

**SUBSTITUTE FOR  
HOUSE BILL NO. 4646**

A bill to amend 1939 PA 288, entitled  
"Probate code of 1939,"  
by amending sections 23d, 29, and 44 of chapter X (MCL 710.23d,  
710.29, and 710.44), section 23d as amended by 2004 PA 487 and  
sections 29 and 44 as amended by 1996 PA 409.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER X

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

1 requirements:

2 (a) The prospective adoptive parent with whom a child is  
3 temporarily placed has had a preplacement assessment completed  
4 within 1 year before the date of the transfer with a finding that  
5 the prospective adoptive parent is suitable to be a parent of an  
6 adoptee.

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

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

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

18 (ii) Language providing that the transfer is for the purpose of  
19 adoption by the prospective adoptive parent.

20 (iii) Language indicating that unless the parent or guardian and  
21 the prospective adoptive parent agree otherwise, the prospective  
22 adoptive parent has the authority to consent to all medical,  
23 surgical, psychological, educational, and related services for the  
24 child and language indicating that the parent or guardian otherwise  
25 retains full parental rights to the child being temporarily placed  
26 and that the temporary placement may be revoked by the filing of a  
27 petition under subsection (5).

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

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

14           (d) In the presence of a witness who also signs the document,  
15 the prospective adoptive parent signs a statement setting forth the  
16 date of the transfer of physical custody and the name and address  
17 of the prospective adoptive parent and attesting to all of the  
18 following:

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

26           (ii) That, if the prospective adoptive parent is a Michigan  
27 resident, the prospective adoptive parent agrees to reside with the

1 child in Michigan until formal placement occurs.

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

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

10 (2) Not later than 2 days, excluding weekends and holidays,  
11 after a transfer of physical custody of a child in accordance with  
12 subsection (1), the adoption attorney or child placing agency who  
13 assists with the temporary placement or the child placing agency  
14 that makes the temporary placement shall submit to the court in the  
15 county in which the child's parent or guardian or the prospective  
16 adoptive parent resides, or in which the child is found, a report  
17 that contains all of the following:

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

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

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

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

27 (e) The documents required under subsection (1)(c) and (d)

1 and, if applicable, the authorization required under section 23b of  
2 this chapter.

3 (3) Not later than 30 days after the transfer of physical  
4 custody of a child under this section, the adoption attorney or  
5 child placing agency who assists with the temporary placement or  
6 the child placing agency that makes the temporary placement shall  
7 submit to the court that received the report described in  
8 subsection (2) a report indicating whether or not 1 of the  
9 following dispositions has occurred:

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

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

13 (4) If the court has not received the report required under  
14 subsection (3) within 45 days after the transfer of physical  
15 custody of a child, the court shall immediately investigate and  
16 determine whether an adoption petition has been filed or the child  
17 has been returned to a parent or other person having legal custody.  
18 If the report required under subsection (3) or the court's  
19 investigation reveals that neither disposition has occurred, the  
20 court shall immediately report to the prosecutor, who shall  
21 immediately file a petition in the court that received the report  
22 described in subsection (2) for disposition of the child as  
23 required by section 23e of this chapter. If a petition has been  
24 filed under subsection (5), (6), or (7), the prosecutor is not  
25 required to file a petition.

26 (5) A parent or guardian who wishes to regain custody of a  
27 child who has been placed temporarily shall file a petition in the

1 court that received the report described in subsection (2)  
2 requesting that the temporary placement be revoked and that the  
3 child be returned to the parent or guardian. Upon request of the  
4 parent or guardian, the adoption attorney or child placing agency  
5 who assisted in making the temporary placement shall assist the  
6 parent or guardian in filing the petition to revoke the temporary  
7 placement. If the temporary placement was made by a child placing  
8 agency under section 23b(3) of this chapter, the child placing  
9 agency shall file the petition on behalf of a parent or guardian  
10 who wishes to regain custody of the child.

11 (6) If a prospective adoptive parent with whom a child has  
12 been temporarily placed is either unwilling or unable to proceed  
13 with the adoption, the prospective adoptive parent may file a  
14 petition in the court that received the report described in  
15 subsection (2) for disposition of the child as required by section  
16 23e of this chapter.

17 (7) If a child placing agency that temporarily placed a child  
18 is unable to proceed with an adoption because of the unavailability  
19 of a parent or guardian to execute a release, or if a child placing  
20 agency with legal custody of a child decides not to proceed with  
21 the adoption by a prospective adoptive parent with whom the child  
22 has been temporarily placed and the prospective adoptive parent  
23 refuses upon the agency's request to return the child to the  
24 agency, the child placing agency shall file a petition in the court  
25 that received the report described in subsection (2) for  
26 disposition of the child as required by section 23e of this  
27 chapter.

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

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

9           **(10) IF AN OUT-OF-COURT RELEASE OR OUT-OF-COURT CONSENT HAS**  
10 **BEEN SIGNED, A PETITION FILED UNDER THIS SECTION TO REVOKE A**  
11 **TEMPORARY PLACEMENT MUST BE FILED WITH THE COURT NOT MORE THAN 5**  
12 **DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, AFTER THE OUT-OF-COURT**  
13 **RELEASE OR OUT-OF-COURT CONSENT HAS BEEN EXECUTED.**

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

20           (2) If the person from whom a release is required is in the  
21 armed services or is in prison, the release may be executed and  
22 acknowledged before an individual authorized by law to administer  
23 oaths.

24           (3) If the release is to be given by an authorized  
25 representative of a child placing agency that has jurisdiction of  
26 the child to be adopted, the release may be executed and  
27 acknowledged before an individual authorized by law to administer

1 oaths.

2 (4) If the release is executed in another state or country,  
3 the court having jurisdiction over the adoption proceeding in this  
4 state shall determine whether the release was executed in  
5 accordance with the laws of that state or country or the laws of  
6 this state and shall not proceed unless it finds that the release  
7 was so executed.

8 (5) A PARENT OR GUARDIAN MAY EXECUTE AN OUT-OF-COURT RELEASE  
9 IN FRONT OF AND WITNESSED BY A THIRD PARTY WITNESS AND AN ADOPTION  
10 ATTORNEY REPRESENTING THE PARENT OR GUARDIAN OR A THIRD PARTY  
11 WITNESS AND A CHILD PLACING AGENCY CASEWORKER, AFTER A 24-HOUR  
12 WAITING PERIOD THAT BEGINS AT THE TIME OF THE CHILD'S BIRTH HAS  
13 EXPIRED UNLESS EXIGENT CIRCUMSTANCES EXIST THAT PROHIBIT OR IMPEDE  
14 WAITING 24 HOURS. IF EXIGENT CIRCUMSTANCES EXIST, THE SPECIFIC  
15 CIRCUMSTANCES MUST BE STATED IN THE OUT-OF-COURT RELEASE OR IN A  
16 STATEMENT ATTACHED TO THE OUT-OF-COURT RELEASE PREPARED BY THE  
17 ADOPTION ATTORNEY WHO REPRESENTS THE PARENT OR GUARDIAN AND  
18 WITNESSED THE OUT-OF-COURT RELEASE OR A CASEWORKER FROM THE CHILD  
19 PLACING AGENCY THAT ACCEPTED THE OUT-OF-COURT RELEASE. IF THE  
20 PARENT EXECUTING THE OUT-OF-COURT RELEASE IS AN UNEMANCIPATED  
21 MINOR, THE OUT-OF-COURT RELEASE IS NOT VALID UNLESS IT IS ALSO  
22 SIGNED IN THE PRESENCE OF THE WITNESS BY A PARENT OR GUARDIAN OF  
23 THAT UNEMANCIPATED MINOR PARENT.

24 (6) ~~(5)~~—A release by a parent or guardian shall be accompanied  
25 by a verified statement signed by the parent or guardian that  
26 contains all of the following:

27 (a) That the parent or guardian has received a list of support



1 groups and, if the release is to a child placing agency, a copy of  
2 the written document described in section 6(1)(c) of the foster  
3 care and adoption services act, ~~Act No. 203 of the Public Acts of~~  
4 ~~1994, being section 722.956 of the Michigan Compiled Laws.1994 PA~~  
5 **203, MCL 722.956.**

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

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

13 (d) That the validity and finality of the release is not  
14 affected by any collateral or separate agreement between the parent  
15 or guardian and the **CHILD PLACING** agency, or the parent or guardian  
16 and the prospective adoptive parent.

17 (e) That the parent or guardian understands that it serves the  
18 **CHILD'S** welfare ~~of the child~~ for the parent to keep the child  
19 placing agency or department informed of any health problems that  
20 the parent develops that could affect the child.

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

27 (7) ~~(6)~~—A release by a parent or a guardian of the child shall

1 not be executed until after the investigation the court considers  
2 proper and until after the judge, referee, or other individual  
3 authorized in subsection (2) has fully explained to the parent or  
4 guardian the legal rights of the parent or guardian and the fact  
5 that the parent or guardian by virtue of the release voluntarily  
6 relinquishes permanently his or her rights to the child; and, if  
7 the child is over 5 years of age, the court has determined that the  
8 child is best served by the release. **IF AN OUT-OF-COURT RELEASE IS**  
9 **EXECUTED UNDER SECTION 29 OF THIS CHAPTER, THE ADOPTION ATTORNEY**  
10 **REPRESENTING THE PARENT OR GUARDIAN WHO WITNESSED THE OUT-OF-COURT**  
11 **RELEASE OR A CASEWORKER FROM THE CHILD PLACING AGENCY THAT ACCEPTED**  
12 **THE OUT-OF-COURT RELEASE SHALL FULLY EXPLAIN TO THE PARENT OR**  
13 **GUARDIAN HIS OR HER LEGAL RIGHTS AND THE FACT THAT THE PARENT OR**  
14 **GUARDIAN BY VIRTUE OF THE OUT-OF-COURT RELEASE VOLUNTARILY**  
15 **RELINQUISHES PERMANENTLY HIS OR HER RIGHTS TO THE CHILD.**

16 (8) ~~(7) Upon~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,**  
17 **UPON** the release of a child by a parent or guardian, the court  
18 immediately shall issue an order terminating the rights of that  
19 parent or guardian to that child. **IF AN OUT-OF-COURT RELEASE HAS**  
20 **BEEN EXECUTED UNDER SUBSECTION (5), NOT SOONER THAN 5 DAYS,**  
21 **EXCLUDING WEEKENDS AND HOLIDAYS, AFTER EXECUTION, THE COURT SHALL**  
22 **ISSUE AN ORDER TERMINATING THE RIGHTS OF THE PARENT OR GUARDIAN TO**  
23 **THAT CHILD.** If the rights of both parents, the surviving parent, or  
24 the guardian have been terminated, the court shall issue an order  
25 committing the child to the child placing agency or department to  
26 which the release was given.

27 (9) ~~(8)~~—The court shall authorize foster care funding pending

1 expiration of the period of appeal or rehearing as provided in  
 2 sections 64 and 65 of this chapter, and pending disposition of any  
 3 appeal or rehearing, for all persons committed to a child placing  
 4 agency. Foster care funding authorized under this subsection shall  
 5 exclude the administrative costs of the child placing agency. The  
 6 costs of foster care shall be paid through the use of the child  
 7 care fund as provided by section 117c of the social welfare act,  
 8 ~~Act No. 280 of the Public Acts of 1939, being section 400.117c of~~  
 9 ~~the Michigan Compiled Laws, 1939 PA 280, MCL 400.117C,~~ or by any  
 10 successor statute. When foster care funding is authorized pursuant  
 11 **ACCORDING** to this subsection, the court shall send a copy of the  
 12 order to the department. Upon receiving a copy of this order, the  
 13 department shall reimburse the court child care fund of the county  
 14 where the court order for foster care funding was made in the total  
 15 amount of the court ordered payment. The reimbursement shall be  
 16 made monthly.

17 (10) ~~(9)~~ Entry of an order terminating the rights of both  
 18 parents under subsection ~~(7)~~ **(8)** terminates the jurisdiction of the  
 19 circuit court over the child in any divorce or separate maintenance  
 20 action.

21 (11) ~~(10) Upon~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**  
 22 **SUBSECTION, UPON** petition of the same person or persons who  
 23 executed the release and of the department or child placing agency  
 24 to which the child was released, the court with which the release  
 25 was filed may grant a hearing to consider whether the release  
 26 should be revoked. A release may not be revoked if the child has  
 27 been placed for adoption unless the child is placed as provided in

1 section 41(2) of this chapter and a petition for rehearing or claim  
2 of appeal is filed within the time required. A verbatim record of  
3 testimony related to a petition to revoke a release shall be made.  
4 IF AN OUT-OF-COURT RELEASE HAS BEEN EXECUTED UNDER SUBSECTION (5),  
5 NOTICE OF REVOCATION MUST BE SUBMITTED IN WRITING TO THE ADOPTION  
6 ATTORNEY REPRESENTING THE PARENT OR GUARDIAN OR A CASEWORKER FROM  
7 THE CHILD PLACING AGENCY NOT MORE THAN 5 DAYS, EXCLUDING WEEKENDS  
8 AND HOLIDAYS, AFTER THE OUT-OF-COURT RELEASE IS EXECUTED AND  
9 ACKNOWLEDGED.

