



## Consent to Adoption

### What Is Consent?

Consent, as it relates to adoption, 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 of provisions designed to ensure protection for all involved individuals, including the following:

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

<sup>1</sup> The term "birth parent" is used to distinguish "birth" from "adoptive" and other types of parents and to reflect language used in state statutes.

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## Who Must Consent?

In all states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, the birth mother and the birth father (if he has properly established paternity) hold the primary right of consent to adoption of their minor child.<sup>2</sup> When neither birth parent is available or is no longer legally authorized to give consent, the responsibility may fall to another legal entity, such as the following:

- The 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<sup>3</sup> may determine that consent of the parent is not needed under specific circumstances, including when parental rights have been terminated, the child has been abandoned, the parent has been convicted of specified crimes against the other parent or the child, the parent has failed to support or establish a significant relationship with the child, or the parent is mentally incompetent or unfit. The court may terminate the rights of one or both parents for reasons including abandonment, failure to support the child, mental incompetence, or a finding of parental unfitness due to child abuse or neglect.<sup>4</sup> An unwed father’s consent may not be needed if he has failed to establish legal paternity, is found to have abandoned or neglected the child or to

<sup>2</sup> In states that have 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 object or consent to the adoption. Other jurisdictions require unwed fathers to file a notice of their paternity claim within a certain period of time. For detailed, state-by-state information, see Information Gateway’s *The Rights of Unmarried Fathers* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/putative/>.

<sup>3</sup> To find information about which court has jurisdiction for adoption consent, see Information Gateway’s *Court Jurisdiction and Venue for Adoption Petitions* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/jurisdiction/>.

<sup>4</sup> Crimes that can lead to the termination of parental rights include murder, manslaughter, or physical assault that results in severe bodily injury. For more information, see Information Gateway’s *Grounds for Involuntary Termination of Parental Rights* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/groundtermin/>.

be an unfit parent, or fails to respond to a notice of an adoption proceeding.

## Consent of Children Being Adopted

Nearly all states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands require that older children give consent to their adoption.<sup>5</sup> In approximately 25 states,<sup>6</sup> the District of Columbia, and the Virgin Islands, a child who is age 14 or older must consent to the adoption.<sup>7</sup> Nineteen states, American Samoa, and Guam require a child who is at least age 12 to consent,<sup>8</sup> while five states, the Northern Mariana Islands, and Puerto Rico require consent of children who are age 10 or older.<sup>9</sup> In 11 states, the requirement can be dispensed with if the child lacks the mental capacity to consent.<sup>10</sup> In 16 states and the Northern Mariana Islands, the court, at its discretion, may dispense with consent if it is in the best interests of the child.<sup>11</sup> Colorado requires that the child be provided with counseling prior to giving consent. In Maryland, a court may grant an adoption only if the child to be adopted is represented by an attorney.

## 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.<sup>12</sup> Sixteen states and the Northern Mariana Islands allow birth parents to consent at any time after the birth of the

<sup>5</sup> Louisiana does not currently address in statute the issue of consent by the minor adoptive child.

<sup>6</sup> The word “approximately” is used to stress the fact that states frequently amend their laws. The information in this publication is current through March 2017.

<sup>7</sup> 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

<sup>8</sup> Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Kentucky, Massachusetts, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia, and Wisconsin

<sup>9</sup> Alaska, Hawaii, Maryland, New Jersey, and North Dakota

<sup>10</sup> Alabama, Idaho, Illinois, Kansas, Missouri, Montana, New Jersey, New Mexico, South Carolina, Tennessee, and Utah

<sup>11</sup> Alaska, Arkansas, Delaware, Florida, Hawaii, Kentucky, New Hampshire, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Vermont, Virginia, and West Virginia

<sup>12</sup> 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.

child.<sup>13</sup> Approximately 14 states allow an alleged birth father to execute consent at any time before or after the child's birth.<sup>14</sup> 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.

Thirty states and the District of Columbia require a waiting period after the birth of a child before consent can be executed. The shortest waiting periods among states that require waiting periods are 12 hours (in Kansas) and 24 hours (in Utah), and the longest is 15 days (in Rhode Island). The most common waiting period, required in 16 states and the District of Columbia, is 72 hours, or 3 days.<sup>15</sup>

The waiting period in Vermont is 36 hours, and it is 48 hours in Connecticut, Florida, Missouri, Nebraska, New Mexico, Texas, and Washington. The waiting period for consent is the fourth day after the child's birth in Massachusetts. Parents must wait 5 days to consent in Louisiana (for private adoptions only) and in South Dakota. In California, a birth mother making a direct placement must wait to consent until she has been discharged from the hospital following the child's birth. If the child being relinquished is an Indian child, California and Washington impose a 10-day waiting period.

## How Consent Must Be Executed

The manner in which consent can be executed varies considerably from state to state, and many states accept more than one form of consent. In 21 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.<sup>16</sup> Twenty-seven states and

<sup>13</sup> Alaska, Arkansas, California (for agency placements), Colorado, Delaware, Georgia, Indiana, Maine, Maryland, Michigan, North Carolina, North Dakota, Oklahoma, South Carolina, Wisconsin, and Wyoming

<sup>14</sup> Alabama, Delaware, Hawaii, Illinois, Indiana, Louisiana, Nevada, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Utah, and Virginia

<sup>15</sup> Arizona, Illinois, Iowa, Kentucky, Louisiana (for agency adoptions only), Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia

<sup>16</sup> Arizona, California, Florida, Georgia, Indiana, Iowa, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Oregon, South Carolina, Utah, Virginia, West Virginia, and Wyoming

the Northern Mariana Islands require that the person executing consent appear before a judge to confirm the consent.<sup>17</sup> In eight states and American Samoa, a petition for relinquishment or termination of parental rights must be filed.<sup>18</sup> Some states require the parent to 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.<sup>19</sup> In cases in which custody of the child has previously been relinquished to an agency, the head of the agency may sign an affidavit of consent.

New Hampshire and Oklahoma require that the instrument of consent indicate whether the child being adopted is an Indian child or eligible for tribal membership. California, New Mexico, North Carolina, and Wisconsin require that relinquishments of Indian children meet the standards set forth in the Federal Indian Child Welfare Act.<sup>20</sup>

In seven states, if the individual executing the consent is a member of the armed services, the consent must be signed or confirmed in the presence of a commissioned officer on active duty in the military service of the United States.<sup>21</sup> In four states, if the person executing consent is in a foreign country, the form must be signed and acknowledged in the presence of an officer of the Foreign Service or a consular officer of the United

<sup>17</sup> Alabama, Alaska, Arkansas, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Missouri, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wyoming

<sup>18</sup> Colorado, Connecticut, Hawaii, Kentucky, Pennsylvania, Rhode Island, Texas, and Wisconsin

<sup>19</sup> Counseling must be provided in six states (Colorado, Iowa, Louisiana, Maine, New Mexico, and Oregon); the legal effects of relinquishment must be explained in 13 states (Alabama, California, Kansas, Louisiana, Maine, Michigan, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, and Vermont) and American Samoa; and independent legal counsel must be provided to a birth parent in Louisiana and New Hampshire.

<sup>20</sup> The Indian Child Welfare Act provides that the consent to adoption of any Indian parent or custodian shall not be valid unless it is executed in writing and recorded before a judge of a court of competent jurisdiction (i.e., a court designated by statute to hear adoption petitions) and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within 10 days after, the birth of the Indian child shall not be valid (25 U.S.C. § 1913(a)).

<sup>21</sup> Delaware, Illinois, Michigan, Montana, Tennessee, Vermont, and West Virginia

States.<sup>22</sup> In Michigan, Montana, and Tennessee, if the person executing the surrender is incarcerated in a state or federal penitentiary, the surrender may be executed before the warden, a notary public, or any person authorized by law to administer oaths.

## Consent by Minor Parents

In 20 states and the District of Columbia, a birth parent who is a minor has the same right to consent to the adoption of his or her child as a parent who is an adult.<sup>23</sup> However, in four states, Guam, and Puerto Rico, the parent of the minor parent must sign the consent.<sup>24</sup> In four states, the minor parent's guardian ad litem must execute the consent.<sup>25</sup> In Florida (for a parent aged 14 or younger), Michigan, and Rhode Island, consent must be given by the minor parent's parent, guardian, or guardian ad litem. Three states require that a minor parent be provided with separate counsel prior to the execution of consent,<sup>26</sup> and five states require that a guardian ad litem must be appointed to review the consent.<sup>27</sup> In Minnesota, a minor parent must be offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child.

## Revocation of Consent

Adoption is meant to create a permanent and stable home for a child; therefore, a validly executed consent 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; in Massachusetts and Utah, all consents are irrevocable upon their execution.

<sup>22</sup> Delaware, Tennessee, Vermont, and West Virginia

<sup>23</sup> Alabama, Arizona, California, Connecticut, Delaware, Florida (except a parent age 14 or younger), Idaho, Indiana, Kansas, Kentucky, Mississippi, Montana, New York, North Carolina, Oklahoma (for a parent age 16 or older), Pennsylvania, South Carolina, Tennessee, Utah, and Virginia

<sup>24</sup> Louisiana, Minnesota, New Hampshire, and Oklahoma

<sup>25</sup> Alabama, Connecticut, Montana, and Rhode Island

<sup>26</sup> Kansas, Montana, and Vermont

<sup>27</sup> Alabama, Connecticut, Kentucky, Missouri, and West Virginia

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.<sup>28</sup>
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent is irrevocable.<sup>29</sup>
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent is irrevocable unless there is evidence of fraud or duress.<sup>30</sup>
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent is irrevocable unless it can be shown that revocation is in the best interests of child.<sup>31</sup>
- There is a judicial finding that withdrawal of consent is in the best interests of the child.<sup>32</sup>
- The birth parents and adoptive parents mutually agree to the withdrawal of consent.<sup>33</sup>
- An adoptive placement is not finalized with a specific family or within a specified period of time.<sup>34</sup>

<sup>28</sup> Alabama, Arizona, Colorado (the claim must be filed within 90 days), Florida, Illinois (the claim must be filed within 12 months), Kansas, Louisiana, Missouri, 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

<sup>29</sup> Arkansas (10 days), California (30 days in a direct placement), Delaware (60 days), Georgia (10 days), Kentucky (20 days), Louisiana (90 days), Maryland (30 days), Mississippi (6 months), Missouri (until confirmed by the court), Oklahoma (15 days for an extrajudicial consent), Virginia (7 days in a direct placement, if the child is at least 10 days old; 7 days in an agency placement), American Samoa (2 years), and the District of Columbia (10 days)

<sup>30</sup> 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 (3 days), Texas (10 days), Vermont (21 days), and Virginia (15 days)

<sup>31</sup> Alaska (10 days), New York (45 days for extrajudicial consents; judicial consents are irrevocable), and Rhode Island (180 days)

<sup>32</sup> 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

<sup>33</sup> Montana, North Carolina, Oklahoma, Vermont (request must be made within 21 days), Virginia (request must be made within 15 days), and West Virginia

<sup>34</sup> 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 no petition for adoption is filed within 2 years)

Idaho requires a birth parent who revokes consent to reimburse the adoptive parents for any expenses they may have paid on behalf of the birth parent. 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. Virginia permits one or both parents in a direct placement to waive the 7-day revocation period at the time of consent if the child is at least 10 days old and the waiving parent has received independent legal counsel. Waiver by one parent does not affect the right of the other parent to the revocation period.

In all jurisdictions, consent becomes final and irrevocable once the court issues a final decree of adoption.

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

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## Alabama

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ala. Code §§ 26-10A-7; 26-10A-8**

Consent shall be required of the following:

- The mother
- The presumed father, regardless of paternity, if:
  - » He and the child's mother are or have been married to each other and the child was born during the marriage or within 300 days after the marriage was terminated.
  - » Before the child's birth, he and the child's mother attempted to marry each other.
  - » After the child's birth, he and the child's mother married or attempted to marry each other and, with his knowledge or consent, he was named as the child's father on the child's birth certificate, he is obligated to support the child, or he received the child into his home and openly held out the child as his own child.
- The agency to which the child has been relinquished or holds permanent custody and has placed the child for adoption
- The putative father, if made known by the mother or is otherwise made known to the court, provided he complies with § 26-10C-1 and responds to notice within 30 days

Prior to a minor parent giving consent, a guardian ad litem must be appointed to represent the interests of a minor parent whose consent is required.

A minor father may give implied consent by his actions. If a court finds by conclusive evidence that a minor father has given implied consent to the adoption, notice and the appointment of a guardian ad litem shall not be necessary.

A petition to adopt an adult may be granted only if written consent to adopt has been executed by the adult seeking to adopt and his or her spouse or by the guardian or conservator of the adult adopted person pursuant to the requirements of §§ 26-10A-6 and 26-10A-11.

### Consent of Child Being Adopted

**Citation: Ala. Code § 26-10A-7**

A child age 14 or older must consent to the adoption, except where the court finds that the child does not have the mental capacity to consent.

### When Parental Consent Is Not Needed

**Citation: Ala. Code §§ 26-10A-9; 26-10A-10**

A required consent or relinquishment may be implied by any of the following acts of a parent:

- Abandonment of the child, including, but not limited to, the failure of the father, with reasonable knowledge of the pregnancy, to offer financial and/or emotional support for a period of 6 months prior to the birth
- Leaving the child without provision for his or her identification for a period of 30 days
- Knowingly leaving the child with others without provision for support and without communication, or not otherwise maintaining a significant parental relationship with the child for a period of 6 months
- Receiving notice of the adoption proceedings and failing to answer or otherwise respond to the petition within 30 days
- Failing to comply with § 26-10C-1

The consent or relinquishment of the following persons shall not be required for an adoption:

- A parent whose rights with reference to the child have been terminated
- A parent who has been adjudged incompetent or mentally incapable of consenting or relinquishing and whose mental disability is likely to continue for so long a period that it would be detrimental to the child to delay adoption until restoration of the parent's competency or capacity
- A parent who has relinquished his or her minor child to the Department of Human Resources or a licensed child-placing agency for an adoption
- A deceased parent or one who is presumed to be deceased
- An alleged father who has signed a written statement denying paternity
- The natural father when the natural mother indicates the natural father is unknown, unless the natural father is otherwise made known to the court



### When Consent Can Be Executed

**Citation: Ala. Code § 26-10A-13**

A consent or relinquishment may be taken at any time, except that, once signed or confirmed, it may be withdrawn within 5 days after birth or within 5 days after signing of the consent or relinquishment, whichever comes last.

### How Consent Must Be Executed

**Citation: Ala. Code §§ 26-10A-11; 26-10A-12**

A consent or relinquishment shall be in writing, signed by the person consenting or relinquishing, and shall state that the person executing the document is voluntarily and unequivocally consenting to the adoption of the named child.

A consent of the natural mother taken prior to the birth of a child shall be signed or confirmed before a judge of probate. At the time of taking the consent, the judge shall explain to the consenting parent the legal effect of signing the document and the time limits and procedures for withdrawal of the consent and shall provide the parent with a form for withdrawing the consent in accordance with the requirements of §§ 26-10A-13 and 26-10A-14.

All other prebirth or postbirth consents or relinquishments shall be signed or confirmed before:

- A judge or clerk of any court that has jurisdiction over adoption proceedings, or a public officer appointed by that judge for the purpose of taking consents
- A person appointed to take consents who is appointed by any agency that is authorized to conduct investigations or home studies, or, if the consent is taken out of state, by a person appointed to take consents by any agency that is authorized by that state's law to conduct investigations and home studies for adoptions
- A notary public

A form for the consent or relinquishment or the withdrawal of the consent or relinquishment is provided in statute.

The form for the consent or relinquishment or the withdrawal of consent or relinquishment for the adoption of an adult shall be developed by the Administrative Office of Courts.

### Revocation of Consent

**Citation: Ala. Code §§ 26-10A-9; 26-10A-13; 26-10-14**

Implied consent due to abandonment may not be withdrawn by any person.

The consent or relinquishment, once signed or confirmed, may not be withdrawn except:

- If the court finds that the withdrawal is reasonable under the circumstances and consistent with the best interests of the child within 14 days after the birth of the child or within 14 days after signing of the consent or relinquishment, whichever comes last
- At any time until the final decree upon a showing that the consent or relinquishment was obtained by fraud, duress, mistake, or undue influence on the part of a petitioner or his or her agent or the agency to whom or for whose benefit it was given
  - » After 1 year from the date of final decree of adoption is entered, a consent or relinquishment may not be challenged on any ground except in cases where the child has been kidnapped.
- Upon dismissal of the adoption after a contested hearing, as provided in § 26-10A-24

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## Alaska

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Alaska Stat. § 25.23.040**

A petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

- The mother of the minor
- The father of the minor if the father was married to the mother at the time the minor was conceived or at any time after conception, the minor is the father's child by adoption, or the father has otherwise legitimated the minor
- Any person lawfully entitled to custody of the minor or empowered to consent
- The court having jurisdiction to determine custody of the minor if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption
- The spouse of the minor to be adopted

**Consent of Child Being Adopted****Citation: Alaska Stat. § 25.23.040**

A child age 10 or older must consent to the adoption unless, in the child's best interests, the court dispenses with consent.

**When Parental Consent Is Not Needed****Citation: Alaska Stat. § 25.23.050**

Consent to adoption is not required of:

- A parent who has abandoned a child for a period of at least 6 months
- A parent of a child in the custody of another if the parent, for a period of at least 1 year, has failed significantly without justifiable cause, including but not limited to indigence:
  - » To communicate meaningfully with the child
  - » To provide for the care and support of the child as required by law or judicial decree
- The father, if the father's consent is not required by § 25.23.040(a)(2)
- A parent who has relinquished the right to consent
- A parent whose parental rights have been terminated by order of the court
- A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent
- A parent of the adopted person if the adopted person is age 18 or older
- A guardian or custodian who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably
- The spouse of the adopted person if the requirement of consent to the adoption is waived by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent

**When Consent Can Be Executed****Citation: Alaska Stat. § 25.23.060**

The required consent to adoption shall be executed at any time after the birth of the child.

**How Consent Must Be Executed****Citation: Alaska Stat. § 25.23.060**

The required consent to adoption shall be executed in the presence of the court or a person authorized to take acknowledgments. The consent is not valid unless the consent form states that the person consenting to the adoption has the right to withdraw that consent as provided in § 25.23.070(b) and unless the person consenting to the adoption acknowledges receipt of a copy of the consent form.

The person giving consent shall state in the consent form whether the child is a member of an Indian tribe or the biological child of a member of an Indian tribe, so that the court may determine whether the provisions of the Indian Child Welfare Act of 1978 apply.

**Revocation of Consent****Citation: Alaska Stat. § 25.23.070**

A consent to adoption may not be withdrawn after the entry of a decree of adoption.

A consent to adoption may be withdrawn before the entry of a decree of adoption, within 10 days after the consent is given, by delivering written notice to the person obtaining the consent. Consent may be withdrawn after the 10-day period if the court finds, after notice and opportunity to be heard is afforded to the petitioner, the person seeking the withdrawal, and the agency placing the child for adoption, that the withdrawal is in the best interests of the person to be adopted, and the court orders the withdrawal.



## American Samoa

Current Through March 2017

### Who Must Consent to an Adoption

**Citation: Ann. Code §§ 45.0412(a); 45.0414(a)**

Written consent must be executed by:

- The parent(s)
- A guardian appointed by the court of a child whose parents are deceased or whose parents' parental rights have been terminated
- The parent in a stepparent adoption when the other parent is deceased or his or her rights have been terminated
- The noncustodial parent when custody has been awarded to the other parent in a dissolution of marriage proceeding and the spouse of the custodial parent wishes to adopt the child
- The Department of Health or a child-placing agency

### Consent of Child Being Adopted

**Citation: Ann. Code § 45.0412(b)**

Written consent to any proposed adoption shall be obtained from the child if he or she is age 12 or older.

### When Parental Consent Is Not Needed

**Citation: Ann. Code §§ 45.0401; 45.0412**

Consent of the parent is not required when a court has terminated the parents' rights upon determination that the child has been neglected.

In a stepparent adoption, consent of the noncustodial parent is not required when that parent has abandoned the child for a period of 1 year or more or has failed without cause to provide reasonable support for the child for a period of 1 year or more.

### When Consent Can Be Executed

This issue is not addressed in the statutes reviewed.

### How Consent Must Be Executed

**Citation: Ann. Code § 45.0402; 45.0412(a); 45.0414(a)**

Any parent who desires to relinquish his or her child must petition the court on forms supplied by the court, giving the following information:

- The names of both natural parents, if known
- The name of the child, if named
- The ages of all parties concerned
- The race and religion of both natural parents, if known
- Why relinquishment is desired

The court will not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counselled and fully advised of the consequences of his or her act. If the court believes after a hearing that the relinquishing parent or parents have been counselled and that the relinquishment would best serve the interests of all parties concerned, it will enter an order of relinquishment.

A child may be available for adoption only upon:

- An order of the court terminating all parental rights in the child in a proceeding brought under § 45.0115(a)(3)
- An order of the court decreeing the voluntary relinquishment of all parental rights in the child under § 45.0403

Unless the placement is made by the court or in accordance with the law of another state or territory, written consent of the Department of Health, agency, or individual to the proposed adoption shall be filed with the petition to adopt.

### Revocation of Consent

**Citation: Ann. Code § 45.0431**

The final decree of adoption may not be attacked by reason of any jurisdictional or procedural defect after 2 years following the entry of the final decree.

**Arizona**

*Current Through March 2017*

**Who Must Consent to an Adoption**

**Citation: Rev. Stat. § 8-106(A), (C)**

The court shall not grant an adoption of a child unless consent to adopt has been obtained and filed with the court from the following:

- The birth or adoptive mother
- The father if he:
  - » Was married to the mother at the time of conception
  - » Is the adoptive father
  - » Has otherwise established paternity
- Any guardian of the child or agency that has been given the child to place for adoption
- The guardian of an adult parent if one has been appointed

Minority of the parent does not affect competency to consent.

**Consent of Child Being Adopted**

**Citation: Rev. Stat. § 8-106(A)**

A child age 12 or older must consent to the adoption in open court.

**When Parental Consent Is Not Needed**

**Citation: Rev. Stat. § 8-106(B), (J)**

It is not necessary for a person to obtain consent to adopt from the following:

- An adult parent for whom a guardian is currently appointed
- A parent whose parental rights have been terminated by court order
- A parent who has previously consented to an agency's or the division's placement of the child for adoption

A potential father who fails to file a paternity action and who does not comply with all applicable service requirements within 30 days after completion of service of notice waives his right to be notified of any judicial hearing regarding the child's adoption or the termination of parental rights, and his consent to the adoption or termination is not required.

**When Consent Can Be Executed**

**Citation: Rev. Stat. § 8-107(B)**

Any consent given sooner than 72 hours after the birth of the child is invalid.

**How Consent Must Be Executed**

**Citation: Rev. Stat. § 8-107(A), (D), (G)**

All consents to adoption shall be in writing and signed by the person giving the consent and witnessed by two or more credible witnesses who are at least age 18 and who subscribe their names in the presence of the person giving the consent or shall be acknowledged by the person giving consent before a notary public.

The consent shall designate either of the following:

- An agency or the division as authorized by the party giving the consent to place the child for adoption
- The particular person or persons authorized to adopt the child by the person giving the consent

A consent other than to any agency or the division that does not designate a particular person or persons, or that purports to permit a third person to locate or nominate an adoptive parent, is invalid.

**Revocation of Consent**

**Citation: Rev. Stat. § 8-106(D)**

Consent is irrevocable unless obtained by fraud, duress, or undue influence.

## Arkansas

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Code § 9-9-206**

A petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

- The mother
- The father if:
  - » He was married to the mother at the time the minor was conceived or at any time thereafter
  - » The child is his child by adoption
  - » He has physical custody of the minor at the time the petition is filed
  - » He has a written order granting him legal custody of the minor at the time the petition for adoption is filed
  - » A court has adjudicated him to be the legal father prior to the time the petition for adoption is filed
  - » He proves a significant custodial, personal, or financial relationship existed with the minor before the petition for adoption is filed
  - » He has acknowledged paternity under § 9-10-120(a)
- Any person lawfully entitled to custody of the minor or empowered to consent
- The court having jurisdiction to determine custody of the minor if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption
- The spouse of the minor to be adopted

A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

### Consent of Child Being Adopted

**Citation: Ann. Code § 9-9-206**

A child age 12 or older must consent to the adoption unless, in the child's best interests, the court dispenses with consent.

### When Parental Consent Is Not Needed

**Citation: Ann. Code § 9-9-207**

Consent to adoption is not required of:

- A parent who has deserted a child without affording means of identification or who has abandoned a child
- A parent of a child in the custody of another if the parent has failed significantly and without justifiable cause to communicate with the child or to provide for the care and support of the child for at least 1 year
- The father of a minor if the father's consent is not required by § 9-9-206(a)(2)
- A parent who has relinquished the right to consent or whose rights have been terminated
- A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent
- Any parent of the adopted person if the adopted person is an adult
- Any legal guardian or custodian of the child, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or who is found by the court to be withholding his or her consent unreasonably
- The spouse of the adopted person if the failure of the spouse to consent is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent
- A putative father of a minor who signed an acknowledgment of paternity or is listed on the Putative Father Registry but who failed to establish a significant custodial, personal, or financial relationship with the juvenile prior to the time the petition for adoption is filed

### When Consent Can Be Executed

**Citation: Ann. Code § 9-9-208**

Consent to adoption shall be executed any time after the birth of the child.

## How Consent Must Be Executed

### Citation: Ann. Code § 9-9-208

The required consent to adoption shall be executed in the following manner:

- If by the adopted person, in the presence of the court
- If by an agency, by the executive head, or other authorized representative, in the presence of a person authorized to take acknowledgments
- If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments
- If by a court, by appropriate order or certificate

A consent that does not identify the adopting parent is valid if the consent contains a statement by the person giving consent that the person voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

If the parent is a minor, the writing shall be signed by a court-ordered guardian ad litem who has been appointed by a judge of a court of record to appear on behalf of the minor parent for the purpose of executing consent. The signing shall be made in the presence of an authorized representative of the Arkansas licensed placement agency taking custody of the child, in the presence of a notary public, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed.

## Revocation of Consent

### Citation: Ann. Code § 9-9-209

A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

A consent to adopt may be withdrawn within 10 calendar days after it is signed or the child is born, whichever is later, by filing an affidavit with the probate clerk of the circuit court in the county designated by the consent as the county in which the guardianship petition will be filed if there is a guardianship, or where the petition for adoption will be filed if there is no guardianship. If the 10-day period ends on a weekend or a legal holiday, the person may file the affidavit the next working day. No fee shall be charged for the filing of the affidavit.

The court may waive the 10-day period for filing a withdrawal of consent for agencies, minors over age 10 who consented to the adoption, or biological parents if a stepparent is adopting.

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## California

*Current Through March 2017*

## Who Must Consent to an Adoption

### Citation: Fam. Code §§ 8603; 8604; 8605

Consent is required from the following persons:

- The birth parents, if living
- The parent having custody if the other parent:
  - » Fails to communicate with and support the child
  - » Fails to respond to notice of adoption
- The spouse of the adopting parent, if the adopting parent is married

## Consent of Child Being Adopted

### Citation: Fam. Code § 8602

A child age 12 or older must consent to the adoption.

## When Parental Consent Is Not Needed

### Citation: Fam. Code §§ 8603; 8604; 8606

The court may dispense with the consent of a spouse who cannot be located after diligent search or a spouse determined by the court to lack the capacity to consent.

The consent of a presumed father is not required for the child's adoption unless he became a presumed father before the mother's relinquishment, before consent becomes irrevocable, or before the mother's parental rights have been terminated.

The consent of a noncustodial parent is not required if the parent willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so for a period of 1 year. If the birth parent or parents have made only token efforts to support or communicate with the child, the court may disregard those token efforts.

The consent of a birth parent is not necessary when the birth parent has:

- Been judicially deprived of the custody and control of the child
- Voluntarily surrendered the right to the custody and control of the child
- Deserted the child without provision for identification of the child
- Relinquished the child for adoption as provided in § 8700
- Relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction

### **When Consent Can Be Executed**

**Citation: Fam. Code §§ 8801.3; 8606.5**

In a direct placement, consent may only take place after the discharge of the birth mother from the hospital. If the mother is required to be hospitalized longer than the child, consent may be given with verification of competency from her physician.

In the case of an Indian child, consent cannot be executed until at least 10 days after the child's birth.

### **How Consent Must Be Executed**

**Citation: Fam. Code §§ 8801.3; 8814; 8700; 8606.5**

In a direct placement, consent must take place in the presence of an adoption service provider or other delegated agent who has advised the parents of their rights. In an agency adoption, a form is signed before two witnesses and acknowledged before an official of the agency.

Either birth parent may relinquish a child for adoption to the Department of Social Services, a county adoption agency, or a licensed adoption agency by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency.

A relinquishing parent who is a minor has the right to relinquish his or her child for adoption, and the relinquishment is not subject to revocation by reason of the minority, or because the parent or guardian of the minor parent was not served with notice of the relinquishment, unless the relinquishing minor parent has previously provided written authorization to serve his or her parent or guardian with that notice.

The relinquishment shall be signed before a representative of a licensed agency that signifies the willingness of the agency to accept the relinquishment. The relinquishment has no effect until a certified copy is sent to and filed with the department. The agency shall inform the birth parent that during this time period he or she may request that the relinquishment be withdrawn and that, if he or she makes the request, the relinquishment shall be withdrawn.

Consent to adoption given by an Indian child's parent is not valid unless both of the following occur:

- The consent is executed in writing at least 10 days after the child's birth and recorded before a judge.
- The judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood.

### **Revocation of Consent**

**Citation: Fam. Code §§ 8814.5; 8815; 8700; 8606.5**

In a direct placement, after consent has been given, the parents have 30 days to submit a signed revocation and request the return of the child or sign a waiver of the right to revoke consent. Once the revocable consent to adoption has become permanent, the consent to the adoption may not be withdrawn. Before the time when the revocable consent becomes permanent, the birth parent(s) may request return of the child. In that case the child shall immediately be returned to the requesting birth parent, unless a court orders otherwise.

In an agency adoption, consent is final and may only be rescinded by mutual consent, unless the birth parent has specified an adoptive parent and that placement is not finalized; then the parent has 30 days to rescind.

The parent of an Indian child may withdraw his or her consent to adoption for any reason and at any time prior to the entry of a final decree of adoption, and the child shall be returned to the parent.

After the entry of a final decree of adoption of an Indian child, the child's parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate that decree and return the child to the parent; however, no adoption that has been effective for at least 2 years may be invalidated unless otherwise permitted under state law.

## Colorado

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Rev. Stat. § 19-5-207**

When a child is placed for adoption by a county department of social services, a licensed child-placing agency, or an individual, that department, agency, or individual shall file with the petition to adopt its written and verified consent to that adoption.

### Consent of Child Being Adopted

**Citation: Rev. Stat. §§ 19-5-103; 19-5-203**

Written consent to any proposed adoption shall be obtained from the person to be adopted if that person is age 12 or older. Children must undergo counseling.

### When Parental Consent Is Not Needed

**Citation: Rev. Stat. §§ 19-5-203; 19-3-604**

Consent is not required when:

- The parent's rights have been terminated due to the parent's unfitness, as outlined in § 19-3-604.
- The parent has failed to provide support or has abandoned the child for 1 year.

### When Consent Can Be Executed

**Citation: Rev. Stat. §§ 19-5-104; 19-5-203**

Consent may be executed any time after the birth of the child.

### How Consent Must Be Executed

**Citation: Rev. Stat. § 19-5-103**

Any parent desiring to relinquish his or her child shall:

- Obtain counseling for himself or herself and the child from a county department of social services or from a licensed child-placing agency
- Petition the juvenile court upon a standardized form providing the name of both natural parents, if known; the name of the child, if named; the ages of all parties concerned; and the reasons relinquishment is desired

The petition shall be accompanied by a standardized affidavit of relinquishment counseling that includes:

- A statement indicating the nature and extent of counseling furnished to the petitioner, if any, and the recommendations of the counselor
- A copy of the original birth certificate
- A statement disclosing any and all payments, gifts, assistance, goods, or services received, promised, or offered to the relinquishing parent in connection with the pregnancy, birth, or proposed relinquishment of the child and the source or sources of such payments, gifts, assistance, goods, or services

The petition for relinquishment also shall include:

- A statement indicating whether the child is an Indian child
- The identity of the Indian child's tribe, if the child is identified as an Indian child

### Revocation of Consent

**Citation: Rev. Stat. § 19-5-104(7)(a)**

A relinquishment may be revoked only if, within 91 days after the entry of the relinquishment order, the relinquishing parent establishes by clear and convincing evidence that such relinquishment was obtained by fraud or duress.

The fact that the relinquishing parent or parents are minors shall in no way affect the validity of the final order of relinquishment.



## Connecticut

Current Through March 2017

### Who Must Consent to an Adoption

**Citation: Gen. Stat. §§ 45a-724; 45a-715**

The following persons may give a child in adoption:

- A statutory parent
- Any parent of a minor child who agrees in writing with his or her spouse that the spouse shall adopt or join in the adoption of the child if that parent is:
  - » The surviving parent if the other parent has died
  - » The mother of a child born out of wedlock provided that there is a putative father who has been notified and the rights of the putative father have been terminated
  - » A former single person who adopted a child and thereafter married
  - » The sole guardian of the child if the parental rights, if any, of any person other than the parties to that agreement have been terminated
- Any parent of a minor child who agrees in writing with the other person who shares parental responsibility for the child that the other person shall adopt or join in the adoption of the child, if the parental rights, if any, of any other person other than the parties to that agreement have been terminated
- For any minor child who is free for adoption, the child's guardian who agrees in writing with a relative that the relative shall adopt the child

A parent who is a minor shall have the right to consent to termination of parental rights, and that consent shall not be voidable by reason of that minority. A guardian ad litem shall be appointed by the court to ensure that the minor parent is giving an informed and voluntary consent.

### Consent of Child Being Adopted

**Citation: Gen. Stat. § 45a-724**

A child age 12 or older must consent to the adoption.

### When Parental Consent Is Not Needed

**Citation: Gen. Stat. § 45a-717(g)**

When no investigation and report has been requested, the court may approve a petition terminating parental rights and appoint a guardian of the person of the child or, if the petitioner requests, the court may appoint a statutory parent, if it finds, upon clear and convincing evidence, that the termination is in the best interests of the child because the parent has:

- Abandoned the child by failing to maintain a reasonable degree of interest, concern, or responsibility for the welfare of the child
- Subjected the child to sexual molestation and exploitation, severe physical abuse, or a pattern of abuse
- Failed to provide the care, guidance, or control necessary for the child's physical, educational, moral, or emotional well-being
- Failed to establish an ongoing parent-child relationship with the child
- Been found by the court to have neglected the child in a prior proceeding, or whose child has been in the custody of the commissioner for at least 15 months and has failed to achieve such degree of personal rehabilitation as would encourage the belief that, within a reasonable time and considering the age and needs of the child, the parent could assume a responsible position in the life of the child
- Had his or her parental rights in regard to another child previously terminated and has failed to achieve a degree of personal rehabilitation that would allow the parent to assume a responsible position in the life of the child
- Killed through a deliberate, nonaccidental act another child of the parent or has requested, attempted, conspired, or solicited such killing or has committed an assault through a deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent
- Committed an act of sexual assault or compelled a spouse or cohabitor to engage in sexual intercourse by the use of force or by the threat of force, if such act resulted in the conception of the child

**When Consent Can Be Executed****Citation: Gen. Stat. § 45a-715(d)**

No consent to termination by a mother shall be executed within 48 hours immediately after the birth of her child.

**How Consent Must Be Executed****Citation: Gen. Stat. §§ 45a-715(e)-(f); 45a-717(f)**

Consent to adoption is made by a petition for voluntary termination of parental rights. The petition shall be filed in the court of probate for the district in which the petitioner or the child resides or, in the case of a minor who is under the guardianship of any child care facility or child-placing agency, in the court of probate for the district in which the main office or any local office of the agency is located. If the petition is filed with respect to a child born out of wedlock, the petition shall state whether there is a putative father to whom notice shall be given.

If any petitioner is a minor, the guardian ad litem must approve the petition in writing, before action by the court.

The court may approve a petition for termination of parental rights based on consent filed pursuant to this section terminating the parental rights and may appoint a guardian of the person of the child. If the petitioner requests, the court may appoint a statutory parent if it finds, upon clear and convincing evidence, that the termination is in the best interests of the child and the parent has voluntarily and knowingly consented to termination of the parent's parental rights with respect to the child.

**Revocation of Consent****Citation: Gen. Stat. § 45a-719**

The court may grant a motion to open or set aside a judgment terminating parental rights or may grant a petition for a new trial on the issue of the termination of parental rights provided the court shall consider the best interests of the child. No such motion or petition may be granted if a final decree of adoption has been issued prior to the filing of any such motion or petition.

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**Delaware***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Code Tit. 13, §§ 908**

The consent to the adoption shall be granted by the department or by the licensed or authorized agency in whom the parental rights are vested.

In the case of an adoption by a stepparent or blood relative, the consent to the adoption shall be granted by the mother of the child and the birth father and any presumed father of the child.

If the individual with the right to consent is under age 18, this fact shall not be a bar to the giving of consent nor render the consent invalid.

**Consent of Child Being Adopted****Citation: Ann. Code Tit. 13, § 907**

A child age 14 or older must provide written consent unless the court finds it in the child's best interests to waive consent.

**When Parental Consent Is Not Needed****Citation: Ann. Code Tit. 13, § 1103(a)**

The parent's consent is not required when his or her parental rights have been involuntarily terminated, it appears to be in the child's best interests, and one or more of the following grounds exist:

- The parent has abandoned the child.
- The parent is unable to discharge parental duties due to mental incompetence.
- The parent has been convicted of a felony in which a child has been harmed or endangered.
- The parent is unable or has failed to plan adequately for the child's needs.
- Parental rights over a sibling of the child have been involuntarily terminated.
- The parent has subjected a child to torture, chronic abuse, sexual abuse, and/or life threatening abuse.
- A child has suffered unexplained serious physical injury, near death, or death that resulted from the intentional or reckless conduct or willful neglect of the parent.

**When Consent Can Be Executed****Citation: Ann. Code Tit. 13, § 1106(c)**

A mother whose consent to the termination of parental rights is required may execute a consent only after the child is born. Consent by the father or presumed father may be executed either before or after the child is born.

**How Consent Must Be Executed****Citation: Ann. Code Tit. 13, §§ 907; 1106(c)**

A petition for adoption shall contain a consent to the proposed adoption. The consent shall be in writing, notarized, and attached to the petition as an exhibit. If consent is obtained or given outside this state, it must be executed in accordance with this section and § 908 of this title.

A consent executed by a parent or guardian must be signed or confirmed in the presence of:

- A judge of a court of record
- An individual designated by a judge to take consents
- An employee designated by an agency to take consents
- A lawyer other than a lawyer who is representing an adoptive parent or the agency to which parental rights will be transferred
- A commissioned officer on active duty in the military service of the United States if the individual executing the consent is in military service
- An officer of the Foreign Service or a consular officer of the United States in another country if the individual executing the consent is in that country

**Revocation of Consent****Citation: Ann. Code Tit. 13, § 909**

In any case in which consent has been given in accordance with the provisions of § 907 of this title and the person, department, licensed agency, authorized agency, or child over age 14 giving the consent desires to withdraw the consent, he or she shall file, within 60 days from the date of the filing of the adoption petition containing the consent, a petition asking the court to revoke his or her consent and dismiss the adoption petition. The family court shall refer the petition to revoke and dismiss to the department or licensed agency, and the department or licensed agency shall, within 30 days, make a formal report to the court. Promptly upon receipt of the report, the court shall rule upon the petition.

**District of Columbia***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Code § 16-304**

Consent to a proposed adoption of a person under age 18 is necessary from:

- Both parents, if they are both alive
- The living parent, if one of the parents is dead
- The court-appointed guardian of the prospective adopted person
- A licensed child-placing agency or the Mayor, if the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Mayor or licensed child-placing agency
- The Mayor, in any situation not otherwise provided for by this subsection

Minority of a natural parent is not a bar to that parent's consent to adoption.

**Consent of Child Being Adopted****Citation: Ann. Code § 16-304**

Consent to a proposed adoption is necessary from the prospective adopted person if he or she is age 14 or older.

**When Parental Consent Is Not Needed****Citation: Ann. Code § 16-304**

When a parent whose consent is required, after such notice as the court directs, cannot be located or has abandoned the prospective adopted person and voluntarily failed to contribute to his or her support for a period of at least 6 months preceding the date of the filing of the petition, the consent of that parent is not required.

The court may grant a petition for adoption without any of the consents specified above when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

### **When Consent Can Be Executed**

This issue is not addressed in the statutes reviewed.

### **How Consent Must Be Executed**

**Citation: Ann. Code §§ 16-304(a); 4-1406(f)**

A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, signed and acknowledged before an officer authorized by law to take acknowledgments, a representative of a licensed child-placing agency, or the Mayor, or unless a relinquishment of parental rights with respect to the prospective adopted person has been recorded and filed as provided by § 4-1406.

Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his or her rights and duties with respect to the permanent care and control of a child under age 16 unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his or her name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least one witness.

Each transfer or relinquishment of parental rights and any revocation of said relinquishment shall be recorded and filed by the child-placing agency in a properly sealed file in the Family Division of the Superior Court within 20 days after the expiration of the revocation period. Any subsequent relinquishment shall be filed by the child-placing agency in a properly sealed file in the Family Division of the Superior Court within 30 days after the date of relinquishment.

### **Revocation of Consent**

**Citation: Ann. Code § 4-1406(c)-(d)**

Any relinquishment of parental rights executed by a single natural parent or by both natural parents, other than by court order as provided in this subsection, may be automatically revoked by a verified writing executed by the single parent or both parents, respectively, and submitted to the agency within 14 calendar days of executing a legal relinquishment. Where both natural parents execute a relinquishment of parental rights, other than by court order, either parent may automatically revoke his or her relinquishment of parental rights by executing a verified writing submitted to the agency within 14 calendar days of executing the relinquishment. The rights of the parent not seeking custody shall be terminated, and the parent shall not have the power to obstruct the revocation. No relinquishment of parental rights shall be considered final until the revocation period has expired with no revocation having been made by the natural parent. Automatic revocation of relinquishment can be exercised only once.

A waiting period of 30 days from the date of revocation of the first relinquishment shall expire before a second relinquishment can be executed. A relinquishment, if exercised a second time, shall be irrevocable unless an additional right to revoke is granted by court order upon a finding that the relinquishment was not given voluntarily, e.g., the relinquishment was induced by fraud, coercion, material mistake, or other factors that bear on a determination of voluntariness.

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## **Florida**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Ann. Stat. § 63.062**

A petition to terminate parental rights pending adoption may be granted only if written consent has been executed by:

- The mother of the minor
- The father of the minor, if:
  - » The minor was conceived or born while the father was married to the mother.
  - » The minor is his child by adoption.
  - » The minor has been established by court proceeding to be his child.
  - » He has filed an affidavit of paternity.
  - » In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor and has filed such acknowledgment with the Office of Vital Statistics of the Department of Health within the required timeframes.

- Any person lawfully entitled to custody of the minor, if required by the court
- The court having jurisdiction to determine custody of the minor, if the person having physical custody of the minor does not have authority to consent to the adoption

If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In that case, no other consent is required.

A petition to adopt an adult may be granted if written consent to adoption has been executed by the adult and the adult's spouse, if any.

### **Consent of Child Being Adopted**

**Citation: Ann. Stat. § 63.062(1)(c)**

A child age 12 or older must consent unless the court determines it is in the child's best interests to dispense with consent.

### **When Parental Consent Is Not Needed**

**Citation: Ann. Stat. § 63.064**

The court may waive the consent of the following individuals to an adoption:

- A parent who has deserted a child without means of identification or who has abandoned a child
- A parent whose parental rights have been terminated by order of a court of competent jurisdiction
- A parent who has been judicially declared incompetent and for whom restoration of competency is medically improbable
- A legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably
- The spouse of the adopted person if the failure of the spouse to consent to the adoption is excused by reason of prolonged and unexplained absence, unavailability, incapacity, or circumstances that are found by the court to constitute unreasonable withholding of consent

### **When Consent Can Be Executed**

**Citation: Ann. Stat. § 63.082**

An affidavit of nonpaternity may be executed before the birth of the minor; however, the consent to an adoption shall not be executed before the birth of the minor except in a preplanned adoption pursuant to § 63.213.

A consent to the adoption of a minor shall not be executed by the birth mother sooner than 48 hours after the minor's birth or the day the birth mother has been notified in writing that she is fit to be released from the hospital or birth center, whichever is earlier.

A consent by a birth father or legal father may be executed at any time after the birth of the child.

### **How Consent Must Be Executed**

**Citation: Ann. Stat. § 63.082**

Consent to an adoption or an affidavit of nonpaternity shall be executed as follows:

- If by the adopted person, by oral or written statement in the presence of the court or by being acknowledged before a notary public and in the presence of two witnesses
- If by an agency, by affidavit from its authorized representative
- If by any other person, in the presence of the court or by affidavit acknowledged before a notary public and in the presence of two witnesses
- If by a court, by an appropriate order or certificate of the court

A minor parent has the power to consent to the adoption of his or her child and has the power to relinquish his or her control or custody of the child to an adoption entity. Such consent or relinquishment is valid and has the same force and effect as a consent or relinquishment executed by an adult parent. A minor parent, having executed a consent or relinquishment, may not revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

A consent or an affidavit of nonpaternity executed by a minor parent who is age 14 or younger must be witnessed by a parent, legal guardian, or court-appointed guardian ad litem.

The consent to adoption or the affidavit of nonpaternity must be signed in the presence of two witnesses and be acknowledged before a notary public who is not signing as one of the witnesses.

## Revocation of Consent

**Citation: Ann. Stat. § 63.082**

A consent to adoption executed by the mother within 48 hours of the child's birth is valid upon execution and may be withdrawn only if the court finds that it was obtained by fraud or duress.

When the minor to be adopted is older than age 6 months at the time of the execution of the consent, the consent to adoption is valid upon execution; however, it is subject to a 3-day revocation period.

If a person seeking to withdraw consent claims to be the father of the minor but has not been established to be the father by marriage, court order, or scientific testing, the court may order scientific paternity testing and reserve ruling on removal of the minor until the results of such testing have been filed with the court.

Following the revocation period for withdrawal of consent or the placement of the child with the prospective adoptive parents, whichever occurs later, consent may be withdrawn only when the court finds that the consent was obtained by fraud or duress.

An affidavit of nonpaternity may be withdrawn only if the court finds that the affidavit was obtained by fraud or duress.

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## Georgia

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Code § 19-8-4(a)**

A child who has any living parent or guardian may be adopted through the Department of Human Services or any child-placing agency only if each such parent and each such guardian:

- Has voluntarily and in writing surrendered all of his or her rights to the child to the department or to a child-placing agency and the department or agency thereafter consents to the adoption
- Has had all of his or her rights to the child terminated by order of a court of competent jurisdiction, the child has been committed by the court to the department or to a child-placing agency for placement for adoption, and the department or agency thereafter consents to the adoption

### Consent of Child Being Adopted

**Citation: Ann. Code § 19-8-4(b)**

In the case of a child age 14 or older, the written consent of the child to his or her adoption must be given and acknowledged in the presence of the court.

### When Parental Consent Is Not Needed

**Citation: Ann. Code § 19-8-10**

Surrender or termination of rights of a parent shall not be required as a prerequisite to the filing of a petition for adoption of a child of that parent when the court determines by clear and convincing evidence that the parent:

- Has abandoned the child
- Cannot be found after a diligent search has been made
- Is insane or otherwise incapacitated from surrendering such rights
- Caused his child to be conceived as a result of having nonconsensual sexual intercourse with the mother of his child or when the mother is younger than age 10
- Has failed to exercise proper parental care or control due to misconduct or inability

Surrender of rights of a parent shall not be required as a prerequisite to the filing of a petition for adoption of a child of that parent if that parent, for a period of 1 year or longer immediately prior to the filing of the petition for adoption, without justifiable cause, has significantly failed:

- To communicate or to make a bona fide attempt to communicate with that child in a meaningful, supportive, and parental manner
- To provide for the care and support of that child as required by law or judicial decree, and the court is of the opinion that the adoption is for the best interests of that child

### When Consent Can Be Executed

**Citation: Ann. Code § 19-8-5**

Consent may be executed any time after the birth of the child.



**How Consent Must Be Executed****Citation: Ann. Code §§ 19-8-4; 19-8-5**

The surrender to the department or to a child-placing agency specified in this Code section shall be executed in the presence of a representative of the department or the agency and a notary. A copy shall be delivered to the individual signing the surrender at the time of the execution thereof.

The surrender of a child to be adopted by a third party who is neither the stepparent nor relative of that child shall be executed in the presence of a notary. A form for the affidavit of surrender can be found in § 19-8-26.

A biological father who is not the legal father of a child may surrender all his rights to the child for purposes of adoption. The biological father who is not the legal father of a child may execute a surrender of his rights to the child prior to the birth of the child for the purpose of adoption. A prebirth surrender, when signed under oath by the alleged biological father, shall serve to relinquish the alleged biological father's rights to the child and to waive the alleged biological father's right to notice of any proceeding with respect to the child's adoption, custody, or guardianship. The court in any adoption proceeding shall have jurisdiction to enter a final order of adoption of the child based upon the prebirth surrender and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes.

