



7<sup>th</sup> JMTC Legal Assistance Information

## Adoption

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

### 1. Q. WHAT IS ADOPTION?

A. Adoption is the procedure by which a child born to one set of parents becomes the legal child of another parent or couple, who then assume all the parental rights and duties concerning the child. The word “child” does not mean only infants - it refers to one who is under eighteen years of age. Adoption terminates the relationship and all rights and responsibilities previously existing between the natural parents and child. The legal result is that the child becomes the legal responsibility of the adoptive parents.

### 2. Q. HOW ARE CHILDREN PLACED FOR ADOPTION?

A. Children may be placed for adoption in a variety of ways. These are as follows:

- An "agency placement" is the procedure for adoption used by county Departments of Social Services and by licensed private adoption agencies.
- A "direct placement" or "independent adoption" is one made by the natural parents directly into an unrelated adoptive home without the assistance of an agency.
- A “relative adoption” is one in which a parent’s relative agrees to adopt the child of that parent. Often times these are “step-parent adoptions”, in which the new spouse of a parent agrees to adopt the child of that parent born before the marriage of the spouses.
- An “adoption facilitator” is an individual or nonprofit entity that assists natural parents in locating and evaluating adoptive parents without charge.

All of these procedures require court approval and a preplacement assessment, or home study, as will be explained later in this pamphlet. There is no one form of adoption that is "right" since different procedures may be better for one couple or another.

### **3. Q. ARE THERE ANY POTENTIAL PROBLEMS IN NOT USING AN ADOPTION AGENCY?**

A. It might seem at first much easier to adopt a child directly from the mother than to apply to a licensed adoption agency. Many direct or independent adoptions work out fine, without any help from an adoption agency. However, there are some potential problems.

- In Germany, you have to register with an adoption agency or else it is considered a crime.
- In some states, the hospital will not release an infant to someone other than a natural parent without a valid approval by the county or state Department of Social Services (DSS), or its equivalent. This approval must be done well in advance of the baby's birth.
- In some states, it is a criminal misdemeanor to separate a child under six (6) months of age from his or her natural parents without such approval of county or state authorities.
- In many states, it is a crime for prospective adoptive parents (or anyone else) to pay for expenses associated with the direct placement of the child. This includes legal fees, medical expenses, home care arrangements, and any other costs.
- The prospective adoptive parents may not be aware of important information about the child's background, medical history, and birth parents.
- There is some risk, especially when adopting illegitimate children, that consent from the birth parents was not obtained legally and properly.
- In direct placement, all the parties know each other, and so there is no guarantee of privacy and security for any of the parties after the adoption, which makes it more difficult to avoid interference by one or both sets of parents.

When an agency placement is done, every effort is made to make sure that the child is placed in a suitable adoptive home with parents well matched to the child's background, capabilities, and medical history. The adoptive parents will be told enough about the child to inform him of these factors, but not enough to identify the birth parents. The child is placed with a couple where there is no danger of recognition by the natural parents or their friends or relatives. The adoptive parents are assured that the child can legally be adopted. Their home environment and backgrounds are checked and studied thoroughly to make sure that they are ready and able to adopt the child and provide adequately for him or her. An agency placement means that every available protection has been given to the natural parents, the child, and the adoptive parents under state law.

#### **4. Q. WHERE CAN WE FIND OUT ABOUT ADOPTING A CHILD BY AGENCY PLACEMENT?**

A. There are adoption agencies in every state, including the local county Department of Social Services as well as private agencies. Check with your Department of Social Services or your lawyer or legal assistance officer for further information.

#### **5. Q. WHAT ARE THE LEGAL STEPS TO BE TAKEN IN ADOPTING A CHILD?**

A. In adopting a child, it is necessary to file certain papers in court, and in most cases, to retain a private attorney for assistance. Although there is no legal requirement that an attorney be involved in an adoption, the process can be quite complex and should be handled by someone with experience and expertise. The procedures will vary in individual cases, depending on whether the proposed adoption is one based on abandonment, consent by the other parent, or placement by an agency. Even if you use an agency, you will probably need to hire a lawyer to draft the adoption petition and to represent you at the hearing. If you have a question about whether you will need a private attorney, you should consult a legal assistance officer. You may file for adoption and receive a legally valid decree either here in Germany, or in the state where the child lives, or in the adoptive parents' state of legal residence. It doesn't really make a lot of difference whether you have a German or an American decree, but for parents who plan to live in the U.S., there may be some slight benefit from having a decree in English from a U.S. court.

In general, procedures for adoption are handled a local court in the county where the adoption is to take place. There is generally a filing fee required with the petition. State laws and procedures vary, but the basic steps for adoption are as follows:

- A petition must be filed with the court by the prospective adoptive parents seeking the court's approval of the adoptive placement. It is signed by the adoptive parents and is filed in the county where the child is living, the county in which the adoption agency is located, or the county in which the adoptive parents live.
- If the adoption is by consent, the next step is the filing of the consent to the child's adoption by the natural parent or parents. In some states, a child over a certain age, such as twelve, for example, must also consent to his or her own adoption. If the adoption is not by consent, the parental rights of each natural parent will need to be terminated pursuant to a court order.
- Next comes the order of reference and the preplacement assessment, or home study. The order of reference refers the case to the adoption agency or, in the case of a step-parent adoption by consent, to the county Department of Social Services, or its equivalent, for the completion and filing of a preplacement assessment of the home situation of the adoptive parent or parents. Reports about the child's health, social, educational, and genetic history, as well as any other pertinent information, are also included in the preplacement assessment.

- Once the preplacement assessment is completed, an interlocutory decree may be issued. This is a temporary court order giving the adoptive parents custody of the child until the final order is issued. The interlocutory decree is not a final order. It will usually take up to a year between the interlocutory decree and the final decree of adoption, but this varies from state to state.
- The final step is the filing of the final order of adoption. This makes the child legally one of the family, just as if he or she had been born to the adoptive parents. The child is able to inherit real and personal property just as a natural child would. After the final decree, the birth certificate of the child is amended and the new certificate will show the adoptive parents as the birth parents of the child.

**6. Q. HOW DOES ADOPTION AFFECT EVERYONE’S LEGAL RIGHTS?**

A. After the final adoption decree, the natural parents lose all their legal rights and obligations toward the child, including child support obligations. The natural parent or parents are not entitled to inherit from the child, nor will the child inherit from the natural parents. For all legal purposes, the child is considered to be the child of the adoptive parents, just as if the child had been born to the adoptive parents.

**7. Q. WHAT IF THE NATURAL PARENT OR PARENTS WON’T GIVE CONSENT?**

A. Lack of consent is a serious obstacle. Courts will usually not terminate someone’s parental rights without their consent, except under limited circumstances, such as abandonment, abuse, neglect, or failure to provide financial support for more than one year.

**8. Q. IF I GIVE MY CONSENT TO HAVE MY CHILD ADOPTED, CAN I CHANGE MY MIND LATER?**

A. The laws of each state permit a natural parent to withdraw his or her consent to the adoption proceedings only in very limited circumstances. Basically, the consent can be withdrawn only within certain time limits, such as within three months of giving consent. Again, the rules vary from state to state.

**9. Q. IF MY NATURAL CHILD IS ADOPTED DO I HAVE ANY LEGAL RIGHTS OR OBLIGATIONS TOWARD THE CHILD?**

A. No. Once the child has been adopted the natural parents cease to have any legal rights or obligations toward the child. If a natural parent owed a child support obligation, that obligation would stop once the child was adopted.

**10. Q. HOW MUCH WILL IT COST FOR AN ADOPTION?**

A. Fees differ with each case. In general, in a simple U.S. adoption with everyone’s consent, attorney fees and court costs combined can be \$1,000 or less. Complicated U.S.

adoptions or international adoptions can cost \$10,000-\$25,000. Make sure you keep your receipts for all expenses.

**11. Q. I HEARD I CAN GET AN INCOME TAX CREDIT FOR ADOPTION EXPENSES. IS THIS TRUE?**

A. Public Law 104-188 authorized tax credits for qualifying adoption expenses beginning in 1997. The tax credit is up to \$5,000 for qualifying expenses paid to adopt an eligible child, and as much as \$6,000 if the expenses are for the adoption of a child with special needs. Qualifying adoption expenses do not include expenses that are for stepparent adoptions, that violate state or federal law, or which are for surrogate parenting arrangements. The adoption credit is an amount that you subtract from your tax liability. After 2001, the adoption credit applies only to the adoption of a child with special needs. *However*, a legislative act called H.R. 622, The Hope for Children Act, was introduced in the House of Representatives on February 14, 2001. This Act would replace the former \$5,000 tax credit with a \$10,000 credit for all adoptions. If you are adopting in 2007-08 then you might want to check for changes in the tax laws.

**12. Q. WILL THE ARMY REIMBURSE ME FOR SOME OF MY EXPENSES?**

Under the Adoption Expense Reimbursement Program, military personnel may be reimbursed for up to \$2,000 per child (with a maximum reimbursement to one service member of \$5,000 in any calendar year) for reasonable and necessary adoption expenses for the adoption of a child under 18 years of age, other than a stepparent or other relative adoption. No more than one service member of a dual military couple may be reimbursed for the expenses for the adoption of the same child. All covered adoptions must be through an agency authorized by a State to provide adoption placement, including nonprofit and voluntary adoption agencies. The reimbursement application forms (DD Form 2675 "Reimbursement Request for Adoption Expenses") should be available from your unit personnel section. The Army will also grant up to 21 days of paid leave to the primary caretaker following the placement of a child for adoption. This leave is not chargeable to ordinary leave. Speak to your local legal assistance attorney for more information.

**13. Q. WHERE CAN I GET MORE INFORMATION?**

A. There are a number of on-line resources available for prospective adoptive parents:

<http://www.adopting.com/>, Adopting.com -- touts itself as "The world's largest adoption resources index on the internet". Has links to valuable and comprehensive resources.

<http://www.childwelfare.gov/adoption/index.cfm> Child Welfare Information Gateway-- a great place to start research on adoption issues.

[http://travel.state.gov/family/adoption/adoption\\_485.html](http://travel.state.gov/family/adoption/adoption_485.html), International Adoption Links -- from Bureau of Consular Affairs, State Department

<http://adoption.about.com/parenting/adoption/library/howto/htstep.htm>, *How to Adopt a Stepchild*. Has a checklist of the process and links to related items, including links to state law.

Some military installations have adoption support groups, which may be a valuable source of information and assistance. The Social Welfare Division of the local military medical facility, Chaplain's Office, etc., may also be able to provide information.

Parents considering an international adoption may want to contact the U.S. Department of State, Children's Issues Desk at (202) 647-2688 and inquire as to the status of the agency or organization handling an adoption before the parent signs anything or pays any fees.

Free legal advice is available at your legal assistance office.

The following is a list of organization that helps people who want to adopt a child overseas:

**[Adoption Center of Washington](#)**

[www.adoptioncenter.com](http://www.adoptioncenter.com)

1726 M St NW # 1101  
Washington, DC 20036, USA  
202-452-8278