

## **IC 31-19-9**

### **Chapter 9. Consent to Adoption**

#### **IC 31-19-9-0.2**

##### **Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 31-3-1-6 (before its repeal, now codified in IC 31-19-2, IC 31-19-4, this chapter, and IC 31-19-10) by P.L.293-1987 apply to a petition for adoption, except for a petition on which an adoption decree has been entered before May 4, 1987.

*As added by P.L.220-2011, SEC.504.*

#### **IC 31-19-9-1**

##### **Consents required**

Sec. 1. (a) Except as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by the following:

(1) Each living parent of a child born in wedlock, including a man who is presumed to be the child's biological father under IC 31-14-7-1(1) if the man is the biological or adoptive parent of the child.

(2) The mother of a child born out of wedlock and the father of a child whose paternity has been established by:

(A) a court proceeding other than the adoption proceeding, except as provided in IC 31-14-20-2; or

(B) a paternity affidavit executed under IC 16-37-2-2.1; unless the putative father gives implied consent to the adoption under section 15 of this chapter.

(3) Each person, agency, or local office having lawful custody of the child whose adoption is being sought.

(4) 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.

(5) The child to be adopted if the child is more than fourteen (14) years of age.

(6) The spouse of the child to be adopted if the child is married.

(b) A parent who is less than eighteen (18) years of age may consent to an adoption without the concurrence of:

(1) the individual's parent or parents; or

(2) the guardian of the individual's person;

unless the court, in the court's discretion, determines that it is in the best interest of the child to be adopted to require the concurrence.

*As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.17; P.L.58-2009, SEC.22; P.L.128-2012, SEC.54.*

#### **IC 31-19-9-2**

##### **Execution of consent; timing; restrictions**

Sec. 2. (a) The consent to adoption may be executed at any time after the birth of the child, either in the presence of:

- (1) the court;
- (2) a notary public or other person authorized to take acknowledgments; or
- (3) an authorized agent of:
  - (A) the department; or
  - (B) a licensed child placing agency.

(b) The child's mother may not execute a consent to adoption before the birth of the child.

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

- (1) is in writing;
- (2) is signed by the child's father in the presence of a notary public; and
- (3) contains an acknowledgment that:
  - (A) the consent to adoption is irrevocable; and
  - (B) the child's father will not receive notice of the adoption proceedings.

(d) A child's father who consents to the adoption of the child under subsection (c) may not challenge or contest the child's adoption.

(e) Except as provided in subsection (f) or (g), a person who executes a written consent to the adoption of a child may not execute a second or subsequent written consent to have another person adopt the child unless one (1) or more of the following apply:

- (1) Each original petitioner provides a written statement that the petitioner is not adopting the child.
- (2) The person consenting to the adoption has been permitted to withdraw the first consent to adoption under IC 31-19-10.
- (3) The court dismisses the petition for adoption filed by the original petitioner or petitioners for adoption based upon a showing, by clear and convincing evidence, that it is not in the best interests of the child that the petition for adoption be granted.
- (4) The court denies the petition to adopt the child filed by the original petitioner or petitioners for adoption.

(f) The department may execute more than one (1) written consent to the adoption of a child if the department determines that the execution of more than one (1) written consent is in the best interests of the child.

(g) The parents of a child who is a ward of the department may execute a second or subsequent consent if:

- (1) the court with jurisdiction over the child in need of services determines that adoption by the person to whom consents were originally signed is not in the child's best interest; or
- (2) if the child's placement with the person who has petitioned or intends to petition to adopt the child is disrupted.

*As added by P.L.1-1997, SEC.11. Amended by P.L.130-2005, SEC.4; P.L.145-2006, SEC.251; P.L.21-2010, SEC.5; P.L.162-2011,*

*SEC.15; P.L.128-2012, SEC.55.*

### **IC 31-19-9-3**

#### **Validity of consent not identifying petitioner for adoption; consent to substituting petitioners**

Sec. 3. (a) A consent to adoption that does not name or otherwise identify a petitioner for adoption is valid if the consent to adoption contains a statement, by the person consenting to adoption, that the person consenting to adoption voluntarily executed the consent to adoption without disclosure of the name or other identification of the petitioner for adoption.

