

NAVIGATING THE ADOPTION PROCESS

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There are two steps to the adoption process in Iowa, each involving a separate legal proceeding. Termination of parental rights is the first step and is governed by either Iowa Code Section 600A for voluntary terminations or Chapter 232 for involuntary terminations (usually resulting from CINA cases.) Termination legally and permanently severs the child's relationship to his or her biological parents. Once this is accomplished, the second step is adoption, which legally establishes the child's relationship to the adoptive parent(s). Adoption is governed by Iowa Code Chapter 600.

This outline will refer primarily to infant adoption in Iowa. There are many other types of adoptions and the legal procedures vary depending on the circumstance. For example, there are foreign adoptions, interstate adoptions, special needs adoptions, relative adoptions, single parent adoptions, and now commonly same sex partner adoptions. Each has its own nuances and may require special procedures to be carefully followed. If you are unsure now to proceed in any adoption situation, swallow your pride and ask other lawyer knowledgeable in this area of practice to assist. There are numerous pitfalls for the unwary or inexperienced in this area. Building families through adoption is too important to make mistakes or take shortcuts.

I. Chapter 600A: Voluntary termination

A. Making an adoption plan

1. Prior to or at the birth of a child, biological parent seeks attorney or agency for assistance with adoption planning. Iowa legal requirements are the same either way.
2. Termination requirements apply to both birthparents.
3. Explore birthparent wishes re: type of adoption (open, closed, semi-open), choosing a family, post-adoption contact, counseling, at-risk placement vs. foster care, expenses issues, prenatal care and any other legal or medical risk issues as soon as possible. Although counseling is not mandatory in Iowa, it is mandatory that counseling be "offered" to the birthparents. There are grief

issues involved in adoption for all parties. Make sure birthparents are at least aware of the issues and opportunity for assistance.

4. ALWAYS disclose whom you represent in the process and the potential for conflict of interest. If separate representation is desired by either birthparent, it is probably good insurance. If a birthparent is a minor, a GAL must be appointed for him/her. (See IRCP 13.)
5. Medical and social history information “to the extent available” must be obtained from birthparents. This information is to be filed with the release of custody but is not to disclose the identity of the biological parents. Section 600A.4(2)(f). Non-identifying medical and social history information may be revealed to the adoptive parents and the adopted person pursuant to Section 600.16(1). There are criminal penalties for disclosure of the identity of the birthparents. See 600.16(4) and 600.16A(5).
6. Make sure adoptive family chosen has valid home study prior to actual placement.
7. Have birthmother complete a hospital plan to identify wishes about seeing the baby at birth or after, naming baby, having adoptive parents come to hospital, etc. Notify hospital social worker or head OB nurse and delivering doctor or midwife of adoption plan ahead of time so they are sensitive to birthparent wishes. This helps make sure things go smoothly at the hospital, which is probably the most critical time of the entire process. Discuss birth certificate procedures (and paternity affidavit) with birthmother ahead of time so there are no surprises. Be certain if birthparents want copies of the birth certificate-Vital Records has instructed hospitals to notify the Dept. if adoption is planned and will not issue the birth certificate to the birthmother as would normally happen in other circumstances. Attorney or agency may have to separately request a copy later for birthparents. Have a plan for discharge (who goes home first, how do birthparents want to say goodbye, where will baby go while termination is pending, etc.) Hospital will need a discharge authorization from birthparents to turn baby over to attorney or agency. Wise to have a temporary custody agreement for interim period to permit placement and medical consent. Whoever takes baby home from hospital will need a car seat. Wise to have nurses give discharge teaching to adoptive parents if possible. Make sure adoptive parents honor birthparents during this time. Watch out for confidentiality issues for both birthparents and adoptive parents at the hospital if adoption is not open. Nurses can be very nosy.

