



**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILD AND FAMILY SERVICES**

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**Manual Transmission Letter (MTL)
Family Programs Office: Statewide Policy Manual**

2008 – MTL #1005
01/17/2008

TO: Barbara Legier, Deputy Director - Division of Child and Family Services – Central Office
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FROM: Chris Lovass-Nagy, LASW, Clinical Program Planner II

POLICY DISTRIBUTION: Enclosed find the following policy for distribution to all applicable staff within your organization:

- 1005 Voluntary Relinquishment

This policy is/was effective 03/14/2006 and replaces the following policy(s):

- 200 Voluntary Relinquishment

Updates to the following areas have been made in this policy (policy page number/summary of change):

- Page 1- Section 1005.3 The Authority Section was updated.

NOTE:

- This policy has been placed into the new Family Programs Office Policy Format. Please read the policy in its entirety and note any areas of Jurisdictional Action that are additionally required by your agency to be in compliance with the policy enclosed.
- This is an **All STAFF MEMO** and it is the responsibility of the Agency Director listed above to disseminate the policy enclosed to appropriate staff within his/her organization and to ensure compliance.
- Please direct questions to Cynthia Freeman, (775)-684-4449, or via email cfreeman@dcfs.state.nv.us

1005.0 Voluntary Relinquishment

1005.1 Policy Approval Clearance Record

<input checked="" type="checkbox"/> Collaborative Policy	This policy supersedes: 200 Voluntary Relinquishment	Number of pages in Policy: 9
Date Effective: Upon Approval	03/14/2006	
PART Review & Approval	MM/DD/YYYY	Policy Lead: _____
DMG Approval	03/14/2006	Policy Lead: Wanda Scott, LSW
Reformatted	10/29/2007	Policy Lead: Nancy O'Neil, LSW
DMG Approved Revisions	MM/DD/YYYY	Policy Lead: Nancy O'Neill, LSW
DMG Approved Revisions	MM/DD/YYYY	Policy Lead: _____
DMG Approved Revisions	MM/DD/YYYY	Policy Lead: _____
DCFS Administrator Approval:	MM/DD/YYYY	Signature: On File
Review by Representative from the Office of the Attorney General:	MM/DD/YYYY	Signature: _____

1005.2 Statement of Purpose

1005.2.1 Policy Statement: Agencies providing child welfare services may consider accepting a relinquishment from the child's birth/legal parent(s) or legal guardians when it is determined that the relinquishment serves the best interest of the child; when other permanency options have been discussed with the parent/guardian; when the legal implications of the relinquishment have been explained to the parent/guardian; and when the parent/guardian's decision to relinquish is entirely voluntary.

1005.2.2 Purpose: Timely permanency planning is required for children in the care and custody of the agency. Permanency planning must begin the day the child enters care. Case management practices that include family engagement, diligent search, concurrent planning, full disclosure, provision of required services to the family, and involvement of the Child and Family Teams throughout the life of the case facilitate timely decision making regarding adoptive placement planning for the child. The agency is required to make and finalize alternate permanency plans by no later than 12 months after the child's removal. ASFA requires that adoption proceedings be completed within 24 months of the child's entry into foster care. The purpose of this policy is to ensure that permanency-planning decisions involving adoption are made timely, are consistent with state and federal time frames and consider the best interest of the child.

1005.3 Authority

NRS 125.050; 125C; 126; 127.050, .052, .230; 128; 432B
 NAC 127.425, .428, 465; 432B.553

1005.4 Definitions

- 1005.4.1 Adoption Review Team:** A multi-disciplinary team which includes adoption case managers, an adoption supervisor, adoptive parents, clinical and developmental professionals who review permanency and adoption related issues. Best practice in reviewing cases to be considered for TPR would include review by an Adoption Review Team.
- 1005.4.2 Child and Family Team:** Refers to a team that is comprised of maternal and paternal family members, fictive kin, friends, foster parents, legal custodian, community support specialists, agency staff and other involved and committed people who join together to strengthen and support the family and provide a plan of care that ensures the safety and well-being of the family's children.
- 1005.4.3 Concurrent Planning:** Refers to working towards a primary permanency goal of reunification while, at the same time implementing an alternative permanency plan.
- 1005.4.4 Consent to Adopt:** Refers to a voluntary written agreement by a birth parent, an individual legally recognized as a parent, or an agency that has assumed legal custody of a child, to the adoption of a child. Children 14 years of age and over must provide written consent for his/her adoption. The consent is prepared and filed with the court by the adoptive parent's attorney.
- 1005.4.5 Diligent Search:** Means identifying, locating and contacting relatives regarding their interest in providing a temporary or permanent placement for or adopting a child prior to or when the child is placed in substitute care. Diligent search also includes a timely and thorough effort to locate absent parent(s) of children in substitute care.
- 1005.4.6 Engagement:** Refers to the skills wherein the caseworker actively involves the child and family in the development of a positive and trusting relationship for purposes of assessment and case planning based on strengths and needs of the child and family. Engagement includes the identification of the family's agenda (what the family is invested in) and joining in a way that motivates and empowers the family.
- 1005.4.7 Full Disclosure:** Means that the birth family, child welfare agency, resource family and legal system are all informed and share pertinent information regarding the case and family history for purposes of case planning and permanency planning options.
- 1005.4.8 Indian Child:** Means any unmarried person under age 18 who is either a member of an Indian tribe, or is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe. 25 U.S.C. 1903 Tribal membership and eligibility are determined by the tribe.
- 1005.4.9 Indian Child Welfare Act:** Refers to the federal legislation designed to reduce the trans-racial placement of American Indian and Alaska Native children. The law gives tribal courts jurisdiction over child welfare custody proceedings involving Indian children: Protective Services, Substitute Care, and Adoptions. If the child may be an Indian child, requirements of the Indian Child Welfare Act must be met. 25 U.S.C.1901 et seq.
- 1005.4.10 Legal or Legally Presumed Father:** Refers to a person who is recognized as the legally presumed father under NRS 126.051 or a legal father under NRS 126.053. A father is

legally presumed if; 1) He and the child's mother are married to each other and the child is born during the marriage or within 285 days after the marriage is terminated; 2) He and the mother were cohabitating for at least six months prior to conception and continue to cohabitate through the period of conception; 3) Before the child's birth, the parents attempt to marry but the marriage was declared invalid; 4) While the child is under age 18, the father receives the child into his home and openly holds out the child as his natural child; and 5) Blood tests or test for genetic identification show a probability of 99 percent or more that he is the father. A person who signs an affidavit for the voluntary acknowledgement of paternity, which is filed with the Office of Vital Statistics, is a legal father.

- 1005.4.11 Open Adoption:** Refers to an arrangement that recognizes the child's connections to both the birth family and the adoptive family by supporting interaction among the birth parents, adoptive parents, and the child through correspondence, telephone calls, or personal contact, depending upon the particular situation.
- 1005.4.12 Permanency Goal:** Refers to the hierarchy of permanency goal options that ensures legal and emotional permanency for a child, which are in ascending order of priority, 1. Reunification, 2. Adoption, 3. Legal Guardianship, 4. Permanent Placement with a fit and willing relative, 5. Other Planned Permanent Living Arrangement.
- 1005.4.13 Permanency Hearing:** Refers to a court review held to determine the permanent placement of a child; the time of the hearing represents a deadline within which the final direction of the case is to be determined.
- 1005.4.14 Post Adoption Contact Agreement:** Refers to a legally enforceable written agreement between the birth parents, adoptive parents and the child that provides for contact or communication after finalization of the adoption. The agreement is negotiated by the birth/legal/adoptive parents and their legal counsel. The agreement must be filed with the court and incorporated into the decree of adoption to be legally enforceable.
- 1005.4.15 Putative Father:** Refers to a person who is named, is alleged or reputed to be the father of a child who is not the legal or legally presumed father.
- 1005.4.16 Relinquishment:** Refers to a legal process through which a birth or legal parent voluntarily gives up parental rights with the intent that the child will be adopted.
- 1005.4.17 Termination of Parental Rights or TPR:** An involuntary court action that permanently ends the legal parent-child relationship. Termination frees the child for adoption.

1005.5 Procedures

- 1005.5.1 Voluntary Relinquishment:** The option of relinquishment should be discussed with the child's parents. Parent(s) may recognize that their circumstances are such that they cannot care for the child may want to help the permanency planning process along by considering relinquishment; particularly in cases where the child will be adopted by the current caregiver or a specified relative. Parent(s) may also consider relinquishment because it eliminates the adversarial legal proceedings associated with the TPR process, shortens the child's stay in foster care, and permits the child's placement in a permanent home at an earlier time. Finally, parent(s) may be concerned about the consequences of a TPR on their other or future children since the agency may use a prior termination to request the court to waive reasonable efforts or to find the parent is unfit.

A. Decision to Accept a Relinquishment

1. Voluntary relinquishments involving non-Indian children are not required to be executed before the court. Therefore, the decision to accept a relinquishment from the parent must be carefully considered. It is important to ensure that the agency's decision to accept the relinquishment is in the child's best interests; that the parent's decision to relinquish is well informed; and that they understand that the relinquishment is irrevocable.
2. If one parent decides to relinquish, and the whereabouts of the other parent are known, the case worker must notify the other parent and discuss permanency options for the child before a relinquishment is accepted. When the parents disagree about the appropriate plan, counseling or other intervention should be provided to help them reach agreement whenever possible.
3. Relinquishments are not accepted to relieve parents of their parental responsibility or obligation to support the child.
4. The caseworker's recommendation to accept a relinquishment must be reviewed and approved by the supervisor and program manager. Best practice would include review by an Adoption Review Team. Agency legal counsel must be consulted where there are questions regarding ICWA or concerns regarding the parent's capacity to sign a relinquishment.