**Revocation of Consent****Citation: Ann. Code § 19-8-9(b)**

A person signing a surrender shall have the right to withdraw the surrender by written notice delivered in person or mailed by registered mail or statutory overnight delivery within 10 days after signing. After 10 days, a surrender may not be withdrawn.

The surrender document is not valid unless it states the right of withdrawal.

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**Guam***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Code Tit. 19, § 4206**

When a petition is filed by a relative of the child within the second degree either by blood or affinity, no adoption of that child may be ordered unless the written consent to the adoption of the child by the petitioner is given by each parent of the child or, if there is no parent, by the guardian of the child's person. A minor parent may consent to an adoption, but his or her consent shall be effective only when concurred by his or her parents or guardian.

When a petition is filed by any other person, no adoption of a child may be ordered unless the written consent to the adoption of that child by the petitioner is given by the child's guardian.

**Consent of Child Being Adopted****Citation: Ann. Code Tit. 19, § 4206**

A child age 12 or older must consent to the adoption.

**When Parental Consent Is Not Needed****Citation: Ann. Code Tit. 19, § 4206(b)**

When the consent of a guardian of the child's person is required, the court may dispense with such consent only if it finds that the withholding of that consent is arbitrary and capricious.

**When Consent Can Be Executed**

This issue is not addressed in the statutes reviewed.

**How Consent Must Be Executed****Citation: Ann. Code Tit. 19, §§ 4206(b); 4207**

Consents shall be acknowledged before a notary public and witnessed by a representative of the court.

Written consent shall be attached to the adoption petition. In the case of a consent by a guardian, the guardian shall file directly with the court satisfactory evidence of his or her authority to consent.

When the parent-child relationship has been terminated by judicial decree, a certified copy of the termination decree shall be filed directly with the court by the guardian of the child's person.

**Revocation of Consent****Citation: Ann. Code Tit. 19, § 4208**

Withdrawal of any consent for adoption shall not be permitted except when the court finds that withdrawal will be in the best interests of the child. The entry of an order of adoption renders any consent irrevocable.

**Hawaii***Current Through March 2017***Who Must Consent to an Adoption****Citation: Rev. Stat. § 578-2(a)**

Written consent to a proposed adoption must be executed by:

- The mother of the child
- A legal father
- An adjudicated father whose relationship to the child has been determined by a court
- A presumed father
- A concerned natural father who is not the legal, adjudicated, or presumed father but who has demonstrated a reasonable degree of interest, concern, or responsibility as to the welfare of a child:
  - » During the first 30 days after the child's birth
  - » Prior to the execution of a valid consent by the mother of the child
  - » Prior to the placement of the child with adoptive parents
- Any person or agency having legal custody of the child or legally empowered to consent
- The court having jurisdiction of the custody of the child if the legal guardian or legal custodian of the person of the child is not empowered to consent to adoption

A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse, if the adult is married.

**Consent of Child Being Adopted****Citation: Rev. Stat. § 578-2(a)(8)**

A child age 10 or older must consent unless the court, in the child's best interests, dispenses with the need for the child to consent.

**When Parental Consent Is Not Needed****Citation: Rev. Stat. § 578-2**

Consent is not required from the following:

- A parent who has deserted a child for a period of 90 days without affording means of identification
- A parent who has voluntarily surrendered the care and custody of the child to another for a period of 2 years
- A parent whose child is in the custody of another, who has failed for a period of at least 1 year to communicate with the child or provide for the care and support of the child when able to do so
- A natural father who was not married to the child's mother at the time of the child's conception or birth and has not established paternity
- A parent whose parental rights have been judicially terminated
- A parent judicially declared mentally ill, mentally retarded, or incapacitated from giving consent
- Any legal guardian or custodian who is found by the court to be withholding consent unreasonably
- A parent of a child who has been in the custody of a petitioner for at least 1 year and who entered the United States as a consequence of extraordinary circumstances in the child's country of origin, by reason of which the existence, identity, or whereabouts of the child's parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child's identity or availability for adoption
- Any parent of the adopted person if the adopted person is an adult eligible for adoption under this section
- A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to § 587A-33

**When Consent Can Be Executed****Citation: Rev. Stat. § 571-61**

The petition for relinquishment may be filed at any time following the mother's sixth month of pregnancy. No judgment may be entered upon a petition concerning an unborn child until after the birth of the child and the petitioners have filed a written reaffirmation of their desires to relinquish and the petitioners have been given no less than a 10-day notice of a proposal for the entry of judgment and an opportunity to be heard in connection with that proposal.

**How Consent Must Be Executed****Citation: Rev. Stat. § 571-61**

A parent who desires to relinquish his or her parental rights to any natural or adopted child and thus make the child available for adoption or readoption may petition the family court of the circuit in which he or she resides or the circuit in which the child resides or was born for the entry of a judgment of termination of parental rights.

**Revocation of Consent****Citation: Rev. Stat. § 578-2(f)**

Consent cannot be withdrawn after the child is placed with prospective adoptive parents unless the court finds it would be in the child's best interests.

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**Idaho***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Stat. § 16-1504**

Consent to adoption is required from:

- Both parents or the surviving parent of a child who was conceived or born within a marriage unless the child is age 18 or older
- The mother of a child born outside of marriage
- Any birth parent who has been adjudicated to be the child's birth father by a court of competent jurisdiction prior to the mother's execution of consent
- An unmarried birth father who has established paternity of the child
- Any legally appointed custodian or guardian of the child
- The guardian or conservator of an incapacitated adult, if one has been appointed
- The adopted person's spouse, if any
- The father of an illegitimate child who has adopted the child by acknowledgment

A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as consent executed by an adult parent.

**Consent of Child Being Adopted****Citation: Ann. Stat. § 16-1504**

A child age 12 or older must consent to the adoption unless he or she lacks the mental capacity to consent.

**When Parental Consent Is Not Needed****Citation: Ann. Stat. § 16-1504**

No consent shall be required of, nor notice given to, any person whose parental relationship to that child has been terminated.

**When Consent Can Be Executed**

This issue is not addressed in the statutes reviewed.

**How Consent Must Be Executed****Citation: Ann. Stat. §§ 16-1506; 16-2005(4)**

Any person whose consent is required shall execute the consent in writing in a form consistent with the provisions of § 16-2005(4). A consent that is filed in the court where the application is made shall be deemed a sufficient appearance on the part of that person.

The court may grant an order terminating the relationship when a consent to termination in the manner and form prescribed by this chapter has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child. When the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held.

Consents required by this chapter must be witnessed by a district judge, a magistrate of a district court, or an equivalent judicial officer of the state where a person consenting resides or is present. A form is provided in the statute.

### **Revocation of Consent**

**Citation: Ann. Stat. § 16-1515**

If the parent revokes consent and petitions for custody of the child, the parent must reimburse the adoptive parents for expenses paid.

## **Illinois**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Cons. Stat. Ch. 750, § 50/8(b)**

Consent is required of the following persons:

- The mother
- The father, if the father:
  - » Was married to the mother on the date of birth of the child or within 300 days before the birth of the child
  - » Is the father by adoption, an order of parentage, or an acknowledgment of parentage or paternity
  - » Openly lived with the child, the child's birth mother, or both and held himself out to be the child's birth father during the first 30 days following the birth of the child
  - » Made a good-faith effort to pay a reasonable amount of the expenses related to the birth of the child and to provide a reasonable amount for the financial support of the child
  - » Has maintained substantial and continuous or repeated contact with the child
  - » Has registered in a timely manner with the Putative Father Registry
- The legal guardian of the person of the child, if there is no surviving parent
- An agency if the child has been surrendered for adoption to such agency
- Any person or agency having legal custody of a child by court order, if the parental rights of the parents have been terminated

### **Consent of Child Being Adopted**

**Citation: Comp. Stat. Ch. 750, § 50/12**

A child age 14 or older must consent. The court may waive consent if the child is in need of mental treatment or is a person with an intellectual disability.

### **When Parental Consent Is Not Needed**

**Citation: Comp. Stat. Ch. 750, § 50/8(a)**

Consent is not required when the person whose consent or surrender would otherwise be required shall be found by the court:

- To be an unfit person
- Not to be the birth or adoptive father of the child
- To have waived his or her parental rights to the child
- To be the parent of an adult sought to be adopted
- To be the father of the child as a result of criminal sexual abuse or assault
- To be the father of a child who:
  - » Is a family member of the mother of the child, and the mother is under age 18 at the time of the child's conception
  - » Is at least 5 years older than the child's mother, and the mother was under age 17 at the time of the child's conception, unless the mother and father voluntarily acknowledge the father's paternity of the child by marrying or by establishing the father's paternity

**When Consent Can Be Executed****Citation: Comp. Stat. Ch. 750, § 50/9**

The mother's consent shall not be taken less than 72 hours after the child's birth. A father may consent before or after the birth of the child.

Consent may be given to a standby adoption by a terminally ill parent to become effective when the parent dies or requests finalization.

**How Consent Must Be Executed****Citation: Comp. Stat. Ch. 750, §§ 50/8; 50/10**

The execution and verification of the petition by any petitioner who is also a parent of the child sought to be adopted shall be sufficient evidence of that parent's consent to the adoption.

Consent to an agency may be taken by an agency representative. In a direct placement, consent is acknowledged in court unless the court waives the appearance.

If the person signing a consent is in the military service of the United States, the consent may be acknowledged before a commissioned officer, and the signature of that officer on the certificate shall be verified or acknowledged before a notary public.

Forms to be used are contained in the statute.

**Revocation of Consent****Citation: Comp. Stat. Ch. 750, §§ 50/11; 50/9**

A consent to adoption by a parent, including a minor, shall be irrevocable unless it was obtained by fraud or duress. No action to void or revoke a consent, including an action based on fraud or duress, may be commenced after 12 months from the date the consent was executed.

The consent or surrender of a parent who is a minor shall not be voidable because of such minority.

If the father consents before the birth of the child, that consent may be revoked within 72 hours after the birth.

**Indiana***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Code § 31-19-9-1**

Written consent to adoption must be executed by the following:

- Each living parent of a child born in wedlock
- The mother of a child born out of wedlock and the father of a child who has established paternity
- Each person, agency, or county Office of Family and Children having lawful custody of the child
- The court having jurisdiction of the custody of the child if the legal guardian or custodian of the person of the child is not empowered to consent to the adoption
- The spouse of the child to be adopted, if the child is married

A parent who is under age 18 may consent to an adoption without the concurrence of the individual's parents or guardian unless the court, in the court's discretion, determines that it is in the best interests of the child to be adopted to require the concurrence.

**Consent of Child Being Adopted****Citation: Ann. Code § 31-19-9-1**

A child age 14 or older must consent to the adoption.

**When Parental Consent Is Not Needed****Citation: Ann. Code §§ 31-19-9-8 to 31-19-9-10**

Consent is not required from any of the following:

- A parent who is adjudged to have abandoned the child for at least 6 months immediately prior to filing of the petition
- A parent of a child in the custody of another person who fails for a period of at least 1 year to communicate significantly or provide for the care and support of the child when able to do so
- A birth father of a child born out of wedlock who has not established paternity

- A birth father of a child born out of wedlock whose child was conceived as a result of rape, child molesting, sexual misconduct with a minor, or incest
- A putative father whose consent to adoption is irrevocably implied, who established paternity after an adoption petition was filed, or who failed to register with the putative father registry
- A parent who has relinquished the right to consent or whose rights have been terminated
- A parent judicially declared incompetent or mentally defective
- A legal guardian who has unreasonably failed to consent to the adoption
- A parent who has been found to be unfit
- A birth father who had denied paternity before or after the birth of the child

Consent to adoption is not required from a parent if the parent is convicted of committing any of the crimes listed below and the victim is the child's other parent:

- Murder, causing suicide, or voluntary manslaughter
- An attempt to commit a crime described above
- A crime in another state that is substantially similar to a crime described above

Consent to adoption is not required from a parent if the parent is convicted of any of the following and the victim is the child or the child's sibling, half-sibling, or step-sibling:

- Murder, causing suicide, or voluntary manslaughter
- Rape, criminal deviate conduct, child molesting, or incest
- Neglect of a dependent or battery
- An attempt to commit any of the above

#### **When Consent Can Be Executed**

**Citation: Ann. Code § 31-19-9-2**

The consent to adoption may be executed at any time after the birth of the child. The child's mother may not execute a consent to adoption before the birth of the child.

The child's father may execute a consent to adoption before the birth of the child if the consent to adoption:

- Is in writing
- Is signed by the child's father in the presence of a notary public
- Contains an acknowledgment that the consent to adoption is irrevocable and the child's father will not receive notice of the adoption proceedings

#### **How Consent Must Be Executed**

**Citation: Ann. Code § 31-19-9-2**

The consent to adoption may be executed in the presence of any of the following:

- The court
- A notary public or other person authorized to take acknowledgments
- An authorized agent of the department, a county office of family and children, or a licensed child-placing agency

#### **Revocation of Consent**

**Citation: Ann. Code §§ 31-19-9-2(d); 31-19-10-3; 31-19-10-4**

A child's father who consents to the adoption of the child prior to the child's birth may not challenge or contest the child's adoption.

A consent to adoption may be withdrawn no later than 30 days after consent to adoption is signed, if the court finds that the person seeking the withdrawal is acting in the best interests of the child.

A consent to adoption may not be withdrawn after the entry of the adoption decree.



**Iowa**

*Current Through March 2017*

**Who Must Consent to an Adoption**

**Citation: Ann. Stat. § 600.7**

The following persons must consent to an adoption:

- Any guardian
- The spouse of a petitioner who is a stepparent
- The spouse of a petitioner who is separately petitioning to adopt an adult person

**Consent of Child Being Adopted**

**Citation: Ann. Stat. § 600.7**

A child age 14 or older must consent to the adoption.

**When Parental Consent Is Not Needed**

**Citation: Ann. Stat. §§ 600.7; 600A.8**

Consent may be unnecessary if:

- Any person required to consent refuses to or cannot be located.
- A parent has signed a release of custody and the release has not been revoked.
- A parent has petitioned for termination of parental rights.
- The parent has abandoned the child.
- A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.
- A parent does not object to the termination after having been given proper notice and the opportunity to object.
- An adoptive parent requests termination of parental rights and the parent-child relationship based upon a showing that the adoption was fraudulently induced.
- The parent has been determined to be a chronic substance abuser and the parent has committed a second or subsequent domestic abuse assault.
- The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.
- The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of 5 or more years.
- The parent has been convicted of a felony offense against a minor, the parent is divorced from or was never married to the minor's other parent, and the parent is incarcerated for at least 5 years for that offense.
- The child was conceived as the result of sexual abuse, and the biological parent against whom the sexual abuse was perpetrated requests termination of the parental rights of the person who perpetrated the abuse.

**When Consent Can Be Executed**

**Citation: Ann. Stat. § 600A.4(2)(g)**

Parental release of custody may not be executed until at least 72 hours after the child's birth.

**How Consent Must Be Executed**

**Citation: Ann. Stat. §§ 600.7; 600A.4**

A consent to the adoption shall be in writing, shall name the child and the petitioner, shall be signed by the person consenting, and shall be made in the following manner:

- Any minor adopted person who is age 14 or older, in the presence of the juvenile court or court in which the adoption petition is filed
- By any other person, either in the presence of the court or before a notary public

A release of custody shall:

- Be accepted only by an agency or a person making an independent placement
- Not be accepted by a person who in any way intends to adopt the child

- Be in writing
- Contain the written acknowledgment from the birth parents that 3 hours of counseling have been offered to the birth parents to take place after the birth of the child
- Be witnessed by two persons familiar with the parent-child relationship
- Name the person accepting the release
- Be followed, within a reasonable time, by the filing of a petition for termination of parental rights under § 600A.5

### **Revocation of Consent**

#### **Citation: Ann. Stat. §§ 600.7; 600A.4**

A consent to the adoption may be withdrawn prior to the issuance of an adoption decree by the filing of an affidavit of consent withdrawal with the court.

Either a parent who has signed a release of custody or a nonsigning parent may, at any time prior to the entry of an order terminating parental rights, request the court to order the revocation of any release of custody previously executed by either parent.

If such request is by a signing parent and is within 96 hours of the time such parent signed a release of custody, the court shall order the release revoked. Otherwise, the juvenile court shall order the release or releases revoked only upon clear and convincing evidence that good cause exists for revocation.

Good cause for revocation includes, but is not limited to, a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact that was material to its execution. In determining whether good cause exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child, including avoidance of a disruption of an existing relationship between a parent and child.

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## **Kansas**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

#### **Citation: Ann. Stat. §§ 59-2129; 59-2136(d)**

Consent to an independent adoption shall be given by:

- The living parents of the child
- One of the parents of the child if the other's consent is found unnecessary under § 59-2136
- The legal guardian of the child if both parents are dead or if their consent is found to be unnecessary
- The court entering an order under § 38-2270
- The judge of any court having jurisdiction over the child pursuant to the code for care of children if parental rights have not been terminated

Consent to an agency adoption shall be given by the authorized representative of the agency having authority to consent to the adoption of the child.

In a stepparent adoption, if a mother consents to the adoption of a child who has a presumed father or a father for whom the child is a legitimate child, the consent of such father must be given to the adoption unless such father has failed or refused to assume the duties of a parent for 2 consecutive years immediately prior to the filing of the adoption petition or is incapable of giving such consent.

### **Consent of Child Being Adopted**

#### **Citation: Ann. Stat. § 59-2129**

Consent to adoption shall be given by the child sought to be adopted if the child is over age 14 and of sound intellect.

### **When Parental Consent Is Not Needed**

#### **Citation: Ann. Stat. § 59-2136(d), (h)**

If a mother desires to consent to the adoption of her child, a petition shall be filed in the district court to terminate the parental rights of the father unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

The court may terminate the father's parental rights upon a finding, by clear and convincing evidence, of any of the following:

- The father abandoned or neglected the child after having knowledge of the child's birth.
- The father is unfit as a parent or incapable of giving consent.
- The father has made no reasonable efforts to support or communicate with the child.

- The father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the 6 months prior to the child's birth.
- The father abandoned the mother after having knowledge of the pregnancy.
- The birth of the child was the result of rape of the mother.
- The father has failed or refused to assume the duties of a parent for 2 consecutive years immediately prior to the filing of the petition.

In making a finding whether parental rights shall be terminated, the court may:

- Consider and weigh the best interests of the child
- Disregard incidental visitations, contacts, communications, or contributions

As far as is applicable, the provisions also apply to the mother.

#### **When Consent Can Be Executed**

**Citation: Ann. Stat. §§ 59-2114; 59-2116**

A consent or relinquishment may not be given by the mother or accepted until 12 hours after the birth of a child. Any consent or relinquishment given by the mother before 12 hours after the birth of a child is voidable, prior to the final decree of adoption.

Consent in all cases shall have been executed not more than 6 months prior to the date the petition for adoption is filed.

#### **How Consent Must Be Executed**

**Citation: Ann. Stat. §§ 59-2114; 59-2115**

Consent shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If consent is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the consenting person of the consequences of the consent.

Minority of a parent shall not invalidate a parent's consent except that a minor parent shall have the advice of independent legal counsel as to the consequences of the consent prior to its execution. The attorney providing independent legal advice to the minor parent shall be present at the execution of the consent. Unless the minor parent is otherwise represented by independent legal counsel, the petitioner or child-placing agency shall provide independent legal counsel to the minor parent at such petitioner's or child-placing agency's sole expense.

#### **Revocation of Consent**

**Citation: Ann. Stat. § 59-2114**

A consent is final when executed unless the consenting party, prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with the consenting party.

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## **Kentucky**

*Current Through March 2017*

#### **Who Must Consent to an Adoption**

**Citation: Rev. Stat. § 199.500**

An adoption shall not be granted without the voluntary and informed consent of:

- The living parent or parents of a child born in lawful wedlock
- The mother of the child born out of wedlock
- The father of the child born out of wedlock, if paternity is established in a legal action or in an affidavit acknowledging paternity of the child

A minor parent may consent to an adoption, but a guardian ad litem for the parent shall be appointed.

#### **Consent of Child Being Adopted**

**Citation: Rev. Stat. § 199.500**

In the case of a child age 12 or older, the consent of the child shall be given in court. The court in its discretion may waive this requirement.

### When Parental Consent Is Not Needed

**Citation: Rev. Stat. §§ 199.500; 199.502**

The consent of a parent shall not be required if the parent:

- Has been adjudged mentally disabled
- Has had his or her parental rights terminated
- Is divorced from the other parent, his or her rights have been terminated, and consent has been given by the parent having custody and control of the child
- Is a birth parent who has not established parental rights
- Has abandoned the child for a period of not less than 90 days
- Has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury
- Has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm
- Has been convicted of a felony that involved the infliction of serious physical injury to the child
- For a period of not less than 6 months has continuously or repeatedly failed to provide, refused to provide, or been substantially incapable of providing essential parental care and protection for the child, and there is no reasonable expectation of improvement in parental care and protection
- Has caused or allowed the child to be sexually abused or exploited
- For reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being, and there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future
- Has had his or her rights to another child involuntarily terminated and the condition or factor that was the basis for the previous termination finding has not been corrected
- Has been convicted of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect

### When Consent Can Be Executed

**Citation: Rev. Stat. § 199.500**

An adoption shall not be granted or a consent for adoption shall not be held valid if the consent for adoption is given prior to 72 hours after the birth of the child.

### How Consent Must Be Executed

**Citation: Rev. Stat. § 625.040**

A petition for voluntary termination of parental rights shall be filed in the circuit court of the county where the petitioner or child resides or in the circuit court in the county in which juvenile court actions concerning the child have commenced.

### Revocation of Consent

**Citation: Rev. Stat. § 199.500**

If placement approval by the secretary of the Cabinet for Health and Family Services is required, the voluntary and informed consent shall become final and irrevocable 20 days after the placement approval or the execution of the voluntary and informed consent, whichever is later.

If placement approval by the secretary is not required, the voluntary and informed consent shall become final and irrevocable 20 days after the execution of the voluntary and informed consent.

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## Louisiana

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ch. Code Art. 1193; 1113**

Consent to the adoption of a child shall be required of the following:

- The mother of the child
- The father of the child, regardless of the child's actual paternity, if any of the following apply:
  - » The child is a child born of the marriage.

- » The father is presumed to be the father of the child in accordance with law.
- The alleged father of the child who has established his parental rights in accordance with law
- The biological father of the child whose paternity has been determined by a judgment of filiation and who has established his parental rights
- The custodial agency that has placed the child for adoption

If a parent executing a surrender in a private adoption is a minor, the parents or tutor of the minor must join in the surrender unless the minor parent has been judicially emancipated or emancipated by marriage.

### **Consent of Child Being Adopted**

This issue is not addressed in the statutes reviewed.

### **When Parental Consent Is Not Needed**

**Citation: Ch. Code Art. 1193; 1245**

The consent of the parent is not required if his or her rights have been terminated in accordance with title X or XI.

The court may grant an adoption without the consent of the agency if the adoption is in the best interests of the child and there is a finding that the agency has unreasonably withheld its consent.

Parental consent is not necessary when a petitioner in an intrafamily adoption has been granted custody of the child by a court of competent jurisdiction, and the parent has failed to support, visit, or communicate with the child without just cause for at least 6 months.

Parental consent is not necessary when the spouse of a stepparent petitioner has been granted sole or joint custody of the child or is otherwise exercising lawful custody of the child, and the other parent has refused to support, visit, or communicate with the child without just cause for at least 6 months.

### **When Consent Can Be Executed**

**Citation: Ch. Code Art. 1122(b)(1); 1130; 1195**

The act of surrender shall not be executed earlier than the third day following the birth of the child if it is an agency adoption or the fifth day following the birth of the child if the adoption is a private adoption.

A father may execute an act of surrender prior to the birth of the child or at any time after the birth. However, any surrender executed by a father earlier than the fifth day following the birth of the child shall not be irrevocable until the fifth day following the birth of the child.

An alleged or adjudicated father may execute an act of surrender prior to the birth of the child or at any time after the birth. His surrender shall be irrevocable upon execution.

### **How Consent Must Be Executed**

**Citation: Ch. Code Art. 1120; 1122**

Prior to the execution of any surrender, the parent shall participate in a minimum of two counseling sessions with a licensed social worker, psychologist, psychiatrist, or a counselor employed by a licensed child-placing agency.

The act of surrender shall make the following declarations:

- The parent has no mental incapacity.
- A minor parent is joined in the act of surrender by the parents or tutor or has the consent of the court except when surrendering to an agency.
- The parent has been informed and understands that the act of surrender is irrevocable.
- The parent freely and voluntarily surrenders custody of the child for the purpose of adoption and waives notice of any subsequent adoption proceedings.
- The parent has been informed of the voluntary registration law for contact between the parent and the surrendered child upon the child's reaching majority.
- A surrendering parent, the agency accepting the surrender, or a prospective adoptive parent are domiciled in the state, or the child is in the custody of the Department of Social Services.
- In an adoption arranged by the department, execution of the surrender is made without conditions of any kind.
- The surrendering mother does or does not wish to be notified of a hearing of any opposition to the adoption filed pursuant to article 1137.

- The surrendering parent does or does not wish the future release of identifying information in the event of a medical necessity for which information is needed in order to treat the child.
- The parent has been informed that the Statement of Family History will be given to the adoptive parents at the time of placement and made available, upon request, to the child at age 18.
- The parent has received the required counseling sessions, or in the case of the father, he has waived such counseling.
- The parent has consulted with and been fully advised by an attorney, other than the attorney of the prospective adoptive parent.

#### **Revocation of Consent**

**Citation: Ch. Code Art. 1123; 1147; 1148; 1195**

Consent is irrevocable upon execution and acceptance by the court.

Except as noted in article 1130, no act of surrender shall be subject to annulment except upon proof of duress or fraud. No action to annul a surrender shall be brought for any reason after 90 days from its execution or after a decree of adoption has been entered, whichever is earlier.

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#### **Maine**

*Current Through March 2017*

#### **Who Must Consent to an Adoption**

**Citation: Rev. Stat. Tit. 18-A, § 9-302**

Written consent to the adoption must be given by:

- Each living parent
- The person or agency having legal custody or guardianship of the child
- A guardian appointed by the court when the child has no living parent, guardian, or legal custodian who may consent

#### **Consent of Child Being Adopted**

**Citation: Rev. Stat. Tit. 18-A, § 9-302**

Written consent to the adoption must be given by the child if he or she is age 14 or older.

#### **When Parental Consent Is Not Needed**

**Citation: Rev. Stat. Tit. 18-A, § 9-302**

Consent to adoption is not required of:

- A putative father or a legal father who is not the birth father if he:
  - » Received notice and failed to respond to the notice within the prescribed time period
  - » Waived his right to notice under § 9-201(c)
  - » Failed to meet the standards of § 9-201(i)
  - » Holds no parental rights regarding the child under the laws of the foreign jurisdiction in which the child was born
- A parent whose parental rights have been terminated
- A parent who has executed a surrender and release pursuant to § 9-202
- A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country
- The parent of an adopted person who is age 18 or older

#### **When Consent Can Be Executed**

**Citation: Rev. Stat. Tit. 18-A, §§ 9-202; 9-302**

Consent can be executed any time after the child's birth. A petition for adoption must be pending before consent is executed.

#### **How Consent Must Be Executed**

**Citation: Rev. Stat. Tit. 18-A, § 9-202**

The parents or the surviving parent must execute the consent in the presence of the judge. The child, if age 14 or older, must execute the consent in the presence of the judge.

The court may approve a consent only when the following conditions are met:

- A licensed child-placing agency or the Maine Department of Health and Human Services certifies that counseling was provided or was offered and refused.
- The court has explained the individual's parental rights and responsibilities, the effects of the consent or the surrender and release, that in all but specific situations the individual has the right to revoke the consent within 3 days, and the existence of the adoption registry and the services available under title 22, § 2706-A.
- The court determines that the consent has been duly executed and was given freely after the parent was informed of the parent's rights.
- At least 3 days have elapsed since the parents or parent executed the consent and the parents or parent did not withdraw or revoke the consent.

Consent may be acknowledged before a notary public who is not an attorney for the adopting parents or a partner, associate, or employee of an attorney for the adopting parents when consent is given by:

- The department or a licensed child-placing agency
- A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country

### **Revocation of Consent**

**Citation: Rev. Stat. Tit. 18-A, § 9-202**

A consent or release will not be valid until 3 days after it has been executed. A consent or a surrender and release is then final and irrevocable when duly executed, except that a consent is final only for the adoption consented to, and if that adoption petition is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to § 9-205.

## **Maryland**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Fam. Law § 5-338(a)**

Consent to an adoption is required from the following persons:

- The birth mother and father
- If parental rights have been terminated, the head of the agency that has been awarded guardianship
- The director of the local department of social services with custody of the child

### **Consent of Child Being Adopted**

**Citation: Fam. Law § 5-338(a)(3)**

The court may grant an adoption only if the child is represented by an attorney and he or she:

- Consents to the adoption, if at least age 10
- Does not object to the adoption, if under age 10

### **When Parental Consent Is Not Needed**

**Citation: Fam. Law § 5-3B-22**

A court may allow adoption without parental consent if the court finds by clear and convincing evidence that:

- The parent has not had custody of the prospective adopted person for at least 1 year.
- The child to be adopted has significant emotional ties to and feelings for the petitioner.
- The parent has not maintained meaningful contact with the child while the petitioner had custody, notwithstanding an opportunity to do so.
- The parent has failed to contribute to the child's physical care and support, notwithstanding the ability to do so.
- The parent has subjected the child to chronic abuse, chronic and life-threatening neglect, sexual abuse, or torture.
- The parent has been convicted of abuse of any offspring.
- The parent has been convicted, in any state or any court of the United States, of:
  - » A crime of violence against a minor offspring of the parent, the child, or another parent of the child
  - » Aiding or abetting, conspiring, or soliciting to commit a crime described above
- The parent has, other than by consent, lost parental rights to a sibling of the child.



**When Consent Can Be Executed****Citation: Fam. Law § 5-3B-21(2)**

Consent to adoption is not valid unless the consent is given after the prospective adopted child is born.

**How Consent Must Be Executed****Citation: Fam. Law §§ 5-339; 5-351**

Consent to an adoption is not valid unless:

- The consent is given in a language that the party understands.
- If given in a language other than English, the consent:
  - » Is given before a judge on the record
  - » Is accompanied by the affidavit of a translator stating that the translation of the document of consent is accurate
- The consent names the child.
- The consent contains enough information to identify the prospective adoptive parent.
- The party has received written notice or on-the-record notice of:
  - » Provisions for revocation of consent
  - » The search rights of adopted persons and parents under § 5-359 and the search rights of adopted persons, parents, and siblings under subtitle 4B
  - » The right to file a disclosure veto under § 5-359
- The consent is accompanied by an affidavit of counsel stating that a parent who is a minor or has a disability consents knowingly and voluntarily.

**Revocation of Consent****Citation: Fam. Law §§ 5-339; 5-351**

A parent may revoke consent to adoption at any time within the later of:

- 30 days after the parent signs the consent
- 30 days after the adoption petition is filed, after which consent is irrevocable

A local department, a guardian, or the child may revoke consent to an adoption at any time before a juvenile court enters an order of adoption.

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**Massachusetts***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Laws Ch. 210, § 2**

Written consent to the adoption is required from:

- The lawful parents, who may be previous adoptive parents
- A surviving parent
- The mother only, if the child has been born out of wedlock
- The child's spouse, if any

If an agency or person receiving a child born out of wedlock for purposes of a subsequent adoption receives from the child's mother an executed consent and no person has acknowledged paternity of the child or has been adjudicated the father of the child by any court of competent jurisdiction, then the person or agency shall request that the mother voluntarily provide a sworn written statement, executed before a notary and in the presence of two competent witnesses, one of whom shall be selected by the mother, that identifies the child's father and his current or last known address. Any such statement shall be used solely for the purpose of notifying the person named as the father of the status of the child.

**Consent of Child Being Adopted****Citation: Ann. Laws Ch. 210, § 2**

A child who is age 12 or older must consent to the adoption.

### **When Parental Consent Is Not Needed**

#### **Citation: Ann. Laws Ch. 210, § 3**

The consent of the persons named above shall not be required if:

- The person to be adopted is age 18 or older.
- The court finds that the adoption is in the best interests of the child due to parental unfitness.

A finding of unfitness may be based on the following:

- The child has been abandoned.
- The child or another child has been abused or neglected.
- The child has been in out-of-home placement for at least 6 months and the parents have not maintained significant and meaningful contact with the child.
- The child is age 4 or older and has been in the custody of the department for at least 12 of the past 15 months and cannot be returned home.
- The child is younger than age 4 and has been in the custody of the department for at least 6 of the past 12 months and cannot be returned home.
- The parent, without excuse, fails to provide proper care or custody for the child.
- Because of the lengthy absence of the parent or the parent's inability to meet the needs of the child, the child has formed a strong, positive bond with a substitute caregiver.
- The parent has made no effort to remedy conditions that create a risk of harm to the child.
- The child or another child has been subjected to severe or repetitive conduct of a physically, emotionally, or sexually abusive or neglectful nature.
- The parent has willfully failed to visit and support a child who is not in the custody of the parent.
- The parent suffers from a condition, such as alcohol or drug addiction, mental deficiency, or mental illness, that makes the parent unlikely to provide minimally acceptable care of the child.
- The parent's conviction of a felony will deprive the child of a stable home for a period of years.
- There exists a prior pattern of parental neglect or misconduct or a felony assault that resulted in serious bodily injury to the child and a likelihood of future harm to the child based on such prior pattern or assault.

### **When Consent Can Be Executed**

#### **Citation: Ann. Laws Ch. 210, § 2**

Written consent shall be executed no sooner than the fourth day after the birth of the child.

### **How Consent Must Be Executed**

#### **Citation: Ann. Laws Ch. 210, § 2**

The written consent shall be attested and subscribed before a notary public in the presence of two competent witnesses, one of whom shall be selected by the consenting person. The agency or person receiving custody shall act as guardian of the child until such time as a court of competent jurisdiction appoints a guardian or grants a petition for adoption. A copy of the consent shall be filed with the Department of Children and Families.

The form of the consent is provided in statute.

If an agency or person receiving a child born out of wedlock for purposes of a subsequent adoption receives from the child's mother an executed consent form and no person has acknowledged paternity of the child or has been adjudicated the father of the child by any court of competent jurisdiction, then the person or agency shall request that the mother voluntarily provide a sworn written statement, executed before a notary and in the presence of two competent witnesses, one of whom shall be selected by the mother, that identifies the child's father and his current or last known address. Any such statement shall be used solely for the purpose of notifying the person named as the father of the status of the child.

### **Revocation of Consent**

#### **Citation: Ann. Laws Ch. 210, § 2**

A consent executed in accordance with the provisions of this section shall be final and irrevocable from the date of execution.

## Michigan

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Comp. Laws § 710.43**

Consent to adoption shall be executed by:

- Each parent or the surviving parent
- The authorized representative of the department or of a child-placing agency to whom the child has been permanently committed by an order of the court or to whom the child has been released
- The court or a tribal court having permanent custody of the child
- The guardian of the child, if a guardian has been appointed
- The guardian of a parent, if a guardian has been appointed
- The authorized representative of a court or child-placing agency of another state or country that has authority to consent to adoption

If the parent of the child to be adopted is an unemancipated minor, that parent's consent is not valid unless a parent, guardian, or guardian ad litem of that minor parent has also executed the consent.

The guardian of the child to be adopted or a parent shall not execute a consent to that child's adoption unless the guardian has first obtained authority to execute the consent from the court that appointed the guardian.

### Consent of Child Being Adopted

**Citation: Comp. Laws §§ 710.43; 710.44**

A child who is age 14 or older must consent to the adoption.

If the adoptee's consent to adoption is required, the consent shall not be executed until after the judge has fully explained to the adoptee the fact that he or she is consenting to acquire permanently the adopting parent or parents as his or her legal parent or parents as though the adoptee had been born to the adopting parent or parents.

### When Parental Consent Is Not Needed

**Citation: Comp. Laws §§ 710.37; 710.43; 710.51(6)**

The court may permanently terminate the rights of the putative father when he:

- Submits a verified affirmation of his paternity and a denial of his interest in custody of the child
- Files a disclaimer of paternity
- Was served with a notice of intent to release or consent at least 30 days before the expected date of birth but failed to file an intent to claim paternity either before the expected date of birth or before the birth of the child
- Is given proper notice of hearing but either fails to appear at the hearing or appears and denies his interest in custody of the child
- Has not made provision for the child's care and did not provide support for the mother during her pregnancy
- Has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care for at least 90 days preceding the hearing required under § 710.36

Consent to adoption of a child shall be executed by each parent or the surviving parent except under the following circumstances:

- The rights of the parent have been terminated.
- The child has been released for the purpose of adoption to a child-placing agency or the department.
- A guardian of the child has been appointed.
- A guardian of a parent has been appointed.
- A parent having legal custody of the child is married to the petitioner.

If the spouse of a custodial parent wants to adopt the child, the court may terminate the rights of the other parent if both of the following occur:

- The other parent, having the ability to support the child, has failed or neglected to provide regular and substantial support for the child for a period of 2 years or more.
- The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more.

### **When Consent Can Be Executed**

#### **Citation: Comp. Laws §§ 710.31; 710.44**

If a child is born out of wedlock and the release or consent of the birth father cannot be obtained, the child shall not be placed for adoption until the parental rights of the father are terminated by the court.

Pending the termination of the rights of the father, the mother may execute a release terminating her rights to the child. At the request of the mother, her formal execution of a release or consent shall be delayed until after court determination of the status of the putative father's request for custody of the child.

If the consent of a parent or guardian is required, the consent shall not be executed until after the judge, referee, or other authorized individual has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the consent voluntarily relinquishes permanently his or her rights to the child.

If the child's consent to adoption is required, the consent shall not be executed until after the judge or referee has fully explained to the child the fact that he or she is consenting to acquire permanently the adopting parent or parents as his or her legal parent or parents as though he or she had been born to the adopting parent or parents.

In a direct placement, a parent or guardian may sign an out-of-court consent after the child's birth. The out-of-court consent shall not be signed until after a 72-hour waiting period that begins at the time of the child's birth has expired. If an out-of-court consent has been signed, the court shall issue an order terminating the rights of the parent or guardian to that child no sooner than 5 days, excluding weekends and holidays, after the out-of-court consent was signed.

### **How Consent Must Be Executed**

#### **Citation: Comp. Laws § 710.29**

Consent shall be by a separate instrument executed before the judge having jurisdiction or before another judge of the family division of circuit court in this state. If the individual whose consent is required is in any of the armed services or is in prison, the consent may be executed before any individual authorized to administer oaths. If the release is to be given by an authorized representative of a child-placing agency that has jurisdiction of the child to be adopted, the release may be executed and acknowledged before an individual authorized by law to administer oaths.

A parent may sign an out-of-court release in front of and witnessed by his or her adoption attorney and a child-placing agency caseworker. If the parent signing the out-of-court release is an unemancipated minor, the release is not valid unless it also is signed by a parent or guardian of the minor parent in the presence of witnesses.

A release by the child's parent shall not be executed until after the investigation the court considers proper and after the judge has fully explained to the parent the legal rights of the parent and that by virtue of the release the parent voluntarily relinquishes permanently his or her rights to the child. If an out-of-court release is signed, the adoption attorney representing the parent who witnessed the out-of-court release and a caseworker from the child-placing agency that accepted the out-of-court release shall fully explain to the parent his or her legal rights and the fact that by virtue of the out-of-court release the parent voluntarily relinquishes permanently his or her rights to the child.

Upon the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent to that child. If an out-of-court release has been signed, within 5 working days after the release was signed, the court shall issue an order terminating the rights of the parent to that child.

### **Revocation of Consent**

#### **Citation: Comp. Laws § 710.29**

The person who granted consent may petition the court for a hearing on whether to grant revocation. A release may not be revoked if the child has been placed for adoption, unless the child was placed as provided by § 710.41(2) (while an appeal of a termination of parental rights is pending), and a petition has been filed for a rehearing within the time required.

A parent or guardian who has signed an out-of-court release but wishes to revoke the release shall submit a written request for revocation to his or her adoption attorney or the child-placing agency that accepted the release no more than 5 days, excluding weekends and holidays, after the release was signed. Upon receipt of the request, the attorney or agency receiving the request shall assist the parent or guardian in filing the petition to revoke the out-of-court release with the court as soon as practicable. A parent or guardian may file this petition with the court on his or her own, but if the parent or guardian files the petition on his or her own, it must be filed with the court no more than 5 days, excluding weekends and holidays, after the release was signed.

Filing a petition with the court to revoke an out-of-court release does not immediately result in the return of the child to the parent or guardian. Unless the child-placing agency or the adoptive parents agree to the revocation, a hearing before a judge is required to determine all of the following:

- Whether the request for revocation was given in a timely and proper manner
- Whether good cause exists to determine that the out-of-court release was not signed voluntarily
- Whether the best interests of the child will be served by any of the following:
  - » Returning custody of the child to the parent or guardian
  - » Continuing the adoption proceeding
  - » Making another disposition appropriate to the child's welfare

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## Minnesota

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Stat. § 259.24, Subd. 1, 2**

No child shall be adopted without the consent of the child's parents and the child's guardian, if there is one. If there is no parent or guardian qualified to consent to the adoption, the agency having authority to place a child for adoption shall have the exclusive right to consent to the adoption.

If an unmarried parent who consents to the adoption of a child is under age 18, the consent of the minor parent's parents or guardian, if any, also shall be required. If either or both the parents are disqualified for any reason, the consent of such parent shall be waived, and the consent of the guardian only shall be sufficient. If there is neither a parent nor guardian qualified to give such consent, the consent may be given by the commissioner.

### Consent of Child Being Adopted

**Citation: Ann. Stat. § 259.24, Subd. 3**

When the child to be adopted is age 14 or older, the child's written consent also shall be necessary.

### When Parental Consent Is Not Needed

**Citation: Ann. Stat. § 259.24, Subd. 1**

Consent shall not be required of a parent:

- Who is not entitled to notice of the proceedings
- Who has abandoned the child
- Who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required by § 259.49
- Whose parental rights to the child have been terminated or who has lost custody of a child through a final commitment of the juvenile court or through a decree in a prior adoption proceeding

### When Consent Can Be Executed

**Citation: Ann. Stat. § 259.24, Subd. 2a**

No sooner than 72 hours after the birth of a child and no later than 60 days after the child's placement in a prospective adoptive home, a person whose consent is required under this section shall execute a consent.

### How Consent Must Be Executed

**Citation: Ann. Stat. § 259.24, Subd. 2, 5**

The agency overseeing the adoption proceedings shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child.

All consents to an adoption shall be in writing, executed before two competent witnesses, and acknowledged by the consenting party.

All consents by a parent shall contain written notice:

- Of the right to withdraw consent under specific conditions
- That the consent itself does not terminate parental rights
- That parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights
- That if the child is not adopted, the parent may be asked to support the child

**Revocation of Consent****Citation: Ann. Stat. § 259.24, Subd.6a**

A parent's consent to adoption may be withdrawn for any reason within 10 working days after the consent is executed and acknowledged. Written notification of withdrawal of consent must be received by the agency to which the child was surrendered, the agency supervising the adoptive placement, or the district court of residence in the case of adoption by a stepparent or any adoption not involving agency placement or supervision, no later than the 10th working day after the consent is executed and acknowledged. On the day following the 10th working day after execution and acknowledgment, the consent shall become irrevocable except upon order of a court of competent jurisdiction after written findings that consent was obtained by fraud.

**Mississippi***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Code § 93-17-5**

Consent shall be executed by the following persons:

- The parents, or parent if only one parent, even if either one is under age 21
- If both parents are dead, then any two adult kin of the child within the third degree
- The guardian ad litem of an abandoned child
- Those persons having physical custody of the child, except persons who are acting as foster parents as a result of placement by the Department of Human Services of the state of Mississippi
- Any person to whom custody of the child may have been awarded by a court of competent jurisdiction of the state of Mississippi
- The agent of the county department of human services that has placed a child in foster care, either by agreement or by court order

**Consent of Child Being Adopted****Citation: Ann. Code § 93-17-5**

If the child is age 14 or older, a consent to the adoption, sworn to or acknowledged by the child, is required.

**When Parental Consent Is Not Needed****Citation: Ann. Code § 93-17-7**

No child shall be adopted by any person if a parent whose parental rights have not been terminated objects thereto before the decree for adoption is issued. A parent shall not be summoned in the adoption proceedings nor have the right to object thereto if the parental rights of the parent have been terminated by the procedure set forth in the Mississippi Termination of Parental Rights Law (§ 93-15-101, et seq.).

**When Consent Can Be Executed****Citation: Ann. Code § 93-17-5**

Consent shall not be executed before 72 hours after the birth of the child.

**How Consent Must Be Executed****Citation: Ann. Code § 93-17-5**

Consenting parents shall be made parties to the adoption proceeding by process or by filing consent to the proposed adoption in the petition. Consent may also be executed and filed by the duly authorized officer or representative of a home to whose care the child has been delivered. The child shall join the petition.

**Revocation of Consent****Citation: Ann. Code §§ 93-17-7; 93-17-15**

No person, whether claiming to be the parent of the child or not, has standing to object to the adoption if:

- A final judgment for adoption that conforms to all applicable state and federal laws has been entered by a court.
- Notice to the parties of the action, whether known or unknown, has been made in compliance with § 93-17-5.

No action shall be brought to set aside any final decree of adoption, whether granted upon consent or personal process or on process by publication, except within 6 months of the entry thereof.

## Missouri

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Rev. Stat. § 453.030**

The written consent of the following persons shall be required:

- The mother
- The man who is presumed to be the father has acted to establish paternity no later than 15 days after the birth of the child or has filed with the putative father registry
- The child's current adoptive parents or other legally recognized parent

### Consent of Child Being Adopted

**Citation: Rev. Stat. § 453.030**

A child who is age 14 or older must consent to the adoption except when the court finds that the child lacks sufficient mental capacity.

In a case involving a child younger than age 14, the guardian ad litem shall ascertain the child's wishes and feelings about his or her adoption by conducting an interview or interviews with the child, if appropriate based on the child's age and maturity level. This information shall be considered by the court as a factor in determining if the adoption is in the child's best interests.

When the person sought to be adopted is age 18 or older, his or her written consent alone to his or her adoption shall be sufficient.

### When Parental Consent Is Not Needed

**Citation: Rev. Stat. § 453.040**

The consent to the adoption of a child is not required of:

- A parent whose rights to the child have been terminated
- A parent of a child who has legally consented to a future adoption of the child
- A parent whose identity is unknown and cannot be ascertained at the time of the filing of the petition
- A man who has not been established to be the father and who is not presumed by law to be the father and who, after the conception of the child, executes a verified statement denying paternity and disclaiming any interest in the child
- A parent or other person who has not executed a consent and fails to respond to notice
- A parent who has a mental condition that is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and that renders the parent unable to knowingly provide the child the necessary care, custody, and control
- A parent who has for a period of at least 6 months for a child age 1 or older, or at least 60 days for a child under age 1, immediately prior to the filing of the petition for adoption, willfully abandoned the child or, for a period of at least 6 months immediately prior to the filing of the petition for adoption, willfully, substantially, and continuously neglected to provide the child with necessary care and protection

### When Consent Can Be Executed

**Citation: Rev. Stat. § 453.030**

The written consent of the birth mother shall not be executed anytime before the child is 48 hours old.

### How Consent Must Be Executed

**Citation: Rev. Stat. § 453.030**

The written consent of the father or other parents may be executed before or after the commencement of the adoption proceedings and shall be executed in front of a judge or acknowledged before a notary public. If consent is executed in front of a judge, it shall be the duty of the judge to advise the consenting birth parent of the consequences of the consent. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding.

The written consent of the birth mother shall be executed in front of a judge or acknowledged before a notary public. If consent is executed in front of a judge, it shall be the duty of the judge to advise the consenting party of the consequences of the consent.



In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons who are present at the execution and who determine and certify that the consent is knowingly and freely given. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding.

The consent form must specify the following:

- The birth parent understands the importance of identifying all possible fathers of the child and may provide the names of all such persons.
- The birth father understands that if he denies paternity but consents to the adoption, he waives any future interest in the child.

The written consent to adoption shall be valid and effective even though the consenting parent was younger than age 18 if the parent was represented by a guardian ad litem at the time the consent was executed.

### **Revocation of Consent**

**Citation: Rev. Stat. § 453.030**

Consent is final when executed unless the consenting party, prior to a final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with the consenting party.

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## **Montana**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Ann. Code § 42-2-301**

Written consents to an adoption must be executed by:

- The birth mother
- The husband of the birth mother if the husband is the presumed father of the child
- Any other person whose parental rights have been established by a court
- The department or an agency that has custody of the child and the authority to place the child for adoption
- The legal guardian of the child if both parents are dead or their rights have been judicially terminated and if the guardian has authority by order of the court appointing the guardian to consent to the adoption

### **Consent of Child Being Adopted**

**Citation: Ann. Code § 42-2-301**

A child who is age 12 or older must consent, either in writing or in court, unless he or she lacks the mental capacity to consent.

