


ADOPTION TRAINING

2017



OVERVIEW



PURPOSE OF THE ADOPTION CODE

The general purposes of the Adoption Code are **all** of the following:

- To provide that each adoptee in this state who needs adoption services receives those services.
- To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.
- To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.
- To achieve permanency and stability for adoptees as quickly as possible.
- To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.

THE DEFINITION OF ADOPTION

- Adoption is the act that legally establishes relations of paternity and affiliation among people who are not related by nature. *In re Session's Estate*, 70 Mich 297, 305 (1888).
- Adoption has also been referred to as the "legal equivalent of biological parenthood." *Smith v Org of Foster Families For Equality and Reform*, 431 US 816, 844 n 51 (1977).

DOCKET PRIORITY

ALL ADOPTION PROCEEDINGS MUST BE TREATED AS HIGH PRIORITY.

MCL 710.25(1)



WHO CAN ADOPT?

- **Persons eligible to adopt are:**
 - A married person and his/her spouse
 - A single person
 - A married person, individually
 - If all parties consent (adult adoption)
 - If spouse's failure to join/consent is excused by court for good cause shown or child's best interests (child adoption)
- **Persons not eligible to adopt are:**
 - Persons convicted of child abuse or criminal sexual conduct
 - Unrelated adults or unmarried partners



FILING AN ADOPTION CASE



SUBJECT MATTER JURISDICTION

Family Division of the Circuit Court has the sole and exclusive jurisdiction over cases involving adoption under the probate code.

MCL 600.1021(1)(b)

VENUE / JURISDICTION

File Petition for Adoption In Any County Where:

- Petitioner Resides;
- Adoptee is Found;
- Temporary Placement – if child has been temporarily placed for adoption, the county in which the report following temporary placement was filed.
- If Termination of Parental Rights Occurred:
 - County in which TPR happened, or happened first if both parents rights terminated at different times/places.
- If Termination of Parental Rights Pending:
 - county in which TPR is pending.

MCL 710.24

\$ FILING FEES \$

- **General Authority** → fees payable in civil actions in circuit court ALSO apply to family division cases. MCL 600.1025.
 - *certain exceptions apply*
- **Filing Fees**
 - \$150 – Civil Filing Fee. MCL 600.2529
 - \$25 – Electronic Filing System Fee for Civil Actions. MCL 600.1986(1)(a)
 - * \$50 – Vital Records Birth Certificate following adoption. MCL 333.2891(9)
- **Waiver of Filing Fee**
 - Court MAY waive / suspend part or all of the filing fee upon affidavit of indigence or inability to pay.
 - MC20 – Waiver / Suspension of Fees and Costs (Affidavit and Order)

ADOPTION CASE TYPES

- AB = Adult Adoptions
- AF = Relative adoptions.
 - *Petitioner is a relative, including a guardian, but is not stepparent.*
- AY = Stepparent Adoptions
- AN = Guardian, nonrelative adoptions
- AG = Safe delivery of newborn adoptions
 - *Adoption is a result of a safe delivery of newborn proceeding.*
- AM = Permanent Ward adoption.
 - *For all state/court wards as a result of child protective proceedings.*
- AD = Direct placement adoptions
 - *Includes all temporary placements before filing petition.*
- AC = Agency international adoptions
- AO = Agency Other adoptions

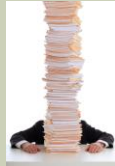
REQUIRED PAPERWORK AT TIME OF FILING

- **Petition for Adoption**
 - PCA 301 – Petition for Adoption
 - PCA 301a – Petition for Direct Placement Adoption
- **Consent to Adopt:**
 - Orders / Authority supporting ability to consent to adoption (i.e. release, TPR, commitment order, etc.);
 - Executed Consent Documents:
 - PCA 309 – Consent to Adoption by Agency / Court
- **If Stepparent Adoption alleging nonsupport/communication**
 - PCA 302 – Supplemental Petition and Affidavit to Terminate Parental Rights of Noncustodial Parent.
- **If Direct Placement Adoption**
 - Preplacement Assessment(s);
 - PC340 – Statement of Identifying Information, if have not exchanged info.

MCL 710.26

REQUIRED PAPERWORK AT TIME OF FILING (CONT.)

- * Any additional facts the court considers necessary.
- Many courts have their own required "packets" or "face sheets" for filing.
- Allows court to establish their own practices.
- Clearly communicate any court specific requirements.



MCL 710.26

INVOLUNTARY TERMINATION

The court may involuntarily terminate under the following codes:

- Adoption Code
- Juvenile Code

INVOLUNTARY TERMINATION (JUVENILE CODE)

The court may involuntarily terminate a parent's parental rights as a result of child protective proceedings under the Juvenile Code.

