



**STATE STATUTES**  
CURRENT THROUGH OCTOBER 2021

# Consent to Adoption

To find statute information for a particular State, go to the [State Statutes Search](#).

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)<sup>1</sup>
- Adoptive parents (to lessen anxiety about the legality of the adoption process)

<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 or the parent has abandoned the child, has been convicted of specified crimes against the other parent or the child, has failed to support or establish a significant relationship with the

child, or is found 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 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 Virgin Islands require that older children give consent to their adoption.<sup>5</sup> In approximately 24 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> Twenty 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 nine 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

<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 Child Welfare Information Gateway's [The Rights of Unmarried Parents](#).

<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](#).

<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](#).

<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 and applies to all data in this publication. The information in this publication is current only through October 2021.

<sup>7</sup> Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, 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, Maine, 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, South Carolina, Tennessee, and Utah

discretion, may dispense with consent if it is in the best interests of the child.<sup>11</sup> Colorado and New Mexico require 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 and the Northern Mariana Islands specify in statute when a birth parent may execute consent to adoption.<sup>12</sup> Fifteen States and the Northern Mariana Islands allow birth parents to consent at any time after the birth of the child.<sup>13</sup> Approximately 18 States allow an alleged birth father to execute consent at any time before or after the child's birth.<sup>14</sup> Only three States (Alabama, Colorado, 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-three States 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), 24 hours (in Utah), and 36 hours (in Vermont) and the longest is 15 days (in Rhode Island).

The most common waiting period, required in 18 States, is 72 hours (also expressed as 3 days).<sup>15</sup> In Connecticut, Florida (for the mother),

Massachusetts, Missouri, Nebraska, New Mexico, Texas, and Washington, the waiting period is 48 hours or 2 days. 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, Washington, and Wisconsin 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, 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 the Northern Mariana Islands, the person executing consent must 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 with the court.<sup>18</sup> Some States require that the parent receive 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>

<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> Statutes in Idaho, New York, Oregon, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands do not currently provide a specific timeframe for executing consent.

<sup>13</sup> Alabama, Alaska, Arkansas, California (for agency placements), Delaware, Florida (for the father), Georgia, Indiana, Maryland, North Carolina, North Dakota, Oklahoma, South Carolina, Wisconsin, and Wyoming

<sup>14</sup> Alabama, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Kansas (only if the father's attorney is present), Louisiana, Missouri, Nevada, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Utah, and Virginia

<sup>15</sup> Arizona, Illinois, Iowa, Kentucky, Louisiana (for agency adoptions only), Maine, Michigan (for direct placements), 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

<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 seven States (Colorado, Iowa, Kansas, 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.

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.

Alaska, Colorado, 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. In Georgia, a father who relinquishes a child for adoption may sign an affidavit regarding his Native American heritage or military service. In Oregon, the relinquishment of an Indian child must be executed at a court hearing. California, New Mexico, North Carolina, South Dakota, 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 States.<sup>22</sup> In Michigan, Montana, Pennsylvania,

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, a physician, or an advanced practice nurse before consenting to the adoption of the child.

<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 Indian parent or custodian. The court shall also certify that either the Indian parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or custodian understands. 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

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

<sup>23</sup> Alabama, Arizona, California, Connecticut, Delaware, Florida (except a parent who is age 14 or younger), Idaho, Indiana, Kansas, Kentucky, Mississippi, Montana, New York, North Carolina, Oklahoma (for a parent who is 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

## REVOCAION 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 Virgin Islands makes no provisions in statute for revocation of consent; and in Massachusetts and Utah, all consents are irrevocable upon their execution.

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>

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.

<sup>28</sup>Alabama, Arizona, Colorado (claim must be filed within 90 days), Florida, Illinois (claim must be filed within 12 months), Kansas, Louisiana, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma (claim must be filed within 3 months), Oregon, Rhode Island (claim must be filed within 180 days), South Carolina, South Dakota (claim must be filed within 1 year or within 2 years for an Indian child), Virginia, Washington (claim must be filed within 1 year or within 2 years for an Indian child), West Virginia (claim must be filed within 6 months), Wisconsin, and Wyoming

<sup>29</sup>Arkansas (10 days), California (30 days in a direct placement), Delaware (60 days), Georgia (4 days), Kentucky (3 days), Louisiana (90 days), Maine (5 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), 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)

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.

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

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