

UNIFORM ADOPTION ACT (1994) *

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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* The Conference changed the designation of the Adoption Act (1994) from Uniform to Model as approved by the Executive Committee on January 15, 2005.

UNIFORM ADOPTION ACT (1994)

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UNIFORM ADOPTION ACT (1994)

Prefatory Note

The guiding principle of the Uniform Adoption Act is a desire to promote the welfare of children and, particularly, to facilitate the placement of minor children who cannot be raised by their original parents with adoptive parents who can offer them stable and loving homes. The Act is premised on a belief that adoption offers significant legal, economic, social and psychological benefits not only for children who might otherwise be homeless, but also for parents who are unable to care for their children, for adults who want to nurture and support children, and for state governments ultimately responsible for the well-being of children.

The Act aims to be a comprehensive and uniform state adoption code that: (1) is consistent with relevant federal constitutional and statutory law; (2) delineates the legal requirements and consequences of different kinds of adoption; (3) promotes the integrity and finality of adoptions while discouraging "trafficking" in minors; (4) respects the choices made by the parties to an adoption about how much confidentiality or openness they prefer in their relations with each other, subject, however, to judicial protection of the adoptee's welfare; and (5) promotes the interest of minor children in being raised by individuals who are committed to, and capable of, caring for them.

The most striking characteristic of contemporary adoptions is the variety of contexts in which they occur. Of the 130,000 or more adoptions that are granted each year, over half are adoptions of minor children by stepparents or relatives. Perhaps another 15-20% or more are of older children, many of whom have previously been shunted back and forth between their birth families and foster care. Many of these children come to their adoptive parents with serious psychological or physical problems that will require years of treatment and loving parental attention. Approximately 7,000-10,000 adoptions of foreign born children occur annually despite the intricate web of domestic and foreign regulations that adoptive parents have to contend with in order to complete their families. In recent years, no more than 25-30% of all adoptions involve infants adopted by unrelated adults. For an analysis of the limited data available on different kinds of adoptions and an overview of contemporary adoption practice, see *Adoption* vol. 3 *Future of Children* (Packard Fdtn, 1993).

At present, the legal process of adoption is complicated not only by the different kinds of children who are adopted and the different kinds of people who seek to adopt, but also by an extraordinarily confusing system of state, federal, and international laws and regulations. Despite allegedly common goals, state adoption laws are not and never have been uniform, and there now appear to be more inconsistencies than ever from one state to another. There are no clear answers to such basic questions as who may place a child for adoption, whose consent is required and when is consent final, how much money can be paid to whom and for what, how much information can or should be shared between birth and adoptive families, what makes an individual suitable as an adoptive parent, and what efforts are needed to encourage the permanent placement of minority children and other children with special needs who languish in foster care. Hundreds of thousands of children in this country need permanent homes, and hundreds of thousands of adults have at least some interest in adoption but are often discouraged

by the confusing laws and procedures as well as by high financial and emotional costs.

To reduce this confusion -- which confounds consensual adoptions and not only the relatively small number that are contested -- the National Conference of Commissioners on Uniform State Laws has approved a Uniform Adoption Act to enable the States to respond more flexibly and reasonably to the changing social, economic and constitutional character of contemporary adoption practice.

In examining virtually every aspect of adoption practice, the Drafting Committee was assisted by its Reporter, Law Professor Joan Heifetz Hollinger, the principal author and editor of *Adoption Law and Practice* 2 vol.(Matthew Bender Co., 1988, Supp. 1989-94), representatives from the Family Law Section of the American Bar Association, and dozens of advisers representing a wide array of professional and citizens organizations. After extensive discussion of the Act at five successive Annual Meetings, the Conference overwhelmingly approved it as a Uniform Act in August 1994.

The Act meets the changing psychosocial and economic aspects of contemporary adoptions by addressing the many different kinds of adoption that now occur and the different functions they serve. Adoptions may be characterized according to the kind of individuals being adopted - - minors or adults, born in this country or foreign born, with or without special needs, with or without siblings. They may also be characterized according to the kind of individuals who are adopting -- married couples, single individuals, stepparents, individuals previously related or unrelated to an adoptee. Another way to characterize adoptions is according to the type of placement -- direct placement by a birth parent with an adoptive parent selected by the birth parent with or without the assistance of a lawyer or an agency, or placement by a public or private agency that has acquired custody of a minor from a birth parent through a voluntary relinquishment or an involuntary termination of parental rights. A fourth way to characterize adoptions is by the nature of the proceeding -- contested or uncontested.

The Act goes beyond existing statutory laws to create a coherent framework for legitimizing and regulating both direct-placement and agency-supervised adoptions. The Act will facilitate the completion of consensual adoptions and expedite the resolution of contested adoptions. By promoting the integrity and finality of adoptions, the Act will serve the interests of children in establishing and maintaining legal ties to the individuals who are committed to, and capable of, parenting them. More specifically:

(1) The Act protects minor children against unnecessary separation from their birth parents, against placement with unsuitable adoptive parents, and against harmful delays in determination of their legal status.

(2) The Act protects birth parents from unwarranted termination of their parental rights. Minor children may not be adopted without parental consent or appropriate grounds for dispensing with parental consent. The Act attempts to ensure that a decision by a birth parent to relinquish a minor child and consent to the child's adoption is informed and voluntary. Once that decision is made, however, and expressed before a judge or another individual who is not implicated in any actual or potential conflict of interest with the birth parent, the decision is final

and, with very few exceptions, irrevocable.

Involuntary as well as voluntary termination proceedings conform to constitutional standards of due process, but an individual's biological ties to a child are not alone sufficient to bestow full parental rights on that individual. The Act protects the parental status of biological parents who have actually functioned as a child's parents.

(3) The Act protects adoptive parents and adopted children by providing them with whatever information is reasonably available at the time of placement about the child's background, including health, genetic, and social history, and by providing access in later years to updated medical information.

(4) The Act discourages unlawful placement activities within and across state and national boundaries by keeping track of minor children once they have been placed for adoption, distinguishing between lawful and unlawful adoption-related expenses and activities, insisting that agencies, lawyers, and other providers of professional services explain their adoption-related services and fees to people considering adoption, requiring judicial approval of adoption-related expenses, and imposing sanctions against unlawful activities.

(5) The Act encourages different kinds of people to adopt. No one may be categorically excluded from being considered as an adoptive parent. Nonetheless, preplacement (except in stepparent adoptions and when waived by a court for good cause) as well as post-placement evaluations of prospective adoptive parents are required, whether initiated by an agency or directly by a birth parent, in order to determine the suitability of particular individuals to be adoptive parents.

(6) Individuals who have served as a minor child's foster or de facto parents are given standing to seek to adopt the child, subject to the particular child's needs. Agencies receiving public funds are required actively to recruit prospective adoptive parents for children who are considered difficult to place because of their age, health, race, ethnicity, or other special needs. The Act prohibits the delay or denial of a child's adoptive placement solely on the basis of racial or ethnic factors. A child's guardian ad litem as well as other interested persons may seek equitable and other appropriate relief against discriminatory placement activities.

(7) The Act requires expedited hearings for contested adoptions and the appointment of a guardian ad litem for minor children whose well-being is threatened by protracted or contested proceedings. During a proceeding, courts are authorized and encouraged to make interim custody arrangements to protect minors against detrimental disruptions of stable custodial environments. Good faith efforts must be made to notify any parent or alleged parent whose rights have not previously been relinquished or terminated of the pendency of an adoption of the parent's child.

(8) The Act clarifies the relationship to adoption proceedings of the Uniform Child Custody Jurisdiction Act, the federal Parental Kidnapping Prevention Act, and the Interstate Compact on the Placement of Children. The Act supports the finality of adoption decrees by strictly limiting the time for appeals or other challenges and by presuming that a final order terminating parental

rights or granting an adoption is valid. A final adoption may not be challenged by anyone for any reason more than six months after the order is entered. Even if a challenge is begun within that time, the adoption may not be set aside unless the challenger proves with clear and convincing evidence that the adoption is contrary to the child's best interests.

(9) The Act permits mutually agreed-upon communication between birth and adoptive families before and after an adoption is final. It also ensures that, except for consensual contacts, the privacy and autonomy of adoptive and birth families will be fully protected. The Act's mutual consent registry is a "user friendly" approach to the issue of whether and when to release identifying information among birth parents, adoptees, and other members of an adoptee's birth and adoptive families. This balanced and uniform procedure can be the basis of a national interstate network for the consensual disclosure of identifying information.

(10) The Act clarifies the legal and economic consequences of different types of adoption so that, within these formal structures, the emotional and psychological aspects of adoptive parent and child relationships can flourish.

UNIFORM ADOPTION ACT (1994)

[ARTICLE] 1. GENERAL PROVISIONS

SECTION 1-101. DEFINITIONS. In this [Act]:

- (1) "Adoptee" means an individual who is adopted or is to be adopted.
- (2) "Adult" means an individual who has attained 18 years of age.
- (3) "Agency" means a public or private entity, including the department, that is authorized by the law of this State to place individuals for adoption.
- (4) "Child" means a minor or adult son or daughter, by birth or adoption.
- (5) "Court," with reference to a court of this State, means the [appropriate court].
- (6) "Department" means the [department of social services, or health services, or children's services].
- (7) "Guardian" means an individual, other than a parent, appointed by an appropriate court as general guardian or guardian of the person of a minor.
- (8) "Legal custody" means the right and duty to exercise continuing general supervision of a minor as authorized by law. The term includes the right and duty to protect, educate, nurture, and discipline the minor and to provide the minor with food, clothing, shelter, medical care, and a supportive environment.
- (9) "Minor" means an individual who has not attained 18 years of age.
- (10) "Parent" means an individual who is legally recognized as a mother or father or whose consent to the adoption of a minor is required under Section 2-401(a)(1). The term does not include an individual whose parental relationship to a child has been terminated judicially or by operation of law.
- (11) "Person" means an individual, corporation, limited liability company, business

trust, estate, trust, partnership, association, agency, joint venture, government, governmental subdivision or instrumentality, public corporation, or any other legal or commercial entity.

(12) "Physical custody" means the physical care and supervision of a minor.

(13) "Place for adoption" means to select a prospective adoptive parent for a minor and transfer physical custody of the minor to the prospective adoptive parent.

(14) "Relative" means a grandparent, great grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew of an individual, whether related to the individual by the whole or the half blood, affinity, or adoption. The term does not include an individual's stepparent.

(15) "Relinquishment" means the voluntary surrender to an agency by a minor's parent or guardian, for purposes of the minor's adoption, of the rights of the parent or guardian with respect to the minor, including legal and physical custody of the minor.

(16) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Stepparent" means an individual who is the spouse or surviving spouse of a parent of a child but who is not a parent of the child.

Comment

"Child" is defined as a son or daughter by birth or adoption because biological and adopted children may be adults as well as minors and because the legal consequences of adoption are not limited to adoptees who are minors. The relationship of "parent and child" referred to in the Act is not limited to the rights and duties that exist between a parent and a child under the age of 18. This relationship includes the legal rights and duties that exist between a parent and a child of any age.

"Legal custody" is distinguished from "physical custody" because a person with whom a minor is actually living may not be the same or the only person who has the legal right to make decisions about the minor's care or the legal responsibility to provide that care. This distinction

is important, for example, in determining who has the legal authority to place a minor for adoption. See Section 2-101.

"Parent" is defined to include any legally recognized mother or father -- anyone recognized in this State or elsewhere as having the legal status of mother or father. Also included in the term are the women and men, other than a minor's guardian, whose consent to the adoption of a minor is required by the Act -- these are the women and men who are probably recognized by most States as legal mothers or fathers. Excluded from the term "parent" are women and men whose status as legal mothers or fathers has been terminated in a judicial proceeding or "by operation of law," as, for example, is the fate in most States of egg or sperm donors who are not intended social parents. Also excluded are women or men who may be candidates for the legal designation of mother or father but who have not yet been recognized as such -- for example, an alleged father who is not married to a birth mother, or a prospective adoptive parent who hopes to become a legally recognized parent but must await judicial approval of the proposed adoption. The Act does **not** refer to a child's parents at birth as the "natural" parents because to do so might imply that it is "unnatural" to be an adoptive parent. Moreover, the increasing use of artificial insemination, in vitro fertilization, embryo transfers, and other forms of "assisted conception" to create children makes it all the more difficult to know who is the most likely candidate for the designation of "natural" parent.

"Place for adoption" is defined as encompassing both the selection of a prospective adoptive parent and the transfer of a minor's physical custody to this individual. Article 2, Part 1, recognizes two kinds of adoptive placements: (1) direct placement, and (2) placement by an agency.

SECTION 1-102. WHO MAY ADOPT OR BE ADOPTED. Subject to this [Act], any individual may adopt or be adopted by another individual for the purpose of creating the relationship of parent and child between them.

Comment

No one is categorically excluded by the Act from being considered as a prospective adoptee or as a prospective adoptive parent. Determinations concerning the availability and suitability of individuals to become each other's adoptive parent or child are to be made on the basis of the particular needs and characteristics of each individual. A specific minor will not become available for adoption, for example, unless the parents of the minor consent to a direct adoptive placement, relinquish their parental rights to an agency, or have their parental rights terminated by a court. A specific individual will not be entitled to adopt a minor unless the individual is favorably evaluated as suitable to adopt, obtains custody of a minor from a person authorized to place the minor for adoption, and is permitted to adopt by a court upon a finding that the adoption is in the minor's best interests. Marital status, like other general characteristics such as race, ethnicity, religion, or age, does not preclude an individual from adopting, but, if a

prospective adoptive parent is married, his or her spouse has to join in the petition. See Section 3-301.

SECTION 1-103. NAME OF ADOPTEE AFTER ADOPTION. The name of an adoptee designated in a decree of adoption takes effect as specified in the decree.

Comment

For the contents of the decree of adoption, see Section 3-705.

SECTION 1-104. LEGAL RELATIONSHIP BETWEEN ADOPTEE AND ADOPTIVE PARENT AFTER ADOPTION. After a decree of adoption becomes final, each adoptive parent and the adoptee have the legal relationship of parent and child and have all the rights and duties of that relationship.

Comment

Sections 1-104 through 1-106 state the most generally accepted legal consequences of adoption: (1) the adoptee becomes in all respects the child of the new adoptive parents; (2) except for the circumstances referred to in Section 1-105, any rights and duties of the adoptee's former parents (i.e., former adoptive or presumed parents as well as birth parents) which have not previously been terminated -- are terminated; and (3) the adoptee retains any right or benefit acquired before the decree of adoption becomes final. See Section 3-706 to determine when the decree becomes final.

The Act defers to the State's probate and other laws for determining how an adoptee's status as the child of the adoptive parents affects their rights to intestate succession and inheritance by, from, and through each other, as well as the adoptee's rights to support, to be a beneficiary of any donative disposition, including class gifts, and to receive wrongful death proceeds, survivor's benefits, educational, insurance, medical, and other third party or public benefits.

SECTION 1-105. LEGAL RELATIONSHIP BETWEEN ADOPTEE AND FORMER PARENT AFTER ADOPTION. Except as otherwise provided in Section 4-103, when a decree of adoption becomes final:

- (1) the legal relationship of parent and child between each of the adoptee's former

parents and the adoptee terminates, except for a former parent's duty to pay arrearages for child support; and

(2) any previous court order for visitation or communication with an adoptee

terminates.

Comment

Except in an adoption by a stepparent, the consequences of an adoption are generally to terminate all aspects of the relationship of parent and child between the adoptee and the adoptee's former legal parents, including the rights of the adoptee and the adoptee's former parents to inheritance or intestate succession by, from, and through each other. Because the adoptee is no longer the legal "child" of a birth parent, the adoptee is similarly no longer the grandchild of a former grandparent, the sibling of a former sibling, and so on. The Act defers to the State's probate laws for the consequences of an adoption for class gifts and other donative dispositions in an instrument executed before or after the adoption becomes final by an adoptee or an adoptee's former parent or relative. See Section 4-103 for the consequences of an adoption by a stepparent.

Except in an adoption by a stepparent, the Act terminates any previous order for visitation or communication with an adoptee but leaves to other law of the State whether agreements for post-adoption visitation or communication are enforceable in a separate civil action. Nonetheless, Section 3-707(c) provides that the validity of an adoption cannot be challenged for failure to comply with such an agreement. Therefore, an agreement for post-adoption visitation or communication, while not prohibited by the Act, has no effect on the fundamental consequence of an adoption, which is to terminate the parental relationship between the child and the former parents and to create the relationship of parent and child in all respects between the adoptive parents and the adopted child.

SECTION 1-106. OTHER RIGHTS OF ADOPTEE. A decree of adoption does not affect any right or benefit vested in the adoptee before the decree becomes final.

Comment

The Act protects an adoptee's interest in any right or benefit acquired -- vested -- before the adoption is final. Section 3-706 indicates when and for what purposes a decree of adoption is "final." For example, an adoptee may become entitled to insurance proceeds or Social Security benefits or to a share of the estate of a birth parent or relative before the decree of adoption or a court order terminating the relationship between the adoptee and the birth parent is issued -- in other words, before the adoptee is the legal child of the adoptive parents. Another possibility is that in the interim between being placed for adoption and the entry of the adoption decree, the

adoptee may acquire a vested right to take from some donative instrument or from a publicly funded program, such as a federal or state subsidy for children with special needs.

SECTION 1-107. PROCEEDINGS SUBJECT TO INDIAN CHILD WELFARE ACT.

A proceeding under this [Act] which pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., is subject to that Act.

Comment

The provisions of the Indian Child Welfare Act (ICWA), including the provisions that determine whether a tribal or a state court has exclusive or concurrent jurisdiction, preempt this Act whenever an adoptive placement, a consent or relinquishment, a proceeding to terminate parental rights, or an adoption proceeding pertains to an "Indian child." The ICWA defines "Indian child" as an unmarried individual under 18 who is either a member of an Indian tribe or eligible for membership by virtue of being the biological child of a tribal member; 25 U.S.C. § 1903(3). A parent or guardian executing a consent or relinquishment under this Act must state that the minor adoptee is not within ICWA's definition of Indian child, Section 2-406(d)(5), and the court, when granting an adoption, has to indicate if ICWA is applicable to the proceeding, and if so, that its requirements were met. See Section 3-703(a)(8).

SECTION 1-108. RECOGNITION OF ADOPTION IN ANOTHER

JURISDICTION. A decree or order of adoption issued by a court of any other State which is entitled to full faith and credit in this State, or a decree or order of adoption entered by a court or administrative entity in another country acting pursuant to that country's law or to any convention or treaty on intercountry adoption which the United States has ratified, has the same effect as a decree or order of adoption issued by a court of this State. The rights and obligations of the parties as to matters within the jurisdiction of this State must be determined as though the decree or order were issued by a court of this State.

Comment

This section provides that an adoption has the same effect in this State as it has in the State that approved the adoption if it is entitled to full faith and credit. A final decree or order of

adoption is entitled to full faith and credit either under Article 4, Section 1 of the U.S. Constitution or under the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. 1738A.

Under the principle of comity for final judgments from other countries, an adoption granted by a court or administrative entity in another country is entitled to recognition in this State as if it were an adoption granted by a court of this State if it is issued pursuant to that country's law or to any convention or treaty ratified by the United States. This section should enable residents of this State who have adopted a child in another country, and who are permitted to bring their adopted child to this country by the Immigration and Naturalization Services, to ensure recognition of the foreign adoption decree simply by registering it with a state court or the Registrar of Vital Statistics. Although a "second" adoption in this State should not be necessary, the status of foreign adoptions will be clarified if and when the United States ratifies and implements the Hague Convention on Intercountry Adoption approved by fifty-five countries in May 1993.

[ARTICLE] 2. ADOPTION OF MINORS

Comment

By its own terms and in accordance with Section 5-101, this article applies to the adoption of unemancipated minors and in accordance with Section 5-101 to incompetent adults by unrelated individuals and by relatives. Article 5 applies to the adoption of adults and emancipated minors and Article 4 applies to the adoption of minors by their stepparents or other individuals who, with the consent of the custodial parent and the court, are permitted to adopt under Article 4.

Unlike many current adoption statutes, the Act defines "place for adoption," Section 1-101(13); specifies the individuals or entities who may place a minor and states the other prerequisites for a valid placement, Part 1 of this article; and provides sanctions for unlawful placement activities, Article 7. The Act recognizes a legitimate role for various providers of professional services in connection with an adoption and requires that they disclose the nature of their services and their fee schedules to birth parents and prospective adopters. See Section 2-102(e) for direct placements and Section 2-103(a) for placements by agencies. The Act provides, however, that the only persons who may actually select an adoptive parent and authorize a transfer of the minor's physical custody are a parent with legal and physical custody of a minor, a guardian with specific judicial authorization to place a minor, or an agency with legal custody of a minor and authorization from a parent, a guardian, or a court to place the minor for adoption.

[PART] 1. PLACEMENT OF MINOR FOR ADOPTION

SECTION 2-101. WHO MAY PLACE MINOR FOR ADOPTION.

(a) The only persons who may place a minor for adoption are:

(1) a parent having legal and physical custody of the minor, as provided in subsections (b) and (c);

(2) a guardian expressly authorized by the court to place the minor for adoption;

(3) an agency to which the minor has been relinquished for purposes of adoption;

or

(4) an agency expressly authorized to place the minor for adoption by a court order terminating the relationship between the minor and the minor's parent or guardian.

(b) Except as otherwise provided in subsection (c), a parent having legal and physical custody of a minor may place the minor for adoption, even if the other parent has not executed a consent or a relinquishment or the other parent's relationship to the minor has not been terminated.

(c) A parent having legal and physical custody of a minor may not place the minor for adoption if the other parent has legal custody or a right of visitation with the minor and that parent's whereabouts are known, unless that parent agrees in writing to the placement or, before the placement, the parent who intends to place the minor sends notice of the intended placement by certified mail to the other parent's last known address.

(d) An agency authorized under this [Act] to place a minor for adoption may place the minor for adoption, even if only one parent has executed a relinquishment or has had his or her parental relationship to the minor terminated.

Comment

Subsection (a) specifies the persons who may "select a prospective adoptive parent for a minor and transfer physical custody of the minor to the prospective adoptive parent," as provided in the definition of "place for adoption" in Section 1-101(13). To protect minors against careless or unsupervised adoptive placements, a guardian, defined in the Act as a "general guardian or guardian of the person of a minor," Section 1-101(7), is not authorized to place the minor for

adoption unless expressly authorized to do so by a court pursuant to the State's guardianship laws. Such authority is not likely to be granted unless the child's parents are deceased or otherwise incapacitated or have had their parental rights terminated.

Subsection (b) allows an "at risk" placement by one parent if that parent has both legal and physical custody of the child, and subsection (d) allows an "at risk" placement by an agency. The risk, which is generally thought to be low, is that the consent, relinquishment, or termination of the rights of the other parent will not occur and, as a result, the adoption will not be completed. The advantage of this kind of placement is that the child will be transferred to the home that is most likely to become the permanent adoptive home and will be spared an interlude in one or more foster homes. Before accepting custody of the child, the prospective adoptive parents must have a favorable preplacement evaluation, Part 2 of this article (unless waived by a court for good cause), will be informed of the risks of the placement, and must have agreed in writing to provide medical and other care and support for the child pending execution of the requisite consents or relinquishments. See Section 2-102(d).

Subsection (c) provides that when both parents share legal custody, or one parent has legal custody and the other has a right of visitation, the parent having legal and physical custody cannot place a child without the other parent's written permission or without notifying the other parent of the intended placement. This provision is much less likely to affect the parents of an infant than of an older child when the parents -- whether divorced or never married to each other -- are subject to a court order for custody and visitation. One parent will be discouraged from attempting to place the child for adoption when the other parent maintains an actual and not simply de jure relationship to the child. If that parent can object to the placement while it is being contemplated, instead of after it has been made, the child can be spared the disruption of being shifted from one custodial environment to another. Nonetheless, if that parent does object or does not reply to the notice, and the parent who intends to place the child believes there are sufficient grounds to terminate the rights of the other parent -- for example, a consistent failure to support and communicate with the child -- the prospective adoptive parents can go ahead and file a petition for adoption. See Section 3-301. In conjunction with that petition, the parent who has selected the prospective adopters can file a petition to terminate the other parent's relationship to the child. See Section 3-501(1). If a custodial parent wants his or her spouse to adopt the child, a "placement" as contemplated by this part is not required and the parent and stepparent may commence an adoption proceeding under Article 4, in which case the status of the other parent will be determined during the pendency of that proceeding.

SECTION 2-102. DIRECT PLACEMENT FOR ADOPTION BY PARENT OR GUARDIAN.

(a) A parent or guardian authorized to place a minor directly for adoption may place the minor only with a prospective adoptive parent for whom a favorable preplacement evaluation has been prepared pursuant to Sections 2-201 through 2-206 or for whom a preplacement evaluation

is not required under Section 2-201(b) or (c).

(b) A parent or guardian shall personally select a prospective adoptive parent for the direct placement of a minor. Subject to [Article] 7, the parent or guardian may be assisted by another person, including a lawyer, health-care provider, or agency, in locating or transferring legal and physical custody of the minor to a prospective adoptive parent.

(c) A prospective adoptive parent shall furnish a copy of the preplacement evaluation to the parent or guardian and may provide additional information requested by the parent or guardian. The evaluation and any additional information must be edited to exclude identifying information, but information identifying a prospective adoptive parent need not be edited if the individual agrees to its disclosure. Subject to [Article] 7, a prospective adoptive parent may be assisted by another person in locating a minor who is available for adoption.

(d) If a consent to a minor's adoption is not executed at the time the minor is placed for adoption, the parent or guardian who places the minor shall furnish to the prospective adoptive parent a signed writing stating that the transfer of physical custody is for purposes of adoption and that the parent or guardian has been informed of the provisions of this [Act] relevant to placement for adoption, consent, relinquishment, and termination of parental rights. The writing must authorize the prospective adoptive parent to provide support and medical and other care for the minor pending execution of the consent within a time specified in the writing. The prospective adoptive parent shall acknowledge in a signed writing responsibility for the minor's support and medical and other care and for returning the minor to the custody of the parent or guardian if the consent is not executed within the time specified.

(e) A person who provides services with respect to direct placements for adoption shall

furnish to an individual who inquires about the person's services a written statement of the person's services and a schedule of fees.

Comment

Consistent with the prevailing law in all but a few States, the Act recognizes and protects the right of a child's parent to select adoptive parents for the child and to transfer physical custody of the child directly to the prospective parents. As of 1994, only Connecticut, Delaware, and Massachusetts continued to bar direct placement as defined in this Act. Even these States, however, allow agencies to make "identified" placements in which a birth parent participates in the selection of an adoptive parent.

In contrast to prevailing practice in most States, the Act requires a preplacement evaluation for direct parental placements (unless waived by a court for good cause) -- often referred to as "private" or "independent" placements -- as well as for placements made by agencies. In order to reduce the risks to children of being "distributed" to "strangers" whose parental capacities are unknown, birth parents or guardians of a minor who make a direct placement must limit their choice of adoptive parents to individuals who have had a favorable preplacement evaluation. An individual who places a minor with someone who has not had a favorable evaluation is subject to a civil penalty. See Section 7-101.