10 (12) AN OUT-OF-COURT RELEASE IS REVOCABLE FROM THE TIME OF  
11 EXECUTION UNTIL NOT MORE THAN 5 DAYS, EXCLUDING WEEKENDS AND  
12 HOLIDAYS, AFTER EXECUTION. REVOCATION MUST BE IN WRITING TO THE  
13 ADOPTION ATTORNEY REPRESENTING THE PARENT OR GUARDIAN WHO WITNESSED  
14 THE OUT-OF-COURT RELEASE OR A CASEWORKER FROM THE CHILD PLACING  
15 AGENCY THAT ACCEPTED THE OUT-OF-COURT RELEASE. IF THE PARENT  
16 EXECUTING THE REVOCATION IS AN UNEMANCIPATED MINOR, THE REVOCATION  
17 IS NOT VALID UNLESS IT IS ALSO SIGNED IN THE PRESENCE OF THE  
18 WITNESS BY A PARENT OR GUARDIAN OF THAT UNEMANCIPATED MINOR PARENT.  
19 UPON RECEIVING THE WRITTEN NOTIFICATION DESCRIBED IN THIS  
20 SUBSECTION, THE ADOPTION ATTORNEY REPRESENTING THE PARENT OR  
21 GUARDIAN WHO WITNESSED THE OUT-OF-COURT RELEASE OR A CASEWORKER  
22 FROM THE CHILD PLACING AGENCY THAT ACCEPTED THE OUT-OF-COURT  
23 RELEASE SHALL ASSIST THE PARENT OR GUARDIAN IN FILING THE PETITION  
24 TO REVOKE THE OUT-OF-COURT RELEASE. THE COURT IN WHICH THE OUT-OF-  
25 COURT RELEASE WAS FILED MAY DETERMINE THAT REVOCATION IS NOT IN THE  
26 BEST INTEREST OF THE CHILD AS DESCRIBED UNDER SUBSECTION (13) (C).

27 (13) IF A PETITION TO REVOKE AN OUT-OF-COURT RELEASE IS FILED

1 WITH THE COURT UNDER SUBSECTION (12), TIMELY NOTICE OF REVOCATION  
2 DOES NOT IMMEDIATELY RESULT IN THE RETURN OF THE CHILD TO THE  
3 PARENT OR GUARDIAN. THE RIGHT OF THE PARENT OR GUARDIAN TO CUSTODY  
4 OF THE CHILD IS NOT SUPERIOR TO THE RIGHT OF THE ADOPTIVE PARENT OR  
5 PARENTS TO CUSTODY OF THE CHILD. A HEARING BEFORE A JUDGE IS  
6 REQUIRED TO DETERMINE ALL OF THE FOLLOWING UNLESS A CHILD PLACING  
7 AGENCY ACCEPTING THE OUT-OF-COURT RELEASE OR THE ADOPTIVE PARENT OR  
8 PARENTS AGREE TO THE REVOCATION:

9 (A) WHETHER THE NOTICE OF REVOCATION WAS GIVEN IN A TIMELY AND  
10 PROPER MANNER.

11 (B) WHETHER GOOD CAUSE EXISTS TO DETERMINE THAT THE OUT-OF-  
12 COURT RELEASE WAS NOT EXECUTED VOLUNTARILY. IF THE COURT FINDS THAT  
13 THE OUT-OF-COURT RELEASE WAS NOT EXECUTED VOLUNTARILY, THE OUT-OF-  
14 COURT RELEASE IS INVALID AND CUSTODY OF THE CHILD SHALL BE RETURNED  
15 TO THE PARENT OR GUARDIAN. IF THE COURT FINDS THAT THE OUT-OF-COURT  
16 RELEASE WAS EXECUTED VOLUNTARILY, THE COURT SHALL PROCEED UNDER  
17 SUBDIVISION (C).

18 (C) WHETHER THE BEST INTEREST OF THE CHILD WILL BE SERVED BY  
19 ANY OF THE FOLLOWING:

20 (i) RETURNING CUSTODY OF THE CHILD TO THE PARENT OR GUARDIAN.

21 (ii) CONTINUING THE ADOPTION PROCEEDING COMMENCED OR INTENDED  
22 TO BE COMMENCED BY THE ADOPTIVE PARENT OR PARENTS.

23 (iii) DISPOSITION APPROPRIATE TO THE CHILD'S WELFARE AS  
24 AUTHORIZED BY SECTION 18 OF CHAPTER XIIA UNDER AN EX PARTE ORDER  
25 ENTERED BY THE COURT.

