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# ADOPTION

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## Legal Overview of Adoption

### Texas Family Code

#### Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship Chapter 162. Adoption

The purpose of the adoption is to create the parent-child relationship between the adopted child and adoptive parents. [Tex. Fam. Code § 162.017\(a\)](#). The adoptive parents are assuming the permanent roles of parental care, custody, and control of the child. Through the adoption, the new parents are making a commitment to the court and the child that they will provide for all aspects of the child's well-being, so the adoption hearing concludes the decision-making and monitoring roles of the court.

#### A. Petition for Adoption

#### B. Documentation Required

#### C. Hearing

Special Issue: Judges interested in additional resources regarding adoption, please see the Texas Bench Book, Chapter 4: Family Proceedings, XVII. Parent & Child Adoption, A. Adoption on the Texas Center for the Judiciary website at:

[http://www.yourhonor.com/web/Online/Resources/Bench\\_Books/Online/Resources/Bench\\_Books.aspx?hkey=933e2911-0259-4dda-962e-430801af23f2](http://www.yourhonor.com/web/Online/Resources/Bench_Books/Online/Resources/Bench_Books.aspx?hkey=933e2911-0259-4dda-962e-430801af23f2).

## A. Petition for Adoption

### 1. Where Petition Must Be Filed

The 84<sup>th</sup> Texas Legislature amended the Texas Family Code to provide that a suit in which adoption is requested may 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. To support this change, the 84<sup>th</sup> Texas Legislature also amended [Tex. Fam. Code § 155.001\(c\)](#), to create an

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exception to continuing, exclusive jurisdiction for suits for adoption. [Tex. Fam. Code § 103.001\(b\)](#).

## **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 in conjunction with the 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 his or her 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\(c\)](#).
- **Interstate Compact Compliance Statement:** per [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.

**Special Issue:** It may be necessary to examine the circumstances of the termination, especially in an adoption from a foreign country, to determine if basic due process rights have been met.

### **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\(b\)](#).

## **C. Hearing**

### **1. Persons Who Should Always Be Present at the Uncontested Adoption Hearing**

- Adoptive parents;
- Assigned caseworker; and
- Legal advocate for the child and/or guardian ad litem/CASA.

### **2. Persons Who Should Be Present at the Contested Adoption Hearing**

- Prospective adoptive parents;
- Assigned caseworker;
- Agency attorney;
- Legal advocate for the child and/or guardian ad litem/CASA;
- Parties contesting the adoption; and
- Attorneys for all parties.

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Special Issue: In a contested adoption, enough time must be set aside for the completion of a careful and complete hearing. Each court must determine the typical range in length of contested hearings and establish a calendar 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 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.](#)

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

Special Issue: Some jurisdictions prefer utilizing 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 set forth explicitly and thoroughly 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.