

April 4, 2019

Dear Chairmen Biklen,

Genie Gillespie and I are Observers for the Unregulated Transfers of Adopted Children Act Committee. As members of the Adoption Law Committee of the Chicago Bar Association, we have been very involved in drafting legislation for the last 2 decades, including laws relating to adoption advertisements and unregulated placements. We offer the following insights on our individual behalf and thank you for the opportunity to comment:

1. We agree wholeheartedly with the comments made by Observer Larry Jenkins---in particular, as to the recommended Uniform Act's application to domestic adoptions as well as international ones. In our experience, unregulated placements can occur in instances of domestic adoptions, particularly where a child has been exposed to trauma and was formerly in state care, and we believe that children adopted domestically are in as much need of protection. We would also add that we believe laws against unregulated placements should apply not only to adoptive parents but also to biological parents who seek to place their children in an unregulated manner. Otherwise it would create a different legal standard for parents who family build through adoption and who should have the same legal rights and responsibilities as biological parents;
2. As to Section 2(2)(B): to clarify the term "substitute care" we would propose adding the terms "guardianship or foster care" after the word "adoption;"
3. Under Section 2 (5) we would propose adding the phrase "or through a judicial proceeding" as this would cover parents adopting privately, which is common in many states;
4. Under Section 4, we are not sure of the meaning of the term "suspend the legal rights" and believe it would be helpful to define that term;
5. Under Section 4, (b) we believe the term "specified time" should be defined as in practice it would cause confusion and may be so vague as to allow unregulated transfers for significant amounts of time;
6. Under Section 4 (b)(1) we believe the list of relatives is too narrow for many states. Instead of coming up with a list of relatives, might we suggest that this section reference the definition of "relatives" as exists under the particular state's law when the definition is used in the context of a "related adoption." Moreover, some states, including Illinois, recognize the concept of "fictive kin" for placement purposes in terms of the definition of relative and perhaps that category could be considered;
7. Under Section 4(b)(2) we believe the word "familiar" is too vague and could open the door to unregulated transfers—for example, if a parent arranges a meeting with someone they meet on the internet and the child becomes "familiar" with that individual after a few visits, that could be construed as acceptable. However, we were confused if this exception would be applied to an adult friend who adopted the child because of the use of the conjunction "and" after the phrase "who adopted the child"---would that mean that the child was already appropriately transferred under section 4. (a)?
8. Under Section 6 and 7, again, we would not limit the disclosure of critical background information or training to intercountry adoptions---our state requires disclosures and training for both domestic agency adoptions and international adoptions—those adopting "youth in care" (foster care) are required to undergo more extensive training—since many states already

have a defined number of training hours we might leave that to the state(also there are relevant Hague requirements);

9. As to Section 6(3), we also are concerned that the section is vague—in Illinois, we require agencies to provide all information “material” to the placement and this has not been challenged as vague (see attached);
10. As to Section 7(7) Illinois defines both dissolution and disruption (see attached) and it is a fairly standard definition;
11. Under Section 10(b) we are not sure what the term “foster care center or adoption resource center or post adoption resource center” means---we think it may be overbroad depending upon the state---in Illinois, only licensed child welfare agencies can advertise along with birth parents or prospective adoptive parents operating on their own behalf (see attached)(prospective adoptive parent would not include parents of a child who has already adopted and the parent is looking for a new home for the child.)
12. Finally, we believe any law relating to eliminating unregulated disruptions should aggressively address the causes, which are often related to developmental and emotional issues presented by the child. Although the proposed Act references access to mental health, we wanted to share Illinois’ statute which sets forth mechanisms through which adoptive parents can access mental health services for their child and requires accountability of our state welfare agency in reporting on access to services (see attached.)

Thank you for the opportunity to share our insights on such an important issue and we look forward to seeing the next draft!

Sincerely,

Barbara Sereda and Genie Gillespie

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ILLINOIS STATORY SECTIONS RELEVANT TO UNREGULATED TRANSFERS OF CHILDREN

225 ILCS 10/2.30)

Sec. 2.30. Placement disruption. "Placement disruption" means a circumstance where the child is removed from an adoptive placement before the adoption is finalized.

(Source: P.A. 99-49, eff. 7-15-15.)

(225 ILCS 10/2.31)

Sec. 2.31. Secondary placement. "Secondary placement" means a placement, including but not limited to the placement of a youth in care, that occurs after a placement disruption or adoption dissolution. "Secondary placement" does not mean secondary placements arising due to the death of the adoptive parent of the child.

(Source: P.A. 99-49, eff. 7-15-15; 100-159, eff. 8-18-17.)

(225 ILCS 10/2.32)

Sec. 2.32. Adoption dissolution. "Adoption dissolution" means a circumstance where the child is removed from an adoptive placement after the adoption is finalized.

(Source: P.A. 99-49, eff. 7-15-15.)

(225 ILCS 10/2.33)

Sec. 2.33. Unregulated placement. "Unregulated placement" means the secondary placement of a child that occurs without the oversight of the courts, the Department, or a licensed child welfare agency.

(Source: P.A. 99-49, eff. 7-15-15.)

(c) Every licensed child welfare agency providing adoption services must make full and fair disclosure to its clients, including biological parents and adoptive parents, of all circumstances material to the placement of a child for adoption. The Department shall adopt rules necessary for the implementation and regulation of the requirements of this subsection (c).

(c-5) Whenever a licensed child welfare agency places a child in a licensed foster family home or an adoption-only home, the agency shall provide the following to the caretaker or prospective adoptive parent:

(1) Available detailed information concerning the

child's educational and health history, copies of immunization records (including insurance and medical card information), a history of the child's previous placements, if any, and reasons for placement changes, excluding any information that identifies or reveals the location of any previous caretaker.

(2) A copy of the child's portion of the client service plan, including any visitation arrangement, and all amendments or revisions to it as related to the child.

(3) Information containing details of the child's individualized educational plan when the child is receiving special education services.

(4) Any known social or behavioral information (including, but not limited to, criminal background, fire setting, perpetration of sexual abuse, destructive behavior, and substance abuse) necessary to care for and safeguard the child.

(225 ILCS 10/12) (from Ch. 23, par. 2222)

Sec. 12. Advertisements.

(a) In this Section, "advertise" means communication by any public medium originating or distributed in this State, including, but not limited to, newspapers, periodicals, telephone book listings, outdoor advertising signs, radio, or television.

(b) A child care facility or child welfare agency licensed or operating under a permit issued by the Department may publish advertisements for the services that the facility is specifically licensed or issued a permit under this Act to provide. A person, group of persons, agency, association, organization, corporation, institution, center, or group who advertises or causes to be published any advertisement offering, soliciting, or promising to perform adoption services as defined in Section 2.24 of this Act is guilty of a Class A misdemeanor and shall be subject to a fine not to exceed \$10,000 or 9 months imprisonment for each advertisement, unless that person, group of persons, agency, association, organization, corporation, institution, center, or group is (i) licensed or operating under a permit issued by the Department as a child care facility or child welfare agency, (ii) a biological parent or a prospective adoptive parent acting on his or her own behalf, or (iii) a licensed attorney advertising his or her availability to provide legal services relating to adoption, as permitted by law.

(c) Every advertisement published after the effective date of this amendatory Act of the 94th General Assembly shall include the Department-issued license number of the facility or agency.

(d) Any licensed child welfare agency providing adoption services that, after the effective date of this amendatory Act of the 94th General Assembly, causes to be published an advertisement containing reckless or intentional misrepresentations concerning adoption services or circumstances material to the placement of a child for adoption is guilty of a Class A misdemeanor and is subject to a fine not to exceed \$10,000 or 9 months imprisonment for each advertisement.

(e) An out-of-state agency that is not licensed in Illinois and that has a written interagency agreement with one or more Illinois licensed child

welfare agencies may advertise under this Section, provided that (i) the out-of-state agency must be officially recognized by the United States Internal Revenue Service as a tax-exempt organization under 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law), (ii) the out-of-state agency provides only international adoption services and is covered by the Intercountry Adoption Act of 2000, (iii) the out-of-state agency displays, in the advertisement, the license number of at least one of the Illinois licensed child welfare agencies with which it has a written agreement, and (iv) the advertisements pertain only to international adoption services. Subsection (d) of this Section shall apply to any out-of-state agencies described in this subsection (e).

