



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Adoption Procedure

Ohio law requires a person seeking to adopt to file a petition in the proper probate court containing certain information about the petitioner and the person to be adopted. The probate court must then hold a hearing on the petition and provide notice of the hearing to certain statutorily required persons. Several written documents must also be filed with the court before an adoption petition for a minor may be granted, including a home study, preliminary estimate accounting, final accounting, and prefinalization assessment. If the court finds that all requirements have been met, an adoption may be ordered, subject to an expedited appeals process. Ohio law also provides for the recognition of adoption decrees issued outside of the state.

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### Adoption petition

In Ohio, probate courts have jurisdiction in adoption cases. The person seeking to adopt (the “petitioner”) must file a petition with the proper probate court in accordance with the Ohio Rules of Civil Procedure and utilize an agency or attorney to arrange the adoption. The petition must contain certain information specified in law, including, for example, the following key information:

- The date, place of birth, and name of the person to be adopted, if known;
- The petitioner’s name, age, and place and duration of residence;
- The petitioner’s marital status and the date and place of marriage, if married;

- The petitioner's relationship to the person to be adopted;
- The name and address, if known, of anyone whose adoption consent is required, but who has not consented, and facts that explain the lack of consent;
- The birth certificate of the person to be adopted, if available, and copies of any necessary consents, if any.<sup>1</sup>

## Adoption hearing

When an adoption petition is filed, the probate court sets a time and place for a hearing, which may take place any time that is more than 30 days after the date the minor is placed in the petitioner's home. Notice of the hearing must be provided at least 20 days before the hearing date to certain groups, such as any person whose consent to the adoption is required but who has not yet consented and any guardian or custodian who has temporary or permanent custody of the minor. Hearings are held in closed court in which the only persons who may be admitted are essential officers of the probate court, parties, witnesses, attorneys, persons whose consent to the adoption is required but have not consented, and representatives of adoption agencies present to perform their official duties.<sup>2</sup> The Supreme Court of Ohio has held that indigent parents are entitled to appointed counsel in adoption proceedings under both the U.S. Constitution and the Ohio Constitution.<sup>3</sup>

## Home study

Generally, an adoption assessor<sup>4</sup> must conduct a home study to determine whether the petitioner is suitable to adopt a minor and file a report of the home study with the court at least ten days before the adoption hearing. The home study includes interviews with all members of the household, physical examinations, financial statements, documentation of current marital status, criminal background checks, and a safety audit of the petitioner's home. The Statewide Automated Child Welfare Information System also must be checked for whether the prospective adoptive parent has been investigated for suspected child abuse or neglect. When the prospective adoptive parents or any adult residing with the adoptive parents have recently lived out of state, the Central Registry of Child Abuse and Neglect also must be checked regarding whether abuse or neglect occurred. In addition, the Ohio Bureau of Criminal Investigation must conduct a criminal records check on prospective adoptive parents and any adult members of the

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<sup>1</sup> R.C. 3107.01(D), 3107.011, 3107.04, and 3107.05.

<sup>2</sup> R.C. 3107.11 and 3107.17.

<sup>3</sup> *In re Adoption of Y.E.F.*, 163 Ohio St.3d 521, 531 (2020).

<sup>4</sup> Typically, an adoption assessor is a person who is: (1) employed, appointed, or under contract with a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA), (2) meets certain education or experience requirements, such as, for example, being a licensed psychologist or an employee of a court or PCSA, and (3) satisfies education requirements. R.C. 3107.014.

household. Finally, the home study report must contain the assessor's opinion as to whether the petitioner is suitable to adopt a minor.<sup>5</sup>

## **Preliminary estimate accounting and final accounting**

The agency (unless the agency is a PCSA) or attorney arranging a minor's adoption must file both (1) a preliminary estimate accounting with the court before the adoption petition is filed, and (2) a final accounting with the court not later than ten days before the final adoption hearing. Each accounting must specify all disbursements of anything of value that the petitioner, a person on the petitioner's behalf, and the agency or attorney made or has agreed to make in connection with the adoption. If a court determines from an accounting that an amount disbursed or to be disbursed for an expense is unreasonable or prohibited, the court may reduce the amount, order a refund of the excess amount, order the disbursement to be returned, or issue an injunction to prevent the disbursement. The accounting requirements do not apply to stepparent adoptions.

