



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Ohio Adoption Basics

Ohio law allows for the adoption of a minor or certain adults by most other adults or of a minor by an unmarried minor parent. State law also specifies who must give consent for an adoption, how consent must be executed, and when consent may be withdrawn. There are specific provisions regarding when the consent of the father or putative father of the child is required. A final adoption, with some exceptions, terminates all prior blood relationships between the adopted person and the person’s biological family, and creates such familial relationships in the adoptive family.

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Who can be adopted

Ohio law permits the adoption of any minor, but allows adult adoption only if one of the following is satisfied:

- The adult is totally or permanently disabled;
- The adult is determined to be a person with an intellectual disability;
- The adult had established a child-foster caregiver, kinship caregiver, or child-stepparent relationship with the adoptive parent as a minor, and the adult consents to the adoption;

- The adult was, at the time of the adult’s 18th birthday, in the permanent custody of or in a planned permanent living arrangement with a public children services agency (PCSA) or a private child placing agency (PCPA) and the adult consents to the adoption;
- The adult is the stepchild of the person seeking to adopt, and the adult consents to the adoption.¹

Who can adopt

Generally

Ohio law permits the following persons to adopt:

- A husband and wife together (see “**Adoption by same-sex couples**,” below), at least one of whom is an adult;
- An unmarried adult;
- The unmarried minor parent of the person to be adopted;
- A married adult without the other spouse if:
 - The spouse is a parent of the person to be adopted and supports the adoption (a stepparent adoption);
 - The petitioner and spouse are legally separated; or
 - The court finds that prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the spouse’s support or refusal.²

Adoption by same-sex couples

The U.S. Supreme Court has held that same-sex couples are entitled to the “constellation of benefits that the States have linked to marriage.”³ At least one court has found that the “constellation of benefits” language from the Court requires reading a gendered state statute in a nongendered manner.⁴ Some courts, however, appear reluctant to extend *Obergefell* beyond the issuance of marriage licenses.⁵

Who must give consent to the adoption

Unless certain exceptions apply (see “**When consent is not required**” below), there must be written consent from all of the following people for an adoption of a minor to take place:

¹ R.C. 3107.02(A) and (B).

² R.C. 3107.03.

³ *Pavan v. Smith*, 137 S.Ct. 2075, 2077 (2017), citing *Obergefell v. Hodges*, 576 U.S. 644 (2015).

⁴ *Harrison v. Harrison*, 2021 Tenn. App. LEXIS 417 (regarding parental status).

⁵ See, e.g., *In re A.E.*, 2017 Tex. App. LEXIS 3817 (regarding parental rights).

- The minor's mother;
- The minor's father, if certain conditions are met (see "**Father's rights**" below);
- The putative father of the minor, if certain conditions are met (see "**Putative fathers**" below);
- Any person or agency having permanent custody of the minor or authorized by court order to consent;
- The minor, if the minor is over 12 years old, unless the court finds that it is in the minor's best interest that consent is not required.⁶

An adult, other than an adult who is totally or permanently disabled or is determined to be a person with an intellectual disability, must consent to being adopted.⁷

In the case of a person who was a minor when the adoption proceedings began, but the person's 18th birthday occurs prior to the decision of the court, that person must submit a written statement of consent or objection to the adoption. If the person objects, the adoption petition must be dismissed. If the person consents, the court must proceed with the adoption case.⁸

Executing consent

Consent for an adoption may be executed at any time after 72 hours following a minor's birth.

The consent to any adoption must be executed in the following manner:

- If by the person to be adopted, in the presence of the court;
- If by a parent of the person to be adopted, in accordance with the required procedure for giving consent;
- If by an agency, then by the executive head or other authorized representative in the presence of a person authorized to take acknowledgements;
- If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgements;
- If by a juvenile court, by appropriate order.

At least 72 hours before a parent executes consent to adoption, unless it is a stepparent adoption or the parent resides in another state, an assessor must meet in person to provide the parent with written adoption materials, discuss the adoption process and ramifications, and inform the parent of the ability to opt-out from identifying information about the parent being provided to the minor and adoptive parent contained in the minor's adoption file.⁹ A grant of

⁶ R.C. 3107.06.

⁷ R.C. 3107.02(B).

⁸ R.C. 3107.02(C).

⁹ R.C. 3107.082.

consent is not invalid for failure to identify the prospective adoptive parent if the consent contains a statement that it was voluntarily executed irrespective of a failure to make that identification.¹⁰

Withdrawal of consent

Consent is irrevocable and cannot be withdrawn after the entry of an interlocutory order¹¹ or final decree of adoption. Before the entry of an interlocutory order or final decree of adoption, consent may be withdrawn if the court finds after a hearing that it is in the best interest of the person to be adopted and authorizes the withdrawal of consent.¹² The mere fact that the natural mother has had a change of heart about the adoption is insufficient to revoke consent, and giving effect to a mere change of heart would be contrary to public policy. Though a court may find that the consent was not voluntarily given in certain instances, such as when there is evidence of fraud or duress.¹³

Father's rights

A father must consent for an adoption of a minor, except as discussed below (see “**When consent is not required**”), if any of the following apply:

- The father was married to the minor's mother when the child was conceived or born;
- The father adopted the minor;
- Prior to the date the adoption petition was filed, the father was determined to be the minor's father in a court or administrative proceeding;
- The father has executed an acknowledgment of paternity that has become final.¹⁴

Putative fathers

A putative father is a man who may be a child's father who meets all of the following:

1. Is not married to the child's mother at the time of the child's conception or birth;
2. Has not adopted the child;

¹⁰ R.C. 3107.08.

