



State Statutes Series 2004 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 the child for adoption and to release all rights and duties with respect to that child. 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 those individuals involved, including:

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

Who Must Consent

In all States, the birth mother and the birth father (if he has properly established paternity¹) hold the primary right of consent to adoption of their child. Either one or both parents may have these rights terminated for a variety of possible reasons, including abandonment, failure to support the child, mental incompetence, or a finding of parental unfitness due to abuse or neglect. When neither birth parent is available to give consent, the responsibility can fall to other legal entities, such as:

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

¹ In those States where there is a putative father registry, a birth father who fails to register in the prescribed manner and within the proper time period, may lose the right to consent. Other jurisdictions require unwed fathers to file a notice of their paternity claim within a certain period of time. See the Clearinghouse publication, *The Rights of Presumed (Putative) Fathers*, for detailed, State-by-State information.



Consent of Minors

Nearly all States,² the District of Columbia, and the U.S. Territories require that older children give consent to their adoption. Approximately³ 24 States,⁴ the District of Columbia, and the Virgin Islands set the age of consent at 14 years; 18 States,⁵ American Samoa, and Guam at 12 years; and 7 States,⁶ the Northern Mariana Islands, and Puerto Rico require consent of children age 10 years and above. In some States, the requirement can be dispensed with if the child lacks the mental capacity to consent,⁷ or the court finds it in the best interest of the child to dispense with consent.⁸ Colorado requires that the child be provided with counseling prior to giving consent.

When Consent Can Be Executed

Approximately 46 States⁹ and the District of Columbia specify in statute when a birth parent may execute consent to adoption. Fifteen States¹⁰ and the Northern Mariana Islands allow birth parents to consent at any time after the birth of the child, while 29 States require a waiting period before consent can be executed. Approximately 12 States¹¹ and the Northern Mariana Islands allow an alleged birth father to execute consent at anytime before or after the child's birth.

The shortest waiting periods are 12 and 24 hours,¹² and the longest are 10 and 15 days.¹³ The most common waiting period, required in 14 States¹⁴ and the District of Columbia, is 72 hours, or 3 days.¹⁵ 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.

² Louisiana does not currently address in statute the issue of consent by the minor adopted person.

³ The word *approximately* is used to stress the fact that States frequently amend their laws, so this information is current only through November 2004.

⁴ Alabama, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, and Wyoming

⁵ Arizona, California, Colorado, Connecticut, Florida, Idaho, Kentucky, Massachusetts, Montana, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, West Virginia, and Wisconsin

⁶ Alaska, Arkansas, Hawaii, Maryland, New Jersey, New Mexico, and North Dakota

⁷ In 10 States: Alabama, Idaho, Illinois, Kansas, Missouri, Montana, New Jersey, New Mexico, South Carolina, and Utah

⁸ In 14 States, Alaska, Arkansas, Delaware, Florida, Hawaii, New Hampshire, New York, North Carolina, Ohio, South Carolina, Texas, Vermont, Virginia, and West Virginia, and the Northern Mariana Islands

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

¹⁰ Alaska, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Indiana, Maine, North Carolina, North Dakota, Oklahoma, South Carolina, Wisconsin, and Wyoming

¹¹ Alabama, Delaware, Illinois, Kansas, Louisiana, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, and Utah

¹² Kansas imposes a 12-hour waiting period. Utah imposes a 24-hour waiting period.

¹³ Virginia and Washington impose a 10-day waiting period. Rhode Island imposes a 15-day waiting period.

¹⁴ Arizona, Illinois, Iowa, Kentucky, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee, and West Virginia

¹⁵ Waiting periods in other States are 36 hours (Vermont), 48 hours (Connecticut, Florida, Missouri, Nebraska, New Mexico, Texas, and Washington), 4 days (Massachusetts), and 5 days (Louisiana and South Dakota).