Although a birth parent or guardian may be "assisted" by others when making a direct placement, the parent or guardian must personally select a prospective adoptive parent on the basis of the information contained in the preplacement evaluation and any additional information provided at the parent's or guardian's request. Moreover, a person who assists in a direct placement may not charge a "finder's" fee or any similar fee for securing a placement, a consent, or a relinquishment. See Sections 7-101 and 7-102. Fees may be charged for lawful professional services rendered during an adoption. All service-providers must disclose in advance the nature of their services and their fees, subsection (e). See, also, Comment to Section 2-103.

The parent or guardian and the prospective adoptive parents may determine for themselves whether to share identifying information and whether to meet each other at the time of placement or at some later time.

Subsection (d) is consistent with the Act's requirement that an adoption based on a direct placement cannot be completed until at least three events occur: a parent or guardian has to place a minor with prospective adopters, the parent or guardian has to execute a consent to the proposed adoption, and the other parent's rights, if not previously terminated, have to be voluntarily or involuntarily terminated. Although they are not the only prerequisites for a valid adoption, these events are essential for an adoption begun through a direct placement.

It is not always possible for a consent to be executed before a child's physical custody is transferred to a prospective adoptive parent. In a direct placement of an infant, for example, the birth mother may release the infant to the prospective adopters from the hospital at least several days before she executes her consent. See Part 3 of this article.

To provide for a minor's care in the interlude between the transfer of physical custody and the execution of a consent, the individual who places the minor has to authorize the prospective adoptive parent to care for the minor pending the execution of the consent. The written authorization should specifically mention medical care so that, pursuant to many States' laws and the Employee Retirement Income Security Act (ERISA), 29 U.S.C.A. § 1169, upon completion of the adoption, the adoptee can be deemed a covered dependent under the adoptive parent's group health insurance plan from the date of placement and not simply from the date the decree becomes final. The authorization may also enable an adoptee with special needs to qualify for federal or state medical assistance programs.

A placement authorization should also indicate when the consent is likely to be executed, and include an acknowledgment by the prospective adoptive parents that, if the parent or guardian who placed the minor decides not to execute the consent at the specified time, the parent or guardian may immediately reclaim physical custody of the child. If the individual who placed the child neither consents nor refuses to consent at the specified time, but simply disappears, the prospective adoptive parents have the option of (1) reporting the disappearance to the department for possible action under the State's child protection laws or (2) filing a petition to adopt under Article 3, Part 3 along with a petition to terminate the parent's rights under Article 3, Part 5 or the guardian's right to withhold consent. See Section 2-402(b).

SECTION 2-103. PLACEMENT FOR ADOPTION BY AGENCY.

(a) An agency authorized to place a minor for adoption shall furnish to an individual who inquires about its services a written statement of its services, including the agency's procedure for selecting a prospective adoptive parent for a minor and a schedule of its fees.

(b) An agency that places a minor for adoption shall authorize in writing the prospective adoptive parent to provide support and medical and other care for the minor pending entry of a decree of adoption. The prospective adoptive parent shall acknowledge in writing responsibility for the minor's support and medical and other care.

(c) Upon request by a parent who has relinquished a minor child pursuant to [Part] 4, the agency shall promptly inform the parent as to whether the minor has been placed for adoption, whether a petition for adoption has been granted, denied, or withdrawn, and, if the petition was not granted, whether another placement has been made.

Comment

Agencies are required to disclose to birth parents, guardians, and prospective adoptive parents the agencies' fee schedules and their policies concerning "closed" or "open" adoptions, the role of birth parents in selecting adoptive parents, and the extent to which the agencies feel bound to honor a birth parent's request for adoptive parents with particular characteristics. It is anticipated that in formulating regulations to implement the Act, the States will draft sample forms for agencies, lawyers, social workers, and other adoption-service providers to report, advertise, and account for their services and fees. See, e.g., Michigan's required "public information forms" for adoption service providers, Mich. P.A. 209 of 1994, Sec. 14.

The Comment to Section 2-102 on the importance of a written authorization to prospective adoptive parents to provide medical care for an adoptee is also relevant to subsection (b) of this section.

Subsection (c) responds to the desire of many birth parents who voluntarily relinquish a child to be informed whether and when the child is adopted.

SECTION 2-104. PREFERENCES FOR PLACEMENT WHEN AGENCY PLACES MINOR.

(a) An agency may place a minor for adoption only with an individual for whom a favorable preplacement evaluation has been prepared pursuant to Sections 2-201 through 2-206. Placement must be made:

(1) if the agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian, with the individual selected by the parent or guardian;

(2) if the agency has not so agreed, with an individual selected by the agency in accordance with the best interest of the minor.

(b) In determining the best interest of the minor under subsection (a)(2), the agency shall consider the following individuals in order of preference:

(1) an individual who has previously adopted a sibling of the minor and who makes a written request to adopt the minor;

(2) an individual with characteristics requested by a parent or guardian, if the agency agrees to comply with the request and locates the individual within a time agreed to by the parent or guardian and the agency;

(3) an individual who has had physical custody of the minor for six months or more within the preceding 24 months or for half of the minor's life, whichever is less, and makes a written request to adopt the minor;

(4) a relative with whom the minor has established a positive emotional relationship and who makes a written request to adopt the minor; and

(5) any other individual selected by the agency.

(c) Unless necessary to comply with a request under subsection (b)(2), an agency may not delay or deny a minor's placement for adoption solely on the basis of the minor's race, national origin, or ethnic background. A guardian ad litem of a minor or an individual with a favorable preplacement evaluation who makes a written request to an agency to adopt the minor may maintain an action or proceeding for equitable relief against an agency that violates this subsection.

(d) If practicable and in the best interest of minors who are siblings, an agency shall place siblings with the same prospective adoptive parent selected in accordance with subsections (a) through (c).

(e) If an agency places a minor pursuant to subsection (a)(2), an individual described in subsection (b)(3) may commence an action or proceeding within 30 days after the placement to challenge the agency's placement. If the individual proves by a preponderance of the evidence that the minor has substantial emotional ties to the individual and that an adoptive placement of

the minor with the individual would be in the best interest of the minor, the court shall place the minor with the individual.

Comment

This section establishes a general order of preference for the adoptive placement of minors who are in the legal custody of an agency. When the State's responsibility for a minor's well-being is delegated to a public or private agency, the agency should make a placement that is responsive to public policies about the kind of placement that is most likely to be in a minor's best interest. Because the Act generally defers to an agency's exercise of its professional judgment, an agency may determine the extent to which birth parents can have a role in the agency's selection of adoptive parents. Once an agency has made this determination, however, it must abide by any assurances it gives to birth parents concerning their requests for certain kinds of adoptive parents from among the pool of applicants with favorable preplacement evaluations.

An agency may decide not to allow birth parents to participate in the selection of adoptive parents. This is likely to happen, for example, when the birth parents' rights are terminated involuntarily. If the agency does not agree to be bound by the parent's choice, the agency will have the discretion to select an adoptive parent from among the pool of applicants with favorable evaluations. In making its selection, the agency must consider the order of preference set forth in subsection (b) but is not bound by it if the agency believes that following it would not be in the best interests of a specific child. Included in this list, and particularly in subsection (b)(3), are individuals who have cared for the minor for a substantial period of time -- for example, foster parents, relatives, stepparents, or other "de facto parents" who have had physical custody of the minor. What is most important about individuals in this category is that they must have an actual and beneficial, and not simply a formal relationship by consanguinity or affinity with the minor. If no one from this category seeks to adopt, or the agency determines that placement of the minor with someone in this category would not be appropriate, the agency may select an adoptive parent from among relatives who have a positive emotional relationship with the minor or from among the agency's general pool of applicants.

An agency may not delay or deny placement, however, solely on the basis of the minor's race, national origin, or ethnic identity, subsection (c). In this respect, the Act is responsive to constitutional principles, federal policy as expressed in the Multiethnic Placement Act of 1994, H.R.6-539, Sec. 551 et seq., data on the disproportionate number of minority children in agency custody who are adoptable, and the persuasive social science research on the harm to children who are denied stable placements. This section extends to agencies that are not recipients of federal funds the basic policies of the Multiethnic Placement Act of 1994 barring discriminatory placement activities in foster care or adoptive placements based solely on the "race, color, or national origin of the adoptive or foster parent, or the child, involved," H.R.6-539, Sec. 553. Moreover, this section allows a minor's guardian ad litem and certain prospective adoptive parents to seek equitable relief against an agency that unlawfully delays or denies a placement. Agencies are not precluded from considering the sensitivity of prospective adoptive parents to a minor's racial or ethnic background. Similarly, agencies may take into account a prospective parent's capacity to deal with any particular needs of a child and should recruit adoptive parents

from diverse backgrounds for children who are awaiting placement. Nonetheless, race, national origin, or ethnicity, should not, by themselves, be the basis of a placement decision. See, Elizabeth Bartholet, *Where Do Black Children Belong?* 139 *Univ. Pa. L. Rev.* 1163 (1991); Comments on Bartholet's article by five adoption experts in 1 *Reconstruction* 22-54 (1992); Hearings on Multiethnic Placement Act of 1994; cf. position of National Association of Black Social Workers, Twila Perry, *The transracial Adoption Controversy*, 21 *N.Y.U. Rev. Law & Soc. Change* 33 (1994).

Subsection (e) permits an individual who previously had physical custody of a minor to seek judicial review of an agency's decision to reject that individual's request to adopt the minor. While not preventing an agency's exercise of discretion, this subsection, like the actions permitted by subsection (c) or, during a proceeding for adoption, by Section 2-402(b), may protect minors and prospective adoptive parents against the occasional unreasonable exercise of discretion by an agency. See, e.g., *In re Petition to Adopt S.T. & N.T.*, 512 N.W.2d 894 (1994).

SECTION 2-105. RECRUITMENT OF ADOPTIVE PARENTS BY AGENCY. An agency receiving public funds pursuant to Title IV-E of the federal Adoption Assistance and Child Welfare Act, 42 U.S.C. Sections 670 et seq., or pursuant to [the State's adoption subsidy program], shall make a diligent search for and actively recruit prospective adoptive parents for minors in the agency's custody who are entitled to funding from those sources and who are difficult to place for adoption because of a special need as described in [the applicable law on minors with special needs]. The department shall prescribe the procedure for recruiting prospective adoptive parents pursuant to this section.

Comment

Consistent with federal and many state laws applicable to publicly-funded agencies, this section calls for diligent efforts to recruit adoptive parents who are capable of caring for minors with "special needs," especially those who, absent such efforts, are not likely to be adopted. The department may suggest the use of photo-listing services, interstate adoption exchanges, pamphlets describing the financial, medical, and other subsidies available to certain adoptees, educational programs about the challenges and benefits of raising children with special needs, and other means likely to diversify the pool of prospective adoptive parents. In cooperation with the federal Department of Health and Human Services, which administers Title IV-E and the Multiethnic Placement Act, the department can develop standards for compliance and sanctions for noncompliance with the requirements of this section. In addition, the department can use its general authority under Section 7-107 to review and investigate compliance with this Act to help

ensure compliance with this section.

SECTION 2-106. DISCLOSURE OF INFORMATION ON BACKGROUND.

(a) As early as practicable before a prospective adoptive parent accepts physical custody of a minor, a person placing the minor for adoption shall furnish to the prospective adoptive parent a written report containing all of the following information reasonably available from any person who has had legal or physical custody of the minor or who has provided medical, psychological, educational, or similar services to the minor:

(1) a current medical and psychological history of the minor, including an account of the minor's prenatal care, medical condition at birth, any drug or medication taken by the minor's mother during pregnancy, any subsequent medical, psychological, or psychiatric examination and diagnosis, any physical, sexual, or emotional abuse suffered by the minor, and a record of any immunizations and health care received while in foster or other care;

(2) relevant information concerning the medical and psychological history of the minor's genetic parents and relatives, including any known disease or hereditary predisposition to disease, any addiction to drugs or alcohol, the health of the minor's mother during her pregnancy, and the health of each parent at the minor's birth; and

(3) relevant information concerning the social history of the minor and the minor's parents and relatives, including:

(i) the minor's enrollment and performance in school, results of educational testing, and any special educational needs;

(ii) the minor's racial, ethnic, and religious background, tribal affiliation, and a general description of the minor's parents;

(iii) an account of the minor's past and existing relationship with any individual

with whom the minor has regularly lived or visited; and

(iv) the level of educational and vocational achievement of the minor's parents and relatives and any noteworthy accomplishments;

(4) information concerning a criminal conviction of a parent for a felony, a judicial order terminating the parental rights of a parent, and a proceeding in which the parent was alleged to have abused, neglected, abandoned, or otherwise mistreated the minor, a sibling of the minor, or the other parent;

(5) information concerning a criminal conviction or delinquency adjudication of the minor; and

(6) information necessary to determine the minor's eligibility for state or federal benefits, including subsidies for adoption and other financial, medical, or similar assistance.

(b) Before a hearing on a petition for adoption, the person who placed a minor for adoption shall furnish to the prospective adoptive parent a supplemental written report containing information required by subsection (a) which was unavailable before the minor was placed for adoption but becomes reasonably available to the person after the placement.

(c) The court may request that a respondent in a proceeding under [Article] 3, [Part] 5, supply the information required by this section.

(d) A report furnished under this section must indicate who prepared the report and, unless confidentiality has been waived, be edited to exclude the identity of any individual who furnished information or about whom information is reported.

(e) Information furnished under this section may not be used as evidence in any civil or criminal proceeding against an individual who is the subject of the information.

(f) The department shall prescribe forms designed to obtain the specific information

sought under this section and shall furnish the forms to a person who is authorized to place a minor for adoption or who provides services with respect to placements for adoption.

Comment

The provisions requiring any person who places a minor for adoption to provide prospective adoptive parents, preferably before placement, with whatever information is "reasonably available" about a minor's medical, psychological, and social history, are among the Act's most significant contributions to the improvement of contemporary adoption practice. These provisions will encourage the development of protocols -- like those being drafted by the American Academy of Pediatrics in cooperation with child welfare agencies and attorneys -- for collecting information in a non-intrusive manner that respects individual privacy. These provisions will also encourage better training of medical personnel, social workers, and genetic counselors who are called upon to assist prospective adoptive parents in evaluating the needs of minor adoptees. See, Marianne Blair, *Lifting the Genealogical Veil: A Blueprint for Legislative Reform*, 70 *N.C. L. Rev* 681 (1992). In addition, the provisions in Article 6 for maintaining, updating, and disclosing nonidentifying information respond to the growing awareness that many birth parents are too young to have much medical history to report at the time of placement, but may develop conditions later on which adoptive families may want disclosed to them.

Although most States now require that some nonidentifying background information be furnished to adoptive parents, the statutes are not uniform. They vary greatly with respect to the type of information sought, procedures, timing, administrative oversight, duties of care, and rules on confidentiality. Very few statutes require that the information be furnished before placement, when it can have the most beneficial effect on the ability of prospective adoptive parents to make informed decisions about whether to adopt a particular child. Hardly any statutes refer to genetic history and, until quite recently, most adoption service providers had no training at all in how to collect or evaluate genetic information or health histories so that the information is not unduly alarming to the prospective parents.

This section also protects against the random disclosure of confidential information and the use in civil or criminal proceedings of any information compiled pursuant to this section against an individual who is the subject of the information. For example, a parent's disclosure of drug addiction will not be admissible evidence in any proceeding involving the parent's alleged violation of other laws.

The reports required by this section must be included and retained in the permanent court records of the adoption proceeding. See Section 3-305(a)(7) and Article 6.

Article 7 provides sanctions and permits individual causes of action for unauthorized disclosures of information and for breaches of the statutory duty to provide information that is "reasonably available." See, e.g., *Burr v. Bd. of Co. Comm.*, 491 N.E.2d 1101 (Ohio 1986) (public agency intentionally misrepresented biological family history, leaving adoptive parents unprepared for the child's later development of multiple neurological disorders); *Gibbs v. Ernst*,

615 A.2d 851 (Pa. App. 1993) (agency liable for failures to disclose child's history of physical and sexual abuse, leaving adoptive parents unprepared to deal with child's uncontrollably violent behavior); Blair, *Liability for Misconduct in Disclosure of Health-Related Information*, ch. 16, *Adoption Law and Practice* (J.H. Hollinger, ed. 1988-94).

SECTION 2-107. INTERSTATE PLACEMENT. An adoption in this State of a minor brought into this State from another State by a prospective adoptive parent, or by a person who places the minor for adoption in this State, is governed by the laws of this State, including this [Act] and the Interstate Compact on the Placement of Children.

Comment

Interstate placements are subject to the provisions of the Interstate Compact on the Placement of Children (ICPC) which has been enacted in all States and the District of Columbia. Like the ICPC, this Act is committed to serving the best interests of minor adoptees. This Act's most important provisions are fully compatible with ICPC policies and, indeed, are more comprehensive because they apply not only to interstate adoptive placements, but to all adoptive placements: intrastate as well as interstate, direct as well as agency placements, adoptions of older children and children with special needs as well as of infants. Among the provisions of this Act that are compatible with the ICPC are: (1) the precise delineation of lawful and unlawful placement activities, (2) the specific penalties for unlawful activities, (3) the requirements for preplacement and post-placement evaluations, (4) "tracking" the whereabouts of infants released from hospitals or birthing centers for purposes of adoption, (5) informing birth parents of the consequences of adoption and protecting them against the unwarranted termination of their parental rights, and (6) ensuring that some person is responsible for the care and financial support of a minor during the pendency of an adoption proceeding.

The jurisdictional and choice of law provisions of the Act are intended to reduce the uncertainty that too often surrounds interstate placements. These provisions are consistent with appellate court decisions and scholarly opinions that the Uniform Child Custody Jurisdiction Act (UCCJA) and the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. 1738A, determine which courts may appropriately exercise jurisdiction over all or some aspects of an adoption proceeding. Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement. See, e.g., *In re Zachariah Nathaniel K.*, 6 Cal. App. 4th 1025, 8 Cal. Rptr.2d 423 (1992) (the UCCJA and federal PKPA determine which State's courts have subject matter jurisdiction over birth mother's execution of, or withdrawal, of consent); H.H.Clark, Jr., *The Law of Domestic Relations* vol. 2 596-599 (2nd ed. 1987).

When a parental consent or relinquishment is executed or parental rights are terminated in State A -- in ICPC terminology, a "sending State" -- and a minor is then transferred to State B -- an ICPC "receiving State" -- where the adoptive parents reside, and a proceeding for adoption is

commenced in State B, this Act provides that the laws of State B, which include the ICPC, govern the proceeding. This is perfectly consistent with the ICPC requirement that the laws of the receiving State, State B, apply to an interstate placement. Under this Act, a consent, relinquishment, or termination will be valid if in accord with the laws of **either** State A or State B, Section 2-405(i), and State B's court will determine their validity during the adoption proceeding.

SECTION 2-108. INTERCOUNTRY PLACEMENT. An adoption in this State of a minor brought into this State from another country by a prospective adoptive parent, or by a person who places the minor for adoption in this State, is governed by this [Act], subject to any convention or treaty on intercountry adoption which the United States has ratified and any relevant federal law.

[PART] 2. PREPLACEMENT EVALUATION

SECTION 2-201. PREPLACEMENT EVALUATION REQUIRED.

(a) Except as otherwise provided in subsections (b) and (c), only an individual for whom a current, favorable written preplacement evaluation has been prepared may accept custody of a minor for purposes of adoption. An evaluation is current if it is prepared or updated within the 18 months next preceding the placement of the minor with the individual for adoption. An evaluation is favorable if it contains a finding that the individual is suited to be an adoptive parent, either in general or for a particular minor.

(b) A court may excuse the absence of a preplacement evaluation for good cause shown, but the prospective adoptive parent so excused must be evaluated during the pendency of the proceeding for adoption.

(c) A preplacement evaluation is not required if a parent or guardian places a minor

directly with a relative of the minor for purposes of adoption, but an evaluation of the relative is required during the pendency of a proceeding for adoption.

Comment

The Act requires that individuals who want to adopt be evaluated so that: (1) questions about their suitability to be adoptive parents can be addressed and (2) persons authorized to place minors for adoption can determine who is suitable as a prospective parent for a specific minor. The provisions governing preplacement evaluations in this part are compatible with ICPC requirements for interstate placements and are based to a large extent on analogous provisions in the Arizona, Florida, Michigan, New York, and Washington statutes.

Although an increasing number of States require preplacement evaluations for direct as well as for agency placements, most States require only post-placement evaluations -- typically called "home studies" -- for direct placement adoptions. By requiring a preplacement evaluation for direct as well as agency adoptions, the Act will have a substantial and beneficial effect on direct placements. There is no credible evidence that adoptive parents with whom a child has been placed directly by a birth parent are any less capable as parents than adoptive parents selected by public or private agencies. Nonetheless, more widespread use of preplacement evaluations will alleviate concerns about whether direct placements pose any risks to children.

Under some circumstances, a waiver of the preplacement evaluation may be warranted, especially if a refusal to grant a waiver is more harmful than beneficial to a minor. For example, if an agency has placed a minor with a foster parent during the pendency of a child protection proceeding and, after the minor's parents' rights are terminated, the agency wants the foster parent to adopt the minor, this agency "placement" should not be invalid simply because the transfer of physical custody to the foster parent occurs before a pre-adoptive evaluation. This situation would constitute "good cause" for a waiver under subsection (b). Another "good cause" situation might arise if a woman who intends to place her newborn for adoption gives birth prematurely, and the prospective adopter selected by the birth mother has not had a chance to complete an evaluation. This may justify a waiver combined with a court order for a prompt post-placement evaluation. By contrast, if circumstances indicate that an individual has ample opportunity to obtain a preplacement evaluation, but intentionally waits until the last minute and then seeks a waiver, the request for a waiver should be denied. See, e.g., *In re Adoption of Male Infant A.*, 150 Misc.2d 893, 578 N.Y.S.2d 988 (1991).

Subsection (c) dispenses with the requirement of a preplacement evaluation when a minor is placed directly with a relative. When a parent leaves a child with a relative, without any formal transfer of custody or clear understanding of what the "leaving" means, and the relative is later permitted to petition to adopt the child, it is certainly appropriate to assess the relative's suitability as an adoptive parent during the adoption proceeding. It is not feasible, however, to require that the evaluation be completed before the parent leaves the child with the relative.

SECTION 2-202. PREPLACEMENT EVALUATOR.

(a) Only an individual qualified by [a state-approved licensing, certifying, or other procedure] to make a preplacement evaluation may do so.

(b) An agency from which an individual is seeking to adopt a minor may require the individual to be evaluated by its own qualified employee or independent contractor, even if the individual has received a favorable preplacement evaluation from another qualified evaluator.

Comment

The Act requires that evaluators be "qualified" but does not assume that the only qualified individuals are employees of child-placing agencies. Although it is unusual for States to certify social workers, family counselors, or psychologists according to specific sub-specialties, it is expected that state Departments of Social Services will develop criteria for certifying individuals as qualified evaluators. Some States have standards for "adoption service providers" or "adoption specialists" -- for example, California, Michigan. In some States, the local courts maintain lists of qualified and experienced evaluators -- for example, New York lists "disinterested persons" who can perform evaluations.

SECTION 2-203. TIMING AND CONTENT OF PREPLACEMENT EVALUATION.

(a) An individual requesting a preplacement evaluation need not have located a prospective minor adoptee when the request is made, and the individual may request more than one evaluation.

(b) A preplacement evaluation must be completed within 45 days after it is requested. An evaluator shall expedite an evaluation for an individual who has located a prospective adoptee.

(c) A preplacement evaluation must be based upon a personal interview and visit at the residence of the individual being evaluated, personal interviews with others who know the individual and may have information relevant to the evaluation, and the information required by subsection (d).

(d) A preplacement evaluation must contain the following information about the individual being evaluated:

(1) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

(2) marital status and family history, including the age and location of any child of the individual and the identity of and relationship to anyone else living in the individual's household;

(3) physical and mental health, and any history of abuse of alcohol or drugs;

(4) educational and employment history and any special skills;

(5) property and income, including outstanding financial obligations as indicated in a current credit report or financial statement furnished by the individual;

(6) any previous request for an evaluation or involvement in an adoptive placement and the outcome of the evaluation or placement;

(7) whether the individual has been charged with having committed domestic violence or a violation of [the State's child protection statute], and the disposition of the charges, or whether the individual is subject to a court order restricting the individual's right to custody or visitation with a child;

(8) whether the individual has been convicted of a crime other than a minor traffic violation;

(9) whether the individual has located a parent interested in placing a minor with the individual for adoption and, if so, a brief description of the parent and the minor; and

(10) any other fact or circumstance that may be relevant in determining whether the individual is suited to be an adoptive parent, including the quality of the environment in the

individual's home and the functioning of other children in the individual's household.

(e) An individual being evaluated must submit to fingerprinting and sign a release permitting the evaluator to obtain from an appropriate law enforcement agency any record indicating that the individual has been convicted of a crime other than a minor traffic violation.

(f) An individual being evaluated shall, at the request of the evaluator, sign any release necessary for the evaluator to obtain information required by subsection (d).

Comment

An evaluator must establish a working relationship with the individual being evaluated in order to be able to evaluate the individual fairly. Subsection (b) requires a visit to the individual's residence and a personal interview in which the evaluator should explain how the information will be used and the consequences of a finding of suitability or unsuitability.

Subsection (c) lists the information that must be obtained. In addition to basic biographical data, the information sought focuses on items that may raise specific concerns about the individual's suitability to be an adoptive parent, especially items pertaining to drug or alcohol abuse, involvement in incidents of domestic violence or child abuse or neglect, or failure to support other children. Subsection (d) requires the individual to be fingerprinted in order to facilitate a criminal records check and subsection (e) requires the individual to furnish signed releases to enable the evaluator to obtain other information.

SECTION 2-204. DETERMINING SUITABILITY TO BE ADOPTIVE PARENT.

(a) An evaluator shall assess the information required by Section 2-203 to determine whether it raises a specific concern that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the physical or psychological well-being of the minor.

(b) If an evaluator determines that the information assessed does not raise a specific concern, the evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment about any factor that in the evaluator's opinion makes the individual suited in general or for a particular minor.

(c) If an evaluator determines that the information assessed raises a specific concern, the evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

Comment

This section establishes the minimum requirements for a favorable evaluation. It focuses on factors that may warrant a determination that an individual is not suitable to become an adoptive parent -- specific concerns that pose significant risks of harm to the physical or psychological well-being of a minor. A finding of unsuitability has to be supported by a written explanation of precisely how each specific concern poses a risk of harm to the minor. For example, an individual should not be disqualified solely because of low income, or because he or she lives in a small house or apartment, unless the individual's financial status or residence is so inadequate for the needs of a child that it poses a threat to the child's well-being.

