

Act No. 222
Public Acts of 1994
Approved by the Governor
June 27, 1994
Filed with the Secretary of State
June 27, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

**Introduced by Senators Welborn Dingell Geake Cisky Dillingham Gougeon McManus Wartner
DeGrow Pridnia Honigman Gast Hoffman Arthurhultz and Hart**

ENROLLED SENATE BILL No. 721

AN ACT to amend sections 22 24 24a 28 29 31 41 43 44 46 51 52 54 and 68a of chapter X of Act No 288 of the Public Acts of 1939 entitled as amended An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state the powers and duties of such court and the judges and other officers thereof certain aspects of the statutes of descent and distribution of property and the statutes governing the change of name of adults and children the adoption of adults and children and the jurisdiction of the juvenile division of the probate court to prescribe the powers and duties of the juvenile division of the probate court and the judges and other officers thereof to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court to prescribe pleading evidence practice and procedure in actions and proceedings in the juvenile division of the probate court to provide for appeals from the juvenile division of the probate court to prescribe the powers and duties of certain state departments agencies and officers and to provide remedies and penalties for the violation of this act sections 22 and 24a as amended by Act No 247 of the Public Acts of 1992 sections 28 43 and 68a as amended by Act No 175 of the Public Acts of 1990 and sections 29 41 44 46 and 51 as amended by Act No 72 of the Public Acts of 1982 being sections 710 22 710 24 710 24a 710 28 710 29 710 31 710 41 710 43 710 44 710 46 710 51 710 52 710 54 and 710 68a of the Michigan Compiled Laws and to add sections 23a 23b 23c 23d 23e 23f 55 55a and 58a to chapter X

The People of the State of Michigan enact

Section 1 Sections 22 24 24a 28 29 31 41 43 44 46 51 52 54 and 68a of chapter X of Act No 288 of the Public Acts of 1939 sections 22 and 24a as amended by Act No 247 of the Public Acts of 1992 sections 28 43 and 68a as amended by Act No 175 of the Public Acts of 1990 and sections 29 41 44 46 and 51 as amended by Act No 72 of the Public Acts of 1982 being sections 710 22 710 24 710 24a 710 28 710 29 710 31 710 41 710 43 710 44 710 46 710 51 710 52 710 54 and 710 68a of the Michigan Compiled Laws are amended and sections 23a 23b 23c 23d 23e 23f 55 55a and 58a are added to chapter X to read as follows

CHAPTER X

Sec 22 As used in this chapter

(a) Adoptee means the individual who is to be adopted regardless of whether the individual is a child or an adult

(b) Adoption attorney means an attorney acting as counsel in a direct placement adoption who meets all of the following requirements

(i) Has completed at least 12 hours of continuing education in this state during the past 5 years in courses integrating the legal and social aspects of adoption

(ii) Maintains an up to date file of individuals licensed or registered under either the public health code Act No 368 of the Public Acts of 1978 being sections 333 1101 to 333 25211 of the Michigan Compiled Laws or the occupational code Act No 299 of the Public Acts of 1980 being sections 339 101 to 339 2721 of the Michigan Compiled Laws and agencies to whom referrals may be made for counseling services needed by an adoption client

(iii) Has registered as an adoption attorney with the children's ombudsman as provided in section 5 of the foster care and adoption services act

(c) Adult former sibling means an individual who is 18 years of age or older and is related to an adult adoptee either biologically or through adoption by at least 1 common parent regardless of whether the adult former sibling ever lived in the same household as the adult adoptee

(d) Agency placement means a placement in which a child placing agency the department or a court selects the adoptive parent for the child and transfers physical custody of the child to the prospective adoptive parent

(e) Attending practitioner means a licensed physician or a registered professional nurse certified as a nurse midwife by the Michigan board of nursing

(f) Best interests of the adoptee or best interests of the child means the sum total of the following factors to be considered evaluated and determined by the court to be applied to give the adoptee permanence at the earliest possible date

(i) The love affection and other emotional ties existing between the adopting individual or individuals and the adoptee or in the case of a hearing under section 39 of this chapter the putative father and the adoptee

(ii) The capacity and disposition of the adopting individual or individuals or in the case of a hearing under section 39 of this chapter the putative father to give the adoptee love affection and guidance and to educate and create a milieu that fosters the religion racial identity and culture of the adoptee

(iii) The capacity and disposition of the adopting individual or individuals or in the case of a hearing under section 39 of this chapter the putative father to provide the adoptee with food clothing education permanence medical care or other remedial care recognized and permitted under the laws of this state in place of medical care and other material needs

(iv) The length of time the adoptee has lived in a stable satisfactory environment and the desirability of maintaining continuity

(v) The permanence as a family unit of the proposed adoptive home or in the case of a hearing under section 39 of this chapter the home of the putative father

(vi) The moral fitness of the adopting individual or individuals or in the case of a hearing under section 39 of this chapter of the putative father

(vii) The mental and physical health of the adopting individual or individuals or in the case of a hearing under section 39 of this chapter of the putative father and of the adoptee

(viii) The home school and community record of the adoptee

(ix) The reasonable preference of the adoptee if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference

(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings

(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding or to a putative father's request for child custody

(g) Born out of wedlock means a child conceived and born to a woman who was not married from the conception to the date of birth of the child or a child whom the court has determined to be a child born during a marriage but not the issue of that marriage

(h) Central adoption registry means the registry established by the department pursuant to section 27b of this chapter to control the release of identifying adoption information

(i) Child means an individual less than 18 years of age

(j) Child placing agency means a private organization licensed under Act No 116 of the Public Acts of 1973 being sections 722 111 to 722 128 of the Michigan Compiled Laws to place children for adoption

(k) Consent means a document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent

(l) Court means the probate court of this state and when the context requires the court having jurisdiction over adoption in another state or country

