

**Report for Congress**

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# Adoption Law

Turkey • United States

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# Comparative Summary

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The attached surveys of adoption law in Turkey and the United States show similarities between the adoption laws of the two countries.

In the US, the particulars of procedure relating to adoption are left to the states, whereas in Turkey adoption is governed by national law, namely the Civil Code and an adoption statute known as the Statute on Execution of Interventions Regarding Adoption.

Both countries require consent from the biological parents, with certain exceptions. In the US, state laws provide various ways in which the biological parents can waive or forfeit the right to consent. In Turkey, the law provides that consent is not required if the biological parents' care is not adequate.

Both countries require certain adoptee children to consent. In Turkey the child's consent is required if he or she has the capacity to act on his or her own behalf. In the US, each state specifies an age at which a child's consent is required, typically between ten and fourteen years.

In the US, an adoption must be found to be in the best interests of the child. Similarly, Turkish law requires the adoption be for the benefit of the child upon review of all circumstances of the case.

In both Turkey and the US, a probationary period must elapse before an adoption is final. In Turkey the probationary period lasts for one year. In the US, the probationary period lasts between three months to one year, depending on state law. In both countries, during the probationary period, child welfare professionals are provided the opportunity to determine whether the adoption would benefit the child. In both countries, following the probationary period, a court proceeding is necessary to finalize the adoption. Courts in both countries rely on findings by the social services agencies on whether the placement is warranted.

In both countries, adoption results in the child obtaining all rights enjoyed by biological children, including the right of inheritance.

Both countries are party to the Hague Convention on Intercountry Adoption.

# Turkey

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**SUMMARY** Adoptions in the Republic of Turkey are governed chiefly by the Civil Code, the Statute on Execution of Interventions Regarding Adoption, and the Hague Convention on Intercountry Adoption. All adoptions, except those between relatives, must be handled by the General Directorate of Social Services and Protection of Children.

Adoptions may be made by single or married persons, but if by the latter, both spouses must agree. Prospective adoptive parents may either apply in person and in writing to the provincial-level Social Services agency, or apply directly to the prospective adoptive child's parents or legal guardian with the process supervised by Social Services. Consent of the biological parents, consent of the child (if he or she has the capacity for consent), certain age restrictions, and mental and physical as well as educational and financial fitness are among the requirements of adoption.

If the applicants' initial application is approved, the prospective adopted child is to be kept under their temporary care for a period of at least one year, under the terms of a "Temporary Care Agreement" executed between them and Social Services, with the parent-child relationship monitored and reported on every quarter. While the prospective adoptive child may leave Turkey during the probationary period, in the case of United States adoptive parents, a visa cannot be issued until the probationary period is over and the adoption is final, and so the prospective parents are advised to remain in Turkey for the year. A decision by a judge is needed for final approval of the adoption.\*

## I. Introduction

The Constitution of the Republic of Turkey provides in general that "[e]very child has the right to adequate protection and care and the right to have and maintain a personal and direct relation with his/her parents unless it is contrary to his/her high interests."<sup>1</sup> Additionally it stipulates, "[t]he state shall take all kinds of measures for social resettlement of children in need of protection."<sup>2</sup>

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\* At present there are no Law Library of Congress research staff members versed in Turkish. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>1</sup> TÜRKIYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY], Law No. 2709 of Nov. 7, 1982 (as last amended Mar. 17, 2011), art. 41, ¶ 3, Grand National Assembly of Turkey, [http://www.tbmm.gov.tr/anayasa/anayasa\\_2011.pdf](http://www.tbmm.gov.tr/anayasa/anayasa_2011.pdf); THE CONSTITUTION OF THE REPUBLIC OF TURKEY (as last amended May 7, 2010), <http://www.byegm.gov.tr/content.aspx?s=tcotrot>.

<sup>2</sup> *Id.* art. 61, ¶ 4.