These provisions are not intended to preclude an agency or an independent evaluator from asking additional questions intended to gauge an individual's capacity to adopt different kinds of children. Nor are evaluators or agencies precluded from offering pre-adoption counseling to prospective adoptive parents. This section should be read in conjunction with other provisions of the Act -- e.g., Sections 1-102, 2-104, 2-206 -- that are intended to protect individuals who seek to adopt from being unreasonably or categorically excluded from consideration.

SECTION 2-205. FILING AND COPIES OF PREPLACEMENT EVALUATION.

(a) If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the evaluator shall give the individual a signed copy of the evaluation. At the individual's request, the evaluator shall furnish a copy of the evaluation to a person authorized under this [Act] to place a minor for adoption and, unless the individual requests otherwise, edit the copy to exclude identifying information.

(b) If a preplacement evaluation contains a finding that an individual is not suited to be an adoptive parent of any minor, or a particular minor, the evaluator shall immediately give a signed copy of the evaluation to the individual and to the department. The department shall retain for 10 years the copy and a copy of any court order concerning the evaluation issued

pursuant to Section 2-206 or 2-207.

(c) An evaluator shall retain for two years the original of a completed or incomplete preplacement evaluation and a list of every source for each item of information in the evaluation.

(d) An evaluator who conducted an evaluation in good faith is not subject to civil liability for anything contained in the evaluation.

Comment

To avoid imposing massive filing requirements, the Act does not provide for a central registry of favorable preplacement evaluations. If the evaluation is favorable, the individual evaluated receives a signed copy and copies are made available at the individual's request to persons who are authorized to place a minor for adoption. These latter copies may be edited to preserve the anonymity of the individual.

Copies of unfavorable evaluations are to be retained by the department for ten years to enable other evaluators, the department, the courts, and adoption-service providers to verify an individual's statements about the outcome of previous evaluations.

Subsection (d) provides immunity from civil liability for an evaluator who conducts an evaluation in good faith.

SECTION 2-206. REVIEW OF EVALUATION.

(a) Within 90 days after an individual receives a preplacement evaluation with a finding that he or she is not suited to be an adoptive parent, the individual may petition a court for review of the evaluation.

(b) If the court determines that the petitioner has failed to prove suitability by a preponderance of the evidence, it shall order that the petitioner not be permitted to adopt a minor and shall send a copy of the order to the department to be retained with the copy of the original evaluation. If, at the time of the court's determination, the petitioner has custody of a minor for purposes of adoption, the court shall make an appropriate order for the care and custody of the minor.

(c) If the court determines that the petitioner has proved suitability, the court shall find the petitioner suitable to be an adoptive parent and the petitioner may commence or continue a proceeding for adoption of a minor. The court shall send a copy of its order to the department to be retained with the copy of the original evaluation.

Comment

This section provides that an individual may seek judicial review of a finding that he or she is not suited to be an adoptive parent. The individual has the burden of proving suitability by a preponderance of the evidence. If found suitable, the individual may commence or continue an adoption proceeding.

SECTION 2-207. ACTION BY DEPARTMENT. If, before a decree of adoption is issued, the department learns from an evaluator or another person that a minor has been placed for adoption with an individual who is the subject of a preplacement evaluation on file with the department containing a finding of unsuitability, the department shall immediately review the evaluation and investigate the circumstances of the placement and may request that the individual return the minor to the custody of the person who placed the minor or to the department. If the individual refuses to return the minor, the department shall immediately commence an action or proceeding to remove the minor from the home of the individual pursuant to [the State's child protection statute] and, pending a hearing, the court shall make an appropriate order for the care and custody of the minor.

Comment

This section requires the department to take immediate action to protect a minor upon learning that the minor has been placed in a home with an individual who has received an evaluation with a finding of unsuitability that has not been reversed.

[PART] 3. TRANSFER OF PHYSICAL CUSTODY
OF MINOR BY HEALTH-CARE FACILITY
FOR PURPOSES OF ADOPTION

Comment

This part provides a procedure for the consensual release of infants directly from hospitals or birthing centers to prospective adoptive parents who have previously been selected by the birth parent or another person authorized to place the infant for adoption. It also provides a procedure to enable the department to follow up on situations in which a child is released to someone other than a birth parent, but an adoption, foster placement, or guardianship proceeding is not commenced within a reasonable time after the release. These procedures are intended to keep track of adoptive placements and are not intended to prevent a birth mother from releasing a child to a relative or friend for a few days while she recovers in the hospital.

This part addresses only the requirements for releasing an infant from a health care facility for purposes of adoption. In order for a lawful adoptive placement to occur, the birth mother must also follow the procedures in Section 2-102, including the birth mother's acknowledgment that she has been informed of the meaning and consequences of an adoptive placement and understands the differences between a consent or a relinquishment and an involuntary termination of parental rights.

SECTION 2-301. "HEALTH-CARE FACILITY" DEFINED. In this [part], "health-care facility" means a hospital, clinic, or other facility authorized by this State to provide services related to birth and neonatal care.

SECTION 2-302. AUTHORIZATION TO TRANSFER PHYSICAL CUSTODY.

(a) A health-care facility shall release a minor for the purpose of adoption to an individual or agency not otherwise legally entitled to the physical custody of the minor if, in the presence of an employee authorized by the health-care facility, the woman who gave birth to the minor signs an authorization of the transfer of physical custody.

(b) An authorized employee in whose presence the authorization required under subsection (a) is signed shall attest the signing in writing.

Comment

The "authorization" for release of an infant from a health-care facility required by this section is not, by itself, an authorization for placement as required by Section 2-102(d). Instead, it supplements the other placement procedures by providing a record of the infant's whereabouts until a petition for adoption is filed or some other decision is made about the infant's care and custody.

SECTION 2-303. REPORTS TO DEPARTMENT.

(a) No later than 72 hours after a release pursuant to Section 2-302, a health-care facility that releases a minor for purposes of adoption shall transmit to the department a copy of the authorization required by Section 2-302 and shall report:

(1) the name, address, and telephone number of the person who authorized the release;

(2) the name, address, and telephone number of the person to whom physical custody was transferred; and

(3) the date of the transfer.

(b) No later than 30 days after a release pursuant to Section 2-302, the person to whom physical custody of a minor was transferred shall report to the department which, if any, of the following has occurred:

(1) the filing of a petition for adoption with the name and address of the petitioner;

(2) the acquisition of custody of the minor by an agency and the name and address of the agency;

(3) the return of the minor to a parent or other person having legal custody and the name and address of the parent or other person; or

(4) the transfer of physical custody of the minor to another individual and the name and address of the individual.

Comment

This section details procedures to be followed for the purpose of keeping a public eye on an infant released from a health-care facility for purposes of adoption. The individual who takes the infant from the facility must report to the department within 30 days after the release whether an adoption petition has been filed, and if not, where and with whom the infant is living.

SECTION 2-304. ACTION BY DEPARTMENT.

(a) If the department receives a report required under Section 2-303(a) from a health-care facility, but does not receive the report required under Section 2-303(b) within 45 days after the transfer of a minor, the department shall immediately investigate to determine the whereabouts of the minor.

(b) If none of the dispositions listed in Section 2-303(b)(1) through (3) has occurred, or the minor has been transferred to an individual described in Section 2-303(b)(4) who has not filed a petition to adopt, the department shall immediately take appropriate action to remove the minor from the individual to whom the minor has been transferred.

(c) The department may also review and investigate compliance with Sections 2-101 through 2-106 and may maintain an action in the [appropriate] court to compel compliance.

Comment

This section requires the department to investigate possible violations of this part and to take appropriate action to remove an infant from the custody of an individual who, for example, has not filed an adoption petition within the requisite time and may no longer be entitled to retain custody.

[PART] 4. CONSENT TO AND RELINQUISHMENT FOR ADOPTION

SECTION 2-401. PERSONS WHOSE CONSENT REQUIRED.

(a) Unless consent is not required or is dispensed with by Section 2-402, in a direct

placement of a minor for adoption by a parent or guardian authorized under this [Act] to place the minor, a petition to adopt the minor may be granted only if consent to the adoption has been executed by:

(1) the woman who gave birth to the minor and the man, if any, who:

(i) is or has been married to the woman if the minor was born during the marriage or within 300 days after the marriage was terminated or a court issued a decree of separation;

(ii) attempted to marry the woman before the minor's birth by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, if the minor was born during the attempted marriage or within 300 days after the attempted marriage was terminated;

(iii) has been judicially determined to be the father of the minor, or has signed a document that has the effect of establishing his parentage of the minor, and:

(A) has provided, in accordance with his financial means, reasonable and consistent payments for the support of the minor and has visited or communicated with the minor; or

(B) after the minor's birth, but before the minor's placement for adoption, has married the woman who gave birth to the minor or attempted to marry her by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or

(iv) has received the minor into his home and openly held out the minor as his child;

(2) the minor's guardian if expressly authorized by a court to consent to the minor's

adoption; or

(3) the current adoptive or other legally recognized mother and father of the minor.

(b) Unless consent is not required under Section 2-402, in a placement of a minor for adoption by an agency authorized under this [Act] to place the minor, a petition to adopt the minor may be granted only if consent to the adoption has been executed by:

(1) the agency that placed the minor for adoption; and

(2) any individuals described in subsection (a) who have not relinquished the minor.

(c) Unless the court dispenses with the minor's consent, a petition to adopt a minor who has attained 12 years of age may be granted only if, in addition to any consent required by subsections (a) and (b), the minor has executed an informed consent to the adoption.

Comment

As a general rule, both parents of a minor child must consent to their child's adoption. Nonetheless, although a birth mother's consent is nearly always required -- except as stated in Section 2-402 -- consent is not required from some of the men who may be the child's father. In accord with federal and state constitutional decisions since the early 1970s on the status of unwed fathers in adoption proceedings, the Act distinguishes the men who manifest "parenting behavior," and have therefore earned the right to withhold consent from a proposed adoption of their children, from the men who fail to perform parental duties and may therefore be denied the right to veto a proposed adoption. In specifying precisely which men are entitled to consent and which men are merely entitled to notice of a proposed adoption, this section is influenced by, but departs from, the definition of "presumed father" in the Uniform Parentage Act, 9B ULA 298.

Special attention has been given to the thwarted father and the balance between his rights and the interests of the child. A thwarted father is a man who has been prevented from meeting his parenting responsibilities (a)(1)(iii) or (iv), because the mother did not tell him of the pregnancy or birth, lied about her plans for the child, disappeared after the child's birth, named another man as the father, or was married to another man in a State that maintains a version of the conclusive presumption of paternity upheld by a plurality of the U.S. Supreme Court in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), or because the State, acting through its licensed agency, placed the child with prospective adoptive parents before he was aware of his child's existence or could assume parenting responsibilities; *Lehr v. Robertson*, 463 U.S. 248 (1983).

A thwarted father may be able to assert parental rights during the pendency of the adoption proceeding or in response to a petition to terminate his parental relationship to a minor. See Article 3, Part 5. A thwarted father may succeed in blocking an adoption if he not only can prove a "compelling reason" for not having performed parental duties but successfully defends against an effort by the prospective adoptive parents, the birth mother, or an agency to prove that termination of a thwarted father's rights is necessary to avoid detriment or a risk of substantial harm to the child. See Section 3-504(d) and (e). A person may not challenge an adoption decree more than six months after it is issued, even if the person was thwarted in his ability to assume parenting responsibilities.

The Act is consistent with U.S. Supreme Court decisions on the status of fathers in custody and stepparent adoption proceedings. The Court has **not** ruled that all biological fathers have a constitutionally protected right to withhold consent to a proposed adoption of their child; *Quilloin v. Walcott*, 434 U.S. 246 (1978) (equal protection clause not violated by State's rule that unwed father who has "never shouldered any significant responsibility" for the care of his child, despite opportunities to do so, cannot veto the child's adoption by the mother's husband). Only those unwed biological fathers who perform parental duties and actively participate in childrearing are entitled to the same rights as is the birth mother to consent to, or to veto, an adoption; *Caban v. Mohammed*, 441 U.S. 380 (1979) (equal protection clause violated by state law that gives unwed mothers but not unwed fathers who support and care for their child a right to block an adoption). See, also, *Stanley v. Illinois*, 405 U.S. 645 (1972) (due process clause offended by denial of parental fitness hearing to unwed father who wanted custody of the three children he had both "sired and raised"). Although this Act is generally protective of the interests of unwed fathers in receiving notice of a proposed adoption, it is not unconstitutional to deny notice to unwed fathers who do not perform parental duties and who have not taken certain formal steps to acknowledge their paternity; *Lehr v. Robertson*, 463 U.S. 248 (1983). Moreover, the Court has ruled that not all biological fathers have a protected "liberty interest" in their biological offspring; *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (upholding the legitimacy of a child's "unitary family" of birth mother and her husband against the desire of a biological father, not married to the mother, to establish his paternity and claim visitation rights).

With respect to consent from an adoptee, the Act follows the prevailing practice in most States. Consent is required from adoptees who have attained a certain age -- subsection (c) says 12 or older -- subject to the court's discretion to waive the consent of an adoptee. See Section 2-402(b). When a minor adoptee's consent is required, it is in addition to the consent of the parents or guardian or agency, and without the minor's consent or sufficient justification for waiving it, the adoption cannot be granted.

When an agency is authorized by the Act to place a minor for adoption, the agency's consent is required in lieu of the consent of a parent or guardian who has relinquished the minor to the agency for adoption, and in lieu of the consent of any parent whose status has been legally terminated.

The consent of a minor's guardian is not required unless the court that appointed the guardian expressly authorizes the guardian to consent to the minor's adoption.

SECTION 2-402. PERSONS WHOSE CONSENT NOT REQUIRED.

(a) Consent to an adoption of a minor is not required of:

- (1) an individual who has relinquished the minor to an agency for purposes of adoption;
- (2) an individual whose parental relationship to the minor has been judicially terminated or determined not to exist;
- (3) a parent who has been judicially declared incompetent;
- (4) a man who has not been married to the woman who gave birth to the minor and who, after the conception of the minor, executes a verified statement denying paternity or disclaiming any interest in the minor and acknowledging that his statement is irrevocable when executed;
- (5) the personal representative of a deceased parent's estate; or
- (6) a parent or other person who has not executed a consent or a relinquishment and who fails to file an answer or make an appearance in a proceeding for adoption or for termination of a parental relationship within the requisite time after service of notice of the proceeding.

(b) The court may dispense with the consent of:

- (1) a guardian or an agency whose consent is otherwise required upon a finding that the consent is being withheld contrary to the best interest of a minor adoptee; or
- (2) a minor adoptee who has attained 12 years of age upon a finding that it is not in the best interest of the minor to require the consent.

Comment

Subsection (a)(2) deprives an individual whose parental rights in a specific child have been terminated pursuant either to the State's general termination statute or to Article 3, Part 5 of the right to veto the child's adoption.

Subsection (a)(3) provides that the consent of a mentally incompetent parent is not required. Upon an appropriate judicial determination that a parent is mentally incompetent and incapable of caring for a minor child, a guardian, or a conservator, is likely to be appointed to act in place of the parent. The task of this guardian or conservator is to protect the parent, and is not necessarily to perform parental responsibilities with respect to the parent's child. The Act provides that if another individual is to act in lieu of the parent for purposes of placing a minor child for adoption, that individual must be appointed by a court as the general guardian or guardian of the person of the child and must be specifically authorized by the court to place the minor for adoption and to consent to the minor's adoption. A guardian or conservator appointed to handle an incompetent parent's affairs is NOT entitled to place the minor or consent to an adoption.

Subsection (a)(4) is applicable to situations in which an alleged father wants to avoid any responsibility for a minor who may be his child, but is unwilling to execute a formal consent or relinquishment because that would require an admission of paternity. If this man executes a statement either denying paternity or disclaiming any interest in the child, his consent to the child's adoption is not required and he will not have to be notified of the adoption proceeding. A "disclaimer of any interest" allows a man to remain noncommittal on the issue of his paternity. This statement may be executed at any time, either before or after the child's birth, and is final and irrevocable. If a birth mother later consents to her child's adoption, or relinquishes the child to an agency, and an alleged father has executed a disclaimer, the adoption can proceed expeditiously. Alternatively, if the mother decides to retain custody of her child, she can later seek child support from the man who signed this "disclaimer" by bringing an action to establish his paternity. The disclaimer should not be allowed to serve as a defense against an "involuntary" paternity and child support action. Because a man who executes a disclaimer under this subsection is an individual whose legal status as a parent is not established, he is not included in the definition of "parent" in Section 1-101(10). Nonetheless, if he is, in fact, the biological father, the person who places the minor for adoption should attempt to learn his health and social history. See Section 1-106.

Subsection (b) is applicable to those rare situations in which an agency or guardian objects to an adoption after having placed the minor with a prospective adoptive parent. Because neither the agency nor the guardian has the benefit of a presumption of parental fitness, their consent can be dispensed with upon a showing by a preponderance of the evidence that the consent is being withheld contrary to the best interest of the minor. The prospective adoptive parents would have the burden of persuasion.

SECTION 2-403. INDIVIDUALS WHO MAY RELINQUISH MINOR. A parent or guardian whose consent to the adoption of a minor is required by Section 2-401 may relinquish to an agency all rights with respect to the minor, including legal and physical custody and the right to consent to the minor's adoption.

Comment

This section helps clarify the distinction between consents and relinquishments and between direct and agency placements. A parent or guardian who makes a direct placement of a minor for adoption must execute a consent for the adoption to go forward. If the parent or guardian prefers, instead, to have an agency place the minor and consent to the minor's adoption, the parent or guardian has to relinquish all rights with respect to the minor to the agency. From then on, the agency acts in lieu of the parent or guardian: it acquires custody of the minor and the authority to place the child for adoption pursuant to the procedures in Sections 2-103 and 2-104. An agency may also acquire the right to place the minor for adoption pursuant to a court order.

SECTION 2-404. TIME AND PREREQUISITES FOR EXECUTION OF CONSENT OR RELINQUISHMENT.

(a) A parent whose consent to the adoption of a minor is required by Section 2-401 may execute a consent or a relinquishment only after the minor is born. A parent who executes a consent or relinquishment may revoke the consent or relinquishment within 192 hours after the birth of the minor.

(b) A guardian may execute a consent to the adoption of a minor or a relinquishment at any time after being authorized by a court to do so.

(c) An agency that places a minor for adoption may execute its consent at any time before or during the hearing on the petition for adoption.

(d) A minor adoptee whose consent is required may execute a consent at any time before or during the hearing on the petition for adoption.

(e) Before executing a consent or relinquishment, a parent must have been informed of the meaning and consequences of adoption, the availability of personal and legal counseling, the consequences of misidentifying the other parent, the procedure for releasing information about the health and other characteristics of the parent which may affect the physical or psychological well-being of the adoptee, and the procedure for the consensual release of the parent's identity to

an adoptee, an adoptee's direct descendant, or an adoptive parent pursuant to [Article] 6. The parent must have had an opportunity to indicate in a signed document whether and under what circumstances the parent is or is not willing to release identifying information, and must have been informed of the procedure for changing the document at a later time.

Comment

This section is consistent with the rule in every State that a birth parent's consent or relinquishment is not valid or final until some time after a child is born. Many States provide that a valid consent may not be executed until at least 12, 24, 48, or, more typically, 72 hours after the child is born. Even the few States, like Washington or Alabama, which permit a consent to be executed before a child's birth, provide that the consent is not final (i.e., it remains revocable) until at least 48 hours after the birth or until confirmed in a formal termination proceeding. Most States provide that a consent or relinquishment is revocable for at least some period of time after being executed, but there are substantial and confusing differences from one State to another with respect to these time periods and with respect to the consequences of revocation for the parent, the child, and the prospective adoptive parent. This Act accommodates the interests of birth parents in not being pressured into making decisions they will later regret with the interests of minors and prospective adoptive parents in having an expeditious resolution of their status.

The Act responds to the needs of birth parents, and especially birth mothers, who are fully prepared shortly after a child's birth to execute an informed decision concerning the child's adoption. The Act also responds to the needs of birth parents who want more time to consider their decision.

This section provides that a consent to a direct placement for adoption, or a relinquishment to an agency, may be executed at any time after a child's birth, but may be absolutely revoked for up to 192 hours (8 days) after the birth. If executed more than 192 hours after birth, a consent or relinquishment is not revocable except for a limited time on the basis of fraud or duress and under the specific circumstances set forth in Sections 2-408 and 2-409. Of course, no parent is required to sign a consent or relinquishment at any time. Moreover, a parent who, before executing a consent, makes a direct placement, pursuant to Part 1 of this article, or authorizes the release of a new born from a birthing center, pursuant to Part 1 of this article, may decide to not execute the consent and to exercise her right to reclaim custody of the child.

Before executing a consent or relinquishment, parents must be offered personal counseling, as well as separate legal representation -- minor parents must have separate representation -- and must be given information about the meaning and consequences of adoptive placements, consents, relinquishments, and other aspects of an adoption. The parents should be informed that a prospective adoptive parent or an agency may pay for the legal or psychological counseling. See Sections 7-103 and 7-104. A birth parent, especially the birth mother, should also be warned

about the consequences of not naming, or misidentifying, the other parent. To avoid even the appearance of a conflict of interest, a consent or relinquishment has to be executed before a "neutral" individual, who has to attest to the apparent validity of the consent or relinquishment. See Section 2-405. This individual also has to confirm that prospective adoptive parents in a direct placement, or an agency to whom a minor is relinquished, accepted the consent or relinquishment and acknowledged its consequences. See Section 2-405. The comprehensive content of the consent or relinquishment is also intended to protect the parent against any misunderstanding concerning a proposed adoption. See Section 2-406.

In some States, the Department of Social Services will develop informational material for dissemination to birth parents who are considering consenting to the adoption of their child or relinquishing their child for adoption. In other States, private as well as public adoption service-providers will develop and disseminate appropriate materials. The Act defers to each State's own decisions about what mix of public and private resources can best produce pamphlets, forms, and other materials to respond to the Act's goal of ensuring that consents or relinquishments are well informed as well as voluntary. Some States will insist, as they already do, that birth parents have separate legal counsel; others will leave that issue to be determined by the parties themselves. Some States may mandate other kinds of counseling instead of simply insisting that it be available and permitting the adoptive parents to pay for it.

This section treats birth mothers and fathers equally: neither can execute a consent until after their child is born. Nonetheless, an unwed or alleged father who is certain that he wants to eschew responsibility for the child, even before the child is born, can execute a disclaimer of parental interest under Section 2-402(a)(4).

The provisions of subsection (e) are based on what is a routine aspect of adoption practice in some States: parents are asked to provide information about their health and social history, told how to update this information in later years, and informed of the existence of the mutual consent registry. They are given an opportunity to record their preferences for withholding or releasing their identities to adoptive parents at any time or directly to adoptees when they are 18 or older. They are also informed that any preference indicated at the time may later be changed. Any document signed by a parent pursuant to this subsection becomes part of the court's permanent record and is filed with the registry established by Article 6.

SECTION 2-405. PROCEDURE FOR EXECUTION OF CONSENT OR RELINQUISHMENT.

(a) A consent or relinquishment executed by a parent or guardian must be signed or confirmed in the presence of:

- (1) a judge of a court of record;
- (2) an individual whom a judge of a court of record designates to take consents or

relinquishments;

(3) an employee other than an employee of an agency to which a minor is relinquished whom an agency designates to take consents or relinquishments;

(4) a lawyer other than a lawyer who is representing an adoptive parent or the agency to which a minor is relinquished;

(5) a commissioned officer on active duty in the military service of the United States, if the individual executing the consent or relinquishment is in military service; or

(6) an officer of the foreign service or a consular officer of the United States in another country, if the individual executing the consent or relinquishment is in that country.

(b) A consent executed by a minor adoptee must be signed or confirmed in the presence of the court in the proceeding for adoption or in a manner the court directs.

(c) A parent who is a minor is competent to execute a consent or relinquishment if the parent has had access to counseling and has had the advice of a lawyer who is not representing an adoptive parent or the agency to which the parent's child is relinquished.

(d) An individual before whom a consent or relinquishment is signed or confirmed under subsection (a) shall certify in writing that he or she orally explained the contents and consequences of the consent or relinquishment, and to the best of his or her knowledge or belief, the individual executing the consent or relinquishment:

(1) read or was read the consent or relinquishment and understood it;

(2) signed the consent or relinquishment voluntarily and received or was offered a copy of it;

(3) was furnished the information and afforded an opportunity to sign the document described by Section 2-404(e);

(4) received or was offered counseling services and information about adoption;

and

(5) if a parent who is a minor, was advised by a lawyer who is not representing an adoptive parent or the agency to which the parent's child is being relinquished, or, if an adult, was informed of the right to have a lawyer who is not representing an adoptive parent or an agency to which the parent's child is being relinquished.

(e) A prospective adoptive parent named or described in a consent to the adoption of a minor shall sign a statement indicating an intention to adopt the minor, acknowledging an obligation to return legal and physical custody of the minor to the minor's parent if the parent revokes the consent within the time specified in Section 2-404(a), and acknowledging responsibility for the minor's support and medical and other care if the consent is not revoked.

(f) If an agency accepts a relinquishment, an employee of the agency shall sign a statement accepting the relinquishment, acknowledging its obligation to return legal and physical custody of the child to the minor's parent if the parent revokes the relinquishment within the time indicated in Section 2-404(a), and acknowledging responsibility for the minor's support and medical and other care if the relinquishment is not revoked.

(g) An individual before whom a consent or a relinquishment is signed or confirmed shall certify having received the statements required by subsections (e) and (f).

(h) A consent by an agency to the adoption of a minor in the agency's legal custody must be executed by the head or an individual authorized by the agency and must be signed or confirmed under oath in the presence of an individual authorized to take acknowledgments.

(i) A consent or relinquishment executed and signed or confirmed in another State or

country is valid if in accordance with this [Act] or with the law and procedure prevailing where executed.

Comment

Because the execution of a consent or relinquishment may be the most important single event in the adoption process, special care must be taken to ensure that the parent or guardian is fully aware of its seriousness and consequences. The individuals who are permitted to explain and witness the signing in subsection (a) must be knowledgeable about adoption and not have a conflict of interest with the parent or guardian. Notaries are intentionally not included in subsection (a). A lawyer who presides over the execution of the consent or relinquishment should not represent or work for the same firm as another lawyer who represents an adoptive parent or an agency to whom the minor is relinquished. A parent who is a minor must be advised by his or her own lawyer, who can then accept the consent or relinquishment and attest to its apparent validity.

SECTION 2-406. CONTENT OF CONSENT OR RELINQUISHMENT.

