



Child Welfare Information Gateway

PROTECTING CHILDREN ■ STRENGTHENING FAMILIES

STATE
STATUTES
SERIES

Current Through
April 2007

Consent to Adoption

What Is Consent?

Consent refers to the agreement by a parent, or a person or agency acting in place of a parent, to relinquish a child for adoption and release all rights and duties with respect to that child. Consent to adoption is regulated by State statutes, not by Federal laws, and States differ in the way they regulate consent. In most States, the consent must be in writing and either witnessed and notarized or executed before a judge or other designated official. State legislatures have developed a range

Electronic copies of this publication may be downloaded at www.childwelfare.gov/systemwide/laws_policies/statutes/consent.cfm

To find statute information for a particular State, go to www.childwelfare.gov/systemwide/laws_policies/search/index.cfm

To find information on all the States and territories, order a copy of the full-length PDF by calling 800.394.3366 or 703.385.7565, or download it at www.childwelfare.gov/systemwide/laws_policies/statutes/consentall.pdf

U.S. Department of Health and Human Services
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau



Child Welfare Information Gateway
Children's Bureau/ACYF
1250 Maryland Avenue, SW
Eighth Floor
Washington, DC 20024
703.385.7565 or 800.394.3366
Email: info@childwelfare.gov
www.childwelfare.gov

of provisions designed to ensure protection for all involved individuals, including:

- Children (to prevent unnecessary and traumatic separations from their adult caregivers)
- Birth parents (to prevent uninformed, hurried, or coerced decisions)¹
- Adoptive parents (to prevent anxiety about the legality of the adoption process)

Who Must Consent?

In all States, the birth mother and the birth father (if he has properly established paternity) hold the primary right of consent to adoption of their child.² The court may terminate the rights of one or both parents for a variety of reasons, including abandonment, failure to support the child, mental incompetence, or a finding of parental unfitness due to abuse or neglect.³ When neither birth parent is available to give consent, the responsibility can fall to another legal entity, such as:

- An agency that has custody of the child
- Any person who has been given custody
- A guardian or guardian *ad litem*
- The court having jurisdiction over the child
- A close relative of the child
- A “next friend” of the child, who is a responsible adult appointed by the court

In all States, the court may determine that consent of the parent is not needed under specific circumstances, including

¹ The term “birth parent” is used to distinguish “birth” from “adoptive” and other types of parents and to reflect language in State statutes.

² In those States where there is a putative father registry, an unmarried birth father who fails to register in a prescribed manner and within the proper time period may lose the right to consent. Other jurisdictions require unwed fathers to file a notice of their paternity claim within a certain period of time. See Child Welfare Information Gateway’s *The Rights of Presumed (Putative) Fathers* for detailed, State-by-State information: www.childwelfare.gov/systemwide/laws_policies/statutes/putative.cfm

³ For a further discussion of the possible grounds for a court termination of parental rights, see Child Welfare Information Gateway’s *Grounds for Involuntary Termination of Parental Rights*, at www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm

termination of parental rights, abandonment of the child, failure to support or establish a significant relationship with the child, mental incompetence, or a finding of parental unfitness due to abuse or neglect. An unwed father's consent may not be needed if he has failed to establish his paternity or fails to respond to notice of an adoption proceeding.

Consent of Children Being Adopted

Nearly all States, the District of Columbia, Puerto Rico, and the U.S. territories require that older children give consent to their adoption.⁴ Approximately 25 States, the District of Columbia, and the Virgin Islands set the age of consent at 14.⁵ Eighteen States, American Samoa, and Guam require a child's consent at age 12, while 6 States, the Northern Mariana Islands, and Puerto Rico require consent of children age 10.⁶ In 11 States, the requirement can be dispensed with if the child lacks the mental capacity to consent.⁷ In 16 States and the Northern Mariana Islands, the court, in its discretion, may dispense with consent if it is in the best interest of the child.⁸ Colorado requires that the child be provided with counseling prior to giving consent.

When Consent Can Be Executed

Approximately 47 States, the District of Columbia, and the Northern Mariana Islands specify in statute when a birth parent may execute consent to adoption.⁹ Sixteen States and the

⁴ Louisiana does not currently address in statute the issue of consent by the minor adoptive child.

⁵ The word *approximately* is used to stress the fact that States frequently amend their laws. The information in this publication is current only through April 2007. The States requiring consent at age 14 include Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, and Wyoming.

⁶ States requiring consent at age 12 include Arizona, California, Colorado, Connecticut, Florida, Idaho, Kentucky, Massachusetts, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia, and Wisconsin. States requiring consent at age 10 include Alaska, Arkansas, Hawaii, Maryland, New Jersey, and North Dakota.

⁷ Alabama, Idaho, Illinois, Kansas, Missouri, Montana, New Jersey, New Mexico, South Carolina, Tennessee, and Utah.

⁸ Alaska, Arkansas, Delaware, Florida, Hawaii, Kentucky, New Hampshire, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Vermont, Virginia, and West Virginia.

⁹ Idaho, New York, Oregon, American Samoa, Guam, Puerto Rico, and the Virgin Islands do not currently provide in statute for a specific timeframe for executing consent.

How Consent Must Be Executed

Northern Mariana Islands allow birth parents to consent at any time after the birth of the child.¹⁰ Approximately 12 States allow an alleged birth father to execute consent at any time before or after the child's birth.¹¹

Thirty States and the District of Columbia require a waiting period before consent can be executed. The shortest waiting periods are 12 and 24 hours, and the longest are 10 and 15 days.¹² The most common waiting period, required in 15 States and the District of Columbia, is 72 hours, or 3 days.¹³ Only two States (Alabama and Hawaii) allow the birth mother to consent before the birth of her child; however, the decision to consent must be reaffirmed after the child's birth.