(b) A petitioner may be substituted under IC 31-19-2-2 if:

(1) the consent to adoption executed by a child's mother contains a statement, by the mother consenting to adoption, that the mother voluntarily agrees that a petitioner for the adoption may be substituted without additional consent from the mother; or

(2) the mother executes a written consent to the substitution of a petitioner for the adoption.

The mother's consent under this subsection is not conditional regardless of whether the mother consents or does not consent to the substitution of petitioners under this subsection.

*As added by P.L.1-1997, SEC.11. Amended by P.L.146-2007, SEC.10.*

### **IC 31-19-9-4**

#### **Forms**

Sec. 4. The department may furnish to the clerks of courts prescribed forms for use by parents or other persons when giving consent to adoption.

*As added by P.L.1-1997, SEC.11. Amended by P.L.145-2006, SEC.252.*

### **IC 31-19-9-5**

#### **Filing of copies**

Sec. 5. Copies of a signed consent to adoption shall be filed with the investigating agency and the clerk of the court in which the petition for adoption is pending.

*As added by P.L.1-1997, SEC.11.*

### **IC 31-19-9-6**

#### **Information and forms provided to birth parents**

Sec. 6. The individual who or agency that arranges for the signing of a consent to adoption shall provide each birth parent whose consent to adoption is obtained under this chapter with the following:

(1) An explanation concerning the following:

(A) The availability of adoption history information under IC 31-19-17 through IC 31-19-25.5.

(B) The birth parent's option to file a nonrelease form with

the state registrar if the birth parent seeks to restrict the release of identifying information.

(C) That identifying information may be released unless the birth parent files the nonrelease form with the state registrar.

(2) A nonrelease form prescribed by the state registrar under IC 31-19-25-4.

*As added by P.L.1-1997, SEC.11. Amended by P.L.191-2011, SEC.12.*

### **IC 31-19-9-7**

#### **Nonrelease forms**

Sec. 7. Upon request, the state registrar shall provide an individual or agency with a nonrelease form required by section 6(2) of this chapter.

*As added by P.L.1-1997, SEC.11.*

### **IC 31-19-9-8**

#### **Consent to adoption not required; written denial of paternity precludes challenge to adoption**

Sec. 8. (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

(1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

(3) The biological father of a child born out of wedlock whose paternity has not been established:

(A) by a court proceeding other than the adoption proceeding; or

(B) by executing a paternity affidavit under IC 16-37-2-2.1.

(4) The biological father of a child born out of wedlock who was conceived as a result of:

(A) a rape for which the father was convicted under IC 35-42-4-1;

(B) child molesting (IC 35-42-4-3);

(C) sexual misconduct with a minor (IC 35-42-4-9); or

(D) incest (IC 35-46-1-3).

(5) The putative father of a child born out of wedlock if the putative father's consent to adoption is irrevocably implied under section 15 of this chapter.

(6) The biological father of a child born out of wedlock if the:

(A) father's paternity is established after the filing of a petition for adoption in a court proceeding or by executing a

paternity affidavit under IC 16-37-2-2.1; and

(B) father is required to but does not register with the putative father registry established by IC 31-19-5 within the period required by IC 31-19-5-12.

(7) A parent who has relinquished the parent's right to consent to adoption as provided in this chapter.

(8) A parent after the parent-child relationship has been terminated under IC 31-35 (or IC 31-6-5 before its repeal).

(9) A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent to adoption.

(10) A legal guardian or lawful custodian of the person to be adopted who has failed to consent to the adoption for reasons found by the court not to be in the best interests of the child.

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

(12) A child's biological father who denies paternity of the child before or after the birth of the child if the denial of paternity:

(A) is in writing;

(B) is signed by the child's father in the presence of a notary public; and

(C) contains an acknowledgment that:

(i) the denial of paternity is irrevocable; and

(ii) the child's father will not receive notice of adoption proceedings.

A child's father who denies paternity of the child under this subdivision may not challenge or contest the child's adoption.

(b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned by the parent.

*As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.18; P.L.61-2003, SEC.11; P.L.130-2005, SEC.5.*

### **IC 31-19-9-9**

#### **Parent's crime against child's other parent; effect on consent requirement**

Sec. 9. A court shall determine that consent to adoption is not required from a parent if the:

(1) parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) an attempt under IC 35-41-5-1 to commit a crime described in clauses (A) through (C); or

(E) a crime in another state that is substantially similar to a

- crime described in clauses (A) through (D);
- (2) victim of the crime is the child's other parent; and
- (3) court determines, after notice to the convicted parent and a hearing, that dispensing with the parent's consent to adoption is in the child's best interests.

*As added by P.L.1-1997, SEC.11.*

#### **IC 31-19-9-10**

#### **Parent's crime against child or child's sibling; effect on consent requirement**

Sec. 10. A court shall determine that consent to adoption is not required from a parent if:

- (1) the parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:
  - (A) murder (IC 35-42-1-1);
  - (B) causing suicide (IC 35-42-1-2);
  - (C) voluntary manslaughter (IC 35-42-1-3);
  - (D) rape (IC 35-42-4-1);
  - (E) criminal deviate conduct (IC 35-42-4-2) (before its repeal);
  - (F) child molesting (IC 35-42-4-3) as a:
    - (i) Class A or Class B felony, for a crime committed before July 1, 2014; or
    - (ii) Level 1, Level 2, Level 3, or Level 4 felony, for a crime committed after June 30, 2014;
  - (G) incest (IC 35-46-1-3) as a:
    - (i) Class B felony, for a crime committed before July 1, 2014; or
    - (ii) Level 4 felony, for a crime committed after June 30, 2014;
  - (H) neglect of a dependent (IC 35-46-1-4) as a:
    - (i) Class B felony, for a crime committed before July 1, 2014; or
    - (ii) Level 1 or Level 3 felony, for a crime committed after June 30, 2014;
  - (I) battery (IC 35-42-2-1) of a child as a:
    - (i) Class C felony, for a crime committed before July 1, 2014; or
    - (ii) Level 5 felony, for a crime committed after June 30, 2014;
  - (J) battery (IC 35-42-2-1) as a:
    - (i) Class A or Class B felony, for a crime committed before July 1, 2014; or
    - (ii) Level 2 or Level 3 felony, for a crime committed after June 30, 2014; or
  - (K) an attempt under IC 35-41-5-1 to commit an offense described in clauses (A) through (J);
- (2) the child or the child's sibling, half-blood sibling, or step-sibling of the parent's current marriage is the victim of the

offense; and

(3) after notice to the parent and a hearing, the court determines that dispensing with the parent's consent to adoption is in the child's best interests.

*As added by P.L.1-1997, SEC.11. Amended by P.L.222-2001, SEC.1; P.L.158-2013, SEC.310; P.L.214-2013, SEC.23; P.L.168-2014, SEC.38.*

#### **IC 31-19-9-12**

##### **When consent of putative father irrevocably implied**

Sec. 12. A putative father's consent to adoption is irrevocably implied without further court action if the putative father:

- (1) fails to file a motion to contest the adoption in accordance with IC 31-19-10 within thirty (30) days after service of notice under IC 31-19-4 in the court in which the adoption is pending;
- (2) having filed a motion to contest the adoption in accordance with IC 31-19-10, fails to appear at the hearing set to contest the adoption;
- (3) having filed a paternity action under IC 31-14, fails to establish paternity in the action; or
- (4) is required to but fails to register with the putative father registry established by IC 31-19-5 within the period under IC 31-19-5-12.

*As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.19; P.L.200-1999, SEC.20; P.L.21-2010, SEC.6.*

#### **IC 31-19-9-13**

##### **Challenge of adoption or validity of implied consent by putative father; when precluded**

Sec. 13. A putative father whose consent to adoption is implied under this chapter or IC 31-19-5-18 is not entitled to challenge:

- (1) the adoption; or
- (2) the validity of the putative father's implied consent to the adoption.

