

MICHIGAN
LAW REVISION COMMISSION

SIXTH ANNUAL REPORT

1971

MICHIGAN LAW REVISION COMMISSION

Term Members:

Jason L. Honigman, Chairman
Tom Downs, Vice Chairman
David Lebenbom
Harold S. Sawyer

Ex-Officio Members:

Senators:

Robert L. Richardson
Basil W. Brown

Representatives:

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TABLE OF CONTENTS

	Page
Letter of Transmittal from the Michigan Law Revision Commission to the Legislature	1
Recommendations of the Law Revision Commission to the Legislature	
1. Technical Amendments to the Revised Judica- ture Act	7
2. Revised Uniform Adoption Act	41
3. Waiver of Medical Privilege	59
4. Venue in Civil Actions against Non-Resident Corporations	63
Study Report: The Michigan Adoption Statute and the Revised Uniform Adoption Act Compared	67

MICHIGAN LAW REVISION COMMISSION
Sixth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its sixth annual report pursuant to Section 14(e) of Act No. 412 of the Public Acts of 1965.

The Commission, created by Section 12 of that Act, consists of the chairmen and ranking minority members of the Committees on Judiciary of the Senate and House of Representatives, the Director of the Legislative Service Bureau, being the five ex-officio members, and four members appointed by the Legislative Council. Terms of appointed Commissioners are staggered. The Legislative Council designates the Chairman of the Commission.

The members of the Commission during 1971 were Senator Robert L. Richardson of Saginaw, Senator Basil W. Brown of Highland Park, Representative J. Robert Traxler of Bay City, Representative Donald E. Holbrook, Jr., of Clare, A.E. Reyhons, Director of the Legislative Service Bureau, as ex-officio members; Tom Downs, Jason L. Honigman, David Lebenbom, and Harold S. Sawyer, as appointed members. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor Carl S. Hawkins of the University of Michigan Law School served as Executive Secretary of the Commission.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators, and other public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

The problems to which the Commission directed its studies during its sixth year of operation were largely identified by a study of statute and case law of Michigan and legal literature by the Commissioners and Executive Secretary. Other subjects were brought to the attention of the Commission by various organizations and groups, and the Commission has responded to any suggestions received from members of the Legislature. The Commission welcomes suggestions from members of the Legislature and any other interested individuals or groups.

From the available topics, the Commission selected the following for immediate study and report:

- (1) Technical Amendments to Revised Judicature Act.
- (2) Revised Uniform Adoption Act.
- (3) Waiver of Medical Privilege.
- (4) Venue in Civil Actions against Non-Resident Corporations.

In addition to the foregoing, the Commission recommends favorable consideration of the following prior recommendations upon which no final action was taken by the Legislature in 1971:

(1) Michigan Business Corporation Act -- S.B. 602, H.B. 5015. See Recommendations of 1970 Annual Report, Supplement.

(2) Abolition of Dower -- S.B. 252 passed by Senate, defeated in House; H.B. 4576 pending in Committee on Judiciary. See Recommendations of 1970 Annual Report, p.14.

(3) Summary Proceedings for Possession of Premises -- H.B. 4616 passed by House; pending in Senate Committee on Judiciary along with S.B. 276. See Recommendations of 1970 Annual Report, p. 16.

(4) District Court Venue in Civil Actions -- S.B. 275, H.B. 4577. See Recommendations of 1970 Annual Report, p. 42.

(5) Execution and Levy in Proceedings Supplementary to Judgment -- S.B. 200, H.B. 4578. See Recommendations of 1970 Annual Report, p. 51.

(6) Condemnation Procedures Act -- S.B. 460, H.B. 4729. See Recommendations of 1968 Annual Report, p. 11.

(7) Attachment Fees Act -- S.B. 199, H.B. 4318. See Recommendations of 1968 Annual Report, p. 23.

(8) Uniform Single Publications Act -- S.B. 194. See Recommendations of 1968 Annual Report, p.36.

(9) Quo Warranto Act -- S.B. 150, H.B. 4320. See Recommendations of 1967 Annual Report, p. 43.

(10) Contribution Among Joint Tortfeasors Act -- S.B. 262, H.B. 4579. See Recommendations of 1967 Annual Report, p. 57.

(11) Qualifications of Fiduciaries Act -- S.B. 198, H.B. 4628. See Recommendations of 1966 Annual Report, p. 32.

(12) Local Administrative Procedures Act -- S.B. 309, H.B. 4473. See Recommendations of 1969 Annual Report, p. 10.

(13) Uniform Child Custody Jurisdiction Act -- S.B. 193, H.B. 4294. See Recommendations of 1969 Annual Report, p. 22.

(14) Wayne Circuit Court Commissioners Power Act -- H.B. 4580. See Recommendations of 1969 Annual Report, p. 56.

(15) Insurance Policy in Lieu of Bond Act -- S.B. 260, H.B. 4295. See Recommendations of 1969 Annual Report, p. 59.

(16) Interest on Judgements Act--S.B. 148. See Recommendations of 1969 Annual Report, p. 64.

(17) Constitutional Amendment re Juries of 12--H.J.R. "M" passed by House; pending in Senate Committee on Judiciary. See Recommendations of 1969 Annual Report, p. 65.

Topics on the current study agenda of the Commission are:

- (1) Court Costs
- (2) Joint Estates in Real and Personal Property
- (3) Uniform Choice of Forum Act
- (4) Small Claims Revision
- (5) Tax Refund Procedures
- (6) Commercial Leasing Code

Topics on the future study calendar of the Commission are:

- (1) Evidence Code
- (2) Disposition of Automobile Accident Cases
- (3) Mechanics Liens

As an important part of its functions, the Commission reviews current court decisions to ascertain whether or not these decisions necessitate or make desirable changes in Michigan law. The Commission continues to welcome the advice and assistance of the justices and judges of the courts of this state. The Commission has also reviewed court decisions to ascertain what laws, if any, have been declared unconstitutional by the courts for the purpose of recommending the repeal or revision of any unconstitutional acts.

The Commission continues to operate with its sole staff member, the part time Executive Secretary whose offices are in the Legal Research Building, University of Michigan Law School, Ann Arbor, Michigan 48104. The use of consultants has made it possible to expedite a large volume of work and at the same time give the Commission the advantage of expert assistance at relatively low costs. Faculty members of the four law schools in Michigan continue to cooperate with the Commission in accepting specific research assignments.

The Legislative Service Bureau has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau, who acts as Secretary of the Commission continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission submits progress reports to the Legislative Council and members of the Commission have met with the Council and other legislative committees to discuss recommendations and subjects under study by the Commission.

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act. No.</u>
Powers of Appointment	1966, p. 11	224
Interstate and International Judicial Procedures	1966, p. 25	178
Dead Man's Statute	1966, p. 29	263
Corporation Use of Assumed Names	1966, p. 36	138
Stockholder Action Without Meeting	1966, p. 41	201
Original Jurisdiction of Court of Appeals	1966, p. 43	65

1968 Legislative Session

Jury Selection	1967, p. 23	326
Emancipation of Minors	1967, p. 50	293
Guardian ad Litem	1967, p. 53	292
Possibilities of Reverter and Rights of Entry	1966, p. 22	13
Corporations as Partners	1966, p. 34	288
Stockholder Approval of Mortgaging Assets	1966, p. 39	287

1969 Legislative Session

Administrative Procedures Act	1967, p. 11	306
Access to Adjoining Property	1968, p. 21	55
Antenuptial Agreements	1968, p. 27	139
Notice of Tax Assessment	1968, p. 30	115
Anatomical Gifts	1968, p. 39	189
Recognition of Acknowledgements	1968, p. 61	57
Dead Man's Statute Amendment	1966, p. 29	63
Venue Act	1968, p. 19	333

1970 Legislative Session

Appeals from Probate Court Act	1968, p. 32	143
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Warranties in Sales of Art Act	1969, p. 47	121
Minor Students Capacity to Borrow Act	1969, p. 51	107
Circuit Court Commissioner Powers of Magistrates Act	1969, p. 62	238

1971 Legislative Session

Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	[E.H.B. 4563]

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Jason L. Honigman, Chairman
Tom Downs, Vice Chairman
David Lebenbom
Harold S. Sawyer

Ex-Officio Members
Sen. Robert Richardson
Sen. Basil W. Brown
Rep. J. Robert Traxler
Rep. Donald E. Holbrook, Jr.
A.E. Reyhons, Secretary

Date: December 10, 1971

RECOMMENDATION FOR TECHNICAL
AMENDMENTS TO THE REVISED
JUDICATURE ACT

Michigan's minor court system was basically revised by P.A. 1968, No. 154. Circuit court commissioners, justices of the peace, and most municipal courts were replaced by district courts. M.C.L.A. §§ 600.9921-2. The common pleas court of Detroit was retained, M.C.L.A. § 600.8105, and some municipal courts have been retained by local option. M.C.L.A. §§ 600.9928, 600.9930.

However, numerous sections in the Revised Judicature Act referring to circuit court commissioners and justices of the peace were not repealed. Some of these sections are no longer needed as a result of the abolition of the offices of circuit court commissioner and justice of the peace, but other sections contain provisions for powers and procedures which have been borrowed by reference in statutes applicable to district, municipal and common pleas courts.

The purpose of the proposed bill is to repeal those sections which are no longer needed, and to amend those which are retained so that they will refer to the courts to which they apply. This will eliminate many anachronisms and confusing provisions in the Act as it now stands.

In a few instances where something more than purely technical amendments are proposed, explanatory comments are given after the particular section.

S.B. 276 and H.B. 4616 now pending in the legislature would repeal Chapter 56 relating to summary proceedings for possession of premises and replace it with a new Chapter 57. The new chapter would correct outdated references to justices of the peace and circuit court commissioners, as well as make some substantive changes. Consequently no changes in Chapter 56 have been included in the present proposed bill.

PROPOSED BILL

A bill to amend Act No. 236 of the Public Acts of 1961, entitled "Revised Judicature Act of 1961," as amended, being sections 600.101 to 600.9930 of the Compiled Laws of 1948, by repealing or changing certain provisions relating to circuit court commissioners, justices of the peace, and justice courts, and by adding other provisions, so as to clarify or provide for certain powers and proceedings in the district, municipal and common pleas courts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 223, 581, 582, 587, 631, 1416, 1440, 2132, 2401, 2441, 2445, 2451, 2455, 2513, 2540, 3125, 3130, 3150, 3165, 3252, 4304, 5261, 5301, 5331, 5809, 6001, 6002, 6003, 6005, 6011, 6026, 6035, 6042, 6052, 6056, 6063, 6064, 6067, 6077, 6078, 6091, 6093, 6094, 6104, 6110, 6113, 6201, 6205, 6215, 6221, 6225, 6231, 6241, Of Act No. 236 of the Public Acts of 1961, as amended, are hereby amended, and a new chapter 65 is hereby added, to read as follows:

Sec. 223 Rule-making power.

The supreme court has authority to promulgate and amend general rules governing practices and procedure in the supreme court and all other courts of record, including but not limited to authority:

(1) [Unchanged.]

(2) [Unchanged.]

(3) to prescribe in which cases the circuit court ~~or any circuit court judge, or circuit court commissioner~~ may grant orders to stay proceedings in matters pending in the circuit courts OR ANY OTHER INFERIOR COURT, and to prescribe the terms and conditions upon which the orders shall be granted and the effect the orders will have.

~~(4) - to prescribe the terms and conditions upon which orders may be granted by circuit court commissioners in any specific class of actions; - to prescribe actions in which circuit court commissioners are not authorized to make orders; and to prescribe rules of practice and procedure for all proceedings involving circuit court commissioners.~~

(4) (5) to abolish, as far as practicable, distinctions between law and equity.

Sec. 581 Sheriff, deputy; attendance at court sessions.

The sheriff of the county, or his deputy, shall attend the circuit court, PROBATE COURT AND DISTRICT COURT sessions WHEN REQUESTED BY SUCH COURTS, and the sessions of such other courts of record as required by law. The judge in his discretion

(a) shall fix, determine, and regulate the attendance at court sessions of the sheriff and his deputies;

(b) may fine the sheriff and his deputies for failure to attend.

Sec. 582 Same; officers of court, powers.

The sheriff and his deputies

(a) are officers of the circuit courts for the purpose of executing the process of the court;

(b) may execute all lawful orders and process of the court in any county of the state:

(c) to whom process is directed may be punished for disobedience or default therein in the manner prescribed by law.

Sec. 587 Same; constable; wilful neglect, penalty.

Any sheriff, constable, or other officer who wilfully neglects to execute any:

(a) attachment,

(b) summons,

(c) precept to summon a jury,

(d) warrant to apprehend a witness or any other person,

or

(e) any other process authorized to be issued by any judge, ~~circuit court commissioners; or justice of the peace in any special proceeding or matter before him; except civil actions before justices of the peace;~~ which is directed and delivered to him may be fined by the JUDGE officer who issued the process in a sum not exceeding \$100.00.

Sec. 631 Circuit courts; nonjury appeal from state agency; procedure, jurisdiction, appeal bond.

An appeal shall lie from any order, decision or opinion of any state board, commission or agency, authorized under the laws of this state to promulgate rules and regulations from which an appeal or other judicial review has not-heretofore-OTHERWISE been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, and such circuit court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in the-same-manner as-appeals-are-made-from-justice-courts;-except-that-no-appeal bond-is-required ACCORDANCE WITH RULES OF THE SUPREME COURT.

COMMENT: As originally adopted in 1961, Section 631 of the Revised Judicature Act was intended to provide a catch-all method for judicial review of administrative agencies, when judicial review was not otherwise provided by specific agency statutes or by the Administrative Procedures Act. Since then, a new Administrative Procedures Act has been adopted, P.A. 1969, NO. 306, which provides a comprehensive scheme for judicial review of an agency's "final decision or order in a contested case," when provision for judicial review has not otherwise been made by special agency statutes. M.C. L.A. §§ 24.301-24.302. The word "heretofore" in Section 631 clouds the relationship between that section and the new Administrative Procedures Act. Substituting the word "otherwise" for "heretofore" in Section 631 will give the intended effect to the new Administrative Procedures Act, as the catch-all provision for judicial review of final decisions in contested cases where review has not been specially provided in specific agency statutes. Section 631 has been retained because it covers a broader scope of agency action, in that it is not limited to "final decisions" or "contested cases". The reference to justice courts in Section 631 has been eliminated, but the reference to Supreme Court rules results in review by the same procedure as was formerly applicable to appeals from justice courts. See General Court Rules, 1963, 706.

Sec. 1416 Courts of record; seals.

(1) The following courts are courts of record and possess seals:

- (a) the supreme court,
- (b) the several circuit courts,
- (c) the several probate courts,
- (d) the recorder's court of Detroit,
- ~~(e) the superior court of Grand Rapids,~~
- (e) ~~(f)~~ the court of claims, and
- (f) ~~(g)~~ any other courts the legislature designates as courts of record.

(2) Whenever the seal of any court becomes unusable the court shall have that seal destroyed.

(3) Whenever the seal of any court is lost or destroyed that court shall have a duplicate made which then shall become the seal of that court.

(4) The expense of a new seal of any ~~circuit court or court of probate;~~ shall be paid by the county in which such courts are held; and the expense of new seals for other courts shall be paid from the state treasury.

Sec. 1440 Oaths or affidavits; persons to administer.

(1) Whenever any oath or affidavit is or may be required or authorized by law in any cause, matter or proceeding, except oaths to witnesses and jurors in the trial of a cause, and such other oaths as are or may be required by law to be taken before particular officers, the same may be taken before any ~~justice;~~ judge or clerk of any court of record; ~~circuit court commissioner;~~ OR notary public. ~~or justice of the peace;~~

(2) [Unchanged.]

(3) [Unchanged.]

(4) [Unchanged.]

Sec. 2132 Marriage certificates and records as evidence.

The original certificates and records of marriage made by the minister, JUDGE, ~~justice~~ or other person authorized to solemnize marriages, as prescribed by law, and the record thereof made by the county clerk or a copy of such record, duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Sec. 2401 Costs; regulation of taxation by supreme court.

Except as otherwise provided by statute, the supreme court shall by rule regulate the taxation of costs. When costs are allowed in any action or proceeding in the supreme court, COURT OF APPEALS, or in the circuit OR DISTRICT courts, the items and amounts thereof shall be governed by the provisions of this chapter AND THE RULES OF THE SUPREME COURT.

Sec. 2441 Same; sundry costs additional in civil actions in ~~supreme-court.~~

(1) In all civil actions or special proceedings in the supreme court OR COURT OF APPEALS, whether heard as an original proceeding or on appeal, the following amounts shall be allowed as costs in addition to other costs unless the court otherwise directs:

- (a) on motions, \$20.00.
- (b) on calendar causes and those given an early hearing, \$50.00.

(2) In all civil actions or special proceedings in the circuit courts AND DISTRICT COURTS, whether heard as an original proceeding or on appeal, the following amounts shall be allowed as costs in addition to other costs unless the court otherwise directs:

- (a) for the proceedings before trial, \$20.00.
- (b) for motions which result in dismissal or judgment, \$20.00.
- (c) for the trial of the action or proceeding, \$30.00.
- (d) in all actions where judgment is taken by default or upon cognovit, \$15.00.

(3) MAGISTRATES IN THE DISTRICT COURTS MAY ASSESS COSTS IN AN AMOUNT FIXED BY RULE OF THE DISTRICT COURT.

Sec. 2445 Same; appeal; damages for delay.

(1) Costs on appeal to the circuit courts, THE COURT OF APPEALS, or to the supreme court shall be awarded in the discretion of the court.

(2) [Unchanged.]

(3) [Unchanged.]

(4) [Unchanged.]

Sec. 2451 Same; taxation in supreme court AND COURT OF APPEALS, notice.

Costs in the supreme court AND IN THE COURT OF APPEALS shall be taxed by 1 of the justices OR JUDGES or the clerk thereof, and by such other officers as the supreme court shall, by general or special order, designate for that purpose; and upon such notice to the opposite party, as shall be prescribed by the general rules of the court.

Sec. 2455 Same; taxation in ~~circuit~~ LOWER courts, municipal courts of record BY OFFICERS, notice.

Costs in the several circuit courts, DISTRICT COURTS, and in municipal courts of record having civil jurisdiction, may be taxed by any ~~officer-authorized~~ OF THE JUDGES THEREOF ~~to tax-costs-in-the-supreme-court;-by-circuit-court-commissioners;~~ or the clerks of the ~~said-circuit-and-municipal~~ courts ~~respectively;~~ and upon SUCH ~~the-like~~ notice AND PROCEEDINGS as shall be ~~required-in-the-supreme-court~~ PROVIDED BY THE RULES OF THE SUPREME COURT OR LOCAL COURT RULE.

Chapter 25 Fees AND FINES

Sec. 2513 Same; excessive amount prohibited.

No judge of any court, ~~justice~~, sheriff, BAILIFF, MAGISTRATE, or other officer whatsoever, or other person except attorneys at law to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, but such as is or shall be allowed by the laws of this state.

Sec. 2540 Same; inquests.

Each juror sworn before any coroner or ~~justice-of-the-peace~~ JUDGE, on an inquest taken by either of them on view of any dead body, is entitled to receive \$6.00 for each day's attendance and \$3.00 for each half day's attendance on such inquest, the accounts for such service to be allowed by the board of supervisors in counties not having a board of county auditors, and in counties having a board of auditors by such board, on the certificate of such coroner or ~~justice~~ JUDGE.

Sec. 3125 Sale; time, place, method.

All sales of land on foreclosure of a land contract or mortgage on real estate shall be made by THE COUNTY CLERK OR HIS DEPUTY ~~a-circuit-court-commissioner~~ of the county in which the judgment was rendered or of the county where the land or some part of the land is situated, or by some other person duly authorized by the order of the court. These sales shall be a public sale between the hour of 9 o'clock in the morning and 4 o'clock in the afternoon and shall take place at the court house or place of holding of the circuit court in the county in which the land or some part of it is situated or at any other place the court directs. The sale is subject to the provisions of section 6091.

Sec. 3130 Same; deed contents, execution, title.

(1) The ~~circuit-court-commissioner-or-other~~ person making the sale shall execute deeds specifying the names of the parties in the action, the date of the land contract or mortgage, when and where it was recorded, a description of

the premises sold, and the amount for which each parcel of land described in the deed was sold; and he shall endorse upon each deed the time it becomes operative in case the premises are not redeemed according to law. Unless the premises described in the deed or any parcel of them are redeemed within the time limited for redemption the deed shall become operative as to all parcels not redeemed, and shall vest in the grantee named in the deed, his heirs, or assigns all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage or at any time thereafter.

Recording of deed, entry of redemption.

(2) [Unchanged.]

Sec. 3150 Personal liability for mortgage debt; execution for deficiency; possession.

In the original judgment in foreclosure cases the court shall determine and adjudge which defendants, if any, are personally liable on the land contract or for the mortgage debt. The judgment shall provide that upon the confirmation of the ~~commissioner's~~ report of sale that if either the principal, interest or costs ordered to be paid, is left unpaid after applying the amount received ~~by the commissioner~~ ~~for~~ UPON the sale of the premises, the clerk of the court shall issue execution for the amount of the deficiency, upon the application of the attorney for the plaintiff, without notice to the defendant or his attorney. The court also has power to order and compel the delivery of the possession of the premises to the purchaser at the sale.

Sec. 3165 Foreclosure; ~~reference to commissioner;~~ sale in parcels.

(1) If the defendant does not bring into court the amount due, with costs, or if for any other cause a judgment is entered for the plaintiff, ~~the court may direct a reference to a circuit court commissioner to ascertain and report the situation of the premises subject to the mortgage or land contract or may itself determine the situation on oral or other testimony~~ AND IF ~~if~~ it appears that the premises can be

sold, in parcels, without injury to the interests of the parties, the judgment shall direct as much of the premises subject to the mortgage or land contract to be sold as if sufficient to pay the amount then due on the mortgage or land contract, with costs, and the judgment shall remain as security for any subsequent default.

(2) - (3) [Unchanged.]

Sec. 3252 Surplus proceeds of sale; distribution; third party claimants.

If after any sale of real estate, made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money after satisfying the mortgage on which such real estate was sold, and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer or other person on demand, to the mortgagor, his legal representative or assigns, unless at the time of such sale, or before such surplus shall be so paid over, some claimant or claimants, shall file with such person so making such sale, a claim or claims, in writing, duly verified by the oath of such claimant, his agent or attorney, that such claimant has a subsequent mortgage or lien encumbering such real estate, or some part thereof, and stating the amount thereof unpaid, setting forth the facts and nature of the same, in which case the person so making such sale, shall forthwith upon receiving such claim, pay such surplus to, and file such written claim with the clerk of the circuit court of the county in which such sale is so made; and thereupon any person or persons interested in such surplus, may apply to said court for an order ~~referring it to a circuit court commissioner of said county~~ to take proofs of the facts and circumstances contained in such claim or claims so filed, and ~~such commissioner shall, upon receiving such order, summon~~ THEREAFTER THE COURT SHALL SUMMON such claimant or claimants, party or parties interested in such surplus, to appear before him at a time and place to be by him named, and attend the taking of such proof, and such claimant or claimants or party interested who shall appear as aforesaid, may examine witnesses and produce such proof as they or either of them may see fit, ~~and the said commissioner shall, after such proofs are closed, at his earliest convenience~~

~~report-the-same-to-said-court-with-his-opinion-thereon,~~ and said court shall thereupon make an order in the premises directing the disposition of said surplus moneys or payment thereof in accordance with the rights of such claimant or claimants or persons interested.

Chapter 43 Habeas Corpus

Sec. 4304 Same; power to issue writ.

The writ of habeas corpus to inquire into the case of detention, or an order to show cause why the writ should not issue, may be issued by the following:

- (1) The supreme court, or a justice thereof;
- (2) The court of appeals, or a judge thereof;
- (3) The circuit courts, or a judge thereof;

(4) The municipal courts of record, including but not limited to the recorder's court of the city of Detroit, common pleas court, or a judge thereof.

(5) THE DISTRICT COURTS, OR A JUDGE THEREOF.

Sec. 5261 Fraud in assignment; enforcement of trust, receiver.

In case there shall be any fraud in the matter of said assignment, or if the assignee shall fail to file the same, or to qualify or to comply with any of the provisions of this chapter, or to promptly and faithfully execute said trust, any person interested therein may bring a civil action in the proper county for the enforcement of said trust. The court in its discretion may appoint a receiver or assignee therein and shall have power to order the summary examination ~~before-himself-or-a-circuit-court-commissioner~~ of any party or witness at any stage of said cause or other proceedings under this chapter, relative to the matters of said trust, and enforce attendance and the giving of testimony. Any such

receiver shall have the same rights, powers, duties and compensation and be subject to all the obligations and liabilities of an assignee.

Sec. 5301 Workers' assignment of future wages; notice to creditors and employer.

Any person employed by any person, firm or corporation, who is or may be working for wages or for a salary for others, including those paid on a commission basis or who are paid through any combination of the above, who has debts which he is unable to pay, may file a full and complete list of such creditors with the clerk of the DISTRICT court ~~of any justice court~~, municipal court or common pleas court where he lives or where he is employed, and upon making an assignment of all his future wages to the clerk of said court to continue during the pendency of the proceedings as hereinafter set forth, shall be entitled to have a notice served upon each of said creditors, which said notice shall set forth the fact that such proceedings are pending and containing a full list of his creditors and the amount alleged to be due to each creditor and shall prescribe a time within which said creditor must file a sworn proof of claim with the clerk of said court, which time shall not be less than 10 days nor more than 20 days from the date of service of such notice upon such creditor and shall be signed by the clerk of the court aforesaid, such notice to act as an immediate stay of proceedings by every creditor so served as against the wages, salary or commission so assigned. The clerk of the court shall thereupon also notify the employer of the pendency of such court proceedings in suitable form as prescribed by the court, and such notice shall constitute a notification to the employer to pay any and all moneys due or to become due to the employee from thenceforth, to the clerk of the court, unless and until served with a notice to the contrary.

Sec. 5331 Determination of amount of claim; judgment creditors.

(1) The ~~justice-or~~ judge shall fix the amount of each claim, regardless of whether or not it exceeds the jurisdiction of the court in civil actions, for the purpose of participating

such funds only, and the fixing of any such amounts shall not be or be construed to be a judgment, but any such creditor may at any time during the pendency of such proceeding or afterwards, take any legal action he may desire against said debtor and any means to collect any judgment secured, excepting to garnishee said assigned wages. In the case of a judgment creditor who is such when the petition is filed, the amount fixed shall be the amount of such judgment with costs and legal interest, less any payments thereon. When a creditor reduces his claim to judgment during the pendency of the proceedings, the amount of his claim for participating in said funds shall thereupon be fixed at the amount of such judgment and costs, but in such case payments previously made to creditors shall not be affected.

Disputed claims, notice, hearing.

(2) The ~~justice~~, judge, debtor, or any creditor, may dispute the claim of any creditor, at any time during the pendency of such proceedings. Upon the determination of the ~~justice-or~~ judge to dispute a claim, or upon the filing of a written notice of intention by the debtor or creditor to do so, the ~~justice-or~~ judge shall cause notice of hearing thereon to be served on the debtor, the creditor whose claim is disputed, and the objector, and have a hearing thereon, and may issue subpoenas to compel the attendance of witnesses as in civil actions therein.

Costs, payment.

(3) Any costs incurred by any such hearing may be taxed against either the debtor, the objector, or the creditor whose claim is disputed, as the ~~justice-or~~ judge may deem just, and may be deducted from any funds in the custody of the court which would otherwise be paid to such person against whom taxed, and paid to the person in whose favor they are taxed.

Intervention.

(4) Any person claiming to be a creditor of any person taking advantage of this chapter who has not been listed, shall have the right to intervene and prove his claim the

same as though his claim had been listed.

Chapter 58 Limitations of Actions

Sec. 5809 Noncontractual money obligations; penalty; forfeiture, judgment.

(1) [Unchanged.]

(2) The period of limitations is 10 years for actions founded upon judgments or decrees rendered in any COURT OF THIS STATE, or in any court of record of the United States; ~~or of this state~~; or of any other state of the United States, from the time of the rendition of the judgment. Within this period an action may be brought upon the judgment for a new judgment, which, in its turn, will be subject to the provisions of this section.

Chapter 60 Enforcement of Judgments

Sec. 6001. Execution; issuance.

Whenever a judgment is rendered in any court ~~of record~~, execution to collect the same may be issued to the sheriff, BAILIFF, or other proper officer of any county, DISTRICT, OR MUNICIPALITY of this state.

Comment: Since justices of the peace have been abolished, there is no apparent reason for retaining a parallel set of provisions governing execution in inferior courts, as is now the case with chapter 72. It is proposed to make chapter 60 applicable to the judgments of all courts and to repeal chapter 72.

Sec. 6002. Same; date.

(1)-(2) [Unchanged.]

Service of execution, completion after return date.

(3) When an officer has begun to serve an execution issued out of any court ~~of record~~, on or before the return day of such execution, he may complete service and return after the return date.

(4)-(5) [Unchanged.]

Sec. 6003 Same; transcript of judgment by justice of the peace.

Whenever a transcript of a judgment rendered by a ~~justice-of-the-peace~~ DISTRICT, MUNICIPAL OR COMMON PLEAS COURT is filed and docketed by the clerk of the circuit court for the county, all executions thereon shall issue out of, and under the seal of, such circuit court in the same form, as near as may be, as other executions issued out of the circuit court.

Sec. 6005. Same; successive, several.

Successive or alias executions may be issued one after another upon return of any execution unsatisfied in whole or in part, for the amount remaining unpaid thereon; and several executions may be issued at the same time to ~~sheriffs~~ OFFICERS of different counties, DISTRICTS, OR MUNICIPALITIES and enforced by them therein.

Sec. 6011 Same; stay of proceedings, effect.

When an execution has been issued, an order to stay proceedings thereon, ~~granted-by-a-circuit-court-commissioner~~, shall not prevent a levy on property by virtue of such execution, but shall only suspend a sale thereon until the decision of the proper court upon the matter.

Sec. 6026 Same; selection; survey.

(1) [Unchanged.]

(2) Whenever a levy is made upon, or THE CLERK OF ANY COURT ~~any-circuit-court-commissioner~~ advertises for sale under any judgment upon the foreclosure of any mortgage not valid as against the homestead and so stated in such judgment, the lands and tenements of a householder whose homestead has not been platted and set apart by metes and bounds, such householder shall notify the officer at the time of making such levy or at the time of such advertising for sale what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone is subject to sale under such levy or judgment. If at the time of such levy or advertising for sale such householder fails or neglects to notify the officer making the levy or advertising such property for sale, what he regards as his homestead with a description thereof, the officer making the levy or advertising such property for sale, shall call upon such householder to make his selection of a homestead out of said land, describing the same minutely. If after such notice the owner of the land fails to select his homestead, such officer may select the homestead out of said land for him and the remainder over and above that part selected by the officer or by the owner of the land, as the case may be, alone is subject to sale under such levy or judgment. If the officer making the levy or advertising the property for sale makes the selection of the homestead out of the lands levied upon or advertised for sale, he shall select lands in compact form, which shall include the dwelling house and its appurtenances thereon.

(3)-(4) [Unchanged.]

Sec. 6035 Same; perishable property, order, notice.

(1) Whenever the ~~sheriff-of-any-county~~ OFFICER by virtue of any execution, issued by a court ~~of-record~~, levies upon any perishable property, he shall proceed to sell the same at such time, place or manner as he may deem most beneficial for the interest of the defendant.

(2) [Unchanged.]

Sec. 6042 Execution sale; postponement, notice.

If, at the time appointed for the sale of any real or personal property on execution, the officer shall deem it expedient and for the interest of all persons concerned, to postpone the sale for want of purchasers or other sufficient cause, he may postpone the same from time to time until the sale is completed; and in every such case he shall make public declaration thereof at the time and place previously appointed for the sale, and ~~if-such-postponement-is-for-a longer-time-than-24-hours~~; notice thereof shall be given in the same manner as PROVIDED IN SECTION 6052 ~~the-original notice-of-such-sale-is-required-to-be-given~~.

Sec. 6052 Sale of realty; notice, display, publication; adjournment.

(1)-(2) [Unchanged.]