¹¹ An interlocutory order of adoption provides for the observation, investigation, and a further report on the adoptive home during a period of at least six months but less than one year from the date of the order. Unless the court vacates the order for good cause, the requirements for a final decree have not been satisfied, or the court finds that the person to be adopted was placed in the home of the petitioner in violation of the law, the interlocutory order becomes a final decree of adoption on a date specified in the order. R.C. 3107.14.

¹² R.C. 3107.084.

¹³ *In re Adoption of Jiminez*, 136 Ohio App.3d 223, 227 (2nd Dist. App. Ct., Montgomery Cty., 1999); and *In re Adoption of Infant Boy*, 60 Ohio App.3d 80, 86 (3rd Dist. App. Ct., Allen Cty., 1989).

¹⁴ R.C. 3107.06(B).

3. Has not been determined by a court or administrative agency to have a parent-child relationship with the child prior to the date an adoption petition was filed;
4. Has not executed an acknowledgement of paternity for the child.¹⁵

The consent of the putative father of a minor for an adoption is unnecessary if the putative father fails to register with the Putative Father Registry (established by the Department of Job and Family Services) not later than 15 days after the minor's birth or if the court finds any of the following after notice and a hearing:

- The putative father is not the minor's father;
- The putative father has willfully abandoned or failed to care for and support the minor;
- The putative father has willfully abandoned the minor's mother during her pregnancy and up to the time she surrendered the minor, or the minor was placed with the petitioner, whichever came first.¹⁶

The Supreme Court of Ohio has found that a putative father's consent to the adoption is not required if the putative father fails to timely register with the Putative Father Registry or to establish paternity prior to the filing of the adoption petition.¹⁷

When consent is not required

The relationship between parent and child is a liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Therefore, exceptions to the requirement of parental consent must protect the right of natural parents to raise and nurture their children.¹⁸ Nevertheless, there are several instances in the Revised Code stating when the consent of a parent, guardian, or lawful custodian is unnecessary. Some examples for which consent is unnecessary include:

- When a parent's rights have been terminated by the juvenile court or when the parent has entered into a voluntary permanent custody surrender agreement with a PCSA or PCPA;
- When the child is conceived as the result of rape or sexual battery and that parent (father, putative father, or mother) is convicted of or pleads guilty to the offense;
- A parent's consent for adoption is not required if the court finds by clear and convincing evidence that the parent has failed without justifiable cause to have more than *de minimis* contact with the child or provide for the child's maintenance and support as required by law or court order for at least one year immediately preceding the filing of the adoption petition or the child's placement in the petitioner's home;

¹⁵ R.C. 3107.01(H).

¹⁶ R.C. 3107.07(B).

¹⁷ *In re Adoption of H.P.*, 2022-Ohio-4369.

¹⁸ *Santosky v. Kramer*, 455 U.S. 745, 753-754 (1982); *In re Adoption of Masa*, 23 Ohio St.3d 163, 165 (1986).

- Certain instances involving putative fathers discussed above.¹⁹

Effect of adoption

An adoption that has become final, or a recognized adoption decree by another state or foreign country, has the following effects:

- Except for a stepparent adoption, to relieve the biological or other legal parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships between the adopted person and the adopted person's relatives for purposes including inheritance and the interpretation or construction of statutes, documents, and instruments that do not expressly include the adopted person.
- To create the relationship of parent and child as if the adopted person were the legitimate blood descendant for all purposes including inheritance and the applicability of statutes, documents, and instruments which do not expressly exclude an adopted person.

However, notwithstanding the above, Ohio law specifically limits the effect of an adoption in the following ways:

- If the person who is adopted is 18 or older at the time of adoption, the adopted person and the adopted person's descendants are excluded from inheriting from an adoptive parent unless the document or instrument explicitly states that the adopted person is included.
- If a parent dies without the parent-child relationship being previously terminated and a spouse of the living parent later adopts the child, all of the child's rights from the deceased parent, including inheritance, are not restricted or curtailed by the adoption.
- If the parent-child relationship has not been terminated between a parent and that parent's child and a spouse of the other parent adopts the child, a grandparent's or relative's right to companionship under Ohio law is not restricted or curtailed by the adoption.²⁰

Adoption procedure

For more information on the adoption procedure in Ohio, see the LSC [Adoption Procedure \(PDF\)](#) *Members Brief*, which is available on LSC's website: lsc.ohio.gov.

¹⁹ R.C. 3107.07.

²⁰ R.C. 3107.14 and 3107.15; *In re H.A.*, 2014-Ohio-3751, ¶ 27 (2d Dist. App. Ct., Montgomery Cty.).