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ARTICLES

REFLECTIONS ON THE
MOVEMENT TOWARD A MORE
CHILD-CENTERED ADOPTION

ANNETTE RUTH APPELL*

INTRODUCTION

Twenty years ago, when I began to represent foster children in the historic Cook County Juvenile Court in Chicago, Illinois,¹ I discovered the deep and enduring connections children have to their kin, particularly their parents and siblings. I represented children of parents on whom the court and agencies had given up—families whose legal ties had been or were on the precipice of being terminated. In contrast to the state actors, the children remained deeply connected to their parents, even when they were resigned to never again live with them. There were also siblings who asked me to fight against termination of their parents’ parental rights or to resist their adoptions because they did not want to be separated from each other or to have no guaranty that they could continue to know and see each other or their parents; others resisted adoption because they feared their names would change.

My colleagues and I fought on their behalf for legal protections that would preserve their identities and bridge these connections.

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¹ Chicago’s juvenile court, founded in 1899, is credited as the first juvenile court in America. DAVID S. TANENHAUS, JUVENILE JUSTICE IN THE MAKING, at xix-xxvi (2004).
In other words, we fought to maintain legal, social, and family connections after termination of parental rights and into the adoption. Unfortunately, the law did not recognize these ties. Legally, the parent-child relationship was “all or nothing” and our legal strategies to protect these connections were largely unsuccessful. These strategies included seeking termination of parental rights orders that incorporated post-termination and post-adoption visitation orders or constrained the power of the court-appointed guardian with authority to consent to the children’s adoption. Such constraints included authorizing the guardian to permit adoption only by persons willing to help the children maintain connections to their parents or siblings or to persons who would continue to be bound by post-termination and adoption visitation agreements to which they had already assented at the termination-of-parental-rights stage.

Our social work consisted of introducing to each other pre-adoptive foster parents of siblings who were to be adopted into different families. We made these introductions to enable the adoptive parents to maintain sibling contact after adoption and to serve as support for each other. Through this work, we aimed to create extended kin networks of adults tied together through their (adopted) children. We hoped these networks would keep children connected across legal-family borders and develop shared knowledge, information, and ongoing support for the adoptive parents and the children they adopted. We also negotiated and reduced to writing unenforceable agreements between birth and prospective adoptive parents for ongoing contact after adoption. While this work did not carry the imprimatur of law, we hoped for compliance and that the process itself would communicate the vitality of these connections to the child welfare system and the families who would adopt our clients.

2. *E.g., In re M.M.*, 619 N.E.2d 702, 708 (Ill. 1993) (denying motions brought on behalf of children seeking to enforce trial court orders conditioning adoption on the adoptive parents' willingness to permit post-adoption contact); *In re Donte A.*, 631 N.E.2d 257, 257-58 (Ill. App. Ct. 1994) (refusing to limit the power of a legal guardian by requiring that the guardian condition its consent to adoption on finding prospective adoptive parents that would allow post-adoption sibling visitation).


5. In those days, foster parents were not likely to know each other. Permanency planning was solely in the domain of caseworkers who transported children from their various homes to the state social services offices or fast food restaurants for family visits.
At the time, there was very little literature and even less law acknowledging or protecting these enduring connections.\(^6\) Not even two decades had passed since the Adoption Assistance and Child Welfare Act ("Adoption Assistance Act") became law in 1980.\(^7\) Among other things, this act deposed the anonymous infant adoption orthodoxy that had defined adoption for much of the century.\(^8\) In the 1980s, the adoption paradigm was still one that contemplated a clean break from the past, extinguishing all biological family connections (except in the case of step-parent adoption) and even changing the child’s birth certificate to reflect the adoptive parents as the child’s birth parents.\(^9\) By designating adoption as the privileged goal for foster children who cannot be reunited with their families and reducing barriers to and providing financial support for adoption, the Adoption Assistance Act challenged the notion that older children were not adoptable.\(^10\)

This challenge failed, however, to account for the fact that these older children carried with them known pasts and conscious relationships. Indeed, even children and adults adopted as infants carry their pasts with them, perhaps more so because their pasts are unknown.\(^11\) Lawmakers and social workers were slow to respond

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6. In fact, the American Law Institute digest of post-adoption parent-child visitation cases, first composed in 1990, did not exist when I began my research. See generally Danny R. Veilleux, Annotation, Postadoption Visitation by Natural Parent, 78 A.L.R.4th 218 (1990). Since 1990, the digest has filled out considerably, with the vast majority of cases dated after 1990. See generally id. Moreover, the number of adoption with contact statutes continues to increase. Compare Annette R. Appell, Increasing Options to Improve Permanency: Considerations in Drafting an Adoption with Contact Statute, CHILD. LEGAL RTS. J., Fall 1998, at 24, 36-42 (describing thirteen adoption with contact statutes), with infra Appendix (reporting on twenty such statutes).


to these contradictions. At the time the Adoption Assistance Act became law, there was little social science research regarding the adoption of foster children\textsuperscript{12} and scant interrogation of the closed-adoption-rebirth paradigm.\textsuperscript{13} Yet it would appear that the same forces that were leading to more organic and inclusive notions of adoption, including the Adoption Assistance Act, were pushing toward opening adoption in practice and law.

Open adoption has now become the norm in practice for all types of adoption.\textsuperscript{14} Common law is slow to sanction open adoption because adoption itself is a statutory creation, the \textit{sine qua non} of which has become the complete substitution of adoptive ties for birth ties. Most state adoption statutes continue to embody the old

\begin{itemize}
  \item[12.] For exceptions, see, for example, Arthur D. Sorosky, Annette Baran & Reuben Pannor, \textit{The Adoption Triangle: The Effects of the Sealed Record on Adoptees, Birth Parents, and Adoptive Parents} (1978) (reconceptualizing adoption as a lifelong process for birth parents, adoptees, and adoptive parents); Robert Borgman, \textit{Antecedents and Consequences of Parental Rights Termination for Abused and Neglected Children}, 60 \textit{Child Welfare} 391 (1981) \[hereinafter Borgman, Antecedents and Consequences\] (study illustrating the children’s resistance to adoption without post-adoption family contact guarantees); Robert Borgman, \textit{The Consequences of Open and Closed Adoption for Older Children}, 61 \textit{Child Welfare} 217 (1982) \[hereinafter Borgman, Consequences of Open and Closed Adoption\] (illustrating, inter alia, that open adoption can help ease birth parent and foster children’s resistance to adoption).
  \item[14.] Harold D. Grotevant et al., \textit{Many Faces of Openness in Adoption: Perspectives of Adopted Adolescents and Their Parents}, 10(3-4) \textit{Adoption Q.} 79, 80 (2007). Adoption of older children, step-children, and related children, which for years predominated adoption, were generally open in the sense that the birth relations and adoptive relations were known to each other. Annette Ruth Appell, \textit{Blending Families Through Adoption: Implications for Collaborative Adoption Law and Practice}, 75 B.U. L. Rev. 997, 1001-02 (1995) \[hereinafter Appell, Blending Families Through Adoption\]. What is most striking is that infant adoptions are increasingly open. Mardell Groth et al., \textit{An Agency Moves Toward Open Adoption of Infants}, 66 \textit{Child Welfare} 247, 248 (1987); Susan M. Henney et al., \textit{The Impact of Openness on Adoption Agency Practices: A Longitudinal Perspective}, 6(3) \textit{Adoption Q.} 31, 34 (2003).
\end{itemize}
norms, treating adoption as a rebirth that severs and erases all ties and then seals all information about the birth family. Of course, adoptive parents gain the rights of parenthood through adoption, including the right to determine with whom their children will associate; grants of visitation rights over their objection or otherwise providing legal guarantees that others can have contact with the adoptee remains exceptional, but is on the rise.

This Article reflects on the increasingly widespread and normative movement toward the practice and regulation of honoring children’s pre-adoptive and often ongoing relationships to birth family members. This Article first rehearses the current state of statutory and judicial post-adoption contact regulation, with emphasis on adoption with contact, a regulatory scheme that best reflects the autonomy of the new adoptive family, but nevertheless may not protect the child’s interests when the adults cannot come to an agreement regarding post-adoption contact. This Article then presents a brief overview of pertinent studies of post-adoption contact here and in the United Kingdom, where the law permits courts to order post-adoption contact without the agreement of the adoptive parents. The regulation and study of open adoptive families reveal them to be dynamic, collaborative, porous, and rich collectives that center around the child’s interests. The Article concludes with some findings and recommendations from the United Kingdom’s experience that are instructive for the United States.

I. THE REGULATION OF POST-ADOPTION CONTACT

Although open adoption encompasses a vast array of relationships and is largely unregulated, there are primarily two types of regulatory schemes that sanction and enforce post-adoption contact among birth relatives, adoptive parents, and the adoptee:

(1) those permitting courts to enforce post adoption contact agreements among the parties, i.e., adoption with contact statutes; and (2) those permitting the court to impose post adoption visitation or contact without regard to the parties’ agreement.

The major distinction between these two categories of statutes is that adoption with contact is, by definition, based on an agree-

15. See generally Naomi Cahn, Perfect Substitutes or the Real Thing?, 52 DUKE L.J. 1077 (2003) (exploring social and legal history of adoption); Samuels, supra note 9, at 373-86 (tracing the history of these norms).

16. See infra Part II.
ment between the parties, while the second category does not require that the parties agree. 17

A. Court-Imposed Open Adoption

Court-imposed post-adoption contact is predominately statutory, 18 but can be equitable. 19 Court-imposed post-adoption-contact statutes empower courts to order visits at the request of third parties, usually nonparent relatives, but also birth parents and siblings, even when the adoptive parents object. 20 This type of open adoption can be useful, particularly when there are people important to the child, but whose importance the adoptive parents do not appreciate; this form of open adoption also may be appropriate when there are logistical constraints precluding agreement regarding contact. 21

At the same time, this form of open adoption challenges the autonomy of the adoptive parents and the new adoptive family. In truth though, this new adoptive family is enmeshed in the child’s birth family in and through the adoptee, who inevitably brings these connections into the adoption. When adoptive families do not recognize this phenomenon, it could be problematic for the child because these connections are important to adoptees, who are likely to revisit birth connections cyclically throughout their lives. 22 Moreover, adoptive parents who do not have contact with birth parents or relatives may be more likely to think poorly of the child’s

17. Annette R. Appell, Enforceable Post Adoption Contact Statutes, Part II: Court-Imposed Post Adoption Contact, 4(2) ADOPTION Q. 101, 101 (2000) [hereinafter Appell, Court-Imposed Post Adoption Contact] (citation omitted); see also Appell, Blending Families Through Adoption, supra note 14, at 1020 (discussing cases in which courts ordered post-adoption contact without explicit statutory authority). Massachusetts provides both mechanisms as it has an adoption with contact statute, MASS. GEN. LAWS ch. 210, §§ 6C, 6D, 6E (2008), and has recognized the equitable authority of the court to order such contact without agreement of the parties. Adoption of Vito, 728 N.E.2d 292, 300 (Mass. 2000).


20. Appell, Court-Imposed Post Adoption Contact, supra note 17, at 101-02.


22. See generally BRODZINSKY, SCHECHTER & HENIG, supra note 11 (describing how adoptees revisit their adoption and birth connections at each developmental phase of their lives).
birth relations, perceptions that the child may absorb as negative messages about the child’s worth or that might produce cognitive dissonance for the child who has loyalties to the birth family.

B. Adoption with Contact Statutes

As the persistence and depth of birth connections have pushed adoption to become more open, there has been an increase in the prevalence of agreements among birth and adoptive parents for post-adoption contact. In a number of states this phenomenon raised concerns about the fairness of private ordering in these open adoptions and whether the parties, particularly birth parents, understood the nonbinding effect of the post-adoption-contact agreements. These considerations, along with a growing recognition of the importance of birth heritage to adoptees, have led a number of states to codify such adoptions. These statutes, in effect, create a new form of adoption: one that, from the outset, acknowledges the child’s pre-adoption birth connections and explicitly brings them into the new adoptive family, often as part of the adoption decree itself.

Adoption with contact statutes share at least two principal strengths. First, they are collaborative because they are based on the agreement of those who will have the contact and not on a court-imposed order. Second, their design minimizes court intervention during and after the adoption proceeding. For example, most of the statutes articulate guidelines for creation, modification, and enforcement of the agreement after adoption. Moreover, and, perhaps most importantly, these statutes explicitly state that any vi-

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24. See infra notes 101-105 and accompanying text.
26. Id.
27. Id.
olation or failure of the agreement is not grounds to set aside the adoption or parental rights relinquishment.29

A growing number of states have passed legislation that acknowledges, accounts for, and regulates post-adoption contact.30 California’s statute articulates the primary considerations undergirding these laws and reflects broad notions of kinship and identity.31

The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents or an Indian tribe, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents or an Indian tribe, and adoptive parents. Nothing in this section requires all of the listed parties to participate in the development of a postadoption contact agreement in order for the agreement to be entered into.32

By the end of the last decade of the twentieth century, fifteen states had adopted statutes that permitted birth relatives and adoptive parents to enter into enforceable open adoption agreements.33 Currently, there are at least twenty. I highlight these statutes because they protect the autonomy of adoptive parents to enter into

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31. See Appell, Survey, supra note 25, at 79 (reporting that concern for the child’s interest in open adoption was a primary motivation behind enacting the adoption with contact statutes).
32. CAL. FAM. CODE § 8616.5(a).
an adoption on their own terms and internalize the type of collaboration that is necessary to make the contact successful. This is not to say that the court-ordered post-adoption contact model does not have value or that blended families cannot come to terms with these imposed conditions, but the agreement of the parties models a more private and organic family operation and is more consistent with U.S. norms of family autonomy.

These adoptions with contact statutes make clear that when open adoptions are entered into under such a statute, parties have rights and obligations. Those open adoption agreements entered into outside these mechanisms continue to be unregulated. Major factors motivating states to adopt such regulations were the desirability of providing procedures for these arrangements, the wisdom of clarifying when these arrangements are extralegal and when they are subject to enforcement, and, of course, the growing understanding of children’s interest in openness. This codification, also known as cooperative adoption, models and accommodates family privacy and the existential facts of adoption: that the birth family and adoptive family are tied together through the child and that adopted children are “forever members of two families—the one that gave them life and the one that nurtured them through the process of adoption.”

