



## 2003 Adoption State Statutes Series Ready Reference Cooperative Adoptions: Contact Between Adoptive and Birth Families After Finalization

### What You Need to Know

Cooperative adoption or adoption with some openness (contact) are terms that refer to arrangements that allow some kind of contact between adoptive families and members of the adopted child's birth family after the adoption has been finalized. These arrangements can range from informal, mutual understandings between the birth and adoptive families, to written, formal contracts. The written agreements specify type and frequency of contact and are signed by the parties to an adoption prior to finalization. The modes of contact can range from an exchange of information about the child between adoptive and birth parents; to the exchange of cards, letters, and photos; to actual personal visits with the child by birth family members.

Adoption with contact agreements have become more prevalent in the last decade. This growth is due to many factors, the most significant being that the majority of adoptions in the United States today are non-infant adoptions. Adoptions more typically involve older children, such as stepchildren and children adopted from foster care. These children, because of their age, frequently have attachments to one or more birth relatives that would be in some way beneficial for them to maintain. In addition, contact with birth relatives can be an ongoing resource to the adoptive parents for information about the child's medical, social, and cultural history.<sup>1</sup> In general, the law does not prohibit post-adoption contact. Since adoptive parents have the right to decide who may have contact with their adopted child, they can allow any amount of contact with birth family members they choose, and such contacts are often arranged by mutual understanding without any formal agreement.<sup>2</sup>

However, many adoption professionals feel that a written contractual agreement<sup>3</sup> between the parties to an adoption can clarify the modes and frequency of contact and thereby minimize conflicts. In the absence of statutory guidance, however, problems have arisen. Unless sanctioned by law, agreements for post-adoption contact are purely voluntary and typically cannot be enforced in court. There is also some concern that the existence of an agreement might be used as grounds to set aside an adoption in the belief that an agreement for post-adoption contact is inconsistent with the severance of all rights of the birth parents that is the traditional consequence of relinquishment for adoption.<sup>4</sup> Increasingly, adoption professionals have looked to State legislatures to provide the legislative mechanisms for drafting and enforcing post-adoption agreements.



The Clearinghouses are services of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

<sup>1</sup> For a fuller discussion see: Annette Appell, "Increasing Options to Improve Permanency: Considerations in Drafting an Adoption with Contact Statute." *Children's Legal Rights Journal*, 18:4, Fall 1998, pp. 24-26.

<sup>2</sup> Joan Hollinger, "Appendix 13-B: Open Adoption or Post-Adoption Agreements." *In Adoption Law and Practice*, 1999 Edition. New York, NY: Matthew Bender Co.

<sup>3</sup> Post-adoption contact agreements of this type are not to be confused with contact ordered by courts regardless of any agreement of the parties. Court-ordered contact more typically occurs in stepparent or relative adoptions. For a more complete discussion of this issue, see: Annette Appell, "Enforceable Post Adoption Contact Statutes, Part II: Court-Imposed Post Adoption Contact." *Adoption Quarterly*, 4:2, 2000, pp. 101-111.

<sup>4</sup> Donald Duquette and Mark Hardin, *Guidelines for Public Policy and State Legislation Governing Permanence for Children*. Washington, DC: Department of Health and Human Services, June 1999, p. II-5.

## Guidelines for Legislation

The issue of adoption with contact was addressed in 1999<sup>5</sup> by a group of experts convened by the Children's Bureau of the U.S. Department of Health and Human Services. In their publication, *Guidelines for Public Policy and State Legislation Governing Permanence for Children*, the experts recommended that States adopt legislation allowing adoption with contact agreements that included these key provisions:

- Adoption is irrevocable, and the birth parent's voluntary relinquishment may not be set aside, even if the post-adoption agreement is modified, set aside, or parties fail to comply.
- The court may approve the agreement only if all parties, including a child over the age of 12, agree on its provisions, and the court finds the agreement is in the best interests of the child.
- The court may approve post-adoption contact ranging from occasional exchanges of cards, photographs, and information to regular personal visits, in whatever level of detail the parties agree to and the court deems appropriate.
- Any party to the agreement may petition the court to modify the agreement, order compliance, or to void the agreement.
- The court may order compliance, modify, or void the agreement only if the parties agree or circumstances have changed, and any action is in the best interests of the child.

## Statutes Permitting Enforceable Contracts

Approximately<sup>6</sup> 18 States (Arizona, California, Connecticut, Florida, Indiana, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Mexico, New York, Oregon, Rhode Island, South Dakota, Vermont, Washington, and West Virginia) currently have legislation allowing written and enforceable adoption with contact agreements. In many of these States, the statutes incorporate the substance of the language recommended by the *Guidelines*, while in other States (notably New York and South Dakota),<sup>7</sup> provisions pertaining to the contents and enforcement of the agreements are not specified.

In most of these States, an agreement for adoption with contact can potentially be permitted for any adoptive child as long as the type and frequency of contact is deemed to be in the child's best interests. Some States, such as Connecticut, Nebraska, and New York, limit the application of agreements to children in foster care. Indiana limits enforceable contact agreements to children ages 2 and older. For children under age 2, non-enforceable agreements are permitted as long as the type of contact does not include visitation.

<sup>5</sup> Adoption with contact statutes were among the issues first addressed in the model Uniform Adoption Act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1994 and endorsed by the American Bar Association in 1995. See Joel Tenenbaum, "Introducing the Uniform Adoption Act." *Family Law Quarterly*, 30:2, Summer 1996, pp. 333-343.

<sup>6</sup> The word *approximately* is used to stress the fact that the statutes are constantly being revised and updated.

<sup>7</sup> In New York, the statute allows the birth parent to execute a conditional surrender and applies only to children in foster care. The relinquishing parent surrenders all rights to a child, except for those contacts included in the written surrender document. The statute does not address how any agreement is to be enforced or modified. South Dakota permits birth and adoptive parents to draft an agreement for post-adoption contact if it is in writing and the birth parents have voluntarily relinquished their rights. It does not indicate whether such agreements are enforceable. See Appell (1998), pp. 39-40.

**Laws in  
Other States**

Most statutes permit post-adoption contact for birth parents; however, some States also allow other birth relatives, including grandparents, aunts, uncles, or siblings, who have significant emotional ties to the child, to be included in the agreement. Minnesota permits foster parents to petition for contact privileges; for Indian children, members of the child's Tribe are included among the eligible birth relatives. California, Indiana, Maryland, and Massachusetts have separate provisions for sibling visitation.

All parties wishing to be included in the agreements must agree in writing to all terms, which in most States are subject to court approval. Disputes over compliance and requests for modification of the terms must also be brought before the court. Five States (Arizona, Connecticut, Louisiana, Minnesota, and Oregon) require parties to participate in mediation before petitions are brought before the court. In no case can disputes over the post-adoption agreement be used as grounds for setting aside an adoption or relinquishment of parental rights.

In most other States, the statutes are silent about the issue of post-adoption contact. Approximately eight other States do address the issue, but do not provide for enforceable agreements. For example, Alaska's statute merely states that contact agreements are not prohibited. Nevada allows visitation to any person who had established a legal right to visit the child prior to the adoption.

Maryland allows agreements that have the mutual consent of both the birth and adoptive parents, but has no provision for enforcement. North Carolina also permits agreements by mutual consent, but specifies that they are not enforceable and failure to comply is not grounds to invalidate consent to the adoption. Ohio and South Carolina specifically state that mutual agreements for contact are non-binding and non-enforceable. Missouri and Tennessee leave decisions about contact and visitation with birth relatives to the sole discretion of the adoptive parents.

Ready Reference publications contain excerpts of text with citations from specific sections of each State's code that focus on a single issue of special interest. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

**ALABAMA**

Not addressed in statutes reviewed.

**ALASKA*****Alaska Stat. § 25.23.130(c) (WESTLAW through 2002 Replac. Set )***

Nothing in this chapter prohibits an adoption that allows visitation between the adopted person and that person's natural parents or other relatives.

**AMERICAN SAMOA**

Not addressed in statutes reviewed.

**ARIZONA*****Ariz. Rev. Stat. Ann. § 8-116.01 (West, WESTLAW through L. effective May 20, 2003 )***

- The parties to a proceeding under this chapter may enter into an agreement regarding communication with a child adoptee, the adoptive parents and a birth parent.
- An agreement is not enforceable unless the agreement is in writing and is approved by the court. The court shall not approve an agreement unless the agreement is approved by the prospective adoptive parents, any birth parent with whom the agreement is being made and, if the child is in the custody of the division or an agency, a representative of the division or agency.
- An agreement entered into pursuant to this section shall state that the adoptive parent may terminate contact between the birth parent and the adoptive child at any time if the adoptive parent believes that this contact is not in the child's best interests.
- The court shall not approve the agreement unless the court finds that the communication between the child adoptee, the adoptive parents, and a birth parent is in the child's best interests. The court may consider the wishes of a child who is at least 12 years of age.
- An agreement entered into pursuant to this section is enforceable even if it does not disclose the identity of the parties to the agreement.
- Failure to comply with an agreement that has been approved pursuant to this section is not grounds for setting aside an adoption decree or for revocation of a written consent to an adoption decree or relinquishment of parental rights.
- The court retains jurisdiction after the decree of adoption is entered to hear motions brought to enforce or modify an order entered pursuant to this section. Before filing a motion, the party seeking to enforce or modify an order shall make a good faith attempt to mediate the dispute. The court shall not enforce or modify an order unless the party filing the motion has made a good faith attempt to mediate the dispute.
- The court may order a modification of an agreement approved pursuant to this section if it finds that the modification is necessary to serve the best interests of the child adoptee and one of the following is true:
  - The modification is agreed to by the adoptive parents;
  - Exceptional circumstances have arisen since the agreement was approved that justify modification of the agreement.

- The court may consider the wishes of a child who is at least 12 years of age in determining whether to order a modification pursuant to subsection H.
- Every agreement entered into pursuant to this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court to enforce and modify the agreement and that they understand that failure to comply with an agreement approved pursuant to this section is not grounds for setting aside an adoption decree or for revocation of a written consent to an adoption decree or relinquishment of parental rights.

## ARKANSAS

Not addressed in statutes reviewed.

## CALIFORNIA

***Cal. Fam. Code § 8714.7 (West, WESTLAW through Ch. 14 of 2003-04 Reg. Sess., Ch. 12 of 1<sup>st</sup> Ex. Sess. and Ch. 1 of 2<sup>nd</sup> Ex. Sess.)***

- The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Post-adoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.
- Nothing in the adoption laws of this State shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.
  - Except as provided in paragraph (2), the terms of any post-adoption contact agreement executed under this section shall be limited to, but need not include, all of the following:
    - Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings;
    - Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both;
    - Provisions for the sharing of information about the child in the future.
  - The terms of any post-adoption contact agreement entered into pursuant to a petition filed pursuant to § 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.
- At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant post-adoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).
- The child who is the subject of the adoption petition shall be considered a party to the post-adoption contact agreement. The written consent to the terms and conditions of the post-adoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the post-adoption contact agreement.

- A post-adoption contact agreement shall contain the following warnings in bold type:
  - After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement;
  - A disagreement between the parties, or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child;
  - A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.
- Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the post-adoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.
- The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.
- A post-adoption contact agreement may be modified or terminated only if either of the following occurs:
  - All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified post-adoption contact agreement and the agreement is filed with the court that granted the petition of adoption;
  - The court finds all of the following:
    - The termination or modification is necessary to serve the best interests of the child;
    - There has been a substantial change of circumstances since the original agreement was executed and approved by the court;
    - The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

- All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing post-adoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.
- By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify post-adoption contact agreements.
- The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the post-adoption contact agreement.

**Cal. Welf. and Inst. Code § 366.29 (West, WESTLAW through Ch. 14 of 2003-04 Reg. Sess., Ch. 12 of 1<sup>st</sup> Ex. Sess. and Ch. 1 of 2<sup>nd</sup> Ex. Sess.)**

- When a court, pursuant to § 366.26, orders that a dependent child be placed for adoption, nothing in the adoption laws of this State shall be construed to prevent the prospective adoptive parent or parents of the child from expressing a willingness to facilitate post-adoptive sibling contact. With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate post-adoptive sibling contact. In no event shall the continuing validity of the adoption be contingent upon the post-adoptive contact, nor shall the ability of the adoptive parent or parents and the child to change residence within or outside the State be impaired by the order for contact.
- If, following entry of an order for sibling contact pursuant to subdivision (a), it is determined by the adoptive parent or parents that sibling contact poses a threat to the health, safety, or well-being of the adopted child, the adoptive parent or parents may terminate the sibling contact, provided that the adoptive parent or parents shall submit written notification to the court within 10 days after terminating the contact, which notification shall specify to the court the reasons why the health, safety, or well-being of the adopted child would be threatened by continued sibling contact.
- Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, the jurisdiction of the juvenile court with respect to the dependency proceedings of that child shall be terminated. Nonetheless, the court granting the petition of adoption shall maintain jurisdiction over the child for enforcement of the post-adoption contact agreement. The court may only order compliance with the post-adoption contact agreement upon a finding of both of the following:
  - The party seeking the enforcement participated, in good faith, in mediation or other appropriate alternative dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action.
  - The enforcement is in the best interest of the child.

**COLORADO**

Not addressed in statutes reviewed.

**CONNECTICUT****Conn. Gen. Stat. Ann. §§ 17a-112(b)-(h), 45a-715(h)-(n) (West, WESTLAW through 1-1-03)**

- Either or both birth parents and an intended adoptive parent may enter into a cooperative post-adoption agreement regarding communication or contact between either or both birth parents and the adopted child. Such an agreement may be entered into if:
  - The child is in the custody of the Department of Children and Families;
  - An order terminating parental rights has not yet been entered;
  - Either or both birth parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights. The post-adoption agreement shall be applicable only to a birth parent who is a party to the agreement. Such agreement shall be in addition to those under common law. Counsel for the child and any guardian *ad litem* for the child may be heard on the proposed cooperative post-adoption agreement. There shall be no presumption of communication or contact between the birth parents and an intended adoptive parent in the absence of a cooperative post-adoption agreement.
- If the Court of Probate or Superior Court determines that the child's best interests will be served by post-adoption communication or contact with either or both birth parents, the court shall so order,

stating the nature and frequency of the communication or contact. A court may grant post-adoption communication or contact privileges if:

- Each intended adoptive parent consents to the granting of communication or contact privileges;
- The intended adoptive parent and either or both birth parents execute a cooperative agreement and file the agreement with the court;
- Consent to post-adoption communication or contact is obtained from the child, if the child is at least 12 years of age; and
- The cooperative post-adoption agreement is approved by the court.
- A cooperative post-adoption agreement shall contain the following:
  - An acknowledgement by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative post-adoption agreement; and
  - An acknowledgement by the adoptive parents that the agreement grants either or both birth parents the right to seek to enforce the cooperative post-adoption agreement.
- The terms of a cooperative post-adoption agreement may include the following:
  - Provision for communication between the child and either or both birth parents;
  - Provision for future contact between either or both birth parents and the child or an adoptive parent; and
  - Maintenance of medical history of either or both birth parents who are parties to the agreement.
- The order approving a cooperative post-adoption agreement shall be made part of the final order terminating parental rights. The finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the post-adoption agreement. Such an agreement shall not affect the ability of the adoptive parents and the child to change their residence within or outside this State.
- A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to change or enforce the agreement unless the petitioner had participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute and allocate any cost for such mediation or dispute resolution proceedings.
- An adoptive parent, guardian *ad litem* for the child or the court, on its own motion, may, at any time, petition for review of any order entered pursuant to subsection (c) of this section, if the petitioner alleges that such action would be in the best interests of the child. The court may modify or terminate such orders as the court deems to be in the best interest of the adopted child.

## DELAWARE

Not addressed in statutes reviewed.

## DISTRICT OF COLUMBIA

Not addressed in statutes reviewed.



**FLORIDA*****Fla. Stat. Ann. § 39.811(7) (West, WESTLAW through 2003 Reg. Sess.)***

- The termination of parental rights does not affect the rights of grandparents unless the court finds that continued visitation is not in the best interests of the child or that such visitation would interfere with the permanency goals of the child.
- If the court terminates parental rights, it may, as appropriate, order that the parents, siblings, or relatives of the parent whose rights are terminated be allowed to maintain some communication or contact with the child pending adoption if the best interests of the child support this continued communication or contact, except as provided above. If the court orders such continued communication or contact, which may include, but is not limited to, visits, letters, cards, or telephone calls, the nature and frequency of the communication or contact must be set forth in written order and may be reviewed upon motion of any party, or, for purposes of this subsection, an identified prospective adoptive parent. If a child is placed for adoption, the nature and frequency of the communication or contact must be reviewed by the court at the time the child is placed for adoption.

***Fla. Stat. Ann. § 63.0427 (West, WESTLAW through to 2003 1<sup>st</sup> Reg. Sess.)***

- A child whose parents have had their parental rights terminated and whose custody has been awarded to the department pursuant to § 39.811, and who is the subject of a petition for adoption under this chapter, shall have the right to have the court consider the appropriateness of post-adoption communication or contact, including, but not limited to, visits, written correspondence, or telephone calls, with his or her siblings or, upon agreement of the adoptive parents, the parents who have had their parental rights terminated or other specified biological relatives. The court shall consider the following in making such determination:
  - Any orders of the court pursuant to § 39.811(7);
  - Recommendations of the department, the foster parents if other than the adoptive parents, and the guardian *ad litem*;
  - Statements of the prospective adoptive parents;
  - Any other information deemed relevant and material by the court.
- If the court determines that the child's best interests will be served by post-adoption communication or contact, the court shall so order, stating the nature and frequency for the communication or contact. This order shall be made a part of the final adoption order, but in no event shall the continuing validity of the adoption be contingent upon such post-adoption communication or contact, nor shall the ability of the adoptive parents and child to change residence within or outside the State of Florida be impaired by such communication or contact.
- Notwithstanding the provisions of § 63.162, the adoptive parent may, at any time, petition for review of a communication or contact order entered pursuant to the subsection above, if the adoptive parent believes that the best interests of the adopted child are being compromised, and the court shall have authority to order the communication or contact to be terminated or modified, as the court deems to be in the best interests of the adopted child. As part of the review process, the court may order the parties to engage in mediation. The department shall not be required to be a party to such review.

**GEORGIA**

Not addressed in statutes reviewed.

**GUAM**

Not addressed in statutes reviewed.

**HAWAII**

Not addressed in statutes reviewed.

**IDAHO**

Not addressed in statutes reviewed.

**ILLINOIS**

Not addressed in statutes reviewed.

**INDIANA**

***Ind. Code Ann. § 31-19-16-1 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

At the time an adoption decree is entered, the court entering the adoption decree may grant post-adoption contact privileges under section 2 of this chapter to a birth parent who has:

- Consented to the adoption; or
- Voluntarily terminated the parent-child relationship.

***Ind. Code Ann. § 31-19-16-2 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

A court may grant post-adoption contact privileges if:

- The court determines that the best interests of the child would be served by granting post-adoption contact privileges;
- The child is at least 2 years of age and the court finds that there is a significant emotional attachment between the child and the birth parent;
- Each adoptive parent consents to the granting of post-adoption contact privileges;
- The adoptive parents and the birth parents:
  - Execute a post-adoption contact agreement; and
  - File the agreement with the court
- The licensed child placing agency sponsoring the adoption and the child's court appointed special advocate or guardian *ad litem* appointed under IC 31-32-3 recommends to the court the post-adoption contact agreement, or if there is no licensed child placing agency sponsoring the adoption, the county Office of Family and Children or other agency that prepared an adoption report under IC 31-19-8-5 is informed of the contents of the post-adoption contact agreement and comments on the agreement in the agency's report to the court;
- Consent to post-adoption contact is obtained from the child if the child is at least 12 years of age;
- The post-adoption contact agreement is approved by the court.

***Ind. Code Ann. § 31-19-16-3 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

A post-adoption contact agreement filed under section 2 of this chapter must contain the following provisions:

- An acknowledgment by the birth parents that the adoption is irrevocable, even if the adoptive parents do not abide by the post-adoption contact agreement;
- An acknowledgment by the adoptive parents that the agreement grants the birth parents the right to seek to enforce the post-adoption privileges set forth in the agreement.

***Ind. Code Ann. § 31-19-16-4 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

A birth parent or an adoptive parent may file a petition with the court entering the adoption decree for the following purposes:

- To modify the post-adoption contact agreement;
- To compel a birth parent or an adoptive parent to comply with the post-adoption contact agreement.

***Ind. Code Ann. § 31-19-16-5 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

The court may not award monetary damages as a result of the filing of a petition under section 4 of this chapter.

***Ind. Code Ann. § 31-19-16-6 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

- The court may void or modify a post-adoption contact agreement approved under this chapter at any time before or after the adoption if the court determines after a hearing that the best interest of the child requires the voiding or modifying of the agreement.
- Before the court (1) voids or modifies an agreement; or (2) hears a motion to compel compliance with an agreement approved under this chapter; the court may appoint a guardian ad litem or court appointed special advocate under IC 31-32-3 to represent and protect the best interests of the child.

***Ind. Code Ann. § 31-19-16-7 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

The provisions of IC 31-32-3 concerning the (1) representation; (2) duties; (3) liabilities; and (4) appointment of a guardian *ad litem* or court appointed special advocate apply to proceedings under this chapter.

***Ind. Code Ann. § 31-19-16-8 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

A court may not revoke an adoption decree because a birth parent or an adoptive parent fails to comply with a post-adoption contact agreement approved by a court under this chapter.

***Ind. Code Ann. § 31-19-16-9 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

Post-adoption contact privileges are permissible without court approval in an adoption of a child who is less than 2 years of age upon the agreement of the adoptive parents and a birth parent. However, post-adoption contact privileges under this section may not include visitation. A post-adoption contact agreement under this section (1) is not enforceable; and (2) does not affect the finality of the adoption.

***Ind. Code Ann. § 31-19-16.5-1 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

At the time an adoption decree is entered, the court entering the decree may order the adoptive parents to provide specific post-adoption contact for an adopted child who is at least 2 years of age with a pre-adoptive sibling if:

- The court determines that the post-adoption contact would serve the best interests of the adopted child; and
- Each adoptive parent consents to the court's order for post-adoption contact privileges.

***Ind. Code Ann. § 31-19-16.5-2 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

In making its determination under section 1 of this chapter, the court shall consider any relevant evidence, including the following:

- A recommendation made by a licensed child placing agency sponsoring the adoption;
- A recommendation made by the adopted child's court appointed special advocate or guardian *ad litem*;
- A recommendation made by the county Office of Family and Children or other agency that prepared a report of its investigation and its recommendation as to the advisability of the adoption under IC § 31-19-8-5;
- Wishes expressed by the adopted child or adoptive parents.

***Ind. Code Ann. § 31-19-16.5-3 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

If post-adoption contact is ordered under this chapter, the adoption is irrevocable even if the adoptive parents do not abide by the post-adoption contact order.

***Ind. Code Ann. § 31-19-16.5-4 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

The following persons may file a petition requesting that the court vacate or modify a post-adoption contact order with a pre-adoptive sibling or to compel an adoptive parent to comply with the post-adoption contact order:

- A pre-adoptive sibling by:
  - Next friend; or
  - Guardian *ad litem* or court appointed special advocate;
- The adopted child by:
  - Next friend;
  - Guardian *ad litem* or court appointed special advocate as described in section 5 of this chapter;
- An adoptive parent.

***Ind. Code Ann. § 31-19-16.5-5 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

The court may vacate or modify a post-adoption contact order entered under this chapter at any time after the adoption if the court determines, after a hearing, that it is in the best interests of the adopted child.

Before hearing the petition to vacate or modify or compel compliance with the post-adoption contact order, the court may appoint a guardian *ad litem* or court appointed special advocate to represent and protect the best interests of the adopted child. However, the court may only appoint a guardian *ad litem* or court appointed special advocate for the adopted child under this chapter if the interests of an adoptive parent differ from the child's interests to the extent that the court determines that the appointment is necessary to protect the best interests of the child.

***Ind. Code Ann. § 31-19-16.5-6 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

The provisions regarding the representation, duties, and appointment of a guardian *ad litem* or court appointed special advocate by a juvenile court described under IC 31-32-3 apply to post-adoption contact proceedings under this chapter.

***Ind. Code Ann. § 31-19-16.5-7 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

The court may not (1) award monetary damages, or (2) revoke an adoption decree if the court finds that a post-adoption contact order entered under this chapter has been violated.

**IOWA**

Not addressed in statutes reviewed.

**KANSAS**

Not addressed in statutes reviewed.

**KENTUCKY**

Not addressed in statutes reviewed.

**LOUISIANA*****La. Children's Code art. 1269.1 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. And Reg. Sess.)***

- In an agency adoption in which the department is the custodian of the child, the court may approve an agreement providing for continuing contact between the child to be adopted and his grandparent, sibling, and any parent whose consent or relinquishment is required for the child's adoption, if both of the following conditions are met:
  - The child has an established, significant relationship with that person to the extent that its loss would cause substantial harm to the child;
  - The preservation of the relationship would otherwise be in the best interest of the child.
- If there is no parental relationship that meets the requirements of the paragraph above, the court may approve an agreement providing for continuing contact between the child to be adopted and any other relative by blood, adoption, or affinity whose relationship with the child meets those requirements.
- When adoption is approved by the court as the permanent plan for the child, the department shall inform any parent, grandparent, sibling, or any other relative by blood, adoption, or affinity who meets the requirements of the paragraphs above, of the possibility of post-adoption contact with the child upon agreement with the adoptive parents in accordance with the provisions of this chapter.

**La. Children's Code art. 1269.2 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. and Reg. Sess.)**

- Every post-adoption contact agreement shall be in writing and signed by the adopting parents and by any adult granted contact. If a sibling granted contact is a minor, his parent or legal custodian shall sign the agreement.
- On behalf of the child who is to be adopted, the department, and counsel for the child shall report to the court approval or objection to the agreement and the child's wishes concerning continuing contact. The court-appointed special advocate (CASA) for the child, if any, may also submit recommendations to the court regarding a proposed agreement.
- If requested by the parties, the court may refer them to mediation to assist them in confecting a continuing contact agreement. If necessary to ensure that the child's best interest is taken into account, the court may also appoint independent counsel for any child involved in future continuing contact.
- A continuing contact agreement may authorize the exchange of information, communication by telephone, mail, e-mail, or other means, and direct visitation in either the adopting parents' home or elsewhere through a mutually agreed upon intermediary.
- Every agreement, in order to be enforceable in accordance with Article 1269.7, must recite the following declarations:
  - The parties have freely and voluntarily entered into the agreement and it reflects their intent to be bound by its terms, unless later modified by a replacement agreement or by court order;
  - The sibling, grandparent, parent, or other relative by blood, adoption, or affinity, or his representative, if any, has been counseled and advised by the department, by counsel, or by other appropriate professional about the meaning of these declarations and the effects of a continuing contact agreement and each has had the opportunity to have the agreement reviewed by his counsel;
  - The sibling, grandparent, parent, or other relative by blood, adoption, or affinity, or his representative, has been informed and understands that upon the execution of the agreement, any dispute or litigation regarding its terms shall not affect the validity of any surrender, termination of parental rights, adoption, or custody of the adopted child;
  - The adopting parents have been informed and understand that the sibling, grandparent, parent, or other relative by blood, adoption, or affinity may seek enforcement of the terms of the agreement in accordance with Article 1269.7.

Note: The statute contains a sample *continuing contact agreement* that is not reproduced here.

**La. Children's Code art. 1269.3 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. and Reg. Sess.)**

- Within 10 days of its execution, the department or attorney for the prospective adoptive parents shall file in the court in which the adoption is pending an agreement for continuing contact.
- The agreement may be filed later than 10 days after execution only with leave of court for good cause shown.
- If either the department or counsel for the child objects to the agreement, the court may conduct a hearing before approving the agreement.

**La. Children's Code art. 1269.4 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. and Reg. Sess.)**

- The court shall review a continuing contact agreement executed in conformity with the requirements of this chapter.
- If the court finds that an agreement serves the best interest of the child, the agreement shall be incorporated into a judgment of the court. An agreement reached by the parties and approved by the department and counsel representing the child is presumed to serve the best interest of the child. The judgment shall provide that failure to comply with the terms of the agreement does not constitute grounds for annulling a surrender or the final decree of adoption.

If the court rejects the agreement, it shall make specific findings of fact in support of its conclusion that the best interest of the child would not be served by approval of the agreement. The factors to be considered shall include:

- The duration of the child's relationship with the parent, grandparent, sibling, or other relative by blood, adoption, or affinity seeking continuing contact;
- The strength of the psychological attachment between the child and the individual seeking continuing contact;
- The resulting harm to the child if the relationship is not preserved.
- The court may receive expert testimony on the issue of continuing contact.
- If the child is 12 years of age or older, the court shall solicit and consider the child's wishes in the matter.

***La. Children's Code art 1269.5 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. and Reg. Sess.)***

- A continuing contact agreement shall be enforceable only if filed with the court and approved in accordance with Article 1269.4.
- Failure to comply with the terms of an agreement made pursuant to this Chapter is not grounds for nullifying a surrender or an adoption decree or revocation by a biological parent of a surrender or consent to an adoption or for any action seeking the child's custody. Failure to include this warning in the judgment as required by Article 1269.4 shall not affect the adoption.

***La. Children's Code art. 1269.6 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. and Reg. Sess.)***

The adoptive parent and the grandparent, sibling, and any parent whose consent or relinquishment is required for the child's adoption, or any other relative by blood, adoption, or affinity who may be permitted continuing contact by Article 1269.1 may enter into an agreement regarding communication or contact after entry of a final decree of adoption. Any such agreement shall be enforceable only if filed with the court and approved in accordance with this Chapter.

***La. Children's Code art. 1269.7 (West, WESTLAW through all 2002 1<sup>st</sup> Ex. and Reg. Sess.)***

- Unless another court has jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, the court shall retain jurisdiction after the decree of adoption is entered for the purpose of hearing motions brought to enforce, modify, or terminate an agreement entered into pursuant to the provisions of this chapter. For the convenience of the parties and the witnesses and in the interest of justice, the court, upon contradictory motion or upon its own motion after notice and hearing, may transfer the proceeding to another juvenile court in the State.
- Before hearing such a motion, the court shall refer the parties to mediation in accordance with title IV, chapter 6 of this code. Only if the court finds that the party seeking relief has participated or attempted to participate in good faith in mediating the dispute, may it proceed to a determination on the merits of the motion.
- If the child is 12 years of age or older, the court shall solicit and consider the child's wishes in the matter.

The court shall order continuing compliance in accordance with the agreement and refuse to modify or terminate it unless it finds that there has been a change of circumstances and the agreement no longer serves the best interest of the child.

## MAINE

Not addressed in statutes reviewed.

## MARYLAND

### ***Md. Code Ann. Fam. Law § 5-312(e) (Lexis, WESTLAW through 2003 Reg. Sess.)***

- *Visitation privileges.* After the adoption, if it is in the child's best interest, the adoptive parent and a non-consenting natural parent may agree to visitation privileges between the child and the natural parent or siblings.

### ***Md. Code Ann. Fam. Law § 5-525.2 (Lexis, WESTLAW through 2003 Reg. Sess.)***

- *Petition for visitation rights.* Any siblings who are separated due to a foster care or adoptive placement may petition a court, including a juvenile court with jurisdiction over one or more of the siblings, for reasonable sibling visitation rights.
- *Role of court.* If a petitioner under this section petitions a court to issue a visitation decree or to amend an order, the court:
  - May hold a hearing to determine whether visitation is in the best interest of the children;
  - Shall weigh the relative interests of each child and base its decision on the best interests of the children promoting the greatest welfare and least harm to the children; and
  - May issue an appropriate order or decree.

## MASSACHUSETTS

### ***Mass. Gen. Laws Ann. ch. 119, § 23(A) (West, WESTLAW through 2003 1<sup>st</sup> Ann. Sess.)***

The court shall, whenever reasonable and practical, and based upon a determination of the best interests of the child, ensure that children placed in foster care who are separated from siblings who are either in other foster or pre-adoptive homes, or in the homes of parents or extended family members, have access to, and visitation rights with, such siblings throughout the period of their placement in the care and custody of the commonwealth, or subsequent to such placements if the children or their siblings are separated through adoption or long-term foster care.

The courts shall determine, at the time of initial placements wherein children and their siblings are separated through placements in foster, pre-adoptive, or adoptive care, that such visitation rights be implemented through a schedule of visitations or supervised visitations to be arranged and monitored through the appropriate public or private agency, and with the participation of the foster, pre-adoptive or adoptive parents, or extended family members, and other parties who are relevant to the preservation of sibling relationships and visitation rights. Periodic reviews shall be conducted, so as to evaluate the effectiveness and appropriateness of the visitations between siblings placed in care.

### ***Mass. Gen. Laws Ann. ch. 210, § 3(d) (West, WESTLAW through 2003 1<sup>st</sup> Ann. Sess.)***

Nothing in this section shall be construed to prohibit the petitioner and a birth parent from entering into an agreement for post-termination contact or communication. The court issuing the termination decree under this section shall have jurisdiction to resolve matters concerning the agreement. Such agreement shall become null and void upon the entry of an adoption or guardianship decree.



Notwithstanding the existence of any agreement for post-termination or post-adoption contact or communication, the decree entered under this section shall be final.

Nothing in this section shall be construed to prohibit a birth parent who has entered into a post-termination agreement from entering into an agreement for post-adoption contact or communication pursuant to section 6C once an adoptive family has been identified.

***Mass. Gen. Laws Ann. ch. 210, § 6C (West, WESTLAW through 2003 1<sup>st</sup> Ann. Sess.)***

- Prior to the entry of an adoption decree, prospective adoptive parents and a birth parent may enter into an agreement for post-adoption contact or communication between or among a minor to be adopted, the prospective adoptive parents and the birth parents. Such agreement may be approved by the court issuing the termination decree under section 3; provided, however, that an agreement under this section shall be finally approved by the court issuing the adoption decree. Any breach, modification or invalidation of the agreement, or any part of it, shall not affect the validity of the adoption. The adoption shall be final.
- The court shall approve an agreement for post-adoption contact or communication if the court finds that such agreement (i) is in the best interests of the child; (ii) contains terms that are fair and reasonable; and (iii) has been entered knowingly and voluntarily by all parties to the agreement.
- This requirement may be satisfied by an affidavit executed by all parties, either jointly or separately, that is filed with the court. The affidavit shall state that the agreement is entered into knowingly and voluntarily and is not the product of coercion or duress. The court may hear testimony from the parties to the agreement.
- To be approved by the court, an agreement for post-adoption contact or communication shall contain the following statements:
  - This agreement is entered into pursuant to the provisions of section 6C of chapter 210 of the General Laws.
  - Any breach, modification or invalidation of the agreement or any part of it shall not affect the validity of the adoption. The adoption shall be final.
  - The parties acknowledge that either the birth or adoptive parents who have entered into the agreement have the right to seek enforcement as set forth in section 6D of chapter 210 of the General Laws.
  - The parties have not relied on any representations other than those contained in this agreement. The agreement shall be signed by the parties and acknowledged before a notary public as the free act and deed of the parties. If the child is above the age of 12, the agreement shall contain the written consent of the child. If the child is in the custody of the Department of Social Services, the agreement shall contain the written approval of the department and the attorney for the child. If the child is in the custody of a licensed child care agency, the agreement shall contain the written approval of the agency.
- To be enforceable, an agreement for post-adoption contact or communication shall be: (i) in writing; (ii) approved by the court prior to the date for entry of the adoption decree; and (iii) incorporated but not merged into the adoption decree, and shall survive as an independent contract.
- An agreement under this section need not disclose the identity of the parties to be enforceable; but if an identity is not disclosed, the unidentified person shall designate an agent for the purpose of service of process.
- An agreement for post-adoption contact or communication shall cease to be enforceable on the date the adopted person turns 18 years of age.

***Mass. Gen. Laws Ann. ch. 210, § 6D (West, WESTLAW through 2003 1<sup>st</sup> Ann. Sess.)***

A party to a court-approved agreement for post-adoption contact or communication may seek to enforce the agreement by commencing a civil action for specific performance. A court order for specific performance of the terms of a post-adoption contact agreement shall be the sole remedy for breach of an agreement.

In such proceedings, parties shall not be entitled to the appointment of counsel; provided, however, that the court may appoint a guardian *ad litem* to represent the interests of the child.

In an enforcement proceeding, the court may modify the terms of the agreement if the court finds that there has been a material and substantial change in circumstances and the modification is necessary in the best interests of the child. A court-imposed modification of a previously approved agreement may limit, restrict, condition or decrease contact between the birth parents and the child but in no event shall a court-imposed modification serve to expand, enlarge or increase the amount of contact between the birth parents and the child or place new obligations on adoptive parents.

If the court finds that an action brought under this section was wholly insubstantial, frivolous and not advanced in good faith in accordance with the provisions of section 6F of chapter 231, the court may award attorney's fees to all prevailing parties.

Nothing in the agreement shall preclude a party seeking to enforce an agreement for post-adoption contact or communication from utilizing child welfare mediation or permanency mediation before, or in addition to, the commencement of a civil action for specific enforcement. All proceedings conducted under this section shall be closed to the public and confidential and papers shall be segregated in accordance with section 5D.

***Mass. Gen. Laws Ann. ch. 210, § 6E (West, WESTLAW through 2003 1<sup>st</sup> Ann. Sess.)***

Nothing contained in sections 6C and 6D shall be construed to abrogate the right of an adoptive parent to make decisions on behalf of his child.

**MICHIGAN**

Not addressed in statutes reviewed.

**MINNESOTA*****Minn. Stat. Ann. § 259.58 (West, WESTLAW through End of 2002 1<sup>st</sup> Spec. Sess.)***

Adoptive parents and a birth relative or foster parents may enter an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents under this section. An agreement may be entered between:

- Adoptive parents and a birth parent;
- Adoptive parents and any other birth relative or foster parent with whom the child resided before being adopted; or
- Adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents.

For purposes of this section, “birth relative” means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a minor adoptee. This relationship may be by blood, adoption, or marriage. For an Indian child, birth relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act, United States Code, title 25, section 1903.

- An agreement regarding communication with or contact between minor adoptees, adoptive parents, and a birth relative is not legally enforceable unless the terms of the agreement are contained in a written court order entered in accordance with this section. An order may be sought at any time before a decree of adoption is granted. The order must be issued within 30 days of being submitted to the court or by the granting of the decree of adoption, whichever is earlier. The court shall not enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents, a birth relative or foster parent who desires to be a party to the agreement, and, if the child is in the custody of or under the guardianship of an agency, a representative of the agency. A birth parent must approve in writing of an agreement between adoptive parents and any other birth relative or foster parent, unless an action has been filed against the birth parent by a county under chapter 260. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the minor adoptee, the adoptive parents, and a birth relative as agreed upon and contained in the proposed order would be in the minor adoptee's best interests. The court shall mail a certified copy of the order to the parties to the agreement or their representatives at the addresses provided by the petitioners.
- Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court under this section is not grounds for:
  - Setting aside an adoption decree; or
  - Revocation of a written consent to an adoption after that consent has become irrevocable.
- An agreed order entered under this section may be enforced by filing a petition or motion with the family court that includes a certified copy of the order granting the communication, contact, or visitation, but only if the petition or motion is accompanied by an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification. The prevailing party may be awarded reasonable attorney's fees and costs. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the minor adoptee, and:
  - The modification is agreed to by the parties to the agreement; or
  - Exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

## MISSISSIPPI

Not addressed in statutes reviewed.

## MISSOURI

### ***Mo. Ann. Stat. § 453.080(4) (West, WESTLAW through End of 2002 2<sup>nd</sup> Reg. Sess. )***

Before the completion of an adoption, the exchange of information among the parties shall be at the discretion of the parties. Upon completion of an adoption, further contact among the parties shall be at the discretion of the adoptive parents. The court shall not have jurisdiction to deny continuing contact between the adopted person and the birth parent, or an adoptive parent and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.

## MONTANA

### ***Mont. Code Ann. § 42-5-301 (WESTLAW through 2002 Spec. Sess.)***

- Except as otherwise provided in this title, a decree of adoption terminates any existing order or written or oral agreement for contact or communication between the adoptee and the birth parents or family.
- Any express written agreement entered into between the placing parent and the prospective adoptive parent after the execution of a relinquishment and consent to adoption is independent of the adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the agreement for contact or communication is later performed. Failure to perform an agreement is not grounds for setting aside an adoption decree.
- court may order that an agreement for contact or communication entered into under this section may not be enforced upon a finding that:
  - Enforcement is detrimental to the child;
  - Enforcement undermines the adoptive parent's parental authority; or
  - Due to a change in circumstances, compliance with the agreement would be unduly burdensome to one or more of the parties.

## NEBRASKA

### ***Neb. Rev. Stat. § 43-155 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

The legislature finds that there are children in temporary foster care situations who would benefit from the stability of adoption. It is the intent of the legislature that such situations be accommodated through the use of adoptions involving exchange-of-information contracts between the department and the adoptive or biological parent or parents.

### ***Neb. Rev. Stat. § 43-156 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

For purposes of sections 43-155 to 43-160, unless the context otherwise requires:

- Adoption involving exchange of information shall mean an adoption of a child in which one or both of the child's biological parents contract with the department for information about the child obtained through his or her adoptive family.
- Exchange-of-information contract shall mean a 2-year, renewable obligation, voluntarily agreed to and signed by both the adoptive and biological parent or parents as well as the department.
- Department shall mean the Department of Health and Human Services.

***Neb. Rev. Stat. § 43-157 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

The department may, when planning the placement of a child for adoption, determine whether the best interests of such child might be served by placing the child in an adoption involving exchange of information.

***Neb. Rev. Stat. § 43-158 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

When the department determines that an adoption involving exchange of information would serve a child's best interests, it may enter into agreements with the child's proposed adoptive parent or parents for the exchange of information. The nature of the information promised to be provided shall be specified in an exchange-of-information contract and may include, but shall not be limited to, letters by the adoptive parent or parents at specified intervals providing information regarding the child's development or photographs of the child at specified intervals. Any agreement shall provide that the biological parent or parents keep the department informed of any change in address or phone number and may include provision for communication by the biological parent or parents indirectly through the department or directly to the adoptive parent or parents. Nothing in sections 43-155 to 43-160 shall be interpreted to preclude or allow visitation between the biological parent or parents and the child.

***Neb. Rev. Stat. § 43-159 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

When, after placement of a child for adoption, it is determined by the department, in consultation with the adoptive parent or parents, that certain or all exchanges of information are no longer in the best interests of the child, the department may enter into an agreement with the biological parent or parents to alter the original contract made between the department and the biological parent or parents.

***Neb. Rev. Stat. § 43-160 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

The existence of any agreement or agreements of the kind specified in section 43-158 shall not operate to impair the validity of any relinquishment or any decree of adoption entered by a court of the State of Nebraska. The violation of the terms of any agreement or agreements of the kind specified in section 43-158 shall not operate to impair the validity of any relinquishment or any decree of adoption entered by a court of competent jurisdiction. The parties to an exchange-of-information contract shall have the authority to bring suit in a court of competent jurisdiction for the enforcement of any agreement entered into pursuant to section 43-158.

***Neb. Rev. Stat. § 43-162 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

The prospective adoptive parent or parents and the birth parent or parents of a prospective adoptee may enter into an agreement regarding communication or contact after the adoption between or among the prospective adoptee and his or her birth parent or parents if the prospective adoptee is in the custody of the department. Any such agreement shall not be enforceable unless approved by the court pursuant to section 43-163.

***Neb. Rev. Stat. § 43-163 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

- Before approving an agreement under section 43-162, the court shall appoint a guardian *ad litem* if the prospective adoptee is not already represented by a guardian *ad litem*, and the guardian *ad litem* of the prospective adoptee shall represent the best interests of the child concerning such agreement. The court may enter an order approving the agreement upon motion of one of the prospective adoptee's birth parents or one of the prospective adoptive parents if the terms of the agreement are approved in writing by the prospective adoptive parent or parents and the birth parent or parents and if the court finds, after consideration of the recommendations of the guardian *ad litem* and the department and other factors, that such communication with the birth parent or parents and the maintenance of birth family history would be in the best interests of the prospective adoptee.
- In determining if the agreement is in the best interests of the prospective adoptee, the court shall consider the following factors as favoring communication with the birth parent or parents: Whether the prospective adoptee and birth parent or parents lived together for a substantial period of time; the prospective adoptee exhibits attachment or bonding to such birth parent or parents; and the adoption is a foster-parent adoption with the birth parent or parents having relinquished the prospective adoptee due to an inability to provide him or her with adequate parenting.

***Neb. Rev. Stat. § 43-164 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

Failure to comply with the terms of an order entered pursuant to section 43-163 shall not be grounds for setting aside an adoption decree, for revocation of a written consent to adoption after the consent has been approved by the court, or for revocation of a relinquishment of parental rights after the relinquishment has been accepted in writing by the Department of Health and Human Services as provided in section 43-106.01.

***Neb. Rev. Stat. § 43-165 (WESTLAW through End of 2002 3<sup>rd</sup> Spec. Sess.)***

An order entered pursuant to section 43-163 may be enforced by a civil action, and the prevailing party may be awarded, as part of the costs of the action, reasonable attorney's fees. The court shall not modify an order issued under such section unless it finds that the modification is necessary to serve the best interests of the adoptee and (1) that the modification is agreed to by the adoptive parent or parents and the birth parent or parents or (2) exceptional circumstances have arisen since the order was entered that justify modification of the order.

**NEVADA*****Nev. Rev. Stat. § 127.171 (WESTLAW through 2001 Reg. Sess. and 17<sup>th</sup> (2001) and 18<sup>th</sup> (2002) Spec. Sess.)***

- In a proceeding for the adoption of a child, the court may grant a reasonable right to visit to certain relatives of the child only if a similar right had been granted previously pursuant to NRS 125C.050.
- The court may not grant a right to visit the child to any person other than as specified in subsection 1.

***Nev. Rev. Stat. § 125C.050 (WESTLAW through Nev. 2001 Reg. Sess. and 17<sup>th</sup> (2001) and 18<sup>th</sup> 2002 Spec. Sess.)***

- Except as otherwise provided in this section, if a parent of an unmarried minor child:
  - Is deceased;
  - Is divorced or separated from the parent who has custody of the child;
  - Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or
  - Has relinquished his parental rights or his parental rights have been terminated, the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during his minority.
- If the child has resided with a person with whom he has established a meaningful relationship, the court in the county in which the child resides also may grant to that person a reasonable right to visit the child during his minority, regardless of whether the person is related to the child.
- A party may seek a reasonable right to visit the child during his minority pursuant to the subsections above only if a parent of the child has denied or unreasonably restricted visits with the child.
- If a parent of the child has denied or unreasonably restricted visits with the child, there is a rebuttable presumption that the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant visitation.
- The court may grant a party seeking visitation a reasonable right to visit the child during his minority only if the court finds that the party seeking visitation has rebutted the presumption in the fourth subsection.
- In determining whether the party seeking visitation has rebutted the presumption established in the fourth subsection, the court shall consider:
  - The love, affection and other emotional ties existing between the party seeking visitation and the child;
  - The capacity and disposition of the party seeking visitation to:
    - Give the child love, affection and guidance and serve as a role model to the child;
    - Cooperate in providing the child with food, clothing and other material needs during visitation; and
    - Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.
  - The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation;
  - The moral fitness of the party seeking visitation;
  - The mental and physical health of the party seeking visitation;
  - The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference;
  - The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child;
  - The medical and other needs of the child related to health as affected by the visitation;
  - The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child;
  - Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right of visitation against the wishes of a parent of the child.

- If the parental rights of either or both natural parents of a child are relinquished or terminated, and the child is placed in the custody of a public agency or a private agency licensed to place children in homes, the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during his minority if a petition therefore is filed with the court before the date on which the parental rights are relinquished or terminated. In determining whether to grant this right to a party seeking visitation, the court must find, by a preponderance of the evidence, that the visits would be in the best interests of the child in light of the considerations set forth above.
- Rights to visit a child may be granted:
  - In a divorce decree;
  - In an order of separate maintenance; or
  - Upon a petition filed by an eligible person:
    - After a divorce or separation or after the death of a parent, or upon the relinquishment or termination of a parental right;
    - If the parents of the child were not legally married and were cohabitating, after the death of a parent or after the separation of the parents of the child; or
    - If the petition is based on the provisions of subsection 2, after the eligible person ceases to reside with the child.
- If a court terminates the parental rights of a parent who is divorced or separated, any rights previously granted pursuant to subsection 1 also must be terminated, unless the court finds, by a preponderance of the evidence, that visits by those persons would be in the best interests of the child.
- For the purposes of this section, “separation” means:
  - A legal separation or any other separation of a married couple if the couple has lived separate and apart for 30 days or more and has no present intention of resuming a marital relationship; or
  - If a couple was not legally married but cohabitating, a separation of the couple if the couple has lived separate and apart for 30 days or more and has no present intention of resuming cohabitation or entering into a marital relationship.

## NEW HAMPSHIRE

Not addressed in statutes reviewed.

## NEW JERSEY

Not addressed in statutes reviewed.

## NEW MEXICO

### ***N. M. Stat. Ann. § 32A-5-35 (West, WESTLAW through 11-5-02)***

- The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption. The contact may include exchange of identifying or non-identifying information or visitation between the parents or the parents' relatives and the petitioner or visitation between the parents or the parents' relatives and the adoptee.



- The court may appoint a guardian *ad litem* for the adoptee. The court shall appoint a guardian *ad litem* for the adoptee when visitation between the biological family and the adoptee is included in the agreement. When an adoptive placement is made voluntarily through an agency or pursuant to § 32A-5-13, the court may, in its discretion, appoint a guardian *ad litem*. In all adoptions other than those in which the child is placed by the department, the court may assess the parties for the cost of services rendered by the guardian *ad litem*.
- In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.
- Every agreement entered into pursuant to provisions of this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee. The provision of this subsection shall not apply to a biological parent who has voluntarily relinquished parental rights and consented to the adoption.
- The court shall retain jurisdiction after the decree of adoption is entered, if the decree contains an agreement for contact, for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests.

## NEW YORK

### ***N. Y. Soc. Serv. Law § 383-c(5)(b) (West, WESTLAW through L. 2003 )***

- The instrument for a judicial surrender and the instrument for an extra-judicial surrender shall be in a form prescribed by the commissioner after consultation with the chief administrator of the courts and shall state in plain language in conspicuous bold print on the first page:
  - That the parent has the right, before signing the surrender, to speak to a lawyer of her or his own choosing and any other person she or he wishes; to have that lawyer and any other person present with her or him at the time of the signing of the surrender; and has the right to ask the court to appoint a lawyer free of charge if the parent cannot afford to hire one; and has the right to have supportive counseling;
  - That the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, and unless such terms are written in the surrender, or, if the parent registers with the adoption information register, as specified in section 4138(d) of the public health law, that the parent may be contacted at anytime after the child reaches the age of 18 years, but only if both the parent and the adult child so choose;
  - That the child will be adopted without the parent's consent and without further notice to the parent, and will be adopted by any person that the agency chooses, unless the surrender paper contains the name of the person or persons who will be adopting the child; and
  - That the parent cannot be forced to sign the surrender paper, and cannot be punished if he or she does not sign the paper; and would not be subject to any penalty for refusing to sign the surrender.

**NORTH CAROLINA*****N.C. Gen. Stat. § 48-3-610 (West, WESTLAW through 2003 Reg. Sess.)***

If a person executing a consent and the prospective adoptive parent or parents enter into an agreement regarding visitation, communication, support, and any other rights and duties with respect to the minor, this agreement shall not be a condition precedent to the consent itself, failure to perform shall not invalidate a consent already given, and the agreement itself shall not be enforceable.

***N.C. Gen. Stat. § 48-4-105 (West, WESTLAW through 2003 Reg. Sess.)***

- An adoption under this article [pertaining to the adoption of a minor stepchild by a stepparent] does not terminate or otherwise affect visitation rights awarded to a biological grandparent of a minor pursuant to G.S. 50-13.2.
- An adoption under this article does not affect the right of a biological grandparent to petition for visitation rights pursuant to G.S. 50-13.2A or G.S. 50-13.5(j).

**NORTH DAKOTA**

Not addressed in statutes reviewed.

**NORTHERN MARIANA ISLANDS**

Not addressed in statutes reviewed.

**OHIO*****Ohio Rev. Code Ann. § 3107.62 (West, WESTLAW through 3/30/03, file 1 of 125<sup>th</sup> Gen. Assem.)***

An agency or attorney arranging a child's adoptive placement shall inform the child's birth parent and prospective adoptive parent that the birth parent and prospective adoptive parent may enter into a nonbinding open adoption in accordance with section 3107.63 of the Revised Code.

***Ohio Rev. Code Ann. § 3107.63 (West, WESTLAW through 3/30/03 , file 1 of 125<sup>th</sup> Gen. Assem.)***

- A birth parent who voluntarily chooses to have the birth parent's child placed for adoption may request that the agency or attorney arranging the child's adoptive placement provide for the birth parent and prospective adoptive parent to enter into an open adoption with terms acceptable to the birth parent and prospective adoptive parent. Except as provided below, the agency or attorney shall provide for the open adoption if the birth parent and prospective adoptive parent agree to the terms of the open adoption.
- An agency or attorney arranging a child's adoptive placement may refuse to provide for the birth parent and prospective adoptive parent to enter into an open adoption. If the agency or attorney refuses, the agency or attorney shall offer to refer the birth parent to another agency or attorney the agency or attorney knows will provide for the open adoption.

**Ohio Rev. Code Ann. § 3107.65 (West, WESTLAW through 2003 , file 1 of 125<sup>th</sup> Gen. Assem.)**

- No open adoption shall do any of the following:
  - Provide for the birth parent to share with the prospective adoptive parent parental control and authority over the child placed for adoption or in any manner limit the adoptive parent's full parental control and authority over the adopted child;
  - Deny the adoptive parent or child access to forms pertaining to the social or medical histories of the birth parent if the adoptive parent or child is entitled to them under section 3107.17 of the Revised Code;
  - Deny the adoptive parent or child access to a copy of the contents of the child's adoption file if the adoptive parent or child is entitled to them under section 3107.47 of the Revised Code;
  - Deny the adoptive parent, child, birth parent, birth sibling, or other relative access to non-identifying information that is accessible pursuant to section 3107.66 of the Revised Code or to materials, photographs, or information that is accessible pursuant to section 3107.68 of the Revised Code;
  - Provide for the open adoption to be binding or enforceable.
- A probate court may not refuse to approve a proposed placement pursuant to division (D)(1) of section 5103.16 of the Revised Code or to issue a final decree of adoption or interlocutory order of adoption under section 3107.14 of the Revised Code on the grounds that the birth parent and prospective adoptive parent have entered into an open adoption unless the court issues a finding that the terms of the open adoption violate the division above or are not in the best interest of the child. A probate court may not issue a final decree of adoption or interlocutory order of adoption that nullifies or alters the terms of an open adoption unless the court issues a finding that the terms violate the division above or are not in the best interest of the child.
- Subject to the divisions above, an open adoption may provide for the exchange of any information, including identifying information, and have any other terms. All terms of an open adoption are voluntary and any person who has entered into an open adoption may withdraw from the open adoption at any time. An open adoption is not enforceable. At the request of a person who has withdrawn from an open adoption, the court with jurisdiction over the adoption shall issue an order barring any other person who was a party to the open adoption from taking any action pursuant to the open adoption.

**OKLAHOMA**

Not addressed in statutes reviewed.

**OREGON****Or. Rev. Stat. § 109.305 (WESTLAW through End of 2001 Reg. Sess. and 2001 Cum. Supp.)**

- The rule that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of this State.
- Nothing in the adoption laws of this State shall be construed to prevent the adoptive parents, the birth parents and the child from entering into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or the adoptive parents. As used in this subsection, "birth relatives" includes birth parents, grandparents, siblings, and other members of the child's birth family.
- Failure to comply with the terms of an agreement made under subsection (2) of this section is not grounds for setting aside an adoption decree or revocation of a written consent to an adoption.

- An agreement made under the subsection above may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.
- The court may modify an agreement made under the subsection above if the court finds that the modification is necessary to serve the best interests of the adopted child, that the party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement and that:
  - The modification is agreed to by all parties to the original agreement; or
  - Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement.

## PENNSYLVANIA

Not addressed in statutes reviewed.

## PUERTO RICO

Not addressed in statutes reviewed.

## RHODE ISLAND

### ***R. I. Gen. Laws § 15-7-14.1 (WESTLAW through 2002 Sess.)***

- At the time an adoption decree is entered, the court entering the decree may, grant post-adoption visitation, contact and/or conveyance of information privileges (hereinafter referred to as: “post-adoption privileges”) under the subsection below to a birth parent who:
  - Has consented to an adoption or voluntarily terminated the parent-child relationship; or
  - Has had his/her parental rights involuntarily terminated pursuant to § 15-7-7-(2)(i), (iii), (iv), or (vii) and has properly filed a timely appeal thereof which is pending and the child was not in a pre-adoptive home prior to the granting of the termination of parental rights petition by the family court.
- A court may grant post-adoption privileges if:
  - The court determines that the best interests of the child would be served by granting post-adoption privileges;
  - The court finds there is a significant emotional attachment between the child and the birth parent;
  - The adoptive parents and the birth parents jointly negotiate and execute a post-adoption privileges agreement which is approved and filed with the family court;
  - The Department of Children, Youth, and Families and the child's court appointed special advocate or the guardian *ad litem* if one has been appointed pursuant to Rhode Island general laws § 40-11-12 recommends that the post-adoption privileges agreement be approved by the court; or if the adoption petition is being sponsored by a licensed child placing agency other than the Department of Children, Youth, and Families, the licensed child placing agency sponsoring the adoption makes a recommendation that the post-adoption privileges agreement be approved by the court;
  - Consent to the post-adoption privileges is obtained from the child, if the child is at least 12 years of age; and
  - The post-adoption privileges agreement is approved by the court.