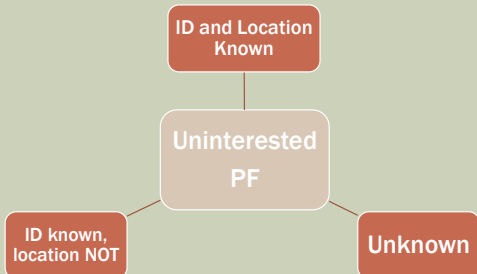
INVOLUNTARY TERMINATION UNDER THE ADOPTION CODE

PROBATE CODE OF 1999 (EXCERPT)
Act 266 of 1999
Chapter 4
MCL-SCM ADOPTION CODE

INVOLUNTARY TERMINATION (ADOPTION CODE)

- The court may involuntarily terminate a parent's parental rights under:
 - MCL 710.37 (uninterested putative fathers)
 - MCL 710.39 (interested putative fathers)
 - MCL 710.51(6) (stepparent adoptions)

3 TYPES OF UNINTERESTED PF



TPR – UNINTERESTED PF (ID & LOC KNOWN)

May Terminate Parental Rights IF BOTH:

- Putative father was:**
 - Served with a notice of intent to release or consent, or
 - Served with or waived the notice of hearing to identify the father;
- The putative father did any of following:**
 - Verified paternity and denied his interest in custody of the child;
 - Filed a disclaimer of paternity;
 - Served with a notice of intent to release/consent at least 30 days before the expected date of confinement but failed to file an intent to claim paternity before expected date of confinement or child's birth;
 - Received property notice of hearing to identify the father and either failed to appear at the hearing or appeared and denied

TPR – UNINTERESTED PF (ID KNOWN, LOC NOT)

May terminate parental rights IF:

- The putative father's identity is known but his whereabouts are unknown

AND

- He has not shown any interest in the child or made any provisions for the child's care for at least 90 days preceding the termination hearing.

TPR – UNINTERESTED PF (UNKNOWN)

May terminate parental rights IF:

- The putative father remains unidentified after reasonable efforts were made to identify him

AND

- he has not provided for the child's care and did not support the mother during her pregnancy or confinement;

PROCESS: UNINTERESTED PUTATIVE FATHERS

When Identity/Whereabouts are Known:

If the court denies the termination petition, the court must indicate the reasons for the denial on the record in writing.

MCL 710.63

PROCESS: UNINTERESTED PUTATIVE FATHERS

When Identity/Whereabouts are Unknown:

- Mother may file affidavit/declaration with court indicating inability to identify/locate father.
- Court must take evidence regarding mother's attempt to identify or locate putative father.
 - If found that reasonable attempt was made to locate putative father, court must proceed to terminate parental rights.
 - If found that reasonable attempt was not made to locate putative father, court must adjourn hearing and order one of the following:
 - Mother to diligently attempt to identify or locate the putative father and properly serve him
 - Mother to serve the putative father in an alternative manner.
- If court denies termination petition, court must indicate reasons for denial on the record or in writing.

INTERESTED PUTATIVE FATHERS MCL 710.39

MCL 710.39 can be broken up into 2 categories:

The "do nothing" father.

Expresses an interest in the child but has not established a custodial relationship with the child or provided substantial and regular support or care to the mother or the child.

The "do something" father.

Established a custodial and/or support relationships with the child.

See MCL 710.39(1)(2); In re Baby Boy Barlow, 404 Mich 216, 229 (1978).

MCL 710.39: INTERESTED PUTATIVE FATHERS

"Do nothing" father request for custody:

- Appears at termination hearing to request custody of child: court must inquire into his fitness and ability to properly care for the child.
 - If court finds not in the best interests of the child, court must terminate parental rights.
 - If court finds in best interests of child, court must terminate temporary placement, return custody to mom (unless rights terminated) or guardian, deny order of adoption, and dismiss pending adoption proceeding, and enter an order granting putative father custody and legitimating the child for all purposes.

"Do something" father:

If one of the following occur:

- Custodial relationship with child established, or
- Provided regular support or care to the mother during pregnancy, or for either the mother or child at least 90 days before a termination hearing,

Parental rights may only be involuntarily terminated during child protective proceedings under the Juvenile Code or through a stepparent adoption.

GUARDIAN'S ADOPTION OF THEIR WARD

GUARDIANSHIP ADOPTIONS

- Guardians CAN consent to the adoption of their own ward, if the court has given them the authority to do so.
- Guardian CANNOT consent if there have not been termination of all parental rights.
 - See *In Handorf*, 285 Mich App 384 (2009)

RELEASE OF PARENTAL RIGHTS

RELEASES

- **"Release" – 710.22(u)**
A document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency.
- **Interested Persons for Release Proceedings**
 - Adoptee (over 5)
 - DHHS / CPA, to which child is to be released
 - Person executing the release
- **Use of Videoconferencing**
 - CAN use video conferencing for Non-Indian child cases.

MCL 710.24; MCR 3.804

WHO MAY EXECUTE A RELEASE?

- Parent /Surviving Parent – unless:
 - Rights have already been terminated;
 - Guardian appointed for the child;
 - Guardian appointed for the parent;
 - * Unemancipated Minor – their parent also must agree
- CPA to whom a child was been committed.
- CPA to whom a child has been released.
- Guardian of Child (if court has authorized)
- Guardian of Parent (if court has authorized)
- **Proof of Authority** – if someone other than parent is providing the release, they must also provide proof of authority to give the release.

MCL 710.28

WHO MAY TAKE THE RELEASE ?