These adoption with contact statutes, informed as much by the political process as academic research, apply only to some adoptions and to some family members and not others. For example, some statutes limit cooperative adoption to parents who have consented to the adoption and preclude parents whose parental rights were involuntarily terminated. Such statutes are inconsistent with


35. Appell, Blending Families Through Adoption, supra note 14, at 1003-08.


37. Id. at 79.


research that suggests parents who contested the termination and adoption can be successful participants in post-adoption contact. Moreover, children’s attachments to parents are not necessarily dependent on the way parental rights were terminated. A number of statutes confine the persons who can enter into enforceable post-adoption-contact agreements to parents or relatives to whom children have a substantial relationship, even though research suggests that a number of relatives (especially grandparents) can be important participants in post-adoption contact and that many infant adoptions involve ongoing contact with them.

In addition, although the statutes are commendable for their respect for the adoptive kin network’s autonomy, most do not provide for counseling or other mechanisms to help the participants understand their rights and responsibilities, the value and purpose of adoption with contact, or the special challenges of blending multiple families. In the end, though, these statutes signify an important message about the value and existence of adoptive kin networks, the endurance of biological kinship, and the status of post-adoption-contact agreements entered into pursuant to these statutes and those entered into without legal sanction.

In contrast to court-imposed open adoption, the adoption with contact statutes have produced remarkably little litigation. Most litigation that has occurred addresses whether open adoption agreements not entered into under the statute are enforceable under the

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40. See infra text accompanying notes 99-130 (rehearsing studies regarding court-ordered and consensual post-adoption contact).
41. See Borgman, Antecedents and Consequences, supra note 12, at 396-98 (study indicating that children were most attached to their parents after contested termination of parental rights proceedings, but that when parents and case workers helped them accept the adoption, they remained connected to their parents).
42. See infra Appendix.
43. See infra Parts II.D-E.
44. A number of statutes do provide dispute resolution mechanisms if a dispute regarding the agreement arises later. See infra Appendix.
46. Appell, Survey, supra note 25, at 75-76. Massachusetts presents a possible exception, but much of the litigation in that state preceded the Massachusetts adoption with contact statute, MASS. GEN. LAWS ch. 210, § 6C (2008), and appears to revolve around disputes regarding court-imposed contact, a form of open adoption that does not fall under the adoption with contact rubric. See infra notes 54-59, 77-94 and accompanying text.
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statute. In one of the rare cases involving litigation on the merits of a statutory adoption with contact agreement, the Minnesota Supreme Court held that the contact agreement created a contractual right that the Fourteenth Amendment Due Process Clause protected. This interest afforded the birth father, who had filed suit to enforce the agreement, a right to an evidentiary hearing, including the right to confront witnesses in the enforcement action.

This case is significant, not just because of its rarity, but for its articulation of the nature and extent of the contact agreement. The decision defined the nature of the birth parent’s rights under the agreement to be contractual, rather than parental, underscoring the important legal fact that the rights the birth parent gains through adoption with contact are not parental rights. At the same time, the court’s application of the Mathews v. Eldridge test regarding what process was due the father took very seriously his interest and the risk of erroneous deprivation. Thus, the court required an actual hearing regarding the propriety of terminating contact, determining that the father’s interest outweighed the burden on the state to afford a full hearing. Finally, clarifying the burden of proof in an enforcement action, a subject on which the statute was silent, the

47. E.g., In re M.B., 921 N.E.2d 494, 499-501 (Ind. 2009) (holding that an agreement that purported to be a precondition to termination of parental rights and adoption violated the statute but was nevertheless enforceable); Adoption of Edgar, 853 N.E.2d 1068, 1075 (Mass. App. Ct. 2006) (statute does not apply to court-sanctioned open adoptions not entered into by agreement of the parties); Moore, 135 P.3d at 388 (post-adoption-contact agreement entered into after the adoption was not enforceable under the statute); In re Tara P., 836 A.2d 219, 222 (R.I. 2003) (the court was not required to enter open-adoption decree that did not meet the statutory requirement when the fifteen-year-old adoptee did not agree and the mother and adoptive parent, the grandmother, did not jointly negotiate an agreement for post-adoption); see also In re Kimberly S., 83 Cal. Rptr. 2d 740, 744 (Cl. App. 1999) (parent not entitled to notice of post-adoption contact option); In re Zachery D., 83 Cal. Rptr. 2d 407, 410 (Cl. App. 1999) (same). But see C.O. v. Doe, 757 N.W.2d 343, 345 (Minn. 2008) (action brought to enforce a 2005 adoption contact agreement).

48. C.O., 757 N.W.2d at 349 (holding that the birth father had a property interest in the contractual right established pursuant to the statute). In In re M.B., the Indiana Supreme Court held that the mother had a statutory right to notice and an opportunity to be heard before a court could terminate her post-adoption visitation with her children. In re M.B., 921 N.E.2d at 501.

49. In C.O., there was no hearing and much of the evidence on which the trial court relied was out-of-court statements by the birth father’s ex-girlfriend. C.O., 757 N.W.2d at 350-51.


51. C.O., 757 N.W.2d at 350-51. The court did not, however, require a heightened standard of proof, holding that in the absence of statutory guidance, the standard would be a preponderance of the evidence. Id. at 353.

52. Id. at 351-52.
court held that the burden was on the party seeking “to benefit from a statutory provision”—here, the adoptive parents who were seeking to establish that exceptional circumstances existed to terminate the agreement.53

Massachusetts appears to have the most reported post-adoption contact litigation of all of the states, the vast majority of which does not appear to have arisen under the adoption with contact statute, probably as a result of Massachusetts’ relatively long-standing and robust practice of court-ordered post-adoption and post-termination family contact.54 In fact, so rooted is this practice that the Massachusetts Supreme Judicial Court, in Adoption of Vito, explicitly rejected the argument that statutory amendments providing for adoption with contact and post-termination contact agreements removed the judiciary’s equitable authority to impose post-termination and post-adoption contact.55 It is not surprising, then, that there continues to be litigation regarding the court’s discretion to order post-adoption contact, which is limited only by the best interests of the child standard, a notoriously indefinite measure.56

In fact, the Vito court recognized this danger of increased litigation, as well as the risks of incursion into the adoptive parents’ parental rights, when courts order post-adoption contact without the adoptive parents’ agreement.57 Even so, Vito affirmed the continued authority of courts to impose post-adoption contact when best for the child—just one year after enactment of the adoption with contact statute.58 At that time, the courts appeared to equate best interests in the context of post-adoption contact with displayed bonding between the birthparent and the child.59 This equitable

53. Id. at 352-53.
54. Infra text accompanying notes 77-94.
57. Adoption of Vito, 728 N.E.2d at 304.
58. See An Act Relative to Adoption and Promoting the Welfare of Children, ch. 3, § 17, 1999 Mass Acts 2, 10-14 (codified at MASS. GEN. LAWS ch. 210, § 3(d) (2008)).
59. E.g., Adoption of Greta, 729 N.E.2d 273, 281 (Mass. 2000); Adoption of Vito, 728 N.E.2d at 303. The Supreme Judicial Court recently, in dicta, noted that the “considerations beyond bonding may be relevant” to the child’s interests in post-adoption contact, such that post-adoption contact may be in the interests even of children with-
power may provide important safeguards for children, but it also may undermine the autonomy of the new blended families that adoption creates.


Most of the adoption with contact statutes contemplate an agreement between the birth parents or other birth relatives and the adoptive parents that would be entered into at the time of adoption. However, it is not uncommon, particularly in foster care cases, for the termination proceeding and the adoption proceeding to be separated in time, place, and constituents. Indeed, at the time of the termination of parental rights, there may not be a designated adoptive family. This discontinuity creates gaps between the time of, and personnel involved in, the creation of the agreement and the adoption. Moreover, not all children whose parental rights are terminated will be adopted, but they will still have ties to siblings or other relatives. Massachusetts and Florida are among the few states with statutes that address the lacuna between termination of parental rights and adoption, a stage that, unfortunately, could last for a lifetime. Nevada provides various mechanisms to bridge the gap between termination of parental rights and

out exhibited ties to their parents. Adoption of Rico, 905 N.E.2d 552, 559 (Mass. 2009); see also infra text accompanying notes 83-94.

60. See, e.g., In re M.M., 619 N.E.2d 702, 706-07 (Ill. 1993); In re Donte A., 631 N.E.2d 257, 258 (Ill. App. Ct. 1994). Both M.M. and Donte A. involved children seeking to compel their state guardian to permit adoption only by persons who would agree to post-adoption contact with birth siblings (and parents as well in M.M.’s case); in those cases, termination of parental rights—which authorized the guardian to consent to adoption—occurred in a separate court and proceeding and at a different time.

61. E.g., Adoption of Rico, 905 N.E.2d at 553 (at time of termination, there was no identified adoptive family).

62. See Martin Guggenheim, The Effects of Recent Trends to Accelerate the Termination of Parental Rights in Children in Foster Care—An Empirical Analysis in Two States, 29 Fam. L.Q. 121, 140 (1995) (estimating based on disparities between numbers of termination of parental rights cases and adoptions in Michigan and New York “that there are somewhere between 40,000 and 80,000 children who have been freed for adoption but have not yet been adopted nationwide”).


65. See Guggenheim, supra note 62, at 140 (“Modern reforms aimed at helping families in need have resulted in creating the highest number of unnatural orphans in the history of the United States.”).
adoption with contact. These include requiring the adoptive parents, their attorneys, and the agencies to notify the court regarding the contact agreement, requiring the adoption court to inquire of the adoptive parents as to whether there is a contact agreement in place, and permitting the birth parents to bring a civil damages action when the adoptive parents have concealed the existence of an agreement before the adoption court.

Florida’s statute permits the court that terminates parental rights to order “communication” or “contact” between the child and “parents, siblings, or relatives of the parent whose rights are terminated” when in the best interests of the child. “[T]he nature and frequency of the communication or contact must be set forth in written order and may be reviewed upon motion of any party,” including “an identified prospective adoptive parent.” The statute further requires the court to review the “nature and frequency of the communication or contact” once the child is placed for adoption.

The Massachusetts provision, added in 1999 to the termination of parental rights statute, explicitly reserves the right of the birth parent and the person petitioning to terminate parental rights to enter into “an agreement for post-termination contact or communication.” The statute also grants jurisdiction to the termination court to resolve disputes relating to the agreement. The agreement itself becomes “null and void” once an adoption or guardianship decree is entered, but does not “prohibit a birth parent who has entered into a post-termination agreement from entering into an agreement for post-adoption contact or communication pursuant to section 6C once an adoptive family has been identified.”

Even before Massachusetts added the explicit provisions for post-termination contact in 1999, its courts were considering post-
termination and post-adoption parental visitation.\textsuperscript{77} They did so based on equitable principles:

Given the “broad, equitable powers” of courts in this area, we see no reason why a judge dealing with a petition to dispense with parental consent may not evaluate “the plan proposed by the department” in relation to all the elements the judge finds are in the child’s best interests, including parental visitation.\textsuperscript{78}

This is a longstanding and oft-used power of the Massachusetts termination of parental rights and adoption courts.\textsuperscript{79} In Adoption of Lars, a Massachusetts appellate court upheld termination of parental rights orders that mandated any subsequent adoption decree to include a birthparent-child visitation order.\textsuperscript{80} Although this case predated the 1999 adoption with contact provisions,\textsuperscript{81} the court anticipated (and assumed) the inevitability of adoptive parent agreement to post-adoption contact when it upheld the visitation order against the child welfare agency’s objection:

Here, where the children had not yet been placed in a prospective adoptive home as of the time of trial, visitation has not been judicially thrust upon identified adoptive parents. When such prospective parents have been chosen, they will, by their willingness to adopt, have implicitly, if not expressly, consented to the visits ordered by the judge.\textsuperscript{82}

Even after the 1999 addition of the Massachusetts statutory adoption with contact and enforceable post-termination of parental rights visitation provisions, courts continued to order post-termination visits based on judicial equitable authority. For example, Adoption of Terrence considered whether it was in the best interests

\textsuperscript{77}. E.g., In re Dept’ of Soc. Servs., 467 N.E.2d 861, 866 (Mass. 1984).
\textsuperscript{78}. Id. (citations omitted); see also Adoption of Vito, 728 N.E.2d 292, 299 (Mass. 2000) (noting equitable authority and citing long line of cases acknowledging this authority).
\textsuperscript{79}. See Adoption of Vito, 728 N.E.2d at 299 (citing nine cases in which such orders had been entered since 1984).
\textsuperscript{81}. Mass. Gen. Laws ch. 210, § 3(d). The statute provides, (d) Nothing in this section shall be construed to prohibit the petitioner and a birth parent from entering into an agreement for post-termination contact or communication. The court issuing the termination decree under this section shall have jurisdiction to resolve matters concerning the agreement. Such agreement shall become null and void upon the entry of an adoption or guardianship decree.
\textsuperscript{82}. Id. Adoption of Lars, 702 N.E.2d at 1191.
of Terrence to order minimal visits with his cognitively limited, mentally ill mother after termination even though there had been no statutory agreement for such visits and, apparently, without the court knowing what the child’s actual adoption plan was.  

This resistance to the legislative adoption and termination with contact provisions surfaced most recently regarding the pseudonymously named Rico and his father. Rico, then a twelve-year-old raised in foster care since the age of three, and his father shared a mutual bond and desire to see each other but, for some reason could not be reunited. The court terminated Rico’s parents’ parental rights after a thirteen-day trial in 2006 when Rico was nine. At the same time, the court found that Rico’s best interests lay in ongoing contact with his father and siblings after termination of parental rights and adoption, but the court made no order to that effect. Instead, the court made the gratuitous finding that Rico’s legal custodian, the child-welfare agency, had the discretion to afford visitation.

The court’s failure to act affirmatively to protect these relationships was odd, particularly when Massachusetts law provides both equitable and statutory options to protect what was by all accounts a strong and mutual connection between father and son. The court could have exercised its equitable power to affirmatively order contact, as the Supreme Judicial Court held on appeal was the trial judge’s duty upon making a finding that the contact was in the child’s best interests. Or, the court could have directed the apparently willing agency and father to “enter[ ] into an agreement for post-termination contact or communication” under General Laws of Massachusetts chapter 210 section 3(d). Yet the trial court left what was clearly an important issue up to the discretion of an agency that had failed for nine years to find permanency for Rico (albeit at the time of the termination, it had failed for only six years).

The Supreme Judicial Court, however, only recognized the equitable method for effecting ongoing contact between Rico and his

84. Adoption of Rico, 905 N.E.2d 552 (Mass. 2009).
85. Id. at 553-55.
86. Id. at 553.
87. Id.
88. Id. at 554-55.
89. Id. at 560.
90. MASS. GEN. LAWS ch. 210, § 3(d) (2008).
family when it held that “the judge was obligated to enter” an order for “postadoption visitation or contact between Rico and his father, as well as among Rico and his siblings.”91 Although it is very likely that Rico will and should have contact with his father and siblings after adoption and that the family that adopts Rico should be open and willing to foster such a relationship,92 the court did not seem to consider the termination with contact method. Perhaps the court felt strongly that post-adoption contact would have to be ordered if and when an adoptive family came forward to adopt Rico or, à la the appeals court’s reasoning in Adoption of Lars,93 that any family adopting Rico would be willing to allow his father and siblings into their extended kin network.

In any event, the courts reviewing Rico’s case on appeal glossed over the statutory mechanism for agreeable visitation orders.94 It seems that the long-recognized equitable authority for courts to order such contact has eclipsed the termination and adoption with contact provision the legislature added in 1999. Nevertheless, one of the lessons of open adoption, and particularly adoption with contact, is that often the child’s families—birth, foster, and adoptive—are in the optimal position to determine what is best for the child and the birth and adoptive families, including what types of arrangements will meet the needs of the families and the child. In contrast, courts and governmental agencies struggle under heavy caseloads and an unavoidable distance between bureaucratic functioning and the lived lives of children and families. Rico could have provided the opportunity to place the plans for a child in the hands of the people closest to him. Confronted with a child-welfare failure—a child in foster care for three-quarters of his life without returning home or receiving an adoptive family—perhaps the reviewing courts had had enough, but they also may have missed an opportunity in the process.

II. THE FAMILIES OF OPEN ADOPTION

Despite the ongoing legal paradigm of the discrete nuclear family, social science recognizes that families are both fluid in formation and porous in boundaries.95 This is particularly true of

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91. Adoption of Rico, 905 N.E.2d at 560.
92. Perhaps this was shorthand for what the Lars court articulated.
94. MASS. GEN. LAWS ch. 210, § 6C.
95. See generally Judith Stacey, In the Name of the Family: Rethinking Family Values in the Postmodern Age (1996) (describing postmodern families);
adoptive families. There do not appear to be any social science studies of the families who participate in legally regulated open adoption (adoption with contact or court-ordered post-adoption contact) in the United States. There have been, however, a number of studies of unregulated open adoption here\(^6\) and of court-imposed post-adoption contact in England,\(^7\) where the Children’s Act 1989 permits courts to order post-adoption contact without the express agreement of the adoptive parents.\(^8\)

These studies reveal a complex, fraught, and overall positive set of relationships and family formations. The studies portray extended, dynamic kin networks that are inorganically created but evolve into multifocal extended families that are sometimes comfortable and sometimes uncomfortable, sometimes bitter and other times sweet. These studies are also beginning to suggest lessons for social workers, lawyers, and courts regarding how to assist in the creation and maintenance of these families. The following is a brief survey of the highlights of findings from studies here and abroad that might help illustrate how these new blended families of open adoption function.


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\(^7\) Murray Ryburn, *A Study of Post-Adoption Contact in Compulsory Adoptions*, 26 BRIT. J. SOC. WORK 627, 639 (1996); Lois Wright et al., *Adolescent Adoption and the Birthfamily*, 1 J. PUB. CHILD WELFARE 35 (2007); see also Smith & Logan, supra note 34, at 53-69.

\(^8\) 1989, c. 41, §§ 8-11 (Eng.).
A. The Contact

In the studies reported here, contact was ongoing after adoption through voluntary arrangements or by court order. In these ongoing contact studies, the contact ranged from exchange of letters and phone calls to in-person visits, attendance at important rites of passage, overnight visits, and an enlargement of the kinship network. Moreover, in families with more than one adoptee, the range of contact might vary among children, and the families tended to view as optimal the most open of the relationships. It is not uncommon for members of the extended birth family to be part of the contact. In fact, the definition of birth family tends to be child-centered and might include adopted or at-home siblings, stepparents, foster siblings and other fictive kin, aunts, uncles, and grandparents. Where openness decreased, other members of the birth family might step into the contact.

The amount and type of contact both reflects and shapes the perspectives and relationships among the adults such that more open contact led to more positive adoptive-parent perceptions of the birth relatives. For example, the “adoptive parents with closed adoptions were significantly more likely to have a negative or mostly negative view of the biological parent than adoptive parents with open adoptions.” In contrast, the greatest percentage of parents with positive views of the birth parents were those who had in-person contact.

In one study of foster-child adoptions, children placed in the first month of life were most likely to have open adoptions. Studies of open adoptions of infants found that feelings about openness were positive and that many adoptions were moving toward
greater openness. Increases in contact were motivated by concern for the child’s well-being, better communication, and good relationships between the birth and adoptive parents. In fact, studies suggest that the more contact families had with each other, the more advantages and fewer disadvantages they attributed to the contact. Adoptive parents were also willing to increase court-ordered or agreed contact at the request of the birth family.

Studies reveal that mediated adoptions tended to become fully disclosed, particularly when the adopted adolescents or the adoptive mothers initiated the increase. It is less likely for mediated contact adoptions to become closed, but it does occur. Researchers noted that decreases in contact were often caused by communications gaps that led to misunderstandings regarding the motives and intentions of the triad members.

In addition, as the adoptee enters adolescence, studies show that they gain authority regarding contact. In other words, as children age, the adults look to the adoptee to set the terms and pace and are less and less involved with the actual contact. By the time adoptees are adolescents, they are better able to manage the complications of the birth-parent relationship. As one adoptive mother noted, “I used to ‘vet’ the letters as some are quite strange, but now that she is older she has them direct.” Similarly, another mother said, “Last time . . . she went by herself to her mother’s flat, but this was less successful as they found they did not communicate well without my help.” At some point, there is a transition that installs the adolescent adoptee as the driver of the amount and type of contact, something both the adoptive and birth parents seem to

107. Dunbar et al., supra note 96, at 454, 462; Siegel, supra note 100, 415-16.
109. Ryburn, supra note 97, at 634-35.
110. SMITH & LOGAN, supra note 34, at 121.
111. Dunbar et al., supra note 96, at 454; Siegel, supra note 100, at 414.
112. See Dunbar et al., supra note 96, at 451. When adoptive parents felt pressured to enter into an open adoption as a condition of receiving a baby, birth parents initiated the decreases. Id.
113. Id. at 461. Dunbar et al. summed it up: “It was both striking and poignant that network members may become distanced from one another because of inaccurate perceptions about each other’s intentions regarding contact.” Id. These misperceptions were most likely in mediated adoptions. Id.
114. Id. at 459-60.
115. Ryburn, supra note 97, at 633.
116. Id. at 632.
understand and accept. This transfer of authority appears to work well as long as the adolescent knows that he or she is in control of, and has the information needed to effect, the contact.

B. The Adoptive Parents

The level of openness did not appear to affect parental satisfaction with adoption or the closeness of their connection with the adoptee. No matter how the openness came to be—through court order or agreement—the adoptive parents viewed the contact as beneficial. In one study, sixty-seven percent of the adopters felt satisfied and comfortable with the contact. Several parents felt discomfort but felt overall that contact was good, positive, and beneficial to the children. Those adoptive parents who had ongoing contact tended to be more sympathetic and less negative toward their children’s birth parents while those without contact had more negative views. Adoptive parents also noted that the contact helped them become closer to their children because they could better understand their children and also speak knowledgeably with them about their birth families.

Moreover, adoptive parents understood that their children had connections to their pre-adoptive kin and helped them remain in contact with birth parents, siblings, and grandparents. Those who adopted adolescents “believed that adopting an adolescent meant also adopting his or her family, including birthparents, siblings, and extended family.” Adoptive parents were active in helping children maintain contact with siblings adopted into other homes. In one study, adoptive parents wanted more contact for

117. See Dunbar et al., supra note 96, at 459-60 (quoting birth and adoptive parents sharing their views of the adoptee’s role in contact and the purpose of that contact).

118. See id. at 460 (describing adoptive parents who had not shared sufficient information with the adoptee to allow him or her to make the transition, including facts such as contact information or that the birth parent actually was interested in contact with the adoptee).

119. Frasch et al., supra note 23, at 440.

120. SMITH & LOGAN, supra note 34, at 98-99.

121. Id.; Ryburn, supra note 97, at 644.

122. Ryburn, supra note 97, at 639.

123. SMITH & LOGAN, supra note 34, at 93.

124. Id. at 87-89; Ryburn, supra note 97, at 631-32.

125. Wright et al., supra note 97, at 46.

126. SMITH & LOGAN, supra note 34, at 92, 96-97; Ryburn, supra note 97, at 633.
their adolescent children or thought the amount of contact should be up to the children.\textsuperscript{127}

Studies regarding court-ordered open adoptions illustrate that control is perhaps the most fundamental aspect of parenting for the adoptive parents. In other words, it is not the exclusivity of parenthood but, instead, “the phenomenology of parenthood [that] is intrinsically characterised by a sense of ownership and control.”\textsuperscript{128} Thus, the vast majority of the adopters in one study were opposed to court-ordered contact, even when they recognized the benefits of it.\textsuperscript{129} On the other hand, in another study of court-ordered contact, adoptive parents indicated that their views about contact were most negative at the beginning but had tempered over time, so they believed that an initial decision against contact should not be irrevocable.\textsuperscript{130}

C. The Adoptees

Most of the studies are of the adults and not the adoptees, so there is less to say about their views directly, but the studies that do engage youth suggest that adoptees are interested in their birth families and that, especially as they age, they are interested in contact.\textsuperscript{131} Researchers Smith and Logan summed up the complicated feelings adopted children have about their adoptive and birth kin:

Children’s accounts of their feelings about adoption and contact suggest that, for most of them, their everyday lives were not clouded by a significant sense of loss. However, when we asked them if they ever worried about anything[,] thirty-six (61 per cent) children identified issues associated with adoption or their birth families. . . . Direct contact went some way towards quelling these worries for many children and adoptive parents were aware of its importance in this respect.\textsuperscript{132}

Most children in one study were happy about being adopted and happy with the post-adoption contact.\textsuperscript{133} Even children who were happy with their adoption “expressed distress or ambivalence about the decision to place them for adoption and the loss of their

\begin{thebibliography}{99}
\bibitem{127} Grotevant et al., \textit{ supra} note 14, at 92-93.  
\bibitem{128} SMITH & LOGAN, \textit{ supra} note 34, at 105.  
\bibitem{129} \textit{Id}.  
\bibitem{130} Ryburn, \textit{ supra} note 97, at 638.  
\bibitem{131} See BENSON ET AL., \textit{ supra} note 11, at 26-27; Berge et al., \textit{ supra} note 96, at 1016.  
\bibitem{132} SMITH & LOGAN, \textit{ supra} note 34, at 144.  
\bibitem{133} \textit{Id}. at 133, 140-41, 148-50.
\end{thebibliography}
Indeed, children’s own statements suggest that they wanted to be both with their birth parents and with their adoptive parents. A majority of the children who had direct contact with their birth relatives wanted more frequent contact; a majority also felt transitory feelings of distress at the end of visits. A minority of the children were distressed by contact with their parents, but some felt more comfortable regarding contact with siblings or other relatives.

Studies illustrate that adoptees in their adolescent years have a strong interest in their birth parents, even when they are not in contact. Studies also indicate that the adoptees are happier when they have direct contact with their birth parents. In one study, adolescents with direct contact described the role of their birth mothers in their lives most frequently as “a close or special friend,” less frequently, as an “acquaintance or casual friend,” or “a relative,” “another parent,” or “a birth mother.” Just under ten percent of the adolescent adoptees in that study described their mother as having “no role” in their lives. Adoptees who were not in contact viewed the in-contact birth parents of their adoptive siblings as surrogates for their own birth parents. Some children adopted as adolescents refused to consent to their adoption if it meant they would not be able to continue to see their siblings and other relatives.

D. The Birth Family

The birth parents have the least control in these relationships, particularly those that are not regulated (i.e., enforceable). Unlike adoptive parents who might prefer for contact not to be court-ordered, birth parents and birth relatives were more likely to want

134. *Id.* at 134.
135. *Id.* at 136-37.
136. *Id.* at 144; see also Grotevant et al., *supra* note 14, at 93.
137. *Smith & Logan,* *supra* note 34, at 144.
138. *Id.* at 140-41.
139. *See id.* at 144; Berge et al., *supra* note 96, at 1029-31; Grotevant et al., *supra* note 14, at 92.
142. *Id.*
144. Wright et al., *supra* note 97, at 52.
court orders to protect their rights to visit.\textsuperscript{145} It is not surprising then that they felt as if they had less control over the relationship and felt less satisfied with the contact.\textsuperscript{146} At the same time, the contact helped them to accept the adoptions after seeing their children “happy and well settled.”\textsuperscript{147} This contact helped the birth parents to accept adoptions that they had earlier contested.\textsuperscript{148}

In addition, the adoptive family becomes the focal point of connection between families such that birth parents experienced the adoptive parents to be more concerned about controlling the boundaries of the adoptive family and less attentive to birth-family boundaries.\textsuperscript{149} In any event, birth parents do seem to feel a part of the adoptive family as indicated by their interaction with their birth children’s siblings\textsuperscript{150} and their feeling of “a familial connection with their biological child’s adoptive family.”\textsuperscript{151} One birth mother claimed of the family that adopted her child: “I feel like they could be relatives of mine.”\textsuperscript{152} Birth parents also brought other members of their family into contact with the children they relinquished for adoption.\textsuperscript{153}

E. \textit{The New Blended Families of Adoption}

This brief rehearsal of findings from social studies of open adoption suggests that the adoptive family of the open-adoption era is not the nuclear family of the mythic American family lore. Leading adoption researchers Harold Grotevant and Ruth McRoy call this the “adoption kinship network” and describe it as a network with “the child at the center of a family system that includes his or her adoptive parents, siblings, and extended family as well as his or her birth parents, siblings, and extended family, whether the individuals are known to one another or not.”\textsuperscript{154}

In both foster care and private adoptions, the birth and adoptive families come together around important rites of passage as well as everyday events. The birth mother’s sister might even
babysit while the adoptive mother is away. In short, open adoption is becoming normal and represents one type of family among many others created through divorce and remarriage, kinship care, and lesbian- and gay-headed families—which by definition have at least one parent or gamete donor who is not part of the household.

