

CROSSING STATE LINES

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Adopting in the U.S. is generally less complicated than adopting internationally, but there are still differences among states. Varying laws mean there may be advantages to choosing which state you adopt from. . .even if it's not where you live.

Ellen, 45, and her husband Stuart, 47, from north central New Jersey were on their way to Pennsylvania to pick up their soon-to-be adopted baby. When they stopped at the agency to sign some documents, their social worker broke the bad news. The birth parents had decided not to place the baby for adoption, a situation legally known as a "disappointment." "It's ironic they call it a disappointment; it's more of a devastation," says Ellen, the memory still fresh.

About six weeks later, the adoption agency matched them with another set of birth parents. Strawberry-blond Max, now two, was born five weeks later. Again the baby was waiting across state lines, again in Pennsylvania. This time, however, Max's birth and adoptive parents agreed to use New Jersey laws for the adoption process, which was possible because Ellen and Stuart reside there. From an adoptive parent's perspective, New Jersey's laws are preferable. In that state, the birth parents' written consent cannot be rescinded unless they can prove duress or coercion. By contrast, in Pennsylvania the birth mother has a 30-day window in which she can change her mind for any reason. Even for some birth parents, a sense of immediate closure is preferable. "They [Max's birth parents] liked that only 72 hours after the birth they could release their parental rights," says Ellen about the New Jersey protocols.

Because adoptive parents and their new child cannot leave the state before all papers are signed and approved by a court, Ellen and Stuart picked Max up from the hospital and then stayed at a hotel in Pennsylvania, waiting for the

birth mom to sign the release of parental rights. Back-to-back ice and snow storms in the region meant that the biological mother was delayed by several days, and Ellen felt anxious but hopeful. This time, though, all went smoothly.

If you, too, have decided to adopt, you may find yourself similarly caught between the adoption guidelines of your home state and that of your son- or daughter-to-be.

Already fraught with uncertainty, the adoption process is made even more daunting by the lack of harmony among state laws. Every state has tried to write legislation that balances four competing obligations: to protect the adoptive children, to balance the rights of the biological parents with those of the adoptive parents, to prevent fraud, and to avoid any attempts at baby selling. Each state, however, has weighted the four criteria differently, resulting in a legal labyrinth.

In practical terms, couples planning to adopt across state lines are in for some legal legwork. Always check with a

reputable local attorney to make sure you understand the laws of the sending state (where your future child is located) and the receiving state (to which you'll be bringing the child home). You'll need to consult attorneys in both places. In order to adopt outside of your home state, you and your agency or attorney must be in compliance with the Interstate Compact on Placement of Children (ICPC), a federal law that governs how children are transported between states for adoption purposes.

Watch out for residency rules. Some states specify that both the adoptive parents and the birth parents must reside in the state; others require the adoptive parents to



have lived a certain number of months in the state they wish to adopt from. Because of an increase in interstate adoption, some states are simplifying the process for prospective parents. In Alabama, California, Illinois, Kansas, Oklahoma, Louisiana, Texas, and Washington, for example, nonresident couples can finalize their adoptions on site as long as the child's birth parents live in that state.

RIGHTS OF THE BIRTH MOTHER (AND FATHER)

Everyone has heard heartbreaking adoption stories about last-minute changes of heart. If a birth mother changes her mind and revokes her consent, the adoption cannot take place. If the birth father is known and asserts his rights, he, too, may be able to veto the process.

"While it's a sad thing to happen, it's a possibility that all adoptive families must confront. The good news is that most birth mothers do not try to revoke their consent," says Brette McWhorter Sember, a former attorney and author of *The Infertility Answer Book* (Sourcebooks, 2005).

From the perspective of the adoptive families, the safest adoptions are those in which the birth mom (or birth parents) cannot withdraw consent, once given, unless they can prove fraud or coercion. Currently, this rule applies in 18 states, among them California, Florida, Utah, and New Jersey. (See the box below for a complete state-by-state listing.)

Theresa, 47, and her husband Craig, 44, who are also from New Jersey, were lucky in that regard. Their future son, born in Texas, was already two days old when their adoption agency called them. At that point, his birth parents had already signed over all their parental rights. The young couple had asked the adoption agency to take care of everything; they even waived their right to choose the adoptive parents. Theresa and Craig had chosen to adopt in the Lone Star State because of stellar recommendations from friends, and because Theresa was born and raised there. They flew to Texas the following day to meet their son.

INDEPENDENT ADOPTIONS

Because agency adoptions can be quite expensive, many couples decide to adopt independently, which can cost less. Experts estimate that of all the infants adopted in the U.S. each year, half to two-thirds are placed through independent adoptions. Rather than having an agency match couples with birth mothers, independent adoptions work by word-of-mouth. The prospective adoptive parents search for an available child by asking friends and family, sending mass mailings to obstetricians' offices and family planning clinics, putting notices in church newsletters and local papers, etc. Once they've successfully identified a child, they use an adoption attorney to handle the legal matters.

Several states do not allow for independent adoptions. If you live in Colorado, Connecticut, Delaware, Wisconsin, Florida, Massachusetts, or North Dakota and plan on an independent adoption, you will have to adopt from another state and file your petition for adoption as part of a non-resident independent adoption. Consult with an attorney in a state allowing non-resident adoption before you make any arrangements.

PAYMENTS TO THE BIRTH MOTHER

Some pregnant women who are planning on placing their children for adoption do request financial help from the future adoptive parents. But contrary to popular belief, not all birth mothers need that assistance. "In my experience, I have found that about half of all birth mothers do ask for help with expenses, which average about \$2,000 total for some and only \$100 for others," writes Mardie Caldwell, a certified open adoption practitioner and author of *Adoption: Your Step-by-Step Guide* (American Carriage House Publishing, 2005).

But be careful. Not all expenses are equal before the law. Before you promise a birth mother any kind of payments, you should check state laws. In most states you can usually pay for her food, rent, utilities, medical care, counseling, maternity clothes, car insurance, pregnancy-related child care, and minor car expenses. In many states

state-by-state guide: birth mom's right to change her mind

For more information on specific state laws visit <http://naic.acf.hhs.gov/general/legal/statutes/search/index.cfm> or http://adoptionlawsite.com/main_cur.asp?

Alabama	Consent can be withdrawn for any reason within five days or within 14 if it's in the child's best interest.	Kentucky	Consent becomes final 20 days after approved placement is made or 20 days after consent, whichever is later.
Alaska	Consent can be withdrawn for any reason within 10 days—thereafter only if it's in the child's best interest.	Louisiana	Consent is irrevocable upon execution. Father's consent is irrevocable—but if given prior to five days after the child's birth it's not irrevocable until the fifth day after the birth. No annulment except on proof of fraud or duress.
Arizona	Consent is irrevocable unless obtained by fraud, duress or undue influence.	Maine	Consent is not valid until three days after it has been executed—then it's final and irrevocable. Review must be held if adoptive placement that has been consented to is not finalized within 18 months.
Arkansas	Consent can be withdrawn within 10 days after initial consent or birth—whichever is later.	Maryland	Consent may be revoked within 30 days by an individual or an agency. The individual to be adopted may revoke consent at any time before a decree of adoption is entered.
California	Consent is final in agency adoption; in direct placement birth parents have 30 days to submit a signed revocation	Massachusetts	Consent to adoption, executed according to statutory provision, is final and cannot be revoked.
Colorado	90 days to revoke only if clear evidence exists that consent was obtained by fraud or duress.	Michigan	The person who granted the consent may petition the court for a hearing on whether to grant revocation. A release may not be revoked if the child has been placed for adoption unless an appeal of a termination of parental rights is pending and a petition has been filed for a rehearing within the time required.
Connecticut	Petition to set aside consent may be filed prior to the final adoption decree—the court will consider the child's best interests.	Minnesota	Consent may be withdrawn for any reason within 10 days. After 10 days it becomes irrevocable unless a court finds that it was obtained by fraud.
Delaware	Petition to court to revoke consent may be filed within 60 days of consent.	Mississippi	Case law suggests that consent is irrevocable absent fraud, duress or undue influence, shown by clear and convincing evidence, and considering the best interests of the child.
DC	Voluntary relinquishment can be automatically revoked by a verified writing submitted to the agency within 10 days.	Missouri	Consent may be withdrawn any time until it is reviewed and accepted by the judge. Case law states that consent is irrevocable absent fraud, duress or coercion.
Florida	Consent to the adoption of a minor may be withdrawn only if the court finds it was obtained by fraud or duress. Consent to the adoption of a minor older than six months may be revoked within three days or any time prior to placement unless consent was obtained by fraud or duress.	Montana	The parent who has relinquished the child and the adoptive parent may mutually agree to revocation prior to the issuance of an order terminating parental rights. A relinquishment cannot be revoked once that order has been issued.
Georgia	Parent may withdraw consent within 10 days and consent is invalid if executed under fraud, duress or incapacity.	Nebraska	Case law suggests that relinquishment is irrevocable unless there is a finding that revocation is in the child's best interest, or upon a finding of fraud, duress or undue influence.
Hawaii	Consent cannot be withdrawn after child is placed with adoptive parents, unless the court finds it's in the child's best interest.	Nevada	Consent by the mother to a specific adoptive placement cannot be revoked except when the adoptive family is found to be unsuitable or the placement is a violation of law. Consent by the father who is not married to the mother becomes invalid if a) the father marries the mother before the child is born, b) The mother does not consent to adoption of the child within six months of the child's birth, or c) No petition for adoption has been filed within two years of the child's birth.
Idaho	If the parent revokes consent and petitions for custody the parent must reimburse the adoptive parents for expenses paid.		
Illinois	Consent is irrevocable unless obtained by fraud or duress. No action to void consent may start 12 months after consent was given. Father may revoke within 72 hours after birth.		
Indiana	Consent cannot be withdrawn after the entry of the adoption decree. Consent may be withdrawn no later than 30 days if court finds that the person seeking the withdrawal is acting in the best interest of the child.		
Iowa	Request to revoke consent may be made prior to termination of parental rights. Within 96 hours of executing release the court shall allow the request—after 96 hours the court must find clear and convincing evidence that good cause exists for revocation such as fraud, coercion or misrepresentation of fact.		
Kansas	Consent is final when executed unless consenting party, prior to the final adoption decree, proves by clear and convincing evidence that consent was not freely and clearly given.		

