

Act No. 487
Public Acts of 2004
Approved by the Governor
December 22, 2004
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December 28, 2004
EFFECTIVE DATE: December 28, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Hardman, Hager, Vander Veen, Waters, McConico, Stallworth and Reeves

ENROLLED HOUSE BILL No. 6010

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending sections 21a, 22, 23a, 23d, 24, 24a, and 56 of chapter X (MCL 710.21a, 710.22, 710.23a, 710.23d, 710.24, 710.24a, and 710.56), section 21a as added by 1982 PA 72, sections 22, 24, and 24a as amended by 1996 PA 409, section 23a as amended by 1994 PA 373, section 23d as amended by 2004 PA 68, and section 56 as amended by 1994 PA 240.

The People of the State of Michigan enact:

CHAPTER X

Sec. 21a. The general purposes of this chapter are:

- (a) To provide that each adoptee in this state who needs adoption services receives those services.
- (b) To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.
- (c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.
- (d) To achieve permanency and stability for adoptees as quickly as possible.
- (e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.

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 an adoption proceeding or case.

(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) “Applicant” means an individual or individuals who desire to adopt a child and who have submitted an adoption application to a child placing agency.

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

(g) “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.

(h) “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.

(i) “Central adoption registry” means the registry established by the department under section 27b of this chapter to control the release of identifying adoption information.

(j) “Child” means an individual less than 18 years of age.

(k) “Child placing agency” means a private organization licensed under 1973 PA 116, MCL 722.111 to 722.128, to place children for adoption.

(l) “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.

(m) “Court” means the family division of circuit court of this state, or if the context requires, the court having jurisdiction over adoption in another state or country.

(n) “Department” means the family independence agency.

(o) “Direct placement” means a placement in which a parent or guardian selects an adoptive parent for a child, other than a stepparent or 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.

(p) “Formal placement” means a placement that is approved by the court under section 51 of this chapter.

(q) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

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

(s) “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 according to this chapter.

(t) “Relative” means an individual who is related to the child within the fifth degree by marriage, blood, or adoption.

(u) “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.

(v) “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 according to section 66 of this chapter.

(w) “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.

(x) “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.

(y) “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 make a direct placement of the 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 under section 51 of this chapter. A formal placement under section 51 of this chapter is not required 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) 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 make a formal placement of the child for adoption under section 51 of this chapter with a stepparent or a relative.

(5) The court may allow the child to attend his or her adoption hearing held under this act.

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 as prescribed by 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 has had a preplacement assessment completed 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.

(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.

(iii) Language indicating that unless the parent or guardian and the prospective adoptive parent agree otherwise, the prospective adoptive parent has the authority to consent to all medical, surgical, psychological, educational, and related services for the child and language indicating that the parent or guardian otherwise 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 all 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 under section 23e(2) of this chapter.

(ii) That, if the prospective adoptive parent is a Michigan resident, the prospective adoptive parent agrees to reside with the child in Michigan until formal placement occurs.

(iii) That the prospective adoptive parent agrees to obtain approval in compliance with the interstate compact on the placement of children, 1984 PA 114, MCL 3.711 to 3.717, before the child is sent, brought, or caused to be sent or brought into a receiving state as that term is defined in section 1 of the interstate compact on the placement of children, 1984 PA 114, MCL 3.711.

(iv) That the prospective adoptive parent submits to this state's jurisdiction.

(2) Not later than 2 days, excluding weekends and holidays, after a transfer of physical custody of a child in accordance with subsection (1), the adoption attorney or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court in the county in which the child's parent or guardian or the prospective adoptive parent resides, or in which the child is found, 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 of this chapter.

(3) Not later than 30 days after the transfer of physical custody of a child under this section, the adoption attorney or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court that received the report described in subsection (2) a report indicating whether or not 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 court 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 the report required under subsection (3) or the court's investigation reveals that neither disposition has occurred, the court shall immediately report to the prosecutor, who shall immediately file a petition in the court that received the report described in subsection (2) for disposition of the child as required by section 23e of this chapter. If a petition has been filed under subsection (5), (6), or (7), the prosecutor is not required to file a petition.