The manner in which consent can be executed varies considerably from State to State. In many States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, consent may be executed by a written statement witnessed and/or notarized by a notary public. Other States may require an appearance before a judge or the filing of a petition of relinquishment. Some States require that the parent be provided with counseling, have his or her rights and the legal effect of relinquishment explained to him or her, or be provided with legal counsel prior to consent. In cases in which custody has previously been placed with an agency, the head of the agency may sign an affidavit of consent.

In most States, a birth parent who is a minor is treated no differently than other birth parents. However, in some States,

¹⁰ Alaska, Arkansas, California (for agency placements), Colorado, Delaware, Georgia, Indiana, Maine, Maryland, Michigan, North Carolina, North Dakota, Oklahoma, South Carolina, Wisconsin, and Wyoming.

¹¹ Alabama, Delaware, Hawaii, Indiana, Louisiana, Nevada, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, and Virginia.

¹² Kansas imposes a 12-hour waiting period, Utah 24 hours, and Rhode Island a 15-day waiting period. California and Washington impose a 10-day waiting period when the child being relinquished is an Indian child.

¹³ The District of Columbia and the following States impose a 72-hour waiting period: Arizona, Illinois, Iowa, Kentucky, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Waiting periods in other States are 36 hours (Vermont), 48 hours (Connecticut, Florida, Missouri, Nebraska, New Mexico, Texas, and Washington), 4th day after the child's birth (Massachusetts), 5 days (Louisiana and South Dakota), and after the mother has been discharged from the hospital following the child's birth (California, in a direct placement).

the minor parent must be provided with separate counsel prior to the execution of consent, or a guardian *ad litem* must be appointed to either review or execute the consent.¹⁴ In five States, Guam, and Puerto Rico, the consent of the minor's parents must be obtained.¹⁵

Revocation of Consent

Adoption is meant to create a permanent and stable home for a child; therefore, a validly executed relinquishment and consent to adopt is intended to be final and irrevocable. As a result, the right of a birth parent to revoke consent is strictly limited. The territory of the U.S. Virgin Islands makes no provisions in statute for revocation of consent, and Massachusetts and Utah specifically require that all consents are irrevocable.

In most States, the law provides that consent may be revoked prior to the entry of the final adoption decree under specific circumstances or within specified time limits. The circumstances under which withdrawal of consent may be permitted by a State can include the following:

- Consent was obtained by fraud, duress, or coercion.¹⁶
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent becomes irrevocable.¹⁷

¹⁴ Four States (Kansas, Maryland, Montana, and Vermont) require the appointment of separate counsel. Six States (Alabama, Arkansas, Connecticut, Kentucky, Michigan, and Rhode Island) require the appointment of a guardian *ad litem*.

¹⁵ Louisiana, Michigan, Minnesota, New Hampshire, and Rhode Island.

¹⁶ Alabama, Arizona, Colorado (the claim must be filed within 90 days), Florida, Illinois (the claim must be filed within 12 months), Kansas, Louisiana, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma (the claim must be filed within 3 months), Oregon, Rhode Island (the claim must be filed within 180 days), South Carolina, South Dakota (the claim must be filed within 2 years), Virginia, Washington (the claim must be filed within 1 year, or within 2 years for an Indian child), West Virginia (the claim must be filed within 6 months), Wisconsin, Wyoming, and Puerto Rico.

¹⁷ Arkansas (10 days), California (30 days in a direct placement), Delaware (60 days), Georgia (10 days), Kentucky (20 days), Maryland (30 days), Mississippi (6 months), Missouri (until confirmed by the court), Oklahoma (15 days for an extrajudicial consent), Virginia (10 days in a direct placement; 7 days in an agency placement), American Samoa (2 years), and the District of Columbia (10 days).

- The birth parent is allowed to withdraw consent within a specified period of time, after which consent becomes irrevocable unless there is evidence of fraud or duress.¹⁸
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent becomes irrevocable unless it can be shown that revocation is in the best interest of child.¹⁹
- There is a finding that withdrawal of consent is in the best interest of the child.²⁰
- The birth parents and adoptive parents mutually agree to the withdrawal of consent.²¹
- An adoptive placement is not finalized with a specific family or within a specified period of time.²²

Idaho requires a parent who revokes consent to reimburse the adoptive parents for any expenses they may have paid on his or her behalf. In Michigan, consent may not be revoked if the child has been placed with an adoptive family unless an appeal of a termination of parental rights proceeding is pending.

Consent becomes final and irrevocable once the court issues a final decree of adoption.

¹⁸ California (2 years for an Indian child), Iowa (96 hours), Maine (3 days), Minnesota (10 days), North Carolina (7 days), Oklahoma (30 days), Pennsylvania (30 days), Tennessee (10 days), Texas (10 days), Vermont (21 days), and Virginia (15 days).

¹⁹ Alaska (10 days), New York (45 days for extrajudicial consents; judicial consents are irrevocable), and Rhode Island (180 days).

²⁰ Alabama (petition must be made within 14 days), Connecticut, Hawaii, Indiana (petition must be filed within 30 days), New Hampshire, North Dakota, Ohio, South Carolina, Guam, and the Northern Mariana Islands.

²¹ Montana, North Carolina, Oklahoma, Vermont (request must be made within 21 days), Virginia (request must be made within 15 days), and West Virginia.

²² California (if the placement is not made within 30 days), Maine (if the adoption is not finalized within 18 months), Oklahoma (if the adoption petition is not filed within 9 months), and Nevada (if the prospective adoptive family is found to be unsuitable or no petition for adoption is filed within 2 years).

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.