How Consent Must Be Executed

The manner in which consent can be executed varies considerably from State to State. In many States,¹⁶ the District of Columbia, and the U.S. territories of 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 States¹⁷ may require an appearance before a judge or the filing of a petition of relinquishment. Some States require that the parent be provided with counseling,¹⁸ have his or her rights and the legal effect of relinquishment explained to him or her, or be provided with legal counsel¹⁹ 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 execution of consent,²⁰ or a guardian *ad litem* must be appointed to either review or execute the consent.²¹ In six States,²² Guam, and Puerto Rico, the consent of the minor's parents must be obtained.

Revocation of Consent

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

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

- Consent was obtained by fraud, duress, or coercion.²³
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent becomes irrevocable.²⁴

¹⁶ In 28 States: Alabama (except for the mother, who must appear before the court), Arizona, California, Delaware, Florida, Georgia, Indiana, Iowa (except for minor parents), Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Texas, and Wyoming

¹⁷ Alabama (for the birth mother), Alaska, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa (if the birth parent is a minor), Kentucky, Maine, Michigan, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin

¹⁸ In Colorado, Iowa, Louisiana, Michigan, and New Mexico

¹⁹ In California, Louisiana, New Hampshire, New Mexico, North Carolina, South Carolina, and South Dakota

²⁰ In Kansas, Maryland, and Montana

²¹ Alabama, Arkansas, Connecticut, Kentucky, and Rhode Island

²² Indiana, Michigan, Minnesota, New Hampshire, Oklahoma, and Rhode Island

²³ Arizona, Colorado (the claim must be filed within 90 days), Florida (in private placements), Illinois (the claim must be filed within 12 months), Kansas, Missouri, New Jersey, New Mexico, Oregon, South Dakota (the claim must be filed within 2 years), Washington (the claim must be filed within 1 year, or within 2 years for an Indian child), West Virginia, Wisconsin, Wyoming, and Puerto Rico

²⁴ Arkansas (10 days), Delaware (60 days), Georgia (10 days), Kentucky (20 days), Louisiana (when consent is given prior to the 5th day after the child's birth), Maryland (30 days), Minnesota (10 days), and the District of Columbia (10 days)

- The birth parent is allowed to withdraw consent within a specified period of time, after which consent becomes irrevocable unless there is evidence of fraud or duress.²⁵
- The birth parent is allowed to withdraw consent within a specified period of time, after which consent becomes irrevocable unless it can be shown that revocation is in the best interests of child.²⁶
- There is a finding that withdrawal of consent is in the best interests of the child.²⁷
- The birth parents and adoptive parents mutually agree to the withdrawal of consent.²⁸
- An adoptive placement is not finalized with a specific family or within a specified period of time.²⁹

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 the National Adoption Information Clearinghouse (NAIC). 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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- To find statute information for a particular State, go to <http://naic.acf.hhs.gov/general/legal/statutes/search> and select the specific State and topic.
- To find information on all of the States and territories, view the complete PDF at <http://naic.acf.hhs.gov/general/legal/statutes/consentall.pdf> or call the Clearinghouse at (888) 251-0075 or (703) 352-3488 to order a copy.

²⁵ Alabama (5 days), Florida (3 days if an agency placement), Iowa (96 hours), Maine (3 days), New York (45 days for extrajudicial consents), North Carolina (7 days; 5 days in a direct placement), Oklahoma (15 days for extrajudicial consents), Pennsylvania (30 days), Tennessee (10 days), Texas (10 days), Vermont (21 days), and Virginia (15 days)

²⁶ Alabama (14 days), Alaska (10 days), Indiana (30 days), and Rhode Island (180 days)

²⁷ Connecticut, Hawaii, New Hampshire, North Dakota, Ohio, Guam, and the Northern Mariana Islands

²⁸ Montana, Oklahoma, Vermont (request must be made within 21 days), Virginia (request must be made within 15 days), and West Virginia

²⁹ California (if the placement is not made within 30 days), Maine, Oklahoma (if the placement is not made within 90 days), and Nevada (if the prospective adoptive family is found to be unsuitable, or no petition for adoption is filed within 2 years)