(a) A consent or relinquishment required from a parent or guardian must be in writing and contain, in plain English or, if the native language of the parent or guardian is a language other than English, in that language:

- (1) the date, place, and time of the execution of the consent or relinquishment;
- (2) the name, date of birth, and current mailing address of the individual executing the consent or relinquishment;
- (3) the date of birth and the name or pseudonym of the minor adoptee;
- (4) if a consent, the name, address, and telephone and telecopier numbers of the lawyer representing the prospective adoptive parent with whom the individual executing the consent has placed or intends to place the minor for adoption;
- (5) if a relinquishment, the name, address, and telephone and telecopier numbers of the agency to which the minor is being relinquished; and
- (6) specific instructions as to how to revoke the consent or relinquishment and how

to commence an action to set it aside.

(b) A consent must state that the parent or guardian executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the minor by, a specific adoptive parent whom the parent or guardian has selected.

(c) A relinquishment must state that the individual executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the minor to the agency for the purposes of adoption.

(d) A consent or relinquishment must state:

(1) an understanding that after the consent or relinquishment is signed or confirmed in substantial compliance with Section 2-405, it is final and, except under a circumstance stated in Section 2-408 or 2-409, may not be revoked or set aside for any reason, including the failure of an adoptive parent to permit the individual executing the consent or relinquishment to visit or communicate with the minor adoptee;

(2) an understanding that the adoption will extinguish all parental rights and obligations the individual executing the consent or relinquishment has with respect to the minor adoptee, except for arrearages of child support, and will remain valid whether or not any agreement for visitation or communication with the minor adoptee is later performed;

(3) that the individual executing the consent or relinquishment has:

(i) received a copy of the consent or relinquishment;

(ii) received or been offered counseling services and information about adoption which explains the meaning and consequences of an adoption;

(iii) been advised, if a parent who is a minor, by a lawyer who is not representing an adoptive parent or the agency to which the minor adoptee is being relinquished,

or, if an adult, has been informed of the right to have a lawyer who is not representing an adoptive parent or the agency;

(iv) been provided the information and afforded an opportunity to sign the document described in Section 2-404(e); and

(v) been advised of the obligation to provide the information required under Section 2-106;

(4) that the individual executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or the relinquishment, except for payments authorized by [Article] 7;

(5) that the minor is not an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq.;

(6) that the individual believes the adoption of the minor is in the minor's best interest; and

(7) if a consent, that the individual who is consenting waives further notice unless the adoption is contested, appealed, or denied.

(e) A relinquishment may provide that the individual who is relinquishing waives notice of any proceeding for adoption, or waives notice unless the adoption is contested, appealed, or denied.

(f) A consent or relinquishment may provide for its revocation if:

(1) another consent or relinquishment is not executed within a specified period;

(2) a court decides not to terminate another individual's parental relationship to the minor; or

(3) in a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.

Comment

The requirements of the consent or relinquishment are lengthy and detailed in order to ensure that all issues relevant to the parent's or guardian's understanding of the adoption process are fully covered. It is anticipated that the department and other adoption-service providers will cooperate to develop "plain language" consent and relinquishment forms in English and other appropriate languages.

Of particular importance in a consent or relinquishment are the specific instructions for revoking it pursuant to Section 2-404(a) or for commencing an action to set it aside for the specific reasons stated in the consent or relinquishment. Also important is the individual's acknowledgement that the validity of a consent, relinquishment, or adoption is not subject to challenge because of the existence of, or a failure to comply with, an agreement for post-adoption visitation or communication.

SECTION 2-407. CONSEQUENCES OF CONSENT OR RELINQUISHMENT.

(a) Except under a circumstance stated in Section 2-408, a consent to the adoption of a minor which is executed by a parent or guardian in substantial compliance with Sections 2-405 and 2-406 is final and irrevocable, and:

(1) unless a court orders otherwise to protect the welfare of the minor, entitles the prospective adoptive parent named or described in the consent to the legal and physical custody of the minor and imposes on that individual responsibility for the support and medical and other care of the minor;

(2) terminates any duty of a parent who executed the consent with respect to the minor, except for arrearages of child support; and

(3) terminates any right of a parent or guardian who executed the consent to object to the minor's adoption by the prospective adoptive parent and any right to notice of the proceeding for adoption unless the adoption is contested, appealed, or denied.

(b) Except under a circumstance stated in Section 2-409, a relinquishment of a minor to an agency which is executed by a parent or guardian in substantial compliance with Sections 2-405 and 2-406 is final and irrevocable and:

(1) unless a court orders otherwise to protect the welfare of the minor, entitles the agency to the legal custody of the minor until a decree of adoption becomes final;

(2) empowers the agency to place the minor for adoption, consent to the minor's adoption, and delegate to a prospective adoptive parent responsibility for the support and medical and other care of the minor;

(3) terminates any duty of the individual who executed the relinquishment with respect to the minor, except for arrearages of child support; and

(4) terminates any right of the individual who executed the relinquishment to object to the minor's adoption and, unless otherwise provided in the relinquishment, any right to notice of the proceeding for adoption.

Comment

This section specifies the general legal consequences of a consent or relinquishment and is consistent with the Act's intention to keep track of a minor and assign responsibility for the minor's care and support throughout the adoption process. If executed in substantial compliance with this part, either document is final and irrevocable except under limited circumstances and entitles the prospective adoptive parents in a direct placement and the agency in an agency placement to the custody of the minor and requires them to provide support and care for the minor. The section also specifies the extent to which further notice of the adoption proceeding is or is not waived by a consent or relinquishment.

SECTION 2-408. REVOCATION OF CONSENT.

(a) In a direct placement of a minor for adoption by a parent or guardian, a consent is revoked if:

(1) within 192 hours after the birth of the minor, a parent who executed the consent

notifies in writing the prospective adoptive parent, or the adoptive parent's lawyer, that the parent revokes the consent, or the parent complies with any other instructions for revocation specified in the consent; or

(2) the individual who executed the consent and the prospective adoptive parent named or described in the consent agree to its revocation.

(b) In a direct placement of a minor for adoption by a parent or guardian, the court shall set aside the consent if the individual who executed the consent establishes:

(1) by clear and convincing evidence, before a decree of adoption is issued, that the consent was obtained by fraud or duress;

(2) by a preponderance of the evidence before a decree of adoption is issued that, without good cause shown, a petition to adopt was not filed within 60 days after the minor was placed for adoption; or

(3) by a preponderance of the evidence, that a condition permitting revocation has occurred, as expressly provided for in the consent pursuant to Section 2-406.

(c) If the consent of an individual who had legal and physical custody of a minor when the minor was placed for adoption or when the consent was executed is revoked, the prospective adoptive parent shall immediately return the minor to the individual's custody and move to dismiss a proceeding for adoption or termination of the individual's parental relationship to the minor. If the minor is not returned immediately, the individual may petition the court named in the consent for appropriate relief. The court shall hear the petition expeditiously.

(d) If the consent of an individual who had legal and physical custody of a minor when the minor was placed for adoption or the consent was executed is set aside under subsection (b)(1), the court shall order the return of the minor to the custody of the individual and dismiss a

proceeding for adoption.

(e) If the consent of an individual who had legal and physical custody of a minor when the minor was placed for adoption or the consent was executed is set aside under subsection (b)(2) or (3) and no ground exists under [Article] 3, [Part] 5, for terminating the relationship of parent and child between the individual and the minor, the court shall dismiss a proceeding for adoption and order the return of the minor to the custody of the individual unless the court finds that return will be detrimental to the minor.

(f) If the consent of an individual who did not have physical custody of a minor when the minor was placed for adoption or when the consent was executed is revoked or set aside and no ground exists under [Article] 3, [Part] 5, for terminating the relationship of parent and child between the individual and the minor, the court shall dismiss a proceeding for adoption and issue an order providing for the care and custody of the minor according to the best interest of the minor.

Comment

This section and Section 2-409 deal with the circumstances under which a consent or relinquishment is revoked or may be set aside. Revocation of a consent to a direct placement may occur, without judicial action, under two circumstances. First, a birth parent who executes consent before the minor is 192 hours old can decide to revoke within those 192 hours, subsection (a)(1). This right to revoke is absolute and requires the prospective adoptive parents or their attorney to return the infant to the parent if the infant had been placed with them. It is not lawful for a prospective adopter to retain custody of the infant after a parent has revoked under subsection (a)(1). If the infant is not returned, the birth parent may petition a court for relief, subsection (c). Second is when the parent and the prospective adopter mutually agree to revoke the consent and not proceed with the proposed adoption.

Any other effort to set aside a consent requires judicial action. Until a decree of adoption is issued, a consent will be set aside if the parent proves by clear and convincing evidence that it was obtained by fraud or duress. If a consent by a parent who previously had custody is set aside for this reason, the court shall order the child returned to the parent and dismiss the adoption proceeding. A finding of fraud or duress is tantamount to a finding that a valid consent never existed and therefore the parent has never agreed to the adoption of the child and the would-be adoptive parents have no basis for retaining custody of the child. The adoption proceeding must

come to an end.

Actions to set aside consents for other reasons have less certain outcomes. Even if a parent establishes by a preponderance of the evidence that one or more of the contingencies specified in the consent has occurred -- for example, the other parent's rights have not been terminated -- it does not automatically follow that the parent is entitled to the legal or physical custody of the minor. The Act provides that the court has to take into account the minor's circumstances at the time a consent is set aside. Even though an adoption proceeding may have to be dismissed, the court has to make an order for the minor's care and custody. In making this order, this court must consider not only the status of the birth parent but also the needs and interests of the minor. It is therefore possible under some circumstances for the individuals who sought to adopt the minor to end up with custody of the minor. Much will depend on the relationship between the minor's birth parents, the length of time the minor has been out of their custody, whether independent grounds exist for terminating the rights of either birth parent, the recommendation of the minor's guardian ad litem [appointed in any contested proceeding, Section 3-201], the willingness of the would-be adopters to retain custody even if an adoption is not granted.

Most importantly, the Act does not treat a minor as an object that "belongs" to a parent or would-be parent and has to be shifted back and forth in the event "ownership" rights are changed or reinstated. The fact that a birth parent's status as a legal parent may be restored or recognized upon the setting aside of a consent or a relinquishment is **not** tantamount to a determination that the minor must be placed in that parent's custody. In the relatively atypical cases where a set-aside is warranted, the likely outcome is that the minor will end up in a parent's custody. Nonetheless, in the event of a set-aside, this Act requires the court to make an independent determination with respect to the minor's custody. That determination ultimately depends on what the court decides is not detrimental to the minor, subsection (e), or is in the minor's best interests, subsection (f). See, also, the consequences of dismissing a proceeding for adoption for other reasons. See Section 3-704.

SECTION 2-409. REVOCATION OF RELINQUISHMENT.

(a) A relinquishment is revoked if:

(1) within 192 hours after the birth of the minor, a parent who executed the relinquishment gives written notice to the agency that accepted it, that the parent revokes the relinquishment, or the parent complies with any other instructions for revocation specified in the relinquishment; or

(2) the individual who executed the relinquishment and the agency that accepted it agree to its revocation.

(b) The court shall set aside a relinquishment if the individual who executed the relinquishment establishes:

(1) by clear and convincing evidence, before a decree of adoption is issued, that the relinquishment was obtained by fraud or duress; or

(2) by a preponderance of the evidence, that a condition permitting revocation has occurred, as expressly provided for in the relinquishment pursuant to Section 2-406.

(c) If a relinquishment by an individual who had legal and physical custody of a minor when the relinquishment was executed is revoked, the agency shall immediately return the minor to the individual's custody and move to dismiss a proceeding for adoption. If the minor is not returned immediately, the individual may petition the court named in the relinquishment for appropriate relief. The court shall hear the petition expeditiously.

(d) If a relinquishment by an individual who had legal and physical custody of a minor when the relinquishment was executed is set aside under subsection (b)(1), the court shall dismiss a proceeding for adoption and order the return of the minor to the custody of the individual.

(e) If a relinquishment by an individual who had legal and physical custody of a minor when the relinquishment was executed is set aside under subsection (b)(2) and no ground exists under [Article] 3, [Part] 5, for terminating the relationship of parent and child between the individual and the minor, the court shall dismiss a proceeding for adoption and order the return of the minor to the custody of the individual unless the court finds that return will be detrimental to the minor.

(f) If a relinquishment by an individual who did not have physical custody of a minor when the relinquishment was executed is revoked or set aside and no ground exists under

[Article] 3, [Part] 5, for terminating the relationship of parent and child between the individual and the minor, the court shall dismiss a proceeding for adoption and shall issue an order providing for the care and custody of the minor according to the best interest of the minor.

[ARTICLE] 3. GENERAL PROCEDURE

FOR ADOPTION OF MINORS

[PART] 1. JURISDICTION AND VENUE

Comment

This Act provides jurisdictional provisions for adoption that are consistent with the jurisdictional provisions of the Uniform Child Custody Jurisdiction Act (UCCJA), but with modifications to address the distinctive characteristics of adoption proceedings and to reduce judicial uncertainty about how to apply the UCCJA "home state" and "significant connection" standards to adoptions. Under the UCCJA, § 2, a "custody determination" is a "court decision and court orders and instructions providing for the custody of a child, including visitation rights," but not including child support orders. A "custody proceeding" includes proceedings in which "a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings." Moreover, the full faith and credit provisions of the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. 1738A et seq., which affect "custody determinations" made pursuant to the UCCJA, should also apply to decrees or orders issued under this Act, but are not clearly applicable to a State's final decrees of adoption. The PKPA definition of "custody determination" is "a judgment, decree, or other order providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications," 28 U.S.C.A. § 1738A(b)(3). Although adoptions are not excluded from this definition, they are not specifically included.

Even without the benefit of the clarifications proposed by this Act, nearly all of the state appellate courts that have faced the question of whether adoption proceedings are within the scope of the UCCJA and the PKPA have answered, "yes." See, e.g., *In re Adoption of Child by T.W.C.*, 270 N.J. Super. 225, 636 A.2d 1083 (1994); *In re Adoption of Baby Girl B.*, 867 P.2d 1074 (Kan. App. 1994); *In re Baby Girl Clausen*, 502 N.W.2d 649 (Mich. 1993); *Torres v. Mason*, 848 P.2d 592 (Or. 1993); *In re Brandon S.*, 507 N.W.2d 94 (Wis. 1993); *In re Zachariah Nathaniel K.*, 6 Cal. App. 4th 1025, 8 Cal. Rptr. 2d 423 (1992); *Rogers v. Platt*, 199 Cal. App. 3d 1204, 245 Cal. Rptr. 532 (1988) and 641 F.Supp. 381 (D.D.C. 1986), rev'd on other grounds, 814 F.2d 683 (D.C.Cir. 1987); *Gainey v. Olivo*, 373 S.E.2d 4 (Ga. 1988), followed by Ga. Code Ann. § 19-9-42(3) (expressly including adoption proceedings in the definition of "custody proceeding"); *Souza v. Superior Ct.*, 193 Cal. App.3d 1304, 238 Cal. Rptr. 892 (1987) (UCCJA & PKPA apply to stepparent adoptions); *Foster v. Stein*, 183 Mich. App. 424, 454 N.W.2d 244

(1990); *In re Adoption of B.E.W.G.*, 549 A.2d 1286 (Pa. Super. Ct. 1988); *In re Adoption of K.C.P.*, 432 So.2d 620 (Fla. Ct.App. 1983) (Florida adoption proceeding violated UCCJA because custody proceedings with respect to minor were pending in New York).

Although these and many other decisions treat adoptions as custody determinations within the UCCJA and PKPA, they manifest considerable uncertainty about precisely how to fit adoptions into the existing jurisdictional pegs. Section 3-101 reduces this uncertainty by including "prospective adoptive parent" in the list of individual's whose caregiving relationship to a minor can establish a basis for exercising jurisdiction. Subsection (a)(1) departs from the basic "home state" provision of the UCCJA to accommodate the special circumstances of an adoptive placement of an infant born in one State with prospective adoptive parents who live in another State. It does this by allowing prospective adoptive parents who live in State A and have had custody of an infant under the age of six months from soon after the infant was born in State B -- but not from the exact moment of birth -- to commence an adoption proceeding in State A without waiting an additional six months. This subsection therefore enables the prospective parents to comply in State A with the requirement that an adoption petition be filed within 30 days after placement. See Section 3-302. It is also consistent with the UCCJA\PKPA goal of having a proceeding that affects a child's status heard in the forum with reliable information about the child's future care.

Section 3-101 also departs from the UCCJA "home state" and "significant connection" plus "substantial evidence" provisions in order to clarify the circumstances under which an adoption proceeding may be commenced by prospective adoptive parents in the State where the agency that placed the minor is located, subsection (a)(3), or in a State other than one that issued a previous visitation or custody order with respect to the minor, subsection (c).

SECTION 3-101. JURISDICTION.

(a) Except as otherwise provided in subsections (b) and (c), a court of this State has jurisdiction over a proceeding for the adoption of a minor commenced under this [Act] if:

(1) immediately before commencement of the proceeding, the minor lived in this State with a parent, a guardian, a prospective adoptive parent, or another person acting as parent, for at least six consecutive months, excluding periods of temporary absence, or, in the case of a minor under six months of age, lived in this State from soon after birth with any of those individuals and there is available in this State substantial evidence concerning the minor's present or future care;

(2) immediately before commencement of the proceeding, the prospective adoptive

parent lived in this State for at least six consecutive months, excluding periods of temporary absence, and there is available in this State substantial evidence concerning the minor's present or future care;

(3) the agency that placed the minor for adoption is located in this State and it is in the best interest of the minor that a court of this State assume jurisdiction because:

(i) the minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this State; and

(ii) there is available in this State substantial evidence concerning the minor's present or future care;

(4) the minor and the prospective adoptive parent are physically present in this State and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

(5) it appears that no other State would have jurisdiction under prerequisites substantially in accordance with paragraphs (1) through (4), or another State has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this State assume jurisdiction.

(b) A court of this State may not exercise jurisdiction over a proceeding for adoption of a minor if at the time the petition for adoption is filed a proceeding concerning the custody or adoption of the minor is pending in a court of another State exercising jurisdiction substantially in conformity with [the Uniform Child Custody Jurisdiction Act] or this [Act] unless the proceeding is stayed by the court of the other State.

(c) If a court of another State has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this State, a court of this State may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(1) the court of this State finds that the court of the State which issued the decree or order:

(i) does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with [the Uniform Child Custody Jurisdiction Act] or has declined to assume jurisdiction to modify the decree or order; or

(ii) does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (a)(1) through (4) or has declined to assume jurisdiction over a proceeding for adoption; and

(2) the court of this State has jurisdiction over the proceeding.

SECTION 3-102. VENUE. A petition for adoption of a minor may be filed in the court in the [county] in which a petitioner lives, the minor lives, or an office of the agency that placed the minor is located.

Comment

The Act follows the general rules for venue followed by most States, except that to be consistent with, and not more restrictive than, the jurisdictional requirements of Section 3-101, venue is determined by where an agency is located or where the petitioner or adoptee "lives" instead of where they "reside." Although Section 3-101 departs from the "home state" and "significant connection and substantial evidence" provisions of the UCCJA to take account of the distinctive characteristics of adoption proceedings, that section does not depart from UCCJA terminology with respect to where petitioners or contestants "live." Under Section 3-101(a)(1) and (2), "living in a state" is an essential element for jurisdiction, but "residency" is not.

Broad venue provisions facilitate access to the court. If an adoption is contested, the court may apply the doctrine of inconvenient forum to transfer the case to a more suitable venue.

[PART] 2. GENERAL PROCEDURAL PROVISIONS

SECTION 3-201. APPOINTMENT OF LAWYER OR GUARDIAN AD LITEM.

(a) In a proceeding under this [Act] which may result in the termination of a relationship of parent and child, the court shall appoint a lawyer for any indigent, minor, or incompetent individual who appears in the proceeding and whose parental relationship to a child may be terminated, unless the court finds that the minor or incompetent individual has sufficient financial means to hire a lawyer, or the indigent individual declines to be represented by a lawyer.

(b) The court shall appoint a guardian ad litem for a minor adoptee in a contested proceeding under this [Act] and may appoint a guardian ad litem for a minor adoptee in an uncontested proceeding.

Comment

This section requires the appointment of a guardian ad litem for a minor adoptee in any contested proceeding under the Act. It is intended to encourage the court and the contestants to pay attention to the needs of the minor, including the need for expeditious resolution of the dispute.

SECTION 3-202. NO RIGHT TO JURY. A proceeding under this [Act] for adoption or termination of a parental relationship must be heard by the court without a jury.

SECTION 3-203. CONFIDENTIALITY OF PROCEEDINGS. Except for a proceeding pursuant to [Article] 7, a civil proceeding under this [Act] must be heard in closed court.

Comment

Article 6 provides for the confidentiality of all records of an adoption proceeding, including the petition, attachments to the petition, medical and social background reports, preplacement and post-placement evaluations, and so on. In a hearing on a petition for adoption or for termination of parental rights under the Act, the court has discretion to determine who may be present at what stages of the hearing, consistent with the requirement that the proceedings be confidential and not public.

SECTION 3-204. CUSTODY DURING PENDENCY OF PROCEEDING. In order to protect the welfare of the minor, the court shall make an interim order for custody of a minor adoptee according to the best interest of the minor in a contested proceeding under this [Act] for adoption or termination of a parental relationship and may make an interim order for custody in an uncontested proceeding.

Comment

In addition to the other provisions of the Act which protect the child's welfare during the adoption process, this section requires the court to take an active role at the outset of any contested proceeding, including a proceeding for adoption, to terminate parental rights, to set aside a consent or relinquishment, or to challenge the denial or delay of an agency placement. The court must make an interim custody order to protect the minor. Although not mentioned specifically in the Act, the court has the discretion to encourage mediation or arbitration.

SECTION 3-205. REMOVAL OF ADOPTEE FROM STATE. Before a decree of adoption is issued, a petitioner may not remove a minor adoptee for more than 30 consecutive days from the State in which the petitioner resides without the permission of the court, if the minor was placed directly for adoption, or, if an agency placed the minor for adoption, the permission of the agency.

[PART] 3. PETITION FOR ADOPTION OF MINOR

SECTION 3-301. STANDING TO PETITION TO ADOPT.

(a) Except as otherwise provided in subsection (c), the only individuals who have standing to petition to adopt a minor under this [article] are:

(1) an individual with whom a minor has been placed for adoption or who has been selected as a prospective adoptive parent by a person authorized under this [Act] to place the minor for adoption; or

(2) an individual with whom a minor has not been placed for adoption or who has not been selected or rejected as a prospective adoptive parent pursuant to [Article] 2, [Parts] 1 through 3, but who has had physical custody of the minor for at least six months immediately before seeking to file a petition for adoption and is allowed to file the petition by the court for good cause shown.

(b) The spouse of a petitioner must join in the petition unless legally separated from the petitioner or judicially declared incompetent.

(c) A petition for adoption of a minor stepchild by a stepparent may be filed under [Article] 4 and a petition for adoption of an emancipated minor may be filed under [Article] 5.

Comment

Under subsection (a)(1), individuals with whom a minor has been placed for purposes of adoption, pursuant to Article 2, Part 1, have standing to file a petition for adoption of the minor. These prospective adoptive parents have accepted physical custody of a minor adoptee and, depending on the circumstances, they may be relatives or foster parents of the minor as well as individuals who are not related to the minor.

A second category of individuals who have standing under subsection (a)(1) to file an adoption petition are individuals who have been appropriately selected as prospective adoptive parents but who have not yet accepted physical custody of the minor. During the early stages of the adoption proceeding, the minor could remain with a birth parent or in agency-supervised

foster care until the status of the birth parents is resolved. An action under Part 5 of this article to terminate the parent-child relationship in the context of a proposed adoption cannot be filed until the petition to adopt is filed. Therefore, in situations requiring the termination of an alleged father's rights, some prospective adoptive parents in a direct placement, or agencies in an agency placement, may prefer to complete the termination action before the minor is transferred to the adoptive home. In some circumstances in which a birth mother has selected a prospective adoptive parent before giving birth, it may be possible to file the petitions for adoption and termination before the child is born -- even though judicial resolution of the issues raised in the termination action would not occur until after the minor's birth.

Under subsection (a)(2), a third category of individuals may obtain standing to file a petition for adoption. These are individuals who have not gone through the formal placement procedure, but are nonetheless allowed to petition to adopt by the court for "good cause shown." This subsection is intended to address the interests of minors in having certain de facto or "informal adoptions" become legal adoptions. For example, a minor may have been left by one or both parents with a relative or a friend for an extended period of time without a formal parental consent to adoption or any "regular" preplacement procedures. This Act would allow individuals who have had physical custody of a minor for an extended period of time under ambiguous circumstances to seek court permission to file a petition for adoption. If an individual in this category is reasonably likely to prove, by clear and convincing evidence, that termination of the relationship between the birth parents and the minor is justified, Part 5 of this article, the court may grant permission and set the stage for this informal arrangement to "ripen" into a legal adoption. Of course, the individual would have to be favorably evaluated during the pendency of the proceeding and the court would have to determine that the proposed adoption was in fact in the minor's best interests.

Petitions to adopt a minor stepchild will normally be filed under Article 4 and petitions to adopt an adult or an emancipated minor will be filed under Article 5.

SECTION 3-302. TIME FOR FILING PETITION. Unless the court allows a later filing, a prospective adoptive parent with standing under Section 3-301(a)(1) shall file a petition for adoption no later than 30 days after a minor is placed for adoption with that individual.

Comment

This section requires the prompt filing of a petition for adoption once a minor adoptee has been placed. Section 3-301(a) allows prospective adoptive parents some flexibility with respect to the time they file -- some may wish to file after being selected but before accepting custody of the adoptee, others may not want to file until the adoptee is living with them. Nonetheless, once the placement is complete -- selection plus transfer of physical custody -- the adoptee's interests require that the petition be filed promptly in order to avoid unwarranted delays in resolving the adoptee's status.

If a petition is not filed within 60 days of the placement, a parent who has consented to adoption may be able to have the consent set aside. See Section 2-408(b)(2).

SECTION 3-303. CAPTION OF PETITION. The caption of a petition for adoption of a minor must contain the name of or a pseudonym for the minor adoptee. The caption may not contain the name of the petitioner.

SECTION 3-304. CONTENT OF PETITION.

(a) A petition for adoption of a minor must be signed and verified by the petitioner and contain the following information or state why any of the information omitted is not contained in the petition:

(1) the full name, age, and place and duration of residence of the petitioner;

(2) the current marital status of the petitioner, including the date and place of any marriage, the date of any legal separation or divorce, and the date of any judicial determination that a petitioner's spouse is incompetent;

(3) that the petitioner has facilities and resources to provide for the care and support of the minor;

(4) that a preplacement evaluation containing a finding that the petitioner is suited to be an adoptive parent has been prepared or updated within the 18 months next preceding the placement, or that the absence of a preplacement evaluation has been excused by a court for good cause shown or is not required under Section 2-201;

(5) the first name, sex, and date, or approximate date, and place of birth of the minor adoptee and a statement that the minor is or is not an Indian child as defined in the Indian

Child Welfare Act, 25 U.S.C. Sections 1901 et seq.;

(6) the circumstances under which the petitioner obtained physical custody of the minor, including the date of placement of the minor with the petitioner for adoption and the name of the agency or the name or relationship to the minor of the individual that placed the minor;

(7) the length of time the minor has been in the custody of the petitioner and, if the minor is not in the physical custody of the petitioner, the reason why the petitioner does not have custody and the date and manner in which the petitioner intends to obtain custody;

(8) a description and estimate of the value of any property of the minor;

(9) that any law governing interstate or intercountry placement was complied with;

(10) the name or relationship to the minor of any individual who has executed a consent or relinquishment to the adoption or a disclaimer of paternal interest, and the name or relationship to the minor of any individual whose consent or relinquishment may be required, but whose parental relationship has not been terminated, and any fact or circumstance that may excuse the lack of consent;

(11) that a previous petition by the petitioner to adopt has or has not been made in any court, and its disposition; and

(12) a description of any previous court order or pending proceeding known to the petitioner concerning custody of or visitation with the minor and any other fact known to the petitioner and needed to establish the jurisdiction of the court.

(b) The petitioner shall request in the petition:

(1) that the petitioner be permitted to adopt the minor as the petitioner's child;

(2) that the court approve the full name by which the minor is to be known if the

petition is granted; and

- (3) any other relief sought by the petitioner.

Comment

This section specifies the information the petition must contain and what relief it must request, including a request to adopt the minor. The petition is intended to show the court that the petitioner has met all the requirements for being an adoptive parent and has the resources to care for the minor adoptee, including any subsidy available for an adoptee with special needs.

SECTION 3-305. REQUIRED DOCUMENTS.

- (a) Before the hearing on a petition for adoption, the following must be filed:

- (1) a certified copy of the birth certificate or other record of the date and place of birth of the minor adoptee;

- (2) any consent, relinquishment, or disclaimer of paternal interest with respect to the minor that has been executed, and any written certifications required by Section 2-405(d) and (g) from the individual before whom a consent or relinquishment was executed;

- (3) a certified copy of any court order terminating the rights and duties of the minor's parents or guardian;

- (4) a certified copy of each parent's or former parent's marriage certificate, decree of divorce, annulment, or dissolution, or agreement or decree of legal separation, and a certified copy of any court order determining the parent's or former parent's incompetence;

- (5) a certified copy of any existing court order or the petition in any pending proceeding concerning custody of or visitation with the minor;

- (6) a copy of the preplacement evaluation and of the evaluation during the pendency of the proceeding for adoption;

- (7) a copy of any report containing the information required by Section 2-106;

(8) a document signed pursuant to Section 2-404(e);

(9) a certified copy of the petitioner's marriage certificate, decree of divorce, annulment, or dissolution, or agreement or decree of legal separation, and a certified copy of any court order determining the incompetence of the petitioner's spouse;

(10) a copy of any agreement with a public agency to provide a subsidy for the benefit of a minor adoptee with a special need;

(11) if an agency placed the minor adoptee, a verified document from the agency stating:

(i) the circumstances under which it obtained custody of the minor for purposes of adoption;

(ii) that it complied with any provision of law governing an interstate or intercountry placement of the minor;

(iii) the name or relationship to the minor of any individual whose consent is required, but who has not executed a consent or a relinquishment or whose parental relationship has not been terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

(iv) whether it has executed its consent to the proposed adoption and whether it waives notice of the proceeding; and

(12) the name and address, if known, of any person who is entitled to receive notice of the proceeding for adoption.

(b) If an item required by subsection (a) is not available, the person responsible for furnishing the item shall file an affidavit explaining its absence.

Comment

A number of documents must be filed with the petition for adoption to substantiate the statements made in the petition. The person responsible for filing a document that is not available must submit an affidavit explaining its absence.

[PART] 4. NOTICE OF PENDENCY OF PROCEEDING

SECTION 3-401. SERVICE OF NOTICE.

(a) Unless notice has been waived, notice of a proceeding for adoption of a minor must be served, within 20 days after a petition for adoption is filed, upon:

(1) an individual whose consent to the adoption is required under Section 2-401, but notice need not be served upon an individual whose parental relationship to the minor or whose status as a guardian has been terminated;

(2) an agency whose consent to the adoption is required under Section 2-401;

(3) an individual whom the petitioner knows is claiming to be or who is named as the father or possible father of the minor adoptee and whose paternity of the minor has not been judicially determined, but notice need not be served upon a man who has executed a verified statement, as described in Section 2-402(a)(4), denying paternity or disclaiming any interest in the minor;

(4) an individual other than the petitioner who has legal or physical custody of the minor adoptee or who has a right of visitation with the minor under an existing court order issued by a court in this or another State;

(5) the spouse of the petitioner if the spouse has not joined in the petition; and

(6) a grandparent of a minor adoptee if the grandparent's child is a deceased parent of the minor and, before death, the deceased parent had not executed a consent or relinquishment

or the deceased parent's parental relationship to the minor had not been terminated.

(b) The court shall require notice of a proceeding for adoption of a minor to be served upon any person the court finds, at any time during the proceeding, is:

(1) a person described in subsection (a) who has not been given notice;

(2) an individual who has revoked a consent or relinquishment pursuant to Section 2-408(a) or 2-409(a) or is attempting to have a consent or relinquishment set aside pursuant to Section 2-408(b) or 2-409(b); or

(3) a person who, on the basis of a previous relationship with the minor adoptee, a parent, an alleged parent, or the petitioner, can provide information that is relevant to the proposed adoption and that the court in its discretion wants to hear.

Comment

This part is based on the notice provisions of many current adoption statutes and includes a number of provisions from the Uniform Putative and Unknown Fathers Act (UPUFA). The Act assumes that the rules of civil procedure in the separate States will supplement the Act by specifying who has to give notice to each person entitled to notice.

As Section 2-401 indicates, the consent of a minor's grandparent is not required for the minor to be adopted. Grandparents of an adoptee are not entitled to notice of an adoption proceeding unless they are the parents of a deceased parent, subsection (a)(6), have an existing court order for visitation or communication with their grandchild, or currently have physical custody of their grandchild. In addition, if grandparents are among those persons described in subsection (b)(3), the court may decide to give them notice. If the petitioner is a relative of the adoptee, a court should probably inquire about the existence of other relatives, including grandparents, who might have relevant information for the court. But, unless these other relatives have a court order of visitation or communication with the adoptee, they are not entitled to receive notice or to intervene in the adoption proceeding. See Article 4 for who gets notice in an adoption of a minor by a stepparent and Article 5 for notice in an adoption of an adult. A grandparent who receives notice under one of these subsections is not entitled to veto the proposed adoption, but only to address the question of whether the adoption will serve the best interests of the minor. See, e.g., *In re Brandon S.*, 507 N.W.2d 94 (Wis. 1993).

In general, notice to persons whose relationship to a minor will be affected by an adoption should be served within 20 days after the petition for adoption is filed. However, if a person entitled to notice is not identified or for some other reason fails to receive notice within the 20-

day period, or if some other person's presence is needed in order for the court to meet its obligations under the Act, the court must see to it that notice of the proceeding is served upon that person.

SECTION 3-402. CONTENT OF NOTICE. A notice required by Section 3-401 must use a pseudonym for a petitioner or any individual named in the petition for adoption who has not waived confidentiality and must contain:

- (1) the caption of the petition;
- (2) the address and telephone number of the court where the petition is pending;
- (3) a concise summary of the relief requested in the petition;
- (4) the name, mailing address, and telephone number of the petitioner or petitioner's lawyer;
- (5) a conspicuous statement of the method of responding to the notice of the proceeding for adoption and the consequences of failure to respond; and
- (6) any statement required by [other applicable law or rule].

Comment

Unless confidentiality has been waived by the petitioner or others named in the petition, pseudonyms should be used in the notice to protect the requested privacy of the individuals involved. The notice must include a conspicuous statement of the method of responding and the consequences of failure to respond.

SECTION 3-403. MANNER AND EFFECT OF SERVICE.

(a) Personal service of the notice required by Section 3-401 must be made in a manner appropriate under [the rules of civil procedure for the service of process in a civil action in this State] unless the court otherwise directs.

(b) Except as otherwise provided in subsection (c), a person who fails to respond to the

notice within 20 days after its service may not appear in or receive further notice of the proceeding for adoption.

(c) An individual who is a respondent in a petition to terminate the relationship of parent and child pursuant to [Part] 5 which is served upon the individual with the notice required by Section 3-401 may not appear in or receive further notice of the proceeding for adoption or for termination unless the individual responds to the notice as required by Section 3-504.

Comment

Subsection (a) authorizes the court to direct a method of service different from the State's normal method if necessary to effectuate personal service. Subsections (b) and (c) state the legal effect of failure to respond to the notice of a proceeding for adoption or a proceeding to terminate a parental relationship. Failure to respond within the requisite time deprives the individual of the right to participate in or receive further notice of the proceeding, and in the case of a respondent in a termination action, is a basis for ordering the termination of any parental relationship the respondent may have to the adoptee. See Section 3-504(a).

SECTION 3-404. INVESTIGATION AND NOTICE TO UNKNOWN FATHER.

(a) If, at any time in a proceeding for adoption or for termination of a relationship of parent and child under [Part] 5, the court finds that an unknown father of a minor adoptee may not have received notice, the court shall determine whether he can be identified. The determination must be based on evidence that includes inquiry of appropriate persons in an effort to identify an unknown father for the purpose of providing notice.

(b) The inquiry required by subsection (a) must include whether:

(1) the woman who gave birth to the minor adoptee was married at the probable time of conception of the minor, or at a later time;

(2) the woman was cohabiting with a man at the probable time of conception of the minor;

(3) the woman has received payments or promises of support, other than from a governmental agency, with respect to the minor or because of her pregnancy;

(4) the woman has named any individual as the father on the birth certificate of the minor or in connection with applying for or receiving public assistance; and

(5) any individual has formally or informally acknowledged or claimed paternity of the minor in a jurisdiction in which the woman resided during or since her pregnancy, or in which the minor has resided or resides, at the time of the inquiry.

(c) If inquiry pursuant to subsection (b) identifies as the father of the minor an individual who has not received notice of the proceeding, the court shall require notice to be served upon him pursuant to Section 3-403 unless service is not possible because his whereabouts are unknown.

(d) If, after inquiry pursuant to subsection (b), the court finds that personal service cannot be made upon the father of the minor because his identity or whereabouts is unknown, the court shall order publication or public posting of the notice only if, on the basis of all information available, the court determines that publication or posting is likely to lead to receipt of notice by the father. If the court determines that publication or posting is not likely to lead to receipt of notice, the court may dispense with the publication or posting of a notice.

(e) If, in an inquiry pursuant to this section, the woman who gave birth to the minor adoptee fails to disclose the identity of a possible father or reveal his whereabouts, she must be advised that the proceeding for adoption may be delayed or subject to challenge if a possible father is not given notice of the proceeding, that the lack of information about the father's medical and genetic history may be detrimental to the adoptee, and that she is subject to a civil penalty if she knowingly misidentified the father.

Comment

This section is consistent with the notice requirements of the Uniform Putative and Unknown Fathers Act (UPUFA). It reflects a desire to provide notice of a proceeding under this Act for adoption or termination of a parent-child relationship to any alleged or possible father of a minor adoptee. The court must conduct an inquiry to determine whether an alleged father can be identified and located for the purpose of providing notice to him. This inquiry would include an examination of any putative father registry in a State where the alleged father might have been during the mother's pregnancy or at the time of the minor's birth. Nonetheless, this section does not require efforts to provide notice which are not likely to result in its actual receipt. Notice by publication or posting may be used only as directed by the court, and the court may direct it only when the father is likely to see or receive it.

This section protects the right of the adoptee's birth mother to remain silent in response to a request to name the father or to reveal his whereabouts. Women often have good reasons -- for example, fear of abuse -- for not naming a father. Moreover, birth mothers might be dissuaded from placing their children for adoption if they believed they would be punished for failure to name the father. See, e.g., *Evans v. So. Car. DSS*, 399 S.E.2d 156 (So.Car. 1990) (alleged father's due process rights are not violated by permitting mother to refuse to disclose his name); *In re Karen A.B.*, 513 A.2d 770 (Del. 1986) (mother's refusal to name alleged father should not be allowed to delay adoption proceeding to detriment of child); *Augusta Co. DSS v. Unnamed Mother*, 348 S.E.2d 26 (Va. Ct. App. 1986) (mother may refuse to name alleged father, but "fair play" for father requires that court have discretion to attempt notice by publication).

A refusal by a mother to name a possible father of her child will make it more difficult, if not impossible, to serve him with notice of the adoption or termination proceedings, or to compile background information about him and his family as called for by Section 2-106. Although the mother's refusal leaves the adoption more susceptible to challenge during the six month period after an order or decree is issued under the Act, Section 3-707, the interest in protecting the mother's decision to remain silent and the inability to punish a mother's refusal without placing the minor at even greater risk of harm outweighs the father's "right" to notice and the minor's interest in learning who the father is. If the father is aware of the mother's pregnancy and the child's birth, he has ample opportunity to acknowledge his paternity, assume parental responsibilities, and make his identity and whereabouts known in order to receive notice and participate in an adoption proceeding. If he does nothing to assert his parental rights and is not a "thwarted" father, he will not be entitled to participate in the adoption proceeding.

Nonetheless, the court or any individual asked to inquire about the father should explain to the mother why the name and whereabouts of the father are important for the adoptee, the prospective adoptive parents, and the integrity and finality of the adoption. The mother should be specifically advised that if the father is in any of the armed services, the Soldiers' and Sailors' Civil Relief Act allows a proceeding (including, perhaps, a proceeding to terminate his parental rights) to be stayed if, during the father's period of service, or within 60 days thereafter, it appears that he was prejudiced by reason of military service in presenting a defense, 50 App. U.S.C.A., § 521. The mother should also be warned that she may be liable for a civil penalty if she names a "bogus father" with an intent to deceive the actual father, an agency, or a

prospective adoptive parent. See Section 7-105(e).

SECTION 3-405. WAIVER OF NOTICE.

(a) A person entitled to receive notice required under this [Act] may waive the notice before the court or in a consent, relinquishment, or other document signed by the person.

(b) Except for the purpose of moving to revoke a consent or relinquishment on the ground that it was obtained by fraud or duress, a person who has waived notice may not appear in the proceeding for adoption.

**[PART] 5. PETITION TO TERMINATE
RELATIONSHIP BETWEEN PARENT AND CHILD**

Comment

The action authorized by Article 3, Part 5 has the same effect as an action under the State's general child protection statutes to terminate the rights of a parent of a minor child. In most States, the grounds for termination are physical or sexual abuse, neglect, abandonment, failure to support, and persistent failures to improve an already shaky parent-child relationship. Part 5 supplements the State's general termination statute by providing for an action, within the proceeding for adoption, to terminate the parental relationship between a minor and a parent whose voluntary consent or relinquishment cannot be obtained when the minor is the subject of a proceeding for adoption. Unlike an action to terminate under the typical child protection laws, which can be brought only by the State or the department, an action to terminate under Part 5 may be brought by a parent or guardian who has selected a prospective adoptive parent for a minor, by a prospective adoptive parent, or by an agency that is placing the minor. Although any of these persons may maintain the action, a desire for confidentiality may dictate that the parent or guardian or the agency file the action rather than the prospective adoptive parent.

SECTION 3-501. AUTHORIZATION. A petition to terminate the relationship between a parent or an alleged parent and a minor child may be filed in a proceeding for adoption under this [Act] by:

(1) a parent or a guardian who has selected a prospective adoptive parent for a minor and who intends to place, or has placed, the minor with that individual;

(2) a parent whose spouse has filed a petition under [Article] 4 to adopt the parent's minor child;

(3) a prospective adoptive parent of the minor who has filed a petition to adopt under this [article] or [Article] 4; or

(4) an agency that has selected a prospective adoptive parent for the minor and intends to place, or has placed, the minor with that individual.

SECTION 3-502. TIMING AND CONTENT OF PETITION.

(a) A petition under this [part] may be filed at any time after a petition for adoption has been filed under this [article] or [Article] 4 and before entry of a decree of adoption.

(b) A petition under this [part] must be signed and verified by the petitioner, be filed with the court, and state:

(1) the name or pseudonym of the petitioner;

(2) the name of the minor;

(3) the name and last known address of the parent or alleged parent whose parental relationship to the minor is to be terminated;

(4) the facts and circumstances forming the basis for the petition and the grounds on which termination of a parental relationship is sought;

(5) if the petitioner is a prospective adoptive parent, that the petitioner intends to proceed with the petition to adopt the minor if the petition to terminate is granted; and

(6) if the petitioner is a parent, a guardian, or an agency, that the petitioner has selected the prospective adoptive parent who is the petitioner in the proceeding for adoption.

Comment

A petition to terminate under this part may be filed simultaneously with the petition for adoption or at any time during the pendency of the adoption proceeding. Consistent with Sections 3-301 and 3-302, prompt filing is encouraged to avoid extensive delays in resolving the status of the adoptee. The petition for adoption should be served, if service is possible, at the same time as service of the petition to terminate and notice of the hearing of the termination petition. See Section 3-503.

An action to terminate parental rights is appropriate in almost any case where an adoption petition is filed after one parent has voluntarily relinquished a child, consented to the child's adoption in a direct placement, or has had his or her parental rights terminated, but the other parent has not executed a voluntary consent or relinquishment. For example, in an adoptive placement by an agency, the agency is permitted under the Act (Article 2, Part 1) to place a child after one parent has relinquished parental rights to the agency, but before the status of the other parent is determined. If the agency makes an at-risk placement, it should move expeditiously under this part to terminate the rights of the parent whose status is not determined. Alternatively, the agency could proceed under the State's general termination laws if it preferred not to place a child or allow prospective adoptive parents to file an adoption petition until the status of both birth parents was clarified.

In a direct placement, one parent with legal and physical custody of a child can place the child with prospective adoptive parents, albeit subject to the exception in Section 2-101(c). Direct placement by one parent often occurs before the status of the other parent is determined, and most frequently occurs when an unwed mother places a child before the status of the biological or alleged father is determined. This part permits the parent who makes a direct placement or the prospective adoptive parent to file a petition to terminate the rights of the other parent or alleged parent, either before or after the adoptive parent assumes physical custody of the adoptee, if a petition for adoption has been previously filed or is filed at the same time as the petition to terminate. See Comments to Section 3-301.

SECTION 3-503. SERVICE OF PETITION AND NOTICE.

(a) A petition to terminate under this [part] and a notice of hearing on the petition must be served upon the respondent, with notice of the proceeding for adoption, in the manner prescribed in Sections 3-403 and 3-404.

(b) The notice of a hearing must inform the respondent of the method for responding and that:

(1) the respondent has a right to be represented by a lawyer and may be entitled to have a lawyer appointed by the court; and

(2) failure to respond within 20 days after service and, in the case of an alleged father, failure to file a claim of paternity within 20 days after service unless a claim of paternity is pending, will result in termination of the relationship of parent and child between the respondent and the minor unless the proceeding for adoption is dismissed.

Comment

If, after service of the petition to terminate and the accompanying notice of hearing, the respondent does not respond as provided in this section, he or she forfeits the right to contest the termination and any right to further notice of the proceeding to terminate. See Section 3-504(a).

If the respondent contests the petition, and in the case of an alleged father, files a paternity claim within the requisite time, the court should schedule a fact-finding hearing on the petition as expeditiously as possible in order to avoid prolonged uncertainty about the legal status and physical custody of the minor. To ensure confidentiality, a hearing on a contested petition can be separated from the adoption proceeding. The court must appoint a guardian ad litem for the minor, Section 3-201, and is authorized by Section 3-204 to make interim custody arrangements to protect the minor's welfare during a contested proceeding. A respondent who "responds" is entitled to receive further notice of the hearing pursuant to the State's general requirements of notice to parties in civil actions. Some States may characterize a "response" as an "appearance." Either way, if the respondent takes the steps set forth in the notice, he or she is entitled to further notice of the hearing.

SECTION 3-504. GROUNDS FOR TERMINATING RELATIONSHIP.

(a) If the respondent is served with a petition to terminate under this [part] and the accompanying notice and does not respond and, in the case of an alleged father, file a claim of paternity within 20 days after the service unless a claim of paternity is pending, the court shall order the termination of any relationship of parent and child between the respondent and the minor unless the proceeding for adoption is dismissed.

(b) If, under Section 3-404, the court dispenses with service of the petition upon the respondent, the court shall order the termination of any relationship of parent and child between the respondent and the minor unless the proceeding for adoption is dismissed.

(c) If the respondent responds and asserts parental rights, the court shall proceed with the hearing expeditiously. If the court finds, upon clear and convincing evidence, that one of the following grounds exists, and, by a preponderance of the evidence, that termination is in the best interest of the minor, the court shall terminate any relationship of parent and child between the respondent and the minor:

(1) in the case of a minor who has not attained six months of age at the time the petition for adoption is filed, unless the respondent proves by a preponderance of the evidence a compelling reason for not complying with this paragraph, the respondent has failed to:

(i) pay reasonable prenatal, natal, and postnatal expenses in accordance with the respondent's financial means;

(ii) make reasonable and consistent payments, in accordance with the respondent's financial means, for the support of the minor;

(iii) visit regularly with the minor; and

(iv) manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent;

(2) in the case of a minor who has attained six months of age at the time a petition for adoption is filed, unless the respondent proves by a preponderance of the evidence a compelling reason for not complying with this paragraph, the respondent, for a period of at least six consecutive months immediately preceding the filing of the petition, has failed to:

(i) make reasonable and consistent payments, in accordance with the respondent's means, for the support of the minor;

(ii) communicate or visit regularly with the minor; and

(iii) manifest an ability and willingness to assume legal and physical custody

of the minor, if, during this time, the minor was not in the physical custody of the other parent;

(3) the respondent has been convicted of a crime of violence or of violating a restraining or protective order, and the facts of the crime or violation and the respondent's behavior indicate that the respondent is unfit to maintain a relationship of parent and child with the minor;

(4) the respondent is a man who was not married to the minor's mother when the minor was conceived or born and is not the genetic or adoptive father of the minor; or

(5) termination is justified on a ground specified in [the State's statute for involuntary termination of parental rights].

(d) If the respondent proves by a preponderance of the evidence that he or she had a compelling reason for not complying with subsection (c)(1) or (2) and termination is not justified on a ground stated in subsection (c)(3) through (5), the court may terminate the relationship of parent and child between the respondent and a minor only if it finds, upon clear and convincing evidence, that one of the following grounds exists, and, by a preponderance of the evidence, that termination is in the best interest of the minor:

(1) if the minor is not in the legal and physical custody of the other parent, the respondent is not able or willing promptly to assume legal and physical custody of the minor, and to pay for the minor's support, in accordance with the respondent's financial means;

(2) if the minor is in the legal and physical custody of the other parent and a stepparent, and the stepparent is the prospective adoptive parent, the respondent is not able or willing promptly to establish and maintain contact with the minor and to pay for the minor's support, in accordance with the respondent's financial means;

(3) placing the minor in the respondent's legal and physical custody would pose a

risk of substantial harm to the physical or psychological well-being of the minor because the circumstances of the minor's conception, the respondent's behavior during the mother's pregnancy or since the minor's birth, or the respondent's behavior with respect to other minors, indicates that the respondent is unfit to maintain a relationship of parent and child with the minor; or

(4) failure to terminate the relationship of parent and child would be detrimental to the minor.

(e) In making a determination under subsection (d)(4), the court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the minor, the role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the minor, the age of the minor, the quality of any previous relationship between the respondent and the minor and between the respondent and any other minor children, the duration and suitability of the minor's present custodial environment, and the effect of a change of physical custody on the minor.

Comment

To satisfy constitutional due process requirements, parental rights of a presumptively "fit" parent cannot be terminated involuntarily except on proof of specified grounds by clear and convincing evidence, *Santosky v. Kramer*, 455 U.S. 745 (1982). Generally, the grounds for termination have to be serious failures to perform parental responsibilities -- sufficiently serious to overcome the presumption of fitness. The Act supplements the grounds for terminating parental rights that are in the child protection laws of most States. This section emphasizes failures by a parent or alleged parent to assume or maintain the parental duties of support, visitation, and communication. The section also focuses on the respondent's behavior with respect to the minor adoptee, the other parent, or other minors which suggests that the respondent is not fit to establish or maintain a parental relationship.

Under subsection (c)(1), a respondent father's rights may be terminated on the basis of his behavior prior to the minor adoptee's birth, including a failure to manifest an ability or willingness to assume parental duties, unless he can prove a "compelling reason" for his failure. State courts have found it constitutionally permissible to terminate a father's status for pre-birth

"abandonment" of an unwed mother whom the father knew was pregnant. See, e.g., *In re Adoption of Doe*, 543 So.2d 741 (Fla. 1989) (unwed father's failure to support mother during pregnancy when he knew of pregnancy, and had the means to pay for some of her birth-related expenses, justifies the termination of his parental rights even though he filed an affidavit of paternity after the child was born); *In re Baby Girl K.*, 335 N.W.2d. 846 (Wis. 1983), appeal dismissed, 104 S.Ct. 1262 (father's pre-birth neglect of mother and refusal to pay for prenatal care can be evidence of failure to assume parental responsibilities, and can justify termination of parental rights); *Doe v. Attorney W.*, 210 So.2d 1312 (Miss. 1982) (father's rights terminated on basis of abandonment of unborn child).

Under subsection (c)(2), a parent of a child who is six months or older when the adoption petition is filed may have parental rights terminated for failure to maintain a substantial relationship with the child for six or more months before the petition was filed. This "no support and no visitation or communication" ground for termination is most likely to arise in the context of stepparent adoptions, but can arise in other contexts as well. This Act permits termination after six consecutive months of failure to support and visit, absent a compelling reason for the failure. Although state courts have generally upheld the constitutionality of this ground for terminating parental rights, they have often done so with respect to statutes that require 1-2 years of failures to support or communicate. See the many cases cited in Ch. 2 *Adoption Law and Practice* (J.H.Hollinger, ed., 1988-94).