### **When Parental Consent Is Not Needed**

**Citation: Ann. Code § 42-2-302**

Consent to adoption of a child is not required from:

- An individual whose parental relationship to the child has been judicially terminated for unfitness, has been determined not to exist, or has been waived
- A parent who has been judicially declared incompetent
- An individual who has not been married to the mother of the child and who, after the conception of the child, executes a notarized statement denying paternity or a notarized statement acknowledging paternity and denying any interest in the child
- The personal representative of a deceased parent's estate

### **When Consent Can Be Executed**

**Citation: Ann. Code § 42-2-408**

A parent whose consent to the adoption of a child is required may execute a relinquishment and consent to adoption only after he following criteria have been met:

- No less than 72 hours have elapsed since the birth of the child.
- The parent has received counseling in accordance with § 42-2-409.

A guardian may execute a relinquishment and consent to adopt at any time after being authorized by a court.

The department or a licensed child-placing agency may execute a consent for the adoption at any time before or during the hearing on the petition for adoption.

A child whose consent is required may execute consent at any time before or during the hearing on the petition to adopt.

### **How Consent Must Be Executed**

**Citation: Ann. Code §§ 42-2-303; 42-2-405; 42-2-408**

The required consents must be acknowledged before an officer who is authorized to take acknowledgments or must be witnessed by a representative of the department, an agency, or the court.

A parent who is a minor has the right to relinquish all rights to the child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority. In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent.

A parent whose consent to the adoption of a child is required may execute a relinquishment and consent to adoption only after the parent:

- Has been informed that fees for any required counseling and legal fees are allowable expenses that may be paid by a prospective adoptive parent
- Has been represented by separate legal counsel if the parent is a minor
- Has been provided a copy of the preplacement evaluation pertaining to the prospective adoptive parent prior to the execution of the relinquishment

If the person from whom a relinquishment and consent to adopt are required is a member of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

### **Revocation of Consent**

**Citation: Ann. Code § 42-2-410**

The parent who executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive parent named or described in the relinquishment and consent to adopt may mutually agree to revocation of consent prior to the issuance of an order terminating parental rights.

A relinquishment may not be revoked if an order has been issued terminating parental rights.

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## **Nebraska**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Rev. Stat. §§ 43-104; 43-105**

Except as otherwise provided in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless written consents are executed by:

- Any district court, county court, or separate juvenile court having jurisdiction of the custody of a minor child by virtue of proceedings that occurred in any court in Nebraska or by virtue of the Uniform Child Custody Jurisdiction and Enforcement Act
- Both parents of a child born in lawful wedlock, if living
- The surviving parent of a child born in lawful wedlock
- The mother of a child born out of wedlock
- Both the mother and father of a child born out of wedlock as determined pursuant to §§ 43-104.08 to 43-104.24

If consent is not required of both parents for the reasons listed below, substitute consents shall be filed as follows:

- Consent to the adoption of a minor child who has been committed to the Nebraska Department of Health and Human Services may be given by the department or its duly authorized agent.
- When a parent has relinquished a minor child for adoption to any child-placing agency licensed or approved by the department, consent to the adoption of such child may be given by such agency.
- In all other cases, consent shall be given by the guardian or guardian ad litem of the minor child.

**Consent of Child Being Adopted****Citation: Rev. Stat. § 43-104**

A written consent must be executed by the minor child if over age 14 or by the adult child.

**When Parental Consent Is Not Needed****Citation: Rev. Stat. §§ 43-104; 43-105**

Consent shall not be required of any parent who:

- Has relinquished the child for adoption by a written instrument
- Has abandoned the child for at least 6 months immediately prior to the filing of the adoption petition
- Has been deprived of his or her parental rights to the child by the order of any court of competent jurisdiction
- Is incapable of consenting

**When Consent Can Be Executed****Citation: Rev. Stat. § 43-104**

A written consent or relinquishment for adoption shall not be valid unless signed at least 48 hours after the birth of the child.

**How Consent Must Be Executed****Citation: Rev. Stat. § 43-106**

Consents must be acknowledged before an officer authorized to acknowledge deeds and signed in the presence of at least one witness as well as the officer.

**Revocation of Consent**

This issue is not addressed in the statutes reviewed.

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**Nevada***Current Through March 2017***Who Must Consent to an Adoption****Citation: Rev. Stat. § 127.040**

Written consent to the specific adoption proposed by the petition or for relinquishment to an agency authorized to accept relinquishments is required from:

- Both parents if both are living
- One parent if the other is deceased
- The guardian of the child appointed by the court

**Consent of Child Being Adopted****Citation: Rev. Stat. § 127.020**

The consent of a child age 14 or older is required.

**When Parental Consent Is Not Needed****Citation: Rev. Stat. §§ 127.040; 127.090**

Consent is not required of a parent who has been adjudged insane for 2 years if the court is satisfied by proof that such insanity is incurable.

Consent of a parent to an adoption shall not be necessary when parental rights have been terminated by an order of a court of competent jurisdiction.

**When Consent Can Be Executed****Citation: Rev. Stat. § 127.070**

All releases for and consents to adoption executed by the mother before the birth of a child or within 72 hours after the birth of a child are invalid.

Release for or consent to adoption may be executed by the father before the birth of the child if the father is not married to the mother.

### How Consent Must Be Executed

**Citation: Rev. Stat. §§ 127.053; 127.043; 127.057**

No consent to a specific adoption is valid unless it:

- Identifies the child to be adopted by name (if any), sex, and date of birth
- Is in writing and signed by the person consenting to the adoption
- Is acknowledged by the person signing the consent to adoption in the manner and form required for conveyances of real property
- Contains, at the time of execution, the name of the person or persons to whom consent to adopt the child is given
- Is attested by at least two competent, disinterested witnesses who sign their names to the consent in the presence of the person consenting

If neither the petitioner nor the spouse of a petitioner is related to the child within the third degree of consanguinity, then one of the witnesses must be a social worker employed by:

- An agency that provides child welfare services
- An agency licensed in this state to place children for adoption
- A comparable state or county agency of another state
- An agency authorized under the laws of another state to place children for adoption if the natural parent resides in that state

### Revocation of Consent

**Citation: Rev. Stat. §§ 127.070; 127.080**

A release executed by the father who is not married to the mother 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 execute a release for or consent to adoption of the child within 6 months after the birth of the child.
- No petition for adoption of the child has been filed within 2 years after the birth of the child.

A minor parent may execute a relinquishment for adoption and cannot revoke it upon coming of age.

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## New Hampshire

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Rev. Stat. § 170-B:5**

A surrender of parental rights shall be obtained from:

- The birth mother, provided that if she is under age 18, the court may require the assent of her parents or legal guardian
- The legal father, provided that if he is under age 18, the court may require the assent of his parents or legal guardian
- The birth father, provided that he was found to be entitled to notice and that if he is under age 18, the court may require the assent of his parents or legal guardian
- The legal guardian of the child if both birth parents are deceased or have surrendered their rights
- The department or any licensed child-placing agency that may be given the care, custody, and control of the child

### Consent of Child Being Adopted

**Citation: Rev. Stat. § 170-B:3**

If the child is age 14 or older, he or she must assent to the adoption unless the court determines that it is not in the best interests of the child to require assent. Such an assent shall be executed by the child in writing and signed in the presence of the court in which the petition for adoption has been filed.

### When Parental Consent Is Not Needed

**Citation: Rev. Stat. § 170-B:7**

Surrender of parental rights is not required of:

- The alleged father who has not met the requirements of § 170-B:5(I) or § 170-B:6
- A parent whose parental rights have been voluntarily or involuntarily terminated by a court in another state
- An alleged father who is found not to be the father

- Any parent of the adopted person if the adopted person is an adult
- A parent whose parental rights have been terminated
- An alleged father who is convicted of an offense under §§ 632-A:2, 632-A:3, 632-A:4, or 639:2 that resulted in the conception of the child
- Parents whose parental rights have been determined to be voluntarily or involuntarily terminated by the proper authorities in another country, such determination to be evidenced by documentation issued by the U.S. Department of Justice or the U.S. Department of State and deemed acceptable by probate court rule

**When Consent Can Be Executed****Citation: Rev. Stat. § 170-B:8**

No surrender shall be taken until a passage of a minimum of 72 hours after the birth of the child.

**How Consent Must Be Executed****Citation: Rev. Stat. §§ 170-B:9; 170-B:10**

A surrender by a parent shall be executed in writing and signed by the parent in the presence of the court of the county in which the parent resides. If the parent is under age 18, the court may require the assent of the minor's parents or legal guardian. If the parent is a nonresident, the surrender may be taken in the state in which the parent resides.

A surrender executed by the department or an agency shall be in writing and signed by the executive head or other authorized representative in the presence of a person authorized to take acknowledgments.

A surrender shall state that the person executing the surrender document acknowledges that the person's parental rights over the child will cease upon the court's approval of the surrender. A surrender shall further state:

- An acknowledgment that after the surrender is executed, it is final and, except as noted below, may not be revoked for any reason, including the failure of an adoptive parent to comply with an arrangement with the birth parent for postsurrender contact
- An acknowledgment that the surrender will extinguish all parental obligations except the obligation to pay any accrued unpaid child support
- That the parent has been informed of counseling services and been provided legal counsel
- That the parent has not received or been promised any money or anything of value for the surrender except for permissible payments
- Whether the parent has been informed of the identity of the adoptive parents
- Whether the child is an Indian child
- Whether the parent wishes to be notified that a final decree of adoption has been entered
- That the parent has read and understands the content of the document and wishes the surrender to take effect

**Revocation of Consent****Citation: Rev. Stat. § 170-B:12**

A parent wishing to withdraw a surrender shall notify in writing the court where the surrender was taken. Notification shall be prior to the entry of the final decree. A surrender may not be withdrawn unless the court finds that:

- The parent seeking to withdraw his or her surrender has proven by a preponderance of evidence that the surrender was obtained by fraud or duress.
- The withdrawal of the surrender is in the best interests of the child. In making this determination, the court may consider every facet of each parent's life.

The court shall notify any other party that has surrendered rights to the child of the issuance of its order granting the withdrawal of such surrender. The party shall have 30 days from the date of the register's notice of decision to request in writing to the court that his or her surrender be withdrawn as well. The 30-day time period to file such a request shall not be extended by the court absent a showing of good cause.

A surrender may not be withdrawn after the entry of the final decree of adoption for any reason.

## New Jersey

Current Through March 2017

### Who Must Consent to an Adoption

**Citation: Ann. Stat. §§ 9:3-41; 9:3-45**

The child may be surrendered for adoption by:

- The parent or guardian of the child
- Any agency that has obtained the authority to place the child for adoption

For purposes of this section, 'parent' means:

- The husband of the mother of a child born or conceived during the marriage
- A putative or alleged biological mother or father of a child

### Consent of Child Being Adopted

**Citation: Ann. Stat. § 9:3-49**

If the child sought to be adopted is age 10 or older, the appearance of the child shall be required at the final adoption hearing unless waived by the court for good cause shown, and the child's wishes concerning the adoption shall be solicited by the court and given consideration if the child is of sufficient capacity to form an intelligent preference regarding the adoption.

### When Parental Consent Is Not Needed

**Citation: Ann. Stat. § 9:3-45; 9:3-46**

Notice of an adoption proceeding shall not be served on a parent:

- Who has executed a valid surrender to an approved agency
- Whose parental rights have been terminated in a separate judicial proceeding
- Who has, prior to the placement of the child for adoption, received notice of the intention to place the child and who has either failed to file written objections or denied paternity or maternity of the child
- Who has given the child for adoption to the adopting parent, and the court has determined that the surrender was voluntary and proper
- Whose child has been made available for adoption in a foreign state or country if it has been determined that the child has been approved for adoptive placement
- Who is presumed to be the biological father of the child but who, within 120 days of the birth of the child or prior to the date of the preliminary hearing, whichever occurs first, has not acknowledged paternity

A judgment of adoption shall be entered over an objection of a person who is entitled to notice if the court finds, during the 6-month period prior to the placement of the child for adoption or within 120 days after the birth of a child or prior to the date of the preliminary hearing, whichever occurs first, in the case of a child placed for adoption as a newborn infant:

- That the parent has substantially failed to perform the regular and expected parental functions of care and support of the child, although able to do so
- That the parent is unable to perform the regular and expected parental functions of care and support of the child and that the parent's inability to perform those functions is unlikely to change in the immediate future

### When Consent Can Be Executed

**Citation: Ann. Stat. § 9:3-41(e)**

A surrender by the birth parent of a child shall not be valid if taken within 72 hours of the birth of the child. The denial of paternity by an alleged father, at any time including prior to the birth of the child, shall be deemed a surrender for purposes of allowing the child to be adopted.

### How Consent Must Be Executed

**Citation: Ann. Stat. §§ 9:3-41(a); 9:3-45(b)(4)**

Surrender of a child to an approved agency for the purpose of adoption shall be acknowledged by an instrument signed by the person executing the instrument before an officer authorized to take acknowledgments or proofs in the state in which the instrument is executed. Prior to the execution of the surrender, the approved agency shall, directly or through its agent, inform the person executing the surrender that the instrument is a surrender of parental rights by the signatory and means the permanent end of the relationship and all contact between the parent and child.

Any approved agency may accept custody of a child by a duly executed instrument of surrender from a parent or guardian of the child or from another approved agency or any agency for the care and protection of children approved by any other state, the United States, or any foreign country that has duly obtained the authority to place the child for adoption. A surrender executed in another state or foreign country by a resident of that state or country and valid where executed shall be deemed a valid surrender in this state if taken more than 72 hours after the birth of the child.

At the request of a parent of the child, an approved agency may receive that parent's surrender of his or her child for purposes of having the child adopted by a person specified by the surrendering parent. A hearing may be held to determine whether the surrender was voluntary and proper.

### **Revocation of Consent**

**Citation: Ann. Stat. § 9:3-41(a)**

The surrender shall be valid and binding without regard to the age of the person executing the surrender and shall be irrevocable except at the discretion of the approved agency taking such surrender or upon order or judgment of a court of competent jurisdiction setting aside such surrender upon proof of fraud, duress, or misrepresentation by the approved agency.

### **New Mexico**

*Current Through March 2017*

#### **Who Must Consent to an Adoption**

**Citation: Ann. Stat. § 32A-5-17**

Consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

- The mother
- The proposed adoptive parent
- The presumed father
- The acknowledged father
- The Children, Youth and Families Department or the agency to whom the child has been relinquished that has placed the child for adoption
- The guardian of the child's parent, when that guardian has express authority to consent to adoption

In any adoption involving an Indian child, consent to adoption by the petitioner or relinquishment of parental rights shall be obtained from an Indian custodian, as required by the provisions of the federal Indian Child Welfare Act of 1978 (25 U.S.C. § 1901, et seq.).

#### **Consent of Child Being Adopted**

**Citation: Ann. Stat. § 32A-5-21**

Consent to adoption shall be required of the child who is age 14 or older and shall be in a writing signed by the child.

#### **When Parental Consent Is Not Needed**

**Citation: Ann. Stat. §§ 32A-5-18; 32A-5-19**

A consent to adoption shall be implied by the court if the parent, without justifiable cause, has:

- Left the child without provision for the child's identification for a period of 14 days
- Left the child with others, including the other parent or an agency, without provisions for support and without communication for a period of:
  - » 3 months if the child was under age 6 at the commencement of the 3-month period
  - » 6 months if the child was over age 6 at the commencement of the 6-month period

The consent to adoption shall not be required from:

- A parent whose rights with reference to the child have been terminated
- A parent who has relinquished the child to an agency for adoption
- A biological father of a child conceived as a result of rape or incest
- A person who has failed to respond when given notice pursuant to the provisions of § 32A-5-27
- An alleged father who has failed to register with the putative father registry within 10 days of the child's birth and is not otherwise the acknowledged father



**When Consent Can Be Executed****Citation: Ann. Stat. § 32A-5-21(G)**

No consent to adoption or relinquishment of parental rights shall be valid if executed within 48 hours after the child's birth.

**How Consent Must Be Executed****Citation: Ann. Stat. §§ 32A-5-21; 32A-5-23**

A consent by a parent shall be in writing and state the following:

- The date, place, and time of execution
- The date and place of birth of the child and any names by which the child has been known
- The identity of the adoptive parent, if known
- That the person executing the consent has been counseled by a certified counselor of the person's choice and with this knowledge the person is voluntarily and unequivocally consenting
- That the consenting party has been advised of the legal consequences of the consent either by independent legal counsel or a judge
- That the consent to or relinquishment for adoption cannot be withdrawn
- That the person executing the consent waives further notice of the adoption proceedings

When the consent is in English and English is not the first language of the consenting person, the person taking the consent shall certify in writing that the document has been read and explained to the person whose consent is being taken in that person's first language. That certification will include the name of the person who read and explained the document and that the meaning and implications of the document are fully understood by the person giving the consent.

A consent taken by an individual appointed to take consents by an agency shall be notarized. When a consent is signed in the presence of a judge, it need not be notarized.

The requirements of a consent to adoption or relinquishment of parental rights involving an Indian child and the rights of a parent of an Indian child to withdraw the consent or relinquishment shall be governed by the relevant provisions of the federal Indian Child Welfare Act.

A consent to adoption or relinquishment of parental rights shall be signed before, and approved on the record by, a judge who has jurisdiction over adoption proceedings within or without this state and who is in the jurisdiction in which the child is present or in which the parent resides.

**Revocation of Consent****Citation: Ann. Stat. §§ 32A-5-21(I); 32A-5-17**

A consent or relinquishment executed by a parent who is a minor shall not be subject to revocation solely by reason of the parent's minority.

A consent to or relinquishment for adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds that the consent or relinquishment was obtained by fraud.

In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption.

**New York**

*Current Through March 2017*

**Who Must Consent to an Adoption****Citation: Dom. Rel. Law §§ 111; 113**

Consent to adoption shall be required from the following persons or entities:

- The parents or surviving parent, whether adult or minor, of a child conceived or born in wedlock
- The mother, whether adult or minor, of a child born out of wedlock
- The father, whether adult or minor, of a child born out-of-wedlock and placed with the adoptive parents more than 6 months after birth, but only if that father has maintained substantial and continuous or repeated contact with the child
- The father, whether adult or minor, of a child born out-of-wedlock and placed with the adoptive parents less than 6 months after birth, but only if the father:
  - » Openly lived with the child or the child's mother for a continuous period of 6 months immediately preceding the placement of the child for adoption

- » Openly held himself out to be the father of such child during such period
- » Paid a fair and reasonable sum, in accordance with his means, for the medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child
- Any person or authorized agency having lawful custody of the adoptive child

An authorized agency may consent to the adoption of a minor whose custody and guardianship has been transferred to that agency.

### **Consent of Child Being Adopted**

**Citation: Dom. Rel. Law § 111**

Consent to adoption shall be required of the adoptive child who is age 14 or older unless the judge or surrogate in his or her discretion dispenses with that consent.

### **When Parental Consent Is Not Needed**

**Citation: Dom. Rel. Law § 111**

Consent shall not be required of a parent or of any other person having custody of the child:

- Who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of 6 months to visit the child and communicate with the child or person having legal custody of the child, although able to do so
- Who has surrendered the child to an authorized agency
- For whose child a guardian has been appointed
- Who, by reason of mental illness or intellectual disability, is presently and for the foreseeable future unable to provide proper care for the child
- Who has executed an instrument, which shall be irrevocable, denying the paternity of the child

### **When Consent Can Be Executed**

This issue is not addressed in the statutes reviewed.

### **How Consent Must Be Executed**

**Citation: Dom. Rel. § 115-b; Soc. Serv. Law. § 384**

A consent to adoption executed by a person who is in foster care shall only be executed before a judge of the family court.

A consent to a private placement adoption may be executed or acknowledged before any judge or surrogate in this state having jurisdiction over adoption proceedings. Such consent shall state that it is irrevocable upon such execution or acknowledgment.

At the time that a parent appears before a judge or surrogate to execute or acknowledge a consent to adoption, the judge or surrogate shall inform the parent of the consequences of that act, including informing the parent of the right to be represented by legal counsel of the parent's own choosing and of the right to obtain supportive counseling. The judge or surrogate shall give the parent a copy of such consent upon the execution thereof.

In any case in which a consent is not executed or acknowledged before a judge or surrogate, that consent shall be executed or acknowledged before a notary public or other officer authorized to take proof of deeds. A copy of the consent shall be given to the parent upon the execution thereof.

### **Revocation of Consent**

**Citation: Dom. Rel. § 115-b**

A judicial consent shall state that it is irrevocable upon such execution or acknowledgment.

An extrajudicial consent shall become irrevocable 45 days after the execution of the consent unless written notice of revocation thereof is received by the court in which the adoption proceeding is to begin within the 45 days. The notice of revocation shall go into effect only if the adoptive parents fail to oppose such revocation or if they oppose such revocation and the court has determined that the best interests of the child will be served by giving force and effect to such revocation.

Nothing contained in this section shall bar actions or proceedings brought on the ground of fraud, duress, or coercion in the execution of an adoption consent.

## North Carolina

Current Through March 2017

### Who Must Consent to an Adoption

**Citation: Gen. Stat. §§ 48-3-601; 48-3-602**

Consent to an adoption in a direct placement must be executed by:

- The mother of the minor
- Any man who may or may not be the biological father of the minor but who:
  - » Is or was married to the mother
  - » Attempted to marry the mother of the minor before the minor's birth
  - » Has legitimated the minor under the law of any state
  - » Has acknowledged his paternity of the minor
  - » Has received the minor into his home and openly held out the minor as his biological child
  - » Is the adoptive father of the minor
- A guardian of the minor
- The guardian ad litem of an incompetent parent

In an agency placement, consent must be provided by:

- The agency that placed the minor for adoption
- Each individual described above who has not relinquished the minor

### Consent of Child Being Adopted

**Citation: Gen. Stat. §§ 48-3-601; 48-3-603**

Consent to an adoption must be executed by the minor to be adopted if he or she is age 12 or older unless the court finds that it is not in the best interests of the minor for the court to require consent.

### When Parental Consent Is Not Needed

**Citation: Gen. Stat. § 48-3-603**

Consent to an adoption of a minor is not required of:

- An individual whose parental rights and duties have been terminated
- A man, other than an adoptive father, who has been judicially determined not to be the father of the minor adopted person, or another man if he has been judicially determined to be the father of the minor
- An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption
- A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor
- A deceased parent or the personal representative of a deceased parent's estate
- An individual listed in § 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice or, if service is by publication, 40 days from the first publication of the notice
- An individual who does not respond to notice of the adoption proceedings in a timely manner or whose consent is not required as determined by the court
- An individual whose actions resulted in a conviction under § 14-27.2 or § 14-27.3 and the conception of the minor to be adopted

The court may issue an order dispensing with the consent of a guardian or an agency that placed the minor upon a finding that the consent is being withheld contrary to the best interests of the minor.

### When Consent Can Be Executed

**Citation: Gen. Stat. § 48-3-604**

A man whose consent is required under § 48-3-601 may execute a consent to adoption either before or after the child is born. The mother of a minor child may execute a consent to adoption at any time after the child is born but not before. A guardian of a minor to be adopted may execute a consent to adoption at any time.

An agency licensed by the Department of Health and Human Services or a county department of social services that places a minor for adoption shall execute its consent no later than 30 days after being served with notice of the proceeding for adoption.

A minor to be adopted who is age 12 or older may execute a consent at any time.

### **How Consent Must Be Executed**

**Citation: Gen. Stat. §§ 48-3-605; 48-3-606**

Consent executed by a parent or guardian or by a child who is age 12 or older must be signed and acknowledged under oath. A parent who is younger than age 18 has legal capacity to give consent to adoption as if he or she were age 18.

A consent by an agency must be executed by the executive head or another authorized employee and must be signed and acknowledged under oath.

A consent to the adoption of an Indian child must meet the requirements of the Indian Child Welfare Act (25 U.S.C. § 1901, et seq.).

A consent must state each of the following:

- The date and place of its execution
- The name, date of birth, and permanent address of the person executing consent
- The date of birth or the expected delivery date and the sex and name of the child, if known
- That the person executing consent is voluntarily consenting to the adoption by the identified prospective adoptive parent
- The person who would receive any notice of revocation
- That the consenting person understands that, after the consent is signed and acknowledged, it is final and irrevocable except as set forth in § 48-3-609
- That the consent is not affected by any separate agreement between the consenting person and the adoptive parent
- That the consenting person has not received or been promised any money or anything of value for the consent except for lawful payments
- That the consenting person understands that when the adoption is final, all rights and obligations will be extinguished and the legal relationship with the child will be terminated
- The name and address of the court
- That the person executing consent waives notice of any adoption proceeding
- That the person executing consent has:
  - » Been advised that counseling services may be available through county departments of social services or licensed child-placing agencies
  - » Been advised of the right to employ independent legal counsel

### **Revocation of Consent**

**Citation: Gen. Stat. §§ 48-3-607; 48-3-608; 48-3-609**

A consent is final and irrevocable except under one of the following circumstances:

- A consent to the adoption of any infant who is in utero or any minor may be revoked within 7 days following the day on which it is executed. The individual who gave the consent may revoke it by giving written notice to the person specified in the consent.
- In a direct placement, if a preplacement assessment is required and if placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor, then that individual's time to revoke any consent previously given shall be either 5 business days after the date the individual receives the preplacement assessment or the remainder of the 7 days, whichever is longer.
- If a person revokes consent, the prospective adoptive parent shall, immediately upon request, return the minor to that person. If a person revokes consent, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. A second consent to adoption by the same adoptive parents is irrevocable.