- Judge or Juvenile Court Referee can take the release in court.
 - ** Judge ONLY for Indian Child.
 - ** NOTE – no provision to have Judge in another county take, as with consents.
- **Prisoners / Military Personnel / CPAs**
 - Release may be taken by an individual authorized to administer oaths.
- **Out-of-Court Release**
 - Adoption attorney and child placing agency working with the parent may take the release.
 - **72hr Waiting Period** – cannot execute an out-of-court release until at least 72 hours following the birth of the child.

MCL 710.29

BEFORE EXECUTING RELEASE

- **Pre-Investigation**
 - There must have been an investigation the court considers appropriate.
- **Explanation of Rights**
 - The individual taking the release must explain to the parent/guardian their legal rights, and that the release is permanent relinquishment of parental rights.
- **Best Interest (If child 5+)**
 - If the child is over 5, the court determines the release is in the child's best interest
- ** Release has to be knowingly and voluntarily made.**

MCL 710.29

EXECUTE RELEASE DOCUMENTS

- PCA 305 – Release of Child by Parent
- PCA 305a – Release of Child by Guardian
- PCA 305i – Release of Indian Child by Parent
- PCA 306 – Release of Child by CPA
- **Also Required (except for CPA release):**
 - PCA 338 – Statement to Accompany Release
 - PCA 348 – Parent's or Guardians Verified Accounting for Adoption Release or Direct Placement Consent
- **Released to Whom?**
 - On the release, indicate to whom the child is being released.
 - * Note, this is not the actual commitment.
- **Effect of Release** → terminates jurisdiction of circuit court over child in a divorce / separate maintenance action.

MCL 710.29

COURT ACTION FOLLOWING RELEASE

- **TPR – enter order terminating parental rights**
 - ** Out-of-Court Release – 5 Day Waiting Period
 - PCA 318 – Order Terminating Parental Rights After Release or Consent
 - PCA 323 – Advice of Rights After Order Terminating Parental Rights
- **Commitment of Child**
 - Commitment may occur ONLY after all rights have been terminated.
 - Order child committed to whom the release was provided (i.e DHHS or CPA).
 - PCA 322 – Order Committing Child to Agency / DHHS
- **Authorize Foster Care Funding (CPA Commitments Only)**
 - Excludes CCF admin rates
 - DHHS to reimburse 100%, during appeal period
 - PCA 326 – Order Authorizing Foster Care Funding After Release

MCL 710.29

STEPPARENT ADOPTIONS



DIFFERENT PROCESS

- Requires different procedures for the adoption process.
- A stepparent adoption occurs when the custodial parent marries and his or her spouse petitions to adopt the custodial parent's child and terminate the noncustodial parent's parental rights. MCL 710.51(6).



WHO IS A NONCUSTODIAL PARENT?

The noncustodial parent may be any one of the following:

- A divorced parent;
- A father that has acknowledged paternity; or
- A putative father who has an established custodial relationship with his child or has provided regular support or care to the mother or child.

NONCUSTODIAL PARENT'S CONSENT TO ADOPTION

- Noncustodial parent may consent.
- Court must terminate noncustodial parent's parental rights if it finds:
 - Consent was genuine; and
 - Adoption is in the child's best interests.

TERMINATION OF NONCUSTODIAL PARENT'S PARENTAL RIGHTS

- No consent: noncustodial parental rights may be involuntarily terminated if:
 - Custodial parent has custody of the child pursuant to court order; and
 - Court finds that the noncustodial parent failed to provide support and maintain contact with the child.
- Following termination of noncustodial parent's parental rights, the child does not become a ward of the court.

IDENTIFYING AND NONIDENTIFYING INFORMATION

- Nonidentifying information:
 - Compilation of information does not apply to stepparent adoptions
 - Release of nonidentifying information does
- Identifying information:
 - Compilation of information does not apply to stepparent adoptions
 - Release of identifying information does



GRANDPARENT VISITATION

- Parent of a biological parent may seek an order for visitation with the adoptee.
 - Entry of a stepparent adoption order does not prohibit a court from entering an order for grandparenting time.



Note: MCL 722.27b(2) prohibits a trial court from allowing the parent of a father who never married the child's mother from seeking an order for grandparenting time if the father's paternity has never been established.

DIRECT ADOPTIONS

DIRECT ADOPTIONS

- **Direct Placement Adoption – 710.22(o)**
Placement in which the parent/guardian selects an adoptive parent for a child and transfers physical custody to the prospective adoptive parent.
 - * The parent/guardian is assisted by an adoption attorney / CPA.
- **Who Can Make Direct Placement?**
 - Parent/Guardian who has legal AND physical custody of the child.
- **NO Delegation of Authority**
 - Parent/Guardian CANNOT delegate their selection authority. Only they can select the prospective adoptive parent.
- * Temporary Placement MAY occur before filing, but not necessary.

MCL 710.23a

FILING A DIRECT ADOPTION CASE

- Case Type = AD
- Filing Fees - \$150 (civil fee) + \$25 (e-filing fund) + *\$50 (vital records fee)
- PCA 301a – Petition for Direct Placement Adoption
- Preplacement Assessment(s)
- * Other Info Required by Court
- Optional @ Filing:
 - Out-of-Court Consent;
 - Birth Certificate;
 - Verified Accounting
- Did Parents / Prospective Adoptive Parents Already Exchange Info?
 - If No -> also file PCA 340 – Statement of Identifying Information.