(3) If the sheriff or other officer adjourns the sale for more than 1 week, he shall give notice to that effect in the newspaper in which the original notice was published and shall continue to publish such notices WEEKLY throughout the adjournment. Notice of adjournment must also be displayed for a like period at the place where the sale is to be held.

Comment: Sections 6042 and 6052(3) have been amended to eliminate the apparent inconsistency noted in Grand Rapids Trust Co. v. Von Zellen, 260 Mich. 341, 244 N.W. 496 (1932).

Sec. 6056 Same; separate parcels.

(1)-(2) [Unchanged.]

(3) When any judgment debtor has an undivided interest with the same parties in several parcels of land, the ~~sheriff~~ OFFICER may levy on, advertise, and sell, as a single parcel,

the interest of the judgment debtor in any or all of such undivided and unpartitioned tracts or parcels in his bailiwick.

Sec. 6063 Acquisition of interest of original purchaser;
 time.

(1)-(4) [Unchanged.]

Same; by holder of lien on undivided interest.

(5) Any such creditor having such judgment or execution so levied or any purchaser at a subsequent ~~sheriff's~~ sale under a junior levy, whose title has not become absolute, which is a lien upon any undivided share or interest in any real estate sold under execution, may, within the same time, on the same terms, and in the same manner, acquire the title of the original purchaser to such share or interest by paying such part of the whole purchase money of such real estate as shall be in just proportion to such share or interest.

(6)-(7) [Unchanged.]

Sec. 6064 Same; purchase by second creditor from first
 creditor.

(1) [Unchanged.]

Same; purchase by third and other creditors.

(2) In the same manner any third or other creditor or purchaser at subsequent ~~sheriff's~~ sale under a junior levy, whose title has not become absolute, who might, according to the foregoing provisions, acquire the title of the original purchaser, may become a purchaser thereof, from the second, third, or any other creditor, who may have become such purchaser from any other creditor upon the same terms and conditions specified in (1).

(3)-(5) [Unchanged.]

Sec. 6067 Right to deed; assignments.

When the premises mentioned in any sheriff's OFFICER'S certificate of sale of real estate under execution is not redeemed, the legal holder of such certificate is entitled to a deed therefor at any time within 10 years from the expiration of the time of redemption. But before any assignee or his personal representative shall be entitled to such deed, every assignment under which he claims title, shall be executed and acknowledged or proved, in the same manner that deeds are required to be executed, acknowledged, or approved, to entitle the same to be recorded, and such assignee shall cause the same to be recorded in the office of the register of deeds in the county where the real estate so sold is situated. When such deed is not taken and recorded in the time limited by this chapter, the certificate of purchase shall become null and void.

Sec. 6077 Civil arrest; warrant, issuance, contents, accompanying affidavit, execution.

(1) Upon satisfactory proof of any of the grounds for civil arrest named in subsections (2) and (3) of section 6075, any judge of the court which rendered the judgment, ~~any-circuit-court-judge-or-circuit-court-commissioners;-or~~ ~~any-justice-of-the-peace-who-rendered-judgment;~~ shall issue a warrant to arrest the judgment debtor.

(2) The warrant shall issue under the hand of such ~~officer~~ JUDGE in behalf of the people of this state and shall be directed to the sheriff, ~~or-constable~~ BAILIFF OR OTHER PROPER OFFICER of the county, DISTRICT, OR MUNICIPALITY within which the issuing ~~officer~~ JUDGE resides. It shall state the nature of the judgment and command that the judgment debtor be arrested and brought before the ~~officer~~ JUDGE issuing the warrant, without delay.

(3) The warrant shall be accompanied by a copy of each affidavit, if any, on which the warrant was issued, such copies to be certified by the ~~offieer~~ JUDGE who issued the warrant, and delivered to the judgment debtor at the time of serving the warrant.

(4) The warrant shall be executed by the arrest of the judgment debtor and his delivery to the ~~offieer~~ JUDGE issuing the warrant, or, some other ~~offieer~~ JUDGE having jurisdiction of the case, and the holding of the judgment debtor until he is committed or discharged according to law.

Sec. 6078 Same; hearing; commitment.

(1) Upon delivery of the judgment debtor to the ~~offieer~~ JUDGE, such ~~offieer~~ JUDGE shall hold a hearing and, after hearing the proofs, the allegations of the judgment creditor are substantiated and the proof of the grounds for civil arrest as described in subsections (2) and (3) of section 6075 has been given, he shall direct that the judgment debtor be committed to the jail of the county in which the hearing is held, to be there detained until he shall be discharged according to law, and the judgment debtor shall be detained accordingly.

Same; controverting facts on which warrant
is based; examination; recognizance.

(2) A person arrested on civil process and brought before the proper ~~offieer~~ JUDGE for hearing, may controvert any of the facts and circumstances on which the warrant issued, and may, at his option, verify his allegations by his own affidavit; and in case of his so verifying the same, the plaintiff may examine such defendant on oath, touching any fact or circumstance material to the inquiry, and the answers of the defendant on such examination shall be reduced to writing, and subscribed by him; and the ~~offieer~~ JUDGE conducting such inquiry shall also receive such other proofs as the parties may offer, either at the time of such first appearance or at such other time as such hearing shall be adjourned to; and in case of an adjournment, such ~~offieer~~

JUDGE may take a recognizance, with surety, from the defendant, for his appearance at the adjourned meeting, and conditioned that said defendant will not meanwhile secrete, destroy, dispose of, or in any manner make away with, or put out of his possession, any of his property not exempt from sale on execution, and in case the said defendant refuses to enter into such recognizance, he shall be committed to the county jail, and there to remain until such time as the said hearing is completed.

(3) The ~~offieer~~ JUDGE conducting such inquiry has the same authority to issue subpoenas for witnesses and to enforce obedience to such subpoenas, and to punish witnesses refusing to testify, as is conferred by law upon such ~~effieers~~ JUDGES in cases of other proceedings before them, and the defendant is entitled to a jury of 6 jurors, if he demand one, to try the issue joined in the matters charged or alleged against him in the affidavit or affidavits exhibited to or before the said ~~effieer~~ JUDGE conducting such inquiry, which jury shall be selected and summoned in the same manner, as near as may be, as in the trial of criminal cases ~~before-justiees-of-the peace~~; and the same ~~offieer~~ JUDGE has the same power in relation to the selection, summoning and swearing such jury and conducting such jury trial, as ~~near-as-may-be,-as-is-given-to justiees-of-the-peace~~; in the trial of criminal cases, before them.

Sec. 6091 Sale of real estate pursuant to judgment; notice, method, fees.

Any ~~circuit-court-commissioners,-or-ether-offieer authorized-by-law,-or-any~~ person duly authorized by an order of the court to sell real estate in pursuance of any judgment, except as otherwise provided by order of the court or by a rule of court, shall give notice of, and conduct such sale as in the case of sale of real estate on execution; and the person making the sale shall have the same power and authority and be subject to the same liability as in the case of sale of realty on execution. All lawful fees for advertising and conducting such sale shall be added to the amount due on such judgment and collected therewith.

Sec. 6093 Collection of judgment; against township, village, or city.

(1) Whenever judgment is recovered against any township, village, or city, or against the trustees or common council, or officers thereof, in any action prosecuted by or against them in their name of office, ~~the justice of the peace rendering such judgment, if in a justice's court at any time after the time for appealing has elapsed, or~~ the clerk of the court ~~if such judgment is rendered in a court of record and has not been reversed,~~ shall, on the application of the party in whose favor such judgment is rendered, his attorney, executor, administrator, or assigns, make and deliver to the party so applying a certified transcript of such judgment, showing the amount and date thereof with the rate of interest thereon, and of the costs as taxed under the seal of the court, if in a court having a seal. The party so obtaining such certified transcript may file the same with the supervisor of the township, if such judgment is against the township, or with the assessing officer or officers of the city or village, if such judgment is against a city or village. The supervisor or assessing officer receiving any such certified transcript or transcripts of any judgment shall proceed to assess the amount thereof with the costs and interests from the date of rendition of judgment to the time when the warrant for the collection thereof will expire upon the taxable property of the township, city or village, as the case may be, upon the then next tax roll of such township, city or village, without any other or further certificate than such certified transcript as a part of the township, city or village tax, adding the total amount of such judgment as the case may be, to the other township, city or village taxes and assessing the same in the same column with the general township, city or village tax.

Such supervisor or assessing officer shall set forth in the warrant attached to such tax roll each judgment separately, stating the amount thereof and to whom payable, and the same shall be collected and returned in the same manner as other taxes. Such supervisor or assessing officer, at the time when he delivers such tax roll to the treasurer or collecting officer of any such township, city or village,

shall deliver to the township clerk or to the clerk or recording officer of any such city or village, a statement in writing under his hand, setting forth in detail and separately such judgment stating the amount with costs and interest as herein provided, and to whom payable. Such treasurer or collecting officer of any such township, city or village, shall collect and pay said judgment to the owner thereof or his attorney, on or before the date when such tax roll and warrant shall be returnable. In case any supervisor, treasurer, or other assessing or collecting officer neglects or refuses to comply with any of the provisions of this section he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than ~~\$100.00~~ \$1,000.00 and costs of prosecution, or imprisonment in the county jail for a period not exceeding 3 months, or both such fine and imprisonment in the discretion of the court. Nothing herein contained shall be construed to exclude other remedies given by law for the enforcement of such judgment.

Same; against village having no assessing officer.

(2) In any case where a judgment is recovered against any such village which, by reason of holding no municipal elections, or for any other reason has no available assessing officer within the jurisdiction of the court wherein such judgment is rendered, the owner of such judgment or any person knowing the facts, acting on behalf of such owner, may make an affidavit showing that the village against which any such judgment is pending and unsatisfied, has no available assessing officer within said jurisdiction, and file the same with the clerk of the ~~eireuit~~ court ~~wherein-said-judgment-is;~~ ~~or-with-the-justice-of-the-peace-having-custody-of-the-decket~~ wherein such judgment is written. The officer who makes the certified transcript shall attach thereto a copy of said affidavit, the correctness of which copy shall also be certified to in said certificate. Any party receiving such certified transcript of judgment and affidavit may file the same with the supervisor of the township in which any such village, having no assessing officer is located. The supervisor shall assess the amount of said judgment with costs and interest, upon the taxable property of said village which is without an assessing officer, and thereafter the same steps and proceedings shall be had in the premises as though it were

a judgment against the township within which said village is located, save that it shall be assessed against the property within the corporate limits of said village only.

Same; against county or county officer.

(3) [Unchanged.]

Sec. 6094 Same; against school district.

(1) [Unchanged.]

(2) If the treasurer fails to certify the judgment, the party obtaining the same, his executors, administrators, or assigns, may file with the supervisor the certificate of the ~~justice~~-or clerk of the court rendering the judgment, showing the facts which should have been certified by the treasurer.

(3)-(4) [Unchanged.]

Chapter 61 Proceedings Supplementary to Judgment.

Sec. 6104 Same; powers of court.

After judgment for money has been rendered in an action in any court of this state, the ~~circuit~~ judge may, on motion in that action or in a subsequent proceeding:

(1) Compel a discovery of any property or things in action belonging to a judgment debtor, and of any property, money, or things in action due to him, or held in trust for him;

(2) Prevent the transfer of any property, money or things in action, or the payment or delivery thereof to the judgment debtor;

(3) Order the satisfaction of the judgment out of property, money, or other things in action, liquidated or

unliquidated, not exempt from execution;

(4) Appoint a receiver of any property the judgment debtor has or may thereafter acquire; and

(5) Make any order as within his discretion seems appropriate in regard to carrying out the full intent and purpose of these provisions to subject any nonexempt assets of any judgment debtor to the satisfaction of any judgment against the judgment debtor.

The court may permit the proceedings under this chapter to be taken although execution may not issue and other proceedings may not be taken for the enforcement of the judgment. It is not necessary that execution be returned unsatisfied before proceedings under this chapter are commenced.

Sec. 6110 Discovery of assets. ~~circuit-court-commissioner.~~

~~{1}-The-judge-may-refer-the-discovery-of-assets-to-a-circuit-court-commissioner.~~

Examination of judgment debtor
or his debtor.

{2}(1) Upon an affidavit, showing to the satisfaction of the judge ~~or-commissioner~~ that any person has money or property of the judgment debtor, or is indebted to him, the judge ~~or-commissioner~~ may issue a subpoena requiring the judgment debtor or such person or both to appear at a specified time and place, and be examined on oath concerning the same, and to produce for examination any books, papers or records in his or its possession or control which have or may contain information concerning the property or income of the debtor.

Corporations; examination; adjournment.

{3}(2) A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined

as a witness in his own behalf and may produce and examine other witnesses as upon the trial of an action. The judge ~~or-commissioner~~ may adjourn any proceedings under this chapter from time to time as he thinks proper.

Witnesses; use of answers; immunity.

~~(4)~~(3) A party or witness examined under these provisions may not be excused from answering a question on the ground that his answer will tend to show him guilty of the commission of a fraud, or prove that he has been a party or privy to, or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose, or that he or another person claims to have title as against the judgment debtor or to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in any criminal proceeding or action.

Sec. 6113 Hearings; place, jury trial, mileage, expenses.

(1) Proceedings under this chapter are special proceedings, and shall be heard by the judge ~~or-commissioner~~ without a jury, except as provided in subsection (3) of section 6128. Hearings may be held in chambers.

(2) A judgment debtor may be required to attend outside the county where he resides but the court may make such order as to mileage and expenses as is just.

Chapter 62 Installment Judgments.

Sec. 6201 Judgment, payment by installments, jurisdiction, retroactive application.

(1) The judge of any court having civil jurisdiction, ~~or any-justice-of-the-peace~~, at the time of the rendition of a judgment, upon proper showing made by the defendant with both parties or their attorneys present in court, may make a written order permitting the defendant to pay such judgment

in installments, at such times and in such amounts as in the opinion of such judge ~~or-justicee~~; the defendant is able to pay.

(2) Any such judge ~~or-justicee~~ may make a written order permitting the defendant to pay any judgment previously rendered in or transcribed to his court in installments, upon compliance by the defendant with the provisions of this chapter and the rules of court.

Sec. 6205 Same; petition, notice, affidavit, garnishment.

(1) At any time after the rendition of a judgment or the filing of a transcript of a judgment the defendant may file a petition with the ~~justicee-of-the-peace;--justicee-clerk;~~ ~~or~~ clerk of the court in which the judgment was rendered, or transcript filed, requesting the ~~justicee-or~~ clerk to issue a notice, directed to the plaintiff personally, or if said plaintiff's action was filed by an agent or attorney or acted upon by an agent or attorney either at the time of the rendition of the judgment, or after, as shown by the court files in said cause, such notice may be directed to the said plaintiff with the name of such agent or attorney designated, and served on said agent or attorney of record and have the same force and effect as a notice served on said plaintiff personally.

(2)-(3)-(4) [Unchanged.]

Sec. 6215 Same; hearing and order; stay of garnishment.

(1) On the date set for the hearing, the plaintiff may have an opportunity to cross-examine the moving party as to the facts set forth in said motion, and the judge ~~or-justicee~~ may then enter an order requiring said defendant to pay to the clerk of the court or to the plaintiff direct, a certain sum of money weekly, biweekly or monthly, to apply on said judgment.

(2) [Unchanged.]

Sec. 6221 Same; alteration of amounts and times of payment of installments.

The judge ~~or-justice~~ may, on motion of either party, following due notice to the other, alter the amounts and times of payment of such installments from time to time when he may deem it advisable and fair.

Sec. 6225 Same; agreement.

A written agreement for the payment of a judgment in installments, signed by the parties, their attorneys or authorized agents of record in the judgment file in their behalf, and filed with the clerk of the court ~~or-justice~~, shall have the same force and effect as an order made by the judge ~~or-justice~~.

Sec. 6231 Same; garnishment, validity.

The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or agreement of parties, is hereby prohibited, excepting upon the written order of the judge ~~or-justice~~; and any writ of garnishment issued without such order is void; but any such order may be made following due notice to the defendant if installments are due.

Sec. 6241 Same; court with more than 1 judge; court rules.

In any court having more than 1 judge ~~or-justice~~, all powers granted and duties imposed by this chapter may be executed in accordance with the rules of said court.