(m) Department means the state department of social services

(n) Direct placement means a placement in which a parent or guardian selects an adoptive parent for a child other than an individual related to the child within the fifth degree by marriage blood or adoption and transfers physical custody of the child to the prospective adoptive parent

(o) Formal placement means a placement that is approved by the court under section 51 of this chapter

(p) Person means an individual partnership corporation association governmental entity or other legal entity

(q) Petitioner except as used in section 68b of this chapter means the individual or individuals who file an adoption petition with the court

(r) Placement or to place means selection of an adoptive parent for a child and transfer of physical custody of the child to a prospective adoptive parent pursuant to this chapter

(s) Release means a document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency

(t) Rescission petition means a petition filed by an adult adoptee and his or her parent whose rights have been terminated to rescind the adoption in which a stepparent acquired parental rights and to restore parental rights of that parent pursuant to section 66 of this chapter

(u) Suitable to be a parent of an adoptee means a conclusion that there is no specific concern with respect to an individual that would suggest that placement of any child or a particular child in the home of the individual would pose a risk of harm to the physical or psychological well being of the child

(v) Temporary placement means a placement that occurs before court approval under section 51 of this chapter and that meets the requirements of section 23d of this chapter

(w) 'Within the fifth degree by marriage blood or adoption means any of the following relationships parent step parent grandparent step grandparent brother step brother sister step sister uncle step uncle aunt step aunt first cousin step first cousin great aunt step great aunt great uncle step great uncle great grandparent step great grandparent first cousin once removed step first cousin once removed great great grandparent step great great grandparent great great uncle step great great uncle great great aunt step great great aunt great great great grandparent or step great great great grandparent

Sec 23a (1) A parent or guardian having legal and physical custody of a child may directly place a child for adoption by making a temporary placement under section 23d of this chapter or a formal placement under section 51 of this chapter A temporary placement becomes a formal placement when the court orders the termination of the rights of the parent or parents or the guardian and approves placement pursuant to section 51 of this chapter A formal placement under section 51 of this chapter does not have to be preceded by a temporary placement

(2) A parent or guardian shall personally select a prospective adoptive parent in a direct placement The selection shall not be delegated

(3) Except as provided in subsection (4) in a direct placement the prospective adoptive parent an adoption attorney or a child placing agency shall provide information about a prospective adoptive parent to the parent or guardian before placement This information shall include the specific information contained in a preplacement assessment as described in section 23f of this chapter and may include additional information requested by the parent or guardian The information does not have to include identifying information described in section 27(3) of this chapter The parent or guardian and the prospective adoptive parent shall determine whether to exchange identifying information and whether to meet each other

(4) A parent or guardian having legal and physical custody of a child may formally place the child for adoption under section 51 of this chapter with an individual who is related to the child within the fifth degree by marriage blood or adoption

Sec 23b (1) A child placing agency or the department that acquires legal and physical custody of a child pursuant to section 29 of this chapter or chapter XIIA may formally place a child for adoption under section 51 of this chapter A child placing agency that acquires written authorization pursuant to subsection (3) from the parent or guardian having legal custody of a child may make a temporary placement of the child under section 23d of this chapter A child placing agency may assist a parent or guardian to make a direct placement under section 23a of this chapter

(2) In an agency placement a child placing agency or the department may involve the parent or guardian of a child in the selection of an adoptive parent and may facilitate the exchange of identifying information or meetings between a biological parent and an adoptive parent

(3) In a written document signed by a witness and by the parent or guardian in the presence of the witness a parent or guardian having legal and physical custody of a child may authorize a child placing agency to make a temporary placement of the child under section 23d of this chapter. If the parent of the child being temporarily placed is an unemancipated minor the authorization is not valid unless it is also signed in the presence of the witness by a parent or guardian of that minor parent.

Sec 23c A court that acquires legal and physical custody of a child pursuant to chapter XIIA may formally place a child for adoption under section 51 of this chapter.

Sec 23d (1) In a direct placement a parent or guardian with legal and physical custody of a child may make a temporary placement of the child as prescribed by this section. In an agency placement a child placing agency with written authorization from the parent or guardian pursuant to section 23b of this chapter may make a temporary placement of the child as prescribed by this section. A temporary placement shall meet all of the following requirements:

(a) The prospective adoptive parent with whom a child is temporarily placed is a Michigan resident.

(b) In a direct placement the parent or guardian is assisted by an adoption attorney or a child placing agency.

(c) In the presence of a witness who also signs the document the parent, guardian, or representative of the child placing agency signs a statement evidencing the transfer of physical custody of the child. If the parent making the temporary placement is an unemancipated minor the statement is not valid unless it is also signed in the presence of the witness by a parent or guardian of that minor parent. The statement shall contain all of the following:

(i) The date of the transfer of physical custody.

(ii) Language providing that the transfer is for the purpose of adoption by the prospective adoptive parent who is a Michigan resident.

(iii) Language indicating that the parent or guardian retains full parental rights to the child being temporarily placed and that the temporary placement may be revoked by the filing of a petition under subsection (5).

(iv) Language providing that the person making the transfer has read a preplacement assessment of the prospective adoptive parent completed or updated within 1 year before the date of the transfer with a finding that the prospective adoptive parent is suitable to be a parent of an adoptee. If a child placing agency makes the transfer of physical custody the statement shall include a verification that the child placing agency has given the parent or guardian who authorized the temporary placement an opportunity to review the preplacement assessment.

(v) Even if only 1 parent is making the temporary placement the name and address of both parents of the child including in the case of a child born out of wedlock the name and the address of each putative father of the child if known.

(d) In the presence of a witness who also signs the document the prospective adoptive parent signs a statement setting forth the date of the transfer of physical custody and the name and address of the prospective adoptive parent and attesting to both of the following:

(i) That the prospective adoptive parent understands that the temporary placement will not become a formal placement until the parents consent or release their parental rights and the court orders the termination of parental rights and approves the placement and that the prospective adoptive parent must relinquish custody of the child within 24 hours after being served with an order pursuant to section 23e(2) of this chapter.

