



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: October 17, 2018

TO: Family Division Judges
Probate Judges
Circuit Court Administrators
Family Division Administrators
Juvenile Registers

FROM: Noah A. Bradow, Court Analyst Manager

RE: AU Case-Type Code and Release to Adopt

The following memo provides instruction on how to process a release for purposes of adoption under MCL 710.29 where there is no open adoption case. This memo is intended to rescind and replace the direction provided in Trial Court Services memo [2014-06](#).

Using the AU Case Type Code

In August 2018, memo [2018-04](#) announced the creation of the new case-type code AU. This new case-type code is intended to be used for certain adoption-related filings that precede the filing of a petition for adoption, including a release to adopt. A release for the purpose of adoption may only be executed pursuant to the adoption code, MCL 710.29. Where a petition for adoption has not yet been filed, a release should be processed as follows:

1. Upon acceptance of a Release of a Child by Parent ([PCA 305](#)) or Guardian ([PCA 305a](#)), Release of Indian Child by Parent ([PCA 305i](#)), or Out-of-Court Release of Child by Parent ([PCA 354](#)), open a new AU case in the court's case-management system, assign a new case number, affix the new case number on the document, and place in the case file. Record the document on the register of actions (ROA). Group files should no longer be used to maintain these documents.
2. "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."¹ SCAO-approved

¹ MCL 710.29(8).

form [PCA 318 – Order Terminating Parental Rights/Rights of Person In Loco Parentis After Release or Consent](#) is available for use. Affix the AU case number on the document and place in the case file. Record the document on the ROA.

3. If the release is related to a pending NA case, a copy of the Order Terminating Parental Rights After Release should be marked confidential, placed in the legal file² of the NA case, and recorded on the ROA of the NA case.

Commitment of Children Following Release

A child may be released to a child-placing agency³ or MDHHS only.⁴ The court must commit the child to MDHHS or the child-placing agency to which the release was given. However, the commitment may not occur until the rights of both parents, the surviving parent, or the guardian have been terminated.⁵

If the termination of parental rights⁶ after release extinguishes all remaining parental rights, the child must be committed to the child placing agency or MDHHS pursuant to MCL 710.29(8).⁷ The SCAO-approved form [PCA 322 – Order Committing Child to Agency / Department of Health and Human Services](#) is available for use. When committed pursuant to this provision the child is referred to as an Act 296 ward. Where appropriate, the court may authorize foster care funding following release for a youth committed as a 296 ward.⁸ SCAO-approved form [PCA 326 – Order Authorizing Foster Care Funding After Release](#) is available for use.

If all parental rights are not extinguished following the release, and the remaining parental rights are terminated in an NA proceeding pursuant to the juvenile code, MCL 712A.19b, the court may commit the child to the Michigan Children’s Institute (MCI) pursuant to MCL 400.203(1)(a). The SCAO-approved form [JC 63 – Order Following Hearing to Terminate Parental Rights \(Child Protective Proceedings\)](#) is available for use. A child committed to MCI pursuant to MCL 400.203(1)(a) is referred to as an Act 220 ward.

If a child is an Indian Child, please refer to the provisions of the Indian Child Welfare Act (ICWA) and Michigan Indian Family Preservation Act (MIFPA) for any additional requirements.

² We recommend that this confidential document be placed in the legal file in such a way to accommodate the clerk’s easy removal to prevent public inspection of the document.

³ “Child placing agency” means a private organization licensed under 1973 PA 116, MCL 722.111 to 722.128, to place children for adoption. MCL 710.22(k).

⁴ MCL 710.28(5).

⁵ MCL 710.29(8).

⁶ Under MCL 710.36, when a mother proposes to execute a release regarding a child born out of wedlock, the court must hold a hearing as soon as practical to identify the putative father and determine or terminate the rights.

⁷ Commitment under this provision should also occur if involuntary termination of the putative father’s rights occurs under MCL 710.37 or 710.39 after the execution of the mother’s release and termination of her parental rights.


⁸ MCL 710.29(9).

Revision of MDHHS Policy Regarding Commitments

Effective October 1, 2018, MDHHS will implement policy requiring that the last action regarding termination of parental rights determine the fund source eligibility.⁹ Accordingly, MDHHS will no longer consider children eligible for paid foster care funding under MCL 710.29(9) if the last remaining parental rights are terminated via the juvenile code.

Please contact me at 517-373-2451 or trialcourtservices@courts.mi.gov with any questions.

⁹ MDHHS Communication Issuance 18-100 is attached to this memo.

 <p>Children's Services Agency</p> <p>Communication Issuance</p> <p>18-100</p>	Subject/Title: Legal Status 44 Change
	Type <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Informational Memorandum <input type="checkbox"/> Program Instruction <input type="checkbox"/> Policy Guide
	Issuance Date 10/8/18 Obsolete Date N/A
	Contact Name Federal Compliance Division Email MDHHS-federalcompliancedivision@michigan.gov Phone N/A
	Due Date N/A Due to N/A
	<i>Distribution</i> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> CSA Central Office Managers/Staff <input checked="" type="checkbox"/> MDHHS BSC and County Directors <input checked="" type="checkbox"/> MDHHS Juvenile Justice Managers/Staff <input checked="" type="checkbox"/> MDHHS Child Welfare Managers/Staff <input checked="" type="checkbox"/> Native American Tribes <input checked="" type="checkbox"/> Office of Workforce Development and Training <input checked="" type="checkbox"/> Private Agency Child Welfare Managers/Staff <input type="checkbox"/> Private Residential Abuse/Neglect Managers/Staff <input type="checkbox"/> Private Residential Juvenile Justice Managers/Staff <input checked="" type="checkbox"/> Other: Child Welfare Funding Specialist Managers/Staff

MDHHS and the State Court Administrative Office (SCAO) have recently clarified the requirements for state ward commitments - Public Act 220 of 1935 and Public Act 296 of 1974. Foster care policy FOM 901-6 is currently in the process of being revised to reflect the **last judicial action** in a case of termination of parental rights for all legal parents drives the commitment type of Act 220 or Act 296. In other words, the order of legal actions do influence the type of state ward commitment and consequently, the child's next fund source. One of the 4 following requirements are necessary to satisfy an Act 296 commitment:

- Both legal parents voluntarily release parental rights under the Adoption Code MCL 710.21 et seq.
- An involuntary termination of one parent's rights occurs under the Juvenile Code MCL 712A.1 et seq. The other parent voluntarily relinquishes his/her parental rights under the Adoption Code at a later date.
- One parent is deceased. The other parent voluntarily releases his/her parental rights under the Adoption Code at a later date.
- The child has only one legal parent and that parent voluntarily relinquishes his/her parental rights under the Adoption Code.

The court makes the decision on the commitment type for the child through a written order. Any questions regarding an order and how it affects the commitment type and fund source determination must be submitted to MDHHS-federalcompliancedivision@michigan.gov as soon as the order is received.

Please apply this clarification to practice effective immediately.