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STATUTORY CHANGES IN CHILD PLACEMENT

Based on recommendations by the Joint Subcommittee on the Placement of Children for Adoption,¹ [hereinafter cited as the Subcommittee], the 1978 Session of the General Assembly made significant changes in the adoption statutes. The study by the Subcommittee was authorized during the 1977 Session following the introduction of several bills which would have permitted physicians and attorneys to participate in child placement without being licensed. The Assembly felt that such an important issue was deserving of closer scrutiny and therefore commissioned the study.² The Subcommittee was directed to probe with particular care the special case of "independent adoptions," that is, those adoptions brought about "without the assistance of a licensed social service agency."³

The study concluded that there were special risks associated with independent adoptions. Foremost of these concerns was the possibility that such unlicensed child-placement would encourage the introduction of black market baby operations into Virginia, although no such illegal activity was discovered in the course of the study. Another concern was that the independent adoption would not provide adequate anonymity between the natural and adoptive parents. Further, the child's right to permanency was jeopardized since should the adoptive parents decide to return the baby prior to finalizing the adoption, there would be no agency involved to whom custody of the child would revert. Instead, the child would be returned to the natural parents who had previously decided to terminate their rights. Other risks involved in independent adoptions were that a couple disapproved for good cause by a licensed agency would be able to adopt through an intermediary,⁴ that the adoption might not be legally finalized, that the necessary information relating to the child's health and development would not be provided, and that the natural mother would

1. REPORT OF THE JOINT SUBCOMMITTEE ON THE PLACEMENT OF CHILDREN FOR ADOPTION. (SENATE DOC. NO. 18, Jan. 16, 1978) [hereinafter S. DOC. 18].

The Subcommittee was composed of four senators and six delegates: Senator Joseph V. Gartlan, Jr., of Alexandria; Senator A. Joe Canada, Jr., of Virginia Beach; Delegate Richard W. Elliott of Rustburg; Delegate Lewis P. Fickett, Jr., of Fredericksburg; Delegate Evelyn M. Hailey of Norfolk; Delegate William P. Robinson, Sr., of Norfolk; Delegate Eleanor P. Sheppard of Richmond; Delegate Frank M. Slayton of South Boston; Senator Russell I. Townsend, Jr. of Chesapeake; and Senator Charles L. Waddell of Sterling.

2. S. J. Res. 152, 1977 Sess. of Va. Gen. Assembly.

3. S. Doc. 18 at p. 6.

4. *Id.* at 7. An "intermediary" is a physician, lawyer, clergyman, neighbor or other individual who participates in an independent adoption by giving assistance to the natural parents in placing the child directly with the adoptive parents.

not receive adequate personal or legal counseling in making her decision to place the child for adoption.⁵

On the other hand, legitimate reasons were advanced by the natural and adoptive parents as to why they preferred independent adoptions as opposed to those through a licensed agency. The adoptive parents suggested that licensed agencies were not favored because of the delay involved in obtaining a baby, resulting from the shortage of white infants and the lengthy home approval studies. Also, these prospective parents were faced with arbitrarily imposed limits with respect to age, employment of the mother, and length of marriage which would exclude them from being considered. Other reasons cited for choosing independent adoptions were the prohibitive fees charged by licensed agencies, the stigma attached to public services, and the view that home studies were an invasion of privacy.⁶

The study also found that natural parents' decisions to place their child independently were influenced by the provision of financial assistance. Independent adoptions also allowed the natural parent to have some input as to where geographically, and with whom, the child would be placed. Other factors were that the natural parents would avoid the stigma attached to public or private services and that this was a means of lessening the embarrassment to their family; that is, a quiet placement would involve fewer people. Use of an intermediary was favored because this person usually had a relationship of trust with the natural parent or because the intermediary promised to provide financial assistance if the baby were placed through him. The Subcommittee also found that there was a general lack of knowledge on the part of the natural parents regarding the services available to them through licensed agencies.⁷

The Subcommittee was concerned with the inequity that resulted when prospective parents were subjected to long delays when dealing with a child-placing agency, while other parents were able to obtain a child quickly by making their decisions known to their physician, lawyer or minister. The Subcommittee then suggested the means of protecting the interests of the involved parties. The natural parents had a right not to be unnecessarily separated from their child and a right to counseling in arriving at their decision. The child had a right to a secure and suitable home. Finally, the adoptive parents' rights could best be protected if they were provided with pertinent information regarding the child's health, if they were protected from identity disclosure, and if they were given counseling

5. *Id.* at 6-8.

6. *Id.* at 8-9.

7. *Id.* at 9-11.

to help them meet the special problems facing adoptive parents.⁸ Finally, the Subcommittee concluded:

*that these conditions are best met and the interests of the parties involved in adoptions are best served by limiting the placement of children to their natural parents or legal guardians and public and licensed child-placing agencies. Physicians, lawyers, clergymen and others who may be serving as intermediaries in the placement of children for adoption do not have the expertise, facilities or resources to provide the protection and services needed by all the parties affected by the adoption.*⁹

Since the natural parents are often young and anxious, they need *disinterested* support in order to make a sound decision.