(ii) That the prospective adoptive parent agrees to reside with the child in Michigan until a change of residence is approved by the court after formal placement occurs.

(2) Not later than 48 hours after a transfer of physical custody of a child pursuant to subsection (1) the adoption attorney or child placing agency who assists with the temporary placement shall submit to the court in the county in which the prospective adoptive parent resides a report that contains all of the following:

(a) The date of the transfer of physical custody.

(b) The name and address of the parent or guardian or the child placing agency who made the temporary placement.

(c) The name and address of the prospective adoptive parent with whom the temporary placement was made.

(d) Even if only 1 parent is making the temporary placement the name and address of both parents of the child including in the case of a child born out of wedlock the name of each putative father if known.

(e) The documents required under subsection (1)(c) and (d) and if applicable the authorization required under section 23b(4) of this chapter.

(3) The adoption attorney or child placing agency who assists with the temporary placement shall submit a report to the court described in subsection (2) within 30 days after the transfer of physical custody of the child indicating whether 1 of the following dispositions has occurred:

(a) A petition for adoption of the child has been filed.

(b) The child has been returned to the agency or to a parent or other person having legal custody.

(4) If the court has not received the report required under subsection (3) within 45 days after the transfer of physical custody of a child the probate register shall immediately investigate and determine whether an adoption petition has been filed or the child has been returned to a parent or other person having legal custody. If neither disposition has occurred the probate register shall immediately report to the prosecutor who shall immediately file a petition in the court described in subsection (2) for disposition of the child pursuant to section 23e of this chapter.

(5) A parent or guardian who wishes to regain custody of a child who has been placed temporarily shall file a petition requesting that the temporary placement be revoked and that the child be returned to the parent or guardian. Upon request of the parent or guardian the adoption attorney or child placing agency who assisted in making the temporary placement shall assist the parent or guardian in filing the petition to revoke the temporary placement. If the temporary placement was made by a child placing agency pursuant to section 23b(3) of this chapter the child placing agency shall file the petition on behalf of a parent or guardian who wishes to regain custody of the child.

(6) If a prospective adoptive parent with whom a child has been temporarily placed is either unwilling or unable to proceed with the adoption the prospective adoptive parent may file a petition in the court described in subsection (2) for disposition of the child pursuant to section 23e of this chapter.

(7) If a child placing agency that temporarily placed a child is unable to proceed with an adoption because of the unavailability of a parent or guardian to execute a release or if a child placing agency with legal custody of a child decides not to proceed with the adoption by a prospective adoptive parent with whom the child has been temporarily placed and the prospective adoptive parent refuses upon the agency's request to return the child to the agency the child placing agency shall file a petition in the court described in subsection (2) for disposition of the child pursuant to section 23e of this chapter.

(8) Except as otherwise agreed to by the parties the prospective adoptive parent with whom a child is temporarily placed under this section may consent to all medical surgical psychological educational and related services for the child.

(9) A hospital or attending practitioner shall not release a child to an individual or agency not otherwise legally entitled to the physical custody of the child unless all of the requirements of subsection (1) are met.

Sec 23e (1) Not later than 14 days after the filing of a petition by the prosecutor pursuant to section 23d(4) of this chapter by a prospective adoptive parent pursuant to section 23d(6) of this chapter or by a child placing agency pursuant to section 23d(7) of this chapter the court shall hold a hearing to determine the custody of a child for whom a temporary placement has been made.

(2) Upon receiving a petition filed under section 23d(5) of this chapter the court shall immediately issue an ex parte order directing the prospective adoptive parent to return the child to the parent or guardian with legal custody within 24 hours after receipt of the order unless the court proceeds under subsection (3).

(3) The court may appoint an attorney or refer the matter to the department for the filing of a petition on behalf of the child requesting the court to take jurisdiction under section 2(b) of chapter XIIA. If a petition has not been filed within 14 days after the hearing under this section the court shall order the return of the child to the parent or guardian with legal custody. During the period before the petition is filed and a preliminary hearing is held or the return of custody is ordered the court shall remove the child from the home of the prospective adoptive parent and make a temporary disposition appropriate for the welfare of the child as authorized by section 18 of chapter XIIA.

(4) Subject to subsection (2) the court may appoint a guardian under the revised probate code Act No. 642 of the Public Acts of 1978 being sections 700.1 to 700.993 of the Michigan Compiled Laws pursuant to a petition filed by the prospective adoptive parent or another individual interested in the welfare of the child or make a temporary disposition appropriate for the welfare of the child as authorized by section 18 of chapter XIIA until an order of guardianship is entered.

(5) The court may order the return of a child to a child placing agency that has obtained legal custody of the child.

(6) The court may appoint a guardian ad litem for the child or for a minor parent of the child.

(7) This act provides the exclusive remedy for all custody disputes arising out of a temporary placement.

Sec 23f (1) In a direct placement an individual seeking to adopt may request at any time that a preplacement assessment be prepared by a child placing agency.

(2) An individual requesting a preplacement assessment need not have located a prospective adoptee when the request is made or when the assessment is completed.

(3) An individual may have more than 1 preplacement assessment or may request that an assessment once initiated not be completed.

(4) If an individual is seeking to adopt a child from a particular child placing agency the agency may require the individual to be assessed by its own employee even if the individual has already had a favorable preplacement assessment completed by another child placing agency.