CHAPTER 65. COURTS OF LIMITED JURISDICTION

SEC. 6501 COURTS OF LIMITED JURISDICTION; COURTS AFFECTED.

THE PROVISIONS OF THIS CHAPTER SHALL APPLY TO DISTRICT AND MUNICIPAL COURTS, AND TO THE COMMON PLEAS COURT OF DETROIT, EXCEPT AS OTHERWISE PROVIDED IN STATUTES AND SUPREME COURT RULES SPECIFICALLY APPLICABLE TO SUCH COURTS.

SEC. 6502 SAME; APPLICABLE STATUTES AND RULES; JURISDICTION; CONSTRUCTION OF SPECIAL STATUTES.

ALL MATTERS RELATING TO THE ORGANIZATION AND FINANCING OF SUCH COURTS, OR TO THE SELECTION, TERMS, COMPENSATION AND DUTIES OF THEIR JUDGES AND OTHER OFFICERS AND PERSONNEL, AND TO LIMITATIONS ON JURISDICTIONAL AMOUNTS SHALL BE GOVERNED BY THE STATUTES RESPECTIVELY APPLICABLE TO SUCH COURTS. IN ALL OTHER MATTERS OF CIVIL JURISDICTION, INCLUDING PLEADINGS AND MOTIONS, FORMS OF ACTION, JOINDER OF CLAIMS AND PARTIES, ISSUANCE, SERVICE AND ENFORCEMENT OF WRITS, SUBPOENAS AND OTHER PROCESS, CONTEMPTS, CONDUCT OF TRIALS, COSTS AND TAXATION OF COSTS, AND ENTRY AND ENFORCEMENT OF JUDGMENTS, THE MUNICIPAL AND COMMON PLEAS COURTS SHALL ALSO BE GOVERNED BY STATUTES AND SUPREME COURT RULES APPLICABLE TO THE DISTRICT COURTS, EXCEPT WHERE SUCH PROVISIONS CONFLICT WITH THE PROVISIONS OF STATUTES OR SUPREME COURT RULES SPECIFICALLY APPLICABLE TO SUCH MUNICIPAL AND COMMON PLEAS COURTS. IN THE STATUTES SPECIFICALLY APPLICABLE TO MUNICIPAL AND COMMON PLEAS COURTS, ALL REFERENCES TO THE POWERS OR PROCEEDINGS OF JUSTICE COURTS OR JUSTICES OF THE PEACE IN MATTERS OF CIVIL JURISDICTION SHALL BE CONSTRUED TO REFER TO THE POWERS OR PROCEEDINGS OF DISTRICT COURTS OR DISTRICT COURT JUDGES.

Comment: The purpose of this chapter is to enable the repeal of Chapters 66 through 79, which detail the powers and procedures of former justice courts and justices of the peace. The justice court provisions cannot simply be dropped without more, because they are to some extent borrowed by reference in section 9922 applicable to the district courts and in other statutes applicable to municipal and common pleas courts. Therefore, former justice court powers which are not directly covered in the district court chapters have been rewritten and retained in this chapter, and have thereby been made applicable to district, municipal, and common

pleas courts. Municipal and common pleas courts will continue to exercise former justice court powers, where needed, by application of this chapter and by borrowing from the provisions applicable to the district courts as herein provided.

SEC. 6505 SAME; GENERAL POWERS.

FOR THE PURPOSE OF EXERCISING JURISDICTION CONFERRED BY THIS CHAPTER, COURTS OF LIMITED JURISDICTION SHALL HAVE ALL SUCH POWERS AS ARE USUAL IN COURTS OF RECORD.

Source: M.C.L.A. § 600.6611.

SEC. 6511 SAME; JURISDICTION AGAINST SCHOOL DISTRICTS.

COURTS OF LIMITED JURISDICTION SHALL HAVE JURISDICTION IN ALL CIVIL ACTIONS AT LAW AGAINST SCHOOL DISTRICTS, WHEN THE AMOUNT CLAIMED OR MATTER IN CONTROVERSY SHALL BE WITHIN THEIR RESPECTIVE JURISDICTIONAL LIMITS.

Source: M.C.L.A. § 600.6605.

SEC. 6515 SAME; VENUE.

EXCEPT AS OTHERWISE PROVIDED IN STATUTES SPECIFICALLY APPLICABLE TO MUNICIPAL OR COMMON PLEAS COURTS, CIVIL ACTIONS MAY BE BROUGHT IN THE MUNICIPAL OR COMMON PLEAS COURT OF THE CITY IN WHICH THERE SHALL OCCUR ONE OR MORE OF THE PLACE REFERENCES ACCORDING TO THE VARIOUS TYPES OF ACTIONS AS PROVIDED IN SECTIONS 1601 TO 1659; PROVIDED THAT, FOR PURPOSES OF THIS SUB-SECTION, ALL REFERENCES TO "COUNTY" IN SECTIONS 1601 TO 1659 SHALL MEAN "CITY".

Comment: M.C.L.A. § 600.6645, which is the current general venue provision for justice courts, municipal courts, and the court of common pleas, is a complicated mixture of venue and territorial limits upon jurisdiction. Venue in the district courts is separately regulated by M.C.L.A. § 600.8312. Pending legislation would amend that section, so that district court venue in civil matters would be governed by Chapter 16, thereby making the venue scheme the same as that for the circuit courts. S.B. No. 275 (1971); H.B. No. 4577 (1971). Since the remaining municipal courts and the common pleas court serve as substitutes for the district courts in the cities where they have been retained,

this section would conform them to the same general venue scheme as the district courts, with the statutory places construed to refer to cities rather than districts.

SEC. 6521 SAME; SUBJECT MATTER JURISDICTION; FORMS OF ACTION ABOLISHED.

EXCEPT AS OTHERWISE PROVIDED OR LIMITED IN STATUTES SPECIFICALLY APPLICABLE TO THE SEVERAL COURTS OF LIMITED JURISDICTION, SUCH COURTS SHALL HAVE JURISDICTION OVER ACTIONS AT LAW, INCLUDING STATUTORY ACTIONS AND REMEDIES WHICH ARE NOT EQUITABLE IN NATURE, WHEN THE AMOUNT CLAIMED OR THE MATTER IN CONTROVERSY DOES NOT EXCEED THE JURISDICTIONAL LIMITS APPLICABLE IN SUCH COURTS. FORMS OF ACTION ARE ABOLISHED AND THERE SHALL BE ONE FORM OF ACTION KNOWN AS A CIVIL ACTION.

Comment: No good reason appears for perpetuating the forms of action in municipal and common pleas courts, as is done by M.C.L.A. § 600.6655, when the forms of action have now been abolished in the district courts as well as in the circuit courts.

Sec. 6525 MUNICIPAL COURTS; CIVIL VERDICTS BY 5 OF 6 JURORS.

IN EVERY MUNICIPAL COURT RETAINED AFTER THE ESTABLISHMENT OF THE DISTRICT COURT PURSUANT TO SECTIONS 9928 AND 9930, A VERDICT IN A CIVIL ACTION TRIED BY A JURY OF 6 SHALL BE RECEIVED WHEN 5 JURORS AGREE.

Source: M.C.L.A. § 600.7058, as added by P.A. 1971, E.S.B. 279.

Comment: In the district and common pleas courts, verdict by 5 of 6 jurors is provided by M.C.L.A. § 600.1352. In the retained municipal courts civil verdicts will also be by 5 of 6 jurors, effective January 1, 1972, by virtue of M.C.L.A. § 600.7058. Since the source provision falls within the chapters to be repealed, it should be saved by inclusion at this point.

Sec. 6531 MUNICIPAL COURTS; APPEALS TO CIRCUIT COURTS.

APPEALS FROM MUNICIPAL COURTS SHALL BE AVAILABLE TO THE SAME EXTENT AND SHALL BE TAKEN IN THE SAME MANNER AS APPEALS FROM DISTRICT COURTS.

Comment: The district courts and common pleas court have their own statutory provisions for appeals to circuit courts. See M.C.L.A. §§ 600.8341 - 600.8342, 728.4. Various municipal court statutes borrow from present sections 7701 and 7703, which are the basic provisions for appeals from justice courts. See M.C.L.A. §§ 730.8, 730.9, 730.106, 730.501, and 730.528. Therefore, it is necessary to have basic provisions for municipal court appeals in this chapter. The proposed section will eliminate the anachronism of review by trial de novo. See M.C.L.A. § 600.8341. There will be a right of appeal from final judgments and all other matters will be appealed only by leave. See M.C.L.A. § 600.8342. Matters of procedure and bond will be left to be regulated by court rules. See GCR 1963, 701-705.

SEC. 6536 COSTS AND FEES ON APPEALS FROM DISTRICT, MUNICIPAL AND COMMON PLEAS COURTS.

IN EVERY APPEAL FROM A DISTRICT, MUNICIPAL OR COMMON PLEAS COURT, THE APPELLANT SHALL PAY TO THE CLERK OF THE TRIAL COURT THE TAXABLE COSTS OF THE PREVAILING PARTY, TOGETHER WITH THE SUM OF \$2 FOR MAKING THE RETURN TO THE APPEAL, AND THE FURTHER SUM OF \$5 AS CLERK AND ENTRY FEE TO BE PAID BY THE CLERK OF THE TRIAL COURT TO THE CLERK OF THE CIRCUIT COURT TO WHICH THE APPEAL IS TAKEN AT THE TIME OF DELIVERING THE PAPERS PERTAINING TO THE APPEAL.

Source: M.C.L.A. § 600.7711.

Comment: The several statutes applicable to district, municipal and common pleas courts do not make special provision for appeal fees but rather borrow from the present section 7711. Therefore, it is necessary to include this provision in this chapter.

Section 2. Sections 1001 to 1077, 2120, 2121, 2573 and 6601 to 7975 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.1001 to 600.1077, 600.2120, 600.2121, 600.2573 and 600.6601 to 600.7975 of the Compiled Laws of 1948 are repealed.

Section 3. This act shall take effect _____.

Comment: Since the proposed amendments mostly eliminate anachronisms and bring the Act into conformity with actual practice, there is no apparent need for any period of implementation or notice before the amendments take effect in normal course.

RECOMMENDATION RELATING TO REVISED
UNIFORM ADOPTION ACT

The present Michigan adoption statute, M.C.L.A. §§710.1-710.14, suffers from several of the common defects which the Revised Uniform Adoption Act was intended to remedy.

(1) The Michigan statute requires that the adoption be consented to by designated natural parents, unless their rights have been terminated by a court of competent jurisdiction. M.C.L.A. §710.3a(1). But there is no clear or comprehensive provision for terminating the rights of the natural parents to consent or withhold consent for purposes of adoption. The probate courts may terminate parental rights as to neglected children, M.C.L.A. §§712A.2(b), 712A.18, 712A.20, but the statute does not explicitly state that this constitutes termination for purposes of adoption. Moreover, the statutory standards for determining a parent's neglect may not include everything relevant to the best interests of the child for purposes of adoption. Similarly, the separate provisions for appointment of guardians for children on the basis of parental incompetency, M.C.L.A. §703.1, may not cover every circumstance in which parental rights should be terminated in the child's best interests for purposes of adoption.

The proposed Uniform Act contains an integrated provision for terminating parental rights for purposes of adoption, either independently or in connection with the adoption proceeding. Section 19.

(2) The Michigan statute contains no comprehensive provision as to who is eligible to adopt. By implication, adoption by married individuals is limited to cases in which both spouses join in the petition. M.C.L.A. §710.1. Thus where the spouses are legally separated but not divorced, neither spouse can adopt a child without the consent of a person with whom the adopting parent no longer has any relations.

Section 3 of the proposed Uniform Act clarifies the list of persons entitled to adopt a child. In subsection (1) a husband and wife acting together are entitled to adopt even though one or both of them is a "minor," that is, under the

age of contracting as provided in this act or in general law. The act lists several cases where a married person may adopt a child without the other spouse joining as petitioner and it lists one situation in which an individual may not be adopted--where the individual is a spouse of the petitioner. The act permits an adult unmarried person to adopt a child; it permits a married individual without the other spouse joining as a petitioner to adopt an individual if the other spouse is a parent of the person to be adopted and consents to the adoption or the petitioner and the other spouse are legally separated; or the nonjoining spouse is excused from participation by the court by reason of circumstances constituting an unreasonable withholding of consent. Thus, a married individual whose spouse is a missing person or is incapacitated may adopt an individual without the consent of the other spouse.

(3) The Michigan statute fails to terminate an adoptive child's right to inherit from or through his natural parents. M.C.L.A. §710.9. This tends to invite both legal and illegal attacks upon the secrecy of the adoption proceedings.

Section 14 of the proposed Uniform Act provides that on adoption a child becomes a stranger to his natural parents and their families and becomes a child of the adopting parents and their families.

(4) The Michigan statute attempts to deter black market adoptions by making it a misdemeanor to pay or give anything except such charges and fees as may be approved by the probate court. M.C.L.A. §§710.13, 710.14. Experience has shown that such criminal sanctions are not the most effective deterrent. And occasionally such provisions may stand in the way of the child's best interests, where adoptive parents who would be good for the child have unwittingly paid some illegal consideration.

The proposed Uniform Act attempts to deal with black market operations in several ways. Section 10 requires a report by the adopting parent of all expenditures made on his behalf in connection with the adoption. This should discourage some of the abuses which occur in private placements.

But it does not invalidate the adoption nor make it impossible for the petitioner to adopt the child because, as an example, in return for the prospective mother's promise to consent to adoption he agreed and paid medical expenses of the mother. The Act does not prohibit private placements of children, but tends to discourage them by providing incentives for institutional placements. An investigation of the home of the adopting parents is not required after the petition is filed if a child placement agency joins in the petition for adoption. A petition for adoption may not be granted until six months after the designated state agency has been informed of petitioner's custody of the child in private placement cases, but in an agency placement adoption may be granted in six months after petitioner acquires custody of the child.

A more detailed analytical comparison of the proposed Uniform Act and present Michigan law is contained in the Study Report beginning at page 64 , infra.

The proposed bill follows:

PROPOSED BILL

A bill to provide for the adoption of individuals and for the relinquishment and termination of parental rights; to establish the status and rights of adopted children and adoptive parents; to provide for the jurisdiction and procedure of courts in connection therewith; to provide for the recognition of foreign decrees affecting adoption; to provide for the payment of subsidies to adopting parents; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Definitions.

As used in this act, unless the context otherwise requires,

- (1) "child" means a son or daughter, whether by birth or by adoption;
- (2) "Court" means the probate court of this State, and when the context requires means the court of any other state empowered to grant petitions for adoption;
- (3) "minor" means an individual under the age of 18 years.
- (4) "adult" means an individual who is not a minor;
- (5) "agency" means any person certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption;
- (6) "person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

Section 2. Who May Be Adopted.

Any individual may be adopted.

Section 3. Who May Adopt.

The following individuals may adopt:

(1) a husband and wife together although one or both are minors;

(2) an unmarried adult;

(3) the unmarried father or mother of the individual to be adopted;

(4) a married individual without the other spouse joining as a petitioner, if the individual to be adopted is not his spouse, and if

(i) the other spouse is a parent of the individual to be adopted and consents to the adoption; or

(ii) the petitioner and the other spouse are legally separated; or

(iii) the failure of the other spouse to join in the petition or to consent to the adoption is excused by the Court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

Section 4. Venue, Inconvenient Forum, Caption.

(a) Proceedings for adoption must be brought in the probate court for the county in which, at the time of filing or granting the petition, the petitioner or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located.

(b) If the court finds in the interest of substantial justice that the matter should be heard in the probate court for another county, the court may transfer, stay or dismiss the proceeding in whole or in part on any conditions that are just.

(c) The caption of a petition for adoption shall be

styled substantially "In the Matter of the Adoption of _____.
The person to be adopted shall be designated in the caption under the name by which he is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known shall not be disclosed in the petition, the notice of hearing, or in the decree of adoption.

Section 5. Persons Required to Consent to Adoption.

(a) Unless consent is not required under section 6, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

(1) the mother of the minor;

(2) the father of the minor, if the father was married to the mother at the time the minor was conceived or at any time thereafter, the minor is his child by adoption, or he has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought;

(3) any person lawfully entitled to custody of the minor or empowered to consent;

(4) the court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5) the minor, if more than 10 years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and

(6) the spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

Section 6. Persons as to Whom Consent and Notice Not Required.