B. Acceptance of Relinquishment:

1. A relinquishment may be accepted under the following circumstances:
 - a. Adoption is determined to be the most appropriate plan for the child; and
 - b. The parent(s) is competent to execute the relinquishment. If the worker has documentation, assessments or other reason to believe that a parent may not be competent due to limited intellectual capacity or mental health limitations, the parent must be afforded legal representation before the relinquishment is taken; and
 - c. The parent(s) has had ample time and counseling to consider the implications of their decision to relinquish; and
 - d. The case has been staffed through the agency's internal review process.
 - e. If the parent(s) is represented by legal counsel, their counsel should be present at the relinquishment or have provided a written waiver of their appearance.
 - f. When both birth/legal parents are deceased, a relinquishment may be accepted from the court appointed legal guardian.
2. Legal considerations of the relinquishment:
 - a. If a Post Adoption Contact Agreement has been negotiated between the child's parent/guardian and adoptive parents, the relinquishment shall not be executed until all parties have signed the agreement.

- b. Birth parents who sign relinquishments terminate all parental rights in regard to their child.
- c. A birth mother cannot sign a relinquishment before a child is at least 72 hours old.
- d. To legally free the child, relinquishments must be obtained from both birth/legal parents and the legally presumed or any putative father if the birth mother is married or was married at the time of conception.
- e. A relinquishment can be executed by the father before the birth of the child if the father is not married to the mother. The relinquishment becomes invalid if:
 - The father of the child marries the mother of the child before the child is born;
 - The mother of the child does not sign a relinquishment for or Consent to Adopt within 6 months after the birth of the child; or
 - No petition for adoption of the child has been filed within two years after the birth of the child.
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- f. Upon acceptance of a relinquishment, the agency assumes all legal responsibility for the child, the obligation to place the child in a permanent home, and authority to consent to child's adoption.
- g. A relinquishment is not required from a parent whose parental rights have been terminated by court order.

3. Relinquishment Forms:

- a. The Relinquishment of Child for Adoption form is used for voluntary relinquishments of the child by the mother; legal and birth father; legal but not birth father; or legal guardians. The definition of legal or legally presumed father and putative father provided in the definition section above provides the criteria for determining which form should be used. By executing the form, the parent or legal guardian relinquishes all legal rights and responsibilities to the child to the agency and authorizes the agency to place and consent to the child's adoption.
- b. The Relinquishment of an Unborn Child for Adoption form is used if a relinquishment by the birth, but not legal, father is taken prior to the birth of the child. The parent relinquishes his legal rights and responsibilities to the child to the agency and authorizes the agency to place and consent to the child's adoption.
- c. The Declaration of Putative Father form is used if the putative father (named by an unmarried mother) refuses to sign the Relinquishment of Child for Adoption. The Declaration permits the alleged father to deny, refuse to acknowledge, or refuse to acknowledge or deny paternity of the child.
- d. Relinquishment of an Indian Child for Adoption form is used when the parent of an Indian Child relinquishes legal rights and responsibilities to the child to the agency and authorizes the agency to place and consent

to the child's adoption. Relinquishments on Indian children must be executed before the Court.

e. If the relinquishment is accepted after the child's birth, the child's name on the relinquishment should be the same as given on the birth certificate. If there is no name on the birth certificate, the child may be identified by sex and birth date. The caseworker should contact legal counsel if there is not a birth certificate for the child.

f. Each parent must sign a separate relinquishment for each child. Any different name by which a parent is known must be included and signed on the relinquishment.

g. Relinquishments must be signed before a notary public and attested to by at least two competent disinterested witnesses, one of whom must be a licensed social worker employed by an agency which provides child welfare services; Nevada licensed child-placing agency; a comparable state or county agency of another state; or an agency licensed in another state to place children for adoption, if the birth parent resides in that state. (NRS 127.053)

h. The caseworker assigned to the case shall not sign as a witness to the relinquishment. The relinquishment must be witnessed by a neutral representative of the agency who is not the caseworker who counseled the parents to avoid all conflicts of interest.

i. Four copies of the relinquishment are signed. One copy is given to the parent, and three copies are retained in the agency file. One copy should be filed with the court within 14 working days after acceptance or receipt of the relinquishment. One copy is later submitted with the Confidential Report to the Court to finalize the adoption.