To achieve these goals the Subcommittee recommended the following statutory changes. First, the statute of limitations for prosecuting a violation of the adoption placement statutes was set at one year from the time the petition for adoption is filed.¹⁰ This change was necessary since violations of the adoption laws are generally not discovered until an investigation, ordered by the circuit court incident to the filing of the adoption petition, is conducted. At the time of filing, the child may have already been in the adoptive home for over a year so an extension of the statute of limitations was necessary.¹¹ Next, "child-placing agency" was redefined to provide uniformity between the licensure and adoption statutes.¹² Definitions for "adoptive home"¹³ and "placement"¹⁴ were added to clarify those activities which were to be regulated by the statute. Authorization for placing a child for adoption was specifically limited to four situations: (1) by a licensed child-placing agency, (2) by a local board of public welfare or social services, (3) by the natural parent or legal guardian and (4) by an agency outside of Virginia which is licensed or authorized to place

8. *Id.* at 11-12.

9. *Id.* at 12.

10. VA. CODE ANN. § 19.2-8 (Cum. Supp. 1978).

11. S. DOC. 18, *supra* at 14.

12. VA. CODE ANN. §§ 63.1-195, 63.1-220 (Cum. Supp. 1978). "Child-placing agency" is now defined as "any person licensed . . . to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes pursuant to §§ 63.1-56 and 63.1-204."

13. "Adoptive home" is now defined as "any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption." *Id.*

14. "Placement" is now defined as "any activity by any person which provides assistance to a parent or guardian in locating and effecting the move of a child to a foster home or adoptive home; provided, however, that such term shall not include the counseling of any person with respect to the options available and the procedures that must be followed to place a child for adoption or to adopt a child." *Id.*

children for adoption by virtue of its own laws.¹⁵ However, the agency or board is permitted to consider recommendations from licensed physicians, attorneys or clergymen familiar with the situation as to how the child might best be placed. The intermediary is expressly prohibited from charging a fee or advertising the availability of his services.¹⁶

To insure compliance with the limitation as to who can place children, certain procedural safeguards were incorporated. It is now required that counseling be provided for the natural mother or, if possible, both natural parents.¹⁷ In cases where there is a direct placement of the child by the natural parent or guardian with the adoptive parents, a valid consent order must be executed before a juvenile and domestic relations court of competent jurisdiction. The court is prohibited from accepting the natural parent's or guardian's consent until it has been ascertained that counseling was provided. Following the receipt of a valid consent, the court will appoint the prospective parents as guardians. This appointment will be reviewed annually by the juvenile court until a final adoption order is entered.¹⁸ In the event that it becomes necessary to remove a child, who had been directly placed by the natural parent, from the adoptive home custody of the child will go to the local board of public welfare or social services. The applicable board is given permission by the court to place the child for adoption.¹⁹ No longer will the child be returned to the natural parents who had relinquished their rights.

The adoption petition now must specifically state, in the case of a direct placement, that the natural parents' consent was informed, uncoerced, and obtained before a juvenile and domestic relations district court of competent jurisdiction. The petition must also state that the petitioners are the duly appointed guardians of the child. Otherwise, it will be sufficient to state that the child has been in the custody of an authorized agency. In both instances, the petition must include the statement that the natural mother, and, if possible, the natural parents, received counseling. The court has the authority to waive any of these requirements if they are contrary to the best interests of the child.²⁰

The preliminary investigation incident to the filing of an adoption petition has been expanded. The investigator must determine if any fees have been paid by the petitioner, or on their behalf, to persons or agencies which

15. *Id.* § 63.1-220.1.

16. *Id.* § 63.1-204(C)(1).

17. *Id.*

18. *Id.* § 63.1-204(C)(2).

19. *Id.* § 63.1-211.1.

20. *Id.* § 63.1-221.

assisted them in obtaining the child. Also, should an unauthorized placement be discovered, the Commissioner of Public Welfare is directed to inform the court and note his disapproval.²¹

Further changes were made regarding revocation of consent and preservation of reports incident to the adoption. The natural parents can now revoke their consent prior to the final adoption order upon a showing of fraud or duress. Revocation can be permitted after placement in the adoptive home if there is a mutual, written consensual agreement by the natural and adoptive parents.²² When the final order of adoption is given, the agency or local board must send all reports and pertinent information to be preserved by the Commissioner of Public Welfare. A licensed child-placing agency may keep duplicates of these reports, if desired.²³

In summary, the recent changes in the adoption laws in Virginia, as enacted by the 1978 Session of the General Assembly, are aimed at protecting the interests of the natural parents, the adoptive parents and the child. Thus, emphasis is placed on obtaining counseling for all the concerned parties and on insuring that the natural parents' decision to relinquish the rights regarding their child was based on an informed consent. The role of intermediaries has been limited to an advisory capacity. New procedural safeguards have been introduced to prevent the unauthorized placement of children for adoption, and the statute of limitations was extended to apprehend violaters. These changes should provide a more secure home for the adopted child and promote his best interests.

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21. *Id.* § 63.1-223(b)(3).

22. *Id.* § 63.1-225.

23. *Id.* §§ 63.1-203, 236.

