

P U B L I C H E A R I N G

before

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

SENATE BILL NO. 1631
(Adoption Revision)

Held:
February 23, 1977
Senate Chamber
State House
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Senator Carmen A. Orechio, Chairman

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SENATE, No. 1631

STATE OF NEW JERSEY

INTRODUCED AUGUST 12, 1976

By Senator MENZA

Referred to Committee on Judiciary

AN ACT concerning the adoption of children and revising and repealing various parts of the law relating to adoption.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. This act shall be liberally construed to the end that the
2 best interests of children be promoted. Due regard shall be given
3 to the rights of all persons affected by an adoption.

1 2. For the purposes of this act:

2 a. "Approved agency" shall mean a nonprofit corporation,
3 association or agency, including any public agency, approved by
4 the Department of Institutions and Agencies for the purpose of
5 placing children for adoption in New Jersey;

6 b. "Child" shall mean a person under 18 years of age, provided,
7 however, that any person under 21 years of age may be adopted
8 under the provisions of this act;

9 c. "Custody" shall mean exercise of continuing control over the
10 person of a child;

11 d. "Guardianship" shall mean responsibility for and authority
12 over the person and property of a child as established by a court
13 order;

14 e. "Parent" shall mean a natural parent or natural parents,
15 without regard to the marital status of either at the time of the
16 child's birth or conception, or a parent or parents by adoption;

17 f. "Placement for adoption" shall mean the transfer of custody
18 of a child to a person for the purpose of adoption by such person;
19 and

20 g. "Plaintiff" shall mean a prospective parent or parents who
21 have filed a complaint for adoption.

1 3. a. No person, firm, partnership, corporation, association or
2 agency shall place, offer to place or materially assist in the place-
3 ment of any child for adoption in New Jersey unless such person

4 shall be the parent of the child, or such firm, partnership, corpora-
5 tion, association or agency shall be an approved agency; provided,
6 however, that this prohibition shall not apply to the placement for
7 adoption of a child with a brother, sister, aunt, uncle, grandparent,
8 natural father or stepparent of such child. For the purposes of
9 this section, material assistance in the placement for adoption of
10 any child shall include but shall not be limited to acting as an agent,
11 finder or intermediary for or between any parent and any prospec-
12 tive parent or a person acting on behalf of either in connection
13 with a placement for adoption of such parent's child. The Superior
14 Court, in an action by the Commissioner of the Department of
15 Institutions and Agencies, may enjoin any party found by the
16 court to have violated this section from any further violation of
17 this section.

18 b. Any person, firm, partnership, corporation, association or
19 agency violating this section shall be guilty of a misdemeanor.

1 4. The Commissioner of the Department of Institutions and
2 Agencies shall promulgate rules and regulations relating to the
3 qualification of agencies for approval to make placements for
4 adoption in New Jersey. Such rules and regulations shall include,
5 but shall not be limited to standards of professional training and
6 experience of staff and requirements relating to responsibilities
7 of trustees, officers or other persons supervising or conducting the
8 placement for adoption program, adequacy of facilities, mainte-
9 nance and confidentiality of casework records and furnishing of
10 reports.

1 5. a. Surrender of a child to an approved agency for the purpose
2 of adoption shall be by a signed instrument acknowledged by the
3 person executing the same before an officer authorized to take
4 acknowledgments or proofs in the State in which the instrument is
5 executed, such officer first having made known the contents of the
6 instrument to the person making the acknowledgment and having
7 been satisfied as to the identity of the person executing the sur-
8 render, which the officer shall certify on the instrument of surrender
9 or on a paper attached thereto. Such surrender shall constitute
10 relinquishment of such person's parental rights in or guardianship
11 or custody of the child named therein and consent by such person
12 to adoption of the child. Such surrender shall be valid and binding
13 without regard to the age of the person executing the surrender.

14 b. Any approved agency may accept custody of a child by a duly
15 executed instrument of surrender from a parent or guardian of
16 the child or from another approved agency or any agency for the

17 care and protection of children approved by any other state, by the
18 United States or by any foreign country, which has duly obtained
19 the authority to place such child for adoption.

1 6. An action for adoption shall be instituted in either the
2 Superior Court or the County Court of the county in which the
3 prospective parent resides; provided, however, that:

4 a. Whenever the child to be adopted has been received into the
5 home of the prospective parent from an approved agency, the
6 action may be instituted in the County Court of any county in which
7 such approved agency has an office; and provided further that

8 b. Whenever a parent of the child to be adopted has been granted
9 a divorce from the other parent by the Superior Court, the action
10 shall be instituted in the Superior Court unless such court
11 previously has awarded custody of the child to an approved agency
12 or has consented to the institution of the action in a County Court.

1 7. a. Any person may institute an action for adoption, provided,
2 however, that a married person living with his spouse may do so
3 only with the written consent of his spouse or jointly with his
4 spouse in the same action or after having lived separate and apart
5 from his spouse for a continuous period of at least 1 year.

6 b. Each plaintiff, at the time of the institution of the action,
7 shall have attained the age of 18 years and shall be at least 10 years
8 older than the child to be adopted, provided, however, that the
9 court for good cause may waive either requirement, such waiver
10 to be recited in any judgment of adoption thereafter entered.

1 8. Whenever any person shall receive a child into his home for
2 the purpose of adoption other than from an approved agency, an
3 action for adoption shall be instituted with reasonable promptness.
4 Whenever any person shall receive a child into his home for
5 purposes other than adoption and it is later determined that an
6 adoption shall be sought, an action for adoption shall be instituted
7 with reasonable promptness following such determination.

1 9. In any adoption proceeding pursuant to this act, notice of the
2 complaint may not be waived and shall be served in accordance
3 with the Rules of Court on each parent of the child to be adopted,
4 except that notice shall not be served on any parent who has
5 executed a valid surrender to an approved agency pursuant to
6 section 5 or whose parental rights have been terminated in a
7 separate judicial proceeding by court order. Such notice shall
8 inform the parent of the purpose, date and place of the hearing,
9 of such parent's right to object to the adoption, of his right to
10 counsel and of his right to have counsel appointed to represent

11 him if he cannot afford to retain counsel. The court may dispense
12 with notice or, in its discretion, permit notice by publication only
13 on proof by affidavit of diligent inquiry establishing that notwith-
14 standing such inquiry the identity or location of such parent cannot
15 be ascertained. For the purposes of this section the defined term
16 "parent" shall include the husband of the mother of a child born
17 or conceived during the marriage and the alleged natural father
18 of a legitimate or illegitimate child.