4. Birth Mother Affidavit Form: The birth mother affidavit regarding the father should be completed in cases where the mother is relinquishing a child for adoption. The purpose of the affidavit is to identify the father and to protect his rights in termination of parental rights proceedings. An affidavit should be obtained whenever a father's rights are not voluntarily relinquished and it is necessary to pursue TPR. The original affidavit is submitted to the court with the TPR petition; and a copy maintained in the case record.

5. ICWA: If a child is suspected to be an Indian Child, a determination must be made as to whether ICWA applies to the case, before the relinquishment is executed. Relinquishment proceedings for Indian Children differ greatly from non-Indian children. Relinquishments for Indian Children must be signed before a judge. Direction from legal counsel must be obtained to ensure ICWA compliance.

6. Visitation: NRS 127.171 and 125C.050(7) authorizes the court to grant visitation to grandparents, great grandparents and a child's siblings when such visitation is determined to be in the child's best interest; and, if a petition for visitation is filed with the court before the relinquishment is taken or the parents rights are terminated. Agency staff should be aware of the statute and be prepared to address the need for visitation prior to accepting a relinquishment.

7. Post-adoption contact agreement: Effective October 1, 2005, NRS 127

authorizes birth and adoptive parents to enter into legally enforceable agreements that provide for contact after finalization of the adoption. Specific provisions of this law are found in NRS 127.187 through 127.1895. If a Post Adoption Contact Agreement has been negotiated between the child's parent(s) and adoptive parents, the relinquishment should not be executed until all parties have signed the agreement.

In order for the Post Adoption Contact Agreement to be enforceable, it must be signed before any relinquishment while the parents still retain their rights as the parents. However, it is very important that the agency not use openness of the adoption relationship or contact after the adoption as an incentive to obtain parental agreement to voluntarily relinquish the child. The parent could try to challenge the relinquishment by arguing that the proposed contact in the agreement was a promise or coercion.

To be legally enforceable, the existence of a written agreement must be reported to the court prior to finalization of the adoption and incorporated into the decree of adoption. NRS 127 requires the adoptive parent; the agency representative (caseworker/social worker) involved in the adoption proceedings; the attorney for the adoptive parent, child, or the agency's legal counsel; to notify the court responsible for entering the order/decreed of adoption of the existence of an agreement. The social worker/case manager involved in finalization of the adoption shall also incorporate information regarding a Post Adoption Contact Agreement into the Confidential Report to the Court.

8. Restoration of parental rights: A child (or the legal guardian of the child) who has not been adopted, and whose parental rights have been terminated or relinquished, may petition the Court for restoration of parental rights (NRS 128.170). The natural parent or parents for whom restoration of parental rights is sought must be fully informed of the legal rights, obligations and consequences of restoration and must consent, in writing, to the petition.

1005.5.2 **Timelines:** N/A

1005.5.3 **Forms/Tools:** Diligent Search Handbook; Concurrent Planning Guide; Relinquishment of Child for Adoption Form; Relinquishment of an Unborn Child for Adoption Form; Declaration of Putative Father Form; Relinquishment of an Indian Child for Adoption Form; Birth Mother Affidavit Form

1005.6 **Jurisdictional Action**

1005.6.1 **Development of Internal Policies:** Jurisdictions are expected to follow the policy as written.

1005.6.2 **Timelines:** N/A

1005.6.3 **Tools & Forms:** N/A

1005.6.4 **Documentation:**

A. Case File Documentation (paper): Copies of all signed relinquishment(s), a copy of the Declaration of Putative Father or Birth Mother Affidavit (as applicable), copies of any visitation orders and/or Post-Adoption Contact Agreement(s) must be maintained in the case file.

B. UNITY Documentation (electronic):

Table 1005.1 Case File Documentation for Voluntary Relinquishment

Applicable UNITY Screen	Data Required
Legal Status	The change in the child's legal status must be documented in the case contact notes and legal status in UNITY within 5 business days after relinquishments are accepted.
Case Notes	Complete documentation of discussions with the parents concerning voluntary relinquishment, including a summary of the content of the discussion; as well as the location, persons present must be entered in the case contact notes within 5 business days of client contact.

1005.6.5 Supervisory Responsibility: A caseworker's recommendation to accept a relinquishment must be reviewed and approved by their supervisor and program manager.

1003.7 State Responsibilities

1005.7.1 Participants in Policy Development

- A. **FPO Staff:** Foster Care Specialist, Adoption Specialist
- B. **Jurisdictional Representatives:** WCDSS, CCDFS, DCFS Rural Region
- C. **External Stakeholders:** Nevada PEP

1005.7.2 Technical Assistance

1005.7.3 Clearance Process

- A. DMG Approval on 03/14/2006
- B. Policy Effective 03/14/2006

1005.7.4 State Oversight

- A. State oversight will be in compliance with FPO oversight methodology

1005.8 Policy Cross Reference

0204 Case Planning

0514 Termination of Parental Rights

1001 Diligent Search

1005.9 Attachments: N/A