Ohio law limits adoption expenses that may be paid by the petitioner, a person acting on a petitioner's behalf, or an agency or attorney to the following:

1. Physician expenses of the birth mother or minor for prenatal care, delivery, and confinement before or after birth;
2. Hospital or other medical facility expenses for the birth mother or minor relating to birth;
3. Attorney or agency expenses for arranging the adoption;
4. Temporary costs of routine maintenance and medical care for a minor if the petitioner refuses to accept placement of the minor;
5. Guardian ad litem fees and expenses;
6. Foster care expenses for temporary care and maintenance of the minor;
7. Court expenses for the adoption;
8. Living expenses, such as rental or utility payments, of not more than \$3,000 for the birth mother.<sup>6</sup>

## **Prefinalization assessment**

Before a court issues a final decree of adoption or finalizes an interlocutory order of adoption<sup>7</sup> for a minor, unless the adoption is by a stepparent, an assessor must conduct a prefinalization assessment of a minor and petitioner. The assessor must prepare a written report of the assessment and provide a copy to the court hearing the adoption petition. The assessment must be filed with the court no later than 20 days before the final hearing on the adoption, unless

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<sup>5</sup> R.C. 3107.031, 3107.033, and 3107.034; Ohio Administrative Code 5101:2-48-10 and 5101:2-48-12(Q).

<sup>6</sup> R.C. 3107.055.

<sup>7</sup> An interlocutory order provides for the observation, investigation, and a further report on the adoptive home and becomes final automatically on a date stated in the order, which is not less than six months or more than a year after the adoptive placement, unless vacated for good cause shown. R.C. 3107.14.

the court finds good cause for filing it later. The prefinalization assessment report must contain certain information specified in statute, including the following, for example:

1. The minor's and petitioner's adjustment to the adoptive placement;
2. The present and anticipated needs of the minor and petitioner for adoption-related services, including, for example, Title IV-E assistance and counseling;
3. The minor's physical, mental, and developmental condition;
4. The reasons for the minor's placement with the petitioner, the petitioner's attitude towards the proposed adoption, and the circumstances under which the minor was with the petitioner;
5. The attitude of the minor towards the proposed adoption, if the minor's age makes this feasible;
6. The minor's psychological background, including prior abuse and behavioral problems of the minor, if known.<sup>8</sup>

## **Final decree or interlocutory order**

At the conclusion of the hearing, the probate court may issue an interlocutory order of adoption or a final decree of adoption if it finds that all required consents have been obtained or excused and that the adoption is in the best interest of the person to be adopted. However, a final decree of adoption cannot be issued, and an interlocutory order of adoption does not become final, until the child has lived in the adoptive home for at least six months after placement by an agency, or for at least six months after the Department of Job and Family Services or the court has been informed of the placement, and the Department or court has had an opportunity to observe or investigate the adoptive home; or, in the case of adoption by a stepparent, until at least six months after the petition's filing, or until the child has lived in the home for at least six months.<sup>9</sup>

## **Adoption order appeals**

Appeals of adoption decisions must be heard on an expedited basis, unless there is good cause for delay. After six months, subject to the disposition of an appeal, the final adoption decree cannot be challenged, even for fraud, misrepresentation, failure to give required notice, or lack of jurisdiction, unless one of the following is met:

- In the case of a minor adoption, the petitioner has not taken custody of the minor;
- In the case of a stepparent adoption of a minor, the adoption would not have been granted but for fraud of the petitioner or the petitioner's spouse;

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<sup>8</sup> R.C. 3107.12.

<sup>9</sup> R.C. 3107.13 and 3107.14.

- In the case of an adoption of an adult, the adult had no knowledge of the adoption decree within the six-month period.<sup>10</sup>

## Recognition of adoption decrees issued outside of Ohio

Ohio law provides that an adoption decree issued pursuant to due process of law by a court of any jurisdiction outside of Ohio, including outside of the United States, must be recognized in Ohio, unless recognition would violate the public policy of the state. The rights and obligations of the parties to the adoption must be determined as though an Ohio court issued the decree. A decree or certificate of adoption issued under the laws of a foreign country that is verified and approved by the U.S. Citizenship and Immigration Services<sup>11</sup> must be recognized in Ohio.

An adoptive parent may file a petition requesting that the court issue a final decree of adoption or an interlocutory order of adoption if both of the following apply:

1. A child born in a foreign country is placed with the adoptive parent or parents in Ohio for the purpose of adoption;
2. The adoption of the child previously has been finalized in the country of the child's birth.<sup>12</sup>

## Adoption basics

For an overview of the basics of adoption in Ohio, including the effects of adoption, who may adopt, and who must consent to an adoption, see the LSC [Ohio Adoption Basics Members Brief \(PDF\)](#), which is available on LSC's website: [lsc.ohio.gov](http://lsc.ohio.gov).

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<sup>10</sup> R.C. 3107.16.

<sup>11</sup> R.C. 3107.18 refers to the federal Immigration and Naturalization Service, which no longer exists. Immigration proceedings are now largely handled by the Citizenship and Immigration Services within the U.S. Department of Homeland Security.

<sup>12</sup> R.C. 3107.18.