

HOUSE BILL No. 5173

October 12, 1989, Introduced by Reps. Gubow, Brown, Honigman, DeBeaussaert, Ciaramitaro, Stabenow, Martin, DeMars, Bandstra, Van Regenmorter, Hertel and Johnson and referred to the Committee on Judiciary.

A bill to amend sections 26, 29, 44, and 45 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 26, 29, and 44 as amended and section 45 as added by Act No. 72 of the Public Acts of 1982, being sections 710.26, 710.29, 710.44, and 710.45 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 26, 29, 44, and 45 of chapter X of Act
2 No. 288 of the Public Acts of 1939, sections 26, 29, and 44 as
3 amended and section 45 as added by Act No. 72 of the Public Acts
4 of 1982, being sections 710.26, 710.29, 710.44, and 710.45 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 **CHAPTER X**

7 Sec. 26. Subsequent to or concurrent with the filing of
8 the adoption petition but before the hearing on the petition by
9 the court, the petitioner, the department, an employee or agent
10 of the court, or a child placing agency, as appropriate, shall
11 file the following documentation:

12 (a) Except in instances of parental consent to adoption, a
13 copy of each release or order terminating parental rights over
14 the child which has a bearing upon the authority of a person to
15 execute the consent to adoption.

16 (b) A copy of the order of commitment, if a commitment was
17 made to a child placing agency or to the department.

18 (c) Proof of a guardian's appointment and authorization to
19 execute the release or consent to the child's adoption.

20 (d) A copy of the consent to adoption as required in this
21 chapter. IF THE CONSENT IS REQUIRED PURSUANT TO
22 SECTION 43(1)(B), (C), OR (D) OF THIS CHAPTER, THE CONSENT SHALL
23 BE FILED CONCURRENT WITH THE FILING OF THE PETITION UNLESS A
24 MOTION IS FILED PURSUANT TO SECTION 45 OF THIS CHAPTER.

25 (e) A copy of the adoptee's birth certificate, verification
26 of birth, hospital birth registration, or other satisfactory

1 proof of date and place of birth, if obtainable, unless this
2 filing is waived by written order of the judge of probate.

3 (f) The report of the investigation prepared pursuant to
4 section 46 of this chapter.

5 (g) If the petition alleges nonsupport and noncommunication
6 by a parent, as described in section 51(6), an affidavit verify-
7 ing that fact.

8 (h) Any additional facts considered necessary by the court.

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

15 (2) If the person from whom a release is required is in the
16 armed services or is in prison, the release may be executed and
17 acknowledged before a person authorized by law to administer
18 oaths.

19 (3) If the release is to be given by a duly authorized rep-
20 resentative of a child placing agency which has jurisdiction of
21 the child to be adopted, the release may be executed and acknowl-
22 edged before a person authorized by law to administer oaths.

23 (4) If the release is executed in another state or country,
24 the court having jurisdiction over the adoption proceeding in
25 this state shall determine whether the release was executed in
26 accordance with the laws of that state or country OR THIS STATE,

1 and shall not proceed unless it finds that the release was so
2 executed.

3 (5) A release by a parent or a guardian of the child shall
4 not be executed until after such investigation as the court deems
5 proper and until after the judge, referee, or other person autho-
6 rized in subsection (2) has fully explained to the parent or
7 guardian the legal rights of the parent or guardian and the fact
8 that the parent or guardian by virtue of the release voluntarily
9 relinquishes permanently his or her rights to the child ~~—~~ and,
10 if the child is over 5 years of age, the court has determined
11 that the child is best served by the release.

12 (6) Upon the release of a child by a parent or guardian, the
13 court immediately shall issue an order terminating the rights of
14 that parent or guardian to that child. If the rights of both
15 parents, the surviving parent, or the guardian have been termi-
16 nated, the court shall issue an order committing the child to the
17 child placing agency or department to which the release was
18 given.

19 (7) The court shall authorize foster care funding pending
20 expiration of the period of appeal or rehearing as provided in
21 sections 64 and 65 of this chapter, and pending disposition of
22 any appeal or rehearing, for all persons committed to a child
23 placing agency. Foster care funding authorized under this sub-
24 section shall exclude the administrative costs of the child plac-
25 ing agency. The costs of foster care shall be paid through the
26 use of the child care fund as provided by section 117c of THE
27 SOCIAL WELFARE ACT, Act No. 280 of the Public Acts of 1939, as

1 amended, being section 400.117c of the Michigan Compiled Laws, or
2 by any successor statute. When foster care funding is authorized
3 pursuant to this subsection, the court shall send a copy of the
4 order to the department. Upon receiving a copy of this order,
5 the department shall reimburse the court child care fund of the
6 county where the court order for foster care funding was made in
7 the total amount of the court ordered payment. The reimbursement
8 shall be made monthly.

9 (8) Entry of an order terminating the rights of both parents
10 pursuant to subsection (6) shall terminate the jurisdiction of
11 the circuit court over the child in any divorce or separate main-
12 tenance action.

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

23 Sec. 44. (1) Except as otherwise provided in this section,
24 the consent required by section 43 of this chapter shall be by a
25 separate instrument executed before the judge of probate having
26 jurisdiction or, at the court's direction, before another judge
27 of probate in this state. A consent may be executed before a

1 referee of the probate court. If the consent of a parent or
2 guardian is executed before a judge or referee as provided in
3 this subsection, a verbatim record of testimony related to execu-
4 tion of the consent shall be made.

5 (2) If the person whose consent is required is in any of the
6 armed services or is in prison, the consent may be executed and
7 acknowledged before any person authorized by law to administer
8 oaths.

9 (3) If the child to be adopted is legally a ward of the
10 department or of a child placing agency, the consent required to
11 be made under section 43 of this chapter by the duly authorized
12 representative of the department or agency may be executed and
13 acknowledged before a person authorized by law to administer
14 oaths.

15 (4) If the consent is executed in another state or country,
16 the court having jurisdiction over the adoption proceeding in
17 this state shall determine whether the consent was executed in
18 accordance with the laws of that state or country OR THIS STATE,
19 and shall not proceed unless it finds that the consent was so
20 executed.

21 (5) If a parent's consent to adoption is required under sec-
22 tion 43 of this chapter or if a guardian's consent is required
23 pursuant to section 43(1)(e) of this chapter, the consent shall
24 not be executed until after such investigation as the court deems
25 proper and until after the judge, referee, or other person autho-
26 rized in subsection (2) has fully explained to the parent or
27 guardian the legal rights of the parent or guardian and the fact

1 that the parent or guardian by virtue of the consent voluntarily
2 relinquishes permanently his or her rights to the child.

3 (6) If the adoptee's consent to adoption is required under
4 section 43 of this chapter, the consent shall not be executed
5 until after such investigation as the court deems proper and
6 until after the judge or referee has fully explained to the
7 adoptee the fact that he or she is consenting to acquire per-
8 manently the adopting parent or parents as his or her legal
9 parent or parents as though the adoptee had been born to the
10 adopting parent or parents.

11 Sec. 45. (1) ~~If a representative or court whose consent~~
12 ~~is required under section 43(1)(b) to (d) of this chapter has not~~
13 ~~executed a consent within a reasonable period of time, a person~~
14 ~~who has filed a petition to adopt may file a motion with the~~
15 ~~court to determine whether the withholding of consent is arbi-~~
16 ~~trary and capricious.~~ A COURT SHALL NOT ALLOW THE FILING OF A
17 PETITION TO ADOPT A CHILD IF THE CONSENT OF A REPRESENTATIVE OR
18 COURT IS REQUIRED PURSUANT TO SECTION 43(1)(B), (C), OR (D) OF
19 THIS CHAPTER UNLESS THE PETITION IS ACCOMPANIED BY THE REQUIRED
20 CONSENT OR A MOTION AS PROVIDED IN SUBSECTION (2).