B. The Termination Process

1. Nothing happens until child is born. Then things may happen relatively quickly.

2. Even if counseled before birth, birthparents must be offered a minimum of three hours of counseling about their adoption decision. The “offer” can be made by the attorney, certified adoption investigator, agency or other qualified counselor [but counseling itself must be done by a qualified counselor pursuant to 600A.4(2)(d).]
3. Release of Custody starts TPR process. Cannot be signed before 72 hours after birth. The 72 hours is a minimum and cannot be waived. Release must meet statutory requirements of 600A.4. Signing starts the 96-hour period in which birthparents can change their mind for any reason. Once expired, birthparents can change their minds only for “good cause” up to time of TPR hearing. 600A.4(4).
4. After Release is signed and with consent of birthparents, file TPR petition. Section 600A.5 sets out contents of petition and venue. Normal filing fee and costs apply. File Releases of Custody and medical/social history with petition.
5. Obtain hearing order. Appoint Custodian and GAL in same order. If needing to publish notice to unknown or unlocated father, have birthmother sign affidavit stating identity of birthfather and last known information about him or why she doesn’t know who he is. Use affidavit to bolster grounds of abandonment by putative father under 600A.8(4). If doing notice by publication, form of publication is set out in 600A.5(5). Note that section requires adherence to the rules of civil procedure where not inconsistent with this section. See IRCP 60.1 re: mailing notice to last known address. Parties may accept service of notice also. If personal service, 7 days notice is required. If notice by certified restricted mail, 14 days notice required. Published notice must be made once for two consecutive weeks “in a medium which is reasonable expected to provide notice to the necessary party” with the last publication not less than 3 days prior to the hearing date.
6. Grounds for termination (600A.8):
 - a. Unrevoked release of custody;
 - b. Parent petitions for own termination;
 - c. Abandonment;
 - d. Abandonment by putative father (the “step up to the plate” section);
 - e. Failure to support child or financially aid in child’s birth without good cause;
 - f. Failure to object after notice and opportunity to do so;
 - g. No objection after reasonable efforts to give notice;
 - h. Fraudulently induces adoptions- adoptive parent requests termination.
7. Termination hearing

- a. Unless wishing to revoke for good cause, birthparents generally don't attend.
 - b. Hearing cannot be sooner than 7 days after birth of child.
 - c. Hearing must be reported. See 600A.7(1) referring to 232.91-232.96.
 - d. Order should name guardian of child if not previously ordered. Guardian will need to consent to adoption after six-month waiting period.
 - e. Appeal period is 30 days, which cannot be waived or extended.
 - f. Child is generally considered "legally free" for adoption after the TPR hearing.
8. TPR records are sealed after expiration of appeal period. Birthparents may file an affidavit re: revealing name (or not) if child ever seeks court permission for identifying information. See 600.16A

II. Chapter 232: Involuntary terminations

III. Adoption: Chapter 600

A. Prerequisites:

1. Approved home study (required before placement can be made)
2. "Qualified"
3. Six-month minimum residency requirement with post-placement supervision

B. Filing Petition:

1. Cannot file before TPR is completed but can file any time thereafter.
2. Venue is proper in county where guardian of minor child or the petitioner is domiciled or resides.
3. Contents of petition and attachments are set forth in 600.5. Effective July 1, 2006, petition must also list any aliases or criminal/child abuse history of Petitioners (aimed primarily at stepparent adoptions where home studies are generally waived.) Required attachments are:
 - a. certified birth certificate or verified birth record;
 - b. copy of TPR order (or consent that constitutes TPR from another jurisdiction);
 - c. any consents required under 600.7 (Note that child over 14 must consent in writing before the judge at the hearing);
 - d. home study.
4. Prepare order setting hearing and notice of adoption hearing (this is your original notice in adoptions). Order should appoint adoption investigator and GAL if needed. Schedule per local protocol (some counties have juvenile judges do all

the adoptions- others use district court judges). Give notice as required by law.

C. Other documents to file prior to hearing:

1. Report of expenditures. See 600.9(2).
2. Background report on biological parents (commonly known as medical/social history).
3. Post-placement investigation report required by 600.8(1)(b).
4. Birthparent affidavits re: revealing their name (or not).

D. Prepare proposed final decree for judge.

E. Hearing:

1. MUST be reported.
2. Make it special! This may be the only contact the family ever has with the court system and it is as significant a day for them as a wedding. Judges usually allow cameras and even videotaping but always ask first. You can get adoption day family pledges, buttons, balloons and other adoption resources from Adoption World Specialties, Ltd. in Cedar Rapids at www.adoptionstuff.com or call 319/365-3454.
3. File decree with clerk of court. Get any certified copies needed that day or you will have to contend with sealed records later on. Clerks vary on if they charge for the certified copies or not.
4. Submit Abstract of Adoption Decree form to clerk to mail to Vital Records. Clerks have the form (a new form came out in 2006- don't use old copies or they will send them back.). This will cause an amended birth certificate to be created. Cost is \$30 payable to Iowa Dept. of Public Health (Vital Records Division). For other states, Iowa will mail it on for you or you can deal directly with the other state. Vital Records has a list of the VR offices in all other states. Costs vary in other states. Usually the amended certificate is sent to the attorney to be forwarded to family.

F. Discuss post-adoption record changes with family: social security number, schools, medical providers, etc.

G. Other types of adoption:

1. Relative adoption: fourth degree of consanguinity
2. Single parent adoption
3. Same sex partner adoption
4. Stepparent adoption
5. Adult adoption

6. Foreign adoption

IV. Miscellaneous adoption issues:

- A. Putative father registry
- B. Adoption registry- Department of Public Health
- C. Indian Child Welfare Acts (ICWA and Iowa ICWA)
- D. Interstate Compact on the Placement of Children