1 10. a. Any parent who has not executed a surrender pursuant
2 to section 5 and whose parental rights have not been terminated
3 by court order shall have the right to object to the adoption of his
4 child. No judgment of adoption shall be entered over an objection
5 of such parent communicated to the court by personal appearance
6 or by letter unless the court finds that such parent has substantially
7 failed to perform the regular and expected parental functions of
8 care and support of the child, which shall include maintenance of
9 an emotional relationship with the child.

10 b. Any guardian of a child to be adopted who has not executed
11 a surrender pursuant to section 5 and any other person standing in
12 loco parentis of such child shall be given notice of the action and
13 in accordance with the Rules of Court shall have standing to object
14 to the adoption, which objection shall be given due consideration
15 by the court in determining whether the best interests of the child
16 would be promoted by the adoption.

1 11. a. When the child to be adopted has been received from an
2 approved agency, the prospective parent shall file with the court a
3 complaint for adoption after the child has been in the home of such
4 prospective parent for at least 6 months. The complaint shall be
5 accompanied by a consent to the plaintiff's adoption of the child
6 signed and acknowledged by an authorized officer or representative
7 of the approved agency; provided, however, that failure or refusal
8 on the part of such approved agency to give such consent, or with-
9 drawal of consent on the part of such approved agency, shall not
10 preclude an action for adoption.

11 b. Upon the filing of the complaint, the court shall set a date
12 for the adoption hearing not less than 10 nor more than 30 days
13 from the date of institution of the action and shall order the
14 approved agency concerned to file at least 5 days prior to the
15 hearing a two-part written report, part one of which shall describe
16 the circumstances surrounding the surrender of the child to the
17 agency and part two of which shall set forth the results of the
18 agency's evaluation of the child and of the plaintiff and his spouse,

19 if any, and the agency's assessment of the care being received by
20 the child and the adjustment of the child and the plaintiff as
21 members of a family. If the agency's report contains any material
22 findings or recommendations adverse to the plaintiff the agency
23 shall serve a copy of part two of its report upon the plaintiff at
24 least 5 days prior to the hearing. If the approved agency that
25 placed the child with the plaintiff has not consented to the adoption,
26 the court may appoint another approved agency to conduct an
27 investigation and make recommendations in the matter. Such ap-
28 pointment shall not deprive the placing agency of standing to
29 appear at the hearing and contest the adoption. Personal appear-
30 ance at the hearing by a representative of the approved agency
31 conducting the investigation may be dispensed with by the court
32 if the agency's report favors the adoption. If such appearance is
33 required, the approved agency shall be entitled to present testimony
34 and to cross-examine witnesses and shall be subject to cross-exami-
35 nation with respect to its report and recommendations in the
36 matter. The appearance of the child to be adopted shall not be
37 required unless ordered by the court or unless the inquiry pursuant
38 to section 13 indicates that the child is opposed to the adoption.

39 c. The adoption hearing shall be held in camera. If a parent
40 of the child has made an objection to the adoption, the court shall
41 take evidence relating to such objection. If the court finds against
42 the objecting parent in accordance with subsection (a) of section 10,
43 it shall make an order terminating the parental rights of such
44 parent and proceed with the hearing.

45 d. If, based upon the approved agency's report and the evidence
46 presented at the hearing, the court is satisfied that the best interests
47 of the child would be promoted by the adoption, the court shall
48 enter a judgment of adoption. If, based upon the approved
49 agency's report and the evidence presented at the hearing, the
50 court is not satisfied that the best interests of the child would be
51 promoted by the adoption, the court shall deny the adoption and
52 make such further order concerning the custody and guardianship
53 of the child as may be deemed proper in the circumstances.

1 12. a. When the child to be adopted has not been received from
2 an approved agency, the prospective parent shall file with the
3 court a complaint for adoption. Upon receipt of the complaint, the
4 court shall by its order

5 (1) Declare the child to be a ward of the court and declare that
6 the plaintiff shall have custody of such child subject to further
7 order of the court;

8 (2) Appoint an approved agency to make an investigation and
9 submit a written report to the court concerning the facts and cir-
10 cumstances surrounding the surrender of custody by the child's
11 parents and the placement of the child in the home of the plaintiff
12 and an evaluation of the child and of the plaintiff and
12A the spouse of the plaintiff if not the child's parent and if not a
13 party to the action, provided, however, that whenever the plaintiff
14 is a stepparent of the child, the court may dispense with the
15 agency investigation and report and take direct evidence at the
16 preliminary hearing of the facts and circumstances surrounding
17 the adoption;

18 (3) Direct the plaintiff to cooperate with the approved agency
19 making such investigation and report; and

20 (4) Fix a day for preliminary hearing not less than 2 or more
21 than 3 months from the date of the institution of the action; pro-
22 vided, however, that such hearing may be accelerated upon the
23 application of the approved agency and upon notice to the plaintiff
24 where the agency determines that removal of the child from the
25 plaintiff's home is required.

26 Whenever a plaintiff is a brother, sister, grandparent, aunt,
27 uncle, natural father or stepparent of the child, the order may limit
28 the investigation to an inquiry concerning the status of the parents
29 of the child and an evaluation of the plaintiff. At least 10 days
30 prior to the day fixed for the preliminary hearing the approved
31 agency shall file its report with the court and serve a copy thereof
32 on the plaintiff.

33 b. The preliminary hearing shall be in camera and shall have for
34 its purpose the determination of the circumstances under which
35 the child was relinquished by his parents and received into the
36 home of the plaintiff, the status of the parental rights of the par-
37 ents, the fitness of the child for adoption and the fitness of the
38 plaintiff to adopt the child and to provide a suitable home. If the
39 report of the approved agency pursuant to subsection a. contains
40 any material findings or recommendations adverse to the plaintiff,
41 the presence of a representative of the approved agency who has
42 personal knowledge of the investigation shall be required at the
43 preliminary hearing. If in the course of the preliminary hearing
44 the court shall determine that there is lack of jurisdiction or that
45 there is lack of qualification on the part of the plaintiff, the action
46 shall be dismissed forthwith. If in the course of the preliminary
47 hearing the court shall determine that the best interests of the
48 child would not be promoted by the adoption, the court shall deny

49 the adoption and make such further order concerning the custody
50 and guardianship of the child as may be deemed proper in the
51 circumstances.

