

The Basics of Adoption.

What is Adoption. The act of creating the relationship between parent and child where it did not exist thereby declaring the child to be legally the child of the adoptive parents and their heir at law, and entitled to all the rights and privileges and subject to all the obligation of a child born to the adoptive parents in lawful wedlock. § 39.01(6)

Where to Find the Statutes and Rules governing Adoption in Florida.

1. F.A.C. Rule 65C-16 <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=65C-16>
2. Chapter 63, Florida Statutes (2010) <http://bit.ly/bgWoUG>
3. Federal Law
 - a. ASFA <http://bit.ly/b4l6Lp>
 - b. MEPA <http://bit.ly/bnODi3>

Who May be Adopted; Who May Adopt § 63.042, Fla. Stat. (2009) <http://bit.ly/9yEg1q> :

1. Any person, a minor or an adult, may be adopted.
2. The following persons may adopt:
 - a. A husband and wife jointly;
 - b. An unmarried adult; or
 - c. A married person without the other spouse joining as a petitioner, if the person to be adopted is not his or her spouse, and if:
 - i. The other spouse is a parent of the person to be adopted and consents to the adoption; or
 - ii. The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court for good cause shown or in the best interest of the child.
3. No person eligible to adopt under this statute may adopt if that person is a homosexual.
4. No person eligible under this section must be prohibited from adopting solely because such person possesses a physical disability or handicap, unless it is determined by the court or adoption entity that such disability or handicap renders such person incapable of serving as an effective parent.

Basic Safeguards Provided by § 63.022(4) Fla. Stat. (2010) <http://bit.ly/bgWoUG> include:

That the child is legally free for adoption; the adoption is consented to or the parent-child relationship is terminated by judgment of the court; appropriate studies are conducted prior to adoption judgment; most placements of minors for adoption are reported to the DCF; child has lived with proposed adoptive home for a sufficient period of time; payments and costs are reported to the court; social and medical information about the child and parents is filed with the court before the final hearing; new birth certificate is issued; court may order substitute care if the court decides the child is in an unsuitable home; records are confidential; best interests of the child; in dependency cases initiated by the agency, where termination of parental rights occurs, and siblings are separated despite diligent efforts, continuing post adoption communication or contact among the siblings may be ordered by the court if found to be in the best interests of the children.

Advocacy at Each Stage of the Adoption Process.

At Removal

1. **Ensure Quality Homestudy** and background checks have been completed.
2. **Possible Relative Placements** – At the Shelter Hearing request that the court order an inquiry
3. **Resolve any Issues with Placement** (if placement is in the child's best interest) by obtaining a court order requiring the agency to assist the proposed adoptive placement to cure the problems. If they are not cured before adoption, the application may be denied. If the placement is not in the child's best interest begin petitioning the court for removal early.
4. **Information to Prospective Adoptive Placement.** Frank and open conversation (preferably in a family case planning conference) with prospective adoptive placement and parent(s) regarding the possibilities of reunification and termination of parental rights. Explain Adoptive Family Selection process and criteria to adoptive family.
5. **Review Automatic Disqualifiers** -Conviction of crimes specified in § 39.0138(2), Florida Statutes, or within 5 years for crimes specified in § 39.0138(3). <http://bit.ly/cQoaLB>.

At the Initial Judicial Review

1. Section 39.701(9)(e) requires the Court to make a finding "regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months . . ." If, at this hearing, the court makes a written finding that it is not likely that the child will be reunified with the parent . . . the department must file . . . a motion to amend the case plan . . . [using] concurrent planning for the case plan." <http://bit.ly/airiC5>
 - a. Ensure goal changed to adoption § 39.811(8) and case manager tasks include adoption recruitment.
2. Judicial Reviews must continue every 6 months until finalization § 39.701(1)(a). <http://bit.ly/airiC5>
3. **Ensure the Department Has Reported Balances of Master Trust Accounts.** See Master Trust Practice Bulletin. <http://bit.ly/cV0SAY>
4. **Adoption / Concurrent Case Plan Tasks.**
 - a. For the agency:
 - i. Documented (signed written version optional) conversation with prospective adoptive placement regarding the following:
 1. Discuss prospective adoptive placement's interest in adoption, including a frank conversation about the possibility of reunification. Outline the process including, termination of parental rights trial and appeal.
 2. Benefits of adoption including description of available subsidy, educational and medical benefits.
 3. Explain the necessary documentation that is required with the adoption application including:
 - a. Marriage or divorce documents
 - b. References and employer verification.
 4. Explain what criminal convictions constitute automatic disqualifiers and which would require review by the Adoption Review Committee (ARC).
 5. Explain that anyone who spends a significant amount of time with the child will be subjected to criminal background checks.
 6. Schedule finger prints.