26 (14) IN DETERMINING THE BEST INTEREST OF THE CHILD UNDER  
27 SUBSECTION (13)(C), IF A PARENT OR GUARDIAN IS SEEKING REVOCATION

1 OF AN OUT-OF-COURT RELEASE, THE COURT SHALL DETERMINE IF THE PARENT  
2 OR GUARDIAN SEEKING REVOCATION IS FIT AND IMMEDIATELY ABLE TO  
3 PROPERLY CARE FOR THE CHILD IF THE COURT RETURNED THE CHILD TO THE  
4 PARENT OR GUARDIAN. IF THE COURT DETERMINES THAT THE PARENT OR  
5 GUARDIAN IS NOT FIT AND IMMEDIATELY ABLE TO PROPERLY CARE FOR THE  
6 CHILD, THE COURT SHALL DENY THE REVOCATION. IF THE COURT FINDS THAT  
7 THE PARENT OR GUARDIAN IS FIT AND IMMEDIATELY ABLE TO PROPERLY CARE  
8 FOR THE CHILD, THE COURT SHALL DETERMINE THE BEST INTEREST OF THE  
9 CHILD. THE "BEST INTEREST OF THE CHILD" MEANS THE SUM TOTAL OF THE  
10 FOLLOWING FACTORS TO BE CONSIDERED, EVALUATED, AND DETERMINED BY  
11 THE COURT:

12 (A) THE CHILD'S AGE AND LENGTH OF TIME THE PARENT OR GUARDIAN  
13 SEEKING REVOCATION HAS HAD PHYSICAL CUSTODY OF THE CHILD SO THAT  
14 SIGNIFICANT LOVE, AFFECTION, AND OTHER EMOTIONAL TIES EXIST BETWEEN  
15 THE PARENT OR GUARDIAN AND THE CHILD AND WHETHER DURING THAT TIME  
16 THE CHILD HAS LIVED IN A STABLE, SATISFACTORY ENVIRONMENT.

17 (B) THE CAPACITY AND DISPOSITION BETWEEN THE PROSPECTIVE  
18 ADOPTING INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN  
19 SEEKING REVOCATION TO GIVE THE CHILD LOVE, AFFECTION, AND GUIDANCE,  
20 AND TO EDUCATE AND CREATE A MILIEU THAT FOSTERS THE CHILD'S  
21 RELIGION, RACIAL IDENTITY, AND CULTURE.

22 (C) THE CAPACITY AND DISPOSITION BETWEEN THE PROSPECTIVE  
23 ADOPTING INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN  
24 SEEKING REVOCATION TO PROVIDE THE CHILD WITH FOOD, CLOTHING,  
25 EDUCATION, PERMANENCE, MEDICAL CARE OR OTHER REMEDIAL CARE  
26 RECOGNIZED AND PERMITTED UNDER THE STATE LAW IN PLACE OF MEDICAL  
27 CARE, AND OTHER MATERIAL NEEDS.

1 (D) THE PERMANENCE AS A FAMILY UNIT BETWEEN THE PROSPECTIVE  
2 ADOPTING INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN  
3 SEEKING REVOCATION.

4 (E) THE MORAL FITNESS BETWEEN THE PROSPECTIVE ADOPTING  
5 INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN SEEKING  
6 REVOCATION.

7 (F) THE MENTAL AND PHYSICAL HEALTH BETWEEN THE PROSPECTIVE  
8 ADOPTING INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN  
9 SEEKING REVOCATION.

10 (G) THE HOME, SCHOOL, AND COMMUNITY RECORD OF THE CHILD.

11 (H) THE CHILD'S REASONABLE PREFERENCE, IF THE CHILD IS 14  
12 YEARS OF AGE OR LESS AND IF THE COURT CONSIDERS THE CHILD TO BE OF  
13 SUFFICIENT AGE TO EXPRESS A PREFERENCE.

14 (I) THE ABILITY AND WILLINGNESS OF THE PROSPECTIVE ADOPTING  
15 INDIVIDUAL OR INDIVIDUALS TO ADOPT THE CHILD'S SIBLINGS.

16 (J) ANY OTHER FACTOR CONSIDERED BY THE COURT TO BE RELEVANT TO  
17 A PARTICULAR PROSPECTIVE ADOPTIVE PLACEMENT OR TO A REVOCATION OF  
18 AN OUT-OF-COURT RELEASE.

19 Sec. 44. (1) Except as otherwise provided in this section, the  
20 consent required by section 43 of this chapter shall be by a  
21 separate instrument executed before the judge having jurisdiction  
22 or, at the court's direction, before another judge of the family  
23 division of circuit court in this state. A consent may be executed  
24 before a juvenile court referee. The consent hearing shall be held  
25 within 7 days after it is requested. If the consent of a parent or  
26 guardian is executed before a judge or referee as provided in this  
27 subsection, a verbatim record of testimony related to execution of

1 the consent shall be made.