52 c. If upon completion of the preliminary hearing the court finds
53 that:

54 (1) The parents of the child do not have rights as to custody of
55 the child by reason of their rights previously having been termi-
56 nated by court order, their failure to make timely objection to the
57 adoption pursuant to section 10 or their substantial failure to per-
58 form the regular and expected parental functions of care and
59 support of the child;

60 (2) The guardian, if any, should have no further control or
61 authority over the child;

62 (3) The child is fit for adoption; and

63 (4) The plaintiff is fit to adopt the child, it shall issue an order
64 stating its findings, declaring that no parent or guardian of the
65 child has any right to custody or guardianship of the child, fixing
66 a date for final hearing not less than 6 nor more than 9 months
67 from the date of the preliminary hearing and appointing an
68 approved agency to evaluate the placement in accordance with
69 subsection d. If the plaintiff is a brother, sister, grandparent, aunt,
70 uncle, natural father, stepparent or foster parent of the child, or
71 if the child has been in the home of the plaintiff for at least 2
72 years immediately preceding the commencement of the adoption
73 action, the court may dispense with such evaluation and final hear-
74 ing and enter a judgment of adoption.

75 d. The approved agency appointed pursuant to subsection c.
76 shall from time to time visit the home of the plaintiff and make such
77 further inquiry as may be necessary to observe and evaluate the
78 care being received by the child and the adjustment of the child
79 and the plaintiff as members of a family. At least 15 days prior to
80 the final hearing such approved agency shall file with the court a
81 written report of its findings, including a recommendation concern-
82 ing the adoption, and shall mail a copy of the report to the plaintiff.

83 If at any time following the preliminary hearing such approved
84 agency shall conclude that the best interests of the child would not
85 be promoted by the adoption, the court, after a hearing held upon
86 the application of such approved agency and upon notice to the
87 plaintiff, may modify or revoke any order entered in the action and
88 make such further order concerning the custody and guardianship
89 of the child as may be deemed proper in the circumstances.

90 e. At the final hearing the court shall proceed in camera; pro-
91 vided, however, that if the approved agency in its report pursuant
92 to subsection d. has recommended that the adoption be granted,
93 the final hearing may be dispensed with and, if the court is satisfied
94 that the best interests of the child would be promoted by the
95 adoption, a judgment of adoption may be entered forthwith.

96 The appearance of the approved agency at the final hearing shall
97 not be required unless its recommendations are adverse to the
98 plaintiff or unless ordered by the court. If such appearance is
99 required, the approved agency shall be entitled to present testimony
100 and to cross-examine witnesses and shall be subject to cross-
101 examination with respect to its report and recommendations in the
102 matter. The appearance of the child to be adopted shall not be
103 required unless ordered by the court or unless the inquiry, pursuant
104 to section 13, indicates that the child is opposed to the adoption.

105 f. If, based upon the report and the evidence presented, the
106 court is satisfied that the best interests of the child would be
107 promoted by the adoption, the court shall enter a judgment of
108 adoption. If, based upon such evidence, the court is not satisfied
109 that the best interests of the child would be promoted by the
110 adoption, the court shall deny the adoption and make such further
111 order concerning the custody and guardianship of the child as
112 may be deemed proper in the circumstances.

1 13. Each report of an approved agency pursuant to section 11
2 or 12 shall set forth the understanding and wishes of the child to
3 be adopted with respect to the proposed adoption, and no judgment
4 shall be entered pursuant to this act without the court's having
5 given due consideration to such understanding and wishes. The
6 foregoing requirement shall not apply in the case of a child under
7 the age of 8 years who, in the judgment of the approved agency, is
8 incapable of understanding and expressing an opinion regarding
9 the proposed adoption.

1 14. a. The entry of a judgment of adoption shall terminate all
2 relationships between the adopted child and his parents and all
3 rights, duties and obligations of any person that are founded upon
4 such relationships, including rights of inheritance under the
5 intestate laws of this State, except such rights as may have vested
6 prior to entry of the judgment of adoption; provided, however,
7 that when the plaintiff is a stepfather or stepmother of the adopted
8 child and the adoption is consummated with the consent and
9 approval of the mother or father, respectively, such adoption shall
10 not affect or terminate any relationship between the child and such

11 mother or father or any rights, duties or obligations based there-
12 upon. For good cause, the court may in the judgment provide that
13 the rights of inheritance from or through a deceased parent will
14 not be affected or terminated by the adoption.

15 b. The entry of a judgment of adoption shall establish the same
16 relationships, rights, duties and obligations between the child and
17 the adopting parent as if such child were born to such adopting
18 parent in lawful wedlock. For good cause, the court may direct the
19 entry of judgment nunc pro tunc as of the date the action was
20 instituted. In applying the intestate laws of this State, an adopted
21 child shall have the same rights of inheritance as if born to the
22 adopting parent in lawful wedlock. In the construction of any
23 testamentary or other document executed subsequent to the effec-
24 tive date of this act, an adopted child shall be deemed lawful issue
25 of the adopting parents unless such document shall otherwise
26 provide.

1 15. The clerk of each County Court shall file promptly with the
2 Superior Court a copy of each judgment of adoption entered pur-
3 suant to this act. The clerk of the Superior Court shall docket the
4 copies of such judgments and shall maintain an alphabetical index
5 of all judgments of adoption entered each year pursuant to this
6 act in the County Courts and the Superior Court of the State,
7 all of which records shall be sealed and thereafter shall be made
8 accessible only by court order.

1 16. a. All records of proceedings relating to adoption, including
2 the complaint, judgment and all petitions, affidavits, testimony,
3 reports, briefs, orders and other relevant documents, shall be filed
4 under seal by the clerk of the court and shall at no time be open to
5 inspection or copying unless the court, upon good cause shown,
6 shall otherwise order. An index to all adoption proceedings shall
7 be maintained by the clerk of the court, but no index of adoption
8 proceedings shall be open to inspection or copying or be made
9 public except upon order of the court.

10 b. Upon entry of a judgment of adoption, the clerk of the court
11 shall certify to the State Bureau of Vital Statistics, any successor
12 agency or any similar agency in the State or country of the child's
13 birth, the date of entry of the judgment, the names of the adopting
14 parent or parents, the name of the child, the date and place of birth
15 of the child and the new name of the child if changed by the judg-
16 ment of adoption.

1 17. The costs of all proceedings pursuant to this act shall be
2 borne by the plaintiff, including the costs incurred by an approved

3 agency acting pursuant to an order of the court; provided, however,
4 that such approved agency may waive part of or all such costs.
5 Payment of costs hereunder shall not be a condition precedent to
6 entry of judgment.

