

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on February 7, 1985, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Robert Barnum, Social and Rehabilitation Services
Donald Pearson, Lutheran Social Services
John Stumbo, Topeka Attorney

Senate Bill 69 - Adoption Procedures.

Robert Barnum, Social and Rehabilitation Services, testified the bill will provide a repository whereby legal documents, background information, health and genetic history can be permanently retained for adopted persons. It also provides a mechanism for the gathering and filing of such information at the time the petition is filed. He reported the fiscal note is approximately \$60,000 the first year, and the following years approximately \$16,000. In response to a question from a committee member, Mr. Barnum explained right now courts are the only place that has these records, and this bill would provide the information be furnished to SRS. A copy of the testimony and proposed amendments are attached (See Attachments I).

Donald Pearson with Lutheran Social Services testified in support of the bill. He stated they are concerned with retention of adoption information, and this bill is providing for that. It has been their experience, as a private agency, that they have people come back needing medical information that is contained in their records. That information is more and more important to these children and to these children in their adult life. During discussion concerning relinquishment of the child, Mr. Pearson explained the work their agency does prior to relinquishment; they try to handle the birth parents concerns which does not come up in the relinquishment hearings. He stated the court is sympathetic to the birth parent and has been more aware of that person's feelings.

Senate Bill 71 - Interstate compact on adoption and medical assistance.

Bob Barnum explained the purpose of this legislation is to put in place a legal mechanism which will assure the continuation of federally funded adoption support medical assistance to children, adopted through the Kansas special needs adoption program, who are placed across state lines or who move with their adoptive families into another state. A copy of his testimony is attached (See Attachment II). Staff inquired, how many states have adopted this legislation? Mr. Barnum reported Maine and Minnesota have adopted it, and fifteen states are considering it in their next legislative session.

Donald Pearson testified he sees this legislation as facilitating the placement of these children. It is an asset to the families who move into the State of Kansas. From their experience there is a problem with our Kansas children who do have medical card eligibility in obtaining services from other states when families move. A committee member inquired if all states provide the same level of medical services?

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~PM~~ on February 7, 1985.

Senate Bill 71 continued

Mr. Barnum replied, not necessarily, no. The committee member was concerned with the fiscal magnitude concerning a person coming into Kansas who has a special needs child because Kansas has better benefits. Mr. Barnum responded, it is advantageous to the system if a person has taken a special needs child. Mr. Pearson pointed out it is a savings to the state if a special needs child moves into an adoptive home.

Senate Bill 73 - Probate code; venue of proceeding for adoption of children.

Bob Barnum explained, the purpose of the bill is to prevent out of state residents filing adoption petitions in Kansas to avoid complying with the laws of their state. A copy of his testimony is attached (See Attachment III).

John Stumbo, a Topeka attorney, testified in opposition to the bill. He is opposed to the proposed language to be added to K.S.A. 59-2101 that appears in lines 27 through 30 in the bill. A copy of his memorandum is attached (See Attachment IV). Committee discussion with him followed. Mr. Stumbo introduced Carol Baumann whose specialty is dealing with natural mothers.

Donald Pearson testified in support of the bill. He stated it is further protection of children's rights, and especially, needs to be done by the State of Kansas.

A committee member inquired how many states allow nonagency adoptions? Mr. Barnum reported he had 15 states listed.

A copy of a letter in opposition to Senate Bill 73 is attached (See Attachment V).

The meeting adjourned.

The guest list is attached (See Attachment VI).

2-7-85

State Department of Social and Rehabilitation Services

Statement Regarding S.B. 69

1. Title

An Act concerning adoption; amending KSA 59-2278 to include provision for the gathering of medical and genetic information on the adopted child and a mechanism to retain such information.

2. Purpose

This bill will do two things. It will provide a repository whereby legal documents, background information, health and genetic history can be permanently retained for adopted persons. It also provides a mechanism for the gathering and filing of such information at the time the petition is filed. The purpose of this repository is to assure the retention and maintenance of all adoption records, since there is no legal provision for the retention of such information anywhere. The policy of individual courts on this issue varies. Some private adoption agencies maintain records and some do not.