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

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

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

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

21 (a) That the parent or guardian has received a list of support  
22 groups and a copy of the written document described in section  
23 6(1)(c) of the foster care and adoption services act, ~~Act No. 203~~  
24 ~~of the Public Acts of 1994, being section 722.956 of the Michigan~~  
25 ~~Compiled Laws. 1994 PA 203, MCL 722.956.~~

26 (b) That the parent or guardian has received counseling  
27 related to the adoption of his or her child or waives the



1 counseling with the signing of the verified statement.

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

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

9 (e) That the parent or guardian understands that it serves the  
10 **CHILD'S** welfare ~~of the child~~ for the parent to keep the child  
11 placing agency, court, or department informed of any health  
12 problems that the parent develops ~~which~~ **THAT** could affect the  
13 child.

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

20 (6) If a parent's consent to adoption is required under  
21 section 43 of this chapter or if a guardian's consent is required  
22 ~~pursuant to~~ **UNDER** section 43(1)(e) of this chapter, the consent  
23 shall not be executed until after the investigation the court  
24 considers proper and until after the judge, referee, or other  
25 individual authorized in subsection (2) has fully explained to the  
26 parent or guardian the legal rights of the parent or guardian and  
27 the fact that the parent or guardian by virtue of the consent

1 voluntarily relinquishes permanently his or her rights to the  
2 child. IF AN OUT-OF-COURT CONSENT IS EXECUTED UNDER SUBSECTION (8),  
3 THE ADOPTION ATTORNEY REPRESENTING THE PARENT OR GUARDIAN WHO  
4 WITNESSED THE OUT-OF-COURT CONSENT OR A CASEWORKER FROM THE CHILD  
5 PLACING AGENCY THAT ACCEPTED THE OUT-OF-COURT CONSENT SHALL FULLY  
6 EXPLAIN TO THE PARENT OR GUARDIAN HIS OR HER LEGAL RIGHTS AND THE  
7 FACT THAT THE PARENT OR GUARDIAN BY VIRTUE OF THE OUT-OF-COURT  
8 CONSENT VOLUNTARILY RELINQUISHES PERMANENTLY HIS OR HER RIGHTS TO  
9 THE CHILD. IF AN OUT-OF-COURT CONSENT HAS BEEN EXECUTED UNDER  
10 SUBSECTION (8), NOT SOONER THAN 5 DAYS, EXCLUDING WEEKENDS AND  
11 HOLIDAYS, AFTER EXECUTION, THE COURT SHALL ISSUE AN ORDER  
12 TERMINATING THE RIGHTS OF THE PARENT OR GUARDIAN TO THAT CHILD.

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

20 (8) IN A DIRECT PLACEMENT, A PARENT OR GUARDIAN MAY EXECUTE AN  
21 OUT-OF-COURT CONSENT AFTER THE CHILD'S BIRTH. AN OUT-OF-COURT  
22 CONSENT EXECUTED UNDER THIS SUBSECTION MUST COMPLY WITH ALL OF THE  
23 FOLLOWING:

24 (A) THE OUT-OF-COURT CONSENT SHALL NOT BE EXECUTED UNTIL AFTER  
25 A 24-HOUR WAITING PERIOD THAT BEGINS AT THE TIME OF THE CHILD'S  
26 BIRTH HAS EXPIRED UNLESS EXIGENT CIRCUMSTANCES EXIST THAT PROHIBIT  
27 OR IMPEDE WAITING 24 HOURS. IF EXIGENT CIRCUMSTANCES EXIST, THE

1 SPECIFIC CIRCUMSTANCES MUST BE STATED IN THE OUT-OF-COURT CONSENT  
2 OR IN A STATEMENT ATTACHED TO THE OUT-OF-COURT CONSENT PREPARED BY  
3 THE ADOPTION ATTORNEY WHO REPRESENTS THE PARENT OR GUARDIAN AND  
4 WITNESSED THE OUT-OF-COURT CONSENT OR A CASEWORKER FROM THE CHILD  
5 PLACING AGENCY THAT ACCEPTED THE OUT-OF-COURT CONSENT.

6 (B) THE OUT-OF-COURT CONSENT MUST BE EXECUTED IN FRONT OF AND  
7 WITNESSED BY A THIRD PARTY WITNESS AND AN ADOPTION ATTORNEY  
8 REPRESENTING THE PARENT OR GUARDIAN OR A THIRD PARTY WITNESS AND A  
9 CHILD PLACING AGENCY CASEWORKER.