CONSENT TO ADOPT DIRECT PLACEMENT

Complete Consent to Adopt Procedures for Direct Placement

VERIFIED ACCOUNTINGS

- * *Except for charges and fees approved by the court, individual cannot pay, give, request, receive, or accept money or anything of value directly or indirectly for:*
 - Placing a child for adoption;
 - Registration, recording, communicating that a child is available for adoption;
 - A release/consent;
 - A petition;
- **Filing of Verified Accountings:**
 - PCA 348 Parent/Guardian Verified Accounting, must accompany consent.
 - MUST file following at least 7 days before formal placement:
 - PCA 347 – Petitioner's Verified Accounting;
 - PCA 346 – Attorney's Verified Statement (attorney for petitioner's and parents);
 - PCA 345 – CPA / DHHS Statement of Services

MCL 710.44; 710.54

FORMAL PLACEMENT / SUPERVISION

- Following consent, may formally place the child for adoption.
- **Period of Supervision:**
 - **6 Months (General Rule)** – must wait 6 months following formal placement before court may enter order of adoption.
 - **3 Months (Infant Exception)** – if the child is less than 12 months at the time of filing, court may enter an order of adoption 3 months after formal placement.
 - **Extension 18 Months** – period of supervision may be extended up to 18 months.
 - **Waiver of Period** – court may waive all or a portion of the waiting period if it is in the best interest of the child.

MCL 710.56

HEARING ON PENDING PETITION

- **Pending for 18 Months** – if the adoption has not been finalized w/in 18 months of formal placement, the court MUST hold a hearing to determine if the adoption petition should be approved or denied.
- **Effect of Denial of Adoption Petition – Court MAY:**
 - Return child to parent(s)/custodian AND restore their rights;
 - OR
 - Make a disposition appropriate under 712A.18 using an EX PARTE order.
- **Finalization** – see later discussion

MCL 710.56; 710.62

INTERNATIONAL ADOPTIONS



INTERNATIONAL ADOPTIONS



Delayed Registration of Foreign Birth

- Child is born outside of the United States.
- Adoption completed internationally
 - Adoption order entered by international court
 - Adoption order must constitute as a delayed registration of foreign birth
 - U.S. court may issue a delayed registration of foreign birth on an adoptive parent's motion.
 - U.S. Court acceptance of paperwork from international court

CONTENTS OF DELAYED REGISTRATION OF FOREIGN BIRTH

- What it must contain:
 - Date and place of birth
 - Any additional facts the DHHS requires



What happens if date and place of birth are not obtainable or a medical assessment indicates date of birth is inaccurate?

- Court must first determine the facts and establish a date and place of birth before issuing the delayed registration.

If adoption not completed overseas and guardianship simply granted, adoptive parents must petition the court to adopt.

Entire record is for delayed registration of foreign birth is confidential.

ADOPTION OF INDIAN CHILDREN

ADOPTION OF INDIAN CHILDREN

STEP 1: Determine whether an Indian child is involved.

STEP 2: If an Indian child is involved, ICWA and MIFPA apply.

- Discovery of an Indian child may occur at any time during the adoption proceedings. Once discovered, ICWA and MIFPA must be applied!

DEFINITIONS: INDIAN CHILD/INDIAN CHILD'S TRIBE/INDIAN TRIBE

"Indian child" means an unmarried person who is under the age of 18 and is either of the following:

- (i) A member of an Indian tribe.
- (ii) Eligible for membership in an Indian tribe as determined by that Indian tribe.

"Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than 1 tribe, the Indian tribe described in 25 CFR 23.109 provides guidance for determining designation of an Indian child's tribe.

"Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the service provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in 43 USC 1602(c).

GENERAL REQUIREMENTS & PURPOSE OF ICWA AND MIFPA

- ICWA/MIFPA mandates that state courts adhere to certain minimum procedural requirements before removing Indian children from their homes and placing them in a foster or adoptive home.
- The purpose of ICWA/MIFPA is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.
- ICWA/MIFPA promotes this purpose by establishing minimum federal standards for the removal of Indian children from their families for placement in foster or adoptive homes that reflect the unique values of Indian culture. It also includes providing assistance to Indian tribes in the operation of child and family service programs.

NOTICE



- Indian child's tribe must be notified
- Once it becomes known that a child is possibly of Indian ancestry, notice becomes mandatory regardless of where the court is in its proceedings.
- Parent cannot waive a child's status as an Indian child or a tribe's right to notice.
- When the identity and location of a child's Indian parent(s), custodian(s), or tribe(s) can be determined, petitioner must notify the parent or custodian and the tribe, by registered mail with return receipt requested.
 - Copies of notices must be sent to the Secretary of the Interior's Regional Director.
 - If more than 1 tribe involved, court may not choose which tribe to notice; notice each federally recognized tribe.
- When the identity and location of a child's Indian parent(s), custodian(s), or tribe(s) cannot be determined, notice must be sent by registered mail with return receipt requested to Secretary of the Interior's Regional Director.