(5) A preplacement assessment shall be based upon personal interviews and visits at the residence of the individual being assessed interviews of others who know the individual and reports received under this subsection The assessment shall contain all of the following information about the individual being assessed

- (a) Age nationality race or ethnicity and any religious preference
- (b) Marital and family status and history including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent
- (c) Physical and mental health including any history of substance abuse
- (d) Educational and employment history and any special skills and interests
- (e) Property and income including outstanding financial obligations as indicated in a current financial report provided by the individual
- (f) Reason for wanting to adopt
- (g) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement
- (h) Whether the individual has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused dependent deprived neglected abandoned or delinquent and the outcome of the proceeding
- (i) Whether the individual has ever been convicted of a crime
- (j) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief description of the parent and the child
- (k) Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent including the quality of the environment in the home the functioning of other children in the household and any aspect of the individual's familial social psychological or financial circumstances that may be relevant to a determination that the individual is not suitable A specific concern is one that suggests that placement of any child or a particular child in the home of the individual would pose a risk of harm to the physical or psychological well being of the child

(6) A child placing agency shall request an individual seeking a preplacement assessment to provide a document from the Michigan state police and the federal bureau of investigation describing all of the individual's criminal convictions as shown by that agency's records or stating that the agency's records indicate that the individual has not been convicted of a crime Upon request of the individual and receipt of a signed authorization the child placing agency shall obtain the criminal record from the law enforcement agency on the individual's behalf

(7) A preplacement assessment shall contain a list of the sources of information on which it is based If the child placing agency concludes that an individual is not suitable to be an adoptive parent the conclusion shall be supported by a written account of how 1 or more specific concerns pose a risk to the physical or psychological well being of any child or a particular child If the conclusion of a preplacement assessment regarding the suitability of the individual differs from the conclusion in a prior assessment the child placing agency shall explain and justify the difference

(8) An individual who receives a preplacement assessment with a conclusion of unsuitability may seek a review of the assessment by the court after filing an adoption petition The court may order an agent or employee of the court to make an investigation and report to the court before the hearing If at the hearing the court finds by clear and convincing evidence that the conclusion of unsuitability is not justified the person with legal custody of the child may place the child with that individual If the court determines that the conclusion of unsuitability is justified it shall order that the child shall not be placed with the individual

Sec 24 (1) If a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name or to adopt a child or an adult without a change of name with the intent to make the adoptee his or her heir that person together with his wife or her husband if married shall file a petition with the probate court of the county in which the petitioner resides or where the adoptee is found

(2) The petition for adoption shall be verified by each petitioner and shall contain the following information

- (a) The name date and place of birth and place of residence of each petitioner including the maiden name of the adopting mother
- (b) The name date and place of birth and place of residence if known of the adoptee
- (c) The relationship if any of the adoptee to the petitioner
- (d) The full name by which the adoptee shall be known after adoption
- (e) The full description of the property if any of the adoptee

(f) Unless the rights of the parents have been terminated by a court of competent jurisdiction or except as otherwise provided in subsection (5) the names of the parents of the adoptee and the place of residence of each living parent if known

(g) Except as otherwise provided in subsection (5) the name and place of residence of the guardian of the person or estate of the adoptee if any has been appointed

(3) In a direct placement the petitioner shall attach to the petition a verified statement certifying that the petitioner has been informed of the availability of counseling services and whether the petitioner has received counseling

(4) In a direct placement the petitioner shall attach a copy of a preplacement assessment of the petitioner completed or updated within 1 year before the petition is filed with a finding that the petitioner is suitable to be a parent of an adoptee copies of all other preplacement assessments of the petitioner if any others have been completed and a verified statement stating that no preplacement assessments of the petitioner have been completed other than those attached to the petition and explaining any preplacement assessments of the petitioner that have been initiated but not completed

(5) In a direct placement in which the parties have elected not to exchange identifying information the information required by subsection (2)(f) and (g) and the surname and place of residence of the adoptee required under subsection (2)(b) may be omitted The attorney or child placing agency assisting in the adoption shall file a verified statement containing the omitted information

Sec 24a (1) Interested parties in a petition for adoption are all of the following

(a) The petitioner

(b) The adoptee if over 14 years of age

(c) A minor parent adult parent or surviving parent of an adoptee unless 1 or more of the following apply

(i) The rights of the parent have been terminated by a court of competent jurisdiction

(ii) A guardian of the adoptee with specific authority to consent to adoption has been appointed

(iii) A guardian of the parent with specific authority to consent to adoption has been appointed

(iv) The rights of the parent have been released

(v) The parent has consented to the granting of the petition

(d) The department or a child placing agency to which the adoptee has been or for purposes of subsection (3) is proposed to be released or committed by an order of the juvenile division of the probate court

(e) A parent guardian or guardian ad litem of an unemancipated minor parent of the adoptee

(f) The juvenile division of the probate court with permanent custody of the adoptee

(g) A court with continuing jurisdiction over the adoptee

(h) A child placing agency of another state or country that has authority to consent to adoption

(i) The guardian or guardian ad litem of an interested party

(2) Interested parties in a petition for a hearing to identify the father of an adoptee and to determine or terminate his rights are all of the following

(a) The persons set forth in subsection (1)

(b) A putative father of the adoptee

(3) Interested parties in a proceeding relating to the execution of a voluntary release are all of the following

(a) The adoptee if over 5 years of age

(b) The department or a child placing agency to which the adoptee is proposed to be released

(c) The person executing the release of parental rights

(4) Interested parties in a rescission petition are all of the following

(a) The petitioners

(b) The stepparent who adopted the adult adoptee

(c) The spouse of the parent whose rights were terminated

(5) Interested parties in a hearing related to temporary placement are all of the following

(a) The parent or guardian who made or authorized the temporary placement

(b) The parent or guardian of an unemancipated minor parent of the adoptee

(c) A child placing agency that was authorized under section 23b(4) of this chapter to make the temporary placement

(d) If only 1 parent made or authorized the temporary placement the other parent and each putative father of the adoptee

