (2) the court approves the petition. [Tex. Fam. Code § 162.026](#). Transfer to the Department for a short term is allowed.

D. Final Order

A court of continuing jurisdiction loses continuing jurisdiction when an order of adoption is rendered by a court where the adoption suit was filed under [Tex. Fam. Code § 103.001\(b\)](#). An order for adoption rendered under [Tex. Fam. Code § 103.001\(b\)](#) on or after September 1, 2015 but before September 1, 2019 is a final order and is not subject appeal on the basis the court rendering the order did not have continuing exclusive jurisdiction. [Tex. Fam. Code § 155.004\(a\)](#).

Notwithstanding [Tex. R. Civ. P. 329](#), the validity of an adoption order is not subject to attack after six months after the date the order was signed. [Tex. Fam. Code § 162.012\(a\)](#).