Adoption of children in Turkey is governed chiefly by articles 305–320 of the Turkish Civil Code of November 22, 2001,<sup>3</sup> which comprise the section on adoption, and the Statute on Execution of Interventions Regarding Adoption (hereinafter Adoption Statute), which is based on the Council of Ministers Decision No. 2009/14729.<sup>4</sup> Since September 1, 2004, moreover, the Hague Convention on Intercountry Adoption<sup>5</sup> has been enforceable in Turkey, through the incorporation of the Convention into domestic law.<sup>6</sup>

Children who may be eligible for adoption in Turkey may be categorized under three groups. The first group comprises children who have been abandoned, generally soon after birth, and delivered to the country's social services agency. Such children have often been born out of wedlock to young, unmarried partners.<sup>7</sup> The second group consists of children whose parents have consented to put them up for adoption, with a decision made by a judge (pursuant to article 309 of the Civil Code).<sup>8</sup> The third group of potential adoptees is minors deemed to be eligible for adoption by the decision of a judge without the consent of the parents, when the parents have not fulfilled their parental duties towards the minor and are incapable of granting consent for the child's adoption, or when the child has not been looked after by the family for a long time.<sup>9</sup>

## II. Adoption Filing Procedures

The Civil Code Stipulates that domestic adoption procedures are to be handled by institutions authorized by the Council of Ministers (Bakanlar Kurulu), Turkey's Cabinet.<sup>10</sup> That body is the

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<sup>3</sup> Türk Medenî Kanunu [Turkish Civil Code], Law No. 4721 of Nov. 22, 2001 (as last amended May 3, 2013, by Law No. 6462), T.C. RESMÎ GAZETE [OFFICIAL GAZETTE OF THE REPUBLIC OF TURKEY], No. 24607, available at <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf>.

<sup>4</sup> Küçüklerin Evlat Edinilmesinde Aracılık Faaliyetlerinin Yürütülmesine İlişkin Tüzük'ün Yürürlüğe Konulmasına Dair Karar [Decision on Entry into Force of the Statute on Execution of Interventions Regarding Adoption] (hereinafter Adoption Statute), Decision No. 2009/14729 (Feb. 25, 2009), T.C. RESMÎ GAZETE, No. 27170 (Mar. 15, 2009), <http://www.resmi-gazete.org/rega/2009-14729-kucuklerin-evlat-edinilmesinde-aracilik-faaliyetlerinin-yurutulmesine-iliskin-tuzuk-un-yururluge-konulmasına-dair-karar-6853.htm>. The Statute is attached to the Decision.

<sup>5</sup> Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption (in force on May 1, 1995), HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69).

<sup>6</sup> İlayda Balkan, *Adoption of Children in Turkey*, <http://www.admldlaw.com/adoption-of-children-in-turkey/>; Çocukların Korunması ve Ülkelerarası Evlat Edinme Konusunda İşbirliğine dair Sözleşmenin Onaylanmasının Uygun Bulunduğu Hakkında Kanun [Law on Ratification of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption], Law No. 5049 (Jan. 14, 2004), GRAND NATIONAL ASSEMBLY OF TURKEY, <http://tbmm.gov.tr/kanunlar/k5049.html>.

<sup>7</sup> *Questionnaire of March 2005 on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption: Turkey* (hereinafter *Questionnaire: Turkey*) (2005), HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, [http://www.hcch.net/upload/adop2005\\_tr.pdf](http://www.hcch.net/upload/adop2005_tr.pdf) (p. 3 of unnumbered, printed-out text).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Turkish Civil Code art. 320; Balkan, *supra* note 6.

General Directorate of Social Services and Protection of Children (hereinafter Social Services) under the Prime Ministry, according to the Adoption Statute.<sup>11</sup>

There are two avenues for adoption in Turkey. Prospective adoptive individuals or couples (spouses) may apply to the provincial-level Social Services agency in person and in writing in order to find a suitable child. Alternatively, the applicant(s) may apply directly to the prospective adoptive child's parents or legal guardian, with the process supervised by Social Services.<sup>12</sup> Private adoptions in Turkey, except those between relatives, are at present not allowed; all other adoptions must be handled through Social Services.<sup>13</sup>

Turkish citizens and foreigners who have held a residence permit in Turkey for at least one year can apply directly to Social Services for an adoption. Turkish citizens living abroad must also inform the relevant institution in the country of their residence regarding the adoption application made in accordance with the Hague Convention on Intercountry Adoption.<sup>14</sup> In the case of intercountry adoptions, the foreign prospective adoptive parent should apply to the competent authority in his or her country of residence, in accordance with the Convention on Intercountry Adoption.<sup>15</sup> The applications will be processed by Turkey's Social Services.<sup>16</sup> According to the US State Department, whether adopting an orphan under state custody or a child to be given up for adoption who still lives with his or her family, prospective adoptive parents residing in the United States must file their application with the local Social Services agency; once the child is found eligible for adoption, Social Services is notified in writing by that local authority, with arrangements for a meeting with the child to be made later.<sup>17</sup>

