§ 111. Whose consent required. 1. Subject to the limitations hereinafter set forth consent to adoption shall be required as follows:

(a) Of the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent;

(b) Of the parents or surviving parent, whether adult or infant, of a child conceived or born in wedlock;

(c) Of the mother, whether adult or infant, of a child born out of wedlock;

(d) Of any person or authorized agency having lawful custody or guardianship of the adoptive child;

(e) In the case of the adoption of a child transferred to the custody and guardianship of an authorized agency, foster parent, or relative pursuant to section three hundred eighty-four-b of the social services law or a child transferred to the custody and guardianship of an authorized agency pursuant to section three hundred eighty-three-c of the social services law:

(i) Of any person adjudicated by a court of this state or a court of any other state or territory of the United States to be the father of the child prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law;

(ii) Of any person who filed a petition in a court in this state seeking to be adjudicated the father of the child prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law, provided that the parentage petition has been resolved in the petitioner's favor or remains pending at the conclusion of the proceedings pursuant to section three hundred eighty-four-b, three hundred eighty-three-c, or three hundred

eighty-four of the social services law;

(iii) Of any person who has executed an acknowledgment of parentage pursuant to section one hundred eleven-k of the social services law, section five hundred sixteen-a of the family court act, or section forty-one hundred thirty-five-b of the public health law prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law, provided that such acknowledgement has not been vacated;

(iv) Of any person who filed an unrevoked notice of intent to claim parentage of the child pursuant to section three hundred seventy-two-c of the social services law prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law;

(f) In any other adoption proceeding:

(i) Of the father, whether adult or infant, of a child born out-of-wedlock and placed with the adoptive parents more than six months after birth, but only if such father shall have maintained substantial and continuous or repeated contact with the child as manifested by: (A) the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either (B) the father's visiting the child at least monthly when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or (C) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. The

subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this paragraph. A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision;

(ii) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time he is placed for adoption, but only if: (A) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (B) such father openly held himself out to be the father of such child during such period; and (C) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

2. The consent shall not be required of a parent or of any other person having custody of the child:

(a) who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or

(b) who has surrendered the child to an authorized agency under the provisions of section three hundred eighty-three-c or three hundred eighty-four of the social services law; or

(c) for whose child a guardian has been appointed under the provisions of section three hundred eighty-four-b of the social services law; or

(d) who, by reason of mental illness or intellectual disability, as defined in subdivision six of section three hundred eighty-four-b of the

social services law, is presently and for the foreseeable future unable to provide proper care for the child. The determination as to whether a parent is mentally ill or intellectually disabled shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law; or

(e) who has executed an instrument, which shall be irrevocable, denying the paternity of the child, such instrument having been executed after conception and acknowledged or proved in the manner required to permit the recording of a deed.

3. (a) Notice of the proposed adoption shall be given to a person whose consent to adoption is required pursuant to subdivision one and who has not already provided such consent.

(b) Notice and an opportunity to be heard upon the proposed adoption may be afforded to a parent whose consent to adoption may not be required pursuant to subdivision two, if the judge or surrogate so orders.

(c) Notice under this subdivision shall be given in such manner as the judge or surrogate may direct.

(d) Notwithstanding any other provision of law, neither the notice of a proposed adoption nor any process in such proceeding shall be required to contain the name of the person or persons seeking to adopt the child.

4. Where the adoptive child is over the age of eighteen years the consents specified in paragraphs (b), (c) and (d) of subdivision one of this section shall not be required, and the judge or surrogate in his discretion may direct that the consent specified in paragraph (f) of subdivision one of this section shall not be required if in his opinion the best interests of the adoptive child will be promoted by the adoption and such consent cannot for any reason be obtained.

5. An adoptive child who has once been lawfully adopted may be readopted directly from such child's adoptive parents in the same manner as from its birth parents. In such case the consent of such birth parents shall not be required but the judge or surrogate in his discretion may require that notice be given to the birth parents in such manner as he may prescribe.

6. For the purposes of paragraph (a) of subdivision two:

(a) In the absence of evidence to the contrary, the ability to visit and communicate with a child or person having custody of the child shall be presumed.

(b) Evidence of insubstantial or infrequent visits or communication by the parent or other person having custody of the child shall not, of itself, be sufficient as a matter of law to preclude a finding that the consent of such parent or person to the child's adoption shall not be required.

(c) The subjective intent of the parent or other person having custody of the child, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph (a) of subdivision two manifesting such intent, shall not preclude a determination that the consent of such parent or other person to the child's adoption shall not be required.

(d) Payment by a parent toward the support of the child of a fair and reasonable sum, according to the parent's means, shall be deemed a substantial communication by such parent with the child or person having legal custody of the child.