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House Bill 4646 (Substitute S-2)
Sponsor: Representative Mike Shirkey
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 2-27-14

CONTENT

The bill would amend the Michigan Adoption Code to do the following:

- **Allow a parent or guardian to execute an out-of-court release or consent to relinquish his or her parental rights, if certain requirements were met.**
- **Allow a parent or guardian to execute an out-of-court consent after a child's birth in a direct placement.**
- **Require an adoption attorney and child placing agency caseworker to explain to a parent or guardian executing an out-of-court release or consent the parent's or guardian's legal rights and the fact that he or she would voluntarily relinquish those rights by virtue of the release or consent.**
- **Require a court to issue an order terminating parental rights not sooner than five days, excluding weekends and holidays, after execution of an out-of-court release or consent.**
- **Provide that an out-of-court release or consent would be revocable from the time of execution until not more than five days, excluding weekends and holidays, after execution.**
- **Require an adoption attorney or child placing agency caseworker to assist a parent or guardian in filing a revocation petition.**
- **Authorize the court in which a release or consent was filed to deny a request for revocation.**
- **Require a hearing before a judge, unless the adoptive parent or parents, or the child placing agency that accepted a release, agreed to a revocation.**
- **Require the court to determine the best interest of the child, if it found that the parent or guardian was fit and able to care for the child.**
- **Prescribe factors the court would have to consider in determining the best interest of the child.**

The bill would take effect 180 days after it was enacted.

Out-of-Court Release & Consent

Under the Code, a person or guardian may relinquish his or her parental rights over a specific child by executing a release of parental rights or giving consent for adoption of the child. ("Release" means a document in which all parental rights over a specific child are

voluntarily relinquished to the Department of Human Services or a child placing agency. "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.) Except as otherwise provided, a release or consent must be by a separate instrument executed before a judge of the court or a juvenile court referee.

The bill would allow a parent or guardian to 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. A release signed in this manner would have to comply with all of the requirements described below.

The release could not be signed until after a 72-hour waiting period beginning with the child's birth had expired.

If the parent signing the out-of-court release were an unemancipated minor, the release would not be valid unless it was also signed by a parent or guardian of the minor parent in the presence of the witnesses described above.

The out-of-court release would have to be accompanied by a verified statement, and a statement regarding relinquishment of parental rights that included all of the following rights: a) to have or to seek care and custody of the child, b) to have or to seek parenting time with the child, c) to inherit from the child or have the child inherit from the parent, d) to receive services and earnings of the child, and e) to determine the child's schooling, religious training, and parenting practices.

In a separate paragraph, with spaces for the parent to initial beside each paragraph, the release would have to state: a) the parent had read or had been read each of his or her rights as a parent, and that the parent understood those rights, b) the release was signed voluntarily and freely, c) the parent had not been promised money or other things of value in exchange for the release, d) the parent was not required to sign an out-of-court release and could make or continue a temporary placement until the parent was ready to sign an out-of-court release or terminate the temporary placement, e) if the parent signed the out-of-court release, the parent understood that he or she was terminating all of his or her parental rights and was authorizing the court to terminate those rights, unless the court allowed a revocation of the release, f) the parent had been advised that he or she could submit a written request for revocation to the adoption attorney or child placing agency that accepted the out-of-court release, or could petition the court for revocation of the release, not more than five days (excluding weekends and holidays) after the release was signed, and g) if the request for revocation were timely, the court could grant or deny the request depending on the parent's fitness and immediate ability to properly care for the child and whether the best interests of the child would be served by the revocation.

The release would have to include the contact information for both the adoption attorney representing the parent or guardian, and the child placing agency that accepted the release, specifying where a written request for revocation could be submitted. A request for revocation could not be submitted to the attorney or child placing agency by telephone or text message.

Also, above the parent's or guardian's signature executing the release, there would have to be a statement that the parent or guardian acknowledged that he or she was signing the release freely and voluntarily after his or her rights had been explained, and any questions that he or she had, had been answered. The statement would have to indicate that the parent or guardian understood the rights he or she was giving up and that an order terminating his or her parental rights, when entered by the court, would be a permanent termination of the parent's parental rights.

In a direct placement, a parent or guardian could execute an out-of-court consent after the child's birth. Requirements similar to those described above would apply. An out-of-court consent could be executed before a petition for adoption was filed. ("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) and transfers physical custody to the prospective adoptive parent.)

Currently, a release or consent may not be executed until after an investigation the court considers proper and until after the judge, referee, or other authorized individual has fully explained to the parent or guardian his or her legal rights and the fact that he or she voluntarily relinquishes those rights by virtue of the release or consent. Under the bill, if an out-of-court release or consent were executed, the adoption attorney representing the parent or guardian who signed it and a caseworker from the child placing agency would have to provide the explanation.