### III. Minimum Requirements for Adoption

The applicants for an adoption must care for and educate the prospective adoptive child for at least one year before the adoption claim is submitted to the court (*see* "Conclusion of Adoption" below). In addition,

- the adoption shall be for the benefit of the child upon review of all circumstances in the case;<sup>18</sup>
- the applicant must be at least eighteen years older than the child;<sup>19</sup>

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<sup>11</sup> Adoption Statute art. 3; Balkan, *supra* note 6; Sefer Koç, Deputy Director General, *T.C. Prime Ministry Social Services and Child Protection Agency General Directorate* (May 2009) (slide presentation) <http://www.slideserve.com/chuong/t-c-prime-ministry-social-services-and-child-protection-agency-general-directorate>.

<sup>12</sup> Balkan, *supra* note 6.

<sup>13</sup> U.S. Dept. of State, Bureau of Consular Affairs, *Turkey: Intercountry Adoption* [under "How to Adopt" tab] (May 2011), [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=turkey](http://adoption.state.gov/country_information/country_specific_info.php?country-select=turkey).

<sup>14</sup> *Id.*

<sup>15</sup> Adoption Statute art. 15; Balkan, *supra* note 6.

<sup>16</sup> Balkan, *supra* note 6.

<sup>17</sup> *Turkey: Intercountry Adoption* [under "Who Can Adopt" tab], *supra* note 13.

<sup>18</sup> Adoption Statute art. 4(1)(b); Balkan, *supra* note 6.

- consent of the child must be obtained if the child has the capacity to act on his/her behalf;<sup>20</sup>
- the consent of the biological parents must be obtained in accordance with article 309 of the Civil Code, with the exceptions noted in articles 311 and 312 (if the parents cannot be located or if their care for the child is not adequate);<sup>21</sup>
- an unmarried applicant must be older than thirty years of age;<sup>22</sup>
- spouse applicants must have been married for at least five years or both must have attained the age of thirty;<sup>23</sup>
- a spouse younger than thirty years of age can adopt his or her spouse's child only if they have been married for more than two years;<sup>24</sup> and
- a spouse can adopt a child alone if he or she can prove that the other spouse is mentally incapacitated, that for a continuous period of more than two years the other spouse has been absent or his or her whereabouts unknown, or that the couple has been legally separated for over two years since the issuance of a court decision.<sup>25</sup>

While adoptive parents may be single or married, a married couple can only jointly adopt the child, and unmarried couples may not adopt a child together.<sup>26</sup>

Applicants who wish to adopt children under one year of age may not be over the age of forty; such prospective adoptive parents can only adopt older children, and if the applicants reach age forty-one during the waiting period after submission of the application they will reportedly be asked to adopt older children.<sup>27</sup> Moreover, “[f]oreign nationals who do not speak Turkish and who are between the ages of 30 and 40 may only adopt children under the age of three.”<sup>28</sup>

Aside from the abovementioned requirements, the applicants must have an educational degree equivalent to primary school graduation in Turkey, they must be physically and mentally fit for adoption, they must not have been convicted of any crime of moral turpitude or be users of illicit drugs, and they must have sufficient financial resources and means to raise the child in a safe,

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<sup>19</sup> Turkish Civil Code art. 308, ¶ 1; Adoption Statute art. 4(1)(c); Balkan, *supra* note 6.

<sup>20</sup> Adoption Statute art. 4(1)(ç); Balkan, *supra* note 6.

<sup>21</sup> Adoption Statute art. 4(1)(d); Balkan, *supra* note 6.

<sup>22</sup> Turkish Civil Code art. 307, ¶ 1; Adoption Statute art. 4(1)(f); Balkan, *supra* note 6.

<sup>23</sup> Turkish Civil Code art. 306 ¶ 2; Adoption Statute art. 4(1)(g); Balkan, *supra* note 6.

<sup>24</sup> Adoption Statute art. 4(1)(ğ); *Turkey: Intercountry Adoption*, *supra* note 13.

<sup>25</sup> Adoption Statute art. 4(2); *Turkey: Intercountry Adoption*, *supra* note 13.

<sup>26</sup> *Turkey: Intercountry Adoption*, *supra* note 13. Both married spouses must agree to the adoption in the written application. Adoption Statute art. 5(2).

<sup>27</sup> *Turkey: Intercountry Adoption*, *supra* note 13.

<sup>28</sup> *Id.*

good environment—matters that are all taken under consideration by Social Services in the Court during the evaluation process.<sup>29</sup>

#### IV. Documentation

Prospective adoptive parents must submit to Social Services

- a copy of the civil registry record obtained from the Directorate of Civil Registration, to certify the applicants' civil status;
- any criminal record of the applicants or of family members living with the applicants;
- documents proving the applicants' ownership of financial assets, and their income and social security status;
- a certificate of residency (local);
- a certificate showing the applicants' educational status;
- a health report, issued by an authorized commission of doctors, showing that the applicants have no physical, mental, or physiological disability and they are not addicted to alcohol or drugs;
- a residence permit for foreigners and for Turkish-citizen applicants who reside abroad; and
- a residence permit of the child if Social Services permits the child to be cared for in a foreign country.<sup>30</sup>

The documents must be submitted no later than two months after the applicants have made their initial application.<sup>31</sup> The order in which the documents are examined and the minor placed will generally depend on the date and time that the documents have been provided.<sup>32</sup> Social Services will visit the applicants at their residence within six months after the documents have been delivered<sup>33</sup> and initiate a social research investigation with a minimum of five meetings.<sup>34</sup>

#### V. Conclusion of Adoption

If an applicant's initial application is approved, the prospective adopted child is to be kept under the temporary care of the applicants, after the child has been placed with them by Social Services, for a period of at least one year, under the terms of a "Temporary Care Agreement"

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<sup>29</sup> Balkan, *supra* note 6;

<sup>29</sup> Adoption Statute art. 4(1)(ğ); *Turkey: Intercountry Adoption*, *supra* note 13.

<sup>30</sup> Adoption Statute art. 6; Balkan, *supra* note 6.

<sup>31</sup> Adoption Statute art. 7(1); Balkan, *supra* note 6.

<sup>32</sup> Adoption Statute art. 7(1).

<sup>33</sup> Adoption Statute art. 7(2). The period may be extended for six months by the provincial Social Services agency. *Id.*

<sup>34</sup> Balkan, *supra* note 6.

executed between the applicant and Social Services.<sup>35</sup> In adoptions between relatives, the prospective adoptive parent will be granted temporary physical custody of the child during the one-year probationary period.<sup>36</sup> The relationship between the applicant and the child governed by the agreement is to be strictly monitored and reported on every quarter.<sup>37</sup> Turkish law allows for a prospective adoptive child to leave Turkey during the one-year probationary period, but, at least in the case of United States adoptive parents, a visa cannot be issued until the probationary period is over and the adoption is final. Therefore, US prospective adoptive parents are advised by the US Department of State to be prepared to remain in Turkey for one year.<sup>38</sup>

At the end of the temporary care period, Social Services will inform the applicants in writing of the need to file a claim with the court within a two-month period. The parties are to apply either to a specialized domestic relations court or, if there is no such specialized court in the relevant province, to the civil court of first instance, in order to obtain a court judgment and complete the adoption process.<sup>39</sup> Before a judge issues a decision on the claim, the Civil Code prescribes that he or she is to review the research and evaluation submitted in a comprehensive report by Social Services on the condition of the applicants and the prospective adoptive child.<sup>40</sup>

The judge makes his final decision as to whether a child may be adopted based on the file compiled by Social Services and the social research investigation the agency has conducted.<sup>41</sup> The provincial Social Services agency is to notify the applicants in writing if the adoption application has been rejected; the rejected applicants have fifteen days from the date of notification to appeal the proceedings to the provincial agency.<sup>42</sup>

The legal conclusion of an adoption entails that the adopted child will benefit from all rights, including the right of inheritance, from which a biological child benefits. The adoptive parents have the right to rename the adopted child.<sup>43</sup>

## VI. A Note on US-Turkey Adoptions

Adoptions between Turkey and the United States are handled under the terms of the Hague Convention on Intercountry Adoption. According to the US State Department, prospective adoptive parents in the United States must first select an accredited adoption service provider in the United States, as such agencies and attorneys are the only ones authorized to provide

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<sup>35</sup> *Id.*; Adoption Statute art. 11.

