

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>196</h1>
Chapter:	Adoption and Guardianship Services	
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Approved:	Karen Shea, Interim Deputy Commissioner	Effective: 8/24/2016
Supersedes:	Family Services Policy 196	Dated: 6/30/2016

## Purpose

To provide guidance for staff regarding the division’s position and recommendations on legally enforceable post-adoption contact agreements between parents and intended adoptive parents for voluntary termination of parental rights (TPR) proceedings.

## Definitions

**Parent:** A person whose rights are the subject of the TPR petition. For the purpose of this policy, the parent becomes the “*former parent*” after the adoption is finalized.

**Intended Adoptive Parent:** A foster parent who has signed an intent to adopt. For the purpose of this policy, the intended adoptive parent becomes the “*adoptive parent*” after the adoption is finalized.

**Post-Adoption Contact Agreement:** An agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent or parents who are parties to the agreement (33 V.S.A. § 5124 (a)). Post-adoption contact agreements are negotiated agreements that set the upper limit on enforceable contact.

**Project Family:** A partnership between the Vermont Department for Children and Families (DCF) and Lund to find and support adoptive parents for Vermont children.

## Policy

Legally enforceable post-adoption contact agreements between parents and intended adoptive parents are an option for children in DCF custody and for children who are the subject of conditional custody orders with a relative or other non-parent. Post-adoption contact agreements are **NOT** open adoptions, good faith agreements, statements of intent to adopt, or agreements between divorced or separating parents.

Post-adoption contact agreements may be entered into if all the following conditions are met:

- (1) The child is in the custody of the Department for Children and Families (DCF) or in the conditional custody of a relative or other non-parent pursuant to 33 V.S.A. Chapter 52 or 53;
- (2) An order terminating parental rights has not yet been entered;

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- (3) The parent seeking contact (either or both parents) agree to a voluntary termination of parental rights (even in cases which began as an involuntary termination of parental rights);
- (4) The intended adoptive parent(s) have signed an intent to adopt and agree to post-adoption communication or contact with either or both birth parents; and
- (5) The court determines that the child’s best interests will be served by post-adoption communication or contact with either or both birth parents.

The form/agreement used by the Vermont Superior Court, Family Division is available here: [https://www.vermontjudiciary.org/sites/default/files/documents/400-00126\\_0.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/400-00126_0.pdf)

The division’s brochure on post-adoption contact agreement or communication is available here: <http://dcf.vermont.gov/sites/dcf/files/Adoption/Post-Adoption-Contact.pdf>

#### Planning for Post-Adoption Contact Agreements

The consideration of an enforceable post-adoption contact agreement should never be a last minute conversation. Social workers and their supervisors shall discuss whether a post-adoption contact agreement could be an option as soon as concurrent planning begins. Social workers shall discuss concurrent planning cases and cases that may lead to TPR with their supervisor and local permanency team.

#### **Planning with Intended Adoptive Parents**

Social workers should consult with the division’s permanency planning manager and Lund’s director of adoption regarding post-adoption contact agreements. If a post-adoption contact agreement is being considered, social workers will share the division’s [Post-Adoption Contact Agreement or Communication Brochure](#) with intended adoptive parents and direct them to Lund’s director of adoption and Project Family partners for consultation. Project Family partners are a helpful resource and support for intended adoptive parents in articulating and determining the terms of post-adoption contact agreements.

#### **Planning with Parents**

If the division is recommending TPR and the parents might consider a post-adoption contact agreement, social workers should share the division’s [Post-Adoption Contact Agreement or Communication Brochure](#) with them. Social workers should discuss this option with parents and their legal counsel. If a post-adoption contact agreement is proposed by the parents’ legal counsel or the court, social workers shall discuss any proposal thoroughly with their supervisor and the assigned Assistant Attorney General

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### Considerations for Post-Adoption Contact Agreements

Separate post-adoption contact agreements may be entered into with both parents, each parent separately, or just one parent. **The division strongly recommends that the adoptive parents enter into separate agreements with each former parent, as circumstances may change in the future.** Details related to the form of communication or contact, frequency, and supervision level should be addressed in each post-adoption contact agreement. Possibilities include, but are not limited to:

- Contact by mail, managed by the Vermont Adoption Registry;
- One-way contact, such as sending school picture or an annual update;
- Contact by mail or electronic communication between the adults;
- Telephone contact (which may or may not include texting);
- Periodic inclusion of former parent in adoptive family outings;
- Periodic visits between the child and former parent (including who else may or must be present, where, when, and how); and/or
- Contact that is deferred until the child or youth requests contact.

Discussion and considerations should include:

- Is post-adoption contact with the parent(s) in the child’s best interests?
- Does the proposed agreement make sense for the child now until the age 18?
- How will this agreement impact the future stability of the adoptive family?
- Does the social worker anticipate that the parent(s) will be a positive presence or a disruptive influence in the lives of the child and adoptive family over time?
- Do the parent(s) and the intended adoptive parent(s) have a solid, respectful relationship now?
- What form and amount of contact will be appropriate, if any?
- Will the agreed upon contact be feasible if either family moves? (The agreement remains in effect if either family moves out of the state or out of the country.)
- Will the agreement allow for communication to cease at the request of the child?
- Are there interpersonal dynamics, including in kinship relationships, that may make it challenging for the parents and intended adoptive parents to uphold the agreement?
- Is the parent’s substance abuse a concern? If so, the agreement should specify that the adoptive parents may restrict access under certain circumstances, such as if the parent is under the influence of drugs or alcohol.

When the topic of post-adoption contact agreements is discussed and questions are raised, social workers may discuss the pro and cons of entering into an agreement with intended adoptive families. **The social worker’s role is not to advise parents or**

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**intended adoptive parents on the topic of post-adoption contact agreements.** This is a vulnerable time for both parents and intended adoptive parents. Social workers shall not apply pressure for families to decide in either direction.

Social workers shall share the division’s position on:

- whether a post adoption contact agreement and its terms are in the best interests of the child;
- whether an agreement and its terms are appropriate for the child’s future stability and well-being; and
- whether an agreement and its terms are reasonable and supported by the division.

**Social workers should communicate with parents and intended adoptive parents if a post-adoption contact agreement is not supported by the division.** Social workers should re-direct families to seek their own legal counsel on this decision if needed. Social workers may ask the court to assign counsel to intended adoptive parents; however, the court is not obligated to appoint counsel to the intended adoptive parents for the purpose of post-adoption contact agreement.

There may be times when the court asks the parties to come together for the purpose of discussing the option of a post-adoption contact agreement and possible terms. Social workers may facilitate such discussions if all parties agree to meet, feel comfortable having the conversation in a group setting, and request that the social worker facilitate the meeting. Also, birth parents or intended adoptive parents may request a similar meeting. If the assigned social worker feels comfortable facilitating the discussion, they may do so. Outside facilitation or mediation may be needed depending on the nature of the situation.

#### Approval and Agreement

For an agreement to be valid, DCF must approve of the post-adoption contact agreement. Without DCF’s agreement, the court cannot approve any arrangement reached by the parents and intended adoptive parents. Therefore, it is imperative that social workers, in consultation with their supervisor and AAG, know the division’s position and the reasons for this position. In addition to DCF’s agreement, the following individuals must agree in writing:

- The parent(s) seeking post-adoption contact;
- The intended adoptive parent(s);
- The child’s guardian ad litem (GAL);
- The child’s attorney; and
- The child if 14 years of age or older.

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The post-adoption contact agreement goes into effect and becomes enforceable only after **all** of the following occur:

- (1) The parent signing the agreement voluntarily surrenders parental rights to the child;
- (2) The Family Court Judge agrees that the agreement is in the child's best interest and approves this agreement through a court order; and
- (3) The child is legally adopted in Vermont by the adoptive parents who signed the agreement.

#### Changing or Enforcing the Post-Adoption Contact Agreement

The former parents and the adoptive parents may agree to vary from the terms set forth in the agreement. If the former parents and adoptive parents disagree, the terms of the original agreement, as ordered, remains in effect and the former parents cannot go to court to change it.

If the agreement is not honored as agreed, the former parents may petition the probate court to enforce the agreement. The adoptive parent may petition the probate court to modify or terminate the agreement if in the best interests of the child. The probate court may limit, but not expand, the post-adoption contact agreement. The former parents and adoptive parents must engage in mediation or other dispute resolution before an enforcement hearing will be held.

A dispute over post-adoption contact does **NOT** lead to an undoing of the voluntary termination or adoption. Agreements are enforceable until the adopted child turns 18 or is no longer in the custody of the adoptive family. If the child is no longer in the custody of the adoptive family, the post-adoption contact agreement will no longer be in effect.

A post-adoption contact agreement is an arrangement between the former parents and the adoptive parents. Consequently, if a child comes into DCF custody and there is an existing post-adoption contact agreement, the department is not legally obligated to honor the agreement. However, the social worker, in consultation with their supervisor, may determine it is in the child's best interests to support contact with the former parents. In determining whether to support such contact, the social worker may consider the reasons why the child is in DCF custody, the short-term and long-term case plan goals, recommendations from treatment providers, input from the adoptive parents, and, where age- and developmentally- appropriate, the wishes of the child.