3. Background

In 1983 KSA 59-2278 relieved SRS of the responsibility of completing investigations and reporting to the court on all nonagency and private agency adoptions. It instead allowed private practice social workers and agencies to do investigations and report directly to the court. However, it inadvertently dropped the provision for the permanent retention of such reports and information. The consequence was that the state lost its capacity of maintaining a complete registry on all adoption petitions filed in Kansas. Private licensed child placing agencies have specifically requested to be included in this legislation in order to assure that their families and children be a part of the registry.

4. Effect of Passage

Since there is no legislation mandating that this information be retained anywhere, adoptive families often have no resource when needing to obtain medical or genetic information on their child. SRS receives approximately 200 requests a year from adoptive parents and/or adopted adults who need such information to aid in the diagnosis and treatment of various medical needs.

As new medical advances are being made in genetics in relationship to the diagnosis and treatment of diseases, the need for this information to be available to the adoptive family and to adopted adults is becoming increasingly important. Passage of this legislation will enable adoptive parents and adopted adults to have access to such information.

5. SRS Recommendation

SRS recommends passage of this bill.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
February 7, 1985

2/7/85
Attach. I

adoption
records
Barnum
*

SENATE BILL No. 69

By Committee on Judiciary

1-23

Attch. I

2-7-85

0017 AN ACT concerning adoption; relating to procedures therefor;
0018 amending K.S.A. 59-2278 and repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 59-2278 is hereby amended to read as fol-
0021 lows: 59-2278. (a) The written consents to adoption which are
0022 required by K.S.A. 59-2102 and amendments thereto *and, if*
0023 *applicable, the information required by section 2* shall be filed
0024 with the petition for adoption *of a minor child*. Upon the filing of
0025 the petition, the court shall fix the time and place for the hearing
0026 thereon. The time fixed for the hearing may be any time not more
0027 than 60 days from the date the petition is filed if (1) consents ~~and~~,
0028 waivers of notice of each living parent *and, if required by section*
0029 *2, the child's genetic and medical history and birth verification*
0030 are filed; (2) the court does not require the petitioner to obtain
0031 an assessment by a person licensed to practice social work in
0032 Kansas *or by a licensed child-placing agency* to determine the
0033 advisability of the adoption; and (3) there are no interested
0034 parties other than the petitioner and the consenting parties. In all
0035 other cases, the time fixed by the court shall be not less than 30
0036 days or more than 60 days from the date of the filing of the
0037 petition. The time fixed for the hearing may be extended by the
0038 court for cause.

0039 (b) Notice of the hearing shall be given to all interested
0040 parties. Pending the hearing the court may make an appropriate
0041 order for the care and custody of the child.

0042 (c) Promptly upon the filing of the petition by a petitioner
0043 who is not a stepparent, the court ~~may~~ *shall* require the peti-
0044 tioner to obtain an assessment by a court designated social
0045 worker licensed to practice social work in Kansas *or by a licensed*

0046 child-placing agency of the advisability of the adoption, and file
 0047 a report of such assessment. The petitioner shall file with the
 0048 court, not less than 10 days before the hearing on the petition, a
 0049 report of the assessment and, if applicable, the information filed
 0050 under section 2. If there is no licensed social worker or licensed
 0051 child-placing agency available to make the social assessment and
 0052 report to the court, the court may use the department of social
 0053 and rehabilitation services for that purpose. The costs for making
 0054 the social of making the assessment and report may be assessed
 0055 as court costs in the case as provided in article 20 of chapter 60 of
 0056 the Kansas Statutes Annotated and acts amendatory of the provi-
 0057 sions thereof or supplemental amendments thereto. In making
 0058 the assessment, the licensed social worker or the social worker,
 0059 child-placing agency or department of social and rehabilitation
 0060 services is authorized to observe the child and to contact the
 0061 agency or individuals consenting to the adoption and obtain any
 0062 voluntarily given genetic information about the child confirm
 0063 and, if necessary, clarify any genetic and medical history filed
 0064 with the petition. This information shall be made a part of the
 0065 report to the court. The licensed social worker's report or the
 0066 report of the social worker, child-placing agency or department
 0067 of social and rehabilitation services to the court may inquire
 0068 whether the consents to the adoption were freely and voluntar-
 0069 ily made. The report to the court by the social worker, child-
 0070 placing agency or department of social and rehabilitation ser-
 0071 vices shall include the results of investigation of the adopting
 0072 parents, their home and their ability to care for the child.

0073 (d) Upon the hearing of the petition, the court shall consider
 0074 the social assessment and all evidence offered by any interested
 0075 party. If the court is of the opinion that the adoption should be
 0076 made, it shall make a final order of adoption and shall deliver the
 0077 child to the petitioner, if that has not already been done. In any
 0078 event, the costs of the adoption proceedings shall be paid by the
 0079 petitioner.

0080 (f) The clerk of each district court shall transfer all legal
 0081 documents and social assessments pertaining to any adoption,
 0082 except stepparent adoptions, finalized on or after July 1, 1983,

- (d) In the case of nonresidents who are filing a petition to adopt a child in Kansas, the assessment and report required herein must be completed in the petitioner's state of residence by a licensed social worker, a licensed child-placing agency or a comparable entity, and filed with the court, not less than 10 days before the hearing on the petition.
- (e) The assessment and report shall be ineffective if completed more than one year prior to the filing of the adoption petition.

Attch. I

0083 and prior to the effective date of this act, to the secretary of social
0084 and rehabilitation services on or before January 1, 1986, or 30
0085 days after the report is filed, whichever is later. The transferred
0086 reports shall be maintained by the secretary and shall be subject
0087 to disclosure to the same extent as reports and other records of
0088 investigations made by the secretary pursuant to this section.

0089 New Sec. 2. (a) Unless the petitioner is a stepparent, the
0090 following information shall be filed with the petition for adop-
0091 tion of a minor child:

0092 (1) A complete written genetic, medical and social history of
0093 the child;

0094 (2) the names, addresses and telephone numbers of each of
0095 the child's biological parents, if known;

0096 (3) any hospital records pertaining to the child or a properly
0097 executed authorization for release of those records; and

0098 (4) the child's birth verification, which shall include the date,
0099 time and place of birth and the name of the attending physician.

0100 (b) The secretary of social and rehabilitation services shall
0101 adopt rules and regulations specifying what should be contained
0102 in the genetic, medical and social history required by this sec-
0103 tion, which shall include but not be limited to genetic and
0104 medical information concerning each of the child's biological
0105 parents, if known; and the date of birth and sex of any of the
0106 child's siblings who are known at the time of filing the petition.

0107 (c) The secretary of social and rehabilitation services shall
0108 adopt rules and regulations establishing procedures for updating
0109 a child's genetic, medical and social history if new information
0110 becomes known at a later date. The secretary or the child-placing
0111 agency, whichever conducts the investigation under K.S.A. 59-
0112 2278 and amendments thereto, shall advise in writing each of the
0113 child's biological parents, if known, of those procedures.

0114 (d) Within 30 days after the final order of adoption is entered,
0115 the clerk of the court shall send to the secretary of social and
0116 rehabilitation services a copy of any information filed pursuant to
0117 this section by anyone other than the secretary, together with any
0118 clarification or modification of that information contained in a
0119 report filed pursuant to K.S.A. 59-2278 and amendments thereto

Attach. I

0120 by anyone other than the secretary. Such information shall be
 0121 subject to disclosure to the same extent as similar information
 0122 concerning children relinquished to the department of social and
 0123 rehabilitation services pursuant to K.S.A. 38-125 and amend-
 0124 ments thereto.

0125 (e) Any employee or agent of the department of social and
 0126 rehabilitation services, a child-placing agency or a district court
 0127 who intentionally destroys any information required to be filed
 0128 under this section is guilty of a class C misdemeanor.

0129 (f) If any information required to be filed under this section is
 0130 not available, an affidavit explaining the reasons why it is not
 0131 available and signed by each party whose consent to the adop-
 0132 tion is required shall be filed with the petition for adoption.

0133 (g) As used in this section and K.S.A. 59-2278 and amend-
 0134 ments thereto, "child-placing agency" means any corporation
 0135 organized under the laws of this state and authorized by law to
 0136 care for and surrender children for adoption as provided in
 0137 K.S.A. 38-112 *et seq.*, and amendments thereto.

0138 ~~Sec. 3.4~~ K.S.A. 59-2278 is hereby repealed.

0139 Sec. 3.5 This act shall take effect and be in force from and
 0140 after its publication in the statute book.

New Sec. 3. Interstate placements shall follow interstate
 compact on placement of children procedures
 as set forth in K.S.A. 38-1201 and amendments
 thereto.