- (e) The prospective adoptive parent with whom temporary placement was made
- (f) The prosecutor who filed a petition under section 23d(4) of this chapter
- (g) The guardian ad litem if a guardian ad litem has been appointed
- (6) In the interest of justice the court may require additional parties to be served
- (7) The court shall not appoint a guardian of the adoptee or of a parent solely for the purpose of defeating that parent's status as an interested party under this section

Sec 28 (1) Subject to this section and section 29 of this chapter a release shall be executed

- (a) By each parent of a child to be adopted or the surviving parent except under the following circumstances
 - (i) The rights of the parent have been terminated by a court of competent jurisdiction
 - (ii) A guardian of the child has been appointed
 - (iii) A guardian of a parent has been appointed
- (b) By the authorized representative of a child placing agency to whom the child has been committed by an order of the juvenile division of the probate court
- (c) By the authorized representative of the child placing agency to whom the child has been released
- (d) By the guardian of the child subject to subsection (3) if a guardian has been appointed
- (e) By the guardian of a parent subject to subsection (4) if a guardian has been appointed
- (2) If the parent of the child to be adopted is an unemancipated minor that parent's release is not valid unless a parent guardian or guardian ad litem of that minor parent has also executed the release
- (3) The guardian of the child to be adopted may not execute a release of the child pursuant to subsection (1) unless the guardian has first obtained authority to execute the release from the court that appointed the guardian
- (4) The guardian of a parent may not execute a release of the parent's child pursuant to subsection (1) unless the guardian has first obtained authority to execute the release from the court that appointed the guardian. Such a release shall have the same effect as if the release were executed by the parent
- (5) A release shall be given only to a child placing agency or to the department
- (6) Before the department arranges a release from a parent or guardian a representative of the department shall advise the parent or guardian about child placing agencies serving the county and upon the parent's or guardian's request shall refer the parent or guardian to a child placing agency. After the release of a child by a parent or guardian to the department the department shall advise the child placing agencies serving the county that the child is available for adoption
- (7) If a child was released for adoption or committed to a child placing agency that agency may release that child to the department and the department shall accept the release
- (8) Upon release of a child to the department pursuant to this section the child becomes a state ward
- (9) Where applicable under this section proof of the termination of parental rights release of parental rights appointment authorization or commitment shall accompany the release

Sec 29 (1) Except as otherwise provided in this section a release shall be by a separate instrument executed before a judge of probate or before a referee of the court. If a parent's or guardian's release is executed before a judge or referee as provided in this subsection a verbatim record of testimony related to execution of the release shall be made

- (2) If the person from whom a release is required is in the armed services or is in prison the release may be executed and acknowledged before an individual authorized by law to administer oaths
- (3) If the release is to be given by an authorized representative of a child placing agency that has jurisdiction of the child to be adopted the release may be executed and acknowledged before an individual authorized by law to administer oaths
- (4) If the release is executed in another state or country the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country or the laws of this state and shall not proceed unless it finds that the release was so executed
- (5) A release by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following
 - (a) That the parent or guardian has received a list of support groups and if the release is to a child placing agency a copy of the statement required under section 23b(2) of this chapter
 - (b) That the parent or guardian has received counseling related to the adoption of his or her child or waives the counseling with the signing of the verified statement

(c) That the parent or guardian has not received or been promised any money or anything of value for the release of the child except for lawful payments that are itemized on a schedule filed with the release

(d) That the validity and finality of the release is not affected by any collateral or separate agreement between the parent or guardian and the agency or the parent or guardian and the prospective adoptive parent

(e) That the parent or guardian understands that it serves the welfare of the child for the parent to keep the child placing agency or department informed of any health problems that the parent develops that could affect the child

(f) That the parent or guardian understands that it serves the welfare of the child for the parent or guardian to keep his or her address current with the child placing agency or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years of age or older

(6) A release by a parent or a guardian of the child shall not be executed until after such investigation as the court deems proper and until after the judge referee or other individual authorized in subsection (2) has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily relinquishes permanently his or her rights to the child and if the child is over 5 years of age the court has determined that the child is best served by the release

(7) Upon the release of a child by a parent or guardian the court immediately shall issue an order terminating the rights of that parent or guardian to that child If the rights of both parents the surviving parent or the guardian have been terminated the court shall issue an order committing the child to the child placing agency or department to which the release was given

(8) The court shall authorize foster care funding pending expiration of the period of appeal or rehearing as provided in sections 64 and 65 of this chapter and pending disposition of any appeal or rehearing for all persons committed to a child placing agency Foster care funding authorized under this subsection shall exclude the administrative costs of the child placing agency The costs of foster care shall be paid through the use of the child care fund as provided by section 117c of the social welfare act Act No 280 of the Public Acts of 1939 as amended being section 400 117c of the Michigan Compiled Laws or by any successor statute When foster care funding is authorized pursuant to this subsection the court shall send a copy of the order to the department Upon receiving a copy of this order the department shall reimburse the court child care fund of the county where the court order for foster care funding was made in the total amount of the court ordered payment The reimbursement shall be made monthly

(9) Entry of an order terminating the rights of both parents pursuant to subsection (7) terminates the jurisdiction of the circuit court over the child in any divorce or separate maintenance action

(10) Upon petition of the same person or persons who executed the release and of the department or child placing agency to which the child was released the court with which the release was filed may grant a hearing to consider whether the release should be revoked A release may not be revoked if the child has been placed for adoption unless the child is placed pursuant to section 41(2) of this chapter and a petition for rehearing or claim of appeal is filed within the time required A verbatim record of testimony related to a petition to revoke a release shall be made

Sec 31 (1) If a child is born out of wedlock and the release or consent of the biological father cannot be obtained the child shall not be placed for adoption until the parental rights of the father are terminated by the court as provided in section 37 or 39 of this chapter by the court pursuant to chapter XIIA or by a court of competent jurisdiction in another state or country