NOTICE REQUIREMENTS

- | | |
|--|--|
| <ul style="list-style-type: none"> Name of Indian child & child's date & place of birth Name of tribe(s) All names, former addresses, & other identifying information of parent(s), grandparents, great grandparents, or custodian(s) Copy of petition, complaint, or other document Name of petitioner & name and address of petitioner's attorney Statement of the right of parent(s) or custodian(s) and the tribe to intervene | <ul style="list-style-type: none"> Statement of right to appointed counsel if found indigent for parent(s)/custodian(s) Statement of right for 20 days to prepare for proceeding at request of parent(s), custodian(s), tribe(s) Location, mailing address, & telephone number of court & all parties notified of pending action Statement of right to petition to transfer proceeding to tribal court Potential legal consequences of an adjudication on future custodial rights Statement to tribe to maintain confidentiality of identifying information of parties |
|--|--|

PROCEDURES FOLLOWING NOTICE

- | | |
|--|---|
| <ul style="list-style-type: none"> Court must wait minimum of 10 days before foster care placement or termination of parental rights proceeding On request, court must grant parent(s), custodian(s), or tribe an additional 20 days to prepare for the proceeding If later discovered child may be an Indian child, all further proceedings must be suspended until notice is received by the tribe or the Secretary of the Interior Notice does not require court or petitioner to demand tribal response <ul style="list-style-type: none"> If proper notice provided and a tribe fails to either respond or intervene in the matter, the burden shifts to the parties (i.e., the parents) to show that the ICWA still applies. | <p>Trial courts have a duty to ensure that the record includes, at minimum:</p> <ul style="list-style-type: none"> Original/copy of each actual notice personally served or sent via registered mail, Original/legible copy of return receipt or other POS showing delivery of notice, and Any additional correspondence between the petitioner, the court, and the tribe or other person or entity entitled to notice. <p><i>In re Morris</i>, 491 Mich 81, 113 (2012).</p> |
|--|---|

VALID EXECUTION OF CONSENT/RELEASE

- MCL 710.29: provides for certain requirements that must be met in order for a parent to properly release his or her parental rights over a child under the Adoption Code.
- MCL 710.44: provides for certain requirements that must be met in order for a parent to properly consent to his or her child's adoption.

VALID

VOLUNTARY PROCEEDINGS-INDIAN CHILD

The following are the types of voluntary proceedings:

- Both parents or Indian custodian voluntarily consent to a petition for guardianship; OR
- A parent consents to "adoptive placement or the termination of his or her parental rights for the express purpose of adoption by executing a release or consent.

Once voluntary consent is executed, the court must follow the ICWA's and the MIFPA's placement preferences (unless the child's tribe has established a different order of preference or good cause is shown to the contrary).

ADOPTIVE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS FOR ADOPTION

A voluntary custody proceeding must meet 3 requirements:

- Valid execution of consent or release,
- Proper notice, and
- Confirm to certain court rule and statutory requirements.



A parent may withdraw consent at any time before entry of a final order of adoption by filing a written demand requesting the return of the child. After entry of final adoption order, the parent may only withdraw on the grounds of fraud or duress and may petition the court to vacate the final order.

Note: Involuntary proceedings must also follow the requirements of ICWA and MIFPA.

AFTER ENTRY OF FINAL ORDER OF ADOPTION

Following entry of a final order of adoption of an Indian child,

- The parent may withdraw consent on the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final order.
- When petition is filed to vacate an adoption order, the court must give notice to all parties to the adoption proceedings and must hold a hearing on the petition.

Note: An adoption may not be vacated if the adoption has been effective for at least 2 years, unless otherwise permitted by law.

INVOLUNTARY PROCEEDINGS (ICWA AND MIFPA)

- Court cannot hold foster care placement/termination of parental rights proceeding until 10 days after child's parent/custodian and the child's tribe (or tribe(s) in the county where the child is located and Secretary of the Interior if the parent or Indian custodian is unknown to the petitioner) receive proper notice of that proceeding (except for emergency proceedings that involve an Indian child).
- On request, the parent/Indian custodian or tribe must be given up to 20 additional days to prepare for the proceedings.

Further information may be found in other training resources.

PREFERRED PLACEMENTS OF INDIAN CHILDREN

- Placement of Indian children reflects the unique values of the Indian child's tribal culture.
- ICWA and MIFPA establish a standard order of preference for foster care, preadoptive, and adoptive placements of Indian children.
 - Child's tribe may establish a different order of preference that DHHS/court making placement must follow.
- DHHS or court must consider preference of child or parent when appropriate, and DHHS/court must give weight to parent's desire for anonymity when applying either the statutory or tribal preferences.

Note: a court does not need to follow the order of preference if it finds that good cause exists to not follow the order of preference.

DISRUPTION OF ADOPTION

Biological parent/prior Indian custodian may petition for return of custody of an Indian child under the following circumstances:

- The adoptive parents voluntarily consent to the termination of their parental rights to the child; or
- The final decree of adoption has been vacated or set aside.



25 USC 1916(a) requires the court to grant the petition unless there is a showing, in a proceeding, that such a return of custody is not in the best interests of the child.

- Requirements:
- Notice must be provided.
 - Appointment of counsel.
 - Examination of reports or other documents.
 - Remedial services, rehabilitative programs, and preventative measures.
 - Foster care placement orders.
 - Orders terminating parental rights.

CENTRAL ADOPTION REGISTRY FOR INDIAN CHILDREN

The Bureau of Indian Affairs (BIA) serves as the central registry for the adoption records of Indian children.

Within 30 days of the court's entry of a final decree or adoptive order for any Indian child, the court must provide the BIA and the tribal enrollment officer of the appropriate tribe with a copy of the decree or order, together with other information to show the following:

- The Indian child's name, birthdate, and tribal affiliation;
- The names and addresses of the biological parents and, when applicable, the affidavit filed by the biological parents requesting confidentiality;
- The names and addresses of the adoptive parents; and
- The identity of any agency having relevant information relating to the adoptive placement.
- Indian child's birth and adoptive name.
- Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

MAINTENANCE OF RECORDS

- MI must maintain a record of every Indian child's voluntary and involuntary foster care, preadoptive, and adoptive placement, which must be made available to the Indian child's tribe or the Secretary of the Interior within 14 days of a request.
- MIFPA also requires:
 - A record of each placement of an Indian child to be maintained by DHHS or court evidencing the efforts to comply with the order of preference. The record shall be made available at any time upon the request of the Secretary of the Interior or Indian child's tribe.
 - All efforts made to identify, locate, and place a child be documented, and, upon request, made available to the court, tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

ACCESS/DISCLOSURE

- Adopted Indian child has access to adoption records.
- If no indication of the biological parents' desires, the biological parents' identifying information may be released if the court finds good cause.
 - COA found that release of the biological parents' identifying information to establish tribal affiliation satisfied the good cause requirement. *In re Hanson*, 188 Mich App 392 (1991).
 - Without an actual consent from the biological parents, the manner in which the biological parents' identifying information is release should be tailored to best protect the privacy rights of the biological parents.
 - Without the biological parents' actual consent, the court should release the identifying information to the Indian tribe, not the adopted Indian child, with the request that the tribe keep it confidential.

RELEASE OF INFORMATION BY COURT

- Permits an adopted Indian child, who is 18 years of age or older, to apply for tribal information from the court that entered the adoption order.
- On receipt of the Indian child's application, the court must inform the adopted Indian child of his or her tribal affiliation, if known, of the individual's biological parents, and provide any information as necessary to protect any rights from the individual's tribal relationship.
- If the biological parents have not given any consent to releasing their identity, the court should release the biological parents' identifying information to the Indian tribe, not the adopted Indian child, with the request that the tribe keep it confidential.

ADULT ADOPTIONS



ADULT ADOPTIONS

An adult adoptee is an individual 18 years of age or older.

- Adoptive parent must file petition for adoption with the court.
- Persons eligible to adopt:
 - Single person
 - Spouses jointly
 - Spouse individually



Court may enter an adult adoptee's adoption after ALL of the following occur:

- Adult adoptee consents to adoption
- Investigative report is filed
- Notice is given to interested parties to adoption.

ADULT ADOPTIONS: OF NOTE

- No supervisory period requirement
- Adult adoptee no longer an heir of biological parents
- A new birth certificate will not be issued in an adult adoption

CONSENT TO ADOPT



CONSENTS

■ "Consent" – 710.22(l)

A document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent.

■ Consent IS NOT same thing as a Release

■ "Release" – 710.22(u)

A document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency.

WHO MAY CONSENT?

- Parent(s) – each parent / surviving parent, unless:
 - Rights have been terminated;
 - Release of rights already occurred;
 - Guardian has been appointed for the child;
 - Guardian has been appointed for the parent
 - ** Unemancipated Minor Parent
- DHHS / CPA – to whom child has been committed.
- DHHS / CPA – to whom child has been released.
- Court / Tribe – if they have permanent custody of a child.
- Guardian of Child (if court has given authority)
- Guardian of a Parent (if court has given authority)

MCL 710.43

WHO MAY CONSENT? (CONT.)

- **Adoptee (over 14)**
 - Required to consent to their adoption
- **Stepparent Adoptions**
 - Only the noncustodial parent consents. The parent petitioning w/spouse does not.
- **Adult Adoptions**
 - Only the adult adoptee needs to consent

EXECUTING CONSENT TO ADOPTION

- **In-Court Consent**
 - Judge OR Juvenile Court Referee
 - * Judge ONLY – if consent involving Indian Child
 - Court MAY direct Judge of another family division in Michigan take the consent.
 - Timing – hearing to be held w/in 7 days after request or filing of report/foster family study.
 - NOTE re: Indian Child – cannot execute a consent until at least 10 days after birth.
 - Record – verbatim record of the hearing required.
- **Prisoners / Military Personnel / DHHS / CPA**
 - May execute consent before a person authorized to administer oaths. This does not need to be in court with Judge/Referee.

MCL 710.44; MCR 3.804

CONSENT HEARING

- **Use of Videoconferencing Technology**
 - CAN use used for consent/release in Non-Indian Child cases only.
- **Pre-Investigation Required (parent/guardian consent only)**
 - Consent cannot be taken until an investigation the court deems appropriate has been completed.
- **Explanation of Rights**
 - The court must explain to the parent/guardian their legal rights, and that relinquishment of their parental rights is permanent.
- **Explanation to Adoptee (If applicable)**
 - If the adoptee must consent, the court must explain that by consenting the adoptee's adoptive parents will be permanent.

MCL 710.44; MCR 3.804(B)(3)

CONSENT DOCUMENTS

- Consent forms **MUST** be executed on SCAO approved forms.
- PCA 307 – Consent to Adoption by Adoptee
- PCA 308 – Consent to Adoption by Parent
- PCA 308a – Consent to Adoption by Guardian
- PCA 308i – Consent by Parent to Adoption of Indian Child
- PCA 309 – Consent to Adoption by Agency/Court
- **Direct Placement Adoptions Only – Also Required:**
 - PCA 348 – Parent/Guardian Verified Accounting for Adoption Release or Direct Placement Consent
 - PCA 339 – Statement to Accompany Consent in Direct Placement

COURT ACTION FOLLOWING EXECUTION OF IN-COURT CONSENT

- **TPR - Enter order terminating parental rights**
 - PCA 318 – Order Terminating Parental Rights / Rights of Person In Loco Parentis After Release or Consent
 - PCA 323 – Advice of Rights After Order Terminating Parental Rights
- **Approval of Placement**
 - If court is satisfied the person had authority to consent, consent was genuine, and serves the best interest of the adoptee... the court may formally place the child for adoption.
 - * Note – if child already temporarily placed, placement becomes formal upon TPR and approval by the court.
 - PCA 320 – Order Placing Child After Consent

EXECUTING OUT-OF-COURT CONSENT

- Direct Placement Adoptions ONLY
- Consent by Parent / Guardian ONLY
- Not available if Indian Child
- **72hr Waiting Period** – out-of-court consent cannot be taken until at least 72 hours after the birth of the child.
- **Adoption Attorney / Agency Worker** – the adoption attorney and child placing agency worker assisting parents must witness and sign the consent.
 - * must also provide explanation of rights to parent/guardian.
- **Execution of Documents:**
 - PCA 355 – Out-of-Court Consent to Direct Placement Adoption by Parent
 - PCA 339 – Statement to Accompany Consent in Direct Placement
 - PCA 348 – P/G Verified Accounting for Adoption Release or Direct Plc. Consent

COURT ACTION FOLLOWING EXECUTION OF OUT-OF-COURT CONSENT

- **TPR – 5 Day Waiting Period**
 - Court CANNOT terminate parental rights until at least 5 days (excluding weekends and holidays) after the consent is executed.
- PCA 318 – Order Terminating Parental Rights After Release / Consent
- PCA 323 – Advice of Rights After Order Terminating Parental Rights
- **Approval of Placement**
 - If court is satisfied the person had authority to consent, consent was genuine, and serves the best interest of the adoptee... the court may formally place the child for adoption.
 - * Note – if child already temporarily placed, placement becomes formal upon TPR and approval by the court.
 - PCA 320 – Order Placing Child After Consent

WITHHOLDING CONSENT TO ADOPT



MOTION ON WITHHOLDING CONSENT TO ADOPT (AKA §45 HEARING)

- When child is released to child placing agency, the DHHS, or the court, it must consent to the child's adoption. If the consent is withheld, the adoptive parent may file a motion claiming the decision to withhold consent is arbitrary and capricious.
 - If the court is withholding consent, the adoptive parent's motion must be heard by a visiting judge.
- An adoptive parent cannot file a motion when consent to adopt is withheld if:
 - The child placing agency, the DHHS, or the court consented to the child's adoption by another adoptive parent;
 - The child has been placed for adoption with the other adoptive parent; and
 - An adoption order has already been entered or 56 days have elapsed since the child was placed.

THE MOTION PROCESS

An adoptive parent's motion claiming that a child placing agency, the DHHS, or the court is arbitrarily and capriciously withholding consent must be filed simultaneously with the adoption petition.

The motion must contain all of the following:

- The specific steps the adoptive parent took to obtain the consent.
- The results the adoptive parent received in trying to obtain the consent.
- The specific reasons the adoptive parent believes the decision to withhold consent is arbitrary and capricious.

Court must grant/deny the motion to determine whether the decision to withhold consent was arbitrary and capricious within 91 days of the motion's filing date, unless good cause is shown.

FINALIZING THE ADOPTION



THE WAITING GAME

CANNOT Finalize Adoption UNTIL



- **Section 45 Motion** – if filed, has been resolved through appeal.
- **Rehearing Granted** → petition for rehearing Granted (but TPR not modified) AND period for appeal as of right has expired without appeal filed.
- **Rehearing Denied** → petition for rehearing Denied, and period for appeal as of right has expired without appeal filed.
- **Appeal** → COA affirms the TPR order.
- **MISCt Denial** → app for leave to appeal denied by MISCt
- **MISCt Affirm TPR** → MISCt affirms TPR order

IN RE JACKSON

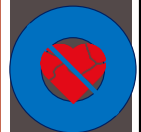
Court MUST make the following finding on the record

- *I have determined that any appeal of the decision to terminate parental rights has reached disposition, that no appeal, application for leave to appeal, or motion for rehearing or reconsideration is pending, and that the time for all appellate proceedings in this matter has expired.*
- * Finding contained on the order of adoption.

