

Adoption Release¹ Checklist – Indian Child (Release Hearing)

If the court has an active abuse and neglect case and the parent is releasing his/her parental rights, the court MUST execute the release and termination order under the Adoption Code.²

Note that a release requires BOTH parents' parental rights over a child to be terminated. See [MCL 710.22\(u\)](#); [MCL 710.28\(1\)\(a\)](#); [MCL 710.29\(8\)](#).

Procedures to follow during the release hearing:^{3, 4}

- Call case, identify case number, full name of child, name of child's tribe and identification number (if one).
- Verbatim record is made of consent hearing.⁵ See [MCL 710.29\(1\)](#).
- Determine Indian child status and state on the record that the child is an Indian child.
- Swear in witnesses, establish paternity and maternity, establish witness date of birth and child's date of birth and birthplace. [MCL 710.28](#); [MCR 3.800](#).
- Ensure Indian child is at least 10 days old. See [MCL 712B.13\(1\)\(a\)](#); [MCR 3.804\(2\)](#).
- Ensure jurisdiction is proper (i.e., that an Indian Tribe does not have exclusive jurisdiction over the proceeding). [MCR 3.807\(B\)\(1\)](#). Dismiss case if jurisdiction is improper.

¹ Release means "a document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency." [MCL 710.22\(u\)](#). "A release shall be given only to a child placing agency or to the department." [MCL 710.28\(5\)](#).

² See *In re Hernandez/Vera*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2013 (Docket No. 312136) (setting out procedures the trial court should have followed when a respondent-parent executes a release and termination of parental rights under the Adoption Code after the initiation of a child protective proceeding under the Juvenile Code); *In re Buckingham*, 141 Mich App 828, 837 (1985) (court's failure to properly execute a release and termination of parental rights under Adoption Code will invalidate a termination order). Unpublished opinions are not precedentially binding under the rule of stare decisis. [MCR 7.215\(C\)\(1\)](#).

³ If a parent is consenting to the termination of his or her parental rights, videoconferencing technology cannot be used for the release hearing. [MCR 3.804\(B\)\(3\)](#).

⁴ For a detailed discussion on Freeing a Child for Adoption and Adoption Proceedings Involving an Indian Child, see the Michigan Judicial Institute's *Adoption Proceedings Benchbook*, Chapters 2 and 11.

⁵ Although statutory language requires a verbatim record if a parent or guardian is executing the consent, it is good practice to create a verbatim record for all consent hearings.

- Ensure all interested parties have been notified of the hearing, including:
 - the adoptee if over the age of 5, and
 - the Indian child's Tribe and Indian custodian (if applicable), or where the Indian child's parent, Indian custodian, or Tribe is unknown, the Secretary of the Interior.⁶ See [MCL 710.24a](#); [MCR 3.800\(B\)\(2\)](#); [MCR 3.804\(B\)\(2\)](#); [MCR 3.807\(B\)\(2\)](#).
- Make a finding that culturally appropriate services⁷ were offered if the release follows the initiation of a child protective proceeding under [MCL 712A.2\(b\)](#). [MCL 712B.13\(5\)](#).

Note: If the parent is executing a release during the pendency of a child protective proceeding under [MCL 712A.2\(b\)](#), the procedures set out under [MCL 712B.15](#) must be followed. [MCL 712B.13\(5\)](#).

- Ensure person releasing is:
 - a parent (if the parent is a minor, his/her release is not valid unless a parent, guardian, or guardian ad litem of the minor parent has also executed the release. [MCL 710.28\(2\)](#)); OR
 - Note:** Both parents' parental rights must be terminated in order to commit the child to the DHHS or child placing agency.
 - an authorized representative of a child placing agency to whom the child has been committed by court order, and the agency filed proof of termination of parental rights, release of parental rights, or commitment, see [MCL 710.28\(9\)](#); OR
 - an authorized representative of a child placing agency to whom the child has been released, and the agency filed

⁶ Copies of the notice must also be sent to the appropriate Regional Director, which for Michigan is the Midwest Regional Director. [25 CFR 23.11\(a\)](#); [25 CFR 23.11\(b\)\(2\)](#).