<sup>36</sup> *Turkey: Intercountry Adoption, supra* note 13.

<sup>37</sup> *Id.*; Adoption Statute art. 12(1).

<sup>38</sup> *Turkey: Intercountry Adoption, supra* note 13.

<sup>39</sup> Balkan, *supra* note 6.

<sup>40</sup> Turkish Civil Code art. 316; Balkan *supra* note 6.

<sup>41</sup> *Questionnaire: Turkey, supra* note 7 (p. 4 of unnumbered, printed-out text).

<sup>42</sup> Adoption Statute art. 9(1) & (2).

<sup>43</sup> Balkan, *supra* note 6.

adoption services between the United States and Turkey.<sup>44</sup> The next step is to apply to be found eligible to adopt by the US government, through the submission of Form I-800A. If the government determines that the applicants “are ‘eligible’ and ‘suitable’ to adopt,” the agency is to forward the applicants’ information to the Turkish adoption authority, which evaluates the application to determine the applicant’s eligibility to adopt under Turkish law.<sup>45</sup>

If the applicants are determined by both countries’ authorities to be eligible to adopt, Social Services in Turkey will provide a referral for a child, as well as detailed information about the child to the adoption agency, through which the applicants may obtain the information.<sup>46</sup> Then, if the applicants accept the proposed match, they must apply to the Department of Homeland Security, US Citizenship and Immigration Services (USCIS) for provisional approval to adopt the child, using Form I-800. USCIS makes a determination as to whether the child is eligible for adoption under US law and for entry into the United States.<sup>47</sup> The applicants or the adoption service provider must next submit a visa application to a consular officer at the US Embassy in Turkey, for review of the child’s information and evaluation of any possible ineligibility for a visa. If the child appears eligible for immigration to the United States, the consular officer will notify Turkey’s adoption authority of that fact. Turkey’s Social Services should also be informed in writing that the child is eligible for adoption in the US.<sup>48</sup>

After the completion of the above steps, the procedures outlined above come into play. Thus, the Social Services representative and the adopting parent(s) will sign a one-year child care contract, during which time the parent-child relationship will be monitored and reported on to Social Services.<sup>49</sup> If there are no problems and the adoption is deemed to be in the best interests of the child, the prospective adoptive parents will be referred to a court to start the legal process of adoption, with Social Services preparing all documents required for the proceeding. After obtaining custody of the child from the court, the adoptive parents must submit the final adoption decree and the child’s updated birth certificate information to Social Services, to register the child as the adoptive family’s son/daughter.<sup>50</sup>

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<sup>44</sup> *Turkey: Intercountry Adoption* [under “Who Can Adopt” link], *supra* note 13.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

# United States

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**SUMMARY** Adoption in the US is mostly governed by state law, although federal constitutional principles and limited federal statutes may come into play. General features of adoption law that are common across states include the complete vesting of parental rights with the adoptive parents, the requirement of consent, the best interests of the child standard, the confidential nature of adoption proceedings, and the permanent nature of adoption.

## I. Introduction

Adoption is a legal process by which “a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person.”<sup>1</sup>

In the United States, apart from limited federal constitutional and statutory law, adoption is controlled by state law. While uniform adoption acts have been proposed for the states, only a few states have adopted them.<sup>2</sup> State law varies in many particulars, but general features of adoption law that are common across most states in the US are described below.

## II. Federal Law Relevant to Adoption

While adoption is mostly a matter of state law, there is a limited amount of federal law relevant to adoption.

### A. Federal Constitutional Law

Under the Due Process Clause of the Fourteenth Amendment to the US Constitution, the Supreme Court has held that natural parents have a fundamental liberty interest in the care, custody, and management of their children.<sup>3</sup> In light of this, decisions in state proceedings to

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<sup>1</sup> N.Y. Dom. Rel. Law § 110 (McKinney 2010).