If, under subsection (c)(1) or (2), the respondent sustains the burden of proving a compelling reason for not performing the requisite parental duties, the petitioner may still attempt to prove by clear and convincing evidence one of the grounds listed in subsection (d). For example, a respondent father may avoid having his rights terminated under (c)(1) by proving that he had no reason to know of the minor's birth or expected birth or that he was "thwarted" in his efforts to assume parental duties by the mother, an agency, the prospective adoptive parent, or another person. At that point, the petitioner may request termination of the father's status under subsection (d)(3) or (4). Although the father is "excused" for his earlier failures to perform parental duties, the fact remains that he has not performed them and has not had any prior relationship with the minor except for their biological connection. In this situation, it is not unconstitutional for the father's assertion of parental rights to be balanced against the risks of substantial harm or the actual detriment to the minor which may occur if the father's rights are not terminated. See, e.g., the U.S. Supreme Court cases cited in the Comment to Section 2-401 and: *In re Appeal in Pima County Juvenile Severance Action no. 2-114487*, 876 P.2d 1121 (Ariz. 1994) (rights of a father who fails to grasp parental "opportunity quickly, diligently, and persistently" may be terminated if court finds that it is in the child's best interest, even if the father's failure is understandable due to the mother's efforts to thwart him); *In re Baby Boy C.*, 581 A.2d 1141 (D.C.App. 1990) (a presumptively fit thwarted father's right to veto a proposed adoption may nonetheless be overcome by clear and convincing evidence that it is in the best interest of the minor for the adoption to proceed); *In re Raquel Marie X.*, 76 N.Y.2d 387, 559 N.Y.S.2d 855 (1990) (unwed father who is physically unable to develop custodial relationship with newborn child, because mother and child are living with mother's husband, is entitled to veto his child's adoption by "strangers" if he acts promptly to establish a legal and emotional bond to his child); *In re Robert O.*, 80 N.Y.2d 254, 590 N.Y.S.2d 37 (1992) ("promptness is measured in terms of the baby's life, not by the onset of the father's awareness"). But see, *In re*

Kelsey S., 823 P.2d 1216 (Cal. 1992) (unwed thwarted father who, once he is or should be aware of child's birth, has "sufficiently and timely demonstrated a full commitment to his parental role" can veto proposed adoption even if he may not be entitled to the child's custody); *In re Doe*, 638 N.E.2d 181 (Ill. 1994), reh'g denied July 1994, cert. denied, U.S. Sup. Ct. Nov. 1994 (unwed father who was prevented from demonstrating parental interest within 30 days of child's birth because of birth mother's lies has not lost his "preemptive right" to veto the child's adoption "wholly apart from any consideration of the so-called best interests of the child").

Under this Act, the needs and well-being of a minor must be considered independently of the claims of any other individual to a possessory interest in the minor. Subsections (d)(3) and (4) permit such an inquiry under the special circumstances of a mother or father whose rights cannot be terminated under subsection (c) but who, despite proving a compelling reason for prior failures, has nonetheless not had an actual ongoing relationship with the minor. The court is allowed to terminate the rights of a "thwarted" parent upon finding clear and convincing evidence that giving the respondent custody of the minor would "pose a risk of substantial harm to the physical or psychological well-being of the minor," (d)(3), or that "failure to terminate would be detrimental to the minor," (d)(4), based on the factors listed in subsection (e). Only upon finding a risk of substantial harm or actual detriment to the minor can the court go on to consider whether termination would also be in the minor's best interests.

In determining for how long and for what purposes the potential interests of a thwarted biological father should be protected, this Act balances: 1) the birth mother's interest in placing her child for adoption without interference from a man whom she believes has no genuine interest in the child, 2) the minor's interest in remaining with suitable prospective adopters with whom the minor may already have bonded, 3) the minor's interest in being raised by biological parents, especially if, in addition to the biological connection, there is also evidence of the father's parental capacity, 4) the efforts by the birth mother or others to interfere wrongfully with the father's efforts to grasp his parental opportunities, and 5) society's interest in protecting minors against "legal limbo" and detrimental disruptions of custodial environments in which they are thriving. See, also, Comments to Section 2-401.

Subsection (c)(3) permits termination for serious and violent offenses by one parent against another. The child protection laws of many States permit termination of a parent's rights on the ground that the parent was physically or sexually abusive to a minor, including the parent's other children. However, only a few States provide that a father's rape or murder of his child's mother justifies terminating his parental rights. See, e.g., Maine, Pennsylvania. This subsection is based in part on Justice Scalia's suggestion in fn. 4 of his opinion in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), that a biological father who raped a child's mother would not have a constitutionally protected "liberty interest" in parenting the child "begotten by rape."

SECTION 3-505. EFFECT OF ORDER GRANTING PETITION. An order issued under this [part] granting the petition:

- (1) terminates the relationship of parent and child between the respondent and the

minor, except an obligation for arrearages of child support;

(2) extinguishes any right the respondent had to withhold consent to a proposed adoption of the minor or to further notice of a proceeding for adoption; and

(3) is a final order for purposes of appeal.

Comment

To be consistent with the Act's requirement for the providing of as much health and social history about a birth parent as is reasonably available, the court is authorized under Section 2-106(c) to request an individual who is subject to an involuntary termination action to supply the information called for by Section 2-106.

SECTION 3-506. EFFECT OF ORDER DENYING PETITION.

(a) If the court denies the petition to terminate a relationship of parent and child, the court shall dismiss the proceeding for adoption and shall determine the legal and physical custody of the minor according to the criteria stated in Section 3-704.

(b) An order issued under this [part] denying a petition to terminate a relationship of parent and child is a final order for purposes of appeal.

Comment

This section contains an important reminder that, if the court has to dismiss an adoption proceeding because it has denied a petition to terminate a parental relationship, it also must decide who will have legal and physical custody of the minor. There is no "automatic" answer to the question of where the minor shall live after an adoption proceeding is dismissed. In making its custody determination, the court is to follow the guidelines in Section 3-704, which, in turn, refer to the criteria set forth in Section 2-408 or 2-409 with respect to the revocation or setting aside of a consent or relinquishment. Under some circumstances, the individuals who had hoped to adopt the minor, as well as one or both birth parents or an agency will be able to seek custody of the minor. See Comments to Section 3-704.

[PART] 6. EVALUATION OF ADOPTEE AND PROSPECTIVE ADOPTIVE PARENT

SECTION 3-601. EVALUATION DURING PROCEEDING FOR ADOPTION.

(a) After a petition for adoption of a minor is filed, the court shall order that an evaluation be made by an individual qualified under Section 2-202.

(b) The court shall provide the evaluator with copies of the petition for adoption and of the items filed with the petition.

Comment

The evaluation during the proceeding for adoption is mandatory. It is intended to inform the court how the adoptive placement is functioning so that the court may decide if granting the adoption petition is in the adoptee's best interests.

SECTION 3-602. CONTENT OF EVALUATION.

(a) An evaluation must be based on a personal interview with the petitioner in the petitioner's residence and observation of the relationship between the minor adoptee and the petitioner.

(b) An evaluation must be in writing and contain:

(1) an account of any change in the petitioner's marital status or family history, physical or mental health, home environment, property, income, or financial obligations since the filing of the preplacement evaluation;

(2) all reasonably available information concerning the physical, mental, and emotional condition of the minor adoptee which is not included in any report on the minor's health, genetic, and social history filed in the proceeding for adoption;

(3) copies of any court order, judgment, decree, or pending legal proceeding affecting the minor adoptee, the petitioner, or any child of the petitioner;

(4) a list of the expenses, fees, or other charges incurred, paid, or to be paid, and

anything of value exchanged or to be exchanged, in connection with the adoption;

(5) any behavior or characteristics of the petitioner which raise a specific concern, as described in Section 2-204(a), about the petitioner or the petitioner's home; and

(6) a finding by the evaluator concerning the suitability of the petitioner and the petitioner's home for the minor adoptee and a recommendation concerning the granting of the petition for adoption.

SECTION 3-603. TIME AND FILING OF EVALUATION.

(a) The evaluator shall complete a written evaluation and file it with the court within 60 days after receipt of the court's order for an evaluation, unless the court for good cause allows a later filing.

(b) If an evaluation produces a specific concern, as described in Section 2-204(a), the evaluation must be filed immediately, and must explain why the concern poses a significant risk of harm to the physical or psychological well-being of the minor.

(c) An evaluator shall give the petitioner a copy of an evaluation when filed with the court and for two years shall retain a copy and a list of every source for each item of information in the evaluation.

[PART] 7. DISPOSITIONAL HEARING; DECREE OF ADOPTION

SECTION 3-701. TIME FOR HEARING ON PETITION. The court shall set a date and time for hearing the petition, which must be no sooner than 90 days and no later than 180 days

after the petition for adoption has been filed, unless the court for good cause sets an earlier or later date and time.

Comment

Consistent with the thrust of the Act to facilitate consensual adoption and resolve contested proceedings expeditiously, this section allows the dispositional hearing of an adoption petition to be held as early as 90 days after the petition is filed and no later than 180 days after it is filed. This procedural rule will alter prevailing practice in many States where it is not unusual for an adoption petition to be filed months after placement -- instead of within 30 days -- and for a final hearing to be postponed for 12 or more months after the petition is filed.

SECTION 3-702. DISCLOSURE OF FEES AND CHARGES. At least 10 days before the hearing:

(1) the petitioner shall file with the court a signed and verified accounting of any payment or disbursement of money or anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption, or pursuant to [Article] 7. The accounting must include the date and amount of each payment or disbursement made, the name and address of each recipient, and the purpose of each payment or disbursement;

(2) the lawyer for a petitioner shall file with the court an affidavit itemizing any fee, compensation, or other thing of value received by, or agreed to be paid to, the lawyer incidental to the placement and adoption of the minor;

(3) the lawyer for each parent of the minor or for the guardian of the minor shall file with the court an affidavit itemizing any fee, compensation, or other thing of value received by, or agreed to be paid to, the lawyer incidental to the placement and adoption of the minor;

(4) if an agency placed the minor for adoption, the agency shall file with the court an affidavit itemizing any fee, compensation, or other thing of value received by the agency for, or incidental to, the placement and adoption of the minor; and

(5) if a guardian placed the minor for adoption, the guardian shall file with the court an affidavit itemizing any fee, compensation, or other thing of value received by the guardian for, or incidental to, the placement and adoption of the minor.

Comment

The accounting required by this section should be as comprehensive as possible. It must include the name and address of each lawyer, doctor, hospital, agency, or other individual or entity who received any funds or anything of value from the petitioner in connection with the placement or the adoption, or who participated in any way in the handling of those funds, either directly or indirectly. Article 7 specifies which fees and expenses are lawful and provides penalties for unlawful or excessive fees. See, also, Section 3-703(9).

Article 4 exempts adoptions by a stepparent from the accounting requirements.

SECTION 3-703. GRANTING PETITION FOR ADOPTION.

(a) The court shall grant a petition for adoption if it determines that the adoption will be in the best interest of the minor, and that:

(1) at least 90 days have elapsed since the filing of the petition for adoption unless the court for good cause shown waives this requirement;

(2) the adoptee has been in the physical custody of the petitioner for at least 90 days unless the court for good cause shown waives this requirement;

(3) notice of the proceeding for adoption has been served or dispensed with as to any person entitled to receive notice under [Part] 4;

(4) every necessary consent, relinquishment, waiver, disclaimer of paternal interest, or judicial order terminating parental rights, including an order issued under [Part] 5, has been obtained and filed with the court;

(5) any evaluation required by this [Act] has been filed with and considered by the court;

(6) the petitioner is a suitable adoptive parent for the minor;

(7) if applicable, any requirement of this [Act] governing an interstate or intercountry placement for adoption has been met;

(8) the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., is not applicable to the proceeding or, if applicable, its requirements have been met;

(9) an accounting and affidavit required by Section 3-702 have been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that is not authorized by [Article] 7 or is unreasonable or unnecessary when compared with the expenses customarily incurred in connection with an adoption;

(10) the petitioner has received each report required by Section 2-106; and

(11) any document signed pursuant to Section 2-404(e) concerning the release of a former parent's identity to the adoptee after the adoptee attains 18 years of age has been filed with the court.

(b) Notwithstanding a finding by the court that an activity prohibited by this [Act] has occurred, if the court makes the determinations required by subsection (a), the court shall grant the petition for adoption and report the violation to the appropriate authorities.

(c) Except as otherwise provided in [Article] 4, the court shall inform the petitioner and any other individual affected by an existing order for visitation or communication with the minor adoptee that the decree of adoption terminates any existing order for visitation or communication.

Comment

A judicial determination that a proposed adoption will be in the best interest of the minor adoptee is an essential -- and ultimately the most important -- prerequisite to the granting of the adoption. This determination is made in conjunction with a determination that all the other substantive and procedural requirements stated in subsection (a) have been satisfied. Among the

most important of these are parental consents or relinquishments or, in lieu of these, disclaimers of parental interest or termination orders, and, in some circumstances, an agency's consent, a guardian's consent or relinquishment, or an adoptee's consent. Although a "substantial compliance" standard is not expressly stated in this section, the Act does not mandate absolute compliance with every provision. For example, consents or relinquishments executed in substantial compliance with Sections 2-405 and 2-406 are considered valid, many opportunities exist for obtaining, for good cause shown, exceptions to the Act's requirements, and other specific requirements are to be construed reasonably in order to serve the needs of minor adoptees.

Subsection (b) enables the court, notwithstanding serious irregularities in the placement, to grant an adoption upon the court's determination that the adoption is in the minor's best interests and that the other requirements under subsection (a) have been met. If the court grants the adoption but suspects that one or more provisions of the Act have been violated, the alleged violations should be referred to the appropriate authorities for imposition of the sanctions set forth in Article 7 or other applicable laws.

Violations of the Act should be addressed, but not at the expense of the minor adoptee's well-being. See, e.g., *Yopp v. Batt*, 467 N.W.2d 868 (Neb. 1991) (despite a possible violation of licensing requirements for adoptive placements, adoption granted because in best interests of minor); *In re Adoption of Daniel C.D.*, NYLJ Nov. 12, 1986, p.14, col.1 (Bx. Surr. 1986) (adoption approved despite excessive fees charges by agency operating in another State); *In re Adoption of a Child by I.T.*, 164 N.J. Super. 476, 397 A.2d 341 (1978) (adoption approved because "innocent" adoptive parents and child should not suffer as result of lawyer's failure to follow ICPC procedures). Nonetheless, the court may determine that the violations are so serious, or cast so many aspersions on the character of the adoptive parents, that the adoption is not in the minor's best interests and should be denied. See, e.g., *Adoption of P.E.P.*, 407 S.E.2d 505 (N.C. 1991) (adoption set aside because of blatant violations by lawyer and adoptive parents of statute prohibiting payments for child-placing).

SECTION 3-704. DENIAL OF PETITION FOR ADOPTION. If a court denies a petition for adoption, it shall dismiss the proceeding and issue an appropriate order for the legal and physical custody of the minor. If the reason for the denial is that a consent or relinquishment is revoked or set aside pursuant to Section 2-408 or 2-409, the court shall determine the minor's custody according to the criteria stated in those sections. If the petition for adoption is denied for any other reason, the court shall determine the minor's custody according to the best interest of the minor.

Comment

If the court determines that a petition for adoption should be denied, the court is then responsible for determining who should have custody of the minor. In making this determination or in making an analogous determination upon denying a petition to terminate under Part 5, the court should consider the factors in Section 2-408 or 2-409, if relevant to the reasons for the denial, and should otherwise consider the minor's best interests. In some circumstances, it may be appropriate to return the minor to one or both birth parents or to a relative; in other cases, an agency should receive custody; in still other cases, the individuals who had hoped to adopt may be granted custody even though they cannot become the legal adoptive parents. See, e.g., *Adoption of Kelsey S.*, 823 P.2d 1216 (Cal. 1992) (even if thwarted father has a right to withhold his consent to an adoption, the question of the child's custody remains to be decided); *Lemley v. Barr*, 343 S.E.2d 101 (W.Va. 1986) (even though UCCJA requires W.Va. courts to recognize Ohio order invalidating birth parent's consent, best interests hearing should be held to determine child's custody); *Sorentino v. Fam. Ch. Soc.*, 378 A.2d 18 (1977) (even after birth parents' rights are vindicated, circumstances may warrant a hearing on whether transfer of custody from prospective adopters would pose risk of serious harm to child).

SECTION 3-705. DECREE OF ADOPTION.

(a) A decree of adoption must state or contain:

- (1) the original name of the minor adoptee, if the adoption is by a stepparent or relative and, in all other adoptions, the original name or a pseudonym;
- (2) the name of the petitioner for adoption;
- (3) whether the petitioner is married or unmarried;
- (4) whether the petitioner is a stepparent of the adoptee;
- (5) the name by which the adoptee is to be known and when the name takes effect;
- (6) information to be incorporated into a new birth certificate to be issued by the [State Registrar of Vital Records], unless the petitioner or an adoptee who has attained 12 years of age requests that a new certificate not be issued;
- (7) the adoptee's date and place of birth, if known, or in the case of an adoptee born outside the United States, as determined pursuant to subsection (b);
- (8) the effect of the decree of adoption as stated in Sections 1-104 through 1-106;

and

(9) that the adoption is in the best interest of the adoptee.

(b) In determining the date and place of birth of an adoptee born outside the United States, the court shall:

(1) enter the date and place of birth as stated in the birth certificate from the country of origin, the United States Department of State's report of birth abroad, or the documents of the United States Immigration and Naturalization Service;

(2) if the exact place of birth is unknown, enter the information that is known and designate a place of birth according to the best information known with respect to the country of origin;

(3) if the exact date of birth is unknown, determine a date of birth based upon medical evidence as to the probable age of the adoptee and other evidence the court considers appropriate; and

(4) if documents described in paragraph (1) are not available, determine the date and place of birth based upon evidence the court finds appropriate to consider.

(c) Unless a petitioner requests otherwise and the former parent agrees, the decree of adoption may not name a former parent of the adoptee.

(d) Except for a decree of adoption of a minor by a stepparent which is issued pursuant to [Article] 4, a decree of adoption of a minor must contain a statement that the adoption terminates any order for visitation or communication with the minor that was in effect before the decree is issued.

(e) A decree that substantially complies with the requirements of this section is not

subject to challenge solely because one or more items required by this section are not contained in the decree.

Comment

This section lists the items that must be included in the decree of adoption, subject to a rule of substantial compliance to protect the decree from being challenged because one or more items are not included. Subsection (b) contains a method for determining the date and place of birth of a foreign born adoptee.

SECTION 3-706. FINALITY OF DECREE. A decree of adoption is a final order for purposes of appeal when it is issued and becomes final for other purposes upon the expiration of the time for filing an appeal, if no appeal is filed, or upon the denial or dismissal of any appeal filed within the requisite time.

SECTION 3-707. CHALLENGES TO DECREE.

(a) An appeal from a decree of adoption or other appealable order issued under this [Act] must be heard expeditiously.

(b) A decree or order issued under this [Act] may not be vacated or annulled upon application of a person who waived notice, or who was properly served with notice pursuant to this [Act] and failed to respond or appear, file an answer, or file a claim of paternity within the time allowed.

(c) The validity of a decree of adoption issued under this [Act] may not be challenged for failure to comply with an agreement for visitation or communication with an adoptee.

(d) A decree of adoption or other order issued under this [Act] is not subject to a challenge begun more than six months after the decree or order is issued. If a challenge is brought by an individual whose parental relationship to an adoptee is terminated by a decree or

order under this [Act], the court shall deny the challenge, unless the court finds by clear and convincing evidence that the decree or order is not in the best interest of the adoptee.

Comment

A basic policy of this Act is to facilitate the completion of consensual adoptions, expedite the handling of contested adoption or termination proceedings, and secure the finality of decrees of adoption and orders terminating parent-child relationships. This section reflects this policy and anticipates that States will provide, by local or state court rule, for expedited hearings of appeals or collateral challenges.

Under current law in most States, it is not clear for how long a decree of adoption may be challenged for fraud, undue influence, duress, failure to provide notice, lack of subject matter jurisdiction, or other alleged irregularities or constitutional violations. Some States have specific time limitations for challenging adoption decrees; many simply rely on their general statutes of limitation or on their own version of Federal Rule of Civil Procedure 60(b).

For at least two reasons, this Act, like the Uniform Putative and Unknown Fathers Act (UPUFA) and the Uniform Parentage Act (UPA), provides that any challenge must be brought within six months of the entry of the decree of adoption or other final order under the Act. The first reason is the desire to minimize the risks of serious harm to minor children and their adoptive families which arise if the finality of adoptions and termination orders is not secure. Second, if the procedures of this Act are followed in good faith, there are likely to be very few cases in which a challenge is warranted. Therefore, six months is a sufficient period of time for bringing a challenge. In order to ensure the finality of an adoption, many courts have sustained specific or "reasonable" time limitations. See, e.g., *D.L.G. v. E.L.S.*, 774 S.W.2d 477 (Mo. 1989) (one year limitation for challenging adoption is not unconstitutional; failure to serve father was "mere procedural irregularity" in light of his failure to accept responsibility for his child within reasonable period of time; rights of adoptive family should not remain in limbo); *Street v. Hubert*, 491 N.E.2d 29 (Ill. App. 1986) (one year limitation for challenging an adoption does not violate due process, even if alleged fraud is not discovered until after statute has run; limitations period is reasonably related to interests of the state and children in finality of adoptions); *Maertz v. Maertz*, 827 P.2d 259 (Utah App. 1992) (birth mother's effort to vacate adoption three years after it became final was not brought within reasonable time under Rule 60(b), especially because child's need for stability creates a "special need" for finality in adoption proceedings).

Subsection (b) provides that an adoption decree or other order issued under the Act may not be challenged at all by a person who waived notice or who received notice but failed to respond to the notice and, in the case of an alleged father, failed to file a timely paternity claim.

Subsection (d) provides that an adoption decree or termination order is presumed valid even if it is challenged within six months by an individual whose parental relationship to the adoptee was terminated without personal service of notice. Unless the individual proves by clear and convincing evidence that the decree or order is not in the adoptee's best interest, the challenge

must be denied.

[PART] 8. BIRTH CERTIFICATE

Comment

Sections 3-801 and 3-802 are a modified version of the relevant sections on adoptees' birth certificates contained in the Revised Model State Vital Statistics Act, as drafted by the U.S. Dept. of Health and Human Services and a committee of State Registrars of Vital Records. This part provides for the issuance of a new birth certificate once an adoption is final, unless the court, the adoptive parents, or an adoptee aged 12 or older, requests that a new certificate not be issued. The new certificate will retain the original date and place of birth of the adoptee, but will substitute the names of the adoptive parents for the names of the individuals listed as the parents at birth. The certificate will contain any additional information required by state regulation. This deference to state regulation allows for differences among the States with regard to such matters as including a special "mark" or "symbol" indicating that an original certificate has been replaced by the new certificate or that the parents listed on the new certificate are parents by adoption and not by birth. Most States do not permit the use of marks or symbols that would distinguish the birth certificates of adoptees from those of biological children.

SECTION 3-801. REPORT OF ADOPTION.

(a) Within 30 days after a decree of adoption becomes final, the clerk of the court shall prepare a report of adoption on a form furnished by the [State Registrar of Vital Records] and certify and send the report to the [Registrar]. The report must include:

(1) information in the court's record of the proceeding for adoption which is necessary to locate and identify the adoptee's birth certificate or, in the case of an adoptee born outside the United States, evidence the court finds appropriate to consider as to the adoptee's date and place of birth;

(2) information in the court's record of the proceeding for adoption which is necessary to issue a new birth certificate for the adoptee and a request that a new certificate be issued, unless the court, the adoptive parent, or an adoptee who has attained 12 years of age requests that a new certificate not be issued; and

(3) the file number of the decree of adoption and the date on which the decree became final.

(b) Within 30 days after a decree of adoption is amended or vacated, the clerk of the court shall prepare a report of that action on a form furnished by the [Registrar] and shall certify and send the report to the [Registrar]. The report must include information necessary to identify the original report of adoption, and shall also include information necessary to amend or withdraw any new birth certificate that was issued pursuant to the original report of adoption.

SECTION 3-802. ISSUANCE OF NEW BIRTH CERTIFICATE.

(a) Except as otherwise provided in subsection (d), upon receipt of a report of adoption prepared pursuant to Section 3-801, a report of adoption prepared in accordance with the law of another State or country, a certified copy of a decree of adoption together with information necessary to identify the adoptee's original birth certificate and to issue a new certificate, or a report of an amended adoption, the [Registrar] shall:

(1) issue a new birth certificate for an adoptee born in this State and furnish a certified copy of the new certificate to the adoptive parent and to an adoptee who has attained 12 years of age;

(2) forward a certified copy of a report of adoption for an adoptee born in another State to the [Registrar] of the State of birth;

(3) issue a certificate of foreign birth for an adoptee adopted in this State and who was born outside the United States and was not a citizen of the United States at the time of birth, and furnish a certified copy of the certificate to the adoptive parent and to an adoptee who has attained 12 years of age;

(4) notify an adoptive parent of the procedure for obtaining a revised birth certificate through the United States Department of State for an adoptee born outside the United States who was a citizen of the United States at the time of birth; or

(5) in the case of an amended decree of adoption, issue an amended birth certificate according to the procedure in paragraph (1) or (3) or follow the procedure in paragraph (2) or (4).

(b) Unless otherwise specified by the court, a new birth certificate issued pursuant to subsection (a)(1) or (3) or an amended certificate issued pursuant to subsection (a)(5) must include the date and place of birth of the adoptee, substitute the name of the adoptive parent for the name of the individual listed as the adoptee's parent on the original birth certificate, and contain any other information prescribed by [the State's vital records law or regulations].

(c) The [Registrar] shall substitute the new or amended birth certificate for the original birth certificate in the [Registrar's] files. The original certificate and all copies of the certificate in the files of the [Registrar] or any other custodian of vital records in the State must be sealed and are not subject to inspection until 99 years after the adoptee's date of birth, but may be inspected as provided in this [Act].

(d) If the court, the adoptive parent, or an adoptee who has attained 12 years of age requests that a new or amended birth certificate not be issued, the [Registrar] may not issue a new or amended certificate for an adoptee pursuant to subsection (a), but shall forward a certified copy of the report of adoption or of an amended decree of adoption for an adoptee who was born in another State to the appropriate office in the adoptee's State of birth.

(e) Upon receipt of a report that an adoption has been vacated, the [Registrar] shall:

(1) restore the original birth certificate for an individual born in this State to its place in the files, seal any new or amended birth certificate issued pursuant to subsection (a), and

not allow inspection of a sealed certificate except upon court order or as otherwise provided in this [Act];

(2) forward the report with respect to an individual born in another State to the appropriate office in the State of birth; or

(3) notify the individual who is granted legal custody of a former adoptee after an adoption is vacated of the procedure for obtaining an original birth certificate through the United States Department of State for a former adoptee born outside the United States who was a citizen of the United States at the time of birth.

(f) Upon request by an individual who was listed as a parent on a child's original birth certificate and who furnishes appropriate proof of the individual's identity, the [Registrar] shall give the individual a noncertified copy of the original birth certificate.

[ARTICLE] 4. ADOPTION OF MINOR STEPCCHILD BY STEPPARENT

Comment

A stepparent who seeks to adopt a minor stepchild under this article has to deal with fewer as well as somewhat different legal requirements than does an individual who seeks to adopt an unrelated minor. These differences are justified because in the typical stepparent adoption, the minor has been living with the stepparent and the stepparent's spouse (the minor's custodial parent), and the adoption merely formalizes a de facto parent-child relationship. The minor is not physically transferred to a new and "strange" custodial environment, but remains in the household where the minor may have already lived for some time. When a stepparent adopts, an evaluation of the stepparent's suitability as an adoptive parent and an accounting of adoption-related expenses is less important than in the adoption-by-strangers scenario because (1) the minor's custodial parent has in effect "selected" the adoptive stepparent on the basis of personal knowledge; (2) the custodial parent is not subject to a pre- or post-placement evaluation under existing adoption or custody laws; (3) a denial of the petition to adopt is not likely to alter the existing custodial arrangement; (4) the expense and hassle of undergoing an evaluation or home-study may be disproportionate to any benefit for the minor which might result from an evaluation, but, see Comment to Section 4-111; and (5) the concerns about unlawful payments to birth parents or intermediaries which are expressed about other types of adoptions are arguably not present in stepparent adoptions, although, in fact, "pay-offs" to noncustodial parents may

occur with some frequency in the form of private agreements not to seek child support arrears from the noncustodial parent.

Although data on the number of adoptions completed in this country each year are unreliable, it is estimated that well over half of the adoptions that **do** occur are by stepparents. This is not surprising given that: (1) remarriages account for nearly 46% of all marriages entered into in 1990, compared to 31% in 1970; (2) more than 1 million children are involved in a divorce each year; (3) in several million families, at least one spouse has had an out-of-wedlock child before getting married; and (4) nearly 7 million children live in stepfamilies, and these children are approximately 15% of all children under 18 living in two parent families. What **is** surprising is that, although stepparent adoptions represent more than 50% of all adoptions, they occur in only a small percentage of the "blended" households headed by a custodial parent and a stepparent. This small percentage may be due, at least in part, to dissatisfaction with the ways in which existing adoption laws are applied to adoptions by stepparents. Typically, the custodial parent is allowed to retain his or her parental status, the adoptive stepparent acquires the status of a legal parent, and the noncustodial parent's relationship to the child is cut off for most purposes. An exception occurs in those States that, like this Act, follow the approach of the Uniform Probate Code (UPC) and permit the child to continue to inherit from and through the former noncustodial parent. For stepfamilies in which a child maintains emotional ties to a noncustodial parent or to the noncustodial parent's family, the traditional approach of completely severing all ties to the noncustodial parent and that parent's family is not necessarily beneficial for the child, and is not always preferred by the parents or the stepparent. The growing body of literature on stepfamilies, while acknowledging that children often thrive in "blended" families, also points to the persistence of friction between children and stepparents and to the desire of many children to maintain contact with noncustodial parents and grandparents with whom they had a prior relationship.

Instead of treating the procedures for stepparent adoptions merely as exceptions to the more general rules pertaining to other adoptions, this Act, and particularly this article, takes an affirmative approach to stepparent adoptions. By allowing post-adoption visitation by noncustodial former parents, siblings, or grandparents, this article may encourage an increase in the number of stepparent adoptions in proportion to the total number of blended families. This would give more children the advantage of living in a household with two legal parents (custodial parent and adoptive stepparent), while not depriving these children of access to their noncustodial parent's family -- assuming that such access would not be detrimental to the child. Moreover, if the traditional rule of "complete severance" between adoptive and biological families is subject to some exceptions in the context of stepparent adoptions, it might be possible to avoid the bitterness that is often attendant upon efforts to terminate the rights of noncustodial parents, and more consensual adoptions might result.

SECTION 4-101. OTHER PROVISIONS APPLICABLE TO ADOPTION OF

STEPCHILD. Except as otherwise provided by this [article], [Article] 3 applies to an adoption of a minor stepchild by a stepparent.

SECTION 4-102. STANDING TO ADOPT MINOR STEPCHILD.

(a) A stepparent has standing under this [article] to petition to adopt a minor stepchild who is the child of the stepparent's spouse if:

(1) the spouse has sole legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days next preceding the filing of a petition for adoption;

(2) the spouse has joint legal custody of the child with the child's other parent and the child has resided primarily with the spouse and the stepparent during the 12 months next preceding the filing of the petition;

(3) the spouse is deceased or mentally incompetent, but before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months next preceding the filing of the petition; or

(4) an agency placed the child with the stepparent pursuant to Section 2-104.

(b) For good cause shown, a court may allow an individual who does not meet the requirements of subsection (a), but has the consent of the custodial parent of a minor to file a petition for adoption under this [article]. A petition allowed under this subsection must be treated as if the petitioner were a stepparent.

(c) A petition for adoption by a stepparent may be joined with a petition under [Article] 3, [Part] 5, to terminate the relationship of parent and child between a minor adoptee and the adoptee's parent who is not the stepparent's spouse.

Comment

In addition to permitting individuals who are within the formal definition of "stepparent" to adopt a minor stepchild under this article, Section 4-102 allows an individual who is a de facto stepparent, but is not, or is no longer, married to the custodial parent, to adopt as if he or she were a de jure stepparent. To file a petition under this article, the de facto stepparent or "second parent" has to have the consent of the court and the custodial parent, whose parental rights will not be terminated by an adoption under this article. In addition, for the court to grant the petition, the other requirements of this article have to be met, including the court's determination that the adoption is in the minor adoptee's best interests. See, e.g., *Adoption of B.L.V.B.*, 628 A.2d 1271 (Vt. 1993) (de facto stepmother allowed to adopt her unmarried partner's biological children because it "serves no legitimate state interest" to deny the children "the security of a legally recognized relationship with their second parent"). See similar analysis in *Matter of Evan*, 153 Misc.2d 844, 583 N.Y.S.2d 997 (Surr. 1992).

If a stepchild's noncustodial parent refuses to consent to the proposed stepparent adoption or cannot be located, an adoption petition under this article may be joined with a petition under Article 3, Part 5, to terminate the parent-child relationship with the noncustodial parent. In most cases, the termination petition will allege that the noncustodial parent has failed to support and visit or communicate with the child for at least six months before the stepparent files the adoption petition, Section 3-504(c)(2), or that, even if the noncustodial parent had a compelling reason for failing to pay support and visit in the past, he is unlikely to perform these duties in the future, Section 3-504(d)(2). Of course, the stepparent and the custodial parent may also seek to prove any of the other grounds stated in Section 3-504 for terminating the noncustodial parent's rights.

SECTION 4-103. LEGAL CONSEQUENCES OF ADOPTION OF STEPCHILD.

(a) Except as otherwise provided in subsections (b) and (c), the legal consequences of an adoption of a stepchild by a stepparent are the same as under Sections 1-103 through 1-106.

(b) An adoption by a stepparent does not affect:

(1) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's spouse or deceased spouse;

(2) an existing court order for visitation or communication with a minor adoptee by an individual related to the adoptee through the parent who is the adoptive stepparent's spouse or deceased spouse;

(3) the right of the adoptee or a descendant of the adoptee to inheritance or intestate

succession through or from the adoptee's former parent; or

(4) A court order or agreement for visitation or communication with a minor adoptee which is approved by the court pursuant to Section 4-113.

(c) Failure to comply with an agreement or order is not a ground for challenging the validity of an adoption by a stepparent.

Comment

Although the legal consequences of an adoption of a stepchild are generally the same as under Sections 1-104 through 1-106, this section provides that the rights and duties of the adoptive parent's spouse -- i.e., the child's custodial parent -- are not terminated by the adoption. The child remains in all respects the child of the adoptive parent's spouse, even if the spouse is deceased, and becomes in all respects the child of the adoptive stepparent. The adopted child, the custodial parent, and the adoptive parent have rights to inheritance and intestate succession by, through, and from each other.

By contrast, except for child support arrearages, the rights and duties of the child's former noncustodial parent are terminated, including the former parent's right to inheritance or intestate succession through or from the adopted child. Nonetheless, the adopted child and the child's descendants retain the right to inheritance or intestate succession through or from the former noncustodial parent. In this respect, the Act is consistent with the provisions of the Uniform Probate Code (UPC) which apply to stepparent adoptions.

SECTION 4-104. CONSENT TO ADOPTION. Unless consent is not required under Section 2-402, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by a stepchild who has attained 12 years of age; and

(1) the minor's parents as described in Section 2-401(a);

(2) the minor's guardian if expressly authorized by a court to consent to the minor's adoption; or

(3) an agency that placed the minor for adoption by the stepparent.

SECTION 4-105. CONTENT OF CONSENT BY STEPPARENT'S SPOUSE.

(a) A consent executed by a parent who is the stepparent's spouse must be signed or confirmed in the presence of an individual specified in Section 2-405, or an individual authorized to take acknowledgements.

(b) A consent under subsection (a) must be in writing, must contain the required statements described in Section 2-406(a)(1) through (3) and (d)(3) through (6), may contain the optional statements described in Section 2-406(f), and must state that:

(1) the parent executing the consent has legal and physical custody of the parent's minor child and voluntarily and unequivocally consents to the adoption of the minor by the stepparent;

(2) the adoption will not terminate the parental relationship between the parent executing the consent and the minor child; and

(3) the parent executing the consent understands and agrees that the adoption will terminate the relationship of parent and child between the minor's other parent and the minor, and will terminate any existing court order for custody, visitation, or communication with the minor, but:

(i) the minor and any descendant of the minor will retain rights of inheritance from or through the minor's other parent;

(ii) a court order for visitation or communication with the minor by an individual related to the minor through the parent executing the consent, or an agreement or order concerning another individual which is approved by the court pursuant to Section 4-113 survives the decree of adoption, but failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption; and

(iii) the other parent remains liable for arrearages of child support unless released from that obligation by the parent executing the consent and by a governmental entity providing public assistance to the minor.

(c) A consent may not waive further notice of the proceeding for adoption of the minor by the stepparent.

Comment

The provisions in this and the next two sections pertaining to the consent of the stepchild's custodial parent (i.e., the stepparent's spouse) and the noncustodial parent are similar to the requirements for consent in a direct placement adoption, Article 2, Part 4, but are specifically tailored to the context of an adoption by a stepparent.

SECTION 4-106. CONTENT OF CONSENT BY MINOR'S OTHER PARENT.

(a) A consent executed by a minor's parent who is not the stepparent's spouse must be signed or confirmed in the presence of an individual specified in Section 2-405.

(b) A consent under subsection (a) must be in writing, must contain the required statements described in Section 2-406(a)(1) through (3) and (d)(3) through (6), may contain the optional statements described in Section 2-406(f), and must state that:

(1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the minor by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right the parent executing the consent has to legal or physical custody of the minor;

(2) the parent executing the consent understands and agrees that the adoption will terminate his or her parental relationship to the minor and will terminate any existing court order for custody, visitation, or communication with the minor, but:

(i) the minor and any descendant of the minor will retain rights of inheritance

from or through the parent executing the consent;

(ii) a court order for visitation or communication with the minor by an individual related to the minor through the minor's other parent, or an agreement or order concerning another individual which is approved by the court pursuant to Section 4-113 survives the decree of adoption, but failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption; and

(iii) the parent executing the consent remains liable for arrearages of child support unless released from that obligation by the other parent and any guardian ad litem of the minor and by a governmental entity providing public assistance to the minor; and

(3) the parent executing the consent has provided the adoptive stepparent with the information required by Section 2-106.

(c) A consent under subsection (a) may waive notice of the proceeding for adoption of the minor by the stepparent unless the adoption is contested, appealed, or denied.

SECTION 4-107. CONTENT OF CONSENT BY OTHER PERSONS.

(a) A consent executed by the guardian of a minor stepchild or by an agency must be in writing and signed or confirmed in the presence of the court, or in a manner the court directs, and:

(1) must state the circumstances under which the guardian or agency obtained the authority to consent to the adoption of the minor by a stepparent;

(2) must contain the statements required by Sections 4-104 and 4-105, except for any that can be made only by a parent of the minor; and

(3) may waive notice of the proceeding for adoption, unless the adoption is

contested, appealed, or denied.

(b) A consent executed by a minor stepchild in a proceeding for adoption by a stepparent must be signed or confirmed in the presence of the court or in a manner the court directs.

SECTION 4-108. PETITION TO ADOPT.

(a) A petition by a stepparent to adopt a minor stepchild must be signed and verified by the petitioner and contain the following information or state why any of the information is not contained in the petition:

(1) the information required by Section 3-304(a) (1), (3), (5), and (8) through (12) and (b);

(2) the current marital status of the petitioner, including the date and place of marriage, the name and date and place of birth of the petitioner's spouse and, if the spouse is deceased, the date, place, and cause of death and, if the spouse is incompetent, the date on which a court declared the spouse incompetent;

(3) the length of time the minor has been residing with the petitioner and the petitioner's spouse and, if the minor is not in the physical custody of the petitioner and the petitioner's spouse, the reason why they do not have custody and when they intend to obtain custody; and

(4) the length of time the petitioner's spouse or the petitioner has had legal custody of the minor and the circumstances under which legal custody was obtained.

SECTION 4-109. REQUIRED DOCUMENTS.

(a) After a petition to adopt a minor stepchild is filed, the following must be filed in the proceeding:

(1) any item required by Section 3-305(a) which is relevant to an adoption by a stepparent; and

(2) a copy of any agreement to waive arrearages of child support.

(b) If any of the items required by subsection (a) is not available, the person responsible for furnishing the item shall file an affidavit explaining its absence.

SECTION 4-110. NOTICE OF PENDENCY OF PROCEEDING.

(a) Within 30 days after a petition to adopt a minor stepchild is filed, the petitioner shall serve notice of the proceeding upon:

(1) the petitioner's spouse;

(2) any other person whose consent to the adoption is required under this [article];

(3) any person described in Section 3-401(a)(3), (4), and (6) and (b); and

(4) the parents of the minor's parent whose parental relationship will be terminated by the adoption unless the identity or the whereabouts of those parents are unknown.

Comment

In addition to the standard requirements for notice as set forth in Section 3-401, this section provides that in a petition to adopt a minor stepchild, notice must be served upon the minor's grandparents who are the parents of the minor's noncustodial parent whose relationship to the minor will be terminated by the adoption. This requirement is intended to give these grandparents an opportunity to seek a post-adoption visitation order under Section 4-113 if they do not have an existing agreement or order for visitation with their grandchild.

SECTION 4-111. EVALUATION OF STEPPARENT.

(a) After a petition for adoption of a minor stepchild is filed, the court may order that an evaluation be made by an individual qualified under Section 2-202 to assist the court in determining whether the proposed adoption is in the best interest of the minor.

(b) The court shall provide an evaluator with copies of the petition for adoption and of the items filed with the petition.

(c) Unless otherwise directed by the court, an evaluator shall base the evaluation on a personal interview with the petitioner and the petitioner's spouse in the petitioner's residence, observation of the relationship between the minor and the petitioner, personal interviews with others who know the petitioner and may have information relevant to the examination, and any information received pursuant to subsection (d).

(d) An evaluation under this section must be in writing and contain the following:

(1) the information required by Section 2-203(d) and (e);

(2) the information required by Section 3-602(b)(2) through (5); and

(3) the finding required by Section 3-602(b)(6).

(e) An evaluator shall complete an evaluation and file it with the court within 60 days after being asked for the evaluation under this section, unless the court allows a later filing.

(f) Section 3-603(b) and (c) apply to an evaluation under this section.

Comment

At present, most States do not require an evaluation or home-study when a stepparent seeks to adopt a stepchild. Even in States where a home-study is ostensibly required, the court usually has the discretion to waive the requirement. This section allows the court to exercise its discretion in determining whether or not to order an evaluation of the adoptive stepparent. Stepparents are the alleged perpetrators in a substantial number of child abuse and neglect cases, and, according to some researchers (e.g., Daly and Wilson), children are up to 100 times more likely to be killed by a stepparent living with one of their biological parents than by a biological

parent living alone or with the other biological parent. Despite what may appear to be an unwarranted intrusion on the privacy of the custodial parent, an evaluation of the stepparent may nonetheless be advisable in some circumstances for the sake of the minor.

SECTION 4-112. DISPOSITIONAL HEARING; DECREE OF ADOPTION. Sections 3-701 through 3-707 apply to a proceeding for adoption of a minor stepchild by a stepparent, but the court may waive the requirements of Section 3-702.

SECTION 4-113. VISITATION AGREEMENT AND ORDER.

(a) Upon the request of the petitioner in a proceeding for adoption of a minor stepchild, the court shall review a written agreement that permits another individual to visit or communicate with the minor after the decree of adoption becomes final, which must be signed by the individual, the petitioner, the petitioner's spouse, the minor if 12 years of age or older, and, if an agency placed the minor for adoption, an authorized employee of the agency.

(b) The court may enter an order approving the agreement only upon determining that the agreement is in the best interest of the minor adoptee. In making this determination, the court shall consider:

(1) the preference of the minor, if the minor is mature enough to express a preference;

(2) any special needs of the minor and how they would be affected by performance of the agreement;

(3) the length and quality of any existing relationship between the minor and the individual who would be entitled to visit or communicate, and the likely effect on the minor of allowing this relationship to continue;

(4) the specific terms of the agreement and the likelihood that the parties to the agreement will cooperate in performing its terms;

(5) the recommendation of the minor's guardian ad litem, lawyer, social worker, or other counselor; and

(6) any other factor relevant to the best interest of the minor.

(c) In addition to any agreement approved pursuant to subsections (a) and (b), the court may approve the continuation of an existing order or issue a new order permitting the minor adoptee's former parent, grandparent, or sibling to visit or communicate with the minor if:

(1) the grandparent is the parent of a deceased parent of the minor or the parent of the adoptee's parent whose parental relationship to the minor is terminated by the decree of adoption;

(2) the former parent, grandparent, or sibling requests that an existing order be permitted to survive the decree of adoption or that a new order be issued; and

(3) the court determines that the requested visitation or communication is in the best interest of the minor.

(d) In making a determination under subsection (c)(3), the court shall consider the factors listed in subsection (b) and any objections to the requested order by the adoptive stepparent and the stepparent's spouse.

(e) An order issued under this section may be enforced in a civil action only if the court finds that enforcement is in the best interest of a minor adoptee.

(f) An order issued under this section may not be modified unless the court finds that modification is in the best interest of a minor adoptee and:

(1) the individuals subject to the order request the modification; or

(2) exceptional circumstances arising since the order was issued justify the modification.

(g) Failure to comply with the terms of an order approved under this section or with any other agreement for visitation or communication is not a ground for revoking, setting aside, or otherwise challenging the validity of a consent, relinquishment, or adoption pertaining to a minor stepchild, and the validity of the consent, relinquishment, and adoption is not affected by any later action to enforce, modify, or set aside the order or agreement.

Comment

This section permits a petitioner in a proceeding to adopt under this article to ask the court to approve an agreement for post-adoption visitation or communication with the adoptee by another individual. Subsection (b) lists the factors the court must consider in determining whether the agreement is in the best interests of the adoptee.

Subsection (c) permits an adoptee's former parent (i.e., the noncustodial parent), grandparent, or sibling to seek a court order for post-adoption visitation or communication with the adoptee over the objection of the custodial parent and the adoptive stepparent. The court cannot issue an order unless it considers the factors listed in subsection (b) and determines that, despite the objections, it would be in the best interests of the adoptee.

In addition to being enforceable in a civil action, visitation or communication orders approved under this section may be modified under "exceptional circumstances." As is indicated elsewhere in the Act, however, failure to abide by an agreement or order for post-adoption visitation\communication is not a basis for challenging the validity of a consent, relinquishment, or adoption.

[ARTICLE] 5. ADOPTION OF ADULTS AND EMANCIPATED MINORS

SECTION 5-101. WHO MAY ADOPT ADULT OR EMANCIPATED MINOR.

(a) An adult may adopt another adult or an emancipated minor pursuant to this [article],

but:

(1) an adult may not adopt his or her spouse; and

(2) an incompetent individual of any age may be adopted only pursuant to [Articles] 2, 3, and 4.

(b) An individual who has adopted an adult or emancipated minor may not adopt another adult or emancipated minor within one year after the adoption unless the prospective adoptee is a sibling of the adoptee.

Comment

An adoption of an adult, like an adoption of a minor, may serve different interests. It may provide formal recognition of a de facto relationship that has existed for many years -- for example, when an individual has been reared by someone other than a parent, but a proceeding for adoption has never been initiated. It may be a belated adoption by a stepparent in a situation in which a child's noncustodial parent never consented to the proposed stepparent adoption. When the noncustodial parent dies, or the child reaches his 18th birthday, the noncustodial parent can no longer block the adoption by the stepparent.

An adoption of an adult may also occur simply to provide the adoptive parent with a legal heir to inherit the adoptive parent's estate. As long as the adults intend to create a parent-child relationship between each other, the adoption should be permitted. If a relationship other than that of parent and child is intended, the adoption may be denied. See, e.g., *In re Robert Paul*, 471 N.E.2d 424 (N.Y., 1984) (adoption by homosexual adult of his male lover disapproved because of desire to circumvent marriage laws and lack of genuine parent-child relationship).

This article covers the adoption of competent adults and emancipated minors. Emancipated minors are included because they are presumed to be sufficiently "adult" to be adopted without the benefit of the additional protections of Articles 2, 3, and 4. The term "emancipated" has the meaning it has in the State where the petition for adoption is filed. Because the proposed adoption of an incompetent adult should be subject to more concerns about "best interests" than are provided in this article, the Act requires that an adoption of an incompetent adult be handled pursuant to Article 2 (Adoption of Minors), Article 3 (General Adoption Procedure), and, if relevant, Article 4 (Adoption by Stepparent).

SECTION 5-102. LEGAL CONSEQUENCES OF ADOPTION. The legal consequences of an adoption of an adult or emancipated minor are the same as under Sections 1-103 through 1-106, but the legal consequences of adoption of an adult stepchild by an adult stepparent are the same as under Section 4-103.

SECTION 5-103. CONSENT TO ADOPTION.

(a) Consent to the adoption of an adult or emancipated minor is required only of:

(1) the adoptee;

(2) the prospective adoptive parent; and

(3) the spouse of the prospective adoptive parent, unless they are legally separated,

or the court finds that the spouse is not capable of giving consent or is withholding consent contrary to the best interest of the adoptee and the prospective adoptive parent.

(b) The consent of the adoptee and the prospective adoptive parent must:

(1) be in writing and be signed or confirmed by each of them in the presence of the court or an individual authorized to take acknowledgments;

(2) state that they agree to assume toward each other the legal relationship of parent and child and to have all of the rights and be subject to all of the duties of that relationship; and

(3) state that they understand the consequences the adoption may have for any right of inheritance, property, or support each has.

(c) The consent of the spouse of the prospective adoptive parent:

(1) must be in writing and be signed or confirmed in the presence of the court or an individual authorized to take acknowledgments;

(2) must state that the spouse:

(i) consents to the proposed adoption; and

(ii) understands the consequences the adoption may have for any right of inheritance, property, or support the spouse has; and

(3) may contain a waiver of any proceeding for adoption.

SECTION 5-104. JURISDICTION AND VENUE.

(a) The court has jurisdiction over a proceeding for the adoption of an adult or emancipated minor under this [article] if a petitioner lived in this State for at least 90 days immediately preceding the filing of a petition for adoption.

(b) A petition for adoption may be filed in the court in the [county] in which a petitioner lives.

SECTION 5-105. PETITION FOR ADOPTION.

(a) A prospective adoptive parent and an adoptee under this [article] must jointly file a petition for adoption.

(b) The petition must be signed and verified by each petitioner and state:

(1) the full name, age, and place and duration of residence of each petitioner;

(2) the current marital status of each petitioner, including the date and place of marriage, if married;

(3) the full name by which the adoptee is to be known if the petition is granted;

(4) the duration and nature of the relationship between the prospective adoptive parent and the adoptee;

(5) that the prospective adoptive parent and the adoptee desire to assume the legal relationship of parent and child and to have all of the rights and be subject to all of the duties of that relationship;

(6) that the adoptee understands that a consequence of the adoption will be to terminate the adoptee's relationship as the child of an existing parent, but if the adoptive parent is the adoptee's stepparent, the adoption will not affect the adoptee's relationship with a parent who

is the stepparent's spouse, but will terminate the adoptee's relationship to the adoptee's other parent, except for the right to inherit from or through that parent;

(7) the name and last known address of any other individual whose consent is required;

(8) the name, age, and last known address of any child of the prospective adoptive parent, including a child previously adopted by the prospective adoptive parent or his or her spouse, and the date and place of the adoption; and

(9) the name, age, and last known address of any living parent or child of the adoptee.

(c) The petitioners shall attach to the petition:

(1) a certified copy of the birth certificate or other evidence of the date and place of birth of the adoptee and the prospective adoptive parent, if available; and

(2) any required consent that has been executed.

SECTION 5-106. NOTICE AND TIME OF HEARING.

(a) Within 30 days after a petition for adoption is filed, the petitioners shall serve notice of hearing the petition upon any individual whose consent to the adoption is required under Section 5-103, and who has not waived notice, by sending a copy of the petition and notice of hearing to the individual at the address stated in the petition, or according to the manner of service provided in Section 3-403.

(b) The court shall set a date and time for hearing the petition, which must be at least 30 days after the notice is served.

SECTION 5-107. DISPOSITIONAL HEARING.

(a) Both petitioners shall appear in person at the hearing unless an appearance is excused for good cause shown. In the latter event an appearance may be made for either or both of them by a lawyer authorized in writing to make the appearance, or a hearing may be conducted by telephone or other electronic medium.

(b) The court shall examine the petitioners, or the lawyer for a petitioner not present in person, and shall grant the petition for adoption if it determines that:

(1) at least 30 days have elapsed since the service of notice of hearing the petition for adoption;

(2) notice has been served, or dispensed with, as to any person whose consent is required under Section 5-103;

(3) every necessary consent, waiver, document, or judicial order has been obtained and filed with the court;

(4) the adoption is for the purpose of creating the relationship of parent and child between the petitioners and the petitioners understand the consequences of the relationship; and

(5) there has been substantial compliance with this [Act].

Comment

The petitioners may appear together at the dispositional hearing or the court may waive their appearance. Before granting the petition, the court must determine that the adoption is for the purpose of creating a parent-child relationship and the petitioners understand the consequences of that relationship. A "best interests" finding is not required because the petitioners are adults or emancipated minors.

SECTION 5-108. DECREE OF ADOPTION.

(a) A decree of adoption issued under this [article] must substantially conform to the

relevant requirements of Section 3-705 and appeals from a decree, or challenges to it, are governed by Sections 3-706 and 3-707.

(b) The court shall send a copy of the decree to each individual named in the petition at the address stated in the petition.

(c) Within 30 days after a decree of adoption becomes final, the clerk of the court shall prepare a report of the adoption for the [State Registrar of Vital Records], and, if the petitioners have requested it, the report shall instruct the [Registrar] to issue a new birth certificate to the adoptee, as provided in [Article] 3, [Part] 8.

Comment

Like any other adoption, the adoption of an adult terminates the adoptee's legal relationship to former parents and relatives, subject to the exception for adoption by a stepparent. Former parents and former family members may want to include the adoptee in their testamentary or other donative dispositions. Efforts by a former relative, for example, to include the adoptee in a class gift to "the child, heir, or issue" of the adoptee's former parent would no longer suffice under the laws of most States because, except for an adoption by a stepparent, the adoptee would not be considered the child, heir, or issue of the former parent for purposes of construing class gifts. Once the adoption is final, a specific reference to the adoptee will be necessary in order for a former parent or former family member to make a gift, bequest, or devise to the adoptee.