(a) Consent to adoption is not required of:

(1) a parent who has deserted a child without affording means of identification, or who has abandoned a child;

(5) the marital status of the petitioner, including the date and place of marriage, if married;

(6) that the petitioner has facilities and resources, including those available under a subsidy agreement or subsidy order, suitable to provide for the nurture and care of the minor to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted;

(7) a description and estimate of value of any property of the individual to be adopted; and

(8) the name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his consent normally required to the adoption.

(b) A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk.

Section 10. Report of Petitioner's Expenditures.

(a) Except as specified in subsection (b), the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The report shall show any expenses incurred in connection with:

(1) the birth of the minor;

(2) placement of the minor with petitioner;

(3) medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and

(4) services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person.

(b) This section does not apply to an adoption by a step-parent whose spouse is a natural or adoptive parent of the child.

(c) Any report made under this section must be signed and verified by the petitioner.

Section 11. Notice of Petition, Investigation and Hearing.

(a) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least 20 days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to (1) the department of social services; (2) any agency or person whose consent to the adoption is required by this act but who has not consented; and (3) a person whose consent is dispensed with upon any ground mentioned in paragraphs (1), (2), (6), (8), and (9) of subsection (a) of section 6 but who has not consented. The notice to the department of social services shall be accompanied by a copy of the petition.

(b) An investigation shall be made by the department of social services or any other qualified agency or person designated by the court to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.

(c) A written report of the investigation shall be filed with the court by the investigator before the petition is heard.

(d) The report of the investigation shall contain an evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.

(e) Unless directed by the court, an investigation and report is not required in cases in which an agency is a party or joins in the petition for adoption, a step-parent is the petitioner, or the person to be adopted is an adult. In other cases, the court may waive the investigation only if it appears that waiver is in the best interest of the minor and that the adoptive home and the minor are suited to each other. The department of social services which is required to consent to the adoption may give consent without making the investigation.

(2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree;

(3) the father of a minor if the father's consent is not required by Section 5(a)(2);

(4) a parent who has relinquished his right to consent under section 19;

(5) a parent whose parental rights have been terminated by order of court under section 19;

(6) a parent judicially declared incompetent or mentally defective if the Court dispenses with the parent's consent;

(7) any parent of the individual to be adopted, if the individual is an adult;

(8) any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably; or

(9) the spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(b) Except as provided in section 11, notice of a hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

Section 7. How Consent is Executed.

(a) The required consent to adoption shall be executed at any time after the birth of the child and in the manner following:

(1) if by the individual to be adopted, in the presence of the court;

(2) if by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgements;

(3) if by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgements;

(4) if by a court, by appropriate order or certificate.

(b) A consent which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

Section 8. Withdrawal of Consent.

(a) A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

(b) A consent to adoption may be withdrawn prior to the entry of a decree of adoption if the court finds, after notice and opportunity to be heard is afforded to petitioner, the person seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the individual to be adopted and the Court orders the withdrawal.

Section 9. Petition for Adoption.

(a) A petition for adoption shall be signed and verified by the petitioner, filed with the clerk of the court, and state:

(1) the date and place of birth of the individual to be adopted, if known;

(2) the name to be used for the individual to be adopted;

(3) the date petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor;

(4) the full name, age, place and duration of residence of the petitioner;

(f) The department of social services or the agency or persons designated by the court to make the required investigation may request other departments or agencies within or without this state to make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the court and shall make similar investigations and reports on behalf of other agencies or persons designated by the courts of this state or another place.

(g) After the filing of a petition to adopt an adult the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the persons involved.

(h) Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice shall be filed with the court before the petition is heard.

Section 12. Required Residence of Minor. A final order of adoption shall not be issued and an interlocutory order of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home for at least 6 months after placement by an agency, or for at least 6 months after the department of social services or the court has been informed of the custody of the minor by the petitioner, and the department or court has had an opportunity to observe or investigate the adoptive home.

Section 13. Appearance; Continuance; Disposition of Petition.

(a) The petitioner and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the court for good cause shown.

(b) The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.

(c) If at the conclusion of the hearing the court determines that the required consents have been obtained or excused and that the adoption is in the best interest of the individual to be adopted, it may (1) issue a final order of adoption; or (2) issue an interlocutory order of adoption which by its own terms automatically becomes a final order of adoption on a day therein specified, which day shall not be less than 6 months nor more than one year from the date of issuance of the order unless sooner vacated by the court for good cause shown.

(d) If the requirements for an order under subsection (c) have not been met, the court shall dismiss the petition and determine the person to have custody of the minor, including the petitioners if in the best interest of the minor. In an interlocutory order of adoption the court may provide for observation, investigation, and further report on the adoptive home during the interlocutory period.

Section 14. Effect of Petition and Order of Adoption.

(a) A final order of adoption and an interlocutory order of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his relatives, including his natural parents, so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and

(2) to create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

(b) Notwithstanding the provisions of subsection (a), if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.

(c) An interlocutory order of adoption, while it is in force, has the same legal effect as a final order of adoption. If an interlocutory order of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.

Section 15. Appeal and Validation of Adoption Order

(a) An appeal from any order rendered under this act may be taken in the manner provided by section 45a of Act No. 288 of the Public Acts of 1939, as added by Act No. 143 of the Public Acts of 1970, being section 701.45a of the Compiled Laws of 1948.

(b) Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor, or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one year period.

Section 16. Hearings and Records in Adoption Proceedings ; Confidential Nature.

(a) Notwithstanding any other law concerning public hearings and records,

(1) all hearings held in proceedings under this act shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representa-

tives of the agencies present to perform their official duties;
and

(2) all papers and records pertaining to the adoption whether part of the permanent record of the court or of a file in the department of social services or in an agency are subject to inspection only upon consent of the court and all interested persons; or in exceptional cases, only upon an order of the court for good cause shown; and

(3) no person in charge of adoption records shall disclose the names of the natural or adoptive parents of a child unless ordered to do so by the court for good cause shown, except to meet requirements of the director of public health for the purpose of creating a new certificate of birth in the adoptive name and sealing the original certificate of birth.

Section 17. Recognition of Foreign Decree Affecting Adoption.

An order, judgment or decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the order, judgment or decree were issued by a court of this state.

Section 18. Application for New Birth Record.

(a) Within 30 days after an adoption order becomes final, the clerk of the court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the order to the director of public health of this state for statistical purposes.

(b) The director of public health shall furnish to the adopting parents a certified copy of the new birth certificate which shall not disclose the adoption of the child. A birth certificate issued to an adopted child shall make no reference to adoption and shall conform as nearly as possible to the appearance of birth certificates issued in other cases.

Section 19. Relinquishment and Termination of Parent and Child Relationship.

(a) The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or prior to an adoption proceeding as provided in this section.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent,

(1) in the presence of a representative of an agency taking custody of the child, whether the agency is within or without the state or in the presence and with the approval of a judge of a court of record within or without this state in which the minor was present or in which the parent resided at the time it was signed, which relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later; and the relinquishment is invalid unless it states that the parent has this right of withdrawal; or

(2) in any other situation if the petitioner has had custody of the minor for 2 years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.

(c) In addition to any other proceeding provided by law, the relationship of parent and child may be terminated by a court order issued in connection with an adoption proceeding under this act on any ground provided by other law for termination of the relationship, and in any event on the ground (1) that the minor has been abandoned by the parent, (2) that by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper parental care and control, or subsistence, education, or other care or control necessary for his physical, mental, or emotional health or morals, or, by reason of physical or mental incapacity the parent is unable

to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof the minor is suffering or probably will suffer serious physical, mental, moral, or emotional harm, or (3) that in the case of a parent not having custody of a minor, his consent is being unreasonably withheld contrary to the best interest of the minor.

(d) For the purpose of proceeding under this act, an order, judgment, or decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the order, judgment or decree and with any required notice of an adoption proceeding other than as provided in this section.

(e) A petition for termination of the relationships of parent and child made in connection with an adoption proceeding may be made by:

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) any other person having a legitimate interest in the matter.

(f) Before the petition is heard, notice of the hearing thereon and opportunity to be heard shall be given the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and, in the discretion of the court, a person appointed to represent any party.

(g) Notwithstanding the provisions of subsection (b), a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship under this section may be vacated by the court upon

RECOMMENDATION RELATING TO WAIVER OF MEDICAL PRIVILEGE

Present Michigan law prohibits a medical practitioner's disclosing any necessary information which he may have acquired in attending any patient in his professional capacity. M.C.L.A. §600.2157. However, this statutory privilege against disclosure is waived if the patient brings an action to recover for personal injuries, or for malpractice, and produces the treating physician as a witness on his own behalf. Ibid. By court rule, the privilege is also waived whenever the plaintiff or his attorney request a copy of the report of medical examination ordered for the defendant. GCR 1963, 311.2(2).

Most people who have studied the problem agree that these waivers do not go far enough and that the patient should be deemed to have waived his privilege against relevant disclosures whenever he commences an action which places in issue the physical or mental condition for which he was treated by the physician. One who seeks recovery on the basis of his physical condition should not be permitted to withhold relevant facts by a claim of privilege after the action has been commenced. As a practical matter, in most cases which are settled, the plaintiff must voluntarily waive the privilege, in order to furnish the defendant with the appropriate information needed to evaluate the claim.

The proposed amendment does not introduce a radical new concept of waiver, but would merely extend the present statutory waiver to a more logical application. California, Hawaii, Illinois, Kansas, Nebraska, Pennsylvania and Virginia provide by statute that institution of suit waives plaintiff's medical privilege. Alaska and Indiana have adopted this position by common law decisions, and Montana has reached the same result by court rule. The American Law Institute Model Code on Evidence also provides for such a waiver. See 49 Mich. St. B.J., Sept. 1970, p.33. Proposals for extending the waiver to commencement of the action have been approved by the Michigan State Bar's Committee on Medicolegal Problems in 1965, 44 Mich. St. B. J., Sept. 1965, p.62, by the Committee on Civil Procedure in 1968, 47 Mich. St. B. J., Sept. 1968,

P.31, and by the Committee on Court Administration in 1970 and 1971, 49 Mich. St. B.J., Sept. 1970, p.33, and 50 Mich. St. B. J., Sept. 1971, p.525.

The principal thrust of the proposed amendment which follows is to advance the statutory waiver of privilege to the time when the action is commenced putting in issue the covered medical facts. Subsidiary changes are also proposed to make clear (1) that the waiver applies to every kind of action in which the patient puts his condition in issue, (2) that it applies to counterclaims, crossclaims, or third-party claims, as well as primary claims, and (3) that it applies to wrongful death actions brought by the deceased patient's personal representative.

The proposed bill follows:

motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

Section 20. Uniformity of Interpretation.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 21. Short Title.

This act may be cited as the Revised Uniform Adoption Act.

Section 22. Subsidies to Adopting Parents, Support, Pre-existing Mental or Physical Conditions, Amount, Continuance, Termination, Source.

(a) Notwithstanding the provisions of this or any other act, when a petition has been filed to adopt a child who has been in foster care for not less than 4 months, a governmental unit or agency may pay either or both of the following subsidies to the adopting parents:

(1) for support of the child, a subsidy not to exceed \$600.00 per year.

(2) for medical, surgical, hospital and related expenses due to a physical or mental condition of the child which existed before the adoption, a subsidy, which may be ordered at any time.

(b) The probate court shall enter an order fixing the amount of the subsidies and containing a finding by the court that after taking testimony from the social agency responsible for placing the child for adoption that efforts have been made to place the child and it has no notice of any other persons who are presently willing and qualified to adopt the child without subsidies.

(c) The subsidies shall continue until the child reaches 18 years of age, becomes emancipated or dies, or until the

further order of the court, whichever occurs first. The subsidies shall continue although the adopting parents leave the state. As a condition for continuation of the subsidies, the court shall require the adopting parents to file a sworn report with the court at least once each year as to the location and other matters relating to the child as the court determines, but not including the financial condition of the parents. On the basis of such report or information received by the court at any time indicating changed conditions, other than financial conditions, the subsidies may be discontinued by order of the court. The subsidies shall not effect the legal status of the child, nor the rights and responsibilities of the adoptive parents as provided by law.

(d) The subsidies shall be paid from the same public funds and in the same manner as foster care payments as provided by section 18b of Act No. 280 of the Public Acts of 1939, as added by Act No. 113 of the Public Acts of 1955, being section 400.18b of the Compiled Laws of 1948.

Section 23. Repeal and Effective Date.

(a) Sections 1 through 14 of chapter 10 of Act No. 288 of the Public Acts of 1939, as amended, being sections 710.1 through 710.14 of the Compiled Laws of 1948, are repealed as of the effective date of this act.

(b) Any adoption or termination proceedings pending on the effective date of this act is not affected thereby.

Section 24. Time of Taking Effect.

This act shall take effect.....

PROPOSED BILL

A bill to amend section 2157 of Act No. 236 of the Public Acts of 1961, entitled "Revised Judicature Act of 1961", being section 600.2157 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

Section 1. Section 2157 of Act No. 236 of the Public Acts of 1961, being section 600.2157 of the Compiled Laws of 1948, is amended to read as follows:

Sec. 2157. No person duly authorized to practice medicine or surgery shall be allowed to disclose any information which he may have acquired in attending any patient in his professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, however, That in case such patient OR HIS PERSONAL REPRESENTATIVE shall bring any action OR CLAIM ~~against-any-defendant~~ to recover for any personal injuries, FOR WORKMEN'S COMPENSATION, ~~or~~ for any malpractice, OR FOR ANY OTHER CAUSE WHICH PLACES IN ISSUE HIS PHYSICAL OR MENTAL CONDITION, ~~if-such-plaintiff-shall-produce any-physician;-as-a-witness-in-his-own-behalf;-who-has-treated him-for-such-injury;-or-for-any-disease-or-condition;-with reference-to-which-such-malpractice-is-alleged;~~ he shall be deemed to have waived the privilege hereinbefore provided for, as to any or all ~~other~~ physicians who may have treated OR EXAMINED him ~~for-such-injuries;-disease-or~~ IN CONNECTION WITH THE PHYSICAL OR MENTAL condition THEREBY PLACED IN ISSUE: Provided further, That after the decease of such patient, in a contest upon the question of admitting the will of such patient to probate, the heirs at law of such patient, whether proponents or contestants of his will, shall be deemed to be personal representatives of such deceased patient for the purpose of waiving the privilege hereinbefore created.

RECOMMENDATION RELATING TO VENUE IN CIVIL ACTIONS AGAINST NON-RESIDENT CORPORATIONS

Under current law, some civil actions against a non-resident corporation have to be brought in the county where the defendant is "established or located". M.C.L.A. §600.1621. A non-resident corporation is "established" in any county in which it has its principal place of business or has its registered office. M.C.L.A. §600.1625(b). It is "located" in any county in which it is doing business or has a place of business if the plaintiff is also established in that same county. M.C.L.A. §600.1625(e).

These provisions may apply awkwardly to a non-resident corporation which does not have a place of business in Michigan but has a registered office with the Corporation Trust Company in Detroit (where many non-resident corporations maintain their registered office). Unless such a corporation happens to be doing business in the same county where plaintiff is established, actions against it may have to be brought in Wayne County, where plaintiff may have no relevant connection and where the case will suffer delay from docket congestion.

For example, assume that a plaintiff residing in Wexford County has a claim against a non-resident corporation which has no place of business in Michigan but which maintains a registered office in Detroit. If defendant's products reached Wexford County through intermediate distributors, wholesalers, and retailers, so that defendant is not doing business there directly, the action may have to be brought in Wayne County, by reason of the fact that defendant's registered agent happens to be located there. But there is no a priori reason for making that the preferred forum over Wexford County where plaintiff resides. The latter would certainly be a more efficient alternative insofar as the distribution of judicial business is concerned. Therefore, the statute should be amended so that Wayne County is merely an alternative venue and not the only venue in such cases.

This would be accomplished by the proposed bill which follows. As applied to a non-resident corporation which does not have its principal place of business in Michigan but has a registered agent here, the amended statute would make the county where the plaintiff is established available for venue, as an alternative to the county in which the registered agent is located. Nothing else in the statute would be changed.

PROPOSED BILL

A bill to amend sections 1621 and 1625 of Act No. 236 of the Public Acts of 1961, entitled "Revised Judicature Act of 1961," as amended by Act No. 333 of the Public Acts of 1969, being sections 600.1621 and 600.1625 of the Compiled Laws of 1948.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 1621 and 1625 of Act No. 236 of the Public Acts of 1961, as amended by Act No. 333 of the Public Acts of 1969, being sections 600.1621 and 600.1625 of the Compiled Laws of 1948, are amended to read as follows:

Sec. 1621. Except for the actions listed in sections 1605, 1611 and 1615, the county in which any defendant is established or located, or if no defendant is established ~~or-located~~ in the state, the county in which the plaintiff is established OR IN WHICH THE DEFENDANT IS LOCATED is a proper county in which to commence and try an action.

Sec. 1625. For purposes of all matters pertaining to venue:

(a) A person is established in any county in which he has a dwelling place but not his transient or temporary lodging.

(b) Both domestic and foreign corporations are established in any county in which the corporation ~~{i}~~ has its principal place of business ~~or-{ii}-has-its-registered office.~~

(c) Partnerships, limited partnerships, partnership associations, and unincorporated voluntary associations, composed of residents, non-residents, or both, are established in any county in which they have their principal place of business.

(d) Fiduciaries appointed by court order, including but not limited to executors, administrators, trustees and receivers, are established in the county of their appointment, as well as the county of their dwelling place.

(e) Persons, domestic and foreign corporations, and partnerships, limited partnerships, partnership associations, and unincorporated voluntary associations, composed of residents, non-residents or both, are located in any county in which they (i) have a place of business if a plaintiff is established therein or (ii) are doing business if a plaintiff is established therein. DOMESTIC AND FOREIGN CORPORATIONS ARE ALSO LOCATED IN ANY COUNTY IN WHICH THEY HAVE A REGISTERED OFFICE.

Section 2. This act shall apply to actions commenced after its effective date, even if the cause of action arose prior thereto. Actions commenced prior to the effective date of this act shall not be affected thereby.

For the court to enter such an order, it must first satisfy itself as to the validity of the necessary consents (as specified in M.C.L.A. §710.3), the general suitability of the person or persons petitioning for adoption, the suitability of the child as the proper subject of adoption by the person or persons petitioning, and finally that the best interests of such child will be served by the adoption. In order to reach this determination, the court is required to direct that full investigation be made by the county agent or probation officer, or by a placement agency licensed by the state, or by the Michigan children's institute, or the State Department of Social Welfare. The written report of such an investigation must be filed in the cause within 6 months. M.C.L.A. §710.5.

The factors to be considered by the investigation are the physical and mental health, emotional stability, and personal integrity of the petitioner and the ability of the petitioner to promote the welfare of the child; the physical and mental condition of the child; the child's family background; the reasons for the child's placement away from his parents, and their attitude towards the proposed adoption; the suitability of the adoption of this child by this petitioner, taking into account the child's own attitude toward the adoption in any case in which the child's age makes this feasible; and finally, the child's previous environmental religious doctrine where the child has reached the age of 7 years or older, unless the child has been waiting six months or more for an adoptive home. The scope and detail of the written report indicate that it plays a considerable role in the court's determination although the court is not bound by its findings.

Perhaps more critical to the order terminating rights of the child's natural parents is the execution of the necessary consents by the natural parents or the persons in loco parentis. It is this statutory requirement which imposes the greatest practical limitation upon adoption. M.C.L.A. §710.3.

If the necessary consents cannot be elicited, either they must be dispensed with by termination of parental rights or the adoption proceeding must fail. There is no provision under the Michigan statute for dispensing with the consent of an unfit parent on grounds of abandonment, neglect, or the like. Termination of parental rights can only be secured by the appointment of a guardian of the person of the child by the judge of probate, M.C.L.A. §703.1(2), or in a hearing for neglected and dependent children within the equitable jurisdiction of the juvenile court. M.C.L.A. §712A.2, §712A.18, §712A.20. However, the probate court will have jurisdiction of the persons and the subject matter for the purpose of hearing the complaint as to neglect of minor children, only when the children reside in the county, the essential parties have had notice and the petition suffi-

ciently alleges neglect and dependency of the children.
Fritts v. Krugh, 1958, 92 N.W. 2d 604, 354 Mich. 97.

Limiting the termination of parental rights to these two proceedings is regrettably an inadequate approach to this problem. The provision for the appointment of a guardian of the person of the child is largely limited to situations in which the child is either an orphan or the parent or parents are found to be incompetent. M.C.L.A. §703.1(2). In the hearing for neglected and dependent children, the entry of an order for permanent custody must be based upon conduct which establishes or seriously threatens neglect of the child for the long run future. Less extensive neglect may only warrant temporary custody, which does not result in the termination of parental rights. M.C.L.A. §712A.2, §712A.18, §712A.20. The inadequacy of these provisions for the purposes of adoption is apparent and unless the rights of the natural parents have been lost, severed, or relinquished, the petition for adoption must fail. Shinkonis v. Johnstone (1945) 20 N.W. 2d 159, 312 Mich. 199.

Once the order of adoption has been entered, M.C.L.A. §710.7, the person or persons so adopting the child thereupon stand in place of a parent or parents to such child in law, in all respects as though the adopted child had been the natural child of the adopting parents, and are liable to all the duties and entitled to all the rights of parents thereto. M.C.L.A. §710.9. As regards intestate succession to property, the child thereupon becomes the heir at law of the adopting person or persons, as well as the heir at law of the lineal and collateral kindred of the adopting person or persons. However, the child's right to inherit from or through his natural parents is in no way affected. In re Carpenter's Estate (1950) 41 N.W.2d 349, 317 Mich. 195. Finally, on the death of the adopting parents, custody of the adopted child is determined as though the child was natural born of the adopting parents.

IV. COMPARISON AND ANALYSIS

Who may adopt.

The Michigan statute is silent on this point, however, the age and other qualifications of petitioners are noted in 4 Moore & Denison §2686;

The petitioner must therefore be either twenty-one years of age or of sufficient age and maturity to voluntarily contract for parental rights and obligations toward the child in question. He must desire to adopt and in addition have the approval of his guardian and the guardianship court. He must apply personally and also by joint action with or through his personal guardian. An incompetent cannot adopt a child for the will to establish such relationship cannot be established

Study Report:
The Michigan Adoption Statute and the
Revised Uniform Adoption Act Compared

Ernest I. Reveal*

I. INTRODUCTION

This memorandum was prepared for the use of the Michigan Law Revision Commission in its consideration of the Revised Uniform Adoption Act, prepared by the National Conference of Commissioners on Uniform State Laws. The intention has not been to furnish an exhaustive study of either the Revised Uniform Act or the Michigan adoption statute, but rather to highlight and compare the principal features of each.

The memorandum has been structured in the following manner. Sections II and III have been devoted to a general description of the Revised Uniform Act and Chapter X of the Michigan Probate Code. In Section IV the two have been compared in their major aspects. In Section V a few concluding observations regarding the Revised Uniform Act have been made and its adoption by the Michigan legislature is recommended. The Appendix furnishes the text of the Revised Uniform Act, as amended, along with the comments by the draftsmen and is supplemented by a section by section designation of the comparable provision under Michigan laws.

II. THE REVISED UNIFORM ADOPTION ACT

The Revised Uniform Act was approved by the National Conference of Commissioners on Uniform State Laws in 1969 and was recently amended in August of 1971. As of this writing, only two states, Montana and Oklahoma, have substantially adopted the Uniform Adoption Act, both having done so prior to the 1969 revision. In drafting the Revised Act, the following shortcomings of many state adoption acts were noted by the Commissioners:

- (1) The absence of a procedure whereby the right of natural parents to consent or withhold consent could be terminated. Those acts containing provisions to meet this need were in many instances believed inadequate because of their focus upon the fault of a particular type of parent.

*This study was made at the request of the Michigan Law Revision Commission by a Research Assistant. The opinions, conclusions and recommendations are those of the author and do not necessarily represent or reflect the opinions, conclusions and recommendations of the Commission.

- (2) The lack of a full list of persons eligible to adopt a child. For example, many states will not permit either spouse to adopt a child without the consent of the person with whom the adopting parent no longer has any legal relations, as in a marriage in which the spouses are legally separated.
- (3) The lack of clarity under many existing statutes on the effect of the petition for adoption on the adoption decree itself. For example, it is generally unclear whether a person who has a petition for adoption pending is the proper party plaintiff for damages in a tort injury of the minor child.

III. CHAPTER X OF THE MICHIGAN PROBATE CODE*

The right of adoption was not recognized at English common law. In *re Smith's Estate*, 1955, 72 N.W.2d 287, 343 Mich. 291, 53 A.L.R.2d 847. Consequently, adoption proceedings and resulting incidents depend wholly upon statute. In *re Loake's Estate*, 1948, 32 N.W.2d 10, 320 Mich. 674. The essence of the present Michigan statute was approved by the legislature in 1945 and has been modified by amendments in 1947, 1952, 1953, 1955, 1957, 1968, 1969, and 1970.

Jurisdiction is lodged exclusively in the probate courts. M.C.L.A. §710.1. The principal object of the statute is to terminate the rights of the natural parents or the persons in loco parentis except those of a natural parent who is also a petitioner in the adoption proceeding, M.C.L.A. §710.5, and to create a new parent and child relationship with all the attendant rights, privileges, and duties. M.C.L.A. §710.9. Change of the name of the child and succession to the inter-state property of the new parents are incidents to the adoption proceeding. In *re Session's Estate*, 1888, 38 N.W.2d 249, 70 Mich. 297, 14 Am. St. Rep. 500.

The statute establishes a two step proceeding whereby the rights of child's natural parents are terminated by order of the probate court, M.C.L.A. §710.6, making the child a ward of the court. The final order of adoption is entered one year thereafter, unless the one year period is waived by the court where it believes that the best interests of the child will be served thereby. M.C.L.A. §710.7.. As the entry of the final order of adoption will frequently be a mere formality, if not already dispensed with by the probate court, the critical point in the adoption proceeding is the order terminating the rights of the child's natural parents.

* M.C.L.A. §§710.1 et. seq., M.S.A. §§ 27.3178 et. seq.

by his guardian. Citizenship is not a prerequisite but is of course most desirable, if it materially affects the welfare of the child or the suitability of the adoptive proposal. A minor mother is inferentially authorized by statute to join her adult husband in petitioning to adopt her own child. It is to be noted that the statute does not confine adoption to married couples and that legally it is possible for a single person but not a separate spouse, other than a spouse adopting his spouse's child, to adopt a child.

The Revised Uniform Act (Section 3) differs in several respects. A minor is permitted to adopt only when married, either to an adult or a minor. It also permits a married individual to adopt without being joined by his spouse in the petition where the other spouse is a parent of the individual to be adopted; or the petitioner and the other spouse are legally separated; or when the failure of the other spouse to join in the petition is excused by the Court. The act lists only one situation in which an individual may not be adopted-- when the individual is the spouse of the petitioner. Though the rationale underlying this exception is not set forth in the comment following the text, it is presumably related to problems of intestate succession created thereby. See Adopting Wife as Heir at Law, 4 Wayne Law Review 169 (1958).

Who May Be Adopted.

The Michigan statute, M.C.L.A. §710.1, is clearly limited to the adoption of minor children, while the Revised Uniform Act (Section 2) provides for the adoption of adults as well as children. Differing requirements for consent and investigation apply under the Revised Uniform Act where the individual to be adopted has reached the age of majority.

Who Must Consent.

The Michigan statute, M.C.L.A. §710.3, requires the consent of the natural parents (or in the case of child born out of wedlock, the mother) or those persons standing in loco parentis. In addition, if the child is ten years of age or older his consent is required as well. Although the statute does not acknowledge the father of an illegitimate child as having any parental rights, a recent Michigan decision noted that the probate court may in its proceedings consider the rights and interest of the father or other persons "in loco parentis" of an illegitimate child in determining whether an adoption will serve the best interest of the child and may consider the parental suitability of the father. In re Mark T., 1967,

Where the adoption of a minor is concerned, the Revised Uniform Act (Section 5) requires the consent of the mother of the minor and the father of the minor if the father was married to the mother at the time child was conceived or at any time thereafter, of it the minor is his child by adoption, or if he has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought. Alternatively, consent is required of the persons in loco parentis. In addition, the consent of the child is required if the child is ten years of age or older, unless the court in the best interest of the minor dispenses with the minor's consent. The flexibility in dispensing with the consent of the minor recognizes that cases will arise in which the child does not know that he is a stepchild and in terms of his best interest, it would be better not to disclose to him at the time of the adoption proceeding that he is being adopted by his stepfather. Lastly, when the minor to be adopted is married, the consent of the minor's spouse is also required.

In a petition for the adoption of an adult, the Revised Uniform Act (Section 5) requires only the consent of the adult and the adult's spouse.

The Revised Uniform Act's requirements concerning consent are further limited by its stipulation of those persons as to whom consent is not required (Section 6). This includes;

- (1) a parent who has abandoned a child (the comment to this section suggests that 'if the evidence otherwise establishes the requisite intent, this fact may be found after a relatively short time of desertion or abandonment);
- (2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of child as required by laws or judicial decree (with respect to this provision, the comment to the Section suggests that a failure to attempt to communicate with the child for 3 years "when the parent is able to do so", or failure to provide support for the child "when the parent is able to do so" for one year permits the court to find that the consent of the parent is unnecessary. The phrase "when able to do so" would permit the court to hold the subsection inapplicable if the failure to communicate or to provide support was due to the actions of the person having custody of the child preventing the parent from communicating or supporting the child);

- (3) the father of a minor if the father's consent is not required by Section 5(a)(2);
- (4) a parent who has relinquished his right to consent under Section 19;
- (5) a parent whose parental rights have been terminated by order of the court under Section 19;
- (6) a parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;
- (7) any parent of the individual to be adopted, if (i) the individual is a minor [18] or more years of age and the Court dispenses with the consent of the parent or (ii) the individual is an adult (Subsection (i) will be nullified when the age of majority is lowered to 18);
- (8) any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of [60] days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably; or
- (9) the spouse of individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

How Consent May Be Dispensed With.

The only grounds for dispensing with consent under Michigan law are those afforded by the provision for appointment of a guardian over the person of the child by the judge of probate, M.C.L.A. §703.1(2), or a hearing for neglected and dependent children within the equitable jurisdiction of the juvenile court. M.C.L.A. §712A.2, §712A.18, §712A.20.

The Revised Uniform Act (Section 19) provides two methods for eliminating the necessity of consent by a parent. Parental rights may be voluntarily relinquished by a writing signed by a parent if the appropriate requirements have been met, or may be involuntarily terminated by court order on any ground provided by other laws for termination of the relationship, and, in any event on the ground;

- (1) that the minor has been abandoned by the parent,
- (2) that by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper parental care and control, subsistence, education, or other care or control necessary for his physical, mental, or emotional health or morals, or, by reason of physical or mental

- incapacity the parent is unable to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof the minor is suffering or probably will suffer physical, mental, moral, or emotional harm, or
- (3) that in the case of a parent not having custody of a minor, his consent is being unreasonably withheld contrary to the best interest of the minor.

The grounds for terminating parental rights outlined in the Revised Uniform Act were taken from statutes such as those in California and Wisconsin.

Nature of the Proceeding.

As noted earlier, the Michigan statute provides a two-step proceeding whereby the rights of natural parents or those persons in loco parentis are terminated prior to placement in the prospective adoptive home. M.C.L.A. §710.6, §710.12. The final order of adoption is entered one year thereafter, unless the one year period is waived by the court where it believes that the best interests of the child will be served thereby. M.C.L.A. §710.7.

Under the Revised Uniform Act (Section 13), the court may issue a final decree of adoption, or in the alternative, issue an interlocutory decree of adoption which by its own terms automatically becomes final on a day therein specified, which day shall not be less than 6 months nor more than one year from the date of issuance of the decree, unless sooner vacated by the court for good cause shown.

Effect of the Adoption Proceeding.

The Michigan Statute, M.C.L.A. §710.9, provides that the person or persons adopting the child upon entry of the final order thereupon stand in place of a parent or parents to such child in law, in all respects as though the adopted child had been the natural child of the adopting parents, and are liable to all the duties and entitled to all the rights of parents thereto. The child thereupon becomes the heir at law of lineal and collateral kindred of the adopting person or persons. However, the decree of adoption in no way impairs the child's right to inherit from or through his natural parents.

In similar fashion, the Revised Uniform Act (Section 14) provides that the minor shall be the "child" of the petitioner for the purposes of all statutes, documents, instruments, and the like, and is to be considered such in all situations in which an express provision to the contrary is not made. The

section is intended to make the use of the word "child" or similar designation such as "issue" in an instrument include an adopted child unless the instrument expressly provides to the contrary. It is particularly important to note that in terminating all legal relationships between the adopted individual and his relatives, including his natural parents, the adopted individual is, with one limited exception, no longer able to inherit from or through his natural parents. It was the belief of the draftsmen that the secrecy of adoption proceedings was better preserved by reducing the selfish reasons an individual might have for discovering his antecedents.

V. CONCLUSION

It is believed that the Revised Uniform Adoption Act is a well considered and carefully drafted piece of legislation. It presents a clearly worded and thoroughly detailed treatment of the problems in this area and does much to remedy many of the defects in existing legislation noted by the draftsmen in their preface to the act. In a number of significant respects it differs from the present Michigan statute. In general, the Revised Uniform Act reflects a more flexible approach to the problems of adoption and its provisions are largely directed towards expediting the practice. This has been accomplished primarily by dispensing with otherwise necessary consents under prescribed circumstances. In sum, it is believed that the Revised Uniform Adoption Act represents a forward-looking approach to these problems and its adoption is strongly recommended.

APPENDIX

REVISED UNIFORM ADOPTION ACT

Section 1. [Definitions.] As used in this Act, unless the context otherwise requires,

(1) "child" means a son or daughter, whether by birth or by adoption;

(2) "Court" means the [here insert name of the court or branch] court of this State, and when the context requires means the court of any other state empowered to grant petitions for adoption;

(3) "minor" means [a male] [an individual] under the age of [18] [21] years [and a female under the age of 18 years];

(4) "adult" means an individual who is not a minor;

(5) "agency" means any person certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption;

(6) "person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

COMMENT •

"Child" is defined so as to include both an adult and a minor as a child capable of being adopted. If an adult is adopted, he becomes a "child" of the adoptive parents to the same extent that a natural child is a "child" of his natural parents even though he is an adult.

The definition of "minor" is the more important definition of this Act. The original Uniform Adoption Act accepted the then general definition of minority. It is well known that many variations have developed in state law as to the age attached to minority in relation to particular purposes. The voting age, the drinking age, the age of consent, and the like now vary considerably in the states. The pamphlet "Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children" prepared by the Children's Bureau of the United States Department of Health, Education and Welfare in 1957 and again in 1961 uses as the age for a "minor" the age of 18 whether a male or female. The two matters as to which the

definition is important in this Act are the age of the adopted person for whom the natural parents must consent to his adoption and the age of a parent who may consent to the adoption of his own child. When the question is whether the child to be adopted must also consent, a different age is proposed in this Act. See section 10.

The definition of "person" is taken from the Uniform Statutory Construction Act and is broad enough to include both a public social welfare agency or an independent social welfare agency. It is also broad enough to include a natural person acting to place children for adoption, but such a person may act as a placing agency only if he is "certified, licensed or otherwise empowered to place children for adoption."

Note: No comparable list of definitions is located in the text of the Michigan statute.

Section 2. [Who May Be Adopted.] Any individual may be adopted.

COMMENT

This section is intended to permit the combination in one act of provisions for adoption of minors and provisions for adoption of adults. Either a minor or an adult may be adopted. This Act provides, in certain places, for a different procedure when an adult is to be adopted from that provided when a minor is to be adopted.

Note: M.C.L.A. §710.1 makes clear that the Michigan statute pertains only to the adoption of minor children.

Section 3. [Who May Adopt.] The following individuals may adopt:

- (1) a husband and wife together although one or both are minors;
- (2) an unmarried adult;
- (3) the unmarried father or mother of the individual to be adopted;
- (4) a married individual without the other spouse joining as a petitioner, if the individual to be adopted is not his

spouse, and if

(i) the other spouse is a parent of the individual to be adopted and consents to the adoption;

(ii) the petitioner and the other spouse are legally separated; or

(iii) the failure of the other spouse to join in the petition or to consent to the adoption is excused by the Court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

COMMENT

This section clarifies the list of persons entitled to adopt a child. In subsection (1) a husband and wife acting together are entitled to adopt even through one or both of them is a "minor," that is, under the age of contracting as provided in this act or in general law. The Act lists several cases where a married person may adopt a child without the other spouse joining as petitioner and it lists one situation in which an individual may not be adopted--where the individual is a spouse of the petitioner. The Act permits an adult unmarried person to adopt a child; it permits any unmarried father or mother to adopt his own child; and it permits a married individual without the other spouse joining as a petitioner to adopt an individual if the other spouse is a parent of the person to be adopted and consents to the adoption or the petitioner and the other spouse are legally separated; or the nonjoining spouse is excused from participation by the court by reason of circumstances constituting an unreasonable withholding of consent. Thus, a married individual whose spouse is a missing person or is incapacitated may adopt an individual without the consent of the other spouse.

Note: There is no comparable provision under the Michigan statute. However, M.C.L.A. §710.1 does note that a married individual seeking to adopt a minor child must be joined in the petition by his wife. The age and other qualifications of petitioners are discussed in 4 Moore and Denison §2686.

Section 4. [Venue, Inconvenient Forum, Caption.]

(a) Proceedings for adoption must be brought in the Court for the place in which, at the time of filing or granting the petition, the petitioner or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located.

(b) If the Court finds in the interest of substantial justice that the matter should be heard in another forum, the Court may [transfer,] stay or dismiss the proceeding in whole or in part on any conditions that are just.

(c) The caption of a petition for adoption shall be styled substantially "In the Matter of the Adoption of _____." The person to be adopted shall be designated in the caption under the name by which he is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known shall not be disclosed in the petition, the notice of hearing, or in the decree of adoption.

COMMENT

The name of the appropriate court or division of the court should be inserted in subsection (a) and again in subsection (b).'

Jurisdiction is based on residence of either the person seeking to adopt the child or the residence of the child at the time of adoption. The section thus permits the parents to bring the adoption action in the court of the place where the agency making the placement is located. If the placement is "an independent placement" or by an agency in another state, the petitioners may bring the proceeding in the place of their own residence if they have resided in the state for 6 months preceding the filing of the petition.

Subsection (b) is taken from the Uniform Interstate and International Procedure Act.

Note: M.C.L.A. §710.1 provides that the adoption petition must be filed in the probate court of the county of residence of the petitioners for no other court has jurisdiction. See 4 Moore and Denison § 2683, §2687.

Section 5. [Persons Required to Consent to Adoption.]

(a) Unless consent is not required under section 6, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

(1) the mother of the minor;

(2) the father of the minor, if the father was married to the mother at the time the minor was conceived or at any time thereafter, if the minor is his child by adoption, or [he has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought] [his consent is required under the Uniform Legitimacy Act];

(3) any person lawfully entitled to custody of the minor or empowered to consent;

(4) the court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5) the minor, if more than [10] years of age, unless the Court in the best interest of the minor dispenses with the minor's consent; and

(6) the spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

COMMENT

In adoption proceedings commenced after placement of the child by an agency, it is contemplated that before the petition for adoption has been filed, that either relinquishment of the right to consent or a court order terminating parental rights under section 19 will have occurred, so that the consent of the natural parent is not required in the adoption proceedings. The persons whose consent may be dispensed with are listed in section 6.

Parental consent is required only where the person to be adopted is a minor child as that term is defined in section 1. If the person to be adopted is an adult or if the person to be adopted is married whether or not he be an adult, the consent of the spouse of the person to be adopted is required. Subsection (a)(3) includes a father having custody of his illegitimate minor child, a legal guardian, or an agency authorized to place the child. If the legal guardian is not empowered to consent to the adoption of the minor child, the court having

certain facts of a prescribed duration. Failure to attempt to communicate with the child for 3 years "when the parent is able to do so" or failure to provide support for the child "when the parent is able to do so" for one year permit the court to find that the consent of the parent is unnecessary. The phrase "when able to do so" would permit the court to hold the subsection inapplicable if the failure to communicate or to provide support was due to the actions of the person having custody of the child preventing the parent from communicating or supporting the child.

If a state defines an adult in section 1 as an individual 18 or more years of age, subparagraph (7)(i) should be utilized only if the state chooses to authorize the adoption of an individual less than 18 years of age without parental consent and the Court dispenses with such consent.

Note: The counterparts under the Michigan statute follow:

Revised Uniform Adoption
Act - Section 6

Michigan Statute

- | | |
|---------|--|
| (a) (1) | No comparable provision
Separate provisions for terminating parental rights may be found under M.C.L.A. §712A.2, §712A.18, §712A.20 (Neglected and Dependent Children) or M.C.L.A. §703.1(2) (Appointment of a Guardian). |
| (a) (2) | See above explanation regarding (a) (1) |
| (a) (3) | No comparable provision |
| (a) (4) | See explanation regarding (a) (1) |
| (a) (5) | See explanation regarding (a) (1) |
| (a) (6) | (a) (4) of M.C.L.A. §710.3 |
| (a) (7) | No comparable provision |
| (a) (8) | No comparable provision. The consent of a guardian having that power is unconditionally required by M.C.L.A. §710.3(d). |
| (a) (9) | No comparable provision |
| (b) | No comparable provision |

See 4 Moore and Denison §2682.

Section 7. [How Consent is Executed.]

(a) The required consent to adoption shall be executed at any time after the birth of the child and in the manner following:

(1) if by the individual to be adopted, in the presence of the court;

(2) if by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgments;

(3) if by any other person, in the presence of the Court or in the presence of a person authorized to take acknowledgments;

(4) if by a court, by appropriate order or certificate.

(b) A consent which does not name or otherwise identify the adopting parent is valid if the consent [is executed in the presence of the court and] contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

COMMENT

This section is intended to prescribe the method by which consents may be executed. Consents executed "in the presence of the court" need no further formalities. Consents otherwise executed must be executed in the presence of a person authorized to take acknowledgments. The method for executing a consent should be distinguished from the method for relinquishment of a right to consent which is prescribed in section 19.

Subsection (b) is designed to clarify a point which seems to be ambiguous under some law as to whether the consent must be a consent to adoption by a particular individual. The subsection authorizes a consent "in blank" if the form of the consent contains a statement that a person consented voluntarily without disclosure of the name or other identification of the adopting parent.

Note: The comparable provision under the Michigan statute is M.C.L.A. §710.3. The counterparts for each subsection follow:

jurisdiction of the custody of the minor may consent in place of the guardian.

Subsection (a)(5) requires the consent of the person to be adopted if he is more than 10 years of age, but flexibility is introduced by permitting the court to dispense with his consent. Apparently, there are cases particularly of "stepchildren" in which the child does not know that he is a stepchild and in terms of his best interest, it would be better not to disclose to him at the time of the adoption proceedings that he is being adopted by a stepfather.

Note: The comparable provision under the Michigan statute is M.C.L.A. §710.3. The counterparts for each subsection follow:

Revised Uniform Adoption
Act - Section 5

M.C.L.A. §710.3

(a) (1)

(a)

(a) (2)

(a)

(a) (3)

(b), (c), (d), (e)

(a) (4)

(b)

(a) (5)

(f)

(a) (6)

No comparable provision

(b)

No comparable provision

See 4 Moore and Denison §§2690-2711, §2735.

Section 6. [Persons as to Whom Consent and Notice Not Required.]

(a) Consent to adoption is not required of:

(1) a parent who has [deserted a child without affording means of identification, or who has] abandoned a child;

(2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree;

(3) the father of a minor if the father's consent is not required by Section 5(a)(2);

(4) a parent who has relinquished his right to consent under section 19;

(5) a parent whose parental rights have been terminated

by order of court under section 19;

(6) a parent judicially declared incompetent or mentally defective if the Court dispenses with the parent's consent;

(7) any parent of the individual to be adopted, if (i) the individual is a minor [18] or more years of age and the Court dispenses with the consent of the parent or (ii) the individual is an adult;

(8) any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of [60] days or who, after examination of his written reasons for withholding consent, is found by the Court to be withholding his consent unreasonably; or

(9) the spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the Court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(b) Except as provided in section 11, notice of a hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

COMMENT

This section deals primarily with legal excuses for not offering the consent of a parent or guardian. In an agency placement the excuse most likely will be that in subsections (a)(4) and (5) where prior to the proceeding the parent has relinquished his rights or the rights have been terminated under section 19 or other appropriate judicial proceedings.

Subsections (1) and (2) excuse termination of parental rights in a separate proceeding where the child has been abandoned or the parent has deserted the child. Subsection (a)(1) would require the court to find (after notice under section 11) that the child has been abandoned. If the evidence otherwise establishes the requisite intent, this fact may be found even after a relatively short time of desertion or abandonment. Subsection (a)(2) is designed to permit the court to find that consent to adoption is unnecessary without finding that the parent has "abandoned" the child by the court finding the existence of

Revised Uniform Adoption
Act - Section 7

M.C.L.A. §710.3

(a)(1)

No comparable provision

(a)(2)

(c),(e)

(a)(3)

(a)(2) spells out the
requirements of a con-
sent executed by parents

(a)(4)

(b)

(b)

No comparable provision

It should be observed that special requirements for the execution of a consent obtain when the party to consent is in any of the armed services, or the child is legally a ward of Michigan children's institute or of any state licensed placement agency of Michigan or any other state. These requirements are detailed in M.C.L.A. §710.3 (g). See 4 Moore and Denison §§2690-2711.

Section 8. [Withdrawal of Consent.]

(a) A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

(b) A consent to adoption may be withdrawn prior to the entry of a decree of adoption if the Court finds, after notice and opportunity to be heard is afforded to petitioner, the person seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the individual to be adopted and the Court orders the withdrawal.

COMMENT

This section limits the opportunity of a person to withdraw his consent. No withdrawal is permitted after entry of an interlocutory or final decree of adoption. Withdrawal of consent before entry of the decree may be made only with the consent of the Court on the basis of a finding that withdrawal of consent is in the best interest of the child.

Note: The counterpart of subsection (a) is the final sentence of M.C.L.A. §710.6. There is no comparable provision to subsection (b) under the Michigan statute. See 4 Moore & Denison §2714.

Section 9. [Petition for Adoption.]

(a) A petition for adoption shall be signed and verified by the petitioner, filed with the clerk of the Court, and state:

(1) the date and place of birth of the individual to be adopted, if known;

(2) the name to be used for the individual to be adopted;

(3) the date [petitioner acquired custody of the minor and] of placement of the minor and the name of the person placing the minor;

(4) the full name, age, place and duration of residence of the petitioner;

(5) the marital status of the petitioner, including the date and place of marriage, if married;

(6) that the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted;

(7) a description and estimate of value of any property of the individual to be adopted; and

(8) the name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his consent normally required to the adoption.

(b) A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk.

Note: The principal comparable provision under the Michigan statute is M.C.L.A. §710.2. The counterparts for each subsection follow:

Revised Uniform Adoption

Act - Section 9

(a) (1)

(a) (2)

(a) (3)

(a) (4)

(a) (5)

(a) (6)

(a) (7)

(a) (8)

(b)

M.C.L.A. §710.2

(b)

(d)

No comparable provision

(a)

No comparable provision

No comparable provision

(e)

No comparable provision

M.C.L.A. §710.4 (regarding
the birth certificate)

See 4 Moore and Denison §§2684-86.

Section 10. [Report of Petitioner's Expenditures.]

(a) Except as specified in subsection (b), the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the Court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The report shall show any expenses incurred in connection with:

(1) the birth of the minor;
(2) placement of the minor with petitioner;
(3) medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and

(4) services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person.

(b) This section does not apply to an adoption by a step-parent whose spouse is a natural or adoptive parent of the child.

(c) Any report made under this section must be signed and verified by the petitioner.

COMMENT

This section is taken from section 224(r) of the California Civil Code. The only adoption to which the section is inapplicable is an adoption by a step-parent.

The purpose of this section is to control some of the abuses which appear from time to time in "private placements" by requiring the petitioner to reveal expenditures which he has made in connection with the adoption. The section does not invalidate the adoption nor make it impossible for the petitioner to adopt the child because, as an example, in return for the prospective mother's promise to consent to adoption he agreed and paid medical expenses of the mother or any other payments to the mother.

Note: No comparable provision under the Michigan statute.

Section 11. [Notice of Petition, Investigation and Hearing.]

(a) After the filing of a petition to adopt a minor, the Court shall fix a time and place for hearing the petition. At least 20 days before the date of hearing, notice of the filing

of the petition and of the time and place of hearing shall be given by the petitioner to (1) [Public Welfare Department]; (2) any agency or person whose consent to the adoption is required by this Act but who has not consented; and (3) a person whose consent is dispensed with upon any ground mentioned in paragraphs (1), (2), (6), (8), and (9) of subsection (a) of section 6 but who has not consented. The notice to [Public Welfare Department] shall be accompanied by a copy of the petition.

(b) An investigation shall be made by the [Public Welfare Department] or any other qualified agency or person designated by the Court to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.

(c) A written report of the investigation shall be filed with the Court by the investigator before the petition is heard.

(d) The report of the investigation shall contain an evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the Court requires regarding the petitioner or the minor.

(e) Unless directed by the Court, an investigation and report is not required in cases in which an agency is a party or joins in the petition for adoption, a step-parent is the petitioner, or the person to be adopted is an adult. In other cases, the Court may waive the investigation only if it appears that waiver is in the best interest of the minor and that the adoptive home and the minor are suited to each other. The [Public Welfare Department] which is required to consent to the adoption may give consent without making the investigation.

(f) The [Public Welfare Department] or the agency or persons designated by the Court to make the required investigation may request other departments or agencies within or without this state to make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the Court and shall make similar investigations and reports on behalf of other agencies or persons designated by the Courts of this state or another place.

(g) After the filing of a petition to adopt an adult the Court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented. The court may order an appropriate investigation

to assist it in determining whether the adoption is in the best interest of the persons involved.

(h) Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the Court by order directs. Proof of the giving of the notice shall be filed with the Court before the petition is heard.

COMMENT

This section establishes the procedure for notices, investigations, and hearings.

Subsection (a) lists the persons who must be given notice of the petition. Normally in an agency placement the consents will have been obtained before filing of the petition so that no notice need be given. Subsection (a) (3) does require notice be given to a person whose consent is going to be dispensed with on any of the grounds listed in section 6(a)(1) and (2). There will be cases where the consents have not been obtained or where the petitioner chooses to obtain the consents in the presence of the court during the proceedings and this section makes provision for obtaining the consents after filing of the petition.

Subsection (b) and following sections require, unless dispensed with by the court, or other circumstances, that an investigation be made by a designated person to determine whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. In an agency placement, the investigation may well have been done prior to the filing of the petition. In private placements, the first opportunity to secure knowledge of the existence of the child may arise as a result of the adoption petition.

Section 12 requires the minor to be resident in the adoptive home for at least 6 months. The commencement of the 6 month period is, under section 12, either the placement by the agency or, in the case of private placements, notification of the fact of custody of the child by the petitioner to the public welfare department.

Subsection (c) requires the report of the investigation to contain a recommendation as to the granting of the petition. The assumption of this section is that the court is entitled to the "expert" judgment of the placement agency or other official making the investi-

gation as well as a report by him of the bare facts.

Note: The comparable provision under the Michigan statute is M.C.L.A. §710.5. The counterparts for each subsection follow:

Revised Uniform Adoption
Act - Section 11

M.C.L.A. §710.5

(a)	No comparable provision
(b)	(a), (b), (c), (d), (e), (f)
(c)	(e)
(d)	No comparable provision
(e)	No comparable provision
(f)	No comparable provision
(g)	No comparable provision
(h)	No comparable provision

See 4 Moore and Denison §2712.

Section 12. [Required Residence of Minor.] A final decree of adoption shall not be issued and an interlocutory decree of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home for at least 6 months after placement by an agency, or for at least 6 months after the [Public Welfare Department] or the Court has been informed of the custody of the minor by the petitioner, and the department or Court has had an opportunity to observe or investigate the adoptive home.

COMMENT

As indicated in the comment to section 11, this section gives an advantage to agency placement over independent placements. For agency placements, the adoption decree may be entered not less than 6 months after placement by the agency. For independent placements, the commencement of the 6 months period is not the initial custody of the child, but is the time that the department or court has been informed of the custody of the child by the petitioner. Thus, for speedy adoptions an advantage is given either to agency placement or to early notice to the official agencies of

the fact of an independent placement.

Many attempts have been made to treat with the so-called "black market" adoption where the adoptive parents enter a state where the child is and take the child to another state for the adoptive home and there is no supervision of the initial placement. Any penalty on adoption by this procedure, however improper it may be, which prohibits the issuance of an adoption decree may, in fact, work against the best interest of the child if the adoptive home is suitable and desirable for the child. The "penalty" imposed by this section is simply a penalty arising from any failure to give early notice to the supervisory agency in the state where the adoptive home is located. Adoption cannot occur until 6 months after the notice has been given.

Note: The comparable provisions under the Michigan statute are M.C.L.A. §710.7 and §710.8.
See 4 Moore and Denison, §2715, §§2721-22.

Section 13. [Appearance; Continuance; Disposition of Petition.]

(a) The petitioner and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the Court for good cause shown.

(b) The Court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.

(c) If at the conclusion of the hearing the Court determines that the required consents have been obtained or excused and that the adoption is in the best interest of the individual to be adopted, it may (1) issue a final decree of adoption; or (2) issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day therein specified, which day shall not be less than 6 months nor more than one year from the date of issuance of the decree, unless sooner vacated by the Court for good cause shown.

(d) If the requirements for a decree under subsection (c) have not been met, the court shall dismiss the petition and determine the person to have custody of the minor, including the petitioners if in the best interest of the minor. In an interlocutory decree of adoption the Court may provide for

observation, investigation, and further report on the adoptive home during the interlocutory period.

COMMENT

This section permits both a final decree of adoption and the entry of an "interlocutory decree" of adoption which ripens automatically into a final decree unless vacated by the court for good cause shown. A number of states have found that the interlocutory decree procedure permits closer supervision of the adoptive home during the initial period and regularizes the relationship between adoptive parents and child prior to entry of the final decree. This section authorizes the use of that procedure. On the other hand, nothing in this section prevents a court from delaying the hearing for the purpose of investigation or supervision rather than issuing an interlocutory decree to be followed by investigation and supervision.

Note: There are no provisions under the Michigan statute comparable to subsections (a) and (b). The counterpart to subsection (c) is M.C.L.A. §710.7, while the counterpart to subsection (d) is M.C.L.A. §710.10. See 4 Moore and Denison §2736, §2689.

Section 14. [Effect of Petition and Decree of Adoption.]

(a) A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a Court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his relatives, including his natural parents, so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and

(2) to create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

(b) Notwithstanding the provisions of subsection (a), if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.

(c) An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.

COMMENT

This section is designed to terminate all relationship of the child to his blood relatives after entry of the interlocutory decree of adoption and to establish at that moment for all purposes the relationship of parent and child between the adoptive parents and the child. The purpose of this section is to give a statutory definition of the "child," for purposes of all statutes, documents, instruments, and the like, which is to govern all situations in which an expressed provision to the contrary is not made. It is not intended by this section to make the property rights of an adopted child a matter of contract; rather the purpose of the section is to make the person a child for all purposes and leave it to other law, such as the law of inheritance, to determine what the property rights of a child are. By providing a statutory definition for child, the section is intended to make any use of the word "child" or other similar designation such as "issue," in an instrument include an adopted child unless the instrument expressly provides to the contrary.

The termination of relationship of parent and child between the adopted person and his natural parents and the family of the natural parents follows the trend of

modern statutes and is desirable for many reasons. It eases the transition from old family to new family by providing for a clean final "cutoff" of legal relationships with the old family. It also preserves the secrecy of adoption proceedings as provided in section 16 by reducing the selfish reasons an individual might have to discover his antecedents.

Note: The comparable provision under the Michigan statute is M.C.L.A. §710.9. It should be observed that unlike Section 14, the Michigan statute does not terminate the adopted child's capacity to inherit from or through his natural parents. See 4 Moore and Denison §§2722-23.

Section 15. [Appeal and Validation of Adoption Decree.]

(a) An appeal from any final order or decree rendered under this Act may be taken in the manner and time provided for appeal from a [judgment in a civil action].

(b) Subject to the disposition of an appeal, upon the expiration of [one] year after an adoption decree is issued the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor, or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the [one] year period.

COMMENT

Subsection (b) is designed to impose a very short statute of limitation on an ability to upset a decree of adoption for any failure to comply with the requirements of this Act, including failure of jurisdiction, fraud, or failure to give notice. The policy of stability in a family relationship, particularly when a young minor is involved, outweighs the possible loss to a person whose rights are cut off through fraud and ignorance.

Note: There is no provision for appeals within the present Michigan adoption statute. Appeals are, therefore, governed by M.C.L.A. §701.45a, applicable to appeals from probate courts generally. There is no

provision comparable to subsection (b).
See 4 Moore and Denison §§2728-31.5.

Section 16. [Hearings and Records in Adoption Proceedings; Confidential Nature.] Notwithstanding any other law concerning public hearings and records,

(1) all hearings held in proceedings under this Act shall be held in closed Court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties; and

(2) all papers and records pertaining to the adoption whether part of the permanent record of the court or of a file in the [Department of Welfare] or in an agency are subject to inspection only upon consent of the Court and all interested persons; or in exceptional cases, only upon an order of the Court for good cause shown; and

(3) except as authorized in writing by the adopted child if [14] or more years of age, or by the adoptive parent, or upon order of the court for good cause shown in exceptional cases, no person is required to disclose the name or identity of either an adoptive parent or an adopted child.

COMMENT

The opening phrase is designed to negate the impact of any "right to know" law or other statute making public records open to inspection as a matter of right by newspapers and other persons. It continues the policy of existing adoption acts of making the proceedings confidential in nature.

Note: The comparable provision under the Michigan statute is M.C.L.A. §710.11. The counterparts for each subsection are as follows:

Revised Uniform Adoption
Act - Section 16

- (1)
- (2)
- (3)

M.C.L.A. §710.11

- No comparable provision
- (1)
 - (2)

See 4 Moore and Denison §2727.

Section 17. [Recognition of Foreign Decree Affecting Adoption.] A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree were issued by a court of this state.

COMMENT

The purpose of this section is to require the courts of this state to recognize termination decrees and adoption decrees issued by courts of other places. It is designed to eliminate from litigation in this state any claim that the adoption was granted on grounds or jurisdiction not recognized in this state. Thus, if a foreign nation gives jurisdiction to grant an adoption on the basis of nationality of the petitioners or of the person to be adopted without regard to residence, the courts of this state are, nevertheless, instructed to recognize the adoption decree. The decree should be given effect as if it were issued by the courts of this state. If in the state of issuance of an adoption decree the adopted child continues to have rights of inheritance from the natural parents, his rights are, to the extent the law of this state is controlling, nevertheless cut off.

Note: There is no comparable provision under the Michigan adoption statute.

See 4 Moore and Denison §2716.

Section 18. [Application for New Birth Record.] Within 30 days after an adoption decree becomes final, the clerk of the court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the [Department of Welfare] of this state for statistical purposes.

COMMENT

The clerk of the adoption court who has the official record of the adoption decree is directed by this section to secure the issuance of a new birth certificate. Nothing in this section prevents the agency participating in the adoption process from preparing the new certificate and forwarding it to the appropriate authorities via the clerk of the court.

Note: The comparable provision under the Michigan statute is M.C.L.A. §710.11(3).

See 4 Moore and Denison §2724, §2734.

Section 19. [Relinquishment and Termination of Parent and Child Relationship.]

(a) The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or prior to an adoption proceeding as provided in this section.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent,

(1) in the presence of a representative of an agency taking custody of the child, whether the agency is within or without the state or in the presence and with the approval of a judge of a court of record within or without this state in which the minor was present or in which the parent resided at the time it was signed, which relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later; and the relinquishment is invalid unless it states that the parent has this right of withdrawal; or

(2) in any other situation if the petitioner has had custody of the minor for [2] years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.

(c) In addition to any other proceeding provided by law, the relationship of parent and child may be terminated by a court order issued in connection with an adoption proceeding under this Act on any ground provided by other law for termin-

ation of the relationship, and in any event on the ground (1) that the minor has been abandoned by the parent, (2) that by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper parental care and control, or subsistence, education, or other care or control necessary for his physical, mental, or emotional health or morals, or, by reason of physical or mental incapacity the parent is unable to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof the minor is suffering or probably will suffer serious physical, mental, moral, or emotional harm, or (3) that in the case of a parent not having custody of a minor, his consent is being unreasonably withheld contrary to the best interest of the minor.

(d) For the purpose of proceeding under this Act, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption proceeding other than as provided in this section.

(e) A petition for termination of the relationships of parent and child made in connection with an adoption proceeding may be made by:

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) any other person having a legitimate interest in the matter.

(f) Before the petition is heard, notice of the hearing thereon and opportunity to be heard shall be given the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and, in the discretion of the court, a person appointed to represent any party.

(g) Notwithstanding the provisions of subsection (b), a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship under this section may be vacated by the Court

upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

COMMENT

This section supplies an important omission from a number of earlier adoption acts. Many acts make no provision for relinquishing or terminating the requirement of consent by a parent. While a number of states provided in the Juvenile Court Act or elsewhere in the statutory law a procedure for termination of parental rights, there was nothing in the Adoption Act requiring recognition of such proceedings as a method of eliminating the requirement of parental consent.

This section provides two methods of eliminating the necessity of consent by a parent: voluntary relinquishment of parental rights under subsection (b) by a writing signed by the parent; and a court order terminating parental rights under subsection (c) on the grounds specified in that section. Subsection (c) lists the persons who may petition for termination of parental rights in connection with an adoption proceeding. Nothing in this listing of persons who may be petitioners limits the provisions in the Juvenile Court or other acts specifying other or additional persons who may petition for termination of parental rights under those acts where no adoption proceeding is pending.

The grounds for terminating parental rights in subsection (c) are more inclusive than the grounds proposed in the Children's Bureau pamphlet referred to in the comment to section 1 and are taken from statutes such as those in California and Wisconsin. The final ground listed in subsection (c) concerns unreasonable withholding of consent to adoption. It can be used in a case where a step-parent and the mother are in custody of the child but the natural father refuses to give consent and withholding of consent is found by the court to be contrary to the best interests of the child. It cannot be used, however, to excuse the absence of consent of a parent who is in legal control of his child or who has custody of the child.

Note: There is no comparable provision under the Michigan adoption statute. The only methods for terminating parental rights are those provided by M.C.L.A. §712.A.2(b),

§712A.18, §712A.20 (Neglected Children) and M.C.L.A.
§703.1(2) (Appointment of a Guardian).

Section 20. [Uniformity of Interpretation.] This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 21. [Short Title.] This Act may be cited as the Revised Uniform Adoption Act.

Section 22. [Repeal and Effective Date.]

(a) The following acts and laws are repealed as of the effective date of this Act:

- (1)
- (2)
- (3)

(b) Any adoption or termination proceedings pending on the effective date of this Act is not affected thereby.

Section 23. [Time of Taking Effect.] This Act shall take effect.....

VII. References

- 4 A.E. MOORE & W.R. DENISON, MICHIGAN PRACTICE,
Probate Law & Practice, §§ 2670-2737 (2nd ed. 1954)
- NAT'L. CONF. OF COMM. ON UNIFORM STATE LAWS,
HANDBOOK, 165-183 (1969)
- Note, Adopting Wife as Heir at Law, 4 WAYNE L. REV. 169 (1958)
- Note, Inheritance by Adopted Child from Natural Relations,
12 WAYNE L. REV. 893 (1966)
- Simpson, Unfit Parent: Conditions under which a Child may
be Adopted without the Consent of his Parent,
39 U. DET. L. J. 347 (1962)
- Weber, Procedure for the Adoption of Minor Children,
26 MICH. S. B. J. 12 (March 1947)