A consent shall be void if:

- Before the entry of the adoption decree, the individual who executed the consent establishes by clear and convincing evidence that it was obtained by fraud or duress.
- The prospective adoptive parent and the individual who executed the consent mutually agree in writing to set it aside.
- The petition to adopt is voluntarily dismissed with prejudice.
- The court dismisses the petition to adopt and no appeal has been taken, or the dismissal has been affirmed on appeal and all appeals have been exhausted.

**North Dakota***Current Through March 2017***Who Must Consent to an Adoption****Citation: Cent. Code § 14-15-05**

A petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

- The mother of the minor, whether by birth or adoption
- The father of the minor if:
  - » The minor is the father's child by adoption or the father has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought.
  - » The person is presumed to be the biological father of the minor, provided the nonexistence of the father-child relationship between them has not been judicially determined.
- Any individual lawfully entitled to custody of the minor or empowered to consent
- The court having jurisdiction to determine custody of the minor if the legal guardian or custodian of the minor is not empowered to consent to the adoption
- The spouse of the minor adopted person

**Consent of Child Being Adopted****Citation: Cent. Code § 14-15-05**

A child who is age 10 or older must consent to the adoption.

**When Parental Consent Is Not Needed****Citation: Cent. Code § 14-15-06**

Consent to adoption is not required of:

- A parent who has deserted a child without affording means of identification or who has abandoned a child
- A parent of a child in the custody of another if the parent for a period of at least 1 year has failed significantly without justifiable cause to communicate with the child or to provide for the care and support of the child
- The father of a minor if the father's consent is not required by § 14-15-05(1)
- A parent who has relinquished the right to consent
- A parent whose parental rights have been terminated
- A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent
- Any parent of the adopted person if the adopted person is an adult
- Any legal guardian or lawful custodian of the child, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably
- The spouse of the adopted person if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent
- A parent of the minor if the failure of the parent to consent is excused by the court in the best interests of the child by reason of the parent's prolonged unexplained absence, unavailability, incapacity, or significant failure, without justifiable cause, to establish a substantial relationship with the minor or to manifest a significant parental interest in the minor, or by reason of inability of the court to identify the parent

**When Consent Can Be Executed****Citation: Cent. Code § 14-15-07**

The required consent to adoption may be executed at any time after the birth of the child.

**How Consent Must Be Executed****Citation: Cent. Code § 14-15-07**

The required consent to adoption must be executed in the following manner:

- If by the individual to be adopted, in the presence of the court
- If by an agency, by the executive head or other authorized representative in the presence of an individual authorized to take acknowledgments

- If by any other individual, in the presence of the court or in the presence of an individual authorized to take acknowledgments
- If by a court, by appropriate order or certificate

### **Revocation of Consent**

**Citation: Cent. Code § 14-15-08**

A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

A consent to adoption may be withdrawn before the entry of a decree of adoption if the court finds, after notice and opportunity to be heard is afforded to the petitioner, the individual seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interests of the individual to be adopted and the court orders the withdrawal.

## **Northern Mariana Islands**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

Written consent to the adoption must be executed by:

- The mother
- The legal father of a legitimate child
- An adjudicated or presumed father
- A concerned natural father who has shown a reasonable degree of interest
- Any person or agency having custody
- The court having jurisdiction

### **Consent of Child Being Adopted**

**Citation: Commonwealth Code Tit. 8, § 1404(8)**

A child who is age 10 or older must consent unless the court, in the child's best interests, dispenses with consent.

### **When Parental Consent Is Not Needed**

**Citation: Commonwealth Code Tit. 8, § 1405(a)**

Consent to adoption is not required of:

- The parent who has:
  - » Abandoned the child
  - » Failed to communicate with or support the child
  - » Relinquished his or her rights or had them terminated
  - » Been declared incompetent or mentally defective
- Any legal guardian who:
  - » Fails to respond to a request for consent
  - » Is found to be withholding consent unreasonably

### **When Consent Can Be Executed**

**Citation: Commonwealth Code Tit. 8, § 1406(a)**

Consent to the adoption shall be executed at any time after the birth of the child.

### **How Consent Must Be Executed**

**Citation: Commonwealth Code Tit. 8, § 1406(a)**

Consent to the adoption shall be executed in the following manner:

- If by the individual to be adopted, in the presence of the court
- If by an agency, by the executive head or authorized representative in the presence of a person authorized to take acknowledgments
- If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments
- If by a court, by appropriate order or certificate

A consent that does not name or otherwise identify an adopting parent is valid if the consent contains a statement that the consenting person voluntarily executed the consent irrespective of the disclosure of the name or other identification of the adopting parent.

### **Revocation of Consent**

**Citation: Commonwealth Code Tit. 8, § 1407**

A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

A consent to adoption may be withdrawn prior to the entry of the adoption decree if the court finds, after notice and opportunity to be heard to the petitioner, the person seeking withdrawal, and the agency placing the child, that the withdrawal is in the child's best interests.

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## **Ohio**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Rev. Code § 3107.06**

An adoption petition may be granted only when written consent has been executed by all of the following unless consent is otherwise not required:

- The mother
- The father if:
  - » The minor was conceived or born while the father was married to the mother.
  - » The minor is his child by adoption.
  - » Prior to the date the petition was filed, a court determined that he has a parent-child relationship with the minor.
  - » He acknowledged paternity of the child, and the acknowledgement of paternity has become final.
- The putative father
- Any person or agency having permanent custody of the minor or authorized to consent

### **Consent of Child Being Adopted**

**Citation: Rev. Code § 3107.06**

A child who is age 12 or older must consent unless the court finds that it is in the child's best interests to waive the requirement.

### **When Parental Consent Is Not Needed**

**Citation: Rev. Code § 3107.07**

Consent is not required of the following:

- A parent who has failed to communicate or support the minor for at least 1 year
- The putative father if:
  - » He failed to register with the putative father registry within 15 days of the minor's birth.
  - » The court finds that he is not the father or he abandoned the minor or the minor's mother.
- A parent whose parental rights have been terminated
- A parent who is married to the petitioner
- A guardian of an incompetent parent or the child who is found to be withholding consent unreasonably
- The adopted person's spouse if the failure to consent is due to prolonged absence, unavailability, or incapacity
- Any parent or guardian in a foreign country, if the adopted person has been released for adoption pursuant to the laws of that country in a form that satisfies the requirements in the United States
- The father or putative father of a minor conceived as the result of rape or sexual battery
- A court, agency, or person that fails to object within 14 days to a notice of a petition
- Any guardian or other party who has temporary custody of the child

### **When Consent Can Be Executed**

**Citation: Rev. Code § 3107.08(A)**

The required consent to adoption may be executed at any time after 72 hours after the birth of a minor.



**How Consent Must Be Executed****Citation: Rev. Code §§ 3107.08; 3107.081**

The required consent to adoption shall be executed in the following manner:

- If by the person to be adopted, in the presence of the court
- If by an agency, by the executive head or other authorized representative in the presence of a person authorized to take acknowledgments
- If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments
- If by a juvenile court, by appropriate order

A parent shall do all of the following as a condition of a court accepting the parent's consent to the minor's adoption:

- Appear personally before the court
- Sign the form prescribed in § 3107.083(A)(1)(a)
- If the parent is the mother, complete and sign the form prescribed in § 3107.083(A)(1)(c)

The parents of a minor who is less than 6 months old may consent to the minor's adoption without personally appearing before a court if both parents do all of the following:

- Execute a notarized statement of consent to the minor's adoption before the attorney arranging the adoption
- Sign the form prescribed by § 3107.083

The court shall question the parent to determine that the parent understands the adoption process and the ramifications of consenting to the adoption and that the parent's consent to the adoption is made voluntarily.

If a minor is to be adopted by a stepparent, the parent who is not married to the stepparent may consent to the minor's adoption without appearing personally before a court if the parent executes consent in the presence of a person authorized to take acknowledgments.

If a parent of a minor to be adopted resides in another state, the parent may consent to the minor's adoption without appearing personally before a court if the parent executes consent in the presence of a person authorized to take acknowledgments.

**Revocation of Consent****Citation: Rev. Code § 3107.084**

A consent to adoption is irrevocable and cannot be withdrawn after the entry of an interlocutory order or after the entry of a final decree of adoption when no interlocutory order has been entered. The consent of a minor is not voidable by reason of the minor's age.

A consent to adoption may be withdrawn prior to the entry of an adoption decree, if, after a hearing, the court finds that the withdrawal is in the best interests of the adoptee and authorizes the withdrawal of consent. Notice of the hearing shall be given to the petitioner, the person seeking the withdrawal of consent, and the agency placing the minor for adoption.

**Oklahoma***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Stat. Tit. 10, § 7503-2.1**

Written consent to adoption or a permanent relinquishment for adoption must be executed by:

- Both parents
- One parent alone if:
  - » The other parent is dead.
  - » The parental rights of the other parent have been terminated.
  - » The consent of the other parent is otherwise not required pursuant to § 7505-4.2.
- The legal guardian or the guardian ad litem of the minor if both parents are dead or if the rights of the parents have been terminated by judicial proceedings
- The executive head of a licensed child-placing agency if the minor has been permanently relinquished to such agency or the rights of both parents have been judicially terminated and custody of the minor has been legally vested in such agency
- Any person having legal custody of a minor by court order

A parent of a minor born in wedlock or a parent who is age 16 or older shall be deemed capable of giving consent to the adoption of a minor.

**Consent of Child Being Adopted****Citation: Ann. Stat. Tit. 10, § 7503-2.1**

If a minor to be adopted is age 12 or older, he or she must consent before a decree of adoption may be granted unless the court makes a finding that it is not in the best interests of the minor to require the minor's consent. The consent of the minor must be given before the court in such form as the court shall direct.

**When Parental Consent Is Not Needed****Citation: Ann. Stat. Tit. 10, § 7505-4.2**

Consent to adoption is not required from a putative father who fails to prove he is the father of the child, or for a child placed for adoption within 14 months of birth, the father fails to show he has exercised parental rights or duties toward the child.

Consent to adoption is not required from a parent who:

- For 12 consecutive months out of the last 14 months immediately before the filing of an adoption petition, willfully failed, refused, or neglected to contribute to the such child's support or maintain a substantial and positive relationship with the child
- Waives in writing the right to notice of the hearing
- Fails to appear at the hearing if all notice requirements have been met
- Is entitled to custody of a minor and has abandoned the minor
- Has been convicted of physically or sexually abusing the minor or a sibling or failed to protect the minor or a sibling from physical or sexual abuse that resulted in severe harm or injury
- Has been convicted of having caused the death of a sibling of the minor as a result of the physical or sexual abuse or chronic neglect
- Has been sentenced to a period of incarceration of no less than 10 years and the continuation of parental rights would result in harm to the minor
- Has a mental illness or deficiency that renders the parent incapable of adequately and appropriately exercising parental rights, duties, and responsibilities
- Has permanently relinquished parental rights and responsibilities to the minor
- Has had his or her parental relationship to a minor legally terminated or legally determined not to exist
- Has voluntarily placed a minor child in the care of a licensed child care institution or child-placing agency if the minor has remained in out-of-home care for 18 months or more and has willfully failed to substantially comply for 12 consecutive months out of the 14-month period immediately before the filing of the adoption petition with a reasonable written plan of care

**When Consent Can Be Executed****Citation: Ann. Stat. Tit. 10, §§ 7503-2.2; 7503-2.3**

Consent may be given as follows:

- The mother of a minor shall not execute a valid consent to the adoption of the minor or a permanent relinquishment of the minor prior to the birth of the minor.
- The father of a minor born in wedlock shall not execute a valid consent to the adoption of the minor or a permanent relinquishment of the minor prior to the birth of the minor.
- A putative father of a minor may execute a consent to the adoption of the minor, a permanent relinquishment of the minor, or an extrajudicial consent to the adoption of the minor before or after the birth of the minor.
- A guardian, guardian ad litem, or legal custodian of a child may execute a consent to the adoption of a minor or a permanent relinquishment at any time after being authorized by a court to do so.
- A child-placing agency that places a child for adoption may execute its consent at any time at or before the hearing on the petition for adoption.
- A minor age 12 or older whose consent is required may execute a consent to adoption at any time at or before the hearing on the petition for adoption.

## How Consent Must Be Executed

**Citation: Ann. Stat. Tit. 10, §§ 7503-2.4; 7503-2.6; 7503-2.1**

A consent must state that the person executing the consent:

- Is voluntarily consenting to the adoption
- Understands that after the consent is executed, it is final and, except for fraud or duress, may not be revoked for any reason except as otherwise authorized by law
- Is represented by counsel or has waived any right to counsel
- Retains the duty to support the mother or the minor until the adoption is completed
- Has not received or been promised any money or anything of value for the consent except for payments authorized by law
- Indicates whether he or she is a member of an Indian tribe and whether the minor is eligible for membership or is a member of an Indian tribe
- Believes the adoption of the minor is in the minor's best interests

A consent may be signed before any judge of a court having adoption jurisdiction in this state or in the state of residence of the person executing the consent.

A putative father of at least age 16 of a minor born out of wedlock who is not an Indian child may execute an extrajudicial consent before a notary public in which the putative father waives any legal interest in the minor and consents to the adoption of the minor. An extrajudicial consent may be executed by a putative father before or after the birth of the minor.

A man who is the legal husband of the mother of a minor who is not an Indian child may execute an extrajudicial consent before a notary public in which he waives any legal interest in the minor and consents to the adoption of the minor. An extrajudicial consent may be executed by the father only after the birth of the minor.

Consent of a minor parent under age 16 is deemed sufficient when given by a minor parent before a judge and accompanied by the written consent of the legal guardian or parents of the minor parent.

## Revocation of Consent

**Citation: Ann. Stat. Tit. 10, §§ 7503-2.7; 7503-2.6**

Except as otherwise provided below, a consent to adoption shall be irrevocable.

The court shall set aside a consent to adoption or vacate an order terminating parental rights based upon the execution of a permanent relinquishment only if it would be in the best interests of the minor and if the individual who executed the permanent relinquishment or consent establishes:

- By a preponderance of the evidence, that without good cause shown, a petition to adopt was not filed within 9 months after the minor was placed for adoption
- By a preponderance of the evidence, that another consent or permanent relinquishment was not executed or that a court decided not to terminate another individual's parental relationship to the minor
- By clear and convincing evidence, before a decree of adoption is issued or within 3 months of the discovery of the fraud, whichever is later, that the consent was obtained by fraud or duress

An extrajudicial consent shall be revocable for any reason for 15 calendar days after the execution of the consent before the notary public.

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## Oregon

*Current Through March 2017*

## Who Must Consent to an Adoption

**Citation: Ann. Stat. §§ 109.321; 109.323; 109.325**

Consent in writing to the adoption of a minor child is required to be given by the following:

- The parents of the child or the survivor of them
- The guardian of the child if the child has no living parent
- The next of kin in this state if the child has no living parent and no guardian
- Some suitable person appointed by the court to act in the proceeding as next friend of the child to give or withhold consent if the child has no living parent and no guardian or next of kin qualified to consent

If the legal custody of the child has been awarded in marital dissolution proceedings, the written consent of the person to whom custody of the child has been awarded may be held sufficient by the court. However, unless the noncustodial parent consents to the adoption, the petitioner shall serve on the noncustodial parent a summons and a motion and order to show cause why the proposed adoption should not be ordered without the noncustodial parent's consent, and the objections of the noncustodial parent shall be heard if an appearance is made.

The Department of Human Services or an approved child-caring agency, acting in loco parentis, may consent to the adoption of a child who has been:

- Surrendered to it for the purpose of adoption
- Permanently committed to it by order of a court of competent jurisdiction
- Surrendered to it for the purpose of adoption by one parent and permanently committed to it by a court of competent jurisdiction having jurisdiction of the other parent

### **Consent of Child Being Adopted**

**Citation: Ann. Stat. § 109.328**

If the child is age 14 or older, the adoption shall not be made without the consent of the child.

### **When Parental Consent Is Not Needed**

**Citation: Ann. Stat. §§ 109.322; 109.324; 109.326**

An adoption may be granted without the consent of the parent if:

- A parent has been adjudged mentally ill or mentally deficient and remains so at the time of the adoption proceedings.
- A parent is imprisoned in a state or federal prison under a sentence for a term of not less than 3 years and has actually served 3 years.
- A parent has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child for 1 year immediately prior to the filing of the petition for adoption.
- The mother of a child was married at the time of the conception or birth of the child, and it has been determined that her husband at such time was not the father of the child; in this case, consent of the husband is not required.

### **When Consent Can Be Executed**

This issue is not addressed in the statutes reviewed.

### **How Consent Must Be Executed**

**Citation: Ann. Stat. §§ 109.321; 109.346; 418.270**

Consent must be in writing and have its validity attested to by the court or an authorized person.

A birth parent consenting to an adoption shall receive notice of the birth parent's right to payment for three adoption-related counseling sessions prior to surrender or relinquishment of the child for adoption and three sessions of adoption-related counseling after surrender or relinquishment of the child for adoption.

Notice of the right to adoption-related counseling shall be in writing and shall be provided to the consenting birth parent by either the attorney for the birth parent, the agency representative taking the birth parent's consent, or the attorney for the prospective adoptive parent. Before entry of a judgment of adoption, the agency or attorney providing the written notice shall submit verification to the court that the notice was given to the consenting birth parent.

A parent may execute consent or surrender to a child-placing agency for the purpose of placing the child for adoption by that agency.

### **Revocation of Consent**

**Citation: Ann. Stat. § 109.321**

A person who gives consent to adoption may agree concurrently or subsequently to the giving of such consent that the consent shall be or become irrevocable and may waive such person's right to a personal appearance in court by a duly signed and attested certificate. The certificate of irrevocability and waiver shall be in effect when the following are completed:

- The child is placed for the purpose of adoption in the physical custody of the person or persons to whom the consent is given.
- The person or persons to whom consent for adoption is given have filed a petition to adopt the child in a court of competent jurisdiction.
- The court has entered an order appointing the petitioner or some other suitable person as guardian of the child.
- A home study has been filed with the court approving the petitioners as potential adoptive parents.

- Information about the child's social, medical, and genetic history has been provided by the person giving consent to the adoption.
- The person signing the certificate of irrevocability and waiver has been given an explanation of the consequences of signing the certificate.

Upon the fulfillment of the conditions above, the consent for adoption may not be revoked unless fraud or duress is proved with respect to any material fact.

Consent to the adoption of a child subject to the Indian Child Welfare Act shall not be valid unless the requirements of the Indian Child Welfare Act (25 U.S.C. 1901, et seq.) are met. In accordance with the Indian Child Welfare Act, a certificate of irrevocability is not valid for a child who is subject to the Indian Child Welfare Act.

## Pennsylvania

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Cons. Stat. Ch. 23, § 2711**

Consent to an adoption shall be required of the following:

- The spouse of the adopting parent, unless he or she joins in the adoption petition
- The parents or surviving parent of a child who has not reached age 18
- The guardian of an incapacitated person to be adopted
- The guardian or custodian of a child under age 18 whenever the child has no parent whose consent is required

The consent of the husband of the mother shall not be necessary if it is proved to the satisfaction of the court that the husband of the natural mother is not the natural father of the child.

### Consent of Child Being Adopted

**Citation: Cons. Stat. Ch. 23, § 2711**

A child who is age 12 or older must consent to the adoption.

### When Parental Consent Is Not Needed

**Citation: Cons. Stat. Ch. 23, §§ 2713; 2714; 2511**

The consent of the parent is not required when:

- The person to be adopted is age 18 or older.
- The child is under age 18 and has no parent living whose consent is required.
- The parental rights of the parent have been terminated.
- The court finds that grounds exist for involuntary termination under § 2511.

The rights of a parent in regard to a child may be terminated when the parent:

- Has refused or failed to perform parental duties
- Has harmed the child through repeated and continued incapacity, abuse, or neglect
- Is the presumptive but not the natural father of the child
- Is unknown or cannot be found and does not claim the child within 3 months after the child is found
- Has a child in out-of-home care and cannot or will not remedy those conditions that led to the removal or placement of the child within a reasonable period of time
- In the case of a newborn child, knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, and has failed for a period of 4 months to make reasonable efforts to maintain substantial and continuing contact with the child or to support the child
- Is the father of a child conceived as a result of a rape or incest
- Has not remedied conditions that led to the removal of the child, 12 months or more have elapsed since the child's removal, and termination of parental rights would best serve the needs and welfare of the child
- Has been convicted of criminal homicide or aggravated assault, and the victim was a child of the parent
- Has committed sexual abuse against the child or another child of the parent
- Is required to register as a sexual offender under Pennsylvania law or to register with a sexual offender registry in another jurisdiction or foreign country

### When Consent Can Be Executed

**Citation: Cons. Stat. Ch. 23, § 2711**

No consent shall be valid if it was executed prior to or within 72 hours after the birth of the child. A putative father may execute consent at any time after receiving notice of the expected or actual birth of the child.

### How Consent Must Be Executed

**Citation: Cons. Stat. Ch. 23, §§ 2501-2504; 2711(d)**

When a child under age 18 has been in the care of an agency for 3 days, or the agency has received a written notice executed by the parent of the intent to transfer to it custody of the child, the parent of the child may petition the court for permission to relinquish forever all parental rights and duties with respect to the child. The written consent of a parent or guardian of a petitioner who has not reached age 18 shall not be required. The consent of the agency to accept custody of the child until the child is adopted shall be required.

When any child under age 18 has been for 3 days in the exclusive care of an adult who has filed a report of intention to adopt, the parent of the child may petition the court for permission to relinquish forever all parental rights to the child. The written consent of a parent or guardian of a petitioner who has not reached age 18 shall not be required. The adults having care of the child shall file a separate consent to accept custody of the child.

Upon presentation of a petition to relinquish parental rights, the court shall hold a hearing within 10 days. The petitioner must appear at the hearing. After the hearing, the court may enter a decree of termination of parental rights.

If a putative father fails to file a petition, appear at the hearing, or file a written objection to the termination and has not filed a claim of paternity, the court may enter a decree terminating the parental rights of the putative father.

If the parent of the child has executed consent, upon petition by the intermediary or, where there is no intermediary, by the adoptive parent, the court shall hold a hearing to confirm a consent to an adoption. The original consent to the adoption shall be attached to the petition. The consent shall include the date and place of its execution and names and addresses and signatures of at least two persons who witnessed its execution and their relationship to the consenter.

### Revocation of Consent

**Citation: Cons. Stat. Ch. 23, § 2711**

The revocation of a consent shall be in writing and shall be served upon the agency or adult to whom the child was relinquished. The following apply:

- For a consent executed by a birth father or a putative father, the consent is irrevocable more than 30 days after the birth of the child or the execution of the consent, whichever occurs later.
- For a consent executed by a birth mother, the consent is irrevocable more than 30 days after the execution of the consent.

An individual who executed a consent to an adoption may challenge the validity of the consent only by filing a petition alleging fraud or duress within the earlier of the following timeframes:

- 60 days after the birth of the child or the execution of the consent, whichever occurs later
- 30 days after the entry of the adoption decree

A consent to an adoption may be invalidated only if the alleged fraud or duress is proven by:

- A preponderance of the evidence in the case of consent by a person age 21 or younger
- Clear and convincing evidence in all other cases

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## Puerto Rico

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Laws Tit. 31, § 535**

The following persons shall give consent to adoption before the court:

- The adopting parents
- The father, mother, or parents of the child who, at the moment of the adoption, possesses his or her patria potestas, as well as the father or mother who, due to a divorce decree, does not possess the patria potestas of a minor
- The father or mother who, on the date the petition is filed, has acknowledged the minor to be adopted as his or her child

- The Secretary of the Department of the Family when an unemancipated minor to be adopted is under his or her guardianship and care and whose father, mother, or parents have been deprived of patria potestas
- The special or legal guardian designated for the purpose of consenting to the adoption
- The parents who are minors, but over age 18, who are married to each other on the date the adoption petition is filed
- The biological grandparents when the biological parents are unemancipated minors
- In the absence of the biological grandparents, the minor parents' court-appointed public defender

*Note: In Puerto Rico, the age of majority is 21 (see tit. 31, § 971).*

#### **Consent of Child Being Adopted**

**Citation: Ann. Laws Tit. 31, § 535**

A child who is age 10 or older must consent to the adoption.