As one researcher observed, “Birth and adoptive family relationships in open adoptions are likely to be as complex and varied as relationships among spouses, parents and children, siblings, and other family members in different family arrangements.” She suggests that professionals working with these families embrace rather than reject these phenomena. At the same time, they should not be too directive about a type or level of contact. Instead, professionals should talk to the adopters about the uniqueness of adoption, what the family needs and wants at the current time, and what it might want in the future. The social worker’s role should be to facilitate a process by which families can reach out to one another and then help them develop plans and procedures to achieve those objectives.

Open-adoption researchers Smith and Logan, who recommend and prefer voluntary rather than court-imposed contact, find that even under court-ordered contact,

...adopters are less likely to find contact problematic when they have been fully involved in discussions about the details and purpose of contact arrangements and where they do not feel compelled to accept contact as a condition of placement. This also requires social workers to undertake thorough discussions with birth relatives about their hopes and expectations for the future.

Along these lines, England and Wales, where most adoptions are from foster care, passed a law in 2002 that requires post-adoption contact to be considered when planning for adoption and mandates that agencies provide post-adoption support for the

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155. Siegel, supra note 100, at 414.
156. See generally Appell, The Endurance of Biological Connection, supra note 95, at 302-15.
157. Siegel, supra note 100, at 417.
158. Id.
159. Id.
160. Id.
161. SMITH & LOGAN, supra note 34, at 182.
162. Id. at 183.
This policy decision represents the recognition that post-adoption contact is valuable and that social service agencies have a role in supporting the adoptive kin network. In the United States, which has a diverse array of paths to and in adoption, regulating and supporting the adoptive kin network is a complicated but worthy and timely endeavor.

**Conclusion**

There are clearly benefits to voluntary, but enforceable, adoption with contact and also—particularly in the case of foster-child adoptions—court-imposed post-termination or post-adoption contact. As the British experience reveals, despite its disregard of family autonomy, court-ordered post-adoption contact at the time of adoption does not undermine the adoptive parents’ legitimacy and has overall positive outcomes. Massachusetts seems to have an optimal regulatory scheme in that it provides for adoption with contact—post-adoption-contact agreements that are enforceable—and for equitable court-imposed post-adoption contact in those instances where contact agreements are not feasible. Massachusetts law also provides for termination of parental rights with contact, a vehicle that helps protect important family relationships between termination and adoption. Unfortunately, *Adoption of Rico* missed an opportunity to examine those various options and instead fell back on the equitable authority of the courts to order visits as if the legislature had never intervened.

The courts are in a unique, and sometimes the best, position to protect children’s legal rights and interests in foster care and adoption. The courts can do so directly or by authorizing the persons closest to the child to protect those interests. The trial court in *Rico* did neither while the Supreme Judicial Court surprisingly ruled that the trial court was duty-bound to order post-adoption contact even when there was no adoptive family before it. The court opined that there was just one option: for the trial court to enter an order for a future that was still unknown and unknowable. In so doing, the court missed an opportunity to engage the people and agencies working with Rico directly and to educate them about collaborative planning in and for adoption.

## Appendix

### Adoption With Contact Statutes 2010

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Enacted &amp; Revised</th>
<th>Which Adoptees</th>
<th>Who Can Have Contact</th>
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<th>Standard for Approval</th>
<th>Standard to Modify or Enforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>AZ</td>
<td>Ariz. Rev. Stat. § 8-116.01</td>
<td>1999</td>
<td>All children</td>
<td>Birth parents</td>
<td>Court, birth &amp; adoptive parents, placing agency (when child in custody); court will consider wishes of child 12 &amp; over</td>
<td>Best interests of the child (BIC)</td>
<td>May modify if in BIC &amp; exceptional change in circumstances or agreement; parties shall make good faith attempt to mediate before seeking enforcement</td>
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<tr>
<td>CA</td>
<td>Cal. Fam. Code § 8616.5</td>
<td>1997, 2000, 2004, 2006, 2009</td>
<td>Children adopted with adoption or child welfare (CW) agency involvement</td>
<td>Relatives of adoptee, including birth parents and Indian tribe (note that contact with the adoptee is permitted only when there is an existing relationship between adoptee &amp; relative)</td>
<td>Court, birth relative &amp; adoptive parent, child 12 &amp; over</td>
<td>BIC</td>
<td>May enforce if in BIC of the child &amp; party seeking enforcement attempted alternative dispute resolution (ADR); may modify or terminate if agreement (&amp; agreement filed with court) or in BIC, substantial change in circumstances &amp; party seeking modification attempted ADR</td>
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<tr>
<td>CT</td>
<td>Conn. Gen. Stat. Ann. §§ 45a-715(h)-(n)</td>
<td>2000</td>
<td>Foster children</td>
<td>Birth parents who agree to voluntarily relinquish parental rights</td>
<td>Court, birth &amp; adoptive parents, child 12 &amp; over; (Guardian ad Litem (GAL) or child's counsel may be heard)</td>
<td>BIC</td>
<td>May modify or terminate if in BIC but court will hear the matter only if parties participated or attempted to participate in ADR</td>
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<td>FL</td>
<td>F LA. STAT. ANN. § 39.811(7) (post-termination contact) § 63.0427</td>
<td>1994; 1998</td>
<td>Foster children</td>
<td>Parents (note that for other relatives the court may order post-adoption contact with or without adoptive parent consent)(^1)</td>
<td>Court, birth relatives, adoptive parents (will consider recommendations of GAL, CW agency, foster parents, et al.)</td>
<td>BIC</td>
<td>Adoptive parents may petition for termination or modification if in BIC</td>
</tr>
<tr>
<td>IN</td>
<td>IND. CODE ANN. §§ 31-19-16-1 to -8</td>
<td>1994</td>
<td>Children over two with significant emotional attachments to birth parents</td>
<td>Birth parents who have voluntarily relinquished parental rights (has separate statute for sibling visits: § 31-19-16.5)</td>
<td>Court, birth &amp; adoptive parents, placing agency, GAL or Court Appointed Special Advocate (CASA), child 12 &amp; over</td>
<td>BIC</td>
<td>May modify if in BIC</td>
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</tbody>
</table>