Upon a child's release by a parent or guardian, the court immediately must issue an order terminating the rights of the parent or guardian to that child. Under the bill, if an out-of-court release were executed, the court would have to issue the termination order not sooner than five days, excluding weekends and holidays, after execution. The bill would establish a similar requirement in the case of an out-of-court consent.

Revocation

Currently, upon petition of the person or people who executed a release and of the Department of Human Services (DHS) or child placing agency to which a child was released, the court may grant a hearing to consider whether the release should be revoked. Under the bill, a parent or guardian who signed an out-of-court release but wished to seek its revocation would have to submit a written request for revocation to the adoption attorney representing the parent or guardian or the child placing agency that accepted the out-of-court release within five days, excluding weekends and holidays, after the out-of-court release was signed. A request for revocation would be timely if delivered to the attorney or agency within five days, excluding weekends and holidays, after the release was signed. Upon receipt of a timely request for revocation, the adoption attorney or the child placing agency would have to assist the parent or guardian in filing the revocation petition as soon as practicable, although a parent or guardian could file the petition on his or her own. If the parent or guardian filed on his or her own, the petition would have to be filed with the court within five days, excluding holidays and weekends, after the release was signed. These provisions would apply to consents as well.

If a petition to revoke an out-of-court release or consent were filed with the court, timely notice of revocation would not immediately result in the return of the child to the parent or guardian. The bill would require a hearing before a judge, unless the adoptive parent or parents or, in the case of a release, the child placing agency that accepted it, agreed to the revocation. At the hearing, the judge would have to determine whether the notice was given in a timely and proper manner, and whether good cause existed to determine that the release or consent was not executed voluntarily. If the court found that the out-of-court release or consent was not executed voluntarily, the release or consent would be invalid and custody of the child would have to be returned to the parent or guardian.

If the court found that the release or consent was executed voluntarily, the court would have to determine whether the child's best interest would be served by any of the following:

- Returning custody to the parent or guardian.
- Continuing the adoption proceeding commenced or intended to be commenced by the adoptive parent or parents.

- Disposition appropriate to the child's welfare as authorized by the juvenile code under an ex parte order entered by the court.

In determining the best interest of the child, the court would have to determine if the parent or guardian seeking revocation was fit and immediately able to properly care for the child if the court returned the child to him or her. If the court determined that the parent or guardian was not fit and immediately able to care for the child, the court would have to deny the revocation. Otherwise, the court would have to determine the best interest of the child.

"Best interest of the child" would mean the sum total of the following factors to be considered, evaluated, and determined by the court:

- The child's age and length of time the parent or guardian seeking revocation had physical custody so that significant love, affection, and other emotional ties existed between the parent or guardian and the child and whether during that time the child lived in a stable, satisfactory environment.
- The capacity and disposition between the prospective adopting individual or individuals and the parent or guardian to give the child love, affection, and guidance, and to educate and create a milieu that fosters the child's religion, racial identity, and culture.
- The capacity and disposition between the prospective adopting individual or individuals and the parent or guardian to provide the child with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the State law in place of medical care, and other material needs.
- The permanence as a family unit between the prospective adopting individual or individuals and the parent or guardian.
- The moral fitness between the prospective adopting individual or individuals and the parent or guardian.
- The mental and physical health between the prospective adopting individual or individuals and the parent or guardian.
- The home, school, and community record of the child.
- The child's reasonable preference, if the child is 14 years old or younger, and if the court considers the child to be of sufficient age to express a preference.
- The ability and willingness of the prospective adopting individual or individuals to adopt the child's siblings.
- Any other factor considered by the court to be relevant to a particular prospective adoptive placement or to a revocation of an out-of-court release or consent.

MCL 710.23d et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have an indeterminate impact on caseload and administrative costs for local courts. There are two offsetting factors, meaning that the direction of the impact is ambiguous at this time. The bill would provide a time period of up to five days within which a parent could attempt to revoke an out-of-court release, and after that point the release would become irrevocable. The bill also would define the parameters of a hearing in the event that a parent submitted paperwork to revoke the release within the specified time period. These parameters include whether the release was given voluntarily and what would be in the best interests of the child. The creation of these time frames and parameters could result in more hearings and thereby increase caseload for family courts. However, the same parameters also could help improve the efficiency of the court in addressing the existing caseload, and the five-day time period could reduce the caseload by preventing revocations that otherwise might occur after the time period.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.