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New Hampshire	A parent wishing to withdraw consent shall notify the court in writing prior to the entry of the final decree. Consent may not be withdrawn unless the court finds that a) the parent seeking to withdraw consent has proven by a preponderance of evidence that the surrender was obtained by fraud or duress, b) The withdrawal of consent is in the best interests of the child. Consent may not be withdrawn after entry of the final decree for any reason.	South Dakota	Except in any case involving fraud, any adoption proceeding shall be in all things legalized and validated two years after finalization. Any claims must be initiated within those two years.
New Jersey	If executed according to provisions, surrender to an agency is irrevocable and constitutes termination of parental rights. At the discretion of the agency, consent may be set aside when based on fraud, duress, or misrepresentation.	Tennessee	A person may revoke a surrender within 10 days if such revocation occurs in the presence of a judge. After 10 days, a surrender cannot be set aside unless the court finds reasons the adoption should not go forward. A surrender may be revoked at any time prior to the entry of an order of confirmation of parental consent by the court. The surrender may be revoked if there is clear and convincing evidence of fraud, misrepresentation, or duress.
New Mexico	Consent may not be withdrawn prior to the entry of the final judgment unless consent was obtained by fraud. After the final decree, consent is irrevocable.	Texas	An affidavit of relinquishment that fails to state that it is irrevocable can be revoked before the 11th day after signing. On the 11th day, consent becomes irrevocable. Any time before an order granting an adoption is filed, consent may be revoked by filing a signed revocation.
New York	In a private adoption, consent given in court is irrevocable. An extra-judicial consent may be revoked within 45 days. Parental consents to private adoptions and surrenders in agency adoptions may be challenged if obtained by fraud, duress, or coercion.	Utah	Consent is effective when signed and cannot be revoked. Case law suggests that consent may be revoked if induced by duress, undue influence, deception, or other grounds that would justify release from a contract.
North Carolina	Consent is generally final and irrevocable. Consent to an infant in utero or any other minor may be revoked within seven days following execution. In a direct placement, consent may be revoked within five business days. Consent may be revoked if there is fraud, or mutual agreement. If a parent revokes consent, and later consents again, the second consent is irrevocable.	Vermont	Consent is irrevocable after 21 days. Consent is revoked if the parent notifies the court within 21 days, or the parent and prospective parent agree. Consent may also be set aside if it was obtained by fraud or duress, or if a condition permitting revocation has occurred.
North Dakota	Consent can be withdrawn before the final adoption order, but only if the court finds that it's in the child's best interest. Consent cannot be withdrawn after the entry of a final decree of adoption.	Virginia	Consent can be revoked by either parent for any reason for 15 days from the date of execution. Parental consent can be revoked a) before the final adoption order, only upon proof of fraud or duress, b) after placement of the child in an adoptive home, upon mutual written consent of the birth and adoptive parents.
Ohio	Consent is irrevocable except if it's withdrawn prior to a) entry of the interlocutory order, b) entry of the final decree, when no other order has been entered, after a hearing that finds withdrawal is in the best interest of the adopted person.	Washington	Consent is revocable until the court approves it. Thereafter, consent is irrevocable, except that for one year, consent may be revoked for fraud, duress, or lack of mental competency. For an Indian child, consent can be withdrawn for any reason before entry of final decree, and for fraud or duress within two years.
Oklahoma	Consent is irrevocable, except if obtained by fraud or duress, or if a court finds it is in the child's best interest, and there has been no adoptive placement for nine months. An extra-judicial consent is revocable for any reason for 15 days.	West Virginia	Consent may provide for conditional revocation if other required consents are not executed, or in direct placements, a petition for adoption is denied or withdrawn. Consent may be revoked if, prior to the entry of the adoption order, the birth parent and adopting parent mutually agree, or by a showing that consent was obtained by fraud or duress. The court will award custody based on the child's best interest.
Oregon	Consent may not be revoked unless fraud or duress is proved surrounding the adoption.	Wisconsin	Generally consents are irrevocable, but a parent who has consented may within one year petition for relief on grounds such as mistake, newly-discovered evidence, fraud, misrepresentation, or misconduct. See the statute for detailed exceptions.
Pennsylvania	Birth mother's consent is irrevocable 30 days after execution. The birth or putative father's consent is irrevocable unless revoked within 30 days of the child's birth or the execution of consent, whichever is later. A person may challenge the validity of a consent only by filing a petition alleging fraud or duress, within the earlier of a) 60 days after the birth of the child or the execution of consent, whichever is later, b) 30 days after the entry of the adoption decree.	Wyoming	Consent is irrevocable unless obtained by fraud or duress. If the court should deny the adoption due to the claim of a putative father, the court may allow the mother to withdraw consent.
Rhode Island	A decree of adoption or consent cannot be challenged except by a petition filed within 180 days, and a finding by the court that the adoption is not in the child's best interest.		
South Carolina	Revocation is not permitted, except where it is in the child's best interest, and if consent was given involuntarily or under duress and coercion. The final decree renders the consent irrevocable.		