Attach . I

2-7-85

State Department of Social and Rehabilitation Services

Statement Regarding S.B. 71

1. Title

Interstate Compact on Adoption and Medical Assistance

2. Purpose

The purpose of this legislation is to put in place a legal mechanism which will assure the continuation of federally funded adoption support medical assistance to children, adopted through the Kansas special needs adoption program, who are placed across state lines or who move with their adoptive families into another state.

3. Background

Currently Kansas adoption laws provide assistance for medical care and cash assistance to adoptive families who adopt certain special needs or "hard to place" children. This cash and/or medical assistance is provided even if the family leaves the state. The jurisdiction of the compact is limited to only those children who are determined eligible for the federally matched adoption support program. The reciprocity of the compact applies only to the medical assistance portion of adoption support. Of the 195 special needs children placed for adoption in FY-84 by SRS staff, thirty were eligible for coverage under the federally matched adoption support program. Presently 119 children are receiving adoption support through this program, and 23 of these children are living in other states. There are also 23 eligible children placed with adoptive families by other states now residing in Kansas. While these numbers will shift, it is anticipated the 50-50 ratio of children in and out of state will remain constant.

Adoptive families of special needs children who move to another state frequently have difficulty in obtaining medical providers willing to accept Kansas medicaid payments. As a consequence some adoptions are disrupted because children cannot receive necessary medical care in another state. Administrative time is spent by Central Office Medical Services staff and Youth Services staff on negotiating with families and out-of-state providers on establishing EDS federal eligibility, locating providers who will accept payment, and approval and payment of bills, etc.

4. Effect of Passage

Through the execution of the compact agreement, eligible children would receive the medical assistance and services from their state of residence, based only on verification that the child is currently receiving adoption assistance from the other state. Cash payments would continue to come from the sending state. This legislation will enable us to join with other states to assure a continuation of adoption assistance funds to special needs children when placed across state lines. The bill essentially provides assurance to families that payments will continue as long as there is a need and provides a mechanism for obtaining medical services for children placed in other states. In order for a state to adopt the Interstate Compact on Adoption and Medical Assistance, the state legislature must enact "The Suggested Act Authorizing an Adoption Assistance Compact and Procedures for Interstate Service Payments.

5. SRS Recommendation

SRS recommends passage of this bill.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
February 7, 1985

2/7/85
Attach. II

State Department of Social and Rehabilitation Services

Statement Regarding S.B. 73

1. Title

An Act relating to the probate code; concerning venue of proceeding for adoption of children; amending KSA 59-2203 and repealing the existing section.

2. Purpose

To prevent out-of-state residents filing adoption petitions in Kansas to avoid complying with the laws of their state. This bill restricts those who may file in Kansas to Kansas residents in private adoptions or to families adopting through licensed adoption agencies.

3. Background

KSA 59-2101 currently permits non-residents of Kansas to petition to adopt a child in this state, if a child is present in Kansas. This current provision means that many out-of-state residents are filing in Kansas and no information is available on them or their suitability as adoptive parents. In the past two years no statistical data has been available concerning the number of out-of-state families adopting in Kansas. During the last year that SRS received notice on all adoptions filed in Kansas, it was reported 67 out-of-state families filed. Sixteen (25%) would not have been allowed to adopt in their home state, either because of their state's adoption laws or because they did not meet adoptive standards. All these adoptions were granted in Kansas. (See attached summary of other state laws and adoption standards.

4. Effect of Passage

SRS has been delegated the responsibility of assuring that "no child is sent, brought or caused to be brought across state lines for the purpose of adoption without the prior approval of the receiving state (KSA 38-1210). SRS cannot comply with that statute when unlicensed intermediaries or families ignore the Interstate Compact on Placement of Children and file in Kansas courts without other states' approval.

Requiring that families file adoption petitions in their county of residence will give assurance that the families are not breaking the laws of the state of residence. It will also give better protection to children as the courts will be in a position to evaluate the family's ability to care for the child and obtain medical history for the child.

The current practices of allowing non-residents to file adoption petitions in Kansas courts and without the requirement for any investigation into the circumstances of the placement, the child's background, or the adoptive family's ability to care for the child, creates the potential for exploitation of children, adoptive parents and genetic parents.

Passage will not prohibit Kansas licensed child placing agencies from making arrangements for out-of-state families to adopt. It will not regulate private adoptions. It will eliminate the current practice of out-of-state residents filing to adopt in Kansas to circumvent their own state laws or to avoid meeting adoption standards in their home state.