#### **When Parental Consent Is Not Needed**

**Citation: Ann. Laws Tit. 31, § 535**

The consent of the parents shall not be required in the following cases:

- When both or either parent have been deprived of patria potestas according to the provisions of §§ 632 through 634c of this title and pursuant to any other legal provisions in effect that apply to these cases
- When the adopted person is a minor emancipated by judicial decree or granted by the father, mother, or parents with patria potestas and when the adopted person is duly qualified for adoption
- When the father, mother, or parents called upon to consent are disqualified by judicial decree or when their whereabouts are unknown or they are declared absent from the jurisdiction of Puerto Rico

#### **When Consent Can Be Executed**

This issue is not addressed in the statutes reviewed.

#### **How Consent Must Be Executed**

**Citation: Ann. Laws Tit. 32, § 2699b**

Written consent of parents shall be attached to the adoption petition.

#### **Revocation of Consent**

**Citation: Ann. Laws Tit. 32, § 2699q**

The adoption decree is voidable when parties entitled to notice have not been notified, when there are flaws or defects in the parental consents, or when there has been fraud.

### **Rhode Island**

*Current Through March 2017*

#### **Who Must Consent to an Adoption**

**Citation: Gen. Laws §§ 15-7-5; 15-7-10**

The parents of the child, or their survivor, shall consent in writing to the adoption. If neither parent is living, consent may be given by:

- The guardian of the person of the child
- The next of kin if there is no guardian
- A suitable person appointed by the court as next friend of the child if there is no next of kin

If the child to be adopted is age 18 or older, the consent of or notice to the child's parents or other person in the child's behalf shall not be required.

No minor parent may give a binding consent to any adoption petition or to any termination of rights except with the consent of one of the parents, guardian, or guardian ad litem of the minor parent.

When (1) the petitioners are one of the natural parents of the child and his or her spouse or one of the grandparents of the child, (2) the child is residing with the petitioners at the time the petition is filed, and (3) the noncustodial parent refused to consent to the adoption, the court shall determine whether the noncustodial parent's rights shall be terminated involuntarily. The court may grant the petition without a noncustodial parent's consent if the petitioners prove by clear and convincing evidence any of the grounds set forth in § 15-7-7(a)(1), (2), or (4). The court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child.



### **Consent of Child Being Adopted**

#### **Citation: Gen. Laws § 15-7-5**

If the child is age 14 or older, the adoption shall not be made without the child's consent.

### **When Parental Consent Is Not Needed**

#### **Citation: Gen. Laws § 15-7-7**

The court shall terminate any and all legal rights of the parent to the child, including the right to notice of any subsequent adoption proceedings involving the child, if the court finds as a fact by clear and convincing evidence that:

- The parent has willfully neglected to provide proper care and maintenance for the child for a period of at least 1 year where financially able to do so.
- The parent is unfit by reason of conduct or conditions seriously detrimental to the child, such as, but not limited to:
  - » Institutionalization of the parent, including imprisonment, for a duration as to render it improbable for the parent to care for the child for an extended period of time
  - » Conduct toward any child of a cruel or abusive nature
  - » A chronic substance abuse problem that has made the parent unable to adequately care for the child
  - » Inability to correct conditions that led to termination of rights to another child
  - » Subjecting the child to aggravated circumstances, including abandonment, torture, chronic abuse, or sexual abuse
  - » Commission of murder, voluntary manslaughter, or felony assault resulting in serious bodily injury on that child or another of his or her children
  - » Behavior or conduct that is seriously detrimental to the child for a duration as to render it improbable for the parent to care for the child for an extended period of time
- The child has been placed in the legal custody or care of the department for at least 12 months, the parents were offered or received services to correct the situation that led to the placement, and it is still unsafe for the child to return home.
- The parent has abandoned or deserted the child.

### **When Consent Can Be Executed**

#### **Citation: Gen. Laws § 15-7-6**

Termination of rights or consent to adoption may not be executed sooner than 15 days after the child's birth.

### **How Consent Must Be Executed**

#### **Citation: Gen. Laws § 15-7-6**

Any governmental or duly licensed child-placing agency in this state, at the request of the natural parent or parents of a child under age 18, may petition the family court for the termination of the rights of the natural parents of the child to consent to the child's adoption. After any notice to the natural parents that the court deems proper, a hearing shall be held prior to the hearing on the petition for adoption in the family court. If the family court finds, after examination of the parent or parents, that the parent or parents freely join in the petition and that the granting of the petition is for the best interests of the child, it shall decree that in the hearing on the adoption of the child the consent of the natural parents as provided above shall be unnecessary and that the agency shall be the sole party to give or withhold consent. The granting of the petition to give or withhold consent to the child placement agency shall also make the agency the guardian of the child for all purposes.

### **Revocation of Consent**

#### **Citation: Gen. Laws § 15-7-21.1**

A decree of adoption or a termination of a parent's right to give or withhold consent for adoption shall not be subject to a challenge or petition to reverse unless the challenge or petition is filed in the family court 180 days after the decree or order is entered.

In the event a challenge is brought within the 180-day period by an individual whose parental relationship to a child is terminated or by any individual who is asserting a parental relationship to the child, the family court shall deny the challenge unless the court finds by clear and convincing evidence that the decree or order is not in the best interests of the child.

## South Carolina

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Code § 63-9-310**

Consent or relinquishment for the purpose of adoption is required of the following persons:

- The parents or surviving parent of a child conceived or born during the marriage of the parents
- The mother of a child born when the mother was not married
- The father of a child born when the father was not married to the child's mother if the child was placed with the prospective adoptive parents more than 6 months after the child's birth, but only if the father has maintained substantial and continuous or repeated contact with the child
- The father of a child born when the father was not married to the child's mother if the child was placed with the prospective adoptive parents less than 6 months after the child's birth, but only if the father openly lived with the child or the child's mother for a continuous period of 6 months and openly held himself out to be the father or paid a fair and reasonable sum for the support of the child

Consent or relinquishment for the purpose of adoption is required of the legal guardian, child-placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and both parents of the child are deceased or their parental rights have been judicially terminated.

Consent is required of the child-placing agency or person facilitating the placement of the child for adoption if the child has been relinquished for adoption to the agency or person.

Consent or relinquishment for the purpose of adoption given by a parent who is a minor is not subject to revocation by reason of the parent's minority.

### Consent of Child Being Adopted

**Citation: Ann. Code § 63-9-310**

A child who is age 14 or older must consent to the adoption except where the court finds that the child lacks the mental capacity to consent or that it is not in the child's best interests.

### When Parental Consent Is Not Needed

**Citation: Ann. Code § 63-9-320**

Consent or relinquishment for the purpose of adoption is not required of the following persons:

- A parent whose parental rights have been terminated
- A parent whom the family court finds to be mentally incapable of giving consent or relinquishment for the purpose of adoption and whom the court finds to be unlikely to provide minimally acceptable care of the child and whose capacity is unlikely to be restored for a reasonable period of time, and, in the court's judgment, it would be detrimental to the child to delay adoption
- The biological parent of a child conceived as a result of that parent's criminal sexual conduct or incest

A parent who has executed a relinquishment pursuant to § 63-9-330 to a person facilitating the adoption or to a child-placing agency for the purpose of adoption of his or her child is not required also to execute a separate consent document.

### When Consent Can Be Executed

**Citation: Ann. Code § 63-9-330**

Consent may be given at any time after the child's birth.

### How Consent Must Be Executed

**Citation: Ann. Code §§ 63-9-330; 63-9-340**

Consent or relinquishment for the purpose of adoption must be made by a sworn document signed by the person or the head of the agency giving consent or relinquishment after the birth of the child.

The sworn document that gives consent must be signed in the presence of two witnesses, one of whom must be one of the following:

- A judge of any family court
- An attorney licensed to practice law in South Carolina who does not represent the prospective adoption petitioners
- A person certified by the State Department of Social Services to obtain consents or relinquishments
- When the consent or relinquishment is obtained outside the state, by an attorney licensed to practice law in that state, by a person designated by an agency of that state, by a person or agency authorized by that state's law to obtain consents or relinquishments or to conduct investigations for adoptions, or by a qualified resident of that state authorized by a South Carolina family court

The persons who witness the signing of the consent shall attach to the document written certification signed by each witness that before the signing of the document, the provisions of the document were discussed with the person giving consent, and that based on this discussion, it is each witness's opinion that consent or relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.

### **Revocation of Consent**

**Citation: Ann. Code §§ 63-9-330; 63-9-350**

The written consent must attest that the person giving consent understands that consent or relinquishment once given must not be withdrawn unless the court finds that it is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. The written consent must also attest that the entry of the final decree of adoption renders any consent or relinquishment irrevocable.

Withdrawal of any consent or relinquishment is not permitted except by order of the court after notice and opportunity to be heard is given to all persons concerned and except when the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. Any person attempting to withdraw consent or relinquishment shall file the reasons for withdrawal with the family court. The entry of the final decree of adoption renders any consent or relinquishment irrevocable.

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## **South Dakota**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Codified Laws § 25-6-4**

No child may be adopted without the consent of the child's parents.

### **Consent of Child Being Adopted**

**Citation: Codified Laws § 25-6-5**

A child who is age 12 or older must consent to the adoption.

### **When Parental Consent Is Not Needed**

**Citation: Codified Laws § 25-6-4**

If it is in the best interests of the child, the court may waive consent from a parent or putative father who:

- Has been convicted of any crime punishable by imprisonment in the penitentiary for a period that, in the opinion of the court, will deprive the child of the parent's companionship for a critical period of time
- Has, by clear and convincing evidence, abandoned the child for 6 months or more immediately prior to the filing of the petition
- Has substantially and continuously or repeatedly neglected the child and refused to give the child necessary parental care and protection
- Being financially able, has willfully neglected to provide the child with the necessary subsistence, education, or other care necessary for the child's health, morals, or welfare or has neglected to pay for such subsistence, education, or other care, if legal custody of the child is lodged with others and such payment has been ordered by the court
- Is unfit by reason of habitual abuse of intoxicating liquor or narcotic drugs
- Has been judicially deprived of the custody of the child if the adjudication is final on appeal to the court of last resort or the time for an appeal has expired

- Has caused the child to be conceived as a result of rape or incest
- Does not appear personally or by counsel at the hearing to terminate parental rights after notice was received at least 30 days prior to the hearing

**When Consent Can Be Executed****Citation: Codified Laws § 25-5A-4**

No petition to terminate rights or consent to adoption may be filed until 5 days after the child's birth.

**How Consent Must Be Executed****Citation: Codified Laws §§ 25-6-12; 25-5A-16**

Before the hearing on a petition for adoption, the person adopting a child, the child adopted, and the other persons whose consent is necessary shall execute their consent in writing, and the person adopting shall execute an agreement to the effect that the child adopted shall be treated in all respects as his or her own. The consent forms and the agreement of the person adopting shall be filed with the court.

At the time of the hearing on the petition, the person adopting the child and the child to be adopted shall appear in court. All persons whose consent is necessary, except the child and the person adopting the child, may be represented by a person who has power of attorney. A guardian may appear on behalf of the child, or a duly incorporated home or society for the care of dependent or neglected children may, by its authorized officer or agent, consent to the adoption of a child surrendered to such home or society by a court of competent jurisdiction. The Department of Social Services may appear in court and consent to the adoption of a child surrendered to it by any court of competent jurisdiction or, if the department has custody of a child by written agreement of a parent or parents with power of attorney to consent to adoption, by the officer of the department holding such power of attorney.

At the time of the hearing, the court, after full and complete inquiry, shall determine whether the petitioner or petitioners are fully aware of the purpose of the proceedings and the consequences of their act.

**Revocation of Consent****Citation: Codified Laws § 25-6-21**

Except in any case involving fraud, any proceeding for the adoption of a child shall be in all things legalized, cured, and validated 1 year after the proceeding is finalized. If any person has a claim or right arising from any adoption proceeding, that person must initiate any action to enforce such right or claim within 1 year of the date when the proceeding is finalized, unless a 2-year statute of limitations is imposed by the Indian Child Welfare Act.

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**Tennessee***Current Through March 2017***Who Must Consent to an Adoption****Citation: Ann. Code §§ 36-1-110; 36-1-117**

The following persons must be made parties to an adoption proceeding:

- The parent, the legal parent, or the guardian
- The putative father of the child

A parent who has not reached age 18 shall have the legal capacity to surrender a child or otherwise give parental consent to adoption or execute a waiver of interest and to release his or her rights to the child and shall be as fully bound thereby as if the parent had attained age 18.

The court shall have the authority to appoint a guardian ad litem for the minor parent of a child who may be surrendered or for whom a parental consent or waiver of interest is given if deemed necessary to advise and assist the minor parent with respect to surrender, parental consent, waiver, or termination of the minor parent's parental rights.

**Consent of Child Being Adopted****Citation: Ann. Code § 36-1-117**

When the child who is the subject of the adoption is age 14 or older, the adoption court must receive the sworn, written consent of the child to the adoption. The court shall receive the consent and testimony from the child in chambers with only the child and a guardian ad litem if required and appointed by the court.

If the child is mentally disabled, the court shall appoint a guardian ad litem to give or withhold consent for the child.

**When Parental Consent Is Not Needed****Citation: Ann. Code § 36-1-117**

The parent, legal parent, guardian, or putative biological father of the child shall not be made a party to the adoption proceeding if he or she:

- Has surrendered parental or guardianship rights to the child
- Has executed a parental consent that has been confirmed by the court
- Has waived his or her rights or has had his or her rights terminated by the order of a court of competent jurisdiction

**When Consent Can Be Executed****Citation: Ann. Code § 36-1-111**

No surrender or parental consent shall be valid that is made within 3 calendar days after the date of the child's birth beginning on the day following the child's birth. The court may, for good cause shown, waive this waiting period.

**How Consent Must Be Executed****Citation: Ann. Code § 36-1-111**

All surrenders must be made in chambers before a judge of the chancery, circuit, or juvenile court, and the court shall advise the person or persons surrendering the child of the right of revocation of the surrender and time for the revocation and the procedure for that revocation.

No surrender or parental consent shall be sufficient to make a child available for adoption when any other person, the department, a licensed child-placing agency, or other child-caring agency is exercising the right to physical custody of the child.

When the person executing the surrender resides in another state or territory of the United States, the surrender may be made in accordance with the laws of that state or territory or may be made before the judge of such state or territory, and such surrender shall be valid for use in adoptions in this state.

When the surrendering person resides or is temporarily in a foreign country, the surrender may be made before any officer of the U.S. armed forces or foreign service authorized to administer oaths.

In cases in which the person executing the surrender is incarcerated in a state or federal penitentiary, the surrender may be executed before the warden or deputy warden of the penitentiary or a notary public.

In all other respects, the court or other persons authorized to accept surrenders must witness the actual act of surrender or must confirm the parental consent by verifying directly with the parent or guardian the parent's or guardian's understanding and willingness to terminate parental rights, by witnessing the parent's or guardian's signature on the surrender form, or by questioning the parent before the entry of an order of confirmation of the parental consent.

**Revocation of Consent****Citation: Ann. Code § 36-1-112**

A person who executed a surrender may revoke the surrender at any time within 3 calendar days of the date of the surrender. The surrender shall be revoked by appearing before the judge who accepted the surrender or the judge's successor or substitute. The revocation of the surrender shall be executed under oath by the parent or guardian who executed the surrender of the child, and the judge or other person who accepted the surrender shall sign and date the revocation form.

No surrender may be revoked by the person surrendering the child or set aside by a court after the expiration of the 3-day period except as the surrender may be invalidated by court order entered pursuant to a timely filed complaint or as permitted by order of the court entered pursuant to § 36-1-118.

A parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court. The parent who executed the parental consent shall appear before the judge of the court in which the adoption petition is filed and shall execute a revocation of the parental consent.

After the revocation period has expired or after the court has entered an order confirming a parental consent, no surrender or waiver of interest or parental consent shall be set aside by a court except upon clear and convincing evidence of duress, fraud, intentional misrepresentation, or invalidity, and no surrender, waiver of interest, or parental consent may be set aside for any reason unless the action based on these grounds is initiated within 30 days of the execution of the surrender or within 30 days of the date of entry of the order of confirmation of parental consent.

## Texas

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Fam. Code § 162.010**

Unless the managing conservator is the petitioner, the written consent of a managing conservator to the adoption must be filed.

If a parent of the child is presently the spouse of the petitioner, that parent must join in the petition for adoption, and further consent of that parent is not required.

### Consent of Child Being Adopted

**Citation: Fam. Code § 162.010**

A child who is age 12 or older must consent to the adoption in writing or in court. The court may waive this requirement if it would serve the child's best interests.

### When Parental Consent Is Not Needed

**Citation: Fam. Code §§ 161.001; 162.010**

The rights of an alleged father may be terminated if:

- After being served with a citation, he does not respond by the timely filing of an admission of paternity or a counterclaim for paternity.
- The child is older than age 1 at the time the petition for adoption is filed, he has not registered with the paternity registry, and after the exercise of due diligence by the petitioner, his identity and location are unknown or his identity is known but he cannot be located
- The child is younger than age 1 at the time the petition for adoption is filed, and he has not registered with the paternity registry.
- He has registered with the paternity registry, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner.

The court may waive the requirement of consent by the managing conservator if the court finds that the consent is being refused or has been revoked without good cause.

### When Consent Can Be Executed

**Citation: Fam. Code §§ 161.103; 161.106**

An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child but not before 48 hours after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished.

A man may sign an affidavit disclaiming any interest in a child before the birth of the child.

### How Consent Must Be Executed

**Citation: Fam. Code §§ 161.103; 161.106**

An affidavit for voluntary relinquishment of parental rights must be signed by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before a person authorized to take oaths. The affidavit must contain:

- The name, address, and age of the parent whose parental rights are being relinquished
- The name, age, and birth date of the child
- The names and addresses of the guardians of the child, if any
- A statement that the person signing the affidavit is or is not presently obligated to make payments for the support of the child
- A description of all property owned by the child
- An allegation that termination of the parent-child relationship is in the best interests of the child
- The name and address of the other parent or a statement that the parental rights of the other parent have been terminated or that the child has no presumed father
- A statement that the parent has been informed of parental rights and duties
- A statement that the relinquishment is revocable, irrevocable, or irrevocable for a stated period of time
- The designation of a prospective adoptive parent, the department, or a licensed child-placing agency to serve as managing conservator of the child

The affidavit may not contain terms for limited posttermination contact between the child and the parent whose parental rights are to be relinquished as a condition of the relinquishment of parental rights.

A man may sign an affidavit disclaiming any interest in a child and waiving notice in any suit filed or to be filed affecting the parent-child relationship. The affidavit shall be signed by the man, whether or not a minor; witnessed by two credible persons; and verified before a person authorized to take oaths. The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

### **Revocation of Consent**

**Citation: Fam. Code §§ 162.011; 161.1035**

At any time before an order granting the adoption of the child is rendered, a consent required by § 162.010 may be revoked by filing a signed revocation.

An affidavit of relinquishment of parental rights that fails to state that the relinquishment is irrevocable for a stated time is:

- Revocable only if the revocation is made before the 11th day after the date the affidavit is executed
- Irrevocable on or after the 11th day after the date the affidavit is executed

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## **Utah**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Ann. Code §§ 78B-6-120; 78B-6-120.1; 78B-6-123**

Consent to adoption of a child or relinquishment of a child for adoption is required from:

- A man or woman who:
  - » Is recognized as the father or mother of the proposed adoptee, unless the presumption is rebutted under § 78B-15-607 or the man or woman was not married to the mother of the proposed adoptee until after the mother consented to the child's adoption
  - » Is the father of the adoptee by a previous legal adoption
- The mother of the adoptee
- A biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption
- A biological parent who has executed and filed a voluntary declaration of paternity with the State Registrar of Vital Statistics prior to the mother's execution of consent
- An unmarried biological father of an adoptee whose consent is not otherwise required, but only if he fully and strictly complies with the requirements of §§ 78B-6-121 and 78B-6-122
- The person or agency to whom an adoptee has been relinquished and that is placing the child for adoption

Consent or relinquishment may be implied by any of the following acts:

- Abandonment
- Leaving the child with a third party, without providing the third party with the parent's identification, for 30 consecutive days
- Knowingly leaving the child with another person, without providing for support, communicating, or otherwise maintaining a substantial relationship with the child, for 6 consecutive months
- Receiving notification of a pending adoption proceeding and failing to respond as required

A minor parent has the power to consent to the adoption of his or her child and relinquish his or her control or custody of the child for adoption. The consent or relinquishment is valid and has the same force and effect as a consent or relinquishment executed by an adult parent.

### **Consent of Child Being Adopted**

**Citation: Ann. Code § 78B-6-120**

A child who is age 12 or older must consent to the adoption unless he or she does not have the capacity to consent.

### **When Parental Consent Is Not Needed**

**Citation: Ann. Code §§ 78B-6-120; 78B-6-121; 78B-6-111**

The consent of a parent is not required if the adopted person is age 18 or older. The consent of a parent is not required if the person's parental rights relating to the child have been terminated.



The consent of an unmarried biological father is not required if:

- The court determines that the unmarried biological father's rights should be terminated based on the petition of any interested party.
- A declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded.
- The unmarried biological father fails to comply with requirements to initiate proceedings to establish his paternity of the child.

An unmarried biological father is not entitled to notice of an adoption proceeding, nor is the consent of an unmarried biological father required in connection with an adoption proceeding, in cases where it is shown that the child who is the subject of the proceeding was conceived as a result of conduct that would constitute any sexual offense, regardless of whether the unmarried biological father is formally charged with or convicted of a criminal offense.

### **When Consent Can Be Executed**

**Citation: Ann. Code § 78B-6-125**

A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.

The consent or relinquishment of any other person as required by §§ 78B-6-120 and 78B-6-121 may be executed at any time, including prior to the birth of the child.

### **How Consent Must Be Executed**

**Citation: Ann. Code § 78B-6-124**

A consent or relinquishment by a birth mother or an adopted person shall be signed before:

- A judge of any court that has jurisdiction over adoption proceedings or a person appointed by that judge for the purpose of taking consents or relinquishments
- A person who is authorized by a licensed child-placing agency to take consents or relinquishments if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency

If the consent or relinquishment of a birth mother or adopted person is taken out of state, it shall be signed before:

- A person who is authorized by a child-placing agency to take consents or relinquishments
- A person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings
- A court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken
- A person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adopted person

The consent or relinquishment of any other person or agency as required by § 78B-6-120 may be signed before a notary public or any person authorized to take a consent or relinquishment. A signature shall be notarized or witnessed by two individuals who are not members of the birth mother's or the adoptee's immediate family.

A person authorized to take consents or relinquishments shall certify to the best of his or her information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.

### **Revocation of Consent**

**Citation: Ann. Code §§ 78B-6-120.1; 78B-6-123; 78B-6-126**

Implied consent under § 78B-6-120.1 may not be withdrawn. A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise by becoming emancipated.

A consent or relinquishment is effective when it is signed and may not be revoked.

## Vermont

Current Through March 2017

### Who Must Consent to an Adoption

**Citation: Ann. Stat. Tit. 15A, § 2-401**

In a direct placement of a minor for adoption by a parent or guardian, a petition to adopt the minor may be granted only when consent to the adoption has been executed by:

- The woman who gave birth to the minor
- The biological father identified by the mother or as otherwise known to the court
- A man who is or has been married to the woman if the minor was born during the marriage or within 300 days after the marriage was terminated or a court issued a decree of separation
- A man who meets all of the following conditions:
  - » Was not married to the minor's mother at the time of the child's birth
  - » Has acknowledged his paternity of the minor by executing a voluntary acknowledgment of paternity or has filed a notice to retain parental rights
  - » Has demonstrated a commitment to the responsibilities of parenthood by establishing a custodial, personal, or financial relationship with the child, unless he was prevented from demonstrating such commitment or was unable to demonstrate such commitment
- The minor's guardian if expressly authorized by a court to consent to the minor's adoption
- The current adoptive or other legally recognized mother and father of the minor

In a placement of a minor for adoption by an agency authorized to place the minor, a petition to adopt the minor may be granted only if consent to the adoption has been executed by:

- The agency that placed the minor for adoption
- A person described above who has not relinquished the minor or had his or her parental rights terminated

### Consent of Child Being Adopted

**Citation: Ann. Stat. Tit. 15A, § 2-401**

Unless the court dispenses with the minor's consent, a petition to adopt a minor who has attained 14 years of age may be granted only if, in addition to any consent required above, the minor has executed an informed consent to the adoption.

### When Parental Consent Is Not Needed

**Citation: Ann. Stat. Tit. 15A, § 2-402**

Consent to an adoption of a minor is not required of:

- A person who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency
- A person whose parental relationship to the minor has been judicially terminated or determined not to exist
- A man who has not been married to the woman who gave birth to the minor and who, after the conception of the minor, executes a notarized statement denying paternity or disclaiming any interest in the minor and acknowledging that his statement is irrevocable when executed
- The personal representative of a deceased parent's estate
- A parent or other person who has not executed a consent or a relinquishment and who fails to file an answer or make an appearance in a proceeding for adoption or for termination of a parental relationship within the requisite time after service of notice of the proceeding

The court may dispense with the consent of:

- A guardian or an agency whose consent is otherwise required upon a finding that the consent is being withheld unreasonably, contrary to the best interests of a minor adopted person
- A minor who is age 14 or older upon a finding that it is not in the best interests of the minor to require the consent

### When Consent Can Be Executed

#### Citation: Ann. Stat. Tit. 15A, § 2-404

A parent whose consent to the adoption is required may not execute a consent or a relinquishment sooner than 36 hours after the minor is born.

