

**§9-302. Consent for adoption**

**1. Written consent.** Before an adoption is granted, written consent to the adoption must be given by:

- A. The adoptee, if the adoptee is 12 years of age or older; [PL 2019, c. 664, Pt. A, §1 (AMD).]
- B. Each of the adoptee's living parents, except as provided in subsection 2; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. A person or agency having legal custody or guardianship of the adoptee if the adoptee is a child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a court, may be overruled by the court. In order for the court to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence, that the person or agency acted unreasonably. The court shall determine whether the person or agency acted unreasonably in withholding consent prior to any hearing on whether to grant the adoption. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof remains on the petitioner, the person or agency should present its reasons for withholding consent and the facts supporting the decision before the petitioner presents its evidence. The court shall consider the following:
  - (1) Whether the person or agency determined the needs and interests of the child;
  - (2) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;
  - (3) Whether the person or agency made the decision consistent with the facts;
  - (4) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement;
  - (4-A) Whether an agency withholding consent to the petitioner consented to the adoption of the child by a person who is a preadoptive parent as defined in Title 22, section 4002, subsection 9-A or who was identified as an appropriate permanency placement in a court-approved permanency plan pursuant to Title 22, section 4038-B; and
  - (5) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding consent; and [PL 2019, c. 664, Pt. A, §1 (AMD).]
- D. A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

A petition for adoption must be pending before a consent is executed.  
[PL 2019, c. 664, Pt. A, §1 (AMD).]

**2. Consent not required.** Consent to adoption is not required of:

- A. A putative parent if the putative parent:
  - (1) Received notice and failed to respond to the notice within the prescribed time period;
  - (2) Waived the right to notice under section 9-201, subsection 3;
  - (3) Does not establish parentage of the child under section 9-201, subsection 9; or
  - (4) Holds no parental rights regarding the adoptee under the laws of the foreign country in which the adoptee was born; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter 6; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A parent who has executed a surrender and release pursuant to section 9-202; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. 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; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. A parent of an adoptee who is 18 years of age or older. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

### 3. Consent by department; notice.

[PL 2019, c. 664, Pt. A, §1 (RP).]

**4. Consent by department; notice.** This subsection applies when the department consents to the adoption of a child in its custody.

A. When the department consents to the adoption of a child in its custody, the department shall immediately notify:

- (1) The District Court in which the action under Title 22, chapter 1071 is pending; and
- (2) The guardian ad litem for the child. [PL 2019, c. 664, Pt. A, §1 (NEW).]

B. The department may consent to more than one person petitioning to adopt a child in its custody. In such cases, the court may request that the department provide information and a recommendation regarding petitioners. [PL 2019, c. 664, Pt. A, §1 (NEW).]

[PL 2019, c. 664, Pt. A, §1 (NEW).]

### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 664, Pt. A, §1 (AMD).

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