(5) A parent or guardian who wishes to regain custody of a child who has been placed temporarily shall file a petition in the court that received the report described in subsection (2) 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 under 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 that received the report described in subsection (2) for disposition of the child as required by 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 that received the report described in subsection (2) for disposition of the child as required by 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. 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 name change, 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 court of the county in which the petitioner resides or where the adoptee is found or, if the petitioner and adoptee reside out of state, where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in section 23d(2) of this chapter.

(2) In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.

(3) If a petition to adopt is filed in a county other than that in which the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found.

(4) 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) Except as otherwise provided in subsection (7), 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 (7), 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 (7), the name and place of residence of the guardian of the person or estate of the adoptee, if any has been appointed.

(5) 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.

(6) Except as otherwise provided in this subsection, 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. If the petitioner is seeking review of a preplacement assessment under section 23f(8) of this chapter, the petitioner may comply with this subsection by attaching a copy of that preplacement assessment and a copy of the application for review, together with copies of all other preplacement assessments and the verified statement required by this section.

(7) In a direct placement in which the parties have elected not to exchange identifying information, the information required by subsection (4)(f) and (g) and the surname and place of residence of the adoptee required under subsection (4)(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 or petitioners.
- (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 court.

- (e) A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.
- (f) The 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 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 of this chapter.

(g) The guardian ad litem of any interested party, 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. 56. (1) Six months after formal placement under section 51, unless the court determines that circumstances have arisen that make adoption undesirable, the court may enter an order of adoption. Upon the motion of the petitioner, the court may waive the 6-month period, or any portion of that period, if the waiver is in the best interests of the adoptee. If, after a hearing, the court finds that the best interests of the adoptee will be served, it may extend the 6-month period for an additional period of time not exceeding 18 months from the time of formal placement for adoption. In an adoption proceeding for which an adoption order is not entered within 18 months after formal placement, the court shall hold a hearing and determine whether an order of adoption shall be entered or the petition denied. If a child is formally placed according to section 41(2) of this chapter, the court may extend the 6-month period for an additional period, which may exceed 18 months from the time of formal placement, until an order for adoption may be entered under subsection (2).

(2) Except as provided in subsection (3), if a petition for rehearing or an appeal as of right from an order terminating parental rights has been filed, the court shall not order an adoption until 1 of the following occurs:

(a) The petition for rehearing is granted, and 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) The court of appeals affirms the order terminating parental rights.

(3) If an application for leave to appeal has been filed with the supreme court, the court shall not order an adoption until 1 or more of the following occurs:

(a) The application for leave to appeal is denied.

(b) The supreme court affirms the order terminating parental rights.

(4) If a motion brought under section 45 of this chapter has been filed, the court shall not order an adoption until 1 of the following occurs:

(a) The motion is decided and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

(b) The motion is decided, an appeal as of right to the court of appeals has been filed, the court of appeals issues an opinion, and subsequently the period for filing an application for leave to the supreme court has expired without an application being filed.

(c) The supreme court denies an application for leave or, if an application is granted, the supreme court issues an opinion.

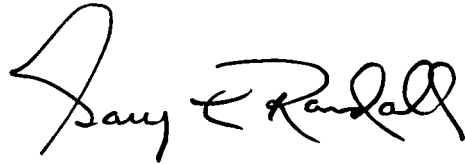
(5) If the person to be adopted is an adult, the court may enter an order of adoption after all of the following occur:

(a) The person to be adopted consents to the adoption according to section 43(3) of this chapter.

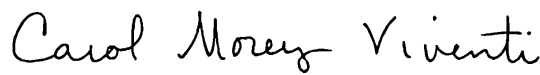
(b) The written report of investigation required by section 46(2) of this chapter is filed.

(c) Notice has been served upon interested parties described in section 24a of this chapter.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor