



# Disparities in Nevada Adoption Laws: Genetic Mothers vs. Fathers

BY MELISSA L. EXLINE, ESQ.

**When a genetic parent seeks to revoke consent for a child’s adoption, the process is intentionally difficult to ensure adoption permanence. However, there are cases where reinstating a parent’s rights may be justified. What options do genetic mothers have to halt or reverse an adoption? How do a genetic father’s rights compare? Nevada’s adoption laws contain complexities, including potentially unconstitutional statutes. This article examines these issues and suggests ways to improve Nevada’s adoption laws.**

## Agency Adoption

Nevada is an “agency” state, requiring a licensed adoption agency to facilitate the process. These agencies, or government child welfare services, oversee communication and care for birth mothers and help find families for the child. Adoptive parents are referred to as a “placement” until the adoption is finalized. This contrasts with private adoptions, where genetic and adoptive parents work directly, often with the help of an attorney or facilitator.

In Nevada, NRS Chapter 127 governs adoption law and NRS Chapter 128 governs termination of parental rights. Under NRS 127.040, biological parents can provide a “written consent” to specific parent(s) or provide a “relinquishment” to an agency.

NRS 127.040(1) states, in part, with emphasis:

1. Except as provided in NRS 127.090, *written consent* to the specific adoption proposed by the petition or for *relinquishment to*

*an agency* authorized to accept relinquishments acknowledged by the person or persons consenting, is required from:

(a) *Each legal parent* who is alive...

NRS 127.070, provides, in part:

1. All *releases for* and *consents to* adoption executed in this state by the parent who gave birth to a child before the birth of the child or within 72 hours after the birth of the child are invalid.
2. A *release for or consent to* adoption may be executed by a parent before the birth of a child if the parent is not married to the parent who gave birth to the child. ...

Looking closer, there are oddities in this law. Sometimes in Chapter 127, a “consent” is discussed, while in other areas the law refers to a “relinquishment.” A consent and a relinquishment are documents where the genetic parent is saying, essentially, “I am giving up my child for adoption.” Notably, in

NRS 127.070, the word “release” is used, *without any clarity in the statute addressing the meaning*. This statute discusses precisely when a genetic mother or father may provide a “release for or consent to” adoption. However, in most cases, a genetic mother (referred to in the statute as the “parent who gave birth”) will sign a general relinquishment to an adoption agency. There is no document created that is simply called a “release,” despite the use of this word in the statute.

It is fundamentally important because “[t]he relinquishment of the [genetic parent], if freely and voluntarily given, is irrevocable, and, there being nothing to indicate that it would be to the detriment of the child to enforce such relinquishment, the document must be accorded the full effect intended under the statute.” *Ex Parte Schultz*, 64 Nev. 264, 272, 181 P.2d 585, 589 (1947). NRS 127.080 goes on to note neither a written consent to a specific adoption nor a relinquishment can be revoked/nullified, even if the parent is a minor. Although NRS 127.040(1)(a) indicates each living legal parent must consent, the statute directly contradicts NRS 127.080(2) and *Blanchard v. Nevada State Welfare Dep’t*, 91 Nev. 749, 542 P.2d 737 (1975), which notes a valid relinquishment is not required by both parents.

## Consents, Relinquishments and Termination of Rights

Consent to adoption is a legal document signed by genetic parent(s) permitting their child to be adopted by another person or family. Using the phrase “specific consent” makes more sense because it invokes what it really is – consent for a specific person or persons to adopt a child. The specific consent should specifically name the adoptive parent(s) and give them the right to adopt. Relinquishment for adoption is a legal process where birth parents voluntarily surrender all parental rights to an adoption agency (either public or private), rather than directly to adoptive parents. This allows the agency to place the child with adoptive parents of the agency’s choosing.

But there are unanswered questions. What if a genetic mother is working with an agency to pick a specific family and the mother wants only that family, yet signs a relinquishment to the agency rather than specific consent? What is the agency’s obligation to explain the difference between the documents? Should the relinquishment be invalid or void in that instance? Under current

law, these scenarios would likely lead to litigation. The genetic mother could claim she received the wrong document, was misled, or did not knowingly waive her rights. However, if she read and signed the relinquishment clearly stating she was giving up parental rights and granting the agency authority to place the child, her case would be difficult to win.

Does consent to a specific adoption or relinquishment terminate parental rights if properly obtained in accordance with NRS 127 and NAC 127? The short answer is no. It is a step shy of this. Under NRS 127.051, the agency receiving a child for adoption is responsible for the child’s care and has custody and control until an adoption petition is granted. Once the adoption decree is entered, the parent who signed the relinquishment or consent is then relieved of all parental responsibilities and no longer has any rights over the child or the child’s property. *See* NRS 127.160.