A guardian may execute a consent to the adoption of a minor or a relinquishment at any time after being authorized by a court to do so.

An agency that places a minor for adoption may execute its consent at any time before or during the hearing on the petition for adoption.

A minor whose consent is required may execute a consent at any time at or before the hearing on the petition for adoption.

### How Consent Must Be Executed

#### Citation: Ann. Stat. Tit. 15A, §§ 2-404; 2-405

Before executing a consent, a parent shall have been informed of the meaning and consequences of adoption, the availability of personal and legal counseling, the consequences of misidentifying the other parent, the procedure for releasing information about the health and other characteristics of the parent that may affect the physical or psychological well-being of the child, and the procedure for the release of the parent's identity.

A consent executed by a parent or guardian shall be signed in the presence of:

- A judge of a court that has jurisdiction over adoption proceedings in this or in any other state
- A person appointed by a probate judge to take consents
- A commissioned officer on active duty in the military if the person executing the consent is in military service
- An officer of the Foreign Service or a consular officer of the United States in another country if the person executing the consent is in that country

A consent executed by a minor person to be adopted shall be signed in the presence of the judge before whom the proceeding is pending. A parent who is a minor is competent to execute consent if the parent has had the advice of an attorney who is not representing an adoptive parent or the agency to which the parent's child is relinquished. The attorney shall be present when the consent is executed.

A prospective adoptive parent named or described in a consent to the adoption of a child shall sign a statement indicating an intention to adopt the child, acknowledging an obligation to return legal and physical custody of the child to the child's parent if the parent revokes the consent within the time specified in § 2-404(a), and acknowledging responsibility for the minor's support and medical and other care if the consent is not revoked.

### Revocation of Consent

#### Citation: Ann. Stat. Tit. 15A, §§ 2-407; 2-408; 2-409

Except as specified below, a consent to adoption that is executed by a parent or guardian is final and irrevocable 21 days after execution.

In a direct placement of a minor for adoption by a parent or guardian, and before the adoption is finalized, a consent is revoked if:

- Within 21 days after the consent is executed, the parent who executed the consent notifies the court in writing that he or she revokes the consent.
- The person who executed the consent and the prospective adoptive parent agree to its revocation.

In a direct placement by a parent or guardian, the court shall set aside the consent if the person who executed the consent establishes:

- By clear and convincing evidence, before a decree of adoption is issued, that the consent was obtained by fraud or duress
- By a preponderance of the evidence before a decree of adoption is issued that, without good cause shown, a petition to adopt was not filed within 45 days after the minor was placed for adoption, unless the 45-day period was extended by the court, in which event the petition to adopt was not filed within the extended period set by the court
- By a preponderance of the evidence, that a condition permitting revocation has occurred

A relinquishment is revoked if:

- Within 21 days after a relinquishment is executed, a parent who executed the relinquishment gives written notice to the court and the agency to which the minor has been relinquished that the parent revokes the relinquishment.
- The person who executed the relinquishment and the agency that accepted it agree to its revocation.

The court shall set aside a relinquishment if the person who executed the relinquishment establishes:

- By clear and convincing evidence, before a decree of adoption is issued, that the relinquishment was obtained by fraud or duress
- By a preponderance of the evidence that a condition permitting revocation has occurred

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## Virgin Islands

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Code Tit. 16, § 142(a)**

Consent must be given by:

- The parents of the child or the survivor of them
- If neither parent is living, the guardian of the child
- If there is no guardian, the next of kin in the Virgin Islands
- If there is no next of kin, a guardian ad litem appointed by the court

### Consent of Child Being Adopted

**Citation: Ann. Code Tit. 16, § 144**

If the child is age 14 or older, the adoption shall not be made without his or her consent given to the court on privy examination.

### When Parental Consent Is Not Needed

**Citation: Ann. Code Tit. 16, § 142(b)**

The consent of the parent is not required if either parent:

- Is insane or imprisoned in a penitentiary under sentence for a term not less than 2 years
- Has willfully deserted and neglected to provide proper care and maintenance for the child for 1 year immediately prior to the filing of the petition
- Is an unfit person to have the care and custody of the child

### When Consent Can Be Executed

This issue is not addressed in the statutes reviewed.

### How Consent Must Be Executed

**Citation: Ann. Code Tit. 16, § 142(a)**

Consent must be in writing.

### Revocation of Consent

This issue is not addressed in the statutes reviewed.

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## Virginia

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Code §§ 63.2-1202; 63.2-1241**

Consent shall be executed by:

- The birth mother
- Any man who:
  - » Is an acknowledged father under § 20-49.1
  - » Is an adjudicated father under § 20-49.8
  - » Is a presumed father
  - » Has registered with the Virginia Birth Father Registry

- The child-placing agency or the local board having custody of the child, with the right to place the child for adoption, through court commitment or parental agreement
- An agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates

In a stepparent adoption, the adoption may be granted when:

- The noncustodial birth parent consents, under oath and in writing, to the adoption.
- The mother swears, under oath and in writing, that the identity of the father is not reasonably ascertainable, rendering his consent unnecessary.
- The acknowledged, adjudicated, presumed, or putative father named by the mother denies paternity of the child, rendering his consent unnecessary.
- The child is age 14 or older and has lived in the home of the person desiring to adopt the child for at least 5 years.
- The noncustodial birth parent is deceased.
- The noncustodial birth parent executes a denial of paternity under oath and in writing.
- The child is the result of surrogacy and the noncustodial birth parent consents to the adoption in writing.
- The noncustodial birth parent:
  - » Is not an acknowledged father
  - » Is not an adjudicated father
  - » Is not a presumed father
  - » Is not a putative father who has registered with the Virginia Birth Father Registry, and the putative father's identity is not reasonably ascertainable

### **Consent of Child Being Adopted**

**Citation: Ann. Code § 63.2-1202**

Consent must be executed by the child if he or she is age 14 or older unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

### **When Parental Consent Is Not Needed**

**Citation: Ann. Code § 63.2-1202**

No consent shall be required if:

- A birth father denies, under oath and in writing, the paternity of the child.
- The birth father is convicted of rape, statutory rape, incest, or an equivalent offense of another state or any foreign jurisdiction, and the child was conceived as a result of such violation.
- Any person has had his or her parental rights terminated by a court of competent jurisdiction.
- A birth parent, without just cause, has neither visited nor contacted the child for a period of 6 months prior to the filing of the petition for adoption.

The failure of the nonconsenting party to appear at the scheduled hearing, either in person or by counsel, after proper notice has been given, shall constitute a waiver of any objection and right to consent to the adoption.

### **When Consent Can Be Executed**

**Citation: Ann. Code §§ 63.2-1202; 63.2-1233**

A birth father may consent to the termination of all of his parental rights prior to the birth of the child.

In a direct parental placement, the adoptive child must be at least in the third calendar day of life before the birth parents can execute consent before the juvenile and domestic relations court.

### **How Consent Must Be Executed**

**Citation: Ann. Code §§ 63.2-1202; 63.2-1233**

No petition for adoption shall be granted unless written consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath, and acknowledged before an officer authorized by law to take acknowledgments. A birth parent who is under age 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption and shall be as fully bound thereby as if the birth parent had attained age 18.

In a direct parental placement, the birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption when they come before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent.

The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father who is not married to the mother of the child at the time of the child's conception or birth if the birth father consents under oath and in writing to the adoption.

### **Revocation of Consent**

**Citation: Ann. Code §§ 63.2-1204; 63.2-1223; 63.2-1234**

Parental consent to an adoption shall be revocable prior to the final order of adoption under these conditions:

- Upon proof of fraud or duress
- After placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents or child-placing agency

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall be revocable by either of the birth parents until the child has reached the age of 10 days and 7 days have elapsed from the date of execution of the agreement. In addition, a valid entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the physical custody of adoptive parents at the time of such revocation. Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board to which the child was originally entrusted.

In a direct parental placement, consent shall be revocable by either consenting birth parent for any reason for up to 7 days from its execution. The 7-day revocation period may be waived in writing at the time of consent provided that the child is at least 10 days old and the consenting birth parent acknowledges having received independent legal counsel regarding the effect of such waiver. In the case of two consenting birth parents, the waiver by one consenting birth parent shall not affect the right of the second consenting birth parent to retain his or her 7-day revocation period.

Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party, and filed with the clerk of the juvenile and domestic relations district court in which the petition was filed.

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## **Washington**

*Current Through March 2017*

### **Who Must Consent to an Adoption**

**Citation: Rev. Code § 26.33.160**

Consent to an adoption shall be required of the following, if applicable:

- The parents and any alleged father of a child under age 18
- An agency or the department to whom the child has been relinquished pursuant to § 26.33.080
- The legal guardian of the child

### **Consent of Child Being Adopted**

**Citation: Rev. Code § 26.33.160**

A child who is age 14 or older must consent to the adoption.

### **When Parental Consent Is Not Needed**

**Citation: Rev. Code §§ 26.33.120; 26.33.170**

Except in the case of an Indian child, the parental rights of a parent may be terminated upon a showing by clear and convincing evidence that it is in the best interests of the child to terminate the relationship, the parent has failed to perform parental duties, and the parent is withholding consent to adoption contrary to the best interests of the child.

Except in the case of an Indian child, the parent-child relationship of an alleged father who claims paternity may be terminated upon a showing by clear and convincing evidence that it is in the best interests of the child to terminate the relationship, that he has failed to perform parental duties under circumstances showing a substantial lack of regard for his parental obligations, that he is withholding consent to adoption contrary to the best interests of the child, or that he is not the father.

The parent-child relationship of an Indian child and his or her parent or alleged father, where paternity has been claimed or established, may be terminated only pursuant to the standards set forth in 25 U.S.C. § 1912(f).

The parent-child relationship of a parent or an alleged father may be terminated if the parent or alleged father fails to appear after being notified of the hearing.

The consent of an agency, the department, or a legal guardian may be dispensed with if the court determines by clear and convincing evidence that the proposed adoption is in the best interests of the child.

The consent of an alleged father, birth parent, or parent may be dispensed with if the court finds that the proposed adoption is in the best interests of the child and that the alleged father, birth parent, or parent:

- Has been found guilty of rape or incest when the child was the victim of the rape or incest
- Has been found guilty of rape or incest when the other parent of the child was the victim and the child was conceived as a result of the rape or incest

### **When Consent Can Be Executed**

**Citation: Rev. Code §§ 26.33.080; 26.33.160**

A petition for relinquishment, together with the written consent to adoption, may be filed before the child's birth. If the child is an Indian child, the petition and consent shall not be signed until at least 10 days after the child's birth and shall be recorded before a court of competent jurisdiction pursuant to 25 U.S.C. § 1913(a).

The consent will not be presented to the court until 48 hours after it is signed or 48 hours after the birth of the child, whichever occurs later. In the case of a consent to an adoption of an Indian child, no consent shall be valid unless the consent is executed in writing more than 10 days after the birth of the child.

### **How Consent Must Be Executed**

**Citation: Rev. Code §§ 26.33.080; 26.33.160**

A parent, an alleged father, the department, or an agency may file with the court a petition to relinquish a child to the department or an agency. The parent's or alleged father's written consent to adoption shall accompany the petition. The written consent of the department or the agency to assume custody shall be filed with the petition.

A parent, alleged father, or prospective adoptive parent may file with the court a petition to relinquish a child to the prospective adoptive parent. The parent's or alleged father's written consent to adoption shall accompany the petition. The written consent of the prospective adoptive parent to assume custody shall be filed with the petition. The identity of the prospective adoptive parent need not be disclosed to the petitioner.

The written consent to adoption shall be signed under penalty of perjury and shall state that:

- It is given subject to approval of the court.
- It has no force or effect until approved by the court.
- The birth parent is or is not of Native American or Alaska native ancestry.
- It is revocable by the consenting party at any time before its approval by the court.
- A written consent to adoption that meets all the requirements of this chapter but that does not name or otherwise identify the adopting parent is valid if it contains a statement that it is voluntarily executed without disclosure of the name or other identification of the adopting parent.
- There must be a witness to the consent of the parent or alleged father. The witness must be at least age 18 and selected by the parent or alleged father. The consent document shall contain a statement identifying by name, address, and relationship the witness selected by the parent or alleged father.

### **Revocation of Consent**

**Citation: Rev. Code § 26.33.160**

Consent to adoption is revocable by the consenting party at any time before the consent is approved by the court. The revocation may be made in either of the following ways:

- Written revocation may be delivered or mailed to the clerk of the court before approval.
- Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within 48 hours after a prior notice of revocation that was given within 48 hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written.



Consent to adoption may not be revoked after it has been approved by the court. Within 1 year after approval, a consent may be revoked for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than 1 year after it is approved by the court.

In the case of consent to an adoption of an Indian child, consent may be withdrawn for any reason at any time prior to the entry of the final decree of adoption. Consent may be withdrawn for fraud or duress within 2 years of the entry of the final decree of adoption.

## West Virginia

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Code §§ 48-22-301; 49-4-114**

Consent to or relinquishment for adoption of a minor child is required of:

- The parents or surviving parent, whether adult or minor, of a marital child
- The outsider father of a marital child who has been adjudicated to be the father of the child or who has filed a paternity action that is pending at the time of the filing of the petition for adoption
- The birth mother, whether adult or minor, of a nonmarital child
- The determined father

If all persons entitled to parental rights of the child are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian or any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.

Whenever a child welfare agency licensed to place children for adoption or the Department of Health and Human Resources has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside, or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child.

### Consent of Child Being Adopted

**Citation: Ann. Code § 48-22-301**

If the child to be adopted is age 12 or older, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction unless, for extraordinary cause, the requirement of such consent is waived by the court.

### When Parental Consent Is Not Needed

**Citation: Ann. Code § 48-22-301**

Consent or relinquishment shall not be required of a parent or of any other person having custody of the child:

- Whose parental rights have been terminated
- Whom the court finds has abandoned the child
- Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent

If the mother, legal father, or determined father is under disability, the court may order the adoption if it finds:

- The parental rights of the person are terminated, abandoned, or permanently relinquished.
- The person is incurably insane.
- The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

### When Consent Can Be Executed

**Citation: Ann. Code § 48-22-302**

No consent or relinquishment may be executed before the expiration of 72 hours after the birth of the child to be adopted.

## How Consent Must Be Executed

**Citation: Ann. Code §§ 48-22-302; 48-22-304**

A consent or relinquishment executed by a parent or guardian must be signed and acknowledged in the presence of one of the following:

- A judge of a court of record
- A person whom a judge of a court of record designates to take consents or relinquishments
- A notary public
- A commissioned officer on active duty in the military of the United States if the person executing the consent or relinquishment is in military service
- An officer of the Foreign Service or a consular officer of the United States in another country if the person executing the consent or relinquishment is in that country

If a person who has executed a consent to or relinquishment for adoption is under age 18 at the time of the filing of the petition, and such minor parent is a resident of the state, the consent or relinquishment shall be specifically reviewed and approved by the court, and a guardian ad litem may be appointed to represent the interests of the minor parent. The guardian ad litem shall conduct a discreet inquiry regarding the consent or relinquishment given and may inquire of any person having knowledge of the consent or relinquishment. If the guardian ad litem finds reasonable cause to believe that the consent or relinquishment was obtained by fraud or duress, the court may request the minor parent to appear before the court or at a deposition so that inquiry may be made regarding the circumstances surrounding the execution of the consent or relinquishment.

## Revocation of Consent

**Citation: Ann. Code §§ 48-22-303; 48-22-305**

A consent or relinquishment may provide explicitly for its conditional revocation if:

- Another person whose consent or relinquishment is required does not execute the same within a specified period.
- A court determines not to terminate another person's parental relationship to the child.
- In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.

Parental consent or relinquishment, whether given by an adult or minor, may be revoked only if:

- The person who executed the consent and the prospective adoptive parent named in the consent, or the agency in case of relinquishment, agree to its revocation prior to the entry of an adoption order.
- The person who executed the consent proves by clear and convincing evidence, in an action filed either within 6 months of the date of the execution of the consent or prior to the date an adoption order is final, whichever date is later, that the consent or relinquishment was obtained by fraud or duress.
- The person who executed the consent proves by a preponderance of the evidence, prior to the entry of an adoption order, that a condition allowing revocation as expressly set forth in the consent has occurred.
- The person who executed the consent proves by clear and convincing evidence, prior to the entry of an adoption order, that the consent or relinquishment does not comply with the requirements set forth in this article.

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## Wisconsin

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Stat. §§ 48.41; 48.42**

A parent may consent to a voluntary termination of parental rights. The father of a nonmarital child may consent to the termination of any parental rights that he may have.

A petition may also be filed by an agency or other authorized person. The following persons must be given notice of any hearing for terminating parental rights:

- The parent or parents of the child unless the child's parent or parents have waived the right to notice
- If the child is a nonmarital child who is not adopted or whose parents do not subsequently marry each other and whose paternity has not been established:
  - » A person who has filed an unrevoked declaration of paternal interest before the birth of the child or within 14 days after the birth of the child

- » A person or persons alleged to be the father of the child or who may be the father of the child based upon the statements of the mother or other information presented to the court, unless that person or persons have waived the right to notice
- » A person who has lived in a familial relationship with the child and who may be the father of the child
- If the child is a nonmarital child who is under age 1 at the time the petition is filed and who is not adopted or whose parents do not subsequently marry each other and whose paternity has not been established and if an affidavit is filed with the petition:
  - » A person who has filed an unrevoked declaration of paternal interest before the birth of the child, within 14 days after the birth of the child or within 21 days after a notice is mailed, whichever is later
  - » A person who has lived in a familial relationship with the child and who may be the father of the child
- The guardian, guardian ad litem, legal custodian, and Indian custodian of the child

### **Consent of Child Being Adopted**

**Citation: Ann. Stat. § 48.42**

Any child who is age 12 or older must be given notice to attend the hearing pertaining to his or her adoptive placement.

### **When Parental Consent Is Not Needed**

**Citation: Ann. Stat. §§ 48.415; 48.42**

Notice of a hearing to terminate parental rights need not be sent to a person who may be the father of a nonmarital child who is not adopted or whose parents do not subsequently marry each other if his paternity has not been established and he has failed to establish his right to notice. In addition, consent is not required of any person whose parental rights have been terminated on any of the following grounds:

- Parental rights have been terminated due to failure of the parents to assume responsibility.
- The parent has abandoned the child.
- There is continuing parental disability.
- The parent has abused the child.
- The parent has relinquished custody of the child when the child was 72 hours old or younger.
- The parent has failed to assume responsibility for the child or to establish a substantial relationship with the child.
- The parent has caused the child to be conceived as a result of incest or sexual assault.
- The parent has been convicted of homicide or of solicitation to commit homicide of the child's other parent.

### **When Consent Can Be Executed**

**Citation: Ann. Stat. §§ 48.837; 48.028**

A hearing is held within 30 days of the filing of a petition for voluntary termination of parental rights but not before the birth of the child.

In the case of an Indian child, consent cannot be executed prior to or within 10 days after the birth.

### **How Consent Must Be Executed**

**Citation: Ann. Stat. §§ 48.41; 48.028**

A parent may consent to a voluntary termination of parental rights upon petition to the court. The parent must appear personally at the hearing to give his or her consent to the termination of his or her parental rights. The court may also accept the written consent of the parent given before an embassy or consul official, a military judge, or a judge of any court of record in another county or state or a foreign jurisdiction.

The father of a nonmarital child may consent to the termination of any parental rights that he may have by signing a written, notarized statement that recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child.

If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent or in which the child's birth parent is a resident of a foreign jurisdiction, the child's birth parent may consent to the termination of any parental rights that he or she may have by filing with the court an affidavit witnessed by two persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims all rights to the child.

In the case of an Indian child, consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences were fully explained and understood in English or interpreted into a language that the parent understood.

## Revocation of Consent

**Citation: Ann. Stat. §§ 48.46(2); 48.028**

A parent who has consented to the termination of his or her parental rights or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the following grounds, as specified in § 806.07(1)(a),(b),(c),(d), or (f):

- Mistake, inadvertence, surprise, or excusable neglect
- Newly discovered evidence that entitles a party to a new trial
- Fraud, misrepresentation, or other misconduct of an adverse party
- A voided judgment
- A prior judgment upon which the judgment is based has been reversed or otherwise vacated

Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights unless the parent files a timely notice of intent to pursue relief from the judgment under § 808.04(7m), in which case the motion shall be filed within the time permitted by § 809.107(5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. Motions under this subsection and appeals to the court of appeals shall be the exclusive remedies for such a parent to obtain a new hearing in a termination of parental rights proceeding.

After the entry of a final order granting adoption of an Indian child, a parent who has consented to termination may withdraw that consent and move the court for relief from the judgment on the grounds that the consent was obtained through fraud or duress. Any such motion shall be filed within 2 years after the entry of an order granting adoption.

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## Wyoming

*Current Through March 2017*

### Who Must Consent to an Adoption

**Citation: Ann. Stat. § 1-22-109**

The consent to adoption shall be signed by:

- Both parents, if living
- The surviving parent
- The mother and putative father of the child if the name of the putative father is known
- The mother alone if she does not know the name of the putative father, in which case she shall sign and file an affidavit so stating, and the court shall determine whether the putative father has registered and, if so, shall require notice to be given to the putative father
- The legal guardian of the person of the child if neither parent is living or if parental rights have been judicially terminated
- The executive head of the agency to whom the child has been relinquished for adoption
- The person having exclusive legal custody of the child by court order
- The legally appointed guardian of any parent or putative father who has been adjudged mentally incompetent

### Consent of Child Being Adopted

**Citation: Ann. Stat. § 1-22-109**

If the child to be adopted is age 14 or older, his or her written consent to adoption shall also be filed with the petition to adopt.

### When Parental Consent Is Not Needed

**Citation: Ann. Stat. § 1-22-110**

The adoption of a child may be ordered without the written consent of a parent or the putative father if the court finds that the nonconsenting parent or putative father is unknown, that the putative father has not registered, and the affidavit required by § 1-22-109(a)(iv) has been filed with the petition to adopt or if the court finds that the putative father or the nonconsenting parent or parents have:

- Been given notice of the hearing and have failed to answer or appear at the hearing
- Been judicially deprived of parental rights of the child for any reason
- Willfully abandoned or deserted the child
- Willfully failed to contribute to the support of the child for a period of 1 year immediately prior to the filing of the petition to adopt and has failed to bring the support obligation current within 60 days after service of the petition to adopt

- Willfully permitted the child to be maintained in or by a public or private institution or by the Department of Family Services for a period of 1 year immediately prior to the filing of the petition without substantially contributing to the support of the child
- Failed, within 30 days after receiving notice of the pending birth or birth of the child, to advise or notify the agency that gave the putative father the notice of his interest in or responsibility for the child or his declaration of paternity
- Been adjudged by a court to be guilty of cruelty, abuse, neglect, or mistreatment of the child
- Caused the conception of the child born out of wedlock as a result of sexual assault or incest for which he has been convicted
- Willfully failed to pay a total dollar amount of at least 70 percent of the court-ordered support for a period of 2 years or more and has failed to bring the support obligation 100 percent current within 60 days after service of the petition to adopt

**When Consent Can Be Executed****Citation: Ann. Stat. § 1-22-109**

The consent to adoption shall be signed any time after the birth of the child.

**How Consent Must Be Executed****Citation: Ann. Stat. § 1-22-109**

A written relinquishment of custody of the child to be adopted and written consent to adoption shall be filed with the petition to adopt. The consent shall be acknowledged or may be approved in the following manner:

- The consent shall be acknowledged by a:
  - » Person authorized to take acknowledgments
  - » Representative of the Department of Family Services
  - » Representative of a certified agency to whom the custody of the child is being relinquished for adoption
- If not acknowledged as provided above, the consent to adoption may be approved by the court after:
  - » The person giving the consent has appeared before the court in an informal hearing in court chambers.
  - » The court finds that the consent is knowingly and voluntarily given.

The consent to adoption and the relinquishment of custody of a child for adoption may be contained in a single instrument.

**Revocation of Consent****Citation: Ann. Stat. § 1-22-109(d)**

Consent to adoption and the relinquishment of a child for adoption are irrevocable unless obtained by fraud or duress, except that if the court should deny the adoption on account of a claim or objection of the putative father of the child, the court may also allow the mother of the child to withdraw her consent and relinquishment. The consent or relinquishment by a parent who is a minor is valid and may not be revoked solely because of minority.



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