10 (C) THE OUT-OF-COURT CONSENT MAY BE EXECUTED BEFORE FILING A  
11 PETITION FOR ADOPTION.

12 (9) OUT-OF-COURT CONSENT IS REVOCABLE FROM THE TIME OF  
13 EXECUTION UNTIL NOT MORE THAN 5 DAYS, EXCLUDING WEEKENDS AND  
14 HOLIDAYS, AFTER EXECUTION. REVOCATION MUST BE IN WRITING TO THE  
15 ADOPTION ATTORNEY REPRESENTING THE PARENT OR GUARDIAN WHO WITNESSED  
16 THE OUT-OF-COURT CONSENT OR A CASEWORKER FROM THE CHILD PLACING  
17 AGENCY THAT ACCEPTED THE OUT-OF-COURT CONSENT. IF THE PARENT  
18 EXECUTING THE REVOCATION IS AN UNEMANCIPATED MINOR, THE REVOCATION  
19 IS NOT VALID UNLESS IT IS ALSO SIGNED IN THE PRESENCE OF THE  
20 WITNESS BY A PARENT OR GUARDIAN OF THAT UNEMANCIPATED MINOR PARENT.  
21 UPON RECEIVING THE WRITTEN NOTIFICATION DESCRIBED IN THIS  
22 SUBSECTION, THE ADOPTION ATTORNEY REPRESENTING THE PARENT OR  
23 GUARDIAN WHO WITNESSED THE OUT-OF-COURT CONSENT OR A CASEWORKER  
24 FROM THE CHILD PLACING AGENCY THAT ACCEPTED THE OUT-OF-COURT  
25 CONSENT SHALL ASSIST THE PARENT OR GUARDIAN IN FILING THE PETITION  
26 TO REVOKE THE OUT-OF-COURT CONSENT. THE COURT IN WHICH THE OUT-OF-  
27 COURT CONSENT WAS FILED MAY DETERMINE THAT REVOCATION IS NOT IN THE

1 BEST INTEREST OF THE CHILD AS DESCRIBED UNDER SUBSECTION (10) (C).

2 (10) IF A PETITION TO REVOKE AN OUT-OF-COURT CONSENT HAS BEEN  
3 FILED WITH THE COURT UNDER SUBSECTION (9), TIMELY NOTICE OF  
4 REVOCATION DOES NOT IMMEDIATELY RESULT IN THE RETURN OF THE CHILD  
5 TO THE PARENT OR GUARDIAN. THE RIGHT OF THE PARENT OR GUARDIAN TO  
6 CUSTODY OF THE CHILD IS NOT SUPERIOR TO THE RIGHT OF THE ADOPTIVE  
7 PARENT OR PARENTS TO CUSTODY OF THE CHILD. A HEARING BEFORE A JUDGE  
8 IS REQUIRED TO DETERMINE ALL OF THE FOLLOWING UNLESS THE ADOPTIVE  
9 PARENT OR PARENTS AGREE TO THE REVOCATION:

10 (A) WHETHER THE NOTICE OF REVOCATION WAS GIVEN IN A TIMELY AND  
11 PROPER MANNER.

12 (B) WHETHER GOOD CAUSE EXISTS TO DETERMINE THAT THE OUT-OF-  
13 COURT CONSENT WAS NOT EXECUTED VOLUNTARILY. IF THE COURT FINDS THAT  
14 THE OUT-OF-COURT CONSENT WAS NOT EXECUTED VOLUNTARILY, THE OUT-OF-  
15 COURT CONSENT IS INVALID AND CUSTODY OF THE CHILD SHALL BE RETURNED  
16 TO THE PARENT OR GUARDIAN. IF THE COURT FINDS THAT THE OUT-OF-COURT  
17 CONSENT WAS EXECUTED VOLUNTARILY, THE COURT SHALL PROCEED UNDER  
18 SUBDIVISION (C).

19 (C) WHETHER THE BEST INTEREST OF THE CHILD WILL BE SERVED BY  
20 ANY OF THE FOLLOWING:

21 (i) RETURNING CUSTODY OF THE CHILD TO THE PARENT OR GUARDIAN.

22 (ii) CONTINUING THE ADOPTION PROCEEDING COMMENCED OR INTENDED  
23 TO BE COMMENCED BY THE ADOPTIVE PARENT OR PARENTS.

24 (iii) DISPOSITION APPROPRIATE TO THE CHILD'S WELFARE AS  
25 AUTHORIZED BY SECTION 18 OF CHAPTER XIIIA UNDER AN EX PARTE ORDER  
26 ENTERED BY THE COURT.

