

ADOPTION CHECKLIST

STATUTORY AUTHORITY

Revised Uniform Adoption Act, ACA 9-9-201 through 9-9-224.

Adoption is a permanency option for juveniles in the custody of DHHS when parental rights have been terminated. 9-9-338(b)(1)(A).

In all custodial placements by DHHS in foster care or adoption, preferential consideration shall be given to an adult relative over a non-related caregiver provided that the relative caregiver meets all relevant child protection standards and it is in the child's best interest to be placed with the relative caregiver. ACA 9-9-102(b).

If the child's genetic parent(s) express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent(s), the court shall place the child with a family that meets the genetic parent's religious preference, or if a family is not available, to a family of a different religious background which is knowledgeable and appreciative of the child's religious background. ACA 9-9-102(c).

The court shall not deny a petition for adoption on the basis of race, color, or national origin of the adoptive parent or the child involved. ACA 9-9-102(d).

It shall be the duty of every person granted custody, guardianship, or adoption of any juvenile in a proceeding pursuant to or arising out of a dependency-neglect action under this subchapter to ensure that the juvenile is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision or custody of the juvenile. This section shall not be construed to prohibit those placements if the person who has been granted custody, guardianship, or adoption obtains a court order to that effect from the juvenile court that made the award of custody, guardianship or adoption. ACA 9-9-353.

Adoption Venue and Consent

- The adoption petition shall be filed in the juvenile court case when the juvenile has an open juvenile court case. 9-9-205(a)(3).
- If the TPR order granted DHHS power to consent to adoption, then DHHS' consent is required. 9-9-206(a)(3).
- The Court can waive DHHS' consent to the adoption if the court finds that DHHS is unreasonably withholding consent. 9-9-207(a)(8).
- The juvenile, if more than 10 years of age, must consent to the adoption, however the court may dispense with the minor's consent if the court finds the adoption is in the best interest of the juvenile. 9-9-206(a)(5).
- Always check the putative father registry, even if a legal father has been identified. The putative father registry is with Vital Statistics at the Division of Health with DHHS.
- A putative father on the registry is entitled to notice unless waived by the putative father in writing signed before a notary public. 9-9-224(b).
- A putative father who is on the registry cannot stop the adoption by withholding consent unless the putative father has established a significant custodial, personal, or financial relationship with the juvenile prior to the time the petition for adoption is filed. 9-9-207(a)(11).
- A putative father who signed an acknowledgement of paternity but who failed to establish a significant custodial, personal, or financial relationship with the juvenile prior to the time the petition for adoption is filed cannot stop an adoption by withholding consent. 9-9-207(a)(10).
- Consent is executed in the presence of the court by the individual to be adopted. 9-9-208(a)(1).
- The court may waive the 10 day period to withdraw consent for minors over 10 years of age who consented to the adoption. 9-9-209(b)(1).

ADOPTION CHECKLIST

- DHHS consent to adoption is executed by the CFS Director or other authorized person (usually the Area Manager), in the presence of a person authorized to take acknowledgements.
- A parent can consent to adoption, which must be done in the presence of a person authorized to take acknowledgements. However, the agency should consider whether or not the parent may have more children before agreeing to allow the parent to consent because an involuntary TPR can be grounds to fast track a case.
- The marital status of the petitioner, including the date and place of marriage, if married.
- That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted and that it is in the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted.
- A description and estimate of value of any property of the individual to be adopted.
- The name of any person whose consent to adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his normally required consent, to the adoption.
- In cases involving a child born to a mother unmarried at the time of the child's birth, a statement that an inquiry has been made to the putative father registry and either no information has been filed in regard to the child born to this mother; or information is contained in the registry. 9-9-210(a).

Petition for Adoption

The caption of a petition for adoption shall be styled substantially "In the matter of the Adoption ..."

The person to be adopted shall be designated in the caption under the name by which he or she is to be known if the petition is granted. 9-9-205(d).

If the child is placed for adoption by an agency, any name by which the child was previously known shall not be disclosed in the petition, the notice of hearing, or in the decree of adoption. 9-9-205(e).

A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk. 9-9-210(b).

The petition for adoption signed and verified by the petitioner(s) shall be filed with the clerk of the court, and state:

- The date and place of birth of the individual to be adopted, if known.
- The name to be used for the individual to be adopted.
- The date the petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how petitioner acquired custody of the minor.
- The full name, age, place, and duration of residence of the petitioner.

Report of Expenditures

- The petitioner shall file, before the petition is heard, a full accounting report in manner acceptable to the court, of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The petitioner shall file a sworn affidavit showing any expenses incurred.
- This section does not apply when petitioner and the minor are related to each other in the second degree.

Pre-Hearing Activities

- No order, interlocutory or final, may be entered prior to the period for withdrawal of consent. 9-9-212(a)(2).
- At least 20 days notice shall be given to any person whose consent is not required (such as putative fathers with no relationship with the juvenile). 9-9-212(a)(4)(B).
- The home study shall address whether the

ADOPTION CHECKLIST

adoptive home is a suitable home and shall include a recommendation as to the approval of the petitioner as an adoptive parent. 9-9-212(b)(4)(A).

- A written report of the home study shall be filed with the court before the petition is heard. 9-9-212(b)(4)(B).
- The home study shall include a state-of-residence criminal background check on the adoptive parents and all household members age 16 and older. 9-9-212(b)(5)(A).
- If a prospective adoptive parent has lived in the state for at least 6 years immediately prior to the adoption, then only a state-of-residence criminal background check shall be required. 9-9-212(b)(5)(B).
- A child maltreatment central registry check shall be required for all household members age 10 and older, if such a registry is available in their state of residence. 9-9-212(b)(6).
- All home studies shall be prepared and submitted in conformity with the regulations promulgated pursuant to the Child Welfare Agency Licensing Act. 9-9-212(d)(4).
- A detailed, written health history and genetic and social history that excludes identifying information shall be provided to the prospective adoptive parents and filed with the clerk before entry of the adoption decree. 9-9-212(g)
- A detailed, written health history and genetic and social history is not required if the petitioner and child to be adopted as related to each other within the second degree of consanguinity. 9-9-212(g)(2)(C).
- A final decree of adoption shall not be issued and an interlocutory decree of adoption does not become final until the minor to be adopted has lived in the home for at least 6 months. 9-9-213.

Hearing on Adoption Petition

- The petitioner and juvenile to be adopted shall appear at the hearing on the petition unless the presence of either is excused by the court for good cause shown. 9-9-214(a).

- The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition. 9-9-214(b).
- All adoption hearings shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties. 9-9-217(a)(1).

Effect of Decree of Adoption

- An adoption decree creates the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual. 9-9-215(a)(2).
- Sibling visitation shall not terminate if the adopted child was in the custody of DHHS and had a sibling who was not adopted by the same family and before adoption the circuit court in the juvenile case has determined that it is in the best interests of the siblings to continue visitation and has ordered visitation between the siblings to continue after the adoption. 9-9-215(c).
- Unless appealed, after 1 year, the adoption decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor, the petitioner has not taken custody of the minor, or in the case of an adoption of an adult, the adult had no knowledge of the decree within the one year period. 9-9-216(b).

ADOPTION CHECKLIST

- Adoption records shall be closed, confidential, and sealed unless authority to open them is provided by law or by order of the court for good cause shown. 9-9-217(a)(2)(A).
- Once final disposition is made in the adoption proceedings, the adoption file shall be transferred from the clerk who is the custodian of juvenile records to the clerk who is the custodian of records. The entry of the adoption decree will be entered by the clerk in the book containing adoption records. The clerk shall assign the file a docket number, shall prepare an application for a new birth record as provided in this section, and shall maintain the file as if the case had originated as an adoption case. No filing fee shall be assessed. 9-9-217(a)(2)(B).

Adoption Subsidy

Two different adoption subsidies exist: state and federal. The subsidy must be approved and the agreement in place prior to the hearing on the adoption petition.

State Adoption Subsidy – ACA 9-9-104 to 412.

A state adoption subsidy is limited to children in the custody of DHHS, and children who were in DHHS custody but are now placed in the custody of another person and the juvenile case remains open pending the child obtaining permanency. The child must have special needs. The adoptive family must qualify using a means based test (size of family and family income). State adoption subsidies are for one year, subject to a re-determination of eligibility.

Federal Adoption Subsidy – 42 USC 673.

A federal adoption subsidy is available to special needs children who are (a) AFDC eligible in the month of removal and the month when the adoption petition is initiated, (b) SSI eligible, or (c) from a disrupted IV-E adoption. The federal adoption subsidy is without regard to parental income, and the state must make a reasonable but unsuccessful effort to place the child without use of an adoption subsidy (excluding placements with foster parents where the child has developed significant emotional ties) before a federal adoption subsidy can be approved.