<sup>2</sup> NAT'L CONFERENCE OF COMM'RS OF UNIF. STATE LAWS, UNIF. ADOPTION ACT (1969), <http://www.uniformlaws.org/shared/docs/adoption/adoption69.pdf>; NAT'L CONFERENCE OF COMM'RS OF UNIF. STATE LAWS, UNIF. ADOPTION ACT (1994), [http://www.uniformlaws.org/shared/docs/adoption/uaa\\_final\\_94.pdf](http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf). The 1969 Act has been adopted in five states. *Legislative Fact Sheet – Adoption Act (1953)(1969)*, UNIF. LAW COMM'N, <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Adoption%20Act%20%281953%29%281969%29> (last visited May 8, 2013). The 1994 Act has been adopted in one state (Vermont). *Legislative Fact Sheet – Adoption Act (1994)*, UNIF. LAW COMM'N, <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Adoption%20Act%20%281994%29> (last visited May 8, 2013).

<sup>3</sup> *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

terminate parental rights must be based on clear and convincing evidence; findings based on a preponderance of the evidence standard are insufficient.<sup>4</sup>

Under the Equal Protection Clause of the Fourteenth Amendment, the Supreme Court found unconstitutional a state law that differentiated between the unwed mother and the unwed father of an illegitimate child with respect to their right to consent to the child's adoption, where the father had shown a significant paternal interest in the child. The Court ruled that there was no substantial relationship between the law's gender-based discrimination and the state's interest of providing for the well-being of illegitimate children, and therefore the discrimination was impermissible under the Equal Protection Clause.<sup>5</sup>

## **B. Federal Statutory Law**

A few federal laws promote, support, or in some cases regulate state adoption and foster care efforts. For example, the Federal Adoption Assistance and Child Welfare Act of 1980 provides for federal funding to be distributed to qualifying state foster care and adoption assistance programs.<sup>6</sup> The Adoption and Safe Families Act of 1997 promotes state programs encouraging the adoption of children in foster care.<sup>7</sup> The Indian Child Welfare Act of 1978 establishes standards for the adoption and foster care of Indian children.<sup>8</sup>

Within the broad parameters of federal law, however, states have wide latitude to structure laws regarding adoption.

## **III. Principles of State Adoption Law**

While state adoption laws are not uniform, some common principles that all US states recognize can be identified.

### **A. Parental Rights and Responsibilities Vest with Adoptive Parents**

Adoption severs the legal relationship of adopted children with their biological parents, and adopted children become, for all legal purposes, the children of their adoptive parents.<sup>9</sup> The adoptive relationship creates new legal rights and obligations under a variety of federal and state

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<sup>4</sup> *Id.* at 768–69.

<sup>5</sup> *Caban v. Mohammed*, 441 U.S. 380, 390 (1979).

<sup>6</sup> 42 U.S.C. § 672 (2006).

<sup>7</sup> 42 U.S.C. § 629 (2006).

<sup>8</sup> 25 U.S.C. § 1902 (2006). *See also* SANFORD N. KATZ & DANIEL R. KATZ, *ADOPTION LAWS IN A NUTSHELL* 275–80 (2012) (listing other federal laws affecting state adoption and foster care practices). The US has also ratified and enacted implementing legislation on the Hague Convention on Intercountry Adoption. *Id.* at 281–85; 42 U.S.C. §§ 14901–54 (2006).

<sup>9</sup> JOAN HEIFETZ HOLLINGER, *ADOPTION LAW AND PRACTICE* § 1.01[1] (2012). In some states a child's biological parent may use adoption to be recognized as a legal parent, such as a biological father not married to the birth mother using the adoption process to become the child's legal father. *Id.*

laws, including tax laws, social security, inheritance, and others, while rights and obligations under such laws with respect to the prior parents are usually extinguished.<sup>10</sup> Adoption is distinguishable from proceedings such as custody and guardianship in that adoption endows the adoptive parents with the status of legal parentage, while the other types of proceedings do not.<sup>11</sup>

## B. Necessity for Consent

In all states, adoption proceedings require the biological parents to voluntarily and knowingly consent to the adoption, except where this consent requirement is waived or forfeited. An “essential characteristic [of US adoption law] is that adoptive relationships will not be created at all unless a court is confident that, absent waiver, voluntary and informed consents have been obtained from the biological parents[, or] appropriate grounds exist to waive the right of the parent to consent.”<sup>12</sup>

All states have statutes requiring that the birth mother consent to the adoption of her child.<sup>13</sup> The consent of married fathers is also typically required.<sup>14</sup>

As to unmarried fathers, the Supreme Court has ruled, at least with respect to those that have manifested significant paternal interests in their children, that a state may not deny them the right to consent to an adoption while granting that right to unwed mothers.<sup>15</sup> In response to this ruling, states have addressed the rights of unwed fathers in adoption proceedings in a variety of ways.<sup>16</sup> For example, approximately half of the states have established putative father registries, to allow unwed fathers to register their contact information in order to obtain notice of adoption proceedings.<sup>17</sup>

Children that have reached a certain age, typically between ten to fourteen years depending on state law, must also consent to the adoption.<sup>18</sup>

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<sup>10</sup> In a small minority of states, adopted children inherit from both their adoptive and biological parents following the adoption decree. KATZ & KATZ, *supra* note 8, at 226–36.