27 (11) IN DETERMINING THE BEST INTEREST OF THE CHILD UNDER

1 SUBSECTION (10) (C), IF A PARENT OR GUARDIAN IS SEEKING REVOCATION  
2 OF AN OUT-OF-COURT CONSENT, THE COURT SHALL DETERMINE IF THE PARENT  
3 OR GUARDIAN SEEKING REVOCATION IS FIT AND IMMEDIATELY ABLE TO  
4 PROPERLY CARE FOR THE CHILD IF THE COURT RETURNED THE CHILD TO THE  
5 PARENT OR GUARDIAN. IF THE COURT DETERMINES THAT THE PARENT OR  
6 GUARDIAN IS NOT FIT AND IMMEDIATELY ABLE TO PROPERLY CARE FOR THE  
7 CHILD, THE COURT SHALL DENY THE REVOCATION. IF THE COURT FINDS THAT  
8 THE PARENT OR GUARDIAN IS FIT AND IMMEDIATELY ABLE TO PROPERLY CARE  
9 FOR THE CHILD, THE COURT SHALL DETERMINE THE BEST INTEREST OF THE  
10 CHILD. THE "BEST INTEREST OF THE CHILD" MEANS THE SUM TOTAL OF THE  
11 FOLLOWING FACTORS TO BE CONSIDERED, EVALUATED, AND DETERMINED BY  
12 THE COURT:

13 (A) THE CHILD'S AGE AND LENGTH OF TIME THE PARENT OR GUARDIAN  
14 SEEKING REVOCATION HAS HAD PHYSICAL CUSTODY OF THE CHILD SO THAT  
15 SIGNIFICANT LOVE, AFFECTION, AND OTHER EMOTIONAL TIES EXIST BETWEEN  
16 THE PARENT OR GUARDIAN AND THE CHILD AND WHETHER DURING THAT TIME  
17 THE CHILD HAS LIVED IN A STABLE, SATISFACTORY ENVIRONMENT.

18 (B) THE CAPACITY AND DISPOSITION OF THE PROSPECTIVE ADOPTING  
19 INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN SEEKING  
20 REVOCATION TO GIVE THE CHILD LOVE, AFFECTION, AND GUIDANCE, AND TO  
21 EDUCATE AND CREATE A MILIEU THAT FOSTERS THE CHILD'S RELIGION,  
22 RACIAL IDENTITY, AND CULTURE.

23 (C) THE CAPACITY AND DISPOSITION OF THE PROSPECTIVE ADOPTING  
24 INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN SEEKING  
25 REVOCATION TO PROVIDE THE CHILD WITH FOOD, CLOTHING, EDUCATION,  
26 PERMANENCE, MEDICAL CARE OR OTHER REMEDIAL CARE RECOGNIZED AND  
27 PERMITTED UNDER THE STATE LAW IN PLACE OF MEDICAL CARE, AND OTHER

1 MATERIAL NEEDS.

2 (D) THE PERMANENCE AS A FAMILY UNIT OF THE PROSPECTIVE  
3 ADOPTING INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN  
4 SEEKING REVOCATION.

5 (E) THE MORAL FITNESS OF THE PROSPECTIVE ADOPTING INDIVIDUAL  
6 OR INDIVIDUALS AND THE PARENT OR GUARDIAN SEEKING REVOCATION.

7 (F) THE MENTAL AND PHYSICAL HEALTH OF THE PROSPECTIVE ADOPTING  
8 INDIVIDUAL OR INDIVIDUALS AND THE PARENT OR GUARDIAN SEEKING  
9 REVOCATION.

10 (G) THE HOME, SCHOOL, AND COMMUNITY RECORD OF THE CHILD.

11 (H) THE CHILD'S REASONABLE PREFERENCE, IF THE CHILD IS 14  
12 YEARS OF AGE OR LESS AND IF THE COURT CONSIDERS THE CHILD TO BE OF  
13 SUFFICIENT AGE TO EXPRESS A PREFERENCE.

14 (I) THE ABILITY AND WILLINGNESS OF THE PROSPECTIVE ADOPTING  
15 INDIVIDUAL OR INDIVIDUALS TO ADOPT THE CHILD'S SIBLINGS.

16 (J) ANY OTHER FACTOR CONSIDERED BY THE COURT TO BE RELEVANT TO  
17 A PARTICULAR PROSPECTIVE ADOPTIVE PLACEMENT OR TO A REVOCATION OF  
18 AN OUT-OF-COURT CONSENT.

19 Enacting section 1. This amendatory act takes effect January  
20 1, 2014.