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## Adoption: Facts and Information

In everyday life, many people may pitch in to help raise a children. In fact, you may be able to think of many thoughtful caregivers, family members, religious leaders and community mentors who have all helped raise a child that you know.

However, under the law, a child may only have one legal set of “parents”. **Adoption is the type of case that asks the court to make legal parents out of people who are not already biological parents of a child.** Because a child may only have one official set of parents, adoption cases require the court to determine which parents will be best for the child. To help judges make this decision, the law requires a number of specific studies and reports to demonstrate the best interest of the child.



The specific requirements of adoption studies and reports can make adoption proceedings overwhelming for non-attorneys. This guide is only meant to give a general overview of adoption and answer some common questions about this type of case. This guide does not replace the legal advice necessary to adopt a child. Because the specific facts of each situation make each adoption case different, you should consult with an attorney about the facts of your case **before** attempting to file for adoption.

## How is adoption different from gaining custody of a child?

Sometimes the court may use a Suit Affecting Parent Child Relationship (“SAPCR”) to give *Conservatorship* (custody) of a child to someone who is not the child’s biological parent. Conservatorship can include a variety of different child-raising rights similar to the rights that a biological parent<sup>1</sup> generally has when the child is born.<sup>2</sup>

However, conservator rights are different from parental rights because they only include the rights that a judge lists in the court order.

**BECAUSE OF THIS, ADOPTED CHILDREN HAVE GREATER, AUTOMATIC INHERITANCE RIGHTS THAN CHILDREN WHO HAVE SIMPLY BEEN RAISED BY A LEGAL CONSERVATOR.**



Through adoption, a child becomes the legal child of the adoptive parents for all purposes including inheritance.<sup>3</sup> This means that if the adoptive parent dies without a will, then the adopted child would generally automatically inherit the same as any natural born children. This also means that any inheritance that other people leave to the adoptive parents’ “children” would automatically include the adoptive child. This is not the case in a conservator-child

relationship which requires a will to transfer property to the child after death.

## Who can ask to adopt a child?

*Generally*, an adult is able to ask the court to adopt a child who may be adopted. Whether or not a child may be able to be adopted depends on the circumstances of the case. Explanations of a few common scenarios are below.

### **Scenario A** – Both parents have or will have their biological rights terminated.

In Texas, a child can be adopted if each living parent of the child has had their rights terminated **OR** a suit to terminate their biological rights is filed with the Adoption lawsuit.<sup>4</sup>

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<sup>1</sup> For example, a managing conservator may make medical decisions for the child, determine where the child should live, how the child should be educated, how to discipline the child, what religious instruction the child should be given, who has access to the child and make other decisions that are generally understood to be part of “raising” a child. Texas Family Code Sec. 153.371

<sup>2</sup> Texas Family Code Chapter 151

<sup>3</sup> Texas Family Code Sec. 162.017

<sup>4</sup> Texas Family Code Sec. 162.001 (b) (1)

Termination of parental rights may happen either voluntarily or involuntarily and is discussed more thoroughly in the “termination” section of this document.

### **Scenario B - Stepparent Adoption**

**Stepparents** can ask to adopt children without terminating the rights of **both** biological parents. In stepparent adoptions, a biological parent may keep his/her parental rights if he/she is married to the stepparent seeking adoption. In this situation, the parental rights of the other parent must still be terminated to make room for the adoptive parent.<sup>5</sup> Families who want to share parenting responsibilities between both biological parents and stepparents might consider filing a SAPCR instead of an adoption.

### **Scenario C – Parental Consent**

A child can be adopted by an adult, if the child is at least two years old **and**

- **One** Parent has had his or her rights terminated,
- The person seeking the adoption is the child’s *former* stepparent **OR** has been a managing conservator or has had actual care, possession, and control of the child for a period of six months before filing for adoption, **and**
- The remaining non terminated parent consents to the adoption<sup>6</sup>

### **Scenario D – No Parental Consent**

Without parental consent, a child may be adopted by an adult, if the child is at least two years old **and**

- **One** Parent has had his or her rights terminated,
- The person seeking the adoption is the child’s *former* stepparent **AND** has been a managing conservator or has had actual care, possession, and control of the child for a period of on year before filing for adoption<sup>7</sup>

### **When can a child be adopted?**

A child can be adopted after living with the petitioner for six months, but this requirement can be waived if the court finds that it is in the best interest of the child.<sup>8</sup>

### **Who needs to agree to the adoption?**

- If a married person asks to adopt a child, that person’s spouse must join the petition for adoption.<sup>9</sup>

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<sup>5</sup> Texas Family Code Sec. 162.001 (b) (2)

<sup>6</sup> Texas Family Code Sec. 162.001 (b) (3)

<sup>7</sup> Texas Family Code Sec. 162.001 (b) (4)

<sup>8</sup> Texas Family Code Sec. 162.009

- If a child is at least 12 years old, he/she must consent to the adoption unless the court waives this requirement due to it being in the child's best interest.<sup>10</sup>
- If the child has a managing conservator, his or her written consent is required unless the managing conservator is also the one bringing the adoption suit **OR** the court waives this requirement because consent has been refused or revoked **without** good cause<sup>11</sup>.