7. Hold a “adoptive” quality staffing to assess the home and its potential to be approved as an adoptive home. Provide services to address concerns.
 8. Begin gathering information for child study—every detail of the child’s developmental, medical, family, psychological history, heredity, and physical history must be collected and recorded in the child study. F.A.C. 65C-16.002(7). <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=65C-16> Note that the psychological expires after 12 months and the physical must be completed within six months of adoptive placement.
- ii. If child is NOT in adoptive placement:
 1. Provide written documentation of all efforts at locating an adoptive placement including asking current custodian and locatable family members about possible placement.
- b. For the prospective adoptive placement:
- i. Attend as many court hearings as possible.
 - ii. Begin gathering documents required for the adoption application such as marriage and divorce papers, employment verification, and references.
 - iii. Notify the agency of any additional members to the household and make them available for background checks.

Filing TPR Petition / Parental Consent § 39.8055 and § 39.806

1. A TPR may be filed if there is clear and convincing evidence that one of the grounds in 39.806 (1)(a)-(l) exist or it may be expedited (no reasonable efforts) if grounds (e)-(l) exist. <http://bit.ly/axl9WC>
 - a. TPR is filed within 60 days of last Judicial Review § 39.802; Expedited TPR § 39.806 <http://bit.ly/axl9WC>
 - b. Diligent Search of Putative Father Registry § 63.165. <http://bit.ly/blag9J>
2. Parental Consent - Rule 8.500(g). Parents may consent to TPR at any time (in writing or orally).

At the Final Judgment of Termination

1. Set a date certain for the filing of proposed order or for entry of judgment.
2. Ensure that TRIAL attorney has filed designation and directions before appellate attorney is appointed.
3. Ask for a certified copy of the final judgment.
4. Final judgment of dependency and TPR must contain dates of hearing.

From Entry of Final Judgment or End of Appellate Process

1. Completion of adoption application and follow through by prospective adoptive placement - documents, current physicals, finger prints, etc.
2. Adoptive Family Selection
 - a. **Grandparents.** Court must give grandparents’ application first priority F.A.C. 65C-16.002(a).
 - b. **Other relatives** must be evaluated to determine suitability through an adoptive homestudy F.A.C. 65C-16.002(b).
 - c. **Current custodian** must be evaluated to determine suitability through an adoptive homestudy F.A.C. 65C-16.002(c). Current custodian may be excluded if the current custodian is unwilling to adopt the child’s sibling and it is in the best interest of the siblings to be kept together or if the current custodian has returned other adoptive children to the department or has arranged for some other out-of-home informal long-term placement for a previously adopted child. F.A.C. 65C-16.002(c)1-2.
 - d. **Siblings.** Agency must consider placing siblings together whenever possible. F.A.C. 65C-16.002(4). Adoptive parents of previously placed siblings shall be given the opportunity to adopt the sibling and shall be given the same consideration as other relatives. If considering placing siblings separately the agency must: staff the case, must be approved in writing and documented, prepare memorandum, describing efforts made to keep the siblings together and an assessment of the short term and long range effects of separation on the children. The memorandum must also include a description of the plan for future contact between the children if separation is approved.
 - e. **Indian Child Welfare Act** – See previous training and practice aids on the Guardian ad Litem website (www.GuardianadLitem.org)
3. Evaluation of Applicants
 - a. Factors that agency must consider (no order of preference, all must be considered):
 - i. child’s choice; willingness to adopt sibling group; commitment to value racial or ethnic heritage; child rearing experience; marital status (no preference for married families but agency shall give “particularly careful evaluation” to couples married less than 2 years); residence; income; housing; health; other children in family; working parents; department or CBC employees; criminal history/background screen, and references F.A.C. 16C-16.005(3)(a)-(o)
 1. abuse hotline record and criminal checks must be conducted on all household members who are 12 and over. F.A.C. 65C-16.007(1)(a) &(2).
 2. Federal background checks (NCIC) must be conducted on all prospective adoptive placements, checks are good for 5 years for foster parents and relatives, only 1 year for all other placements. F.A.C. 65C-16.007(3).
 3. All placements must have current state and local checks and these checks are only good for 90 days. F.A.C. 65C-16.007(3).
 - ii. Criteria must be reconsidered for families who adopt again.
4. Internal Agency Staffings: Match and Separation of Siblings
 - a. Separation of Siblings Staffings: agency is required to staff the case as a team and consider the emotional ties existing between and among siblings and the degree of harm which each child is likely to experience as a result of separation. The positives and negatives must be considered with at least one member of the team assigned to defend the position of placing the siblings together. F.A.C. 65C-16.002(4).
 - b. Match Staffings
 - i. Case Reviews: agency is required to meet *at least quarterly* to discuss and assess the needs of waiting children and available families. F.A.C. 65C-16.002(2)(b).
 - ii. If the agency has to make a decision between a current custodian who is a foster parent and a relative, the agency must consider the following:
 1. Attachment
 2. Kinship
 3. Permanence F.A.C. 65C-16.002(5)(a)-(c)
 - iii. Guardian ad Litem should work with Agency to ensure notice and participation in staffings
5. Appropriateness Hearing
 - a. Best Interest Standard
 - b. Expert testimony may be necessary
6. Adoption Review Committee (ARC)
 - a. ARC must consist of at least 3 persons and one member shall be a department staff person, preferably with adoption experience when issue before ARC involves criminal or abuse history. F.A.C. 65C-16.005(9).
 - b. Cases that must be referred to the ARC:
 - i. Health issue
 - ii. Abuse History
 - iii. Criminal History (Note that cases where conviction of crime specified in § 39.0138(2) or § 39.0138(3) if within 5 years, there is an automatic denial and case will not go before ARC). <http://bit.ly/9IPiJR>
 - iv. Foster parent issues (supervision concerns or violations of licensing standards). F.A.C. 16C-16.005(a)(1)-(5).

