

FINAL REPORT

ADOPTION REFORM INTERIM STUDY COMMITTEE

January 1994

AUTHORIZATION AND APPOINTMENT

The Adoption Reform Interim Study Committee was established by the Legislative Council for the 1993 Interim to "review Iowa's adoption laws, other state laws, and proposed uniform adoption laws. Determine if sufficient safeguards exist in Iowa's adoption system and whether Iowa's laws should be changed to promote the interest of the child."

MEMBERSHIP

The members of the Study Committee were:

Senator Florence Buhr, Co-chairperson
Representative Charles Hurley, Co-chairperson
Senator Merlin Bartz
Senator Larry Murphy
Senator Sheldon Rittmer
Senator Richard Varn
Representative Barry Brauns
Representative Dwight Dinkla
Representative Dolores Mertz
Representative Michael Moreland

BACKGROUND

The Adoption Reform Interim Study Committee was established following the 1993 Session of the General Assembly during which legislators discussed and proposed changes to the existing laws relating to adoption in Iowa. The impetus for the discussion was the then ongoing case commonly referred to as the "Baby Jessica" case. The facts of the case and related proceedings resulted in concern over a number of issues. In that case, Cara Clausen gave birth to a baby girl on February 3, 1991, in Iowa, and executed a release of custody of the child less than 72 hours later. Ms. Clausen named Scott Seefeldt as the biological father

and he signed a release of custody, as well. The potential adoptive parents, Jan and Roberta DeBoer, filed an adoption petition on February 25, 1991, and the parental rights of Ms. Clausen and Mr. Seefeldt were terminated on that same day with the DeBoers being granted custody of the child during the remaining proceedings. A few days later, Ms. Clausen filed a motion to revoke her release of custody on the basis that she had misrepresented the identity of the biological father and that her release had been obtained too soon after the birth of the child. Ms. Clausen named Daniel Schmidt as the true biological father and Mr. Schmidt filed an affidavit of paternity and a petition to intervene in the adoption proceedings. Following these actions, *judicial proceedings were carried out in the courts of both Iowa and Michigan over a more than two-year period.* The proceedings resulted in the restoration of Cara (Clausen) Schmidt's parental rights; establishment of Daniel Schmidt as the biological father of the child; a decision that since the parental rights of Mr. Schmidt had not been terminated the adoption petition could never have been filed, due to the requirement that termination of parental rights must precede the filing of an adoption petition; and a decision to return the child to the Schmidts.

During the proceedings, concern was raised regarding the sufficiency of Iowa law in addressing the issues which developed. During the 1993 Session of the General Assembly, a number of legislators worked to address the concerns and concluded that a study of the issues, raised through the "Baby Jessica" case and others which were brought to light around the nation during the pendency of that case, would be the most appropriate means of formulating recommendations for improvement in the law. The following issues were noted in House Concurrent Resolution No. 34 which was introduced in and passed the House during that session:

1. Termination of parental rights procedures.
2. Release of custody, including the appropriateness of the allowable minimum time frame.
3. The possibility of expediting and providing for reliable establishment of paternity.
4. Development of a policy which encourages the fulfillment of responsibilities of biological parents.
5. *Development of a policy which provides for the termination of parental rights, adoption, and other related procedures which promote expedited resolution, responsible and lawful actions by all parties to the proceedings, and which ensure the promotion of the best interests of the child.*
6. The appropriateness of advertising for adoption.

7. The need for unbiased counseling for biological parents who are considering releasing their child for adoption.
8. The efficacy of establishing criminal penalties for knowingly misrepresenting the identity of a biological parent in a termination of parental rights proceeding.
9. The effective implementation of interstate adoption laws.

In addressing these and other related issues, the members appointed to the Interim Study Committee developed an agenda and included presentations in the agenda which would provide review of the current law relating to adoption and which would result in recommendations for improvement, as necessary.

COMMITTEE PROCEEDINGS

The Legislative Council authorized one meeting day for the Study Committee which was held on December 20, 1993.

The presentations and discussions of the meeting of December 20, 1993, are summarized as follows:

Mr. Daniel Bray and Ms. Lori Klockau, attorneys, Iowa City, provided an overview of the current termination of parental rights and adoption procedures and reviewed the Iowa State Bar Association proposal for amendment of the laws related to the termination of parental rights including notice provisions to potential biological parents.

Ms. Nancy Lee Ziese, MSW, Iowa Inter-Agency Adoption Coalition, and Ms. Marg Corkery, Adoption Program Manager, Department of Human Services, provided recommendations for reform in the adoption process including the recommendations of the Lieutenant Governor's Task Force which studied adoption reform. The presenters addressed the areas of counseling related to the release of custody and adoption procedure, punishment of persons who misrepresent the identity of a biological parent in the termination process, the compiling of certain information with regard to family and medical background of an adoptee, limitations placed on allowable expenditures by potential adoptive parents to biological parents relative to the adoption, the defining of the concept of "best interests of the child," advertising for children, establishment of paternity including affirmative parenting measures, and penalties for violations of procedures involved in the termination and adoption processes.

Ms. Lu Ann Barnes, attorney and representative of the Pro-Adoption Coalition, provided recommendations to the Committee and also provided materials which address the defining of "abandonment" with regard to termination of parental rights, the limiting of the

time during which an appeal relative to a termination of parental rights or a final adoption order may be taken, and providing notice in a manner which provides finality to the proceedings. Additional materials and discussion relate to acceptable adoption terminology, counseling, time allowances for termination of parental rights, preservation of private adoptions, limitations on the fees charged by private agencies, and rights to medical information.

Ms. Shelley Ackerman, LSW, ACSW, a maternal/child social worker at Iowa Methodist Medical Center, provided her views on the provision of counseling related to the voluntary termination and adoption processes and stressed the need to normalize the processes and to develop a positive image relative to the adoption process.

Ms. Rebecca Colton, Executive Assistant to the Chief Justice, and Mr. David Ewert, Screening Attorney, Judicial Department, provided information regarding the capability of the court system to manage and expedite matters related to terminations and adoptions.

Mr. Jeffrey Krausman, attorney, and representative of the Association of Adoptees, Parents and Professionals, presented information regarding the Uniform Adoption Act currently in the drafting stages with the National Conference of Commissioners on Uniform State Laws and his recommendations for changes in the Iowa law which would be consistent with the uniform law. Mr. Krausman's recommendations included providing for finality in the adoption process, providing adequate notice to potential biological fathers, advertising which is controlled through limitations on expenses and reporting requirements, swift placement of a child with the potential adoptive family, provision of nonmandatory counseling, provision of background information through a voluntary mutual consent registry, the application of a best interests of the child test if custody disputes arise during the adoption process, and the establishment of an affirmative duty for putative fathers who wish to be involved in the retaining of their parental rights.

Ms. Lorrie Wood and Mr. Jeff Silber, DeBoer Committee for Children's Rights, provided information regarding the need for finality in the adoption process and the use of the best interests of the child standard in resolving disputes which arise during the process.

Ms. Diane Riccolo provided recommendations regarding the defining and use of the best interests of the child concept in dealing with conflict in the adoption process, the establishment of legal consequences related to misinformation knowingly provided in identifying birth parents, the use of genetic testing methods in establishing paternity, finality in the adoption process related to termination of parental rights including the use of mediation, expediting the adoption process, and maintenance of the private adoption process.

Other materials were submitted to the Committee for review by the members. A list of the materials submitted is attached to this report and copies of the materials are on file with the Legislative Service Bureau.

RECOMMENDATIONS

The Committee discussed approaches to adoption reform and made the following recommendations:

1. Acceptance of the proposal presented by representatives of the Iowa State Bar Association regarding the provision of notice to potential fathers and the establishment of affirmative duties of birth parents with minor modification by the Committee, including that the costs associated with the establishment of paternity requirements be reviewed so as not to discourage potential fathers, that notice be targeted in order to be effective, and that the issue of the classification of information collected as an open record be resolved. (A copy of the proposed language is attached to this Report.)
2. That the Iowa Supreme Court be encouraged to adopt rules which provide for expediting of contested termination and adoption cases.
3. That Iowa law provide that a person who knowingly and intentionally misidentifies a birth parent is guilty of a serious misdemeanor.
4. That Iowa law provide that a person who accepts a release of custody prior to the expiration of the 72-hour waiting period be subject to a penalty, yet to be established.
5. That counseling be offered to birth parents, provided that the counseling may be refused by signing a waiver. Counseling would be provided by licensed counselors with experience in the area of adoption.
6. That Iowa law more clearly specify the types of expenditures for which payment to birth parents is allowed by prospective adoptive parents including medical care, legal fees, and counseling, living, and transportation expenses necessary to assist the birth mother during her pregnancy. The recommendation also includes an intent that the limitations apply to interstate adoptions involving Iowans.

MATERIALS SUBMITTED TO THE ADOPTION REFORM INTERIM STUDY COMMITTEE

1. Background memorandum prepared by staff.
2. Outline of Mr. Daniel Bray and Ms. Lori Klockau including proposal of the Iowa State Bar Association.
3. Termination of Parental Rights and Adoption in Iowa provided by Ms. Lori Klockau.
4. Written presentation of Ms. Nancy Lee Ziese, Iowa Inter-Agency Adoption Coalition.
5. Written presentation of Ms. Marg Corkery, Adoption Program Manager, Department of Human Services.
6. Materials provided by Ms. Lu Ann Barnes including: letter from Mrs. Donna Snyder, outline of adoption terminology, Pro-Adoption Coalition proposal, the Adoption Parents Coalition Consensus on Proposed Legislative Change, and a letter from Ms. Jill Jones.
7. Outline of presentation by Ms. Shelley Ackerman, LSW, ACSW.
8. Written presentation of Mr. Jeffrey Krausman on behalf of Adoptees, Parents and Professionals.
9. Materials provided by the DeBoer Committee for Children's Rights.
10. Written presentation by Ms. Diane O'Connor Riccolo.
11. Materials submitted by Ms. Lyn Kane, LSW, regarding suggestions for revision of Iowa's adoption law.
12. Letter submitted by Ms. Leona Brandhof.
13. Letter submitted by Mrs. Roland (Mary) Van Zee.
14. Materials submitted by Ms. Wilma June (VanDen Hoek) Ver Woert.
15. Letter submitted by Ms. Marilue B. Watkins.

