

Contested Adoptions Are on the Rise . . . But a Sad Story Can Have a Happy Ending

There is a troubling trend in family law that affects schools, churches, and entire communities: contested adoptions are on the rise. This trend is probably the result of the bigger problem of increased substance abuse, especially with heroin and prescription painkillers. This Alert discusses some of the social complexities that give rise to contested adoptions and the need for wise and skilled legal advice to bring stability to the children caught in the middle.

The U.S. heroin epidemic has caused more and more children to be born with a substance dependency because of the mother's drug use during pregnancy. A child born with a drug dependency is a "mandatory reporting event" so that Child Protective Services (CPS) must be notified immediately. Of course, children are also referred to CPS for other cases of abuse and neglect. Once children move into the custody of Departments of Social Services, they are placed with foster families. Other children are left, or abandoned, by their biological parents with family or friends, and the government is not initially involved. Either instance can lead to legal wrangling between birth and foster parents.

When children are removed from their parents, State laws always seek to return them as soon as possible. [Sections [16.1-281](#) to [16.1-283](#) in the Code of Virginia] Of course, this can only happen when the parents have changed the behavior or circumstances that led to removal in the first place. To this end, regulations lay out specific steps and goals for the birth parents and provide services to help them succeed. Family courts oversee the process and follow a strict time table.

Unfortunately, parents often fail to change their behavior and the children are left with foster parents for long periods of time—often years. Naturally, the children bond with the foster parents and begin to see them as their true parents.

Once a child has bonded with his or her caregiver – whether a relative, family friend, or foster parents – it becomes clear that the best thing for the child is to be adopted by them. Attachment and bonding are normal and necessary parts of healthy human development. Psychologists have [researched](#) and written a great deal on the subject in the last twenty years. A disruption of the parent-child bond can cause great harm to the child. But so can disrupting the child's bond with his or her long-term caregivers or foster parents. Indeed, the consequences of a disrupted placement can be far more severe than many people imagine, often not showing up until the teen years.

Unfortunately, many birth parents do not understand this and cling to unrealistic hopes that they will eventually improve their circumstances and be able to regain custody of the child. They also tend to think that the child will want to return to them and that no harm would occur to the child if s/he does so.

On the other hand, caregivers develop a love for the child and can rightly assert that it is in the best interests of the child to remain with them. They may seek adoption in order to give the child more safety and security. Adoption can remove the threat of visitation proceedings or custody battles from birth parents that cause ongoing instability and anxiety to the child.

Here is where the courts step in to grant an adoption without the consent—and often against the wishes—of the birth parents. Of course, because terminating parental rights is such an extraordinarily serious matter, there are strict standards which must be proven by clear and [convincing evidence](#) [Virginia Code Section 63.2-1205], before a court may do so. Many are surprised to learn that contested adoptions are even possible, yet they occur regularly in all 50 states. Adoption law is almost exclusively governed by state law, and the rules with respect to it vary widely. Contested adoptions require a particularly skilled attorney to navigate the legal and emotional issues. The complexities of adoption cases have even led to the American Academy of Adoption Attorneys—an association of only about 300 attorneys with strict requirements of demonstrated expertise in the complexities of adoption law and the highest standards of ethics.

Contested adoptions are on the rise, but the patience of loving foster parents and the attentions of a skilled attorney can bring a happy ending.

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