(2) Pending the termination or other disposition of the rights of the father of a child born out of wedlock the mother may execute a release terminating her rights to the child If the mother releases the child the child placing agency or department to which the child is released may file a petition of dependency or neglect pursuant to chapter XIIA Pending disposition of the dependency or neglect petition the court may enter an order authorizing temporary care of the child

(3) At the request of the mother her formal execution of a release or consent shall be delayed until after court determination of the status of the putative father's request for custody of the child

Sec 41 (1) Except as provided in section 23d of this chapter a child shall not be placed in a home for the purpose of adoption until an order terminating parental rights has been entered pursuant to this chapter or chapter XIIA and the court has formally approved placement under section 51 of this chapter After an order terminating parental rights has been entered the court shall enter any appropriate orders pursuant to sections 45 46 and 51 of this chapter Such orders shall not be withheld because the period specified for a rehearing or an appeal as of right has not expired or because of the pendency of any rehearing or appeal as of right

(2) If an order terminating parental rights is entered pursuant to this chapter or chapter XIIA the child may be placed in a home for the purpose of adoption during the period specified for a rehearing or an appeal as of right and the period during which a rehearing or appeal as of right is pending When a child placing agency the court or the department formally places a child or the court approves placement of a child pursuant to this subsection the child

placing agency court or department shall inform the person or persons in whose home the child is placed that an adoption will not be ordered until 1 of the following occurs

(a) The petition for rehearing is granted at the rehearing the order terminating parental rights is not modified or set aside and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed

(b) The petition for rehearing is denied and the period for appeal as of right to the court of appeals has expired without an appeal being filed

(c) There is a decision of the court of appeals affirming the order terminating parental rights

(3) This section shall not be construed to prevent a child residing in a licensed foster home from being adopted by the foster parent or parents

(4) This section does not apply if the petitioner for adoption is married to a parent having legal custody of the child

Sec 43 (1) Subject to this section and sections 44 and 51 of this chapter consent to adoption of a child shall be executed

(a) By each parent of a child to be adopted or the surviving parent except under the following circumstances

(i) The rights of the parent have been terminated by a court of competent jurisdiction

(ii) The child has been released for the purpose of adoption to a child placing agency or to the department

(iii) A guardian of the child has been appointed

(iv) A guardian of a parent has been appointed

(v) A parent having legal custody of the child is married to the petitioner

(b) By the authorized representative of the department or of a child placing agency to whom the child has been permanently committed by an order of the juvenile division of the probate court

(c) By the juvenile division of the probate court or by a tribal court having permanent custody of the child

(d) By the authorized representative of the department or of a child placing agency to whom the child has been released

(e) By the guardian of the child subject to subsection (5) if a guardian has been appointed

(f) By the guardian of a parent subject to subsection (6) if a guardian has been appointed

(g) By the authorized representative of a court or child placing agency of another state or country that has authority to consent to adoption

(2) If the child to be adopted is over 14 years of age that child's consent is necessary before the court may enter an order of adoption

(3) If the individual to be adopted is an adult the individual's consent is necessary before the court may enter an order of adoption but consent by any other individual is not required

(4) If the parent of the child to be adopted is an unemancipated minor that parent's consent is not valid unless a parent guardian or guardian ad litem of that minor parent has also executed the consent

(5) The guardian of the child to be adopted shall not execute a consent to that child's adoption pursuant to subsection (1) unless the guardian has first obtained authority to execute the consent from the court that appointed the guardian

(6) The guardian of a parent shall not execute a consent to the adoption of the parent's child pursuant to subsection (1) unless the guardian has first obtained authority to execute the consent from the court that appointed the guardian. The consent shall have the same effect as if the consent were executed by the parent

(7) If the petitioner for adoption is married to the parent having legal custody of the child and that parent has joined the petitioner in filing the petition for adoption that parent shall not execute a consent to the adoption. The consent of the parent who does not have legal custody of the child and whose parental rights have not been terminated shall be executed before the court may enter an order of adoption under section 56 of this chapter

Sec 44 (1) Except as otherwise provided in this section the consent required by section 43 of this chapter shall be by a separate instrument executed before the judge of probate having jurisdiction or at the court's direction before another judge of probate in this state. A consent may be executed before a referee of the probate court. The consent hearing shall be held within 7 days after it is requested. If the consent of a parent or guardian is executed before a judge or referee as provided in this subsection a verbatim record of testimony related to execution of the consent shall be made

(2) If the individual whose consent is required is in any of the armed services or is in prison the consent may be executed and acknowledged before any individual authorized by law to administer oaths

(3) If the child to be adopted is legally a ward of the department or of a child placing agency the consent required to be made under section 43 of this chapter by the authorized representative of the department or agency may be executed and acknowledged before an individual authorized by law to administer oaths

(4) If the consent is executed in another state or country the court having jurisdiction over the adoption proceeding in this state shall determine whether the consent was executed in accordance with the laws of that state or country or the laws of this state and shall not proceed unless it finds that the consent was so executed

(5) In a direct placement a consent by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following

(a) That the parent or guardian has received a list of support groups and if being assisted by a child placing agency a copy of the statement required under section 23b(2) of this chapter

(b) That the parent or guardian has received counseling related to the adoption of his or her child or waives the counseling with the signing of the verified statement

(c) That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption of the child except for lawful payments that are itemized on a schedule filed with the consent

(d) That the validity and finality of the consent is not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent

(e) That the parent or guardian understands that it serves the welfare of the child for the parent to keep the child placing agency court or department informed of any health problems that the parent develops which could affect the child

(f) That the parent or guardian understands that it serves the welfare of the child for the parent or guardian to keep his or her address current with the child placing agency court or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older

(6) If a parent's consent to adoption is required under section 43 of this chapter or if a guardian's consent is required pursuant to section 43(1)(e) of this chapter the consent shall not be executed until after the investigation the court considers proper and until after the judge referee or other individual authorized in subsection (2) has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the consent voluntarily relinquishes permanently his or her rights to the child

