

Child Protection Committee

Postadoption Contact Agreements

Summary: In general, State law does not prohibit postadoption contact or communication, because adoptive parents have the right to decide who may have contact with their adopted child without formal agreements. A written contractual agreement between the parties can clarify the type and frequency of the contact and provide a way for the agreement to be legally enforced. Agreements for postadoption contact or communication have become more prevalent in recent years. Currently, 26 states have statutes that allow written and enforceable contact agreements. Most state statutes permit contact for any adoptive child, but Vermont restricts the enforceable agreements to stepparent adoptions.

Current Law: In Vermont, when an adoption becomes final, any agreement for visitation or communication becomes unenforceable except in the case of stepparent adoption. 15A V.S.A. § 1-109. In the case of stepparent adoption, the agreement may be enforced in a civil action if the court finds enforcement is in the best interest of the child. Upon the request of the petitioner, the child's other parent, or a relative of the child, the court shall review a written agreement that permits another person to visit or communicate with the child after the decree of the stepparent adoption is final. The court can approve an agreement only upon making a determination that the agreement is in the best interest of the child. Courts look to the following in the best interest determination:

- Preference of the child.
- Special needs of the child and how they would be affected by performance of the agreement.
- Length and quality of existing relationship; effect on the child of allowing the relationship to continue.
- Specific terms of the agreement and likelihood that parties will cooperate.
- Recommendation of the child's guardian ad litem, attorney, or social worker.
- Any other factor relevant to the child's best interests.

15A V.S.A. § 4-112.

Issues and Potential Committee Options: The Committee heard testimony that "open adoptions" or permitting postadoption contact agreements could reduce the number of contested CHINS proceedings. The Committee could broaden the current statute to allow for parties to make enforceable postadoption contact agreements for other adoptive children. Other states limit the enforceability of such agreements based on factors such as the type of adoption, the age of the adoptive child, or the nature of the contact. For example, Connecticut limits agreements to children who have been adopted from foster care, Indiana limits enforceable contact agreements to children ages two and older, and Oklahoma limits postadoption visitation by a birth relative to those relatives with whom the child has formerly resided.