\(^1\) Florida’s statute is a hybrid; it frames the issue in the context of the child’s right to have the court consider the appropriateness of post-adoption contact between the child and his or her relatives, including siblings. Only if the contact will be with birth parents is the adoptive parent’s assent required. FLA. STAT. ANN. § 63.0427(1) (West 2005).
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<tr>
<td>LA</td>
<td>LA Child. Code Ann. art. 1269.1- .7</td>
<td>2001; 2003</td>
<td>Foster children</td>
<td>Parents, grandparents, sibling to whom child has a substantial relationship such that child would be harmed without contact</td>
<td>Court, birth relatives, adoptive parents (CW agency &amp; child’s attorney must review agreement; if they approve, then presumed to be BIC; CASA may review); court shall solicit the wishes of child 12 or older</td>
<td>BIC (informed by three listed factors); if CW agency &amp; child’s attorney approve, then agreement presumed to be in BIC</td>
<td>Modify or terminate if change of circumstances &amp; agreement no longer serves BIC, may be modified by agreement without court approval</td>
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<tr>
<td>MD</td>
<td>MD. Code Ann., Fam. Law §§ 5-308, 5-331, 5-345, 5-3A-08, 5-3B-07</td>
<td>2005; effective 2006</td>
<td>All children</td>
<td>Birth parents, former parents, adoptees &amp; adoptees’ relatives</td>
<td>Adoptive parent and birth parent</td>
<td>None; agreement is filed with the court</td>
<td>Enforce unless not in BIC; modify if exceptional circumstances &amp; court finds BIC to modify</td>
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<tr>
<td>MA</td>
<td>Mass. Gen. Laws ch. 210, §§ 6C-6E</td>
<td>1999</td>
<td>All children</td>
<td>Birth parents</td>
<td>Court, birth &amp; adoptive parents, placing agency (when child in custody), child’s attorney (when child in state custody), child 12 &amp; over</td>
<td>BIC, fair and reasonable terms, agreement entered into freely &amp; voluntarily</td>
<td>May modify if in BIC &amp; material substantial change in circumstances; may not increase amount of contact or place new obligations on adoptive parents</td>
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<td>MN</td>
<td>Minn. Stat. Ann. § 259.58</td>
<td>1997; 1997, 1998, 1999, 2006</td>
<td>All children</td>
<td>Relatives, including step-parents and foster parents who have lived with the child</td>
<td>Court, adoptive parents, birth relative, agency if child in its custody</td>
<td>BIC</td>
<td>BIC &amp; either exceptional circumstances or the parties agree</td>
</tr>
<tr>
<td>State</td>
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<td>MT</td>
<td>MONT. CODE ANN. § 42-5-301</td>
<td>1997</td>
<td>All children</td>
<td>Placing parent</td>
<td>Parent &amp; adoptive parent</td>
<td>None (court approval not required)</td>
<td>Not detrimental to child, does not undermine adoptive parent's authority, and compliance unduly onerous due to changed circumstances</td>
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<td>NE</td>
<td>NEB. REV. STAT. §§ 43-162 to -165</td>
<td>1993</td>
<td>Foster children</td>
<td>Birth parents</td>
<td>Court, birth &amp; adoptive parents (GAL's opinion considered)</td>
<td>BIC, with guidance</td>
<td>BIC &amp; either exceptional circumstances or the parties agree</td>
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<td>NEV. REV. STAT. §§ 41.509, 127.187-.1895</td>
<td>2005</td>
<td>All children</td>
<td>Birth Parents</td>
<td>Birth parent(s) &amp; adoptive parent(s)</td>
<td>Assent by the parties that they entered into the agreement</td>
<td>BIC &amp; changed circumstances, or consent, but presumption that modification in BIC; child’s wishes may be considered (note: only adoptive parents may petition for modification or termination &amp; contact cannot be increased)</td>
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<td>NM</td>
<td>N.M. STAT. ANN. § 32A-5-35</td>
<td>1993; 2001, 2005, 2009</td>
<td>All children</td>
<td>Birth parents &amp; other relatives</td>
<td>Court, birth &amp; adoptive parents (child’s wishes considered)</td>
<td>BIC (&amp; BIC presumed); additional requirements for sibling visits</td>
<td>BIC &amp; changed circumstances</td>
</tr>
<tr>
<td>State</td>
<td>Statute</td>
<td>Enacted &amp; Revised</td>
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<td>NY</td>
<td>N.Y. Dom. Rel. Law § 112-b</td>
<td>2005; 2006</td>
<td>All children</td>
<td>Surrendering birth parents, prospective adoptive or adoptive parent &amp; siblings⁵</td>
<td>Court, birth &amp; adoptive parents</td>
<td>BIC</td>
<td>BIC for enforcement but enforcement presumed if the agreement part of surrender &amp; incorporated into tpr order³</td>
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<td>OR</td>
<td>OR. Rev. Stat. § 109.305</td>
<td>1957; 1993; 2007</td>
<td>All children</td>
<td>Birth relatives with emotional ties creating ongoing personal relationship with the child; for children under 1 year, relationship must have lasted at least half the child’s life</td>
<td>Court, birth, adoptive parents, children 14 &amp; over</td>
<td>None</td>
<td>BIC, party seeking modification has attempted to mediate, and either exceptional circumstances or the parties agree</td>
</tr>
<tr>
<td>RI</td>
<td>R.I. Gen. Laws § 15-7-14.1</td>
<td>1997; 2001</td>
<td>All children</td>
<td>Birth parents</td>
<td>Court, adoptive &amp; birth parents, GAL or placing agency, child 12 &amp; over</td>
<td>BIC</td>
<td>BIC</td>
</tr>
<tr>
<td>SD</td>
<td>S.D. Codified Laws § 25-6-17</td>
<td>1939; 1997</td>
<td>All children</td>
<td>Birth parents</td>
<td>Birth &amp; adoptive parents</td>
<td>None</td>
<td>Not stated</td>
</tr>
</tbody>
</table>

2. Note that in agency and foster care adoptions, the child welfare or adoption agency and the child’s law guardian (attorney) enter into the agreement as well and may move to enforce the agreement. N.Y. Soc. Serv. Law §§ 383-c(2)(b), 384(2)(b) (McKinney Supp. 2010).

3. Not enforceable against a sibling 14 years old or older unless that sibling has consented to the agreement. Id. § 383-c(2)(b).
<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Enacted &amp; Revised</th>
<th>Which Adoptees</th>
<th>Who Can Have Contact</th>
<th>Whose Approval Needed</th>
<th>Standard for Approval</th>
<th>Standard to Modify or Enforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>VT</td>
<td>VT. STAT. ANN. tit. 15A § 4-112</td>
<td>1995</td>
<td>Children adopted by stepparents</td>
<td>Adoptee, birth &amp; adoptive parents, other relatives/persons.</td>
<td>Minor 14 years or older, step/adoptive parent, custodial birth parent, person who will have contact, placing agency (if any)</td>
<td>BIC (informed by six listed factors)</td>
<td>BIC to enforce; modification if BIC &amp; either exceptional circumstances or the parties agree</td>
</tr>
<tr>
<td>WA</td>
<td>WASH. REV. CODE § 26.33.295</td>
<td>1990; 2009</td>
<td>All children</td>
<td>Birth parents, siblings</td>
<td>Court, birth &amp; adoptive parents, GAL, placing agency</td>
<td>BIC</td>
<td>BIC &amp; either exceptional circumstances or the parties agree</td>
</tr>
<tr>
<td>WV</td>
<td>W. VA. CODE § 48-22-704(c)</td>
<td>2001</td>
<td>All children</td>
<td>Anyone</td>
<td>Anyone &amp; adoptive parents</td>
<td>None</td>
<td>Enforce if in BIC; court may consider child's wishes</td>
</tr>
</tbody>
</table>