*As added by P.L.1-1997, SEC.11.*

#### **IC 31-19-9-14**

##### **Establishment of paternity by putative father; when precluded**

Sec. 14. A putative father whose consent to adoption of a child is implied under this chapter or IC 31-19-5-18 is not entitled to establish paternity under IC 31-14.

*As added by P.L.1-1997, SEC.11.*

#### **IC 31-19-9-15**

##### **When consent of putative father irrevocably implied; additional circumstances**

Sec. 15. (a) The putative father's consent to adoption of the child is irrevocably implied without further court action if the father:

- (1) fails to file a paternity action:

(A) under IC 31-14; or  
(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;  
not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether the child is born before or after the expiration of the thirty (30) day period; or

(2) files a paternity action:

(A) under IC 31-14; or  
(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;  
during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding under IC 31-14 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.

(b) This section does not prohibit a putative father who meets the requirements of section 17(b) of this chapter from establishing paternity of the child.

*As added by P.L.1-1997, SEC.11. Amended by P.L.200-1999, SEC.21.*

#### **IC 31-19-9-16**

##### **Challenge of adoption or validity of irrevocably implied consent by putative father; when precluded**

Sec. 16. A putative father whose consent to adoption is irrevocably implied under section 15 of this chapter is not entitled to contest:

- (1) the adoption; or
- (2) the validity of the putative father's implied consent to the adoption.

*As added by P.L.1-1997, SEC.11.*

#### **IC 31-19-9-17**

##### **Establishment of paternity by putative father; restrictions**

Sec. 17. (a) A putative father whose consent to an adoption is implied under section 15 of this chapter is not entitled to establish paternity of the child:

- (1) in a court proceeding under IC 31-14; or
- (2) by executing a paternity affidavit under IC 16-37-2-2.1.

(b) Notwithstanding subsection (a), a putative father who is barred from establishing paternity of the child under subsection (a) may establish paternity of the child in a court proceeding under IC 31-14 if:

- (1) the putative father submits, together with the petition to establish paternity, an affidavit prepared by the:
  - (A) licensed child placing agency; or
  - (B) attorney;

that served notice or caused notice to be served upon the putative father under IC 31-19-3-1 stating that neither a petition

for adoption nor a placement of the child in a proposed adoptive home is pending; and

(2) the court finds on the record, based on all the information available to the court, including an affidavit described under subdivision (1), that neither a:

(A) petition for adoption; nor

(B) placement of the child in a prospective adoptive home; is pending.

The requirements of this subsection are jurisdictional and must be strictly adhered to by the putative father and the court.

(c) An individual who is otherwise barred from establishing paternity under this article may establish paternity in relation to a child if an adoption for the child is not pending or contemplated. A petition for adoption that is not filed or a petition for adoption that is dismissed is not a basis for enabling an individual to establish paternity under this section unless the requirements of subsection (b) are satisfied.

*As added by P.L.1-1997, SEC.11. Amended by P.L.200-1999, SEC.22; P.L.61-2003, SEC.12.*

#### **IC 31-19-9-18**

##### **When implied consent to adoption irrevocable**

Sec. 18. (a) The consent of a person who is served with notice under IC 31-19-4.5 to adoption is irrevocably implied without further court action if the person:

(1) fails to file a motion to contest the adoption as required under IC 31-19-10 not later than thirty (30) days after service of notice under IC 31-19-4.5; or

(2) files a motion to contest the adoption as required under IC 31-19-10 but fails to:

(A) appear at the hearing to contest the adoption; and

(B) prosecute the motion to contest without unreasonable delay.

(b) A court shall dismiss a motion to contest an adoption filed under subsection (a)(2) with prejudice and the person's consent to the adoption shall be irrevocably implied if the court finds that the person who filed the motion to contest is failing to prosecute the motion without unreasonable delay.

*As added by P.L.61-2003, SEC.13.*

#### **IC 31-19-9-19**

##### **Implied consent to adoption bar to adoption challenge**

Sec. 19. A person whose consent to adoption is irrevocably implied under section 18 of this chapter may not contest the adoption or the validity of the person's implied consent to the adoption.

*As added by P.L.61-2003, SEC.14.*