THE INDIANA COOPERATIVE ADOPTION LAW

A RESOURCE FOR POTENTIAL ADOPTIVE PARENTS

Cooperative adoption has been a reality in Indiana since 1994, yet many potential adoptive parents are not aware of its existence. Using this law as it was intended might permit hundreds of young Hoosiers to secure permanent homes through adoption.

WHAT IS COOPERATIVE ADOPTION?

Cooperative adoption means that a birth parent can give consent to an adoption and still have some court-sanctioned visitation or continuing contact after the adoption occurs. A cooperative adoption can happen only when birth parents and adoptive parents can agree on specific visitation times and places or on reports and communication at specific times. That agreement will become part of the court record. Breaking the agreement can result in contempt of court charges but will not affect the adoption itself.

Legislation in 1997 provided that post-adoption promises can be made part of the court proceeding in regard to sibling contact as well as birth parent/child contact. It is hoped in this way that sibling groups which are split for purposes of adoption will be able to maintain bonds throughout childhood.

WHEN IS COOPERATIVE ADOPTION APPROPRIATE?

Cooperative adoption is meant to be used when 1) the child(ren) are in danger of languishing in foster care because reunification is not working, but the situation does not provide grounds for involuntary termination of birth parent rights; 2) the birth parent(s) realize that they are unable to care for their child(ren), but they do not wish to sever all contact with the child for life; 3) birth parents and adoptive parents know each other and are willing to enter into a post-adoption agreement.

For example, suppose seven-year-old Michael has been with his current foster parents for two years. Reunification with the birth parents has been tried, but has not succeeded, and Michael always returns to the foster home. The foster parents would like to adopt Michael, but birth parents' rights have not been terminated. The birth parents know they have not been able to care for Michael, but he has been their child for seven years, and they cannot bear the thought of giving him up, never seeing him again, never even knowing how he is doing. If birth parents and adoptive parents agree, they can present to the court their proposal for post-adoption promises. They might agree on a visit every three months and an extra visit during the

holiday season. Or they might have an agreement with no visitation at all, but pictures and a letter twice a year.

All agreements under cooperative adoption must meet the approval of: the birth parents, the adoptive parents, the CASA or GAL, the child placing agency, and the child if over 12.

WHAT ARE THE LIMITS ON COOPERATIVE ADOPTION?

Cooperative adoption is meant to allow continuing relationships where a long-standing attachment has occurred. Hence, the child must be at least two years of age. While agreements can be made in regard to children under two, these agreements are not enforceable by the court.

HOW CAN BIRTH PARENT RIGHTS BE PROTECTED DURING THE PROCEEDINGS?

Cooperative adoption agreements will not be recognized or promised by the judge at a hearing for termination of parental rights. However, if the adopting parents and the birth parents are in agreement about post-adoption contact, the adopting parents can bypass the termination of parental rights proceeding and file directly for adoption. The agreement between birth parents and adopting parents can be formalized at the adoption hearing.

ARE THERE ANY OBJECTIONS TO COOPERATIVE ADOPTION?

Some legislators confused cooperative adoption with open adoption and felt that all confidentiality in adoption would be overturned. However, cooperative adoption and open adoption are not the same. Some open adoption advocates have pressed for sealed records to be opened after the adoption has occurred. In a cooperative adoption, the birth parents and the adopting parents come to an agreement <u>before</u> the adoption takes place. Open adoption emphasizes sharing identities and information, the discovery of biological roots. Cooperative adoption is concerned with ongoing relationships between parents and siblings.

Others feared that a child's stability would be undermined by contact with biological parents after the child had a permanent adoptive home. However, children of divorce maintain contact with both custodial and non-custodial parents, and research shows that the child is the better for maintaining such contacts.

Still others objected that adoptive parents are adopting a child, not the child's whole biological family. However, cooperative adoption is voluntary. It does not take place unless birth parents and adoptive parents agree on all the terms.

WHO DECIDES WHETHER A COOPERATIVE ADOPTION IS APPROPRIATE?

Any of the interested parties - case manager, birth parents, prospective adoptive parents, CASA or GAL, adoptive parents' attorney - can suggest cooperative adoption.

WHAT ARE THE ADVANTAGES OF COOPERATIVE ADOPTION?

Because termination of parental rights can be voluntary, the child can more easily proceed from foster care to a permanent home through adoption.

Birth parents can give up parental rights knowing that they will not be completely cut off from their child for life.

Prospective adoptive parents can more quickly and easily achieve the adoption of the child they have chosen to adopt.

In short, cooperative adoption can benefit children and prospective adoptive parents by moving children more quickly from out-of-home placement to a permanent home.

WHERE CAN I FIND THE COOPERATIVE ADOPTION LAW?

The original cooperative adoption law is codified at I.C. 31-19-16-1 through 8. The Postadoption Sibling Contact law is codified at I.C. 31-19-16.5-1 through 7. The rules for a child under two are codified at I.C. 31-19-16-9. Indiana was the first state in the nation to introduce the cooperative adoption bill and the third state to pass a cooperative adoption law. As of 2001, over 30 states have cooperative adoption laws.

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