Adoption Release[1] Checklist – Non-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]

Procedures to follow during the release hearing:[3]

❑ Call case, identify case number and full name of child.

❑ Verbatim record is made of release hearing.[4] See MCL 710.29(1).

❑ Determine Indian child status and state on the record that the child is not 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.

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[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).
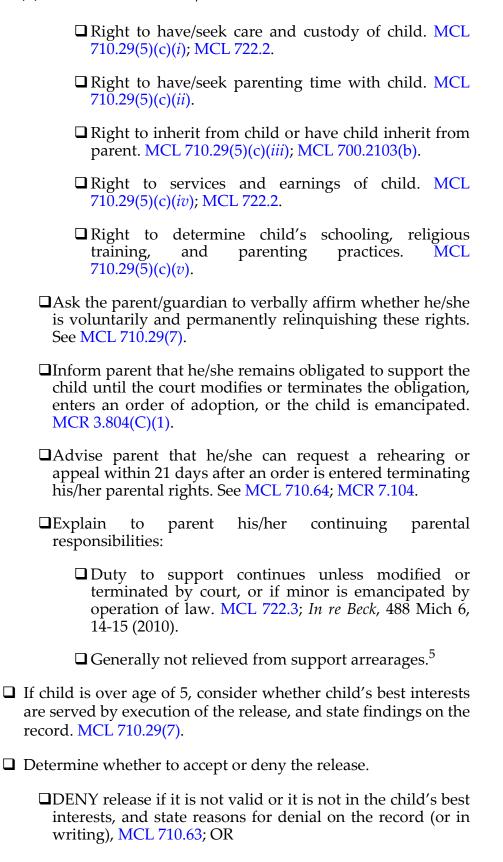
[2] See *In re Hernandez/Vera*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2013 (Docket No. 312136) (setting out procedures the trial court should have followed when a respondent-parent executes a release and termination of parental rights under the Adoption Code after the 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 Unpublished opinions are not precedentially binding under the rule of stare decisis.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] For a detailed discussion on Freeing a Child for Adoption, see the Michigan Judicial Institute's *Adoption Proceedings Benchbook*, Chapter 2.
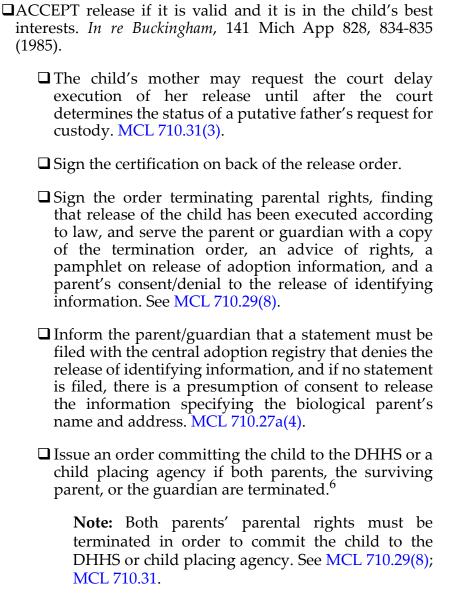
[4] Although statutory language require a verbatim record if a parent or guardian is executing the release, it is good practice to create a verbatim record for all release hearings.

❑ Ensure all interested parties have been notified of the hearing (including the adoptee if over the age of 5). See MCL 710.24a; MCR 3.800(B)(2).

❑ 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 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).

❑ 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*:**

❑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 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 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 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 child.

> ❑Parent/guardian understands that it serves the 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 710.29(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 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).

❑ Inform parent that he/she remains obligated to support the child until the court modifies or terminates the obligation, enters an order of adoption, or the child is emancipated. MCR 3.804(C)(1).

❑ 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.

❑ 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.[5]

❑ 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

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[5] See www.legislature.mi.gov/Publications/FriendofCourt.pdf; Friend of the Court Model Handbook.

❑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 determines the status of a putative father's request for custody. MCL 710.31(3).

   ❑ Sign the certification on back of the release order.

   ❑ Sign the order terminating parental rights, finding that release of the 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.[6]

      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.

For court forms related to adoption proceedings, see the One Court of Justice website.

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