### **Does adoption require termination of parental rights?**

Because children may only have one legal set of parents, adoption requires that the parental rights of biological parent(s) be terminated to make room for the exclusive rights of the new, adoptive parent(s). A parent's rights may be terminated either voluntarily or involuntarily.

#### ***Voluntary Termination*** of Parental Rights

Voluntary Termination of parental rights is an option under the Texas Family Code. For instance, a parent can bring their own suit to terminate their own parental rights.<sup>12</sup> However, in most cases, the court will be required to rule that the voluntary termination is in the best interest of the child.<sup>13</sup>

The court is also able to voluntarily terminate parental rights if the parent has signed an affidavit of voluntary relinquishment or an alleged father signed an affidavit waiving interest. Even if these documents are done correctly, the court will still have to order the termination of parental rights, the document alone is not enough.<sup>14</sup> The court system is still involved.

#### ***Involuntary Termination*** of Parental Rights

***Involuntary termination*** requires that a high legal standard be met. Generally, most of the time, courts are required to find by clear and convincing evidence that termination is in the best interest of the child **and** is supported by one the stated legal reasons for termination of parental rights.<sup>15</sup>

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<sup>9</sup> Texas Family Code Sec. 162.002

<sup>10</sup> Texas Family Code Sec. 162.010 (c)

<sup>11</sup> Texas Family Code Sec. 162.010 (a)

<sup>12</sup> Tex. Fam. Code 161.005 (a)

<sup>13</sup> If genetic testing shows that the petitioner is not the child's genetic father a best interest determination is not required. - Tex. Fam. Code 161.005(h)

<sup>14</sup> Texas Family Code Sec. 161.001(1)(K), 161.204

<sup>15</sup> A court cannot terminate a person's parental rights unless the State proves by clear and convincing evidence that the parent engaged in certain proscribed conduct, as specified in the Family Code, and that termination is in the best interest of the children. I

In re E.N.C., 384 S.W.3d 796, 798 (Tex. 2012)

The reasons a parents rights can be involuntarily terminated fall into the following categories

- The Parent Abandoned or did not support the child
- The Parent Endangered the Child
- The Parent Engaged in Criminal Conduct
- The Parent is otherwise unfit.

Chapter 161 of the Texas Family Code contains more information the different reasons a parent’s rights can be involuntarily terminated.

### **Best Interest of the Child – THE Standard**

The best interest of the child is a common legal standard that judges use in cases that involve children.<sup>16</sup> To decide what is in the “best interest of the child” the court will usually consider the child’s emotional and physical needs, the parental abilities of potential caregivers, future plans for the child, home stability, parenting acts or omissions that suggest the parent-child relationship is unhealthy, excuses for any acts or omissions of the parent and sometimes the child’s desires, among other factors. <sup>17</sup>



### **What should I expect in adoption proceedings?**

Adoption cases require a number of studies and reports.<sup>18</sup> Generally, these reports and studies help show the court that transferring parental rights to the adoptive parents is best for the child. At the same time, reports must be provided to the adoptive parents to make sure that they have the information they need to properly care for their adopted child.

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<sup>16</sup> Texas Family Code Sec. 153.002

<sup>17</sup> Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976)

<sup>18</sup> Texas Family Code 162.003; 107.0519

These studies generally include: <sup>19</sup>

- *Personal interviews of the adoptive parents and the child*
- *Evaluations of home environments where the child might live*
- *Observations of the child in different home environments*
- *Assessments of the child's relationship with the involved adults,*
- *Consideration of criminal history reports for anyone living in the homes that are being studied.*

Unless the adoptive parents are the child's grandparent, aunt, uncle or stepparent, then additional reports must also be made to ensure that the adoptive parents have the information they need to properly care for the child. <sup>20</sup>

These reports include health, social, educational and genetic history information about the child. <sup>21</sup>

#### **How does the court make its final decision?**

Generally, the court's main concern in making its final decision is doing what is best for the child. The judge will make this decision after hearing the testimony of involved parties, examining the required reports and studies and then applying the law that applies to your particular situation.

Because the specific facts of each situation make each adoption case different, you should consult with an attorney about the facts of *your* case **before** attempting to file for adoption.

Thank you for reading.

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<sup>19</sup> Texas Family Code 107.0514

<sup>20</sup> Texas Family Code 162.005

<sup>21</sup> Texas Family Code 162.007