

Act No. 117  
Public Acts of 2014  
Approved by the Governor  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Reps. Shirkey and Kurtz

# ENROLLED HOUSE BILL No. 4646

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 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:*

## 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 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.

(10) Except as otherwise provided in this subsection, a parent or guardian who has signed an out-of-court release or out-of-court consent but wishes to request revocation of the out-of-court release or out-of-court consent 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 or witnessed the out-of-court consent not more than 5 days, excluding weekends and holidays, after the out-of-court release or out-of-court consent was signed. 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 or out-of-court consent 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 or out-of-court consent 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 or out-of-court consent was signed.

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 XIIA under an ex parte order entered by the court.

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

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

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

(4) If the consent is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the consent 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 consent was so executed.

(5) In a direct placement, a consent 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 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 consent to adoption of the child, except for lawful payments that are itemized on a schedule filed with the consent.

(d) That the validity and finality of the consent is not affected by any collateral or separate agreement between the parent or guardian and the 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, court, 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, court, 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 or older.

(6) If a parent's consent to adoption is required under section 43 of this chapter or if a guardian's consent is required under section 43(1)(e) of this chapter, the consent 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 consent voluntarily relinquishes permanently his or her rights to the child. If an out-of-court consent is signed under subsection (8), the adoption attorney representing the parent or guardian who witnessed the out-of-court consent and a caseworker from the child placing agency that witnessed the out-of-court consent 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 consent voluntarily relinquishes permanently his or her rights to the child. If an out-of-court consent has been signed under subsection (8), not sooner than 5 days, excluding weekends and holidays, after the out-of-court consent was signed, the court shall issue an order terminating the rights of the parent or guardian to that child.

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

(8) In a direct placement, a parent or guardian may sign an out-of-court consent after the child's birth. An out-of-court consent signed under this subsection must comply with all of the following:

(a) The out-of-court consent 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 consent is an unemancipated minor, the out-of-court consent 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 consent must be accompanied by the verified statement from subsection (5) 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 consent must state all of the following:

(i) I have read or had read to me each of my rights as a parent described in section 44(8)(c) of chapter X of the probate code of 1939, 1939 PA 288, MCL 710.44, and I understand these rights.

- (ii) I am signing the out-of-court consent 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 consent 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 consent.
- (iv) If I sign the out-of-court consent, 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 consent.
- (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 consent.
- (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 consent in court or sign an out-of-court consent.
- (C) I may request revocation of the out-of-court consent I have signed by submitting a timely written request for revocation.
- (D) If I request a revocation of the out-of-court consent, 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 witnessed the out-of-court consent not more than 5 days, excluding weekends and holidays, after the out-of-court consent was signed or I may petition the court on my own for revocation of the out-of-court consent not more than 5 days, excluding weekends and holidays, after the out-of-court consent was signed.
- (vii) If I submit a timely request for revocation, the court may grant the request or deny the request for revocation 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 consent must contain the contact information for both the adoption attorney representing the parent or guardian and the child placing agency that witnessed the out-of-court consent 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 witnessed the out-of-court consent 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 consent: "I acknowledge that I am signing this out-of-court consent 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."
- (g) The out-of-court consent may be signed before filing a petition for adoption.
- (9) Except as otherwise provided in this subsection, a parent or guardian who has signed an out-of-court consent but wishes to request revocation of the out-of-court consent shall submit a request for revocation to the adoption attorney representing the parent or guardian or the child placing agency that witnessed the out-of-court consent not more than 5 days, excluding weekends and holidays, after the out-of-court consent 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 consent to the adoption attorney representing the parent or guardian or a caseworker from the child placing agency that witnessed the out-of-court consent. The request for revocation is timely if delivered to the adoption attorney or a caseworker from the child placing agency not more than 5 days, excluding weekends and holidays, after the out-of-court consent 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 consent 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 consent was signed.
- (10) The court in which the out-of-court consent was filed may deny the request for revocation under subsections (11) and (12).
- (11) If a petition to revoke an out-of-court consent has been 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 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 consent was not signed voluntarily. If the court finds that the out-of-court consent was not signed voluntarily, the out-of-court consent is invalid and custody of the child shall be returned to the parent or guardian. If the court finds that the out-of-court consent 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 XIIIA under an ex parte order entered by the court.

(12) In determining the best interest of the child under subsection (11)(c), if a parent or guardian is seeking revocation of an out-of-court consent, the court shall determine if the parent or guardian seeking revocation is fit and immediately able to properly care for the child if the court returned the child to the parent or guardian. If the court determines that the parent or guardian is not fit and immediately able to properly care for the child, the court shall deny the revocation. If the court finds that the parent or guardian is fit and immediately able to properly care for the child, the court shall determine the best interest of the child. The "best interest of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The child's age and length of time the parent or guardian seeking revocation has had physical custody of the child so that significant love, affection, and other emotional ties exist between the parent or guardian and the child and whether during that time the child has lived in a stable, satisfactory environment.

(b) The capacity and disposition of the prospective adopting individual or individuals and the parent or guardian seeking revocation 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.

(c) The capacity and disposition of the prospective adopting individual or individuals and the parent or guardian seeking revocation 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.

(d) The permanence as a family unit of the prospective adopting individual or individuals and the parent or guardian seeking revocation.

(e) The moral fitness of the prospective adopting individual or individuals and the parent or guardian seeking revocation.

(f) The mental and physical health of the prospective adopting individual or individuals and the parent or guardian seeking revocation.

(g) The home, school, and community record of the child.


(h) The child's reasonable preference, if the child is 14 years of age or less and if the court considers the child to be of sufficient age to express a preference.

(i) The ability and willingness of the prospective adopting individual or individuals to adopt the child's siblings.

(j) 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 consent.

Enacting section 1. This amendatory act takes effect 180 days after the date it is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor