

**PROBATE CODE OF 1939 (EXCERPT)**  
**Act 288 of 1939**

**710.39 Inquiry into fitness of putative father; determining best interests of child; termination of rights of putative father; determination that rights of putative father not be terminated; use of mother or guardian release or consent relinquishing rights to child; order granting custody to putative father and legitimating child; fee; report.**

Sec. 39.

(1) If the putative father does not come within the provisions of subsection (2), and if the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the best interests of the child will be served by granting custody to him. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the putative father has established a custodial relationship with the child or has provided substantial and regular support or care in accordance with the putative father's ability to provide support or care for the mother during pregnancy or for either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him, the rights of the putative father shall not be terminated except by proceedings in accordance with section 51(6) of this chapter or section 2 of chapter XIIA.

(3) If the court determines that the parental rights of the putative father will not be terminated under subsection (1), the court shall do all of the following:

(a) Terminate the temporary placement made under section 23d of this chapter.

(b) Return custody of the child to the mother or the guardian unless the mother's parental rights have been terminated under this chapter or other law and are not restored under section 62 of this chapter.

(c) Deny the order of adoption and dismiss the pending adoption proceeding.

(4) The fact that the mother or guardian executed or proposed to execute a release or consent relinquishing the mother's parental rights or the guardian's rights to the child and sought termination of the putative father's parental rights under section 36, 37, or 39 of this chapter shall not be used against the mother or guardian in any proceeding under the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31, after the court has completed the provisions in subsection (3).

(5) If the mother's parental rights are terminated under this chapter or other law and are not restored under section 62 of this chapter and if the court awards custody of a child born out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes. Upon entry of an order granting custody and legitimating the child, the clerk of the court shall collect a fee of \$35.00 from the putative father. The clerk shall retain \$9.00 of the fee and remit the \$26.00 balance, along with a written report of the order granting custody and legitimating the child, to the director of the department of community health. The report shall be on a form prescribed by or in a manner approved by the director of the department of community health. Regardless of whether the fee required by this section is collected, the clerk shall transmit and the department of community health shall receive the report of the order granting custody and legitimating the child.

**History:** Add. 1974, Act 296, Eff. Jan. 1, 1975 ;-- Am. 1980, Act 288, Eff. Oct. 17, 1980 ;-- Am. 1982, Act 72, Imd. Eff. Apr. 14, 1982 ;-- Am. 1994, Act 202, Eff. Jan. 1, 1995 ;-- Am. 1994, Act 373, Eff. Jan. 1, 1995 ;-- Am. 1996, Act 409, Eff. Jan. 1, 1998 ;-- Am. 1998, Act 94, Eff. Sept. 1, 1998 ;-- Am. 2014, Act 119, Eff. Oct. 12, 2014

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