

Iowa Department of Human Services
New Adoption Legal Requirements

Changes to the Adoption Petition Content under Iowa Code §600.5:

An adoption petition shall be signed and verified by the petitioner, shall be filed with the juvenile court or court designated in section 600.3, and shall state:

9A. If the parents of the person to be adopted had their parental rights terminated pursuant to chapter 232, the petition shall include the names of any known siblings placed separately from the person to be adopted and either the plan for ongoing contact between the siblings if a court found that continued contact is in the best interest of each sibling or a statement that the court found continued contact between the siblings is not in the best interest of each sibling.

Changes to the Adoption Petition Attachments under Iowa Code §600.6:

An adoption petition shall have attached to it the following:

2A. If parental rights were terminated pursuant to chapter 232, a copy of any court orders concerning whether ongoing contact between siblings not placed with the person to be adopted is in the best interest of each sibling.

Changes to the Preplacement Investigation under Iowa Code §600.8:

1.a. A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(4) Whether the minor person to be adopted was the subject of a termination of parental rights proceeding pursuant to chapter 232, whether there are siblings not placed with the minor person to be adopted, and whether, if there are siblings, there is an ongoing relationship between the siblings and the minor child to be adopted or a court order finding contact between the siblings is in the best interest of each sibling.

Changes to the Notice Requirement under Iowa Code §600.11:

2.a. At least twenty days before the adoption hearing, a copy of the petition and its attachments and a notice of the adoption hearing shall be given by the adoption petitioner to:

(7) Any siblings of the person to be adopted due to either an ongoing relationship or a court finding that ongoing contact with the person to be adopted is in the best interest of each sibling if the person to be adopted was a minor child when the minor child's parents had their parental rights terminated pursuant to chapter 232 and the person to be adopted and the person's siblings were not placed together.

3. A notice of the adoption hearing shall state the time, place, and purpose of the hearing and shall be served in accordance with rule of civil procedure 1.305. Proof of the giving of notice shall be filed with the juvenile court or court prior to the adoption hearing. *Acceptance of service by the party being given notice shall satisfy the requirements of this subsection. (emphasis added)*

Changes to Allow Access to the Adoption File under Iowa Code §600.16A

2. With the exception of access to the original certificate of birth as provided in section 144.24A, all of the papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption shall not be open to inspection and the identity of the biological parents of an adopted person shall not be revealed except under any of the following circumstances:
 - e. Subject to section 235A.15, the juvenile court or court shall order the opening of the permanent adoption record of the juvenile court or court, the permanent termination of parental rights record under chapter 232, or both, pertaining to an adopted person who is an adult, upon request of the adopted person if the parents of the adopted person had their parental rights terminated pursuant to chapter 232.

Questions and Answers Related to the Changes

Q. The adoption petition shall provide the names of any known sibling placed separately from the person to be adopted. How should we interpret that?

A. If parental rights were terminated pursuant to Iowa Code Chapter 232, the following must be included in an adoption petition:

1. the names of any known siblings placed separately from the person to be adopted and
2. a. **EITHER** a statement that a court has found continued contact between siblings is in their best interest and a plan for that ongoing contact OR
b. a statement that the court found continued contact between the siblings is not in the best interest of each sibling.

The petition is prepared by the petitioners (adoptive parents). As such, it should include information known to them and, if the court has found that contact is in their best interest, a plan prepared by them, the petitioners. DHHS has an obligation to provide the termination order, which (if entered after July 1, 2022) should have language regarding ongoing relationships between siblings not placed together. DHHS also has an obligation to provide the preplacement investigation, which must also address the questions of whether the minor person to be adopted was the subject of a termination of parental rights proceeding pursuant to chapter 232, whether there are siblings not placed with the minor person to be adopted, and whether, if there are siblings, there is an ongoing relationship between the siblings and the minor child to be adopted or a court order finding contact between the siblings is in the best interest of each sibling.

The adoptive parents (due to their relationship with the child or family) may also have an ongoing relationship with other siblings. If they have such information, they would be required to provide it. DHHS cannot provide information regarding children who have been previously adopted due to the sealed record requirements of Iowa Code §600.16A.

Because the statement regarding ongoing relationships and best interest **must** be included in the adoption petition, it is necessary for DHHS to request that a judge make that determination. If there has been no finding regarding ongoing relationships between siblings, DHHS will need to seek such a finding in the termination action as outlined below.

There are substantial legal questions regarding what “not placed together” means. Until the Court finds otherwise, DHHS will treat children who were involved in the same CINA or TPR case as siblings who may be placed separately, even if one of the siblings is now an adult. **DHHS cannot violate the sealed records provisions of Iowa Code §600.16A to provide any information regarding a child who has already been adopted**, however, if the adoptive parent (petitioner) has independent knowledge of such a child, the adoptive parent should provide information regarding that sibling. If a sibling remains with a biological parent and has never been removed from both parents, DHHS would take the position that child is not “placed.”

If a sibling is placed separately but a court is unwilling to make a determination that ongoing contact is in the best interest of **both** children, a statement to that effect should be included in the preplacement investigation.

DHHS acknowledges that Iowa Code currently uses different phrases to describe connections between siblings. For the purposes of our work, consistent with the goal of fostering connections between siblings, DHHS interprets “existing relationship”, “ongoing relationship”, “visits” and “interactions” to each be indications that a court presiding over an adoption should be made aware of the nature of the relationship between siblings and notice to the sibling should be considered.

Q. How does the new law impact adoptions on cases where termination occurred prior to July 1, 2022.

A. The adoption worker should review the termination order to determine if the Court has made findings as to whether the siblings have an existing relationship/continuing contact and whether such is in their best interests. A statement regarding ongoing contact/best interest **must** be included in all petitions for adoption filed after July 1, 2022. DHHS recognizes that the new laws create a gap for cases where a termination order was done before July 1, 2022 and an adoption was not finalized before July 1, 2022. A DHHS adoption worker may need to request that the Court make such findings as set forth below.

Iowa Code 232.117(4) now requires courts to address ongoing relationships between siblings in the context of CINA/TPR proceedings. It provides: “If the court orders a termination of parental rights and siblings are not placed together but have an existing relationship, the court shall order ongoing contact between the siblings in accordance with section 232.108 if the court finds that either visitation or ongoing interaction is in the best interests of each sibling. This subsection shall not be construed to require visitation between a child and a parent whose parental rights have been terminated as to that child, even if a sibling remains with the parent.” At a minimum, the Court should be making a finding regarding whether ongoing contact is in the best interest of the child to be adopted, over which it has jurisdiction. DHHS staff should work with the guardian ad litem and/or county attorney on the case to request court findings where they are needed to proceed with an adoption.

- ◆ In cases where the adoption is imminent and very likely to occur before the next scheduled TPR review hearing, the assigned worker will now need to notify the assigned county attorney and seek an order from the Court regarding the sibling relationship(s). Adoption staff should follow area specific guidance as to request this type of order from their assigned individual counties and/or courts. The resulting order would be the order provided to the adoption attorney as part of the adoption packet sent for the finalization of the adoption.

- ◆ If, however, the adoption is not imminent and a TPR Review hearing will occur before the adoption, then workers should be spelling out the details of the sibling relationship(s) in their case plans and asking the Court, in the TPR review order, to make the findings necessary regarding the sibling relationship. The resulting order would be the order provided to the adoption attorney as part of the adoption packet sent for the finalization of the adoption.
- ◆ If the court issues an order which states it is **not** in the best interest for the child to have ongoing contact, DHHS adoption staff will need to provide the siblings names to the adoption attorney. This will allow the names to be listed in the adoption petition. The siblings would **not** need to be provided notice of the adoption.
- ◆ If the court issues an order which states **it is** in the best interest for the child to have ongoing contact, DHHS adoption staff will still need to provide the siblings names to the adoption attorney. This will allow the names to be listed in the adoption petition. The siblings **would** need to be provided notice of the adoption.

Moving forward, during the Termination of Parental Rights filed under Iowa Code Chapter 232 in an ongoing Child in Need of Assistance Court case, DHHS SWCMs should recommend and request in the termination report that the assigned judge include ongoing contact/best interest language in the TPR order. This should result in the information being available for the Adoption Petition when the case is ready for adoption finalization. **This will be a new practice for ongoing SWCMs** and may take some time to implement fully into practice as staff are trained on all the new guidelines. Adoption staff should be prepared to check the TPR order for ongoing contact/best interest language upon case assignment for the foreseeable future.

Q. If a child has biological siblings that they have never met, but have been placed according to the same CINA or TPR case, and we have a current address for, do we need to request a court finding regarding ongoing contact and/or best interest?

A. We will need to request an order in this case. In the request, provide the Court with the information that the siblings have never met and do not have an ongoing/existing relationship with each other.

If the court issues an order which states it is **not** in the best interest for the child to have ongoing contact, we will need to provide the siblings names to the adoption attorney. This will allow the names to be listed in the adoption petition. The siblings would **not** need to be provided notice of the adoption.

If the court issues an order which states **it is** in the best interest for the child to have ongoing contact, we will still need to provide the siblings names to the adoption attorney. This will allow the names to be listed in the adoption petition. The siblings **would** need to be provided notice of the adoption.

