Consent to Adoption

What Is Consent?

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

To find statute information for a particular State, go to

https://www.childwelfare.gov/systemwide/laws_policies/state/
State legislatures have developed a range of provisions designed to ensure protection for all involved individuals, including:

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

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

In all States, the court may determine that consent of the parent is not needed under specific circumstances, including when parental rights have been terminated, the child has

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1 The term “birth parent” is used to distinguish “birth” from “adoptive” and other types of parents and to reflect language in State statutes.
2 In 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/systemwide/laws_policies/statutes/putative.cfm.
3 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/systemwide/laws_policies/statutes/jurisdiction.cfm.
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. 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 notice of an adoption proceeding.

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. Approximately 25 States, the District of Columbia, and the Virgin Islands set the age of consent at 14. Nineteen States, American Samoa, and Guam require a child’s consent at age 12, while five States, the Northern Mariana Islands, and Puerto Rico require consent of children age 10. In 11 States, the requirement can be dispensed with if the child lacks the mental capacity to consent. In 16 States and the Northern Mariana Islands, the court, in its discretion, may dispense with consent

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4 For more information, see Information Gateway’s Grounds for Involuntary Termination of Parental Rights at https://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm.
5 Louisiana does not currently address in statute the issue of consent by the minor adoptive child.
6 The word “approximately” is used to stress the fact that States frequently amend their laws. The information in this publication is current through May 2013. The States requiring consent at age 14 include Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, and Wyoming.
7 States requiring consent at age 12 include Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Kentucky, Massachusetts, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia, and Wisconsin. States requiring consent at age 10 include Alaska, Hawaii, Maryland, New Jersey, and North Dakota.
8 States that waive consent if the child lacks the mental capacity to consent are Alabama, Idaho, Illinois, Kansas, Missouri, Montana, New Jersey, New Mexico, South Carolina, Tennessee, and Utah.
if it is in the best interests of the child. 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.

Approximately 47 States, the District of Columbia, and the Northern Mariana Islands specify in statute when a birth parent may execute consent to adoption. Sixteen States and the Northern Mariana Islands allow birth parents to consent at any time after the birth of the child. Approximately 14 States allow an alleged birth father to execute consent at any time before or after the child’s birth.

Thirty States and the District of Columbia require a waiting period 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.

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, in a direct placement, the mother 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.

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9 The court may dispense with consent from the child in Alaska, Arkansas, Delaware, Florida, Hawaii, Kentucky, New Hampshire, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Vermont, Virginia, and West Virginia.
10 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.
11 States that allow birth parents to consent any time after the child’s birth are Alaska, Arkansas, California (for agency placements), Colorado, Delaware, Georgia, Indiana, Maine, Maryland, Michigan, North Carolina, North Dakota, Oklahoma, South Carolina, Wisconsin, and Wyoming.
12 Alabama, Delaware, Hawaii, Illinois, Indiana, Louisiana, Nevada, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Utah, and Virginia allow fathers to consent before or after the birth.
13 The waiting period is 72 hours in Arizona, Illinois, Iowa, Kentucky, Louisiana (for agency adoptions only), Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.
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Only two States (Alabama and Hawaii) allow the birth mother to consent before the birth of her child; however, the decision to consent must be reaffirmed after the child's birth.

The manner in which consent can be executed varies considerably. In many States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, consent may be executed by a written statement witnessed and/or notarized by a notary public. Other States may require an appearance before a judge or the filing of a petition of relinquishment. Some States require 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. In cases in which custody has previously been placed with an agency, the head of the agency may sign an affidavit of consent.

In most States, a birth parent who is a minor is treated no differently than other birth parents. However, in some States, the minor parent must be provided with separate counsel prior to the execution of consent, or a guardian ad litem must be appointed to either review or execute the consent. In five States, Guam, and Puerto Rico, the consent of the minor's parents must be obtained.

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

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

15 Louisiana, Michigan, Minnesota, New Hampshire, and Rhode Island require consent from the minor's parents.
under which withdrawal of consent may be permitted by a State can include the following:

- Consent was obtained by fraud, duress, or coercion.  

- The birth parent is allowed to withdraw consent within a specified period of time, after which consent is irrevocable.

- 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.

- 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.

- There is a finding that withdrawal of consent is in the best interests of the child.

- The birth parents and adoptive parents mutually agree to the withdrawal of consent.

- An adoptive placement is not finalized with a specific family or within a specified period of time.

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

17 Arkansas (10 days), California (30 days in a direct placement), Delaware (60 days), Georgia (10 days), Kentucky (20 days), Maryland (30 days), Mississippi (6 months), Missouri (until confirmed by the court), Oklahoma (15 days for an extrajudicial consent), Virginia (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).

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

19 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.

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

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

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