

**REPORT OF THE SUBCOMMITTEE ON ADOPTION
TO THE COMMITTEE ON CHILDREN, YOUTH AND FAMILIES
(NEVADA REVISED STATUTES 218.53723)
APRIL 22, 2004**

Summary: During the February 12, 2004, meeting of the Committee on Children, Youth and Families, Senator Raymond D. Rawson, Chairman, appointed the Subcommittee on Adoption to review issues raised during the 2003 Legislative Session. Chairman Rawson appointed Senator Maggie Carlton to serve as chairwoman of the subcommittee and invited other interested members of the Committee to participate.

Subcommittee Meeting

The Subcommittee met on Saturday, March 20, 2004, in Room 4401 of the Grant Sawyer State Office Building in Las Vegas. The meeting was videoconferenced to Room 2135 of the Legislative Building in Carson City. Three major issues were included on the agenda: (1) the State Register for Adoptions; (2) access to files and records concerning proceedings of adoption or birth; and (3) contracts between parties for post-adoptive contact. Chairwoman Carlton invited interested members of the public to testify on each item. For more detailed information, please see the minutes and exhibits of the meeting.

Agenda Item II—State Register for Adoptions (Nevada Adoption Registry)

Background—The State Register for Adoptions (also known as the Nevada Adoption Registry) was established by the Legislature in 1979 to assist birth parents, certain family members, and adult adoptees relinquished or adopted through a Nevada child-placing agency to receive identifying information and to contact each other after the adoption proceedings have been completed. Non-identifying information is also available to adult adoptees. The Division of Child and Family Services (DCFS), Department of Human Resources, is responsible for operating the Nevada Adoption Registry.

Like many states, Nevada has a mutual consent registry under which both the applicant and the party who is the subject of the search must both have applications on file consenting to the release of their identifying information. If only one party is registered, identifying information regarding the other party cannot be shared. However, the Registry also maintains and provides non-identifying information collected by DCFS or other child-placing agencies.

Testimony on Agenda Item II—Following is a general summary of testimony presented. For more complete information, please reference the minutes of the meeting and its exhibits. In addition, the recording of the meeting is available through the Publications Office of the Legislative Counsel Bureau.

Wanda Scott testified on behalf of DCFS and provided background information on the operation of the Adoption Registry. She explained that an additional option for adoptees,

EXHIBIT <u>E</u> ChildFam	Document consists of <u>6</u> pages
<input checked="" type="checkbox"/> Entire document provided.	
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.	
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).	
Meeting Date <u>4-22-04</u>	

birth mothers, and relatives seeking information is the International Soundex Reunion Registry (ISRR), which is not limited to information on Nevada adoptions.

Members of the public who spoke in favor of the registry process included parents of adoptees (some of whom spoke on behalf of birth mothers) and representatives of private adoption agencies including Catholic Charities and Latter Day Saints Family Services. Speakers noted that:

- There may be compelling reasons for a birth mother to wish not to be contacted, but those who do wish to be contacted have the option of signing up with the registry;
- Registries are available throughout the United States and will be more effective at “matching up” adoptees and their birth families as more adoptees reach the age of 18 years; and
- Information regarding how to sign up with the Nevada Adoption Registry and the ISRR is now routinely provided to birth mothers and adopting parents at the time of the adoption.

Concern for Registry Process

Others present were not satisfied with the registry process and expressed their concerns, which included the following: (1) the availability of public information about the registry option; (2) the Nevada Adoption Registry’s requirement that a birth mother give her permission before other members of the birth family are allowed to sign up with the Registry (unlike the ISRR); (3) the adequacy of the resources available for the staffing and operation of Nevada’s Adoption Registry; and (4) the usefulness of the registry system generally because many registries charge fees (although the Nevada Adoption Registry and the ISRR do not), and the non-identifying information available through the Registry is not helpful sufficiently to those trying to find their birth parents.

Agenda Item III—Access to Files and Records Concerning Proceedings of Adoption or Birth

Background—Following is an overview of provisions under *Nevada Revised Statutes* (NRS) relating to accessing information involving a particular adoption:

- **State Register for Adoptions**—The State Register for Adoptions, as discussed above, provides a mechanism for accessing identifying information under certain circumstances. Non-identifying information may also be available, including the child’s birth information, including social or health history; the age of the birth or adoptive parents at the time of adoption; the height, weight, completion, eye and hair color, and ethnic background of the parents; the education, religion, and occupation of the parents; and the health of the parents. (NRS 127.007).