5. SRS Recommendation

SRS recommends passage of this bill.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
February 7, 1985

2/7/85
Cottch. III

MEMORANDUM IN OPPOSITION TO SENATE BILL 73

TO: Members 1985 Senate Judiciary
Committee and Staff

DATE: February 7, 1985

SUBMITTED BY: John E. Stumbo
Attorney at Law
2887 MacVicar
Topeka, Kansas 66611

The principal reason for this memorandum is to oppose the additional language proposed to be added to K.S.A. 59-2101 which reads as follows:

(b) a person who is not a resident of this state may adopt a minor child only if the minor child is in the custody of a corporation or state agency authorized by the laws of this state to place children for adoption.

Though this opponent is an attorney he is here in an individual capacity and not representing a client. Historically, I have acted as the attorney of record for a great number of both agency and private adoptions. Through the last twenty years, I have represented many adoptive parents who obtained their child from the State Department of Social Welfare, now Social and Rehabilitation Services, the Kansas Children's Service League, Catholic Social Services as well as non-agency, private placements.

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I.

PRESENT SYSTEMS OF ADOPTION

For a long period of time in Kansas we have had both agency and non-agency or private adoptions allowed by law. The procedure in a typical agency adoption has been for the agency to obtain a consent from the natural mother of an illegitimate child at the time of birth. That consent runs to the agency, placing the agency in loco parentis to the child. Thereafter, the agency places the child in a potential adoptive home and observes the home for a period of weeks or months. After it is satisfied that the home is acceptable and that the adoption should proceed, the agency then gives its consent to the adoption to the proposed adoptive parents who, in turn, proceed to file an adoption proceeding under Kansas law in the appropriate Probate Court.

Until recently the consent of the putative father of an illegitimate child was not required, only that he receive notice of the time and place of the hearing of the adoption. In 1982 and 1983, K.S.A. 59-2105 was added to the adoption code requiring the consent of the putative father of an illegitimate child except in certain circumstances. Historically, agencies have proceeded through the Juvenile Court for the severance of parental rights of putative fathers in illegitimate births. Those severance proceedings were commenced and completed by the agency as a protection against any concern that the consent of the natural

Attch. IV

father should have been obtained notwithstanding the then Kansas law. This agency procedure has typically taken several months to complete from the date of birth to the date of the Decree of Adoption and has usually not permitted or allowed any contact between the natural mother or natural parents of the illegitimate child and the eventual adoptive parents.

For a considerable period of time Kansas has allowed the Probate Court, in its discretion, to require a home study report to be prepared and filed with the Court prior to the hearing on the Petition for Adoption. Typically, those home study reports were not required in agency adoptions as the Court assumed that the agency had sufficiently investigated the matter before giving its consent to the adoptive petitioners.

The second adoption procedure which has historically been permitted in Kansas is the so-called "non-agency" or private adoption. This procedure does not involve a licensed adoption agency or State agency under Kansas law. Typically, under the most recent amendments, the natural mother and father of an illegitimate child provide their written consents directly to the petitioners for adoption immediately following birth. The Petition for Adoption with attached consents is then filed in the Probate Court having venue over the adoption. The Probate Court issues a temporary custody order granting to the adopting petitioners temporary custody of the child and setting the

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matter for hearing. The Court traditionally requires that a home study report be prepared and filed prior to the hearing on the Petition for Adoption. Under recent law changes those home study reports are prepared and filed by private, licensed Social Workers who have been approved by the Court for such work. The home study report is completed within a reasonable time and filed with the Court for its consideration at the time of the hearing on the Petition. Most of these private adoptions are then heard in not less than thirty nor more than sixty days after they are filed.

II.

WHY BOTH SYSTEMS DESIRABLE

Historically, the State Department of Social Welfare in Kansas, now the Department of Social and Rehabilitation Services, has been opposed to the private adoption system which has been a part of Kansas law for a long time. The classic reasoning given by the State agency has been twofold. They have felt that they do a more adequate and complete job of screening potential adoptive parents than does the private adoption system and, secondly, the ability of them to delay the giving of their consent to the adoption allows for a longer period of time in which to study the potential adoptive home before the completion of the adoption proceeding.