(7) If the adoptee's consent to adoption is required under section 43 of this chapter the consent shall not be executed until after the investigation the court considers proper and until after the judge or referee has fully explained to the adoptee the fact that he or she is consenting to acquire permanently the adopting parent or parents as his or her legal parent or parents as though the adoptee had been born to the adopting parent or parents

Sec 46 (1) Upon the filing of an adoption petition the court shall direct a full investigation by an employee or agent of the court a child placing agency or the department The court may use the preplacement assessment described in section 23f of this chapter and may order an additional investigation by an employee or agent of the court or a child placing agency The following shall be considered in the investigation

(a) The best interests of the adoptee

(b) The adoptee's family background including names and identifying data regarding the parent or parents if obtainable

(c) The reasons for the adoptee's placement away from his or her parent or parents

(2) A written report of the investigation shall be filed within 3 months after the order for investigation

(3) If the adoptee has been placed for foster care with the petitioner for 12 months or longer and the foster family study was completed or updated not more than 12 months before the petition was filed the court upon motion by the petitioner may waive the full investigation required by this section The foster family study with information added as necessary to update or supplement the original study may be substituted for the written report required under subsection (2)

Sec 51 (1) Not later than 14 days after receipt of the report of investigation except as provided in subsections (2) and (5) the judge of probate shall examine the report and shall enter an order terminating the rights of the child's parent or parents if there was a parental consent or the rights of any person in loco parentis if there was a consent by other than parents and approve placement of the child with the petitioner if the judge is satisfied as to both of the following

(a) The genuineness of consent to the adoption and the legal authority of the person or persons signing the consent

(b) The best interests of the adoptee will be served by the adoption

(2) If it is necessary to hold a hearing before entering an order terminating the rights of a parent or a person in loco parentis or if other good cause is shown the time specified in subsection (1) shall be extended for an additional 14 day period

(3) Upon entry of an order terminating rights of parents or persons in loco parentis a child is a ward of the court and a consent to adoption executed pursuant to section 43 of this chapter shall not be withdrawn after the order is entered. Entry of the order terminates the jurisdiction of the circuit court over the child in a divorce or separate maintenance action. If the petitioner for adoption is married to the parent having legal custody of the child the child shall not be made a ward of the court after termination of the rights of the other parent

(4) Without making the child a ward of the court the court may approve placement of a child if the child is placed for adoption in this state by a public or licensed private agency of another state or country and if the law of the sending state or country prohibits the giving of consent to adoption at the time of placement. Before placement of the child in that instance the sending agency shall tender evidence as the court requires to demonstrate that the agency possesses the necessary authority to consent to the adoption at the time of entry of the final order of adoption. After the sending agency has given evidence of its ability to consent the agency shall not do anything to jeopardize its ability to grant the required consent before entry of the final order of adoption. After the sending agency gives its consent for the adoption that consent shall not be withdrawn

(5) If a parent having legal custody of the child is married to the petitioner for adoption the judge of probate shall not enter an order terminating the rights of that parent

(6) If the parents of a child are divorced or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur

(a) The other parent having the ability to support or assist in supporting the child has failed or neglected to provide regular and substantial support for the child or if a support order has been entered has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition

(b) The other parent having the ability to visit contact or communicate with the child has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition

(7) Unless otherwise ordered by the court the prospective adoptive parents with whom a child is placed pursuant to a court order approving placement under this section may consent to all medical surgical psychological educational and related services for the child

Sec 52 (1) Subject to subsection (2) during the period before entry of the order of adoption the child shall be supervised at the direction of the court by an employee or agent of the court a child placing agency or the department who shall make reports regarding the adjustment of the child in the home as the court orders. The investigations shall be made under reasonable circumstances and at reasonable intervals

(2) In a direct placement the child shall be supervised during the period before entry of the order of adoption by the child placing agency that investigated the placement under section 46 of this chapter or in the court's discretion by another child placing agency

Sec 54 (1) Except for charges and fees approved by the court a person shall not pay or give offer to pay or give or request receive or accept any money or other consideration or thing of value directly or indirectly in connection with any of the following

(a) The placing of a child for adoption

(b) The registration recording or communication of the existence of a child available for adoption

(c) A release

(d) A consent

(e) A petition

(2) Except for a child placing agency's preparation of a preplacement assessment described in section 23f of this chapter or investigation under section 46 of this chapter a person shall not be compensated for the following activities

(a) Assisting a parent or guardian in evaluating a potential adoptive parent

(b) Assisting a potential adoptive parent in evaluating a parent or guardian or adoptee

(c) Referring a prospective adoptive parent to a parent or guardian of a child for purposes of adoption

(d) Referring a parent or guardian of a child to a prospective adoptive parent for purposes of adoption

(3) An adoptive parent may pay the reasonable and actual charge for all of the following

(a) The services of a child placing agency in connection with an adoption

(b) Medical hospital nursing or pharmaceutical expenses incurred by the birth mother or the adoptee in connection with the birth or any illness of the adoptee if not covered by the birth parent's private health care payment or benefits plan or by Medicaid

(c) Counseling services related to the adoption for a parent a guardian or the adoptee

(d) Living expenses of a mother before the birth of the child and for no more than 6 weeks after the birth

(e) Expenses incurred in ascertaining the information required under this chapter about an adoptee and the adoptee's biological family

(f) Legal fees charged for consultation and legal advice preparation of papers and representation in connection with an adoption proceeding including legal services performed for a biological parent or a guardian and necessary court costs in an adoption proceeding

(g) Traveling expenses necessitated by the adoption

(4) An adoptive parent shall pay the reasonable and actual charge for preparation of the preplacement assessment and any additional investigation ordered pursuant to section 46 of this chapter