⁷ Culturally appropriate services means "services that enhance an Indian child's and family's relationship to, identification, and connection with the Indian child's tribe. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child's tribe so those may be incorporated into the Indian child's daily life, as well as services that address the issues that have brought the Indian child and family to the attention of the [DHHS] that are consistent with the tribe's beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, extended family members, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child's tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe's definition." [MCL 712B.3\(d\)](#).

proof of termination of parental rights, release of parental rights, or commitment, see [MCL 710.28\(9\)](#); OR

- the child's guardian, only if he/she has obtained authority to execute the consent from the appointing court, and the guardian filed proof of appointment and authorization to execute release, see [MCL 710.28\(9\)](#); OR
- the parent's guardian, only if he/she has obtained authority to execute the consent from the appointing court, and the guardian filed proof of appointment and authorization to execute release, see [MCL 710.28\(9\)](#). [MCL 710.28\(1\)](#); [MCL 710.28\(3\)](#); [MCL 710.28\(4\)](#); [MCL 712B.13\(3\)](#).
- For an *unrepresented minor parent* releasing, ensure the adoption attorney or child placing agency provided the minor parent with an opportunity to meet with an attorney, unrelated to the proceedings, to discuss the legal ramifications of his/her release. See [MCL 710.55a\(2\)](#).
- Ensure a verified accounting statement was filed that itemizes all money or things of value received, promised, or paid in connection with the release. [MCL 710.29\(6\)\(c\)](#); [MCL 710.54\(1\)\(c\)](#).
- If release is requested by *parent/guardian*:**
 - If release is requested by parent/guardian of the child, state on the record the nature and extent of the court-ordered investigation. See [MCL 710.29\(7\)](#); *In re Gonzales*, 330 Mich 35, 38 (1951).
 - If no investigation was done, question the parent/guardian on the record to ensure he/she understands the nature and consequences of releasing his/her parental rights and that he/she has not been forced, coerced, or threatened into signing the release. See *In re Blankenship*, 165 Mich App 706, 714 (1988).
 - Ensure the parent/guardian filed a verified statement that affirms the following:
 - Parent/guardian has received a list of community and federal resource support groups and information regarding the duties of adoption facilitators as described in [MCL 722.956\(1\)\(c\)](#).
 - Parent/guardian has received counseling related to the adoption of his/her Indian child or waived the counseling.

- Parent/guardian has not received or been promised any money or anything of value in exchange for release, except for lawful payments that are itemized on the verified accounting statement filed with the court.
- Validity/finality of the release is not affected by any collateral or separate agreement between the parent/guardian and the adoptive parent.
- Parent/guardian understands that it serves the Indian child's welfare for the parent to keep the child placing agency, court, or DHHS informed of any health problems that the parent develops that could affect the Indian child.
- Parent/guardian understands that it serves the Indian child's welfare for the parent/guardian to keep his/her address current with the child placing agency, court, or DHHS 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. [MCL 712B.13\(6\)\(a\)-\(f\)](#).
- Fully explain to the parent/guardian his/her legal rights and that consenting to the release means he/she is voluntarily and permanently relinquishing his/her rights to the Indian child, [MCL 710.29\(7\)](#):
 - Right to have/seek care and custody of child. [MCL 710.29\(5\)\(c\)\(i\)](#); [MCL 722.2](#).
 - Right to have/seek parenting time with child. [MCL 710.29\(5\)\(c\)\(ii\)](#).
 - Right to inherit from child or have child inherit from parent. [MCL 710.29\(5\)\(c\)\(iii\)](#); [MCL 700.2103\(b\)](#).
 - Right to services and earnings of child. [MCL 710.29\(5\)\(c\)\(iv\)](#); [MCL 722.2](#).
 - Right to determine child's schooling, religious training, and parenting practices. [MCL 710.29\(5\)\(c\)\(v\)](#).
- Ask the parent/guardian to verbally affirm whether he/she is voluntarily and permanently relinquishing these rights. See [MCL 710.29\(7\)](#).
- Ensure the parent understands that the release constitutes a consent for adoption under [MCL 712B.13](#). [MCL 712B.13\(1\)\(a\)](#).