(f) An advertiser, publisher, or broadcaster, including, but not limited to, newspapers, periodicals, telephone book publishers, outdoor advertising signs, radio stations, or television stations, who knowingly or recklessly advertises or publishes any advertisement offering, soliciting, or promising to perform adoption services, as defined in Section 2.24 of this Act, on behalf of a person, group of persons, agency, association, organization, corporation, institution, center, or group, not authorized to advertise under subsection (b) or subsection (e) of this Section, is guilty of a Class A misdemeanor and is subject to a fine not to exceed \$10,000 or 9 months imprisonment for each advertisement.

(g) The Department shall maintain a website listing child welfare agencies licensed by the Department that provide adoption services and other general information for biological parents and adoptive parents. The website shall include, but not be limited to, agency addresses, phone numbers, e-mail addresses, website addresses, annual reports as referenced in Section 7.6 of this Act, agency license numbers, the Birth Parent Bill of Rights, the Adoptive Parents Bill of Rights, and the Department's complaint registry established under Section 9.1a of this Act. The Department shall adopt any rules necessary to implement this Section.

(h) Nothing in this Act shall prohibit a day care agency, day care center, day care home, or group day care home that does not provide or perform adoption services, as defined in Section 2.24 of this Act, from advertising or marketing the day care agency, day care center, day care home, or group day care home.

(Source: P.A. 100-406, eff. 1-1-18.)

(750 ILCS 50/18.9)

Sec. 18.9. Post-placement and post-adoption support services.

(a) It is the public policy of this State to find permanency for children through adoption and to prevent placement disruption, adoption dissolution, and secondary placement. Access to post-placement and post-adoption support services to provide support and resources for youth in care as defined in Section 4d of the Children and Family Services Act, foster families, and adoptive families is essential to promote permanency. Public awareness of post-placement and post-adoption services and the ability of families to utilize

effective services are essential to permanency.

(b) The Department shall establish and maintain post-placement and post-adoption support services.

(c) The Department shall post information about the Department's post-placement and post-adoption support services on the Department's website and shall provide the information to every licensed child welfare agency, every out of State placement agency or entity approved under Section 4.1 of this Act, and any entity providing adoption support services in the Illinois courts. The Department's post-placement and post-adoption support services shall be referenced in information regarding adoptive parents' rights and responsibilities that the Department publishes and provides to adoptive parents under this Act. The Department shall establish and maintain a toll-free number to advise the public about its post-placement and post-adoption support services and post the number on its website.

(d) Every licensed child welfare agency, every entity approved under Section 4.1 of this Act, and any entity providing adoption support services in the Illinois courts shall provide the Department's website address and link to the Department's post-placement and post-adoption services information set forth in subsection (c) of this Section, including the Department's toll-free number, to every adoptive parent with whom they work in Illinois. This information shall be provided prior to placement.

(e) Beginning one year after the effective date of this amendatory Act of the 99th General Assembly, the Department shall report annually to the General Assembly on January 15 the following information for the preceding year:

(1) a description of all post-placement and post-adoption support services the Department provides;

(2) without identifying the names of the recipients of the services, the number of foster parents, prospective adoptive parents, and adoptive families in Illinois who have received the Department's post-placement and post-adoption support services and the type of services provided;

(3) the number of families who have contacted the Department about its post-placement and post-adoption services due to a potential placement disruption, adoption dissolution, secondary placement, or unregulated placement, but for whom the Department declined to provide post-placement and post-adoption support services and the reasons that services were denied; and

(4) the number of placement disruptions, adoption dissolutions, unregulated placements, and secondary placements, and for each one:

(A) the type of placement or adoption, including whether the child who was the subject of the placement was a youth in care as defined in Section 4d of the Children and Family Services Act, and if the child was not a youth in care, whether the adoption was a private, agency, agency-assisted, interstate, or intercountry adoption;

(B) if the placement or adoption was intercountry, the country of birth of the child;

(C) whether the child who was the subject of the placement disruption, adoption dissolution, unregulated placement, or secondary placement entered State custody;

(D) the length of the placement prior to the placement disruption, adoption dissolution, unregulated placement, or secondary placement;

(E) the age of the child at the time of the placement disruption, adoption dissolution, unregulated placement, or secondary placement;

(F) the reason, if known, for the placement disruption, adoption dissolution, unregulated placement, or secondary placement; and

(G) if a licensed child welfare agency or any approved out of State placing entity participated in the initial placement, and, if applicable, the name of the agency or approved out of State placing entity.

(Source: P.A. 99-49, eff. 7-15-15; 100-159, eff. 8-18-17.)