The genetic mother’s parental rights become unclear if the genetic father steps in and takes custody after she signs a consent or relinquishment. In that case, presumably, a specific consent is not completely undermined because the child is not going to be adopted by the chosen family. The ability of the genetic mother and the adoptive placement to rescind the consent is not addressed in Nevada law. Further, a relinquishment is conferring rights to the agency to choose an adoptive family, but since the biological father has stepped in, an agency adoption is not going to happen. The statutes do not adequately address these situations. When a genetic mother relinquishes her rights to an agency, and the agency doesn’t terminate the genetic father’s rights, the agency is no longer involved. Additionally, if the genetic father steps in and refuses to consent, there is no clear timeline for when the agency must return the child. The agency often demands a paternity test and may proceed to terminate the father’s rights. It is notable that between the agency (who may have already placed a child with a family, potentially out-of-state) and the genetic father seeking to maintain his parental rights, the father does not legally stand in a superior position to the agency over his own child while the legal process is playing out.

## An Equal Protection Failure and Unknown “Release”

In addition to the concerns above, there are other issues impacting genetic mothers. Analyzing the plain language of

NRS 127.070, there is a failure to treat both genetic parents the same regarding when or how a release or consent may become invalid. Though written in general-neutral terms, the disparate treatment arguably violates the genetic mother’s right to Equal Protection, guaranteed by the 14th Amendment. *See* U.S. Constitution Article 4 and Nevada Constitution Section 21. The genetic mother is treated meaningfully different from the genetic father. A genetic mother’s “release for or consent to adoption” is treated as irrevocable if signed 72 hours after the birth of the child. The genetic mother may attempt to seek invalidation on an argument of fraud, duress, or setting aside due to lack of making a knowing, voluntary and intelligent waiver of rights, or, to seek restoration of her parental rights with help from the agency under NRS 128.160-128.190. But, again, the odd use of the term “release” is problematic. The Nevada Administrative Code, NAC 127, does not define “release” but does define “relinquishment” in NAC 127.065. Again, a consent to adoption is distinguishable from a relinquishment in that it is for a specific adoption under NRS 127.053. Thus, the applicability of NRS 127.070, addressing when a consent or release is invalid, is not squarely applicable when there was a relinquishment.

However, NRS 127.070 (2) goes further and allows a genetic father’s release or consent to **become invalid** if:

- 1) the parents marry before the child is born;
- 2) the mother does not execute a release within six months following the child’s birth; or
- 3) if there is no petition for adoption filed within two years following the child’s birth.

Although both genetic mothers and fathers are entitled to constitutional protection of their fundamental parental rights, Nevada law treats them differently. This raises the question: Why does the genetic father have an “out” such that his parental rights are restored (by invalidity of the release or consent, assuming arguendo a release would be treated as a relinquishment) if the genetic mother does not sign? It is noticeable that a genetic mother does not have the same benefit. Why does the genetic father get this benefit if there is no adoption within two years,

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but a genetic mother does not? This is a fundamental failure in Nevada’s adoption law.

Because an order terminating parental rights or issuing an adoption decree is the *only way* to terminate parental rights to both biological parents, it defies logic to treat the genetic parents differently regarding a consent’s voidability. A genetic mother who signs a consent or relinquishment remains in legal limbo if the genetic father doesn’t sign or have his rights terminated, as her consent remains inexplicably valid. However, if the roles are reversed and the genetic father signs first, his consent becomes invalid under the law if the genetic mother doesn’t sign or if an adoption does not take place.

The holding in *Ex Parte Schultz*, 64 Nev. 264, 272, 181 P.2d 585, 589 (1947) indicating a genetic mother’s relinquishment is irrevocable and the holding in *Blanchard v. Nevada State Welfare Dep’t*, 91 Nev. 749, 542 P.2d 737 (1975), which found a valid relinquishment does not require both parents’ signature cannot be logically reconciled with NRS 127.040(1)(a) which statutorily mandated each living legal parent must consent to the adoption. The Equal Protection flaw is exposed and should not stand.

## Proposed Remedies

In conclusion, Nevada’s adoption laws are in urgent need of reform. The processes for release, consent, and relinquishment must be overhauled to ensure equal treatment of genetic parents under NRS 127.070. Additional revisions are needed to clarify the effect of a relinquishment if no adoption occurs. As adoption laws have evolved nationally, Nevada has fallen behind. It would be nice to see clearer definitions of agency obligations to genetic parents. Lastly, Nevada should take a look at expanding terms to keep up with the times by addressing issues like domestic partnership, family and non-family adoptions, and re-adoption.



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December 2024 • Nevada Lawyer