However, there is no evidence to support the fact that

adoptive parents who have been processed through a child placement agency turn out to be any better parents than those who adopt through a non-agency process. In fact, it could be argued that the delay imposed upon potential adoptive parents by the agency creates a nervous and unstable home environment during the early months of the child's life. Most parents who have gone through the agency procedure always worry about whether they will be denied the right to adopt the child after having become attached to the child for some number of weeks or months.

Historically, there have been many couples who have not been able to qualify under agency guidelines because of handicapping conditions of one or both of the parents, inadequate marriage history, insufficient attempts for natural children or other reasons. The validity of any such reasons is certainly questionable. Correspondingly, there are many excellent adoptive homes in which the parents would not have originally qualified through an agency because of arbitrary standards established for qualification by the agency.

With fewer number of newborn children available for adoption as a result of abortion, birth control, increased tendency for natural mothers to keep children etc. the temptation of agencies is to become increasingly selective in their approval of potential adoptive parents. Therefore, there is a tendency for only "super parents" to qualify for an agency adoption.

That proclivity certainly precludes a lot of well-meaning and good couples from being adoptive parents.

III.

EFFECT OF PROPOSED AMENDMENT

Obviously, the principal effect of the proposed amendment is to no longer permit out-of-state residents to be parties to private adoptions within the State of Kansas. It would appear to this attorney that the most logical reason for the proposed amendment to be supported by State Administrative Agencies is as a first step in the abolishment of private adoptions in Kansas. We assume that the proponents of the amendment feel that agencies in Kansas are better equipped and able to pass on the question of the placement of a child for adoption. We would seriously dispute the validity of that assumption.

Historically, the emphasis on adoption procedure has been at two points. In the first instance, the critical issue is the selection of a home for the placement of the children for a potential adoption. The second point of inquiry has been by the judicial system in deciding whether to approve a Decree of Adoption. Therefore, the proponents of the legislation must feel that agencies can do a better job of evaluating the placement of the child in the case of out of state petitioners. Given the safeguards which are already a part of Kansas law there is no support for the assumption that agencies can do.

something for the protection of the welfare of the children in the case of out-of-state petitioners that is not already existent in the law.

One of the major concerns which we have experienced in our work with both agency and private adoptions is the recurring insensitivity which agencies demonstrate to the changing concerns of natural parents of children placed for adoption. Because of the usual inability of the natural mother to have any contact, even though anonymously, with the potential adoptive parents as a result of the agency process, the system demonstrates an insensitivity to the growing concerns of natural mothers. Particularly in the case of illegitimate births, there is a growing tendency among natural mothers to be concerned about the quality of the home in which the child will be placed. Often we have, in the interest of protecting the identity of one party from the other, unjustifiably prevented the natural mother from any conversation or access to the adoptive home. In our practice in private adoptions we are permitting and encouraging telephone conversations, without the name identity of the parties, between the natural mother and the potential adoptive parents prior to and after the birth of the child before the adoption petition is heard. We have encouraged the adoptive petitioners to send flowers to the natural mother in the hospital and to do other things without disclosing their

identity which causes the natural mother to have confidence in the home to which her child is being sent.

There is no reason to believe that adoptive petitioners from out-of-state are any less qualified or any more in need of agency intervention than in-state residents. If we are concerned about Kansas being a refuge for adoption or people engaging in unethical or illegal conduct relative to the placement of children with out-of-state residents there are already adequate laws several places in the statutes to guard against such abuses.

IV.

REASONS FOR OPPOSING AMENDMENT

The ultimate authority for the approval of an adoption, whether agency or private, is the judicial system through the Probate Courts in Kansas. Certainly, this is where the ultimate authority for the approval should be. Likewise, to assist the Probate Courts in its task, we have long permitted Probate Courts to order home study reports. Typically, as already mentioned, those home study reports are required in all private adoptions and in few agency adoptions. Since the statute is permissive, K.S.A. 59-2278, in regard to home studies, most agency adoption files in the Probate Court do not contain independent home studies.

Because Kansas law does not terminate an adopted child's right to inherit from its natural parents we have always taken

the position that a child may at some point in its maturity request the Probate Court to open its adoption file and disclose to it the identity and information of its natural parents. The presence of a home study report in that court file greatly facilitates the satisfaction of the inquiry from the child. In the absence of such a report, such as an agency adoption proceedings, the child would be required to go to the agency which originally placed it in the adoptive home. It is not clear, in the absence of an independent compelling legal proceeding, that the agency is required to disclose all of its information about the natural parents of the child.