- **Confidentiality and Court Order to Access Information**—Nevada law specifies that the files and records of the court in adoption proceedings are not open to inspection by any person. An exception is provided upon an order of the court expressly permitting inspection pursuant to a petition setting forth the reasons for opening the files, or if a natural parent and the child are eligible to receive information from the State Register of Adoptions (NRS 127.140). This statute also specifies that all hearings in proceedings under Chapter 127 of NRS (Adoption of Children and Adults) are confidential and must be held in closed court.
- **Access to Original Birth Certificates**—Upon receipt of a certified report of adoption, the State Registrar must prepare and file a supplementary birth certificate with the new name of the adopted person (NRS 440.310). The State Registrar must seal and file the report or decree and the original birth certificate. Sealed records may only be opened if the court issuing the adoption decree issues an order so permitting, pursuant to a petition setting forth the reasons for opening the record.
- **Access to Medical Information**—*Nevada Revised Statutes* 127.152 requires that the adopting parents receive a report which includes copies of the child's medical records in the possession of the child welfare agency or licensed child-placing agency and information obtained by such an agency during interviews with the natural parent regarding the child's and natural parents' medical and sociological history and any behavioral, emotional, or psychological problems the child may have.

Nevada Revised Statutes 127.152 specifies that the report must exclude any information that would lead to the identification of the natural parent.

Testimony on Agenda Item III—Following is a general summary of testimony presented. For more complete information, please reference the minutes of the meeting and its exhibits. In addition, the recording of the meeting is available through the Publications Office of the Legislative Counsel Bureau.

Multiple parties, including birth mothers, adoptees, parents of adopted children, and representatives of Nevada Open, Bastard Nation, and other adoption-related organizations, spoke in favor of revising Nevada law to allow parties to an adoption ready access to identifying information relating to the adoption. Advocates stated that adult adoptees have both a right and a need to access this type of information, which may or may not be used to facilitate reunions between adoptees and birth parents. Advocates also argued that Nevada historically has not guaranteed a right to privacy for adoption records. One speaker expressed frustration with the court procedures under which a person may seek an order for access to the adoption files. Exhibits from speakers included information on laws in other states authorizing access to birth certificates, as well as letters and policy statements from national organizations in support of access to adoption records.

Speakers advocating opening access to adoption records testified that medical histories and genetic information, for example, are critically important when adoptive parents or adoptees fill out medical histories requested by physician offices. One speaker noted that his mother

was adopted and that if his family had known the history of birth defects in her family, the strokes his daughter had shortly after birth resulting in the need for feeding tubes and leg braces could have been prevented.

Concern for Revising Nevada's Laws Governing Access to Adoption Records

Speakers opposing changes in Nevada law advocated use of the Nevada Adoption Registry as a means through which adult adoptees and birth parents can mutually arrange to contact one another, and noted that non-identifying information is also available through the Registry, DCFS, and the private adoption agencies.

Testimony in opposition argued that birth parents and adopting parents have an expectation of privacy with regard to the adoption records; that compelling reasons exist for some birth mothers who wish not to be contacted; and that extremely personal information regarding all parties to the adoption is included in the adoption files. Speakers noted that open access should not be available, for example, to the personal questionnaires they completed when applying to be adoptive parents, which are part of the adoption files.

Agenda Item IV—Contracts Between Parties for Post-Adoptive Contact

Background—During the adoption process, birth parents and adopting parents may choose to enter into agreements (oral or written) for contact between the birth parents and the adopted child. Based upon the information presented, such agreements vary widely. For example, some agreements may be oral agreements simply to send an updated picture of the child to the birth mother for a limited period of time, while others may establish written arrangements for regular visits between the birth parent and the child.

Speakers discussed a 2002 opinion from the Nevada Supreme Court and noted that post-adoption contact agreements that are not incorporated into the adoption decrees are not enforceable. During the 2003 Legislative Session, Assembly Bill 28 was introduced to provide a statutory procedure under which parties to an adoption may choose to enter into enforceable agreements for post-adoptive contact. This measure did not pass.

Testimony on Agenda Item IV—Following is a general summary of testimony presented. For more complete information, please reference the minutes of the meeting and its exhibits. In addition, the recording of the meeting is available through the Publications Office of the Legislative Counsel Bureau.

Testimony on this issue was provided by a birth mother whose agreement for post-adoption contact was not enforced. The birth mother advocated for legislation prohibiting agencies from offering such agreements for which there is no guarantee of enforcement.