16. Materials submitted by Mr. Larry E. Ivers regarding Iowa's termination of parental rights statute.
17. Letter submitted by Ms. Adele Ver Steeg.
18. Letter submitted by Ms. Earlene Clausen.
19. Letter submitted by Ms. Marion S. Snoble.
20. Materials submitted by Ms. Laurie Schipper, Iowa Coalition Against Domestic Violence.
21. Letter submitted by Mr. John R. Webber III, McKay, Moreland & Webber, P.C.
22. Governor's adoption proposals.

**PROPOSED AMENDMENT TO CHAPTER 600A, TERMINATION OF PARENTAL
RIGHTS, BY THE FAMILY LAW SECTION OF THE
IOWA STATE BAR ASSOCIATION**

1 Section 600A.1, Code 1993, is amended to read as follows:

2 **600A.1 Construction**

3 This chapter shall be construed liberally. ~~The welfare~~ best interests of the
4 child subject to the proceedings of this chapter shall be the paramount consideration in
5 interpreting this chapter. However, the interests of the parents of this child or any natural
6 person standing in the place of the parents to this child shall be given due consideration
7 in this interpretation.

8 The best interests of a child require that each birthparent affirmatively
9 assume the duties encompassed by the role of being a parent. This affirmative duty
10 encompasses more than financial obligations; it requires continued interest in the child
11 and a genuine effort to maintain communication in association with the child. Parental
12 duties require that a parent exert himself or herself to take and maintain a place of
13 importance in the child's life.

14 Section 600A.2, subsection 17, Code 1993, is amended to read as follows:

15 17. *"To abandon a minor child"* means to permanently relinquish or
16 surrender, without reference to any particular person, the parental rights, duties, or
17 privileges inherent in the parent-child relationship. The term includes both the intention
18 to abandon and the acts by which the intention is evidenced. The term does not require
19 that the relinquishment or surrender be over any particular period of time.

20 Any potential biological father who is not married to the child's mother at the
21 time of the birth of a child is presumed to have abandoned the child when the child
22 reaches twenty (20) days of age or at the time of a termination of parental rights hearing,
23 if earlier, unless the potential biological father does one of the following:

24 1. Files an affidavit of paternity with the Bureau of Vital Statistics as
25 provided in Iowa Code section 144.40. The Bureau of Vital Statistics shall accept and
26 file such affidavit of paternity without fees and without the mother's signature if the
27 affidavit is filed within twenty days of the child's birth or prior to a termination of parental
28 rights hearing, if earlier. This affidavit will be public information.

1 2. Files a petition to establish his paternity and his obligations pursuant to
2 Chapter 600B and serves notice on the child's mother and on any prospective adoptive
3 parents within twenty days of the child's birth or prior to a termination of parental rights
4 hearing, if earlier.

5 Section 600A.5, Code 1993, is amended by adding a new section as follows:

6 **New Section Notice To Biological Fathers**

7 If a potential biological father who is not married to the child's mother seeks
8 to retain parental rights with respect to a child, the potential biological father must file a
9 declaration of paternity in the court in which a termination proceeding is pending and
10 request in writing to be notified of further proceedings with respect to any termination of
11 his parental rights. If he does not file such a declaration of paternity and request to be
12 notified of any further proceedings then whatever legal rights he may have with respect
13 to the child will be deemed terminated with the entry of a decree terminating parental
14 rights.

15 Section 600A.6, subsection 5, Code 1993, is amended to read as follows:

16 ~~5. A necessary party whose identity is known but whose location or address~~
17 ~~is unknown may be served by published notice. Such notice shall be served according~~
18 ~~to the rules of civil procedure relating to an original notice where not inconsistent with the~~
19 ~~provisions of this section. In addition to the requirements of subsection 3, such notice~~
20 ~~shall include only the name of the unlocated necessary party being noticed. Notice by~~
21 ~~publication shall be published once a week for two consecutive weeks, the last publication~~
22 ~~to be not less than seven days prior to the hearing on termination of parental rights.~~

23 5. Notice by publication shall be served according to the rules of civil
24 procedure relating to an original notice where not inconsistent with the provisions of this
25 section. In addition to the requirements of subsection 3, such notice shall include the
26 name of a known but unlocated necessary party being noticed, using the form as
27 provided in Iowa Code Section 600A.6 (6) (as amended). Notice by publication shall be
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notice to you. When your legal rights with respect to the child are so terminated, you will not be entitled to notice of any proceeding instituted for the adoption of the child.

You are notified that there will be a hearing on the petition to terminate parental rights before the Iowa District Court For _____ County, at the Courthouse in _____ Iowa at _____ o'clock _____ M. on the _____ day of _____, 19_____.

CLERK OF THE ABOVE COURT