Source: National Adoption Information Clearinghouse (NAIC), Nov. 2004. The NAIC was established by Congress in 1987 to provide free information on all aspects of adoption. State laws change—always check with a reputable adoption attorney.

the details are specific, so do your homework. Be especially careful with gifts to the birth mom—many states prohibit or limit them to prevent even the slightest appearance of baby selling.

Be aware that in most cases birth parents are under no obligation to repay anything if the adoption doesn't go through; the payments are considered gifts. Idaho is the only state that requires birth parents to repay if they change their minds.

"I'm glad I live in a state [Pennsylvania] which does not allow for birth mother compensation, because I think it muddies the water," says Debra Fox, an adoption attorney in Haverford, Pennsylvania. "In a small minority of cases, the birth mom knows she is not going to give the baby up for adoption but will gladly take the money." But despite having experienced cases of bogus reimbursements, where payments were made to mothers who had no intention of releasing their babies, attorney Suzanne Nichols, an adoption attorney in White Plains, New York, defends the practice. "Most of the women are honest, trying to locate a good family to place their baby with."

Fox's advice to would-be adoptive parents in states where payments are allowed:

- Look for red flags.
- Confirm the alleged pregnancy with necessary documentation to prevent outright fraud.
- Ask the birth mom to produce receipts.
- Pay the provider directly.

Adopting across state lines does mean a lot of extra legal homework. But it can be worth your while, especially if you live in a state where very few infants are available for adoption. Theresa and Craig were so pleased with their experience that they'd like to do it again. This time they're hoping for a little sister for their now two-year-old son.

"You wouldn't believe how many people tell me how much he looks like me," says the brown-eyed, brunette mother of a blond, blue-eyed toddler. When strangers ask if he gets his coloring from his father, she smiles. "His mother," she thinks. "His birth mother." But most of the time she doesn't correct the assumption.

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adoption facilitators

In their quest for a baby, some couples turn to adoption facilitators—individuals or organizations specializing in helping adoptive parents locate a birth mother. A word of warning, though: adoption professionals often mistrust them.

"I would never recommend that parents use a facilitator," says adoption attorney Nichols, in whose state paid facilitators are illegal. "Usually they are quite expensive, and in my experience it's faster [to locate a birth mother] if someone is willing to put in the time herself. You can make a better connection with the birth mom directly if you advertise and search yourself." In New Jersey and New York it's illegal for any person other than an adoption agency to receive any compensation for finding a birth mother.

Attorney Fox warns that facilitators are not licensed. "Unlike an agency which is inspected regularly, you don't have to have a special professional background to be an adoption facilitator. It leaves the field wide open for people who are not qualified." In Fox's experience, facilitators don't come cheap—\$5,000 on average. "What they can do for that money is very limited," she says.

Not all facilitators are mercenary in their motives. Some help free of charge, acting solely for the emotional rewards, notes Randall B. Hicks, adoption attorney and author of *Adopting in America—How to Adopt Within One Year* (Wordslinger Press, 2004).