Other speakers noted that such agreements facilitate adoptions in situations involving children in Foster Care because birth parents are more willing to relinquish their parental rights if they know that they will be able to have on-going contact with the child. Speakers emphasized that the 2003 legislation did not require post-adoptive contact agreements, but if such agreements

were made, the bill would provide direction for enforcement. Proponents also noted that approximately 18 other states have similar statutes. Finally, suggestions were made during the meeting to expand the 2003 legislation to address agreements for sibling visitation.

Concern for Enacting Laws Governing Post-Adoptive Contact Agreements

Some individuals expressed general concern for establishing state statutes for court enforcement of post-adoption contact agreements, particularly when the adopting parents have the right to raise the child as they deem appropriate. Questions surrounding enforcement include whether a court could order sanctions against adoptive parents who refuse access to the child, and if so, what those sanctions may be. An adoptive parent may, for example, refuse access by a birth mother who becomes addicted to drugs and then, by statute, may be required to defend that action in court. In addition, concern was raised regarding the potential impact of the legislation on simple, oral agreements to allow some contact after adoption (such as providing occasional pictures to the birth mother).

Potential Recommendations Developed for the Consideration of the Committee on Children, Youth and Families

No formal recommendations were evaluated or acted upon by Chairwoman Carlton during the Subcommittee meeting. Chairwoman Carlton reviewed with staff the information from the meeting and is presenting the following list of options for the consideration of the Committee:

1. **Opening Access to Adoption Information**—Strong testimony was presented both in favor of revising Nevada law to allow full access to adoption records and in opposition to changing Nevada's existing statutes which provide access to identifying information through the State Register for Adoptions (Adoption Registry) in certain circumstances and by court order.

Potential Courses of Action

- a. **Birth Certificates**—The Committee may wish to consider recommending legislation allowing adoptees access to their original birth certificates.
- b. **Adoption Registry**—The Committee may wish to consider a recommendation for the Legislature to monitor the operation of the Nevada Adoption Registry as an increasingly viable means of facilitating reunifications of adult adoptees and birth families in situations in which there is a mutual desire for such reunification. Additional funding, if needed to improve its operation, could be considered.

It is reasonable to assume that the Registry's usefulness will continue to improve over time as more adoptees reach adulthood and more individuals are aware of the Registry. According to testimony, private adoption agencies and the Division of Child and Family Services, Department of Human Resources, provide information regarding the

Nevada Adoption Registry routinely and information about the Nevada Adoption Registry is now easily accessible through the Internet.

- c. **Access to Updated Medical information**—According to testimony, the medical information on the birth parents contained in the adoption file or available through the Adoption Registry is often incomplete and is rarely updated to reflect medical problems experienced by the birth parents or their families as they age. The Committee may wish to consider recommending a *confidential intermediary system* under which an adult adoptee can contact a governmental entity (such as the courts or the Division of Child and Family Services) and request that the entity use information from the adoption file to try to contact a birth parent to obtain updated medical information. Similar systems exist in other states.
 - d. **Court Orders**—The Committee may wish to consider providing more guidance to courts with regard to petitions to provide access to adoption information. Some states, for example, require “good cause” to be proven to the court in order for access to be granted.
2. **Post-Adoptive Contact Agreements**—Based upon information presented at the hearing, it appears that post-adoptive contact agreements incorporated into adoption decrees are currently enforceable, but the mechanisms for enforcement or modification of such agreements are not clear as these agreements are not addressed in statute. Concerns were raised that if legislation were enacted, adoptive parents may feel compelled to sign such agreements. Concerns were also expressed for the unintentional or unforeseen impact of such legislation on informal or oral agreements.

If the Committee wishes to act on this issue, to balance the interests involved, legislation similar to Assembly Bill 28 from the 2003 Session could be considered. Modifications to the prior legislation could include one or more of the following:

- a. Preamble language describing the intent of the bill and specifying that the legislation sets forth procedures applicable only to written post-adoptive contact agreements, and that the legislation is *not* intended to:
 - Affect, or provide a mechanism for challenging, the legitimacy of the adoption itself;
 - Require post-adoptive contact agreements;
 - Affect oral agreements.
 - Create any presumptions or public policy that adoptions involving post-adoptive contact are preferred or in the best interest of the child.
- b. Language specifying that such an agreement may only be modified at the request of the adoptive parents (not at the request of the birth parent). The party seeking modification must only establish that the agreement is no longer in the best interests of the child.
- c. Post-adoptive contact agreements with siblings in the legislation.