- c. ARC chairperson WILL issue a written recommendation to circuit legal counsel and the appropriate entity within the agency within 30 days of receipt of the request. F.A.C. 16C-16.005(9)(b).
 - d. The agency will provide the applicant with written notification within 30 days of the decision. If a denial, the notice must include the reasons for the denial and advise the applicant of the judicial option for review of the denial pursuant to an administrative proceeding. F.A.C. 16C-16.005(9)(c).
7. Denials of Adoption Application
- a. Agency should make efforts to resolve issues at the counselor/supervisor level. F.A.C. 16C-16.008.
 - b. If unresolved, case must be referred to ARC
8. Adoption Petition Rule 8.535
- a. The petition for adoption must be filed in the division of the circuit court that entered the judgment terminating parental rights, unless a motion for change of venue is granted.
 - b. The adoption petition must be filed no later than 60 days after entry of the final judgment of termination of parental rights.
9. Adoption Finalization (not sooner than 30 days after date of TPR or not sooner than 90 days after date the child is placed in physical custody of petitioner. § 63.142(4) <http://bit.ly/bafPvB> .
- a. A final judgment of adoption is issued when the court decides that:
 - i. Adoption is in the best interest of the child.
 - ii. Parental rights have been terminated.
 - iii. The period for filing of an appeal has expired.

Services and Adoption Assistance (Subsidy)

Department has a legal responsibility to provide services until finalization of the adoption. F.A.C. 65C-16.010(1).

What is a Subsidy? Financial aid which enables prospective adoptive parents to adopt a *special needs child* when it is shown that the child could not be placed without financial aid (subsidy). A special needs child is:

1. Whose permanent custody has been awarded to an agency and who meet at least one of the following criteria:
 - a. Children who have established significant emotional ties with their foster parent.
 - b. Children who are eight years of age or older,
 - c. developmentally disabled,
 - d. physically or emotionally handicapped,
 - e. African American or racially mixed parentage, or
 - f. A member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption; and
2. Except when the child is being adopted by the child's foster parents or relative caregivers, a child for whom a reasonable but unsuccessful effort has been made to place the child without providing a maintenance subsidy. § 409.166, Fla. Stat. (2009) <http://bit.ly/boo9LY>

What Types of Adoption Assistance / Subsidies are Available for the Adoptive Family? F.A.C. 65C-012 *It is the responsibility of the community based care or sub-contractor agency adoption staff to inform prospective adoptive parents of the availability of all of the benefits listed below*

1. **Maintenance subsidy.** monthly payment for support and maintenance of a special needs child until the child's 18th birthday. Children adopted privately may be eligible Maintenance subsidy payments can begin as soon as child is placed in adoptive placement (occurs before finalization). Monthly maintenance subsidy cannot exceed foster care board rate. F.A.C. 65C-012(2).

Planning for adoption begins at removal and continues through adoption