Further, under the home study statute, prior to its amendment, the home study reports were prepared at the request of the Probate Court by the State Department of Social and Rehabilitation Services. Over the last twenty years this author has had the occasion to read a great many of those home study reports prepared by the State agency and to be involved in assisting the agency in the conduct of its interviews. If you would compare the reports previously furnished by the State agency with those reports which are now being furnished by independent licensed social workers approved by the Court you would typically find a great deal of difference in the length, depth and quality of the two reports. Very often, in my experience, the State agency report were done by an intern or other inexperienced

social worker and usually consisted of only one interview with the prospective adoptive parents. I repeatedly requested that the State agency contact the natural mother to confirm that the consent which she gave was free and voluntary. However, in most instances, the natural mother was not contacted.

On the other hand, with the home studies now being done by independent licensed social workers, we find that the reports are much longer and the process of gathering information much more intense. In the case of recent petitions for adoption filed by out-of-state residents through our office the licensed social worker has traveled to the home of the out-of-state resident and conducted intensive interviews over several hours with the prospective adoptive parents. Likewise, the social worker has requested references and contacted those references as well as a contact with neighbors, employers etc. In addition, the reports reflect extensive interviews with the natural mother and the natural father, if available, which deal not only with the voluntariness of the consent and the understanding of the consenting party of the proceeding and its consequence but also deal in depth with the biological history of the child. Rarely did the State agency home study reports have any extensive biological history of the natural parent. Not only is this biological history important to the welfare of the child and the knowledge of the adopting parents but it is also necessary

in order to satisfy such laws as the American Indian Child Welfare Act. There is no question about the improved quality of the home study reports. Likewise, that quality applies as much to out-of-state petitioners as it does to in-state petitioners.

If we are concerned about the quality of the placement of the child then the two tier process which has long been a part of Kansas law, that is the home study report and the judicial inquiry, is more than adequate to safeguard the welfare of the children involved. Certainly, there is no justification for a distinction, arbitrary as it may be, between out-of-state residents and in-state residents.

There are some advantages of the present system which would be vitiated by the adoption of this proposed amendment. For example, there are many agencies which will not pay the medical expenses of the natural mother and/or child. In the event the natural mother does not have insurance coverage and cannot afford to pay those medical expenses then the agency adoption system creates an irreconcilable difficulty. In fact, it has been this author's experience that many natural mothers refuse to go through agencies for this reason because they know that in the private adoption system the adopting petitioners typically pay for all medical expenses. That would be a valid reason for a natural mother pursuing a private adoption method

rather than an agency.

Additionally, as already described, it has been the experience of this author that many natural mothers are wishing some contact, anonymously, with the potential adoptive home. The traditional agency adoption does not permit or provide for this contact. In the efforts under the law to protect the rights of the child and to insure that the adoptive parents are capable, the tendency is to neglect and to have been insensitive to the natural parents. A recent article appearing in the January 22, 1985, issue of U.S.A. Today describes a survey by a Harvard researcher of mothers who had placed their children for adoption and the anguish which they had experienced in desiring to know something about the child's welfare after its placement. We would submit that some incidental contact between the natural mother and the adoptive home at the time of the adoption proceeding would do much to alleviate growing concerns and fears of a natural mother about the welfare of its child.

For example, we have adopted a practice of allowing the natural mother to write a letter to its child describing reasons why she felt it necessary to place the child for adoption. The letter is then sealed and made available to the child when it is old enough to appreciate the contents. The letter helps alleviate the nagging worry that a natural mother has about questions her child may some day have about why it was placed

for adoption. Typically, we would submit, that the agency process does not allow for these kinds of activities to assist the natural mother.

If we are concerned about abuses by out-of-state residents in attempting to procure through private adoption procedures children for adoption, then there are many statutes which provide safeguards against such abuses. We have described in the Appendix a chronology of the most germane adoption statutes relating to this concern. Obviously, the social worker and the home study inquiry and, ultimately, the Probate Court at the time of the hearing can inquire of the petitioners about the process used and the procedure followed which led them to the filing of the Petition for Adoption. The Court has full authority to inquire into any potential abuses and to make its judgement on the adoption petition in accordance therewith.