21 (2) ~~If at a hearing, the court finds clear and convincing~~
22 ~~evidence that a consent required under section 43(1)(b) to (d) of~~
23 ~~this chapter is being arbitrarily and capriciously withheld, the~~
24 ~~court may terminate the rights of that representative or court,~~
25 ~~and enter a final order of adoption in accordance with this~~
26 ~~chapter.~~ IF THE ADOPTION PETITIONER HAS BEEN UNABLE TO OBTAIN
27 THE CONSENT REQUIRED BY SECTION 43(1)(B), (C), OR (D) OF THIS

1 CHAPTER, HE OR SHE MAY FILE A MOTION WITH THE COURT ALLEGING THAT
2 THE DECISION REGARDING CONSENT WAS ARBITRARY AND CAPRICIOUS.

3 SUCH A MOTION SHALL ALLEGE BOTH OF THE FOLLOWING:

4 (A) THE SPECIFIC STEPS TAKEN BY THE PETITIONER TO OBTAIN THE
5 CONSENT REQUIRED AND THE RESULTS, IF ANY.

6 (B) THE SPECIFIC REASONS WHY THE PETITIONER BELIEVES THE
7 DECISION REGARDING CONSENT WAS ARBITRARY AND CAPRICIOUS.

8 (3) UPON THE FILING OF A PETITION TO ADOPT A CHILD AND THE
9 FILING OF THE MOTION DESCRIBED IN SUBSECTION (2), THE COURT SHALL
10 NOT DIRECT THE FULL INVESTIGATION OF THE PETITION PROVIDED IN
11 SECTION 46 OF THIS CHAPTER EXCEPT FOR GOOD CAUSE. THE COURT
12 SHALL DECIDE THE MOTION WITHIN 28 DAYS AFTER THE FILING OF THE
13 MOTION UNLESS GOOD CAUSE IS SHOWN.

14 (4) THE COURT SHALL DENY THE MOTION DESCRIBED IN
15 SUBSECTION (2) UNLESS THE PETITIONER ESTABLISHES BY CLEAR AND
16 CONVINCING EVIDENCE THAT THE DECISION REGARDING CONSENT WAS ARBI-
17 TRARY AND CAPRICIOUS. TO ESTABLISH THIS, THE PETITIONER SHALL
18 SHOW THAT THE DECISION REGARDING CONSENT WAS MADE IN DEFIANCE OF
19 THE WELFARE OF THE ADOPTEE BASED ON FACTS KNOWN OR FACTS THAT
20 SHOULD HAVE BEEN KNOWN THROUGH THE USE OF REASONABLE DILIGENCE
21 WHEN THE DECISION WAS MADE BY THE AGENCY OR COURT. EVIDENCE THAT
22 THE DECISION REGARDING CONSENT WAS MADE CONSISTENT WITH ESTAB-
23 LISHED AGENCY OR COURT POLICIES AND PROCEDURES CREATES A REBUTTA-
24 BLE PRESUMPTION OF THE LACK OF ARBITRARINESS OR CAPRICIOUSNESS.

25 (5) IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT
26 THE DECISION REGARDING CONSENT WAS ARBITRARY AND CAPRICIOUS, THE
27 COURT MAY TERMINATE THE RIGHTS OF THE APPROPRIATE COURT, CHILD

1 PLACING AGENCY, OR DEPARTMENT AND MAY ENTER SUCH FURTHER ORDERS
2 IN ACCORDANCE WITH THIS CHAPTER OR SECTION 18 OF CHAPTER XIIA AS
3 THE COURT CONSIDERS APPROPRIATE. IF THE COURT DOES NOT FIND THAT
4 THE DECISION REGARDING CONSENT WAS ARBITRARY AND CAPRICIOUS, THE
5 COURT SHALL DENY THE MOTION AND DISMISS THE PETITION TO ADOPT.

6 (6) ~~(3)~~ If the consent at issue is that required of the
7 juvenile division of the probate court under section 43(1)(c) of
8 this chapter, the motion shall be heard by a visiting judge
9 assigned pursuant to section 8212 of THE REVISED JUDICATURE ACT
10 OF 1961, Act No. 236 of the Public Acts of 1961, as amended,
11 being section 600.8212 of the Michigan Compiled Laws.