1 18. a. No person, firm, partnership, corporation, association or
2 agency shall make, offer to make or assist or participate in any
3 placement for adoption and in connection therewith

4 (1) Pay, give or agree to give any money or any valuable con-
5 sideration, or assume or discharge any financial obligation; or

6 (2) Take, receive, accept or agree to accept any money or any
7 valuable consideration.

8 b. The prohibition of subsection a. shall not apply to the fees
9 or services of any approved agency in connection with a placement
10 for adoption, nor shall such prohibition apply to the payment or
11 reimbursement of medical, hospital or other similar expenses
12 incurred in connection with the birth or any illness of the child,
13 or to the acceptance of such reimbursement by a parent of the child.

14 c. Any person, firm, partnership, corporation, association or
15 agency violating this section shall be guilty of a high misdemeanor.

1 19. a. Any prospective parent who is not a brother, sister, aunt,
2 uncle, grandparent, foster parent, natural father or stepparent of
3 the child to be adopted shall file before the complaint is heard, in
4 accordance with court rules, a detailed report which shall be signed
5 and verified by each such prospective parent and shall disclose all
6 sums of money or other valuable consideration paid, given or
7 agreed to be given to any person, firm, partnership, corporation,
8 association or agency by or on behalf of the prospective parent in
9 connection with the adoption, and the names and addresses of each
10 such person, firm, partnership, corporation, association or agency
11 to whom such consideration was given or promised. The report,
12 a copy of which shall be provided to the approved agency appointed
13 pursuant to section 12, shall include but shall not be limited to
14 any expenses incurred or to be incurred by or on behalf of such
15 prospective parent in connection with

16 (1) The birth of the child;

17 (2) The placement for adoption of the child with the prospective
18 parent;

19 (3) Medical or hospital care received by the mother or the child
20 during the mother's pre- and postnatal period; and

21 (4) Services relating to the adoption or to the placement for
22 adoption, including legal services, which were rendered or are to
23 be rendered to or for the benefit of the prospective parent, either
24 parent of the child or any other person or agency.

25 b. Whenever based upon a report filed pursuant to this section it
26 shall appear to the court that any person may have violated
27 sections 3 or 18 hereof, the court shall refer the matter to the
28 appropriate county prosecutor.

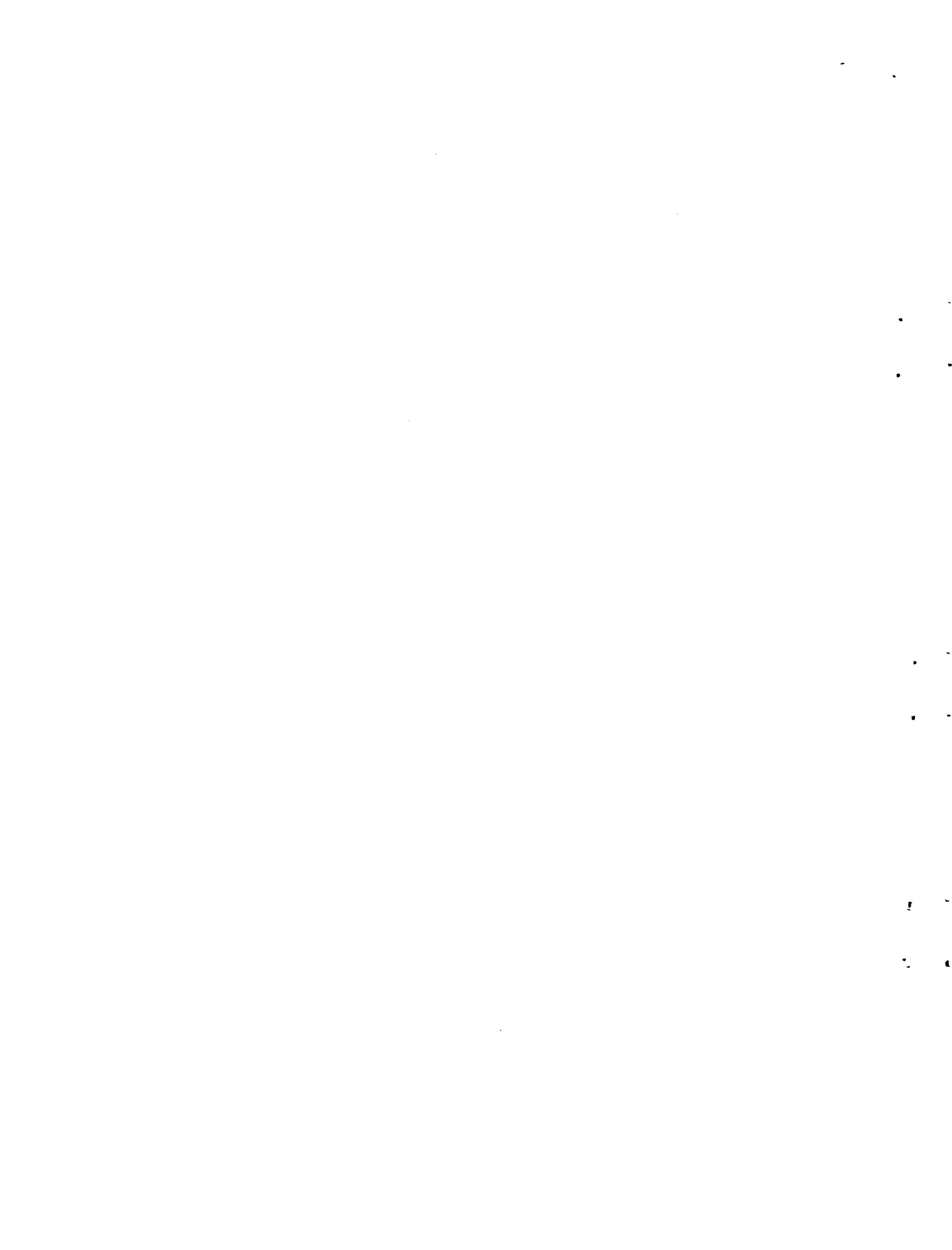
1 20. P. L. 1953, c. 264 (C. 9:3-17 to 9:3-36), P. L. 1953, c. 265
2 (C. 2A:96-6 to 2A:96-8), P. L. 1954, c. 112 (C. 9:3-19.1), and P. L.
3 1955, c. 140 (C. 9:3-22.1) are hereby repealed subject to section 22.

1 21. If any provision of this act, or any application of any provi-
2 sion, is held invalid, the invalidity shall not affect other applications
3 of the provision, or other provisions of the act, which reasonably
4 can be given effect despite the invalidity. To this end, the provi-
5 sion of this act are declared severable.

1 22. This act shall take effect 30 days after enactment but it shall
2 not apply to any action for adoption commenced prior to such
3 effective date, for purposes of which P. L. 1953, c. 264 (C. 9:3-17 to
4 9:3-36) as amended, shall remain in effect until final disposition.

STATEMENT

The present law governing adoption dates back to 1953. The purpose of this legislation is to simplify and clarify the provisions governing adoption proceedings, shorten the period of time necessary to complete an adoption, modernize the law with respect to the rights of parents and bring it into conformity with recent United States Supreme Court decisions, and facilitate enforcement of the law against unauthorized persons who for profit act as intermediaries in adoption placements.



SENATOR CARMEN A. ORECHIO (Chairman): We will now convene this public hearing on Senate Bill 1631.

My name is Carmen Orechio. I am Chairman of the Senate Law, Public Safety and Defense Committee. The gentleman on my left is Steve Robbins, who is a member of the staff of this Committee.

Is there anyone here who has not registered who wishes to speak on this bill today? If so, could we have your names.

MR. ROBBINS: I made a list of all the invitees. Let me read the names and maybe those people who are here could indicate whether they are going to speak. (Mr. Robbins reads the list of names on the witness list.) Is there any other person who would like to speak on the bill other than the governmental agencies and Senator Menza's aide? Thank you.

SENATOR ORECHIO: At this time, we will hear from our first speaker, Miss Dinah Stevens, representing Senator Menza, the sponsor of the bill.

D I N A H S T E V E N S: Thank you, Mr. Chairman. My name is Dinah Stevens. I am pleased to be here representing Senator Menza. I have a brief opening statement and then I would be happy to answer any questions I can.

This bill, Senate 1631, represents a modest, but important, attempt to bring the New Jersey adoption law, which was passed in 1953, up to date.

The attitude of the law and the State regarding the rights of children and the role of the State in the family have changed and are changing drastically and rapidly.

This bill is an effort to clarify and simplify adoption procedures. It spells out the important differences in procedures between independent and agency placement adoptions; it simplifies step-parent adoptions.

Additionally, it shortens the period of time necessary to complete an adoption, modernizes the law with respect to the rights of parents, brings it into conformity with recent United States Supreme Court decisions and facilitates enforcement of the law against unauthorized persons, who, for profit, act as intermediaries in adoption placements.

The sponsor and his staff have worked on the provisions of this bill for two years with interested governmental and private agencies. There are still some technical amendments which need to be made, such as changing the name of the Department of Institutions and Agencies to Human Services. We are also willing to consider, with the committee and committee staff, those substantive amendments which are recommended here today. However, a great deal of consideration has already gone into this bill. We would hope that the recommended changes will be minimal and will be limited to the provisions covered by this bill. Other areas of concern can and should be addressed by future legislation.

Senator Menza urges expeditious and favorable consideration by the committee. Thank you.

SENATOR ORECHIO: Thank you.

Our next speaker is Mr. Chris Kennan from the Department of Human Services.

C H R I S K E N N A N: Good morning, Mr. Chairman. My name is Chris Kennan and I am the Legislative Liaison for the Department of Human Services. I appreciate the opportunity to appear before you on behalf of Commissioner Klein, in regards to

Senate Bill 1631.

As you know, the Department has several responsibilities in the area of adoption under existing statutes which date back at least to 1953.

First, it is our responsibility to approve and regulate adoption agencies in the State of New Jersey. There are currently 14 adoption agencies approved by the Division of Youth and Family Services, who in 1975 placed a total of 478 children with families across the State.

Second, we are also an adoption agency ourselves, having placed 421 children in 1975 and 559 children in 1976, including many difficult to place children that other adoption agencies are less able to handle.

Third, in a non-agency, or independent, adoption we are most often appointed by the court to perform an investigation, for the court, to determine the suitability of the plaintiff to become an adopting parent.

Senate Bill 1631 is the product of several years work on the part of a Task Force composed of professionals in the field, several adoption agencies, child advocacy groups, and staff of the Division of Youth and Family Services.

The impetus for this bill came primarily from a sense that the current statutes were old and somewhat outdated, from a need to improve and modernize the basis on which a court can terminate parental rights, and from a desire to put some teeth in the statute with regards to what are known as "black market" or "grey market" adoptions.

Without going into great detail, let me outline some of the more important provisions of S 1631.

1. S 1631 separates and clarifies the procedures to be followed in agency as opposed to non-agency or independent placements. In the present law, it is difficult to separate provisions which apply to each type of placement or to both types.

2. S 1631 provides that if the plaintiff in an independent adoption is a step-parent, the court may dispense with the agency investigation and report, to which I referred earlier, and take direct evidence at the preliminary hearing. This provision has the potential for reducing the volume of adoption complaint investigations assigned to DYFS by 50 to 75 percent. There are currently an estimated 1800 to 1900 such investigations being done every year at a cost of up to \$174 to the family. And we could reduce that to perhaps 500 a year, which would represent a substantial savings to parents and would also free up the staff of the Division of Youth and Family Services for more important casework.

3. S 1631 brings the adoption law in line with the age of majority law, which specifies that a person age 18 may adopt a child. It also includes a provision that a person under 21 years may be adopted as a minor.

4. Each report of an approved agency must include the understandings and wishes of the child to be adopted with respect to the proposed adoption, which must be given due consideration by the court before entering a judgment. This requirement does not apply if a child under age 8, in the judgment of the agency, is incapable of understanding and expressing an opinion in the matter.

5. Essentially, the provisions regarding violations and penalties are the same as in the present law, but with the inclusion of the term "material assistance" which is defined. An important addition is a provision that in non-relative placements, the prospective parent must file, before the complaint is heard, a detailed

report, signed and verified by each prospective parent, which discloses "all sums of money or other valuable consideration paid, given or agreed to be given to any person, firm, partnership, corporation, association or agency, by or on behalf of the prospective parent in connection with the adoption, and the names and addresses of each such person, firm, partnership, corporation, association or agency to whom such consideration was given or promised." It must include, but not be limited to, any expense incurred or anticipated in connection with:

- a) The birth of the child;
- b) The placement of the child with the prospective parents;
- c) Medical or hospital care received by the mother or the child during the pre- and postnatal period; and,
- d) Services related to the adoption or the placement for adoption, including legal services, which were rendered or are to be rendered to or for the benefit of the prospective parents, either parent of the child or any other person or agency.

A copy of this report must be provided to the investigating agency. If the court finds from information in the report that any person may have violated provisions of this Act, the court shall refer the matter to the appropriate County Prosecutor. This addition was added so that prospective adoptive parents will be required to make full disclosures in writing of any financial expenditures or other obligations made, promised or anticipated in connection with the adoption, along with the names and addresses of all persons and organizations involved. It is hoped that this requirement will bring to the attention of courts and adoption agencies those persons and organizations involved in placement violations for financial gain. The mandatory provision that courts report such violations to the appropriate Prosecutors will hopefully result in criminal action against those involved in black market adoptions.

In terms of the bill, as written, the Department sees no particular areas which need amendment, with the exception of the name of the Department which should be amended to reflect the change from Institutions and Agencies to Human Services.

This bill would bring the current adoption statutes up to date and would also make the process of adopting a child more efficient by shortening somewhat the time needed to complete the adoption. It would also facilitate the enforcement of the law against those persons who, without authorization and therefore illegally, offer children for adoption for profit. The Department of Human Services urges the passage of this legislation.

SENATOR ORECHIO: Thank you.

Our next speaker will be Mr. Mitsock, representing Concerned Persons for Adoption.

T H O M A S M I T S O C K: Concerned Persons for Adoption has reviewed this bill and we find it quite necessary to facilitate the process of adoption. We recommend a very early passage of this bill. It will save adoptive parents time, it will save the agencies time, and give them more time to spend helping find new homes rather than supervising already-made placements.

One of the points that we feel is of particular importance is the section where it says the adoption can be granted over the objection of the natural parents if they have willfully and substantially failed to maintain an emotional relationship with the child. We think this is a very important part because there are many children now in foster care that cannot be adopted because they are not legally free. There is interest, but not enough interest to return the child to the family.

We think this is a very important section which should be left in and passed early.

We are in general support of the bill and we would like to see it passed as soon as possible.

SENATOR ORECHIO: Thank you very much.

Our next speaker will be Mr. John Boyne, Executive Director of the Inter-agency Adoption Council.

J O H N B O Y N E: Thank you for inviting us today. We appreciate the chance to speak out on this bill.

The Interagency Adoption Council represents the licensed adoption agencies of the State. In making our comments, by the way, we do not mean that the individual agencies may not have anything else to say, but our statement represents the consensus.

The bill is substantively quite good. We do recommend its passage. I will not be redundant. All the praise that has been spread on it so far by everyone who has spoken before is quite merited, with respect to the distinction between agency adoptions, private adoptions, clarification and making efficient procedures, etc.

We have, however, four recommendations for amendments, at least one of which we feel is essential to the integrity of the bill and another of which is essential, we think, to the integrity of good adoption practice.

The first thing we would suggest is clarification of the terms "custody" and "guardianship." As a group of social workers meeting once a month, we struggle with this and realize that we are not competent to make these legal definitions ourselves. However, it struck us there were some inconsistencies within the bill and there were inconsistencies with other parts of the law, particularly Title 30. For example, at one point, something that just struck me as a layman in legal matters, the definition of "'custody' shall mean exercise of continuing control over the person of a child." This could be a long-term baby-sitter or a relative that you left your child with while you were sick in the hospital for a month. In a sense, the old law was tighter on that.

Please bear in mind, our objections are not to undermine this bill. We support it and we want to strengthen it rather than to undermine it. We want to make that quite clear.

We believe that the task of consistent and clear legal definition is best left to expert legal research. It is beyond our competence as social workers to do that. However, we suggest that custody as physical possession be distinguished from custody as legal status, and that these further be distinguished from guardianship. We also urge that the definition of each term include at least a summary of the following five elements:

- a) Source of the legal status - for example, biological parenthood;
- b) The rights conferred;
- c) The duties conferred;
- d) Transferability - and that is from whom to whom, and whether by voluntary action of by court order only, etc.; and
- e) The right to terminate.

The definition of these terms seems to be the weakest part of the bill.

I think they need reworking, simply to strengthen them.

We make a second recommendation which we feel is important to the integrity of good adoption practice; and, that is, the problem of surrenders and the rights of fathers, especially unknown fathers and putative fathers. Two problems have come up with this. One is that, as a result of recent court decisions, agencies have spent an enormous amount of time tracking down fathers who are not interested or men who deny that they are fathers. Yet they must do so and, I think rightly so, to preserve the rights of fathers to their children. However, frequently it is a lot of wheel-spinning.

A second thing is that a number of people - I was talking to one of my social workers today - would consider adopting, and they would consider even adopting the so-called hard-to-place children that Spaulding specializes in, but they are afraid the children will be taken away. The law is uncertain; people are anxious. We recommend a kind of registry. There were a number of comments made by my staff, some of which I can't quote, about preserving the rights of fathers, but making the fathers actively responsible. Parenthood is an active responsibility. It is not simply a passive state. The problem is complicated by the fact that some mothers conceal their pregnancy from the father and from the agency. There is no way we can get around that.

More than the waste of professional time, the agencies are concerned that the rights of fathers be respected, but that reasonable limits be set, so that the child does not suffer and so that adoptions are not legally undermined by the violation of those rights. On the assumption that sexually-active men are aware of the facts of life and on the assumption that responsible parenthood inherently begins with taking active responsibility for the potential result of sexual intercourse, we propose that the following be spelled out in the bill: -- However, again, if this would retard the passage of the bill, we would rather have it put under separate legislation; but we would like to see it in this bill because it is good adoption practice.

A putative father who fails to determine whether an act of sexual intercourse on his part has resulted in offspring within a certain reasonable time - let's say 30 days of the birth of a child - or who within 30 days of being informed by the mother, by a licensed foster care or adoption agency, or by a court, fails to declare his fatherhood, shall be deemed technically negligent as a parent and his parental rights shall be automatically and irrevocably terminated. However, any man who believes that he may be the father of a child, but cannot determine this fact, can preserve his parental rights by naming the presumed mother and the approximate date of the expected birth in a registry to be maintained - we suggest - in the Bureau of Vital Statistics. It would go with birth records. This list shall be confidential and be accessible only to the court of appropriate jurisdiction, to a licensed foster care or adoption agency and to the attorney representing the plaintiff in connection with the adoption of a specific child.

This sort of registry is said to exist in some other states; for example, Michigan. We haven't checked this out. It is expected that only a few men will take advantage of it. But they will be the men who care enough to take responsibility for their fatherhood and who are being blocked by uncooperative mothers. Meanwhile, children will be protected from those who risk siring, but show no interest in fathering.

The third recommendation we make is that we suggest that the statement of public policy prefacing the old adoption law be incorporated into this bill and we suggest that something like the following statement be added to it: "With due regard to the rights of all persons affected by an adoption, in any conflict or balancing of rights relative to this Act, the rights and best interests of the child shall prevail." This policy statement will help in interpreting the application of the law in hundreds of unforeseen contingencies.

Fourth. An especially fine portion of the bill, I think, is the section which states who may institute action. We suggest strengthening this section with two additions. Although it seems implied, it should be made clearer that a married person with the consent of spouse may institute action, even if separated less than a year. It is simply a matter of clarity. It may be implied already. Further, we suggest that, in order to protect the non-adopting spouse, the bill should explicitly state that the non-adopting spouse and his property are totally free of all legal obligations or ties to the adopted child in virtue of the adoption, notwithstanding any and all other laws pre-existing. This is, of course, not intended to void any contractual, fiduciary, or other obligations arising out of some other relationship with the child. It may be that this protection is already afforded the non-adopting spouse, but an explicit statement might avoid all question of controversy around family law or property rights. Again, this is a matter of legal research about which we were anxious.

In the last year, Spaulding - and we specialize only in "hard to place" children - has had to turn down at least two or three parents, all black, by the way, who were willing to adopt "hard to place" children and were separated for 4, 5, 6 or 7 years, with no prospect of a reunited marriage. Under the current law, we couldn't place them. This law will open that door, and I think that is quite worthwhile. Thank you.

SENATOR ORECHIO: Thank you for coming.

The next speaker will be Mr. Boskey, representing the Citizens Committee for Children. I should have said Professor Boskey of the Seton Hall Law School. I'm sorry.

J A M E S B O S K E Y: I am Professor Boskey, Professor of Family Law and Legislation, among other things, at Seton Hall Law School. I am here representing the Citizens Committee for Children of New Jersey. The Citizens Committee, which is a statewide, non-profit organization, has taken a continued interest in this bill from its early stages.

First, we would like to state that we strongly feel, as the other speakers have said, that this bill is an important one and one that will accomplish a number of matters which are very useful in the restructuring of the adoption law.

We think, particularly important in this regard, among other things, are the proper classification of the circumstances for private placement, as opposed to agency placement, the implementation of more effective procedures for adoption, and the disclosure of payment provisions which were mentioned earlier.

We strongly encourage the passage of this bill and would encourage the rapid passage of this bill. We feel, however, there are a number of matters that are deserving of consideration by the Committee in its review of the bill, and would like to point out several of these at this time. None of these matters are of such a nature that their exclusion should in any way block the bill from passage, because the bill, even as it stands, is a good one, although we feel that it can be improved.

There are a number of technical amendments - "custody" and "guardianship" definitional problem, which Mr. Boyne mentioned, and related ones which I don't feel it is necessary to go into at this time; but we will supply the Committee and already have supplied certain members of the Committee with descriptions of some technical problems that we have with the language of drafting.

There are a couple of more substantive provisions which are worth mentioning, however, here. Of major importance to the Citizens Committee is, in our feeling, the need for a provision providing in essence that, "No approved agency shall discriminate with regard to the selection of adoptive parents for any child on the basis of age, sex, race or religion, except as otherwise provided in this act; provided, however, that these factors may be considered in determining whether the best interests of a child would be served by a particular placement for adoption or by the adoption."

The problem here is one that has not been as great in New Jersey as it has been in other states. But it is a problem that continues to exist. I would just like to mention a couple of aspects of the problem. Where a child is hard to place, the agencies in New Jersey have generally been quite cooperative in placing the child cross-racially, with older parents and the like, in the course of normal placement. With the non-hard-to-place child, however, this has not been the case and there has been a perhaps too great an accordance to the traditional goals of ideal matching, the matching of formal characteristics as opposed to the idea of providing the child with the best possible placement under the circumstances. There is at least one agency in New Jersey which specifically discriminates on the basis of religion in its placements. I am informed it specifically discriminates on the basis of religion in its placements as an official policy. There are a number of other agencies, which while they do not as official policy discriminate, do in fact tend to discriminate on a religious basis.

The same problem arises with regard to trans-racial adoptions. The statement of the National Association of Black Social Workers that no placement should be made of a black child with a non-black family, or at least with a white family, has caused a problem for a number of agencies. And a number of agencies are extremely reluctant to make a cross-racial placement, even where this may be the only placement available to a particular child.

This kind of discrimination is clearly violative, to my mind, of the equal protection section of the United States Constitution and of equivalent sections of the New Jersey Constitution. While it would be possible to deal with this sort of discrimination under the provisions of the Constitution, we feel that a specific statement in the law would be far more effective in dealing with the problems of discrimination.

There are three other matters which I feel are important to consider. One was mentioned by Mr. Boyne from the Interagency Adoption Council; and, that is, the one-year separation provision. This may qualify as a technical amendment, but I think that it is worth mentioning because I think it is something the Committee should consider. Perhaps this one-year period should be changed to an 18-month period of separation prior to the filing for an adoption. The reason for this is that under New Jersey's current no-fault divorce laws, it is clear that a person who has been separated from his or her spouse for a period of 18 months can then obtain a divorce. If the spouse of the person seeking the adoption, presumably as a single-parent adoption in the separation situation, wishes not to be associated

with the adoption, by using an 18-month period, this would allow that spouse to elect to proceed in a divorce action and thereby to exclude any possibility of any of the problems, such as attachment of their estate or other interests, with regard to the adoption. It is the same problem that Mr. Boyne spoke to with a slightly different approach to the resolution of it.

The Citizens Committee also feels that, under certain circumstances, the interest of the child and the interest of the natural parents and/or the potential adoptive parents, may be in conflict where there is a contested adoption. Under those circumstances, the Citizens Committee would recommend that a guardian-ad-litem should be appointed for the child, once the fact of the contesting of the adoption has taken place, whether that contest comes through the "natural" parents of the child or through a negative recommendation by an agency, recommending that the placement for adoption should not be continued. In both of these circumstances, we feel that the appointment of a guardian-ad-litem would allow the child's interests, as opposed to those of the parents, where they are in conflict, to be suitably represented.

Finally, I would agree with Mr. Boyne on one additional problem that he stated - although we have come up with a somewhat different solution, I think either solution to the problem would be appropriate - and, this is, the so-called Stanley versus Illinois problem, the question of the putative father's rights with regard to termination of the putative father's rights in an adoption matter. The problem, as Mr. Boyne has said, comes in a variety of areas. One, that has been suggested, is wheel-spinning by the agency, that the agency in order to try and locate the putative father may be required to spend great sums of money to locate somebody who does not wish to be located. Secondly, the putative father who has not expressed an interest in the child over an extended period of time, it seems to us, has shown that he lacks a sufficient tie to the child to warrant very substantial attention to his rights.

The problem, of course, arises in view of the Supreme Court decision in Stanley v. Illinois, which on its face appears to state that every putative father must be notified of the fact of adoption under all circumstances. Recent decisions throughout the country, however, although admittedly not U. S. Supreme Court decisions, have substantially limited the scope of Stanley - and, to my mind, as a professor specializing in this area, I believe correctly - and have suggested that Stanley would be limited to facts similar to facts in that case where the father had retained an interest in the children over an 18-year period following the creation of the relationship with the mother.

For these reasons, we would recommend a section which would read: "For the purposes of this section (this being page 4, line 15, section 9) the term 'parent' shall include the biological father of a child who has acknowledged paternity, has been determined to be the father by a court of law or has regularly provided support to the child during the period following its birth."

We feel, if there has been no acknowledgement by the father, there has been no provision of support or there has not been a finding of paternity, that the father can properly be excluded -- no, correction -- not can be excluded from the hearing, but need not be provided with notice of the hearing. If the father is aware of the hearing and wishes to appear, then I would feel that his exclusion would be improper. But he need not be given notice of the hearing under those circumstances. Thank you. (See written statement submitted by Professor Boskey on p. 10.)

SENATOR ORECHIO: Thank you very much.

MR. ROBBINS: Could I ask you a question?

PROFESSOR BOSKEY: Sure.

MR. ROBBINS: On the subject of guardian-ad-litem, are you specifically recommending that an attorney be appointed for this purpose or could some other ---

PROFESSOR BOSKEY: Our recommendation would be that it need not be an attorney appointed for this purpose. It need merely be someone whose interests are clearly independent of the agency and the parents in these circumstances.

My feeling is that typically under New Jersey court procedures, the courts would probably appoint an attorney to the position, but I don't feel that that is by any means necessary to see that the child's rights are properly protected. In many cases, a non-attorney might do a better job of protecting those rights.

MR. ROBBINS: Thank you.

Is there anyone else who wishes to speak on the bill?

SENATOR ORECHIO: I just have a question to ask Miss Stevens.

Page 4 of the bill, specifically Section 10 (a), specifically, lines 8 and 9 - how do we prove where an emotional relationship with the child has not been maintained by a parent? What is the criteria for that?

MS. STEVENS: I would assume the criteria would be worked out on a case-by-case basis and there is probably some history at this point in the close cases.

The obvious distinctions would be a parent who had paid no attention to the child at all or who had neglected or abused the child and the problem would come in the close cases rather than in the obvious ones.

MR. ROBBINS: Would there be any use in possibly including some statutory criteria with regard to this? In other words, it seems fairly nebulous, "maintenance of an emotional relationship." Would there be any use in saying, "including, but not limited to," or something along that line, and then citing a number of standards?

MS. STEVENS: I would certainly be willing and I think the sponsor would be willing to explore language that might define it more precisely and see if we aren't running into other problems by trying to.

SENATOR ORECHIO: Thank you very much.

If no one else wishes to be heard, this hearing will be concluded. I want to thank everyone who participated. I also want to say I imagine a transcript of these proceedings will be provided for us long before we meet. But this bill will be given top priority and it will be on the agenda at the next meeting of our Law, Public Safety and Defense Committee.

(Hearing Concluded)

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CITIZENS COMMITTEE FOR CHILDREN OF NEW JERSEY

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STATEMENT BEFORE:

New Jersey State Senate
Law, Public Safety and Defense Committee
February 23, 1977
Trenton, New Jersey
Public Hearing on Senate Bill 1631

Citizens Committee for Children of New Jersey (CCCNJ), a nonprofit organization dedicated to improving programs and policies affecting children, strongly supports Senate Bill 1631 introduced by Senator Menza.

It is a comprehensive, well-written piece of legislation that creatively balances the rights of parents and children and establishes an adoption process that is both efficient and responsive. We strongly support this legislation because it tightens regulation of independent adoptions to prevent exploitation of children for profit and simplifies the procedure for obtaining surrenders and terminating parental rights in appropriate instances.

Before the bill is enacted, we urge that several major additions and some minor technical revisions be made which would greatly strengthen the legislation. We sincerely hope that these recommended changes will not substantially hold up reporting out of the bill, especially in view of the fact that the sponsor has expressed a willingness to give full consideration to proposed revisions if your committee is in agreement.

First, we urge that a section be added to prohibit discrimination against adoptive parents on the basis of age, sex, race, religion or marital status. Although the equal protection clause of the Constitution and state law prohibit such discrimination, our organization has information that, in practice, adoptive agencies in New Jersey have engaged in discriminatory practices which have denied children adoptive homes. Such a

clause would not prevent agencies from giving consideration to these factors as part of an overall assessment of the appropriateness of the adoptive placement. We therefore recommend the addition of the following provision on line 15, page 10, following section 18(c):

"No approved agency shall discriminate with regard to the selection of adoptive parents for any child on the basis of age, sex, race or religion, except as provided otherwise in this act; provided however that these factors may be considered in determining whether the best interests of a child would be served by a particular placement for adoption or the adoption."

Secondly, although S1631 makes adequate provision for legal representation of prospective and natural parents, CCCNJ thinks it is essential that children be represented by a guardian-ad-litem in certain instances where their interests may differ from the parent or agency. The Committee therefore recommends that the following provision should be added on page 7, section 12d, line 85:

"The court shall appoint a guardian-ad-litem for the child to further investigate the situation and, after a hearing..."

a similar provision should be added at pg 5 2118 line 29

Thirdly, CCCNJ recommends that changes in the definition of parent be made so that the rights of fathers are adequately recognized in accordance with the "Stanley" decision at the same time the interests of adoptive children are protected. On one hand, the suggested amendment would ensure that fathers who had been legally recognized or had provided support were notified of adoptive proceedings. At the same time, it would prevent publication and unnecessary search for unwilling fathers that can cause excessive delays in freeing children for adoption. We therefore recommend the following language on page 4, line 15, section 9:

"For the purposes of this section the term 'parent' shall include the biological father of a child who has acknowledged paternity, has been determined to be the father by a court of law or has regularly provided support to the child during the period following its birth."

There are some other proposed revisions of a minor nature which we will submit in writing to Senator Menza and the Committee at a later date.

Citizens Committee appreciates the opportunity to testify on behalf of this piece of vitally needed legislation and urges that it be reported out of committee at the earliest possible date.

JUN 27 1985