(5) A prospective adoptive parent shall pay for counseling for the parent or guardian related to the adoption unless the parent or guardian waives the counseling pursuant to section 29 or 44

(6) A payment authorized by subsection (3) shall not be made contingent on the placement of the child for adoption release of the child consent to the adoption or cooperation in the completion of the adoption If the adoption is not completed an individual who has made payments authorized by subsection (3) may not recover them

(7) At least 7 days before formal placement of a child under section 51 of this chapter the following documents shall be filed with the court

(a) A verified accounting signed by the petitioner itemizing all payments or disbursements of money or anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption The accounting shall include the date and amount of each payment or disbursement made the name and address of each recipient and the purpose of each payment or disbursement Receipts shall be attached to the accounting

(b) A verified statement of the attorney for each petitioner itemizing the services performed and any fee compensation or other thing of value received by or agreed to be paid to the attorney for or incidental to the adoption of the child If the attorney is an adoption attorney representing a party in a direct placement adoption the verified statement shall contain the following statements

(i) The attorney meets the requirements for an adoption attorney under section 22 of this chapter

(ii) The attorney did not request or receive any compensation for services described in section 54(2) of this chapter

(c) A verified statement of the attorney for each parent of the adoptee itemizing the services performed and any fee compensation or other thing of value received by or agreed to be paid to the attorney for or incidental to the adoption of the child If the attorney is an adoption attorney representing a party in a direct placement adoption the verified statement shall contain the following statements

(i) The attorney meets the requirements for an adoption attorney under section 22 of this chapter

(ii) The attorney did not request or receive any compensation for services described in section 54(2) of this chapter

(d) A verified statement of the child placing agency or the department itemizing the services performed and any fee compensation or other thing of value received by or agreed to be paid to the child placing agency or the department for or incidental to the adoption of the child and containing a statement that the child placing agency or the department did not request or receive any compensation for services described in section 54(2) of this chapter

(8) At least 21 days before the entry of the final order of adoption the documents described in subsection (7) shall be updated and filed with the court

(9) To assure compliance with limitations imposed by this section and section 55 of this chapter and by section 14 of Act No 116 of the Public Acts of 1973 being section 722 124 of the Michigan Compiled Laws the court may require sworn testimony from persons who were involved in any way in informing notifying exchanging information identifying locating assisting or in any other way participating in the contracts or arrangements that directly or indirectly led to placement of the individual for adoption

(10) The court shall approve or disapprove all fees and expenses Acceptance or retention of amounts in excess of those approved by the court constitutes a violation of this section

(11) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100 00 or both for the first violation and of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2 000 00 or both for each subsequent violation The court may enjoin from further violations any person who violates this section

Sec 55 (1) Only a person specified in sections 23a(1) 23b(1) and 23c of this chapter may place a child for adoption. Only a prospective adoptive parent may solicit biological parents or guardians of potential adoptees for the purposes of adoption. Only a biological parent or guardian or the court department or child placing agency with authority to place a child may solicit potential adoptive parents for purposes of adoption of that child. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100 00 or both for the first violation and of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2 000 00 or both for each subsequent violation. The court may enjoin from further violations any person who violates this section.

(2) As used in this section, solicit means contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient. Solicit does not include public communication that is not directed to specific individuals.

Sec 55a (1) An attorney shall not represent a party in a direct placement adoption unless the attorney is an adoption attorney. An attorney or law firm shall not serve as the attorney for or provide legal services to both a parent or guardian and a prospective adoptive parent.

(2) In a direct placement or agency placement adoption, if the minor parent of a child who is a potential adoptee is not represented by an attorney, the adoption attorney or child placing agency that is providing adoption services involving that minor parent shall provide the minor parent with an opportunity to discuss with an attorney who is not associated with the adoption attorney or child placing agency the legal ramifications of a consent or release or of the termination of parental rights before the execution of a consent or release or the termination of parental rights.

Sec 58a (1) Beginning on the effective date of section 14c of Act No. 116 of the Public Acts of 1973, being section 722 124c of the Michigan Compiled Laws, the probate register shall forward to the department, not later than 15 days after the entry of an order of adoption pursuant to section 56 of this chapter, either of the following:

(a) A public information form completed and filed with the court by the primary adoption facilitator.

(b) A public information form completed by the probate register that consists only of the name of the primary adoption facilitator and the confidential information as prescribed by section 14d of Act No. 116 of the Public Acts of 1973, being section 722 124d of the Michigan Compiled Laws.

(2) As used in this section, primary adoption facilitator and public information form mean those terms as defined in section 14b of Act No. 116 of the Public Acts of 1973, being section 722 124b of the Michigan Compiled Laws.

Sec 68a (1) The department, in cooperation with adoption support groups, shall develop and publish an information pamphlet explaining the release of information from adoption records pursuant to this act.

(2) Within 14 days after it is contacted by an adoptee, adult former sibling, former parent, or adoptive parent, a child placing agency or court or the department shall provide the adoptee, adult former sibling, former parent, or adoptive parent with all of the following:

(a) A copy of the information pamphlet described in subsection (2).

(b) A list of adoption support groups.

(c) Information about the provisions described in this section and sections 27a, 27b, 68, and 68b of this chapter.

(3) If a child placing agency, a court, or the department receives a written request from an adoptee, adult former sibling, former parent, adoptive parent, or any other person biologically related to an adoptee that the requester's current address be placed in its adoption files, the child placing agency, court, or department shall place the information in its adoption files.

Section 2 This amendatory act shall take effect January 1, 1995.

Section 3 This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) Senate Bill No. 299

(b) Senate Bill No. 722

(c) Senate Bill No. 723

(d) Senate Bill No. 724

(e) Senate Bill No. 725

(f) House Bill No. 4201

(g) House Bill No. 4428

(h) House Bill No. 4614

(i) House Bill No. 4638

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor