

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

710.29 Release; separate instrument; persons before whom release executed and acknowledged; execution in another state or country; out-of-court release; verified statement; investigation; explaining legal rights to parent or guardian; order terminating rights; order committing child to child placing agency or department; foster care funding; termination of jurisdiction; hearing to consider revocation of release.

Sec. 29. (1) Except as otherwise provided in subsections (5) to (11), a release shall be by a separate instrument executed before a judge of the court or a juvenile court referee. 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 parent or guardian may sign an out-of-court release in front of and witnessed by an adoption attorney representing the parent or guardian and a child placing agency caseworker. An out-of-court release signed under this subsection must comply with all of the following:

(a) The out-of-court release shall not be signed until after a 72-hour waiting period that begins at the time of the child's birth has expired.

(b) If the parent signing the out-of-court release is an unemancipated minor, the out-of-court release is not valid unless it is also signed by a parent or guardian of that unemancipated minor parent in the presence of the witnesses described in this subsection.

(c) An out-of-court release must be accompanied by the verified statement described in subsection (6) and a statement regarding relinquishment of parental rights that includes all of the following:

(i) The right to have or to seek care and custody of the child.

(ii) The right to have or to seek parenting time with the child.

(iii) The right to inherit from the child or have the child inherit from the parent.

(iv) The right to services and earnings of the child.

(v) The right to determine the child's schooling, religious training, and parenting practices.

(d) In separate paragraphs with sufficient space in the margin for a parent to place his or her initials beside each paragraph, the out-of-court release must state the following:

(i) I have read or had read to me each of my rights as a parent described in section 29(5)(c) of chapter X of the probate code of 1939, 1939 PA 288, MCL 710.29, and I understand these rights.

(ii) I am signing the out-of-court release as a free and voluntary act on my part, and I have been advised that I cannot be forced to sign the out-of-court release for any reason.

(iii) I have not been given or promised any money or other thing of value in exchange for signing the out-of-court release.

(iv) If I sign the out-of-court release, I understand that I am giving up all of my parental rights and authorizing the court to permanently terminate all of my parental rights, unless the court allows me to revoke my out-of-court release.

(v) It has been explained to me and I understand all of the following:

(A) I am not required to sign an out-of-court release.

(B) I may make a temporary placement of my child with the prospective adoptive parent or parents, if I have not already done so, or I may continue the temporary placement I have already made, until I choose to sign a release in court or sign an out-of-court release.

(C) I may request revocation of the out-of-court release I have signed by submitting a timely written request for revocation.

(D) If I request a revocation of the out-of-court release, I must appear before the court so the court may consider whether to grant the revocation.

(vi) I have been advised that I may submit a request for revocation in writing to the adoption attorney or child placing agency that accepted the out-of-court release not more than 5 days, excluding weekends and holidays, after the out-of-court release was signed or I may petition the court on my own for revocation of the

out-of-court release not more than 5 days, excluding weekends and holidays, after the out-of-court release was signed.

(vii) If I submit a timely request for revocation, the court may grant the request or deny the request depending on my fitness and immediate ability to properly care for the child and whether the best interests of the child would be served by the revocation.

(e) The out-of-court release must contain the contact information for both the adoption attorney representing the parent or guardian and the child placing agency that accepted the out-of-court release specifying where a written request for revocation may be submitted, including a postal mailing address, overnight carrier address, fax number, and electronic mail address. A request for revocation may not be submitted to the adoption attorney representing the parent or guardian or the child placing agency that accepted the out-of-court release by telephone or text message.

(f) The following statement must appear immediately above the signature of the parent or guardian executing the out-of-court release: "I acknowledge that I am signing this out-of-court release freely and voluntarily, after my parental rights have been explained to me and any questions I may have about it have been fully answered. I understand the rights I am giving up and that an order terminating my parental rights, when entered by the court, is a permanent termination of all of my parental rights."

(6) 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 written document described in section 6(1)(c) of the foster care and adoption services act, 1994 PA 203, MCL 722.956.

(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 child placing agency, or the parent or guardian and the prospective adoptive parent.

(e) That the parent or guardian understands that it serves the child's welfare 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 child's welfare 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.

(7) A release by a parent or a guardian of the child 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 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. If an out-of-court release is signed under subsection (5), the adoption attorney representing the parent or guardian who witnessed the out-of-court release and a caseworker from the child placing agency that accepted the out-of-court release shall fully explain to the parent or guardian his or her legal rights and the fact that the parent or guardian by virtue of the out-of-court release voluntarily relinquishes permanently his or her rights to the child.

(8) Except as otherwise provided in this subsection, 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 an out-of-court release has been signed under subsection (5), not sooner than 5 days, excluding weekends and holidays, after the out-of-court release was signed, the court shall issue an order terminating the rights of the 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.

(9) 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, 1939 PA 280, MCL 400.117c, or by any successor statute. When foster care funding is authorized according 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.

(10) Entry of an order terminating the rights of both parents under subsection (8) terminates the jurisdiction of the circuit court over the child in any divorce or separate maintenance action.

(11) Except as otherwise provided in subsection (12), 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 as provided in 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.

(12) Except as otherwise provided in this subsection, a parent or guardian who has signed an out-of-court release but wishes to request revocation of the out-of-court release shall submit a request for revocation to the adoption attorney representing the parent or guardian or the child placing agency that accepted the out-of-court release not more than 5 days, excluding weekends and holidays, after the out-of-court release was signed. The request for revocation from the parent or guardian must be submitted in writing by the parent or guardian who signed the out-of-court release to the adoption attorney representing the parent or guardian or a caseworker from the child placing agency that accepted the out-of-court release. The request for revocation is timely if delivered to the adoption attorney or the child placing agency not more than 5 days, excluding weekends and holidays, after the out-of-court release was signed. Upon receipt of a timely request for revocation, the adoption attorney or the child placing agency receiving the request for revocation shall assist the parent or guardian in filing the petition to revoke the out-of-court release with the court as soon as practicable. A parent or guardian may file this petition with the court on his or her own. If the parent or guardian files the petition on his or her own, the petition must be filed with the court not more than 5 days, excluding weekends and holidays, after the out-of-court release was signed.

(13) The court in which the out-of-court release was filed may deny the request for revocation under subsection (14).

(14) If a petition to revoke an out-of-court release is filed with the court, timely notice of revocation does not immediately result in the return of the child to the parent or guardian. A hearing before a judge is required to determine all of the following unless a child placing agency accepting the out-of-court release or the adoptive parent or parents agree to the revocation:

(a) Whether the request for revocation was given in a timely and proper manner.

(b) Whether good cause exists to determine that the out-of-court release was not signed voluntarily. If the court finds that the out-of-court release was not signed voluntarily, the out-of-court release is invalid and custody of the child shall be returned to the parent or guardian. If the court finds that the out-of-court release was signed voluntarily, the court shall proceed under subdivision (c).

(c) Whether the best interest of the child will be served by any of the following:

(i) Returning custody of the child to the parent or guardian.

(ii) Continuing the adoption proceeding commenced or intended to be commenced by the adoptive parent or parents.

(iii) Disposition appropriate to the child's welfare as authorized by section 18 of chapter XIII A under an ex parte order entered by the court.

History: Add. 1974, Act 296, Eff. Jan. 1, 1975;—Am. 1976, Act 382, Imd. Eff. Dec. 28, 1976;—Am. 1982, Act 72, Imd. Eff. Apr. 14, 1982;—Am. 1994, Act 222, Eff. Jan. 1, 1995;—Am. 1994, Act 373, Eff. Jan. 1, 1995;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 2014, Act 117, Eff. Oct. 12, 2014.

Popular name: Probate Code