

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

***** 710.44.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 12, 2014 *****

710.44.amended Consent to adoption; separate instrument; persons before whom consent executed and acknowledged; execution in another state or country; verified statement; investigation; explaining legal rights of parent or guardian; conditions to execution of adoptee's consent to adoption; out-of-court consent.

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 XIIA 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.

History: Add. 1974, Act 296, Eff. Jan. 1, 1975;—Am. 1982, Act 72, Imd. Eff. Apr. 14, 1982;—Am. 1994, Act 222, Eff. Jan. 1, 1995;—Am. 1994, Act 373, Eff. Jan. 1, 1995;—Am. 1996, Act 409, Eff. Jan. 1, 1998;—Am. 2014, Act 117, Eff. Oct. 12, 2014.

Popular name: Probate Code