- A post-adoption privileges agreement filed under subsection (b)(4) must contain the following provisions:
  - An acknowledgement by the birth parents that the adoption is irrevocable, even if the adoptive parents do not abide by the post-adoption privileges agreement.
  - An acknowledgement by the adoptive parents that the agreement grants the birth parents the right to seek to enforce the post-adoption privileges set forth in the agreement.
- A birth parent or an adoptive parent may file a petition with the court entering the adoption decree for the following purposes:
  - To modify the post-adoption privileges agreement;
  - To compel a birth parent or adoptive parent to comply with the post-adoption privileges agreement.
- The court may not award monetary damages as a result of the filing of a petition under subsection above.
- The court may void or modify a post-adoption privileges agreement approved under this section at any time before or after the adoption if the court determines after a hearing that the best interests of the child require the voiding or modification of the agreement. Before the court (1) voids or modifies an agreement; or (2) hears a motion to compel compliance with an agreement approved under this section; the court shall give notice and an opportunity to be heard to the licensed, child placement agency that sponsored the adoption and to the child's court appointed special advocate (CASA) or court appointed guardian *ad litem* if one had been appointed prior to the finalization of adoption.
- A court may not revoke a decree of adoption because a birth parent or an adoptive parent fails to comply with a post-adoption privileges agreement approved by the court under this section.

## **SOUTH CAROLINA**

### ***S.C. Code Ann. § 20-7-1770(D) (WESTLAW through End of 2002 Reg. Sess.)***

The validity of the final decree of adoption is not affected by an agreement entered into before the adoption between adoptive parents and biological parents concerning visitation, exchange of information, or other interaction between the child and any other person. Such an agreement does not preserve any parental rights with the biological parents and does not give to them any rights enforceable in the courts of this State.

## **SOUTH DAKOTA**

### ***S. D. Codified Laws § 25-6-17 (WESTLAW through 77<sup>th</sup> L. Sess.)***

The natural parents of an adopted child are from the time of the adoption, relieved of all parental duties towards, and of all responsibility for the child so adopted, and have no right over it. Adoption of a child shall be final and unconditional except as otherwise provided by § 25-6-21. The natural parents of an adopted child shall retain no rights or privileges to have visitation or other post-adoption contact with the child, except in cases where a natural parent consents to the adoption of a child by the child's stepfather or stepmother who is the present spouse of the natural parent or in cases of voluntary termination where there is a written pre-adoption agreement between the natural parent or parents and the adoptive parents. The South Dakota Supreme Court decision, *People in Interest of S.A.H.*, 537 N.W.2d 1 (S.D. 1995), is abrogated by the South Dakota Legislature in so far as the case gave circuit courts the option to order an open adoption or post-termination visitation. Post-adoption visitation is an extraordinary remedy and may be exercised only by the adoptive parents when in the child's best interests. This section does not apply to pre-adoption agreements entered into before July 1, 1997.

**TENNESSEE*****Tenn. Code Ann. § 36-1-121(f) (WESTLAW through End of 2002 2<sup>nd</sup> Reg. Sess.)***

The adoptive parents of a child shall not be required by any order of the adoption court to permit visitation by any other person, nor shall the order of the adoption court place any conditions on the adoption of the child by the adoptive parents. Any provision in an order of the court or in any written agreement or contract between the parent or guardian of the child and the adoptive parents requiring visitation or otherwise placing any conditions of the adoption shall be void and of no effect whatsoever; provided, that nothing under this part shall be construed to prohibit "open adoptions" where the adoptive parents permit, in their sole discretion, the parent or guardian of the child who surrendered the child or whose rights to the child were otherwise terminated, or the siblings or other persons related to the adopted child, to visit or otherwise continue or maintain a relationship with the adopted child; and provided further, that the permission or agreement to permit visitation or contact shall not, in any manner whatsoever, establish any enforceable rights in the parent or guardian, the siblings or other related persons.

**TEXAS**

Not addressed in statutes reviewed.

**UTAH**

Not addressed in statutes reviewed.

**VERMONT*****Vt. Stat. Ann. tit. 15A, § 4-112 (WESTLAW through the 2002 Sess. ( 2001 Adjourned Sess.))***

- Upon the request of the petitioner, the petitioner's spouse, the adoptee's other parent or a relative of the adoptee, the court shall review a written agreement that permits another person to visit or communicate with the minor after the decree of adoption becomes final. The agreement shall be signed by the person, the petitioner, the petitioner's spouse, the minor if 14 years of age or older, and, if an agency placed the minor for adoption, an authorized employee of the agency.
- The court may enter an order approving the agreement only upon determining that the agreement is in the best interest of the minor adoptee. In making this determination, the court shall consider:
  - The preference of the minor, if the minor is mature enough to express a preference;
  - Any special needs of the minor and how they would be affected by performance of the agreement;
  - The length and quality of any existing relationship between the minor and the person who would be entitled to visit or communicate, and the likely effect on the minor of allowing this relationship to continue;
  - The specific terms of the agreement and the likelihood that the parties to the agreement will cooperate in performing its terms;
  - The recommendation of the minor's guardian *ad litem*, attorney, social worker, or other counselor; and
  - Any other factor relevant to the best interest of the minor.

- In addition to any agreement approved pursuant to subsections (a) and (b) of this section, the court may approve the continuation of an existing order or issue a new order permitting the minor adoptee's former parent, grandparent, or sibling to visit or communicate with the minor if:
  - The grandparent is the parent of a deceased parent of the minor or the parent of the adoptee's parent whose parental relationship to the minor is terminated by the decree of adoption;
  - The former parent, grandparent, or sibling requests that an existing order be permitted to survive the decree of adoption or that a new order be issued; and
  - The court determines that the requested visitation or communication is in the best interest of the minor.
- In making a determination under the subsection above, the court shall consider the factors listed above and any objections to the requested order by the adoptive stepparent and the stepparent's spouse.
- An order issued under this section may be enforced in a civil action only if the court finds that enforcement is in the best interest of a minor adoptee.
- An order issued under this section may not be modified unless the court finds that modification is in the best interest of a minor adoptee and:
  - The persons subject to the order request the modification; or
  - Exceptional circumstances arising since the order was issued justify the modification.
- Failure to comply with the terms of an order approved under this section or with any other agreement for visitation or communication is not a ground for revoking, setting aside, or otherwise challenging the validity of a consent, relinquishment, or adoption pertaining to a minor stepchild, and the validity of the consent, relinquishment, and adoption is not affected by any later action to enforce, modify, or set aside the order or agreement.

## VIRGINIA

Not addressed in statutes reviewed.

## VIRGIN ISLANDS

Not addressed in statutes reviewed.

## WASHINGTON

### ***Wash. Rev. Code Ann. § 26.33.295 (West, WESTLAW through 2003 L. Sess.)***

- Nothing in this chapter shall be construed to prohibit the parties to a proceeding under this chapter from entering into agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents.
- Agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents shall not be legally enforceable unless the terms of the agreement are set forth in a written court order entered in accordance with the provisions of this section. The court shall not enter a proposed order unless the terms of such order have been approved in writing by the prospective adoptive parents, any birth parent whose parental rights have not previously been terminated, and, if the child is in the custody of the department or a licensed child-placing agency, a representative of the department or child-placing agency. If the child is represented by an attorney or guardian *ad litem* in a proceeding under this chapter or in any other child-custody proceeding, the terms of the proposed order also must be approved in writing by the child's representative. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the child

adoptee, the adoptive parents, and a birth parent or parents as agreed upon and as set forth in the proposed order, would be in the child adoptee's best interests.

- Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of a written consent to an adoption after that consent has been approved by the court as provided in this chapter.
- An agreed order entered pursuant to this section may be enforced by a civil action and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the child adoptee, and that: (a) The modification is agreed to by the adoptive parent and the birth parent or parents; or (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

## WEST VIRGINIA

### ***W. Va. Code Ann. § 48-22-704(e) (Lexis, WESTLAW through End of 2003 1<sup>st</sup> Ex. Sess.)***

A decree or order entered under this chapter may not be vacated or set aside upon application of a person alleging there is a failure to comply with an agreement for visitation or communication with the adopted child: Provided, That the court may hear a petition to enforce the agreement, in which case the court shall determine whether enforcement of the agreement would serve the best interests of the child. The court may, in its sole discretion, consider the position of a child of the age and maturity to express such position to the court.

## WISCONSIN

Not addressed in statutes reviewed.

## WYOMING

Not addressed in statutes reviewed.