



## State Statutes Series 2004

# Parties to an Adoption

### Who May Adopt

In order for an adoption to take place, a person available to be adopted must be placed in the home of a person or persons eligible to adopt. All States, the District of Columbia, and the U.S. territories of American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands have laws that specify which persons are eligible as adopting parents and which persons can be adopted. In addition, most States, the District of Columbia, and the territories have laws that designate which persons or entities have the authority to make adoptive placements.

In general, any single adult or a husband and wife jointly can be eligible to adopt. In addition, a stepparent can adopt the birth child of his or her spouse.<sup>1</sup> In approximately<sup>2</sup> 17 States<sup>3</sup> and the District of Columbia, there are no additional conditions specified. In some States, married persons may adopt singly if they are legally separated from their spouse or if their spouse is legally incompetent.

In approximately six States (Kentucky, Louisiana, Montana, New Jersey, Tennessee, and Washington), the age of adulthood for purposes of adoption is 18; three States (Colorado, Delaware, and Oklahoma) and American Samoa set the age at 21; and Georgia and Idaho specify age 25. A few States allow minors to adopt under certain circumstances, such as when the minor is the spouse of an adult adoptive parent, or when the minor is the unmarried birth parent of the child to be adopted.

In approximately six States (California, Georgia, Nevada, New Jersey, South Dakota, and Utah) and the Northern Mariana Islands, the adopting parents must be at least 10 years older than the person to be adopted. In Puerto Rico, the adopting parent must be at least 14 years older; in Idaho, the parent must be at least 15 years older.

Approximately 17 States<sup>4</sup>, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands require that petitioners for adoption be State residents. The required period of residency ranges from 60 days to 1 year. There are exceptions to the residency requirement in some States. For example, in South Carolina and Indiana, a nonresident can adopt a special needs child; in Illinois, Mississippi, New Mexico, and Rhode Island, a nonresident may adopt through an agency.

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<sup>1</sup>A parent can usually adopt a stepchild without the spouse (the birth parent) joining in the petition, as long as the spouse consents to the adoption.

<sup>2</sup>The word *approximately* is used to stress the fact that the statutes are constantly being revised and updated.

<sup>3</sup>In Maryland, North Carolina, Pennsylvania, and Texas, any adult may adopt. In Alabama, Arizona, Hawaii, Kansas, Louisiana, Maine, Massachusetts, Michigan, Missouri, Nebraska, and Virginia, a single adult and married couples jointly may adopt. In Vermont, any adult and a parent's partner may adopt.

<sup>4</sup>Arizona, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and Wyoming.



## Gay and Lesbian Adoption

The statutory laws in most States are largely silent on the issue of adoption by gay and lesbian persons. At this time, only two States, Florida and Mississippi, explicitly prohibit adoption by homosexuals in their statutes. Utah bars adoption by persons who are cohabiting but not legally married; this language could be interpreted to encompass gay and lesbian adoptions. In Connecticut, the sexual orientation of the prospective adoptive parent may be considered, notwithstanding provisions in the State's laws prohibiting discrimination based on sexual orientation.

## Who May Be Adopted

All States, the District of Columbia, and the U.S. territories permit the adoption of a child. Three States (Colorado, Indiana, and Rhode Island), American Samoa, and the Northern Mariana Islands specify that the child must be under age 18. Four States (Connecticut, Delaware, Montana, and Wisconsin), American Samoa, and Guam specify in statute that the child must be legally free for adoption. Six States (Arizona, Colorado, South Carolina, Texas, Wisconsin, and Wyoming), American Samoa, and the Virgin Islands require that the child to be adopted must be present in the State at the time the petition is filed. Iowa requires that the child must have resided for a minimum period of 180 days in the home of the prospective adoptive parents.

Approximately 26 States<sup>5</sup> and the District of Columbia allow the adoption of any person, regardless of age. Rhode Island, American Samoa, and the Northern Mariana Islands allow parties to petition the court for the adoption of persons over age 18 but under age 21. Nevada specifies that the adult to be adopted must be younger than the adoptive parent, and West Virginia allows a resident of that State to adopt an adult.

Alabama restricts adoption of adults to persons who are permanently and totally disabled or mentally retarded. Ohio allows adoption of an adult only when the person is permanently disabled, mentally retarded, or a stepchild or foster child with whom the relationship was established while the child was a minor. Idaho, Illinois, and South Dakota require that the adopting parent be in a sustained parental relationship for a specified period of time, ranging from 6 months to 2 years, with the adult to be adopted. Virginia allows the adoption of an adult stepchild, niece, or nephew, as long as the adopted person resided in the home for at least 3 months prior to reaching adulthood and is at least 15 years younger than the adopting parent.

## Who May Place a Child for Adoption

In general, any person or entity who has the right of consent to a child may place that child for adoption. Such persons include the birth parents or the child's legal guardian or guardian *ad litem*; legal entities include State Departments of Social Services or child-placing agencies. All States (except Arkansas), the District of Columbia, and all the U.S. territories (excluding the Northern Mariana Islands) specifically designate which persons or entities hold the authority to make adoptive placements.

Most States allow "nonagency" placements of children for adoption, often referred to as "private" or "independent" adoption. One type of private adoption allowed in most States is the "direct placement" of a child by the birth parent with an adoptive family.

<sup>5</sup>Alaska, Arkansas, Florida, Georgia, Hawaii, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Vermont, Washington, and Wyoming.

Many States that allow direct placement have detailed statutory regulation in order to protect the interests of the parties to the adoption.

Approximately six States (Alaska, Delaware, Illinois, Indiana, Ohio, and West Virginia) require that all adoptive placements be made by the State Departments of Human or Social Services or child-placing agencies that are licensed by the State or meet certain standards. In four States (Florida, Kentucky, Minnesota, and Rhode Island), parents who wish to make private placements must first obtain permission from the Department or the court.

A few States allow the use of intermediaries in arranging private placements. These intermediaries are usually attorneys, and their activities, as well as the compensation they are allowed to accept, are strictly regulated.<sup>6</sup>

This publication is a product of the State Statutes Series prepared by the National Adoption Information Clearinghouse (NAIC). 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 agency regulations, case law, and informal practices and procedures.

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<sup>6</sup>For additional information about the use of intermediaries, see the NAIC publication *Use of Advertising and Facilitators in Adoptive Placements* at the NAIC website at <http://naic.acf.hhs.gov>.