- Ensure the parent understands that his/her release may be withdrawn for any reason at any time before the entry of a final order of adoption by filing a written demand requesting the return of his/her Indian child. [MCL 712B.13\(3\)](#).
- Advise parent that he/she can request a rehearing or appeal within 21 days after an order is entered terminating his/her parental rights. See [MCL 710.64](#); [MCR 7.104](#).
- Certify that the terms and consequences of the release were fully explained in detail and were fully understood by the parent, and that either the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood. [MCL 712B.13\(1\)\(a\)](#); [MCR 3.804\(B\)\(2\)](#).
- Explain to parent his/her continuing parental responsibilities:
 - Duty to support continues unless modified or terminated by court, or if minor is emancipated by operation of law. [MCL 722.3](#); *In re Beck*, 488 Mich 6, 14-15 (2010).
 - Generally not relieved from support arrearages.⁸
- May order visitation between the Indian child and one or more members of the Indian child's tribe and extended family members. See [MCL 712B.27\(2\)](#).
- If child is over age of 5, consider whether child's best interests are served by execution of the release, and state findings on the record. [MCL 710.29\(7\)](#).
- Determine whether to accept or deny the release.
 - DENY release if it is not valid or it is not in the child's best interests, and state reasons for denial on the record (or in writing), [MCL 710.63](#); OR
 - ACCEPT release if it is valid and it is in the child's best interests. *In re Buckingham*, 141 Mich App 828, 834-835 (1985).
 - The child's mother may request the court delay execution of her release until after the court

⁸ See www.legislature.mi.gov/Publications/FriendofCourt.pdf; www.courts.mi.gov/administration/scao/resources/documents/publications/manuals/focb/focb_hbk.pdf.

determines the status of a putative father's request for custody. [MCL 710.31\(3\)](#).

- Ensure release contains the following information:
 - The Indian child's name and date of birth.
 - The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
 - The name and address of the releasing parent.
 - A sworn statement from the translator, if any, attesting to the accuracy of the translation.
 - The signature of the releasing parent verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement at any time.
 - The name and address of the person or entity that will arrange the preadoptive or adoptive placement.
 - The name and address of the person or entity who will arrange the foster care placement.
 - The name and address of the prospective foster care parents (if known). [MCL 712B.13\(2\)\(a\)-\(g\)](#).
 - Clearly sets out the conditions attached to the release. See [25 CFR 23.126\(a\)](#).
- Sign the release order.
- Sign the order terminating parental rights, finding that release of the Indian child has been executed according to law, and serve the parent or guardian with a copy of the termination order, an advice of rights, a pamphlet on release of adoption information, and a parent's consent/denial to the release of identifying information. See [MCL 710.29\(8\)](#).
- Inform the parent/guardian that a statement must be filed with the central adoption registry that denies the release of identifying information, and if no statement is filed, there is a presumption of consent to release the information specifying the biological parent's name and address. [MCL 710.27a\(4\)](#).

- Issue an order committing the child to the DHHS or a child placing agency if both parents, the surviving parent, or the guardian are terminated.⁹

Note: Both parents' parental rights must be terminated in order to commit the child to the DHHS or child placing agency. See [MCL 710.29\(8\)](#); [MCL 710.31](#).

Withdrawal of release:

- BEFORE entry of a final order of adoption** parent files a written demand requesting return of the Indian child, the court must order return of the Indian child. [MCL 712B.13\(3\)](#); [MCR 3.804\(C\)](#). Any person or entity that arranged the preadoptive or adoptive placement must be notified. [25 CFR 23.128\(d\)](#).
- AFTER entry of a final order of adoption** parent files a petition to vacate the order of adoption and alleges that his/her release of parental rights was obtained through fraud or duress, the court must vacate the final order of adoption, revoke the release, and return the child IF the court finds that the release was obtained through fraud or duress *and the adoption has been effective for less than 2 years*.¹⁰ [MCL 712B.27\(5\)](#). All parties to the adoption proceedings and the Indian child's Tribe must be notified. [25 CFR 23.136\(b\)](#).

For court forms related to adoption proceedings, see the One Court of Justice [website](#).

⁹ If the child is released to the DHHS, the child becomes a state ward. [MCL 710.28\(8\)](#).

¹⁰ An adoption may not be vacated pursuant to [25 USC 1913\(d\)](#) or [MCL 712B.27\(5\)](#) if the adoption has been effective for at least two years, unless otherwise permitted by law. [25 USC 1913\(d\)](#); [MCL 712B.27\(5\)](#).