<sup>11</sup> HOLLINGER, *supra* note 9.

<sup>12</sup> *Id.* § 1.01[2][a].

<sup>13</sup> SANFORD N. KATZ & DANIEL R. KATZ, *supra* note 8, at 40–51 (listing consent statutes of the fifty states and the District of Columbia).

<sup>14</sup> HOLLINGER, *supra* note 9, § 2.04[1].

<sup>15</sup> *Caban v. Mohammed*, 441 U.S. 380, 390 (1979); *see also* *Lehr v. Robertson*, 463 U.S. 248 (1983) (where unmarried father lacks significant custodial, personal, or financial relationship with child, there is no constitutional right to notice of adoption proceedings).

<sup>16</sup> HOLLINGER, *supra* note 9, §§ 2.04[2][c]–2.04A[9]. “The most perplexing dilemma . . . is how to devise procedures which enable those fathers who are interested in their children to have a role in adoption proceedings while simultaneously expediting the termination of the rights of those fathers who show no interest.” *Id.* § 2.04[2][c].

<sup>17</sup> *Id.* § 2.04A[7].

<sup>18</sup> *Id.* § 2.08.

The right to consent may be waived or forfeited through abandonment, judicial termination of parental rights, adjudication of incompetence, and the like.<sup>19</sup>

### **C. Best Interests of the Child**

In all states, the determination whether prospective adopters are suitable parents is based on a finding that an adoption is in the best interests of the child.<sup>20</sup> The law requires the focus to be on the interests of the child, rather than the interests of the birth parents, the adoptive parents, or anyone else. An adoption is generally not final until a probationary period of a certain number of months has elapsed, during which time the question of the best interests of the child may be evaluated.<sup>21</sup> A court will generally rely on investigations conducted by child welfare professionals in determining whether a placement is in the best interests of the child.<sup>22</sup>

### **D. Confidential Nature of Adoption Proceedings**

Adoption proceedings and records are confidential in nature. Adoption proceedings are closed to the public. The records of the adoption proceeding are sealed and may not be opened except upon a judicial finding of good cause, or in some states upon the mutual consent of all parties. The child's original birth certificate is sealed, and a new one is issued containing only the child's adoptive name.<sup>23</sup>

Traditionally, biological parents of a child who was placed for adoption were unaware of the identity of the adoptive parents, and vice versa. In recent decades, the law of many states has become more accommodating of efforts to open sealed adoption records and original birth certificates, and of agreements allowing ongoing contact between adoptive and birth families following the adoption decree.<sup>24</sup>

### **E. Permanent Nature of Adoption**

Upon finalization of the adoption, the adoptive parents obtain the same rights and responsibilities with respect to the child that biological parents typically have, and the parental relationship is not subject to revocation. After a period specified by each state's law, the adoption proceeding cannot be reopened, absent fraud or significant procedural irregularity; incompatibility or the second thoughts of any party cannot serve as the basis of reopening the proceeding.<sup>25</sup>

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<sup>19</sup> *Id.* § 2.10[1].

<sup>20</sup> *Id.* § 4.01[1].

<sup>21</sup> *Id.* § 1.01[2][b]. Probationary periods last between three months to a year, depending on state law.

<sup>22</sup> *Id.* §§ 1.01[2][b] & 4.12.

<sup>23</sup> *Id.* § 1.01[2][d].

<sup>24</sup> *Id.* §§ 13.02, 13-A.01 to 13-A.04 (listing states with various procedures for obtaining identifying information from sealed adoption records), & 13-B.01 to 13-B.03 (discussing and listing states with statutes that recognize and allow enforcement of "open adoption" or post-adoption contact agreements between birth and adoptive families, and states that recognize "non-binding open adoption" agreements).

<sup>25</sup> *Id.* § 1.01[2][e].