In the interest of protecting the private decision of the parties to an adult adoption, the Act does not require notice of the proceeding to other individuals who may be affected by the adoption except the adoptive parent's spouse. Nonetheless, the adoptee's own children and former parents should have an opportunity to adjust their economic affairs, including their testamentary plans, to take account of the adoption. Hence, this section requires that copies of the decree of adoption be sent to the adoptee's children and former parents.

The adoption also creates a new status for the adoptee with respect to the family of the adoptive parent. Some of these individuals may want to exclude the adoptee from a class gift or other donative disposition. This section, however, only requires that copies of the decree be sent to other children of the adoptive parent, not to other members of the adoptive parent's family, except his or her spouse. This means that an adoptive parent's own parent, sibling, aunt, uncle, etc. will have to learn about the adoption informally and decide whether to excise the new adult adoptee from their donative dispositions.

[ARTICLE] 6. RECORDS OF ADOPTION PROCEEDING:
RETENTION, CONFIDENTIALITY, AND ACCESS

Comment

The Act, and especially this article, is consistent with the law of every State with respect to: (1) the confidentiality of adoption proceedings, (2) the confidentiality of all records pertaining to the proceeding after an adoption becomes final, (3) the sealing of the court records of the adoption proceeding, (4) the basic procedure for sealing an adoptee's original birth certificate and issuing a new one to reflect the adoptive parent's legal parentage, and (5) the availability of a limited exception to the general rule of confidentiality through a judicial finding of "good cause." In contrast to most States, however, which require the permanent sealing of court records, the Act provides for the opening of sealed records after 99 years.

With respect to nonidentifying information about an adoptee's medical and social history, the Act is consistent with the goals of most modern statutes in encouraging the collection and release of this information to adoptive parents and adoptees at age 18 upon request. However, the Act is more comprehensive than many of these statutes and establishes careful procedures for compiling, maintaining, releasing, and updating nonidentifying information. The Act also authorizes civil and criminal penalties, as well as private actions for damages or equitable relief, for unwarranted failures to disclose information that should be disclosed and for unauthorized disclosure of confidential information. See Sections 7-105 and 7-106.

With respect to identifying information, the Act allows the consensual disclosure of identities through a mutual consent registry. This procedure recognizes and protects the rights of birth parents or adoptees who choose to remain unidentified as well as the interests of those who wish to disclose their identities. If one birth parent and an adoptee (at age 18 or older) or the adoptive parent of an adoptee under 18 register a willingness to disclose their identities, the identifying information must be disclosed. If there is no mutual consent, the Act allows a suit for disclosure of identifying information for good cause. Over half of the States have some form of mutual consent registry [e.g., Fla. Stat. Ann. § 63.162 et seq.; Idaho Code § 39-259A; La. Rev. St. Ann. § 9:40.91.999; Ohio Rev. Code Ann. § 3107.39 et seq.; Tex. Hum. Res. Code Ann. Ti.2D, ch. 49]. Several States have no registry and disclose identities only by court order [e.g., D.C.Code § 16-311; Montana Code Ann. § 40-8-126 & 50-15-206; New Jersey].

For States that choose an approach different from the one taken in the Act, there are two existing alternatives. The first is to authorize a confidential intermediary who seeks out the individual who is the object of a search and requests permission for the disclosure of the individual's identity; [e.g., Ariz Code § 134 (d); Mich. Comp. Laws Ann. 710.68b; N.D. Cent. Code § 14-15-16; Wash. Rev. Code § 26.33.343; Wis. Stat. Ann. § 48.93]. The second is to provide original birth certificates to an adult adoptee upon request [e.g., Alaska St. § 18.50.500 (to adoptee at age 18 or older); KS Code Ann. § 65-2423 (to adoptee at age 18 or older adopted adult); Wash. Rev. Code Ann. 26.33.345 (for adoptions finalized after Sept. 1993, to adoptee at age 18 or older, unless birth parent has filed nondisclosure request)].

SECTION 6-101. RECORDS DEFINED. Unless the context requires otherwise, for purposes of this [article], "records" includes all documents, exhibits, and data pertaining to an adoption.

SECTION 6-102. RECORDS CONFIDENTIAL, COURT RECORDS SEALED.

(a) All records, whether on file with the court, or in the possession of an agency, the [Registrar of Vital Records or Statistics], a lawyer, or another provider of professional services in connection with an adoption, are confidential and may not be inspected except as provided in this [Act].

(b) During a proceeding for adoption, records are not open to inspection except as directed by the court.

(c) Within 30 days after a decree of adoption becomes final, the clerk of the court shall send to the [Registrar], in addition to the report of adoption required by Section 3-801, a certified copy of any document signed pursuant to Section 2-404(e) and filed in the proceeding for adoption.

(d) All records on file with the court must be retained permanently and sealed for 99 years after the date of the adoptee's birth. Sealed records and indices of the records are not open to inspection by any person except as provided in this [Act].

(e) Any additional information about an adoptee, the adoptee's former parents, and the adoptee's genetic history that is submitted to the court within the 99-year period, must be added to the sealed records of the court. Any additional information that is submitted to an agency, lawyer, or other professional provider of services within the 99-year period must be kept confidential.

SECTION 6-103. RELEASE OF NONIDENTIFYING INFORMATION.

(a) An adoptive parent or guardian of an adoptee, an adoptee who has attained 18 years of age, an emancipated adoptee, a deceased adoptee's direct descendant who has attained 18 years of age, or the parent or guardian of a direct descendant who has not attained 18 years of age may request the court that granted the adoption or the agency that placed the adoptee for adoption, to furnish the nonidentifying information about the adoptee, the adoptee's former parents, and the adoptee's genetic history that has been retained by the court or agency, including the information required by Section 2-106.

(b) The court or agency shall furnish the individual who makes the request with a detailed summary of any relevant report or information that is included in the sealed records of the court or the confidential records of the agency. The summary must exclude identifying information concerning an individual who has not filed a waiver of confidentiality with the court or agency. The department or the court shall prescribe forms and a procedure for summarizing any report or information released under this section.

(c) An individual who is denied access to nonidentifying information to which the individual is entitled under this [article] or Section 2-106 may petition the court for relief.

(d) If a court receives a certified statement from a physician which explains in detail how a health condition may seriously affect the health of the adoptee or a direct descendant of the adoptee, the court shall make a diligent effort to notify an adoptee who has attained 18 years of age, an adoptive parent or guardian of an adoptee who has not attained 18 years of age, or a direct descendant of a deceased adoptee that the nonidentifying information is available and may be requested from the court.

(e) If a court receives a certified statement from a physician which explains in detail

why a serious health condition of the adoptee or a direct descendant of the adoptee should be communicated to the adoptee's genetic parent or sibling to enable them to make an informed reproductive decision, the court shall make a diligent effort to notify those individuals that the nonidentifying information is available and may be requested from the court.

(f) If the [Registrar] receives a request or any additional information from an individual pursuant to this section, the [Registrar] shall give the individual the name and address of the court or agency having the records, and if the court or agency is in another State, shall assist the individual in locating the court or agency. The [Registrar] shall prescribe a reasonable procedure for verifying the identity, age, or other relevant characteristics of an individual who requests or furnishes information under this section.

SECTION 6-104. DISCLOSURE OF IDENTIFYING INFORMATION.

(a) Except as otherwise provided in this [article], identifying information about an adoptee's former parent, an adoptee, or an adoptive parent which is contained in records, including original birth certificates, required by this [Act] to be confidential or sealed, may not be disclosed to any person.

(b) Identifying information about an adoptee's former parent must be disclosed by the [Registrar] to an adoptee who has attained 18 years of age, an adoptive parent or guardian of an adoptee who has not attained 18 years of age, a deceased adoptee's direct descendant who has attained 18 years of age, or the parent or guardian of a direct descendant who has not attained 18 years of age if one of these individuals requests the information and:

(1) the adoptee's former parent or, if the former parent is deceased or has been judicially declared incompetent, an adult descendant of the former parent authorizes the

disclosure of his or her name, date of birth, or last known address, or other identifying information, either in a document signed pursuant to Section 2-404(e) and filed in the proceeding for adoption or in another signed document filed with the court, an agency, or the [Registrar]; or

(2) the adoptee's former parent authorizes the disclosure of the requested information only if the adoptee, adoptive parent, or direct descendant agrees to release similar identifying information about the adoptee, adoptive parent, or direct descendant and this individual authorizes the disclosure of the information in a signed document kept by the court, an agency, or the [Registrar].

(c) Identifying information about an adoptee or a deceased adoptee's direct descendant must be disclosed by the [Registrar] to an adoptee's former parent if that individual requests the information and:

(1) an adoptee who has attained 18 years of age, an adoptive parent or guardian of an adoptee who has not attained 18 years of age, a deceased adoptee's direct descendant who has attained 18 years of age, or the parent or guardian of a direct descendant who has not attained 18 years of age authorizes the disclosure of the requested information in a signed document kept by the court, an agency, or the [Registrar]; or

(2) one of the individuals listed in paragraph (1) authorizes the disclosure of the requested information only if the adoptee's former parent agrees to release similar information about himself or herself, and the former parent authorizes the disclosure of the information in a signed document kept by the court, an agency, or the [Registrar].

(d) Identifying information about an adult sibling of an adoptee who has attained 18 years of age must be disclosed by the [Registrar] to an adoptee if the sibling is also an adoptee and both the sibling and the adoptee authorize the disclosure.

(e) Subsection (d) does not permit disclosure of a former parent's identity unless that parent has authorized disclosure under this [Act].

SECTION 6-105. ACTION FOR DISCLOSURE OF INFORMATION.

(a) To obtain information not otherwise available under Section 6-103 or 6-104, an adoptee who has attained 18 years of age, an adoptee who has not attained 18 years of age and has the permission of an adoptive parent or guardian, an adoptive parent or guardian of an adoptee who has not attained 18 years of age, a deceased adoptee's direct descendant who has attained 18 years of age, the parent or guardian of a direct descendant who has not attained 18 years of age, or an adoptee's former parent may file a petition in the court to obtain information about another individual described in this section which is contained in records, including original birth certificates, required by this [Act] to be confidential or sealed.

(b) In determining whether to grant a petition under this section, the court shall review the sealed records of the relevant proceeding for adoption and shall make specific findings concerning:

(1) the reason the information is sought;

(2) whether the individual about whom information is sought has filed a signed document described in Section 2-404(e) or 6-104 requesting that his or her identity not be disclosed, or has not filed any document;

(3) whether the individual about whom information is sought is alive;

(4) whether it is possible to satisfy the petitioner's request without disclosing the identity of another individual;

(5) the likely effect of disclosure on the adoptee, the adoptive parents, the adoptee's

former parents, and other members of the adoptee's original and adoptive families; and

(6) the age, maturity, and expressed needs of the adoptee.

(c) The court may order the disclosure of the requested information only upon a determination that good cause exists for the release based on the findings required by subsection (b) and a conclusion that:

(1) there is a compelling reason for disclosure of the information; and

(2) the benefit to the petitioner will be greater than the harm to any other individual of disclosing the information.

SECTION 6-106. STATEWIDE REGISTRY. The [Registrar] shall:

(1) establish a statewide confidential registry for receiving, filing, and retaining documents requesting, authorizing, or not authorizing, the release of identifying information;

(2) prescribe and distribute forms or documents on which an individual may request, authorize, or refuse to authorize the release of identifying information;

(3) devise a procedure for releasing identifying information in the [Registrar's] possession upon receipt of an appropriate request and authorization;

(4) cooperate with registries in other States to facilitate the matching of documents filed pursuant to this [article] by individuals in different States; and

(5) announce and publicize to the general public the existence of the registry and the procedure for the consensual release of identifying information.

SECTION 6-107. RELEASE OF ORIGINAL BIRTH CERTIFICATE.

(a) In addition to any copy of an adoptee's original birth certificate authorized for

release by a court order issued pursuant to Section 6-105, the [Registrar] shall furnish a copy of the original birth certificate upon the request of an adoptee who has attained 18 years of age, the direct descendant of a deceased adoptee, or an adoptive parent or guardian of an adoptee who has not attained 18 years of age, if the individual who makes the request furnishes a consent to disclosure signed by each individual who was named as a parent on the adoptee's original birth certificate.

(b) When 99 years have elapsed after the date of birth of an adoptee whose original birth certificate is sealed under this [Act], the [Registrar] shall unseal the original certificate and file it with any new or amended certificate that has been issued. The unsealed certificates become public information in accordance with any statute or regulation applicable to the retention and disclosure of records by the [Registrar].

SECTION 6-108. CERTIFICATE OF ADOPTION. Upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the clerk of the court that entered a decree of adoption shall issue a certificate of adoption which states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

SECTION 6-109. DISCLOSURE AUTHORIZED IN COURSE OF EMPLOYMENT.

This [article] does not preclude an employee or agent of a court, agency, or the [Registrar] from:

- (1) inspecting permanent, confidential, or sealed records for the purpose of discharging any obligation under this [Act];
- (2) disclosing the name of the court where a proceeding for adoption occurred, or the

name of an agency that placed an adoptee, to an individual described in Sections 6-103 through 6-105, who can verify his or her identity; or

(3) disclosing nonidentifying information contained in confidential or sealed records in accordance with any other applicable state or federal law.

SECTION 6-110. FEE FOR SERVICES. A court, an agency, or the [Registrar] may charge a reasonable fee for services, including copying services, it performs pursuant to this [article].

[ARTICLE] 7. PROHIBITED AND PERMISSIBLE
ACTIVITIES IN CONNECTION WITH ADOPTION

SECTION 7-101. PROHIBITED ACTIVITIES IN PLACEMENT.

(a) Except as otherwise provided in [Article] 2, [Part] 1:

(1) a person, other than a parent, guardian, or agency, as specified in Sections 2-101 through 2-103, may not place a minor for adoption or advertise in any public medium that the person knows of a minor who is available for adoption;

(2) a person, other than an agency or an individual with a favorable preplacement evaluation, as required by Sections 2-201 through 2-207, may not advertise in any public medium that the person is willing to accept a minor for adoption;

(3) an individual, other than a relative or stepparent of a minor, who does not have a favorable preplacement evaluation or a court-ordered waiver of the evaluation, or who has an unfavorable evaluation, may not obtain legal or physical custody of a minor for purposes of adoption; and

(4) a person may not place or assist in placing a minor for adoption with an individual, other than a relative or stepparent, unless the person knows that the individual has a favorable preplacement evaluation or a waiver pursuant to Section 2-201.

(b) A person who violates subsection (a) is liable for a [civil penalty] not to exceed [\$5,000] for the first violation, and not to exceed [\$10,000] for each succeeding violation in an action brought by the [appropriate official]. The court may enjoin from further violations any person who violates subsection (a) and shall inform any appropriate licensing authority or other official of the violation.

Comment

This section authorizes civil penalties, injunctive relief, and other sanctions against persons engaged in unlawful placement activities. Those subject to liability under this section include a person who attempts to place a minor without authority under Section 2-101 to do so, a person other than an agency or an individual with a favorable preplacement evaluation who advertises for an adoptable child, an individual who has an unfavorable evaluation or has not sought an evaluation and who attempts to obtain custody of an adoptable child, and a person who places a minor with an individual whom the person knows does not have a favorable evaluation or a waiver. Prospective adoptive parents with a favorable evaluation may advertise their interest in finding an adoptable child. Similarly, persons authorized to place a minor -- birth parents, guardians with placement authority, agencies with legal and physical custody of minors -- may advertise their willingness to place minor children for adoption.

SECTION 7-102. UNLAWFUL PAYMENTS RELATED TO ADOPTION.

(a) Except as otherwise provided in Sections 7-103 and 7-104, a person may not pay or give or offer to pay or give to any other person, or request, receive, or accept any money or anything of value, directly or indirectly, for:

- (1) the placement of a minor for adoption;
- (2) the consent of a parent, a guardian, or an agency to the adoption of a minor; or
- (3) the relinquishment of a minor to an agency for the purpose of adoption.

(b) The following persons are liable for a [civil penalty] not to exceed [\$5,000] for the

first violation, and not to exceed [\$10,000] for each succeeding violation in an action brought by the [appropriate official]:

(1) a person who knowingly violates subsection (a);

(2) a person who knowingly makes a false report to the court about a payment prohibited by this section or authorized by Section 7-103 or 7-104; and

(3) a parent or guardian who knowingly receives or accepts a payment authorized by Section 7-103 or 7-104 with the intent not to consent to an adoption or to relinquish a minor for adoption.

(c) The court may enjoin from further violations any person described in subsection (b) and shall inform any appropriate licensing authority or other official of the violation.

Comment

This section authorizes civil penalties, injunctive relief, and other sanctions against persons who knowingly accept or make payments, directly or indirectly, for a placement, consent, or relinquishment -- in other words, payments that are, or appear to be, for the "purchase" of a child. Most States have similar provisions. These sanctions are also available against a person who knowingly makes a false report about adoption-related payments or who acts fraudulently by knowingly accepting a legitimate adoption-related payment, as listed in Section 7-103 or 7-104, with the intent of not consenting to the proposed adoption.

SECTION 7-103. LAWFUL PAYMENTS RELATED TO ADOPTION.

(a) Subject to the requirements of Sections 3-702 and 3-703 for an accounting and judicial approval of fees and charges related to an adoption, an adoptive parent, or a person acting on behalf of an adoptive parent, may pay for:

(1) the services of an agency in connection with an adoption;

(2) advertising and similar expenses incurred in locating a minor for adoption;

(3) medical, hospital, nursing, pharmaceutical, travel, or other similar expenses

incurred by a mother or her minor child in connection with the birth or any illness of the minor;

(4) counseling services for a parent or a minor for a reasonable time before and after the minor's placement for adoption;

(5) living expenses of a mother for a reasonable time before the birth of her child and for no more than six weeks after the birth;

(6) expenses incurred in ascertaining the information required by Section 2-106;

(7) legal services, court costs, and travel or other administrative expenses connected with an adoption, including any legal services performed for a parent who consents to the adoption of a minor or relinquishes the minor to an agency;

(8) expenses incurred in obtaining a preplacement evaluation and an evaluation during the proceeding for adoption; and

(9) any other service the court finds is reasonably necessary.

(b) A parent or a guardian, a person acting on the parent's or guardian's behalf, or a provider of a service listed in subsection (a), may receive or accept a payment authorized by subsection (a). The payment may not be made contingent on the placement of a minor for adoption, relinquishment of the minor, or consent to the adoption. If the adoption is not completed, a person who is authorized to make a specific payment by subsection (a) is not liable for that payment unless the person has agreed in a signed writing with a provider of a service to make the payment regardless of the outcome of the proceeding for adoption.

Comment

Subsection (a) specifies the adoption-related fees and charges that an adoptive parent may lawfully pay, subject to the judicial accounting and approval provisions of Sections 3-702 and 3-703. In addition to expenses incurred for preplacement and postplacement evaluations, legal and psychological counseling for themselves, and expenses for locating an adoptable child, the adoptive parents are permitted to pay the medical costs incurred in connection with a child's

birth, living and counseling expenses of the birth mother for reasonable periods of time, and the legal expenses incurred by a birth parent who consents to the adoption or relinquishes a minor child to an agency.

Under subsection (b), payments cannot be made contingent on a birth parent's performance of any promise to place a minor, consent to an adoption, or relinquish the minor. If an adoption is not completed, adoptive parents who have made payments during the proceeding are not entitled to reimbursement or restitution, but they do not have to make additional payments to service providers unless they have agreed to do so regardless of the outcome of the adoption proceeding.

SECTION 7-104. CHARGES BY AGENCY. Subject to the requirements of Sections 3-702 and 3-703 for an accounting and judicial approval of fees and charges related to an adoption, an agency may charge or accept a fee or other reasonable compensation from a prospective adoptive parent for:

(1) medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her minor child in connection with the birth or any illness of the minor;

(2) a percentage of the annual cost the agency incurs in locating and providing counseling services for minor adoptees, parents, and prospective parents;

(3) living expenses of a mother for a reasonable time before the birth of a child and for no more than six weeks after the birth;

(4) expenses incurred in ascertaining the information required by Section 2-106;

(5) legal services, court costs, and travel or other administrative expenses connected with an adoption, including the legal services performed for a parent who relinquishes a minor child to the agency;

(6) preparation of a preplacement evaluation and an evaluation during the proceeding for adoption; and

(7) any other service the court finds is reasonably necessary.

SECTION 7-105. FAILURE TO DISCLOSE INFORMATION.

(a) A person, other than a parent, who has a duty to furnish the nonidentifying information required by Section 2-106, or authorized for release under [Article] 6, and who intentionally refuses to provide the information is subject to a [civil penalty] not to exceed [\$5,000] for the first violation, and not to exceed [\$10,000] for each succeeding violation in an action brought by the [appropriate official]. The court may enjoin the person from further violations of the duty to furnish nonidentifying information.

(b) An employee or agent of an agency, the court, or the [State Registrar of Vital Records] who intentionally destroys any information or report compiled pursuant to Section 2-106, or authorized for release under [Article] 6, is guilty of a [misdemeanor] [punishable upon conviction by a fine of not more than [\$] or imprisonment for not more than [], or both].

(c) In addition to the penalties provided in subsections (a) and (b), an adoptive parent, an adoptee, or any person who is the subject of any information required by Section 2-106, or authorized for release under [Article] 6, may maintain an action for damages or equitable relief against a person, other than a parent who placed a minor for adoption, who fails to perform the duties required by Section 2-106 or [Article] 6.

(d) A prospective adoptive parent who knowingly fails to furnish information or knowingly furnishes false information to an evaluator preparing an evaluation pursuant to [Article] 2, [Part] 2 or [Article] 3, [Part] 6, with the intent to deceive the evaluator, is guilty of a [misdemeanor] [punishable upon conviction by a fine of not more than [\$] or imprisonment for not more than [], or both].

(e) An evaluator who prepares an evaluation pursuant to [Article] 2, [Part] 2 or [Article] 3, [Part] 6 and who knowingly omits or misrepresents information about the individual being evaluated with the intent to deceive a person authorized under this [Act] to place a minor for adoption is guilty of a [misdemeanor] [punishable upon conviction by a fine of not more than [\$] or imprisonment for not more than [], or both].

(f) A parent of a minor child who knowingly misidentifies the minor's other parent with an intent to deceive the other parent, an agency, or a prospective adoptive parent is subject to a [civil penalty] not to exceed [\$5,000] in an action brought by the [appropriate official].

Comment

The civil penalties authorized in subsection (a) for an intentional refusal to provide nonidentifying information and the criminal penalties authorized in subsection (b) for an intentional destruction of this information are consistent with the Act's requirement that adoptive parents and adoptees be provided with as much relevant information as is reasonably available about the medical, genetic, and social history of adoptees and their biological families; Section 2-106 and Article 6. These sanctions can be imposed against agencies, lawyers, evaluators, and other providers of professional services who fail to perform their responsibilities according to a generally acceptable standard of care. Subsection (d) authorizes criminal sanctions against a prospective adoptive parent who knowingly furnishes false information during an evaluation with the intent to deceive the evaluator.

The Act's requirement that agencies, parents, lawyers, and others involved in an adoption must provide background information that is "reasonably available" is intended to create a statutory duty to use reasonable efforts to obtain the information and to disclose the information that is collected to prospective adoptive parents. In addition to the civil penalties for a breach of the statutory duty, subsection (c) allows adoptive parents and adoptees to maintain an action for damages or equitable relief for failures to provide reasonably available background information or perform the statutory duties set forth in Article 6. The best way for adoption-service providers to avoid liability under this section is to pass along to adoptive families the nonidentifying information they have compiled and not withhold information, as many agencies and lawyers routinely did before the 1980's.

Birth parents are generally exempt from the sanctions in this section lest they be deterred from consenting or relinquishing because of a possible criminal penalty for failing to disclose their medical or social histories. The Act's goal is to facilitate adoptions, not to impede them by punishing parents. Nonetheless, subsection (f) authorizes a civil penalty against a birth parent who knowingly withholds the name of the other parent with an intent to deceive prospective

adoptive parents or an agency. This provision may serve to warn birth parents about the harmful consequences for their children of failing to tell the truth. One such consequence may be the belated discovery by the other parent of an adoption proceeding, followed by an effort by that parent to contest the adoption, thus plunging the parties into litigation with an uncertain outcome.

SECTION 7-106. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) Except as authorized in this [Act], a person who furnishes or retains a report or records pursuant to this [Act] may not disclose any identifying or nonidentifying information contained in the report or records.

(b) A person who knowingly gives or offers to give or who accepts or agrees to accept anything of value for an unauthorized disclosure of identifying information made confidential by this [Act] is guilty of a [misdemeanor] [punishable upon conviction by a fine of not more than [\$] or imprisonment for not more than [], or both,] for the first violation and of a [felony] [punishable upon conviction by a fine of not more than [\$] or imprisonment for not more than [], or both,] for each succeeding violation.

(c) A person who knowingly gives or offers to give or who accepts or agrees to accept anything of value for an unauthorized disclosure of nonidentifying information made confidential by this [Act] is subject to a [civil penalty] not to exceed [\$5,000] for the first violation, and not to exceed [\$10,000] for each succeeding violation in an action brought by the [appropriate official].

(d) A person who makes a disclosure, that the person knows is unauthorized, of identifying or nonidentifying information from a report or record made confidential by this [Act] is subject to a [civil penalty] not to exceed [\$2,500] for the first violation, and not to exceed [\$5,000] for each succeeding violation in an action brought by the [appropriate official].

(e) The court may enjoin from further violations any person who makes or obtains an

unauthorized disclosure and shall inform any appropriate licensing authority or other official of the violation.

(f) In addition to the penalties provided in subsections (b) through (e), an individual who is the subject of any of the information contained in a report or records made confidential by this [Act] may maintain an action for damages or equitable relief against any person who makes or obtains, or is likely to make or obtain, an unauthorized disclosure of the information.

(g) Identifying information contained in a report or records required by this [Act] to be kept confidential or sealed may not be disclosed under any other law of this State.

Comment

This section provides civil and some criminal penalties for unauthorized disclosures of information -- both identifying and nonidentifying -- made confidential by the Act. Individual actions for damages or equitable relief are also permitted for unauthorized disclosures of information from reports or records made confidential by the Act.

SECTION 7-107. ACTION BY DEPARTMENT. The department may review and investigate compliance with this [Act] and may maintain an action in the [appropriate court] to compel compliance.

[ARTICLE] 8. MISCELLANEOUS PROVISIONS

SECTION 8-101. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among the States enacting it.

SECTION 8-102. SHORT TITLE. This [Act] may be cited as the Uniform Adoption Act (1994).

SECTION 8-103. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 8-104. EFFECTIVE DATE. This [Act] takes effect on
.....

SECTION 8-105. REPEALS. The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)

SECTION 8-106. TRANSITIONAL PROVISIONS. A proceeding for adoption commenced before the effective date of this [Act] may be completed under the law in effect at the time the proceeding was commenced.