FINALIZATION HEARING

- PCA 321 – Order of Adoption
- Provide adoptive parties with copy of order
- **Preparation of Adoption Court Report to Vital Records**
 - Prepare and sent to vital records to establish new birth record.
 - \$50 vital records fee.
 - Due by 10th of month following adoption

DISSOLUTION OF ADOPTIONS



DISSOLUTION OF ADOPTIONS

There is no statutory authority that provides for revocation of an adoption order. *In re Bell's Estate*, 310 Mich 394, 397 (1945).

The court may dissolve an adoption if all of the following are met:

- The biological parents express a desire to readopt their child.
- The adoptive parents are willing to revoke the adoption.
- The biological parents are fit parents.
- The biological parents could provide the child with a suitable home. *Id.* at 397-398.

Adoption may also be overturned if there is significant fraud. *In re Leach*, 373 Mich 148, 152-153 (1964).

REPORTING

If court amends, annuls, or rescinds an adoption order, it must prepare and send an adoption report to the State Registrar's Office. MCL 333.2829(2).

The adoption report must contain all of the following:

- The facts necessary to identify the original adoption report.
- The facts amended in the adoption order necessary to properly amend the adoptee's birth certificate.
- The petitioners' current names and addresses.

RECORDS AND ACCESS



RESTRICTIONS ON ACCESS TO ADOPTION RECORDS

- Adoption records must be kept in separate locked files and must not be opened to inspection or copying.
- Exception: 21 days after the court enters a final order of adoption, the court:
 - Must permit the inspection/copying of adoption records to the children's ombudsman who is conducting an investigation.
 - Must permit the release of nonidentifying information if authorized under MCL 710.68.
 - May permit the release of identifying information if authorized under MCL 710.68.
 - May permit a petitioner who files a petition indicating good cause to inspect or copy adoption records.

DISCLOSURE OF BIOLOGICAL OR ADOPTIVE PARENTS' NAMES

A person in charge of adoption records must not disclose the biological or adoptive parents' names, unless:

- Ordered to do so by the court.
- The children's ombudsman is conducting an investigation authorized under the Children's Ombudsman Act.
- The release of information is authorized under MCL 710.68.
- The Director of Public Health is creating a new birth certificate in the adoptive name and sealing the original birth certificate.

RELEASE OF NONIDENTIFYING INFORMATION

- Release to Adoptive Parent, Adult Adoptee, Former Parent, or Adult Former Sibling
 - Adoptive parent, adult adoptee, former parent, or adult former sibling may request the nonidentifying information and it must be released upon demand. The agency/court has 63 days from the request to provide in writing all of the nonidentifying information.
- Release to Direct Descendant
 - If adult adoptee is deceased, the adoptee's direct descendant may request the nonidentifying information. The agency/court must release to direct descendant any information to which the deceased adult adoptee would have been entitled.
- Release to Children's Ombudsman
 - Agency/court must allow inspection of adoption records in connection with an investigation.

RELEASE OF IDENTIFYING INFORMATION

- **Release to Adult Adoptee**
 - Former Parent's Identifying Information
 - Depends on whether former parent consented to or denied release of info.
 - Submit clearance request form to central adoption registry. Central adoption registry will respond to clearance request with reply form. W/in 28 days of receiving reply form, court/agency must notify adoptee in writing info entitled to or identifying info that can't be released and why.
- **Release to Former Parent/Adult Former Sibling**
 - Depends on whether adult adoptee has authorized release.
- **Release of Medical Information**
 - Life-Threatening Medical Information: request must be met.
 - Nonlife-Threatening Medical Information: placed in adoption file
- **Release to Direct Descendant: must release**
- **Release to Children's Ombudsman: must allow inspection in connection with investigation**

CONFIDENTIAL INTERMEDIARIES

- Trained individuals appointed by the court, at petitioner's request, to search for and contact former family members, adult adoptees, or a deceased adoptee's adult children.
- Once court appoints a confidential intermediary, the court must contact the central adoption registry.
- A confidential intermediary be receive court-approved reasonable fees and reimbursement for actual expenses incurred during the performance of responsibilities.
- Court may dismiss a confidential intermediary if the intermediary engages in conduct that violates professional or ethical standards.
 - May also be held in contempt of court for releasing identifying information without authorization.

RESOURCES

- **ADOPTION BENCHBOOK:**
[HTTPS://WWW.EDUCATION.MI.GOV/BENCHBOOK%20ADoption-PROCEEDINGS](https://www.education.mi.gov/benchbook%20adoption-proceedings)
- **LEGAL ADVICE TRAINING:**
[HTTPS://WWW.EDUCATION.MI.GOV/VIDEO-LEGAL](https://www.education.mi.gov/video-legal)
- **ADOPTION TRAINING RESOURCES MAY BE FOUND AT** [HTTPS://WWW.EDUCATION.MI.GOV/](https://www.education.mi.gov/)



QUESTIONS

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