Q. If a child being adopted has sibling(s) whose rights were previously terminated and who have been adopted, is the Department required to provide their names?

A. No, providing such information would violate the sealed records requirements under Iowa Code §600.16A. Disclosing such information if not authorized to do so is a serious misdemeanor.

However, if the adoptive parents (petitioners) have independent knowledge of those children, they should include the information they have. DHHS will not be authorized to supplement this information.

Q. If I am testifying and am asked about other siblings, but they have been adopted or there are other confidentiality concerns, what do I do?

A. You should be prepared to read the following statement:

It is my belief that providing the requested testimony may be in violation of Iowa Code § 217.30 or other provisions of Iowa law. If I provide the requested information without proper authorization, I may be liable to civil or criminal penalties. I will provide the requested testimony only if the Court indicates that the testimony is necessary to this proceeding and directs me to testify.

If the Court then orders you to provide the information, you are doing so pursuant to a Court order, which you would be required to do.

Q. Where should I report siblings & their ongoing contact? Am I required to mention all siblings & their contact or lack of contact?

A. Iowa Code 600.6 requires that the adoption petition attach a copy of any court orders concerning whether ongoing contact between siblings not placed with the person to be adopted is in the best interests of each sibling. DHHS will need to provide the termination order and any order regarding contact between siblings.

Iowa Code 600.8 requires that a preplacement investigation answer whether the minor person to be adopted was the subject of a termination of parental rights pursuant to chapter 232, whether there are siblings not placed with the minor person to be adopted and whether, if there are siblings, there is an ongoing relationship between the siblings and the minor child to be adopted or a court order finding contact between the siblings is in the best interests of each sibling. DHHS will need to provide this preplacement investigation.

The preplacement investigations (Supervisory and/or Final Reports) must include statements addressing the following:

1. whether the minor person to be adopted was the subject of a termination of parental rights pursuant to chapter 232
2. whether there are siblings not placed with the minor person to be adopted, and
3. whether, if there are siblings, there is an ongoing relationship between the siblings and the minor child to be adopted OR a court order finding contact between the siblings is in the best interest of each sibling.

Document any sibling for whom there is ongoing contact and who is not placed with the child to be adopted in our supervisory and/or final report. DHHS/adoption staff will need to get a court order and request a finding from the Court regarding if the siblings are having ongoing contact and/or it is in their best interest for that contact to continue as set forth above. DHHS staff are not expected to determine what constitutes ongoing contact, a Court will need to make that finding. DHHS staff will need to provide the court order with those findings to the adoption attorney as part of the adoption packet.

Q. Is the biological parent entitled to an opportunity to be heard on the issue of ongoing sibling contact pre or post termination?

A. It is the position of DHHS that biological parents do not have standing to be heard on the issues of sibling contact either pre- or post-termination. Some judges may choose to make the finding regarding sibling relationships and ongoing contact in a separate post-termination order so that such a finding would not be subject to appeal or challenge by the biological parent whose rights have been terminated.

Q. Under the new law, which siblings are entitled to service?

A. Iowa Code §600.11 provides that a copy of the petition, its attachments and a notice of the hearing shall be given by the adoption petitioner to any siblings of the person to be adopted due to either an ongoing relationship or a court finding that ongoing contact with the person to be adopted is in the best interest of each sibling, if the person to be adopted was a minor child when the minor child's parents had their parental rights terminated pursuant to chapter 232, and the person to be adopted and the person's siblings were not placed together.

This can include adult siblings, as well as minor siblings, but only those siblings who were not placed together. This will be tied to the Court's finding pursuant to Iowa Code §232.117(4), as set forth above.

The keys are an ongoing relationship and that continuing that relationship is in the best interests of each sibling, including the person to be adopted. If the Court finds there is no relationship and/or ongoing contact is not in the best interests of the child to be adopted, there is no need to serve that sibling.

As indicated above, the petition is prepared by the adoptive parents as petitioners. The information regarding "known" siblings would be provided by them. Because DHHS is precluded from providing information regarding particular siblings, the petitioner would only be able to provide what is known to them. The adoption attorney will need to make the decision regarding which siblings require service based on the Court's orders.

An adoption cannot occur until at least 20 days after siblings who meet the above requirements are served or accept service.

- ◆ Adoption staff may need to remind adoption attorneys to review these new notice requirements.

Q. Who is required to provide notice/service?

A. The petitioner in the adoption will need to arrange for service. Ultimately it will be the adoption attorney's decision regarding who is required to receive service, what will be included in the notice, and how such service is done.

Q. How is notice/service provided?

A. The adoption attorney will need to provide personal service or obtain an acceptance of service from the adult sibling or the guardian of a minor sibling. Iowa Code §600.11(3) specifically recognizes that an acceptance of service will meet this requirement.

If DHHS is the guardian of the sibling receiving service and the sibling is a minor, DHHS can accept service on behalf of the sibling.

If actual service is necessary, there may be additional costs. The DHHS worker should be prepared to request an Exception to Policy (ETP) to cover such additional costs.

Q. Under the new law, is the sibling who receives notice entitled to a Guardian ad Litem in the adoption action if they are a minor?

A. There is nothing under the new law authorizing appointment of a guardian ad litem for the minor sibling. It only provides they be given notice.

Q. Can the sibling object to the adoption or request a hearing on ongoing sibling contact?

A. The Judge will determine who can be heard in the courtroom, but there is nothing in the new code provision that gives the sibling party status, gives them a right to be heard or allows them to make requests. The Judge may decide to do so. A sibling may also request to intervene, but that will also be a decision made by the Judge.

Q. What can we do to address concerns that someone who receives notice may cause issues at the adoption hearing?

A. The Judge controls what occurs in their courtroom and will act accordingly. If the parties feel it is in the best interests of the family, the adoption attorney could request that after those who were entitled to notice are heard, that the courtroom be cleared and the courtroom closed to anyone not invited by the family, due to the confidential nature of the proceedings. The Judge would need to make that decision on a case-by-case basis.

Q. What is the remedy if the sibling is not provided notice?

A. There is no remedy provided in the new code provision. It is possible that the Court will continue the adoption hearing to give Petitioner an opportunity to comply with the expectation, which may cause a delay in the adoption.

Q. Can the Court waive the requirement of service to a sibling?

A. The Court will make that decision if such a request is made, but there is nothing in the Code that would appear to give the Court authority to do so.

Q. Under the new law, how can an adoptive parent protect their confidential information in the home study and other protected documents?

A. There are a number of legal provisions that may affect confidentiality of the home study and other required attachments. These include **Iowa Code §22.7** (identifying public records to be kept confidential unless release is authorized or court ordered); **Iowa Code Chapter 125** (protecting substance abuse records); **Iowa Code §217.3** (protecting confidentiality of DHHS records regarding services); **Iowa Code §228.2** (protecting mental health information from disclosure); **Iowa Code §232.97** (protecting social reports); **Iowa Code §232.147** (protecting the juvenile court file); **Iowa Code Chapter §235A** (protecting child abuse assessment information); **Iowa Code Chapter HIPPA 45 CFR 164.500, et seq** (protecting confidential medical records); **Iowa Administrative Code 641 – 95.12** (prevents DHHS from giving the birth certificate to the registrant (child), a member of their family or their legal representative).

The petitioners should ask their attorney to request a protective order from the Court to allow them to maintain confidential information, by redacting or sealing certain attachments so that the information does not need to be provided to the sibling receiving service or their guardian. Such a request should include reference to the any statutory provisions that protect the information from disclosure.

If there is concern that confidential information will be provided to someone who otherwise would not be entitled to the information, such as a relative, a biological parent to the sibling, or a parent whose rights have been previously terminated, the adoption attorney may choose to seek a protective order seeking permission from the court to protect their client's confidential information. If a court enters a protective order, it will be the obligation of the petitioner's attorney to redact, seal or otherwise protect the confidential information consistent with that order.

If there are specific concerns relating to service to a sibling whose custody remains with a previously terminated parent, the Code specifically indicates that nothing in the section requires notice be given to a person whose rights have been previously terminated to the child (to be adopted). If there is a biological sibling who meets the above requirements and is in the care of a biological parent whose rights have been terminated as to the child to be adopted, the adoption attorney may use this language in the Code to ask the Court to allow an alternative means of service for the minor sibling.

Plan for Ongoing Contact

Q. Does DHHS have to create a plan for ongoing contact between the siblings for inclusion in the adoption petition.

A. No. This is a requirement for the adoptive parents to create or to indicate they have no such plan. This information simply informs the Court of the plan going forward. DHHS should provide any plan for ongoing contact between the siblings that was ordered in the termination order or any other plan of which DHHS is aware.

Adults seeking their sealed adoption file pursuant to Iowa Code 600.16A

Q. The new law allows for an adult who was adopted after a Chapter 232 termination to unseal their adoption file and/or juvenile court file. That file contains confidential information, is there something I need to do to protect that information?

A. The law allows them access to their Court file, not their DHHS file. It will be up to the Court to grant the request and to protect any information it deems necessary.