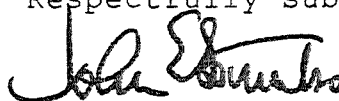
The present bill proposes that it would become effective from and after its publication in the statute book. It is not known how many potential out-of-state residents are preparing to adopt children born in the State at any one point in time. Because of the uncertainty to the general public about the effective date of the statute, if passed, we would suggest that it would be less abusive if a specific date of effect would be stated instead of publication. For example, if a

pregnant woman's expenses were being funded by an out-of-state resident with the hope that, following birth, they would be permitted to adopt the child at the time that the act was published then they would be procluded from subsequently filing their Petition for Adoption. On the other hand, if an effective date were stated then that would give better notice to out-of-state residents and if it were far enough in advance any injustices could be avoided. The provision about the act becoming effective at its publication and the potential for innocent injustices to occur as a result thereof only serves to demonstrate the lack of familiarity with the circumstances and insensitivity to people by the drafters of the legislation.

In conclusion, the basic question has always been who will have the right to decide who may adopt children. This proposed amendment accentuates the presumed superior ability of agencies to make that determination and represents an invasion in the inherent value of the independent home study and, finally, the judicial decision. The Courts of this State with the assistance of the home study report ought to be left with the decision about who can adopt children and not an agency. Adequate safeguards already exist in the law as cited in the Appendix attached listing germane statutes to protect the welfare of the child. The present system, with recent amendments, does a more effective job of assuring the welfare of the child being best served

then would the proposed amendment. Likewise there is no legitimate basis for distinguishing between non residents of this state and residents of this state. We appreciate your consideration of this memorandum.

Respectfully submitted,

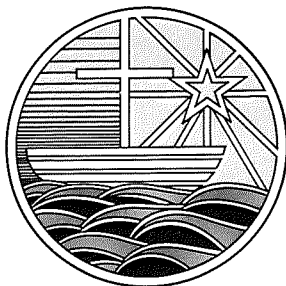
A handwritten signature in cursive script, appearing to read "John E. Stumbo".

JOHN E. STUMBO

APPENDIX

Relevant Statutes Relating to Adoption:

- K.S.A. 59-2101 et.seq. Decrees who may adopt children. Also sets forth requirements such as consents, exceptions excusing putative father's consent, etc.
- K.S.A. 59-2277 et.seq. These are the adoption procedure statutes dictating process in the probate court. Includes provision for home study report by licensed social worker.
- K.S.A. 38-315 Places restrictions upon out-of-state agency placing out-of-state child in state.
- K.S.A. 38-1201 et.seq. Interstate Compact on Placement of Children. Article III - No sending agency, includes person by definition, will send child into Kansas preliminary to adoption until notifying public authority of receiving state for approval.
- Article VIII - Does not apply to parent bringing child into state and leaving child with relative or non-agency guardian.
- K.S.A. 65-509 No person shall offer to adopt or find a home for any child as an inducement to come to his home during pregnancy.



Most Pure Heart of Mary Church

3601 West Seventeenth Street • Topeka, Kansas 66604 • 913/272-5590

February 6, 1985

Honorable Robert G. Frey
Chairman of the Judiciary Committee
Statehouse
Topeka, Ks. 66612

RE: S.B. 73 Opposition in present form

Dear Representative Frey:

The Social Concerns Committee of the Parish Council of Most Pure Heart of Mary Parish are opposed to S.B. 73 as it stands now.

We urge you and the committee to set more precise standards, guidelines, and procedures for private adoptions from out of state (as well as within the state) rather than prohibit them altogether.

We think the private adoption, when properly handled, is, in many cases, preferable for the parties and child. Both agency and private adoptions should always be available.

One change could be to set specific standards of time and specifically for social workers home study and report.

Another would be to allow a period of time in the adoptive home, subject to study, in the private adoption like there is in the agency adoption. The agency can place, observe, and decide before a petition is filed. The private petitioner is tied to the 30-60 day window since only by petition can the child be placed. The hearing must automatically follow within 60 days. Modify the law to allow a placement before the filing of petition so there is more time to observe.

Adoption should be made more available, not less available. Agencies sometimes have drawbacks the private adoption does not. Specify the rules to protect the parties, then encourage the private adoption.

Thank you,

Bernard Dunn
Bernard Dunn, Co Chairman
Barbara Dunn
Barbara Dunn, Co Chairman
Sr. Francis Mulhall
Sr. Francis Mulhall, M.S.W. A.C.S.W.
Most Pure Heart Staff Representative

Attch. V
2/7/85