



# Disabled Parents Rights

## Stepparent and custodial adoption in Colorado

**C**olorado statute allows stepparents and relative child custodians to adopt children in their care without the consent of the biological parent in two circumstances:

1. The biological parent has abandoned the child for a period of one year, and or
2. The biological parent has failed to provide support for the child for a period of one year, without cause. C.R.S. § 19-5-203.

In all circumstances the adoption must be deemed to be in the best interests of the child. Let's address each of these issues in turn.

### Who may adopt?

A step-parent over the age of 21 may petition to adopt. Kinship (relative) child custodians with legal or physical custody of the child for more than a year who are over the age of 21 may petition to adopt. A non-relative legal custodian or legal guardian over the age of 21 who has had custody of the child for more than a year may petition to adopt. While Colorado allows second parent adoptions, unless the petitioner fits one of the above categories, second-parent adoption would not be possible unless the party seeking to adopt under the second parent statute qualifies under custodial or kinship provisions.

### What does it mean to abandon a child.

A child is considered abandoned when looking at the totality of the circumstances, a parent has left her or his child(ren) without an intent to return. Although the adoption statutes do not define abandonment, the Colorado Court of Appeals has defined it as "the act of leaving a spouse or child willfully and without an intent to return." *In re J.A.V.*, 206 P.3d 467, 468 (Colo. App. 2009). The relevant period for determining whether a parent has abandoned their child is the twelve months immediately preceding the date the petition for adoption was filed. *Petition of R.H.N.*, 710 P.2d 482, 487 (Colo. 1985).

### What does it mean to fail to provide support?

In order to adopt without the biological parent's permission, adoption petitioners must prove that the parent failed without cause to pay reasonable child support for one year or more, and whether there is any likelihood that the parent will provide child support. The relevant time period for determining whether or not a parent has failed to pay reasonable child support is one year prior to the date the petition for adoption was filed. *Petition of R.H.N.*, 710 P.2d 482, 487 (Colo. 1985).

It does not matter whether or not there is a child support order in place or not. *Petition of T. C. H.*, 531 P.2d 404, 406 (Colo. App. 1974). Colorado courts have ruled that a parent must pay some child

support regardless. Courts have found that incarcerated parents must pay child support, and they have found that disabled parents must pay child support. It is imperative that all parents pay something in child support, be it \$5 a month, even if the parent is unemployed or without any income. If a parent has regular income, the parent should be making at least the statutory minimum payment of \$50 a month.

### What does best interests of the child mean?

Best interests of the child is not a clearly defined line in the sand in adoption cases. The courts look at many factors including the child's relationship with her or his parents, extended family, community, and school.

*Disabled Parents Rights is a small organization dedicated to combating discrimination that impacts parenting for parents with all types of disabilities.*

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*You can "like" our Facebook page at <http://fb.me/DisabledParentsRights>*

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