Research

MINUTES OF THE MEETING OF THE SENATE COMMITTEE ON JUDICIARY

SIXTY-FIRST SESSION NEVADA STATE LEGISLATURE March 17, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:00 a.m., Tuesday, March 17, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

SENATE BILL NO. 372--Revises statutes relating to adoption of minor children.

Senator Clifford E. McCorkle stated S. B. No. 372 was originally conceived because of several problems that people who have had to deal with adoptions and the independent adoption process have been frustrated with. He said the problems have been summarized in five separate areas.

Senator McCorkle said there has been difficulty in allowing a parent or a friend to aid in the placement of a child. It has been discovered that the law would currently allow limited types of aid, but the purpose of S. B. No. 372 principally is to clarify a lot of public misunderstanding. He pointed out that the bill is substantially different from what the original bill draft included. The title is inaccurate now. The bill is the result of a substantial amount of negotiation with the Welfare Division. They are not trying to change legislation but are attempting to clarify it.

Senator McCorkle stated the second general emphasis is that they are attempting to encourage more independent adoptions, which were effectively stifled by the lack of understanding.

The third area is that they were attempting to have a child placed as close to birth as possible with adoptive parents. They felt there were some inhibitors to those attempts. They are attempting to speed up termination of parental rights, which gets into a combination of other bills. They are also attempting to allow an attorney to play a limited role in dealing with the adoption process, whereas now they are totally prohibited. Again, they are not necessarily prohibited by law but according to their interpretation of the law, they are prohibited.

Senator McCorkle stated there are six major sections in S. B. No. 372. On page 2, lines 2 through 6, new language has been added.

Chairman Close asked why the termination would not take place before the petition for adoption. If they are filed concurrently, it may take some time to have the termination completed. There would be an adoption pending that may never be completed if there was not a termination.

Senator McCorkle replied that at the latest, they should be filed concurrently so there is not someone going to court seeking adoption and then find the adoption cannot be completed.

Chairman Close felt an adoption should not even be filed unless the rights of the father or mother have been terminated.

Senator McCorkle stated that is not necessarily true. They are trying to have the child adopted as quickly as possible. If the termination of rights is filed first and then the adoption process, there is a delay.

Chairman Close stated if the adoption is filed when there has been no termination, the same delay will occur. Senator McCorkle explained that presently, if there is no termination, the child is placed in a foster home. One of the changes they are suggesting by regulation, and it has been agreed to by Welfare, is that they are trying to avoid the break in a child's home life where they are put into a foster home while termination is going on and then shifted to adoptive parents. Under some circumstances, Welfare has agreed to allow a child to be placed in the home of prospective adoptive parents in a foster care status that would then be converted to full adoptive status when the termination is completed.

Senator Ashworth stated that on that point, there is a six-month requirement that the child be in the home so what this basically does is start that period to run. If there is no termination, the adoption would be vitiated anyway. If they do get the termination, they would be able to speed up the time period because the two would run concurrently.

Senator McCorkle stated the ideal circumstances would be on the day a child is born, it would be placed in a home permanently with adoptive parents.

The second portion to be amended is lines 13 through 16, in which the major change is in the word "recommend." Language following refers to "recommend" on lines 34 through 39. They are changing the language which presently prevents accepting placement of, placement, aiding, abetting, counseling and so forth. All of those words are interpreted by the public generally as being prohibited, which effectively keeps anyone from doing anything, even if it is in the form of a recommendation. They feel, and the Welfare feels that recommendations are okay but actual physical placement of a child is prohibited and should be prohibited.

Senator Raggio asked how that would tie in with the existing language, Section 127.280, which is in the bill on page 2, line 48. He stated that language is already in the law referring to a person recommending placement. Senator Raggio asked whether the new language would change the intent of that line.

Senator McCorkle stated that it would not. Ms. Gloria Hanley of the Welfare Department stated the only intent there is to clarify what recommend means. That has been one of the questions that has not been clear.

Senator Don Ashworth asked whether this all revolves around a principal or a theory that has been present for a long time with regard to adoptions, that the parent that is giving the child up for adoption should not know specifically who is adopting that child.

Senator McCorkle stated they wanted to give the parent the freedom to do that. Senator Don Ashworth asked if the theory has not been that the whereabouts and the identity of who has adopted the child should not be known by the natural parents.

Senator McCorkle stated he did not feel that was the basis for the restrictive language in the bill. The restrictive language

is based upon the black market problem, not trying to conceal identities from parents. He stated it is a controversal subject. Some people want to learn the identity and some do not. There is no consistency of thought that the disclosure should be prohibited.

Senator McCorkle repeated that the purpose in changing the recommendation definition is that the present law is interpreted by most people to mean that a mother is entirely by herself in trying to find an adoptive couple. She can receive no help from anybody. That may not actually be the interpretation of the law by courts but that is the public's perception in allowing recommendations as defined in the statute.

Senator Raggio asked why the natural mother would be without help when there are child placement agencies. Senator McCorkle replied she is without help if she wants to personally find out the identity of the adoptive parents, if that is her choice. Right now, she does not have that choice.

Senator Raggio asked whether that should be the situation and if there was no uniformity of thought to their knowledge. Senator McCorkle stated that was correct.

Senator McCorkle stated the fourth section of the bill is on page 4, lines 24 through 26. The language that was causing some confusion and that is being deleted in the amendment is that "any person who places, accepts placement of, or aids, abets or counsels the placement of any child in violation of the placement provisions of this section is guilty of a misdemeanor." They are trying to change that since the language is just too broad.

The changes on lines 33 through 39 allow limited activity by an attorney. The attorney now may recommend a placement of a child, again going back to recommend the placement of a child for adoption pursuant to the provisions of the chapter, facilitate negotiations between prospective adoptive parents and a parent or guardian desiring to place a child for adoption, perform legal services in adoption proceedings, and receive compensation for legal services but not for recommending the placement of a child for adoption. Senator McCorkle stated they are trying to prohibit, as much as they possibly can, the black market tendency. They feel that the new language will keep it sufficiently restricted.

Chairman Close stated when he first came to the legislature, the black market sale of babies was in full force. He had the research division try to go back to find the minutes of those

meetings but the minutes were not too helpful. The research division does have in its possession articles starting as far back as 1961. One of the articles indicated the worst violators of the black market situation at that time were the attorneys. Editorials later stated how pleased they were that attorneys were no longer involved in the adoption business because it resulted in unsatisfactory placement of children, the sale of children and other problems. Nevada had a serious problem at that time. Chairman Close stated he could not understand why people would want to go back to what used to be where attorneys get involved in adoption proceedings. He felt it would only be a matter of time before the same situation arises which Nevada was involved in 20 years ago.

Senator McCorkle stated S. B. No. 372 as originally drafted would have opened the door much more than what it reads now. That was the reason Welfare was opposing them originally.

Chairman Close stated he felt the language on page 4 would open it up again.

Senator McCorkle stated that even without the language, an attorney can violate the law and black marketing can be occurring today against the law. What the amendment does is allow people who are attempting to satisfy the law, people who felt they could not participate in the independent adoption process to do it now. The crooks are not going to be encouraged or discouraged by the language.

Chairman Close stated he did not agree because he knows what happened when the new language came in and how it stopped the black marketing of children. He did not agree that the bill did not have the affect that was desired. He stated there is still black marketing going on but Nevada is no longer the leader in black market activities as it was at one time.

Senator Raggio stated he wanted to make it clear to everyone that he is the father of a natural child and also the father of two adoptive children, therefore, has a keen interest in S. B. No. 372. He also recalled the problems of black market babies, especially in the state of Nevada which was singled out as the jurisdiction which by inaction and loose laws encouraged the black market activity in adoptions. The legal profession was chastized severely for allowing this to occur. The state Bar conducted an extensive investigation, trying to change the situation, which resulted in the present law. Regardless of what has been said, the language on page 4, line 35, in Senator Raggio's opinion, leaves the door wide open for

the sale of babies from a natural parent to adoptive parents. It would allow negotiations and attorneys would be allowed to participate and facilitate the direct dealings between the natural parents and the adoptive parents. Senator Raggio stated that is really where the problem occurs because in the past, they were selling babies for $5,000 or $10,000. Secondly, on line 38 of page 4 where the attorney may receive compensation for his legal services but not for recommending the placement of a child for adoption, who is to say what the fee of $5,000 is for. It could be for handling the adoption or for recommending the placement.

Senator McCorkle stated the fee must be disclosed to the court. Senator Raggio stated even if it were disclosed, the court has nothing to do with determining the fees in any matter except perhaps in a probate matter. He stated the bill as drafted goes right back to opening the door for the same type of practice that existed in 1961. There is nothing in S. B. No. 372 which prevents a mother from selling her child to a prospective parent, notwithstanding the provisions in the existing law. That is the reason that the direct participation between the natural parent and the prospective parents is discouraged and prohibited.

Senator Ford stated there is a proposed amendment in the packet that tightens that up.

Senator Wagner asked what the opportunity was for this type of thing to occur in other states. She asked if the proposed language in S. B. No. 372 is based on laws from other states that have worked well in the past.

Senator McCorkle stated the law is much freer in California, and they do not have a rampant black market problem.

Senator McCorkle agreed with Senator Ford that the amendment would tighten the law up some but it will not go as far as has been suggested. His suggestion would be to eliminate number 2 on line 35 and insert such strong disclosure language that an attorney simply could not charge a fee beyond just the legal costs.

Senator Raggio asked what about doctors and their fees. Senator McCorkle stated in the language where any person can recommend, and they want doctors to be able to recommend, they cannot place the baby because there is very restrictive language. However, it does allow a mother to be given the name of someone and to

personally make the contact. Right now the mother is by herself and if she does not want to work through an independent adoption agency or through Welfare, she has no alternative.

Senator Raggio stated one of the dangers after a child has been placed is the fact that the natural mother may change her mind about the placement. He asked how that issue is addressed in S. B. No. 372.

Senator Hernstadt asked whether the modern birth control methods and the Supreme Court decision allowing abortions during the first two trimesters of gestation is causing a shortage more today than in the past of babies available for adoption. He asked whether the black market price would not be greater today if a black market situation developed. He stated his concern is that the one element in the placement is the finder's fee or putting the two people together, no matter what it is called.

Senator McCorkle stated independant adoptions are by definition approved in many states in this country and there are no abuses in many of the states. The present law has gone overboard and completely eliminated that segment of the adoption process. All they are trying to do is pull it back a little bit so that there is some discretion by the mother. Teen-age mothers are not going to go around the neighborhood knocking on doors. Some of them do not like the impersonal attitude within the Welfare Division and they do not like the red tape. They want to know the parents who will be adopting their child.

Senator Hernstadt stated the whole point of a bureaucracy is not to offend the mother but to make sure that a neurotic potential adoptive couple does not give the child a bad home.

Senator McCorkle stated once a mother has independently chosen an adoptive couple, they must go through the whole qualification process that is required today. That is not being changed. He stated he met with one mother who has had a child with cerebral palsy for approximately seven months. Part of the problem was the delay in termination of parental rights that she was having to undergo. She was a foster parent and the bond between herself and the child was growing very strong. She was very critical of the delay in placing a child. The group supportive of the legislation has discussed a means of speeding up the termination process. They were talking about the juvenile courts taking over termination hearings. They came up with no recommendation until the bill that has been passed which talks about a court master, which is S. B. No. 252. It made sense that the same judicial function be given the right to hear termination of parental rights cases, which could be tied in with S. B. No. 252.

Senator McCorkle stated the typical delay today because of court hearings is four months. That is a long time for a baby to not have an adoptive parent.

Mrs. Kris Martin stated she is an adoptive parent and has two sons who were both adopted independently. She represents herself and the concerned individuals she has met during the past year during her efforts to clarify the existing Nevada laws on adoption. S. B. No. 372 is a brand new bill. It is the efforts of two months' negotiations with the Welfare Department. Their representatives are in complete agreement with the proposals in the bill. It is a noncontroversial bill and it does not attempt to change any portion of the existing Nevada law. They are merely requesting that the law be clarified to eliminate the confusion that Nevadans have encountered over the past 15 years when they have read the existing law. She stated she believes very strongly that a law that people are expected to adhere to be clear enough that no person would misinterpret the law in any way. She has testimony to show what the intent of the existing law was and to show the committee they are not deviating from that intent. There are areas of consideration in the bill. She stated she would address two of them and have Welfare address the third issue. She said she would explain what the independent adoption procedure is so it can be fully understood. She referred to a diagram, which is attached hereto as Exhibit C, which follows the adoption procedure as it stands in the existing statute. As can be noted, no consent is signed prior to the birth of the child and the mother has the option of changing her mind after the birth of the child if she so desires. This provision is in the current statute, as is everything on the chart, except for the conditions for making recommendations for placement.

Mrs. Martin stated all S. B. No. 372 attempts to do is to plug in the missing component in that portion of the law that has never been clearly defined or clearly understood. Also in the packet provided by Mrs. Martin is a xeroxed copy of the existing law that is misunderstood and the way it is misunderstood. See Exhibit D attached hereto. What they have done is define the word "recommend" which is to offer or suggest with favor. It is merely a verbal recommendation and nothing more. Nowhere in the existing statutes is there a definition for "recommend." It talks about the person making the recommendation but it does not describe who that person is, what recommend means, and it does not define what the limitations are on recommending.

Mrs. Martin stated they have introduced language in the bill to clarify that any person can make recommendations.

With regard to the comments concerning black marketing, Mrs. Martin stated that in terms of having S. B. No. 372 increase black marketing in the state of Nevada, they feel it will have a tendency to decrease the black marketing, the reason being that when a mother is making her own choices for her child and she is choosing the couple she wants to adopt her baby, it is her ball game. She is the one that is calling the shots and there is no need for a black marketeer to enter in. Mrs. Martin felt it was actually when people are not allowed to seek or they are not aware they may seek recommendations that this will lead them down other avenues in which to obtain a child. Black marketeers thrive on laws that are misunderstood or misinterpreted. When she said there was no opposition to the bill, she felt perhaps a black marketeer would walk in to say he objected to it because by clarifying the flaw, it is going to cause individuals to seek out and deal only with reputable professionals in the community. People are going to seek recommendations from people they know, people they respect like their obstetrician or gynecologist who are usually the first contact for a young girl who is pregnant and desires not to have an abortion but to relinguish her child for adoption. If she chooses to go the route of an agency, if she chooses to go through Welfare that is fine and there is nothing wrong with that. If she chooses to go through a religious agency, that is fine. Independent adoption is merely a well-regulated alternative to the adoption process and it is spelled out very well in the existing statutes except for the ideas of who may recommend and the definition of recommend.

Regarding the section on the attorneys, Mrs. Martin stated she personally did not feel it is going to open up the black marketing. She felt the bill clearly defines what an attorney can do and the amendment was intended to tell what an attorney could not do. See Exhibit E attached hereto. She stated the bill drafters did not put it in the right prospective in the bill as they had requested. Welfare and Mrs. Martin agreed it should be placed in the section 127.285 which deals with attorneys. The amendment states an attorney may not place a child, which they should not be allowed to do, he may not arrange the placement of a child and he cannot advertise that he will place children.

Mrs. Martin stated she is sympathetic to the committee's concern with regard to where the attorney fits into the adoption. With regard to an attorney facilitating negotiations between the parties, she felt very strongly that a person has the constitutional right to seek legal counsel. If they seek legal counsel and the attorney interprets the law that he cannot help them, there is nothing he can do to help them out, it is barring a person's

ability to seek counseling and he is, in fact, interpreting the law incorrectly. She felt by introducing the idea of who can recommend and defining what recommend is it is merely clarifying the existing statutes. The existing statutes with regard to independent adoptions have been on the books for the past 15 years and it is about time the legislators make some determination to clear up the law so people can understand it, in her opinion.

Senator Raggio stated that in the 15 year period, there has been no indication of a problem in black market babies. Mrs. Martin stated S. B. No. 372 would decrease the black market. He repeated there was a notorious period in the history of Nevada where there was a black market problem and it was not only lawyers. There were also physicians and third parties involved. He asked Mrs. Martin if there was any basis for her statement that there would be a decrease in black market operations.

Mrs. Martin stated she had not been able to ascertain any specific cases. She did go to the library and look up the articles dated 1961. She stated she was trying to point out the fact that by laws that are misunderstood, this is what drives people down the avenues where black marketeers are waiting because people are not aware, in fact, that they are allowed to seek recommendations. If she could seek a recommendation from her obstetrician with regard to placement, she would do that as opposed to seeking someone else.

Senator Raggio stated there would be lawyers and obstetricians who would be very responsible in this area but the unfortunate part is that laws derived from the acts of irresponsible people are those that would violate a law. He stated that is what compelled the legislation approximately 15 years ago. He said he wondered if those people in support of S. B. No. 372 and independent placement really are aware of the studies, intensive investigation and the thoroughness with which the law was examined at that time. The same arguments were made but the result was bad, and the present law came into existence. He questioned whether the people who support the bill on its face are really aware of all the history involved.

Mrs. Martin stated she was not aware of it and can safely say that she does not believe other members that are present were aware of it. However, the members present can testify that there has been misinterpretation of the law. There are individuals who have gone to their attorneys and asked for clarification of the law. Attorneys have told them they would have to go Welfare and that was their only option.

Senator Raggio asked whether they could not go to other licensed child placement agency.

Mrs. Martin stated they could but it is unfair because according to Welfare, people are not aware that recommendations can be made by other persons, and the law is misinforming the public. That is what she is upset about and that is why she thinks the law needs to clarify what "recommend" means and the fact that people can receive recommendations.

Senator Raggio asked whether an attorney, in her interpretation, is prohibited from independently calling the Welfare Department, the county or state or Catholic Welfare and without any knowledge of a prospective birth saying he has a couple who is interested in adopting a child.

Mrs. Martin agreed the attorney can call to say he has a couple interested in adopting a child.

Senator Raggio felt an attorney could also call an agency to say he had a mother who is planning to give birth and needs to talk to someone.

Mrs. Martin agreed that would be perfectly acceptable but she asked why the law should not tell him exactly what he can do. The law may intend to do that but it does not clarify it. When the law is read and it says the person making the recommendation gives written notice to Welfare, who is the person? Who is making the recommendation?

Senator Raggio stated the reason for the law was to prevent the private placement by individuals of the children for many reasons. They are to avoid the black market situation and the other concern was where a mother executed a consent and knows where the child is, then decides she wants to cause a problem. He felt this should be a concern to adoptive parents. If the mother knows where the child is, she can cause a great deal of harassment and trouble for the prospective parents and that is the problem.

Mrs. Martin stated when a mother gives a consent for an adoption, as Welfare will attest to, it is in the statutes that this consent is irrevocable. Secondarily, she stated she is an adoptive parent and went through independent placement. She felt if an adoptive mother chooses to make her own placement, she is fulfilling a desire of hers to plan the child's future. She wants to do this and it may make the decision of adoption easier for her. Placing the baby into anonymity may cause her in future years to wonder who is taking care of her child, what philosophies are they using

to raise the child and wondering what kind of people adopted her child. Those are questions that arise when a child is adopted into anonymity. When the mother makes the decision herself and sees the kind of people who are going to be adopting the child and feels comfortable with that decision since they can provide the kind of environment the mother cannot give to the child at that point in time under the circumstances, it makes the decision easier. Through concern for the child, she would stay out of that child's life, especially where the mother had made the decision and no one else has made it for her concerning placement.

Senator Raggio stated the problem of the mother interfering can occur and probably more often than not in personal placement would be the case. Placement can also be made selfishly with the thought that the mother can have some contact with the child. Senator Raggio stated there are a number of cases where a mother would harass the parents after adoption, even though the consent was irrevocable. That was one of the considerations that went into the law.

Mrs. Martin stated Dr. Stewart would testify and he was instrumental in 1961 and was for the existing law the way the law reads with regard to independent placement. The balance of the material that was provided to the committee by Mrs. Martin is attached hereto as Exhibit F.

Senator Hernstadt stated the reason the term "termination of parental rights" was used in the law was to mean that the new adoptive parents have the child and raise it as though it is their own. Apparently, in the past few years there has been a trend developing where adoptive kids when they reach the age of majority want to find out who their real parents are. It opens up all kinds of problems for everyone. He felt the theory of adoption is that the child goes to a new set of parents who raise it as their own and it is as though the natural parents never existed.

Mrs. Martin stated the trend is to let children know they are adopted and feeling comfortable with it. The new laws that allow parents to see children and children to see parents are starting to weave a new string.

Senator Hernstadt asked what Mrs. Martin felt about breaking what was a bridge of anonymity and total separation.

Mrs. Martin stated that still exists for people who desire it. That would be through the agency adoptions, if that is the road

people choose to seek with regard to placement. There are people who want to make their own decisions and they should be allowed to do so. She felt the government should not be able to step in and say there is only one way to place a child. There is the option of having an abortion and if a mother does not want an abortion, she can keep and raise a child no matter how difficult it is, she can go to an agency and release the child through the agency or she should be able to make her own placement if she so desires. People should be allowed to make that choice if they decide to do so. She stated she had no fear that the natural mothers of her children will come back but if they do, she will handle that situation when it comes.

Senator Close asked whether Mrs. Martin knew who the natural mothers were. She stated she knows who they are and they know who she is. If her children want to know the names of their natural mothers later in life, that is fine. She does not put any strings on her children. She stated she feels very comfortable being an adoptive parent. In reply to Senator Keith Ashworth's question as to whether she would assist her children in knowing more about their natural mothers, she stated that she would.

Senator Wagner stated she wanted to get a better background in terms of Mrs. Martin's own involvement with her independent adoption. She asked where it occurred and what kind of things transpired. She asked whether there were questions asked in terms of what kind of parents they would be for the child.

Mrs. Martin stated she is very open and honest about adoption and she does not mind sharing any of it. She stated they met and talked with the young girl who gave birth to their oldest son. They told her about themselves, the kind of philosophies they had about life, what their extracurricular activities were, that they liked camping, had a dog, the professions they were in and they gave her a lot of background information to make her feel comfortable with her decision. Prior to meeting them, the girl was given a lot of background information about them and they just reaffirmed what she had been told. She made the statement when she saw the baby that she knew she was making the right decision and that at her age of 17 she could not care for the child. She wanted to go to further her career in the area of nursing and the fact Mrs. Martin was a nurse was special to her. After the girl met and talked to them, she said she thought they were very nice people, she felt comfortable with them and said she knew she had made the right decision. That also reinforced their feelings that she had made a decision, it was her decision and Mrs. Martin did not feel she would be

coming back looking for her child. If she does, she will be a total stranger to the child and they will deal with it when the time comes.

Chairman Close asked how she met the mother. Mrs. Martin said it was an independent placement and the recommendation was made to the mother by an attorney, she gathered the information about them, met them and made the ultimate decision that they were fine.

Senator Keith Ashworth asked whether it was in the state of Nevada. Mrs. Martin replied it was in the state of California.

Senator Ford asked whether they then had to be investigated in the state of California by an agency. Mrs. Martin said they were investigated by Welfare and the consent was obtained from the mother after the birth of the child. It was explained to her that the consent was irrevocable. Welfare came to do a home study on them, three home visits, and she did not object to that. She stated she feels the Welfare plays a very important role in this area. It is up to them to protect the rights of the child. They do so by their investigation.

Mrs. Martin stated what surprises her is that she did not feel S. B. No. 372 was going to be such a big deal. She felt it was noncontroversial. She thought they could convince the committee that all they were doing was trying to clarify the law. Everything they presented was in the existing statute. The entire procedure is listed therein except for the idea of recommending and there has been some misinterpretation about who can make recommendations. She felt the law should be clarified so that the citizens, the physicians, the attorneys and people who are looking into the law can read and know what it says. It should not mean anything but what it says. That is all they are asking for.

Senator Wagner asked whether she could review some of the information from research regarding the black market situation that existed previously.

Chairman Close stated the Research Department has a scrapbook that deals with all kinds of situations on every bill the legislature has passed.

Senator Raggio stated that Bryn Armstrong was very much involved in the news collection on the subject, and there was a study by the State Board of Nevada which detailed all of the facts.

Mrs. Martin commented that she felt education of the public would be the basic way to let people know what the existing statutes read so they will not be violated. She stated she was more than willing to devote her energies towards educating the public in the way of public service announcements, talking with groups or whatever is necessary.

Dr. William Ramos, a practicing obstetrician in Reno, stated he finds that an obstetrician is generally the first person the pregnant woman contacts if she wants to put her baby up for adoption. He feels it is the obstetrician's responsibility to counsel the patient as to the options and alternative which are open to her of keeping the child, abortion, agency placement or independent adoption. He stated it has been his experience that when the alternatives are presented to the patient in a clear and unbiased way, a substantial percentage of them do prefer the independent adoption procedure because it does allow them more control over what is becoming of the child. They have very strong maternal feelings about the children they are carrying and they do want to be sure that the children are going to be well cared for. In this day and age, the young people have a distrust of government and have a distrust of agencies. They prefer the personal contact of one physician, one attorney and meeting the prospective adoptive parents. Their other major concern is relating to their medical fees such as their hospital fees, their physicians fees and the care of the child. They are concerned about who is going to pay for those things. It is carefully explained to the mothers that regardless of which alternative they choose, independent or agency adoption, the fees are being taken care of. The agency adoptions tend to pay the fees after completion of all medical care. The independent adoptions are usually paid as they go along. The major concern Dr. Ramos has as a physician is if the patient has opted for an independent adoption, how then does he manage to allow her to meet prospective adoptive parents in order to make her decision as to where she wants her child to go. The way the law currently reads in the state of Nevada, this is somewhat vague and ambiguous as to what individuals are allowed to do currently. In fact, he had received from the Assistant Attorney General in Reno, Welfare Division, a fairly threatening letter containing a copy of the current law and advising him that it was illegal to assist in placement of adoptions. The letter was so plainly written as to cause him to contact his attorneys and the Attorney General directly. What he found was that even the Attorney General and the attorneys were unclear as to what the current interpretation or meaning is. After considerable discussion with the Attorney General and his attorneys, it became clear and apparent that what he had been doing was, in fact, legal and ethical. See Exhibit G attached hereto.

Chairman Close asked Dr. Ramos what he had been doing that was being questioned.

Dr. Ramos replied he had been introducing the parents to an attorney who handles a number of adoptions. The attorney would then present the pregnant woman with a number of couples on paper who were interested in adopting a child. She would then decide whether or not she wanted to meet them, talk to them on the phone or talk to them in person. The attorney is in California, and he is operating under California law. In Nevada, the actual introducing of pregnant women with prospective adoptive parents is currently fairly vague as to whether or not that is illegal. How it can be legally performed is also vague.

Chairman Close asked whether the attorney in California contacted him to advise him he was available to handle adoptions.

Dr. Ramos replied that the attorney is a relative of his wife, is the parent of two adopted children, is a man known to be extremely ethical and extremely dedicated to independent adoptions. His usual fee, depending upon how difficult and how much work is involved, is $500 for a private adoption. He is losing money on the process. Dr. Ramos stated he uses the California attorney because he can trust him to be ethical and concerned for the welfare of his patients, as well as his own clients. The concern of a pregnant woman who wants to place her child for adoption is how can she meet someone she will approve of to care for her child. The way the current law is written, it is somewhat threatening and substantially vague. As a result of this, a significant number of babies are going to California for adoption, and there are Nevada parents who have adopted their children in California. Dr. Ramos stated he knows of at least a dozen babies that have been adopted in California through independent adoption. That is depriving the Nevada infertile couples of an opportunity to adopt these children unless they go to California. He felt this is discriminating against the Nevada families who want to adopt children because their only option is to go to an agency. Since large numbers of babies are going out of state, legally, ethically, they are losing out on these babies. Dr. Ramos stated he would like to see them stay in the state of Nevada. He did not feel it should be his position as a physician to address the subject of black marketing but felt it should be left up to the bill drafters and the legislature to see that this does not occur and that black marketing continues to be strictly illegal. There still should be some avenue for independent adoption for the mothers to have the chance to meet and choose and have more of a personal adoption process than is currently allowed through the agencies.

Dr. Ramos repeated that the legislators and attorneys should find enough safeguards in the law to strictly and enforceably prohibit any profiteering in the process. He felt it should be perfectly reasonable for the attorney to receive a fair compensation for his services and for the physician to receive fair compensation for his services, for the hospital to be paid for their involvement but only to the current levels of their normal charges and fees for the services. He did not feel it would be appropriate for the natural mother to make a profit, and these issues have to be carefully dealt with in the law. However, he would like to see the law relaxed somewhat to allow the introduction of couples face to face with the pregnant women, or it could be by telephone. It could be open, or anonymous at the option of the parties involved so that Nevada does not continue to lose babies to California. The attorneys in California are very happy with the current Nevada law because it is providing them with an additional source of babies that they are ethically placing in California.

Chairman Close asked the Welfare Department whether agency placements precluded from allowing the natural mother to meet with the adoptive parents.

Ms. Gloria Handley of the State Welfare Agency, stated it is their policy that they do not meet and both parties remain anonymous.

Chairman Close asked if the mother would be allowed to meet the adoptive parents if she so desired. Ms. Handley stated there is nothing in the law which would prohibit it but at this time, it is policy and it is an area which should be reviewed.

Senator Hernstadt asked what happens when a mother who has given her child up for adoption later marries or educates herself but then has the child locate her in later years asking why she gave him up for adoption.

Dr. Ramos said the subject of the child wanting to meet the natural parent or the natural parent wanting to see the child later on is a subject of concern to every adoption, whether it be an agency adoption, a blind adoption or an independent adoption. Even in the event of blind adoptions, they often fail and the child finds the natural parent or the natural parent finds the child. A recent case was a set of triplets in New York. He felt the natural parent should have rights to remain anonymous also, if she so desires. There really is no way of permanently closing the door, either through the agencies or through an independent adoption procedure. Dr. Ramos stated most of his patients currently are not old enough to have reached the point

of potentially changing their minds, but many of the parents feel much more satisfied knowing where the child is. One of his patients was a medical student and her baby was adopted by a physician, which made her feel very good knowing the child would receive educational benefits and financial opportunities that would not otherwise be available if it had been adopted by someone of a lesser income.

Senator Hernstadt asked whether the concept of anonymity is right or wrong. Dr. Ramos stated it is neither. For some people it is right and for some people it is wrong. Senator Hernstadt asked who is to make that determination. Dr. Ramos stated he felt it would be best left to the individuals. One patient he has now has requested that she not know who the adopting parents are and she does not want the child to remain in the state of Nevada. People should have rights to make these decisions and the agencies do not give them these opportunities.

Senator Raggio asked whether it is the policy of the Welfare Department as the placing agency to tell the adoptive parents something about the natural mother and vice versa. Does the natural mother who gives up her child for adoption receive a profile of the adoptive parents? Ms. Handley stated she is given the information if she wants it.

Dr. Ramos stated another important point is that the parents who are adopting the child should, regardless of how the adoption is handled, be counseled as to any significant family history from the natural parent. Many times patients who have been adopted do not have any information on their family history. The individual has a right to the information and it is important medical information that should travel with that person. At the present time, that is not being carried across even though all current forms of adoption do allow that information to be passed on. It is not being done.

Dr. R. L. Stewart stated he was one of the two doctors, along with two lawyers, two ministers and two members of the Senate that were more or less instrumental in getting the present law into existence. As to how serious the situation was, he said he had dozens of patients that would walk through a casino, sit down at a bar, and in several occasions just shopping in a grocery store, who were tapped on the shoulder and offered anywhere from $2,000 to $8,000 at that time for their unborn baby whenever it was born. It was a pretty serious situation in the state of Nevada and something had to be done to stop it. The committee tried to work out a law that would be acceptable but still keep things under control and eliminate the black market.

He felt one passage in the present law has been misinterpreted. At the time it was written, he objected to it but the lawyers who were there said it pertained only to the placement and did not pertain to recommendation. The section says that agents, servants, physicians, attorneys, parents and guardians as well as other persons are not allowed to participate in recommending or placing a child.

Chairman Close asked Dr. Stewart whether he was involved in drafting the original amendment. Dr. Stewart stated they worked many evenings and talked about all the possibilities. He stated in NRS 127.240 was where they ran into trouble. The present law says that no person other than the parent or guardian of the child may place, arrange the placement of or assist in placing or arranging the placement of any child for adoption or permanent free care without securing and having in full force a licence to operate a child placing agency. This subsection applies to agents, servants, physicians, attorneys, parents and guardians as well as other persons.

Dr. Stewart stated the purpose of the law at the time was that it pertained to placement only. It did not have anything to do with recommendations. What they tried to do was stop the black market, therefore, they put all the placements in the hands of the state Welfare Department. This even included those that were going through Catholic Welfare and LDS Welfare. The adoptions still had to be approved by the state Welfare. This was done automatically because they knew that the agency did an adequate job of investigating. However, realizing that a Welfare Agency is not necessarily infallible either, the committee felt there had to be a way of bypassing them in case they got out of line. One of the things that came up at the time was that one couple had been bypassed by the state Welfare for a long period of time repeatedly because one of the people involved in the family had a divorce during a previous marriage because they had gotten married as teenagers. The couple had been married for six or eight years and there were no problems. As a result of an independent adoption, they were able to get a baby and the Welfare Agency had to investigate them and follow them. Within two years, the Welfare Agency decided they were good enough parents that they offered them another child. The Welfare Agency had been bypassing good parents simply because of a small failure in their interpretation of things. The committee felt this had to be left open and that was why they arranged so that anyone could recommend an adoption. This meant that it could be recommended but the state Welfare then had to investigate the people, make sure things were carefully under control and that the people who were getting the baby were adequate. Realizing that the state

Welfare Agency had to be able to stop an adoption if it was not a good one, they felt the agency had the right to say whether this was allowed or not. The committee still felt the Welfare Agency could get out of line if they were not curbed a little bit, so they arranged that if they turned down one of the recommended adoptions it would have to be presented to a District Judge. There the Welfare could present their arguments against the adoption, the prospective adoptive parents or the people recommending the adoption could present their side of the story and the judge would make the final decision. Those were the purposes when the committee first worked out the law. Dr. Stewart felt the one passage has kind of been misinterpreted by doctors, lawyers and everyone to the point that many of the doctors and lawyers are afraid to counsel their patients. There is no way that he as a doctor can have a patient come in to see him saying they want to give their baby up for adoption without counseling those people. He has to let them know of all the possibilities. A lawyer who has a client come in to ask about the possibilities has to counsel. If the doctor or lawyer know a good couple, there should be no reason why it should not be recommended for them.

Dr. Stewart felt adoption still has to be kept tightly under the control of the state Welfare so they can investigate very thoroughly but there still should be a curb against the state Welfare if they get out of line too and that was what was aimed at when the law was designed.

Senator Raggio stated NRS 280 does provide for the placement if recommended by a person other than a licensed child caring agency. The prescription is the child may not be placed in a home within the 60-day period in which an investigation must take place. Senator Raggio asked Dr. Stewart the reason that provision was put in the law at that time.

Dr. Stewart stated that passage pertains only to the placement. The Welfare Agency is the only organization that can place a child, however, anyone should be allowed to recommend. The purpose of the 60-day situation was to limit the time it took the Welfare Department to investigate the couples so the baby would not be placed in the hands of people who were not proper adopting parents.

Senator Raggio stated proposed S. B. No. 372 would relax the time limit and would allow immediate placement of the child in a home. Dr. Stewart stated he did not think it means that. The purpose of that situation and the reason it states the

investigation had to be done in 60 days was in case of a mother who wanted to give her child up for adoption when it was born. She could make the arrangements three months ahead of time, the investigation would be completed before birth and immediately after birth, the baby could go right to the adoptive parents because the investigation was completed and everything was in order.

Ms. Gloria Handley, representing the Welfare Division, stated she did not have a great deal to add to what had already been said, other than they have been working with Senator McCorkle and Kris Martin and S. B. 372 is the proposal which they did come up with. In reply to Senator Wagner's previous question regarding how the laws in Nevada compare with other laws in the country, she stated the Nevada law may be a little unique and the uniqueness is because of everything that happened back in the early 1960s with regard to the black market problem. The provision about the notification to the Welfare Division 60 days prior to the placement investigation by the Welfare Division is a little different than what is required by other states. Some states have gone so far as to completely outlaw any kind of an independent adoptive placement, such as Colorado. She stated there is a great variation in the adoption statutes across the country.

Senator Keith Ashworth asked whether, to Ms. Handley's knowledge, anyone wanting to adopt her baby out would have a difficult time in Nevada. Ms. Handley stated not to her knowledge, in fact, it is the other way around. She stated, however, it is difficult for a couple wanting to adopt a baby simply because there are so few babies available.

Senator Keith Ashworth asked whether anyone wishing to adopt a baby is restricted because of the law or because there are not enough babies available. Ms. Handley stated there are not enough babies available.

Senator Hernstadt asked whether it was a correct statement that mothers who wish to consult with or meet with the potential adoptive parents are giving them up to California, thereby causing Nevada to lose potentially adoptive babies because of the way the law is written.

Ms. Handley stated they do not have any statistics on the number of children going to California, but they do have children coming from other states to Nevada.

Senator Ford asked Ms. Handley if they have any problems with the amendments to S. B. 372. The proposal would be to leave in the

bill under 127 which is the adoption statute the options for an attorney and then to put in the statute under attorneys clear prohibitions as to what they cannot do. She asked whether there should be a penalty for violations.

Senator Wagner asked Ms. Handley to address some of the concerns to the committee in terms of how the Welfare Department perceives S. B. No. 372, since they are supporting it.

Ms. Handley stated since they feel S. B. No. 372 is just a clarification of current statutes, it should not have any affect in terms of the black market in babies, that it should not increase it because everything that S. B. No. 372 allows is currently allowed under the law. It does nothing more than explain what the current law is.

Senator Raggio asked whether her interpretation of the present law is that an attorney can facilitate negotiations between the adoptive parents and the natural parent.

Dr. Stewart stated there was a letter sent out by the Welfare Department in 1972 which literally stated the interpretation. See Exhibit H attached hereto.

Senator Raggio asked what is necessary to obtain a license as a child placement agency.

Ms. Mary Lee of the Welfare Department stated there are quite a few requirements to get a license as a child placement agency. There must be social work staff employed by the agency, the agency has to be financially sound so that it does not appear they are going to go out of business. There would have to be a certain amount of income and ways of generating revenue to keep the agency going.

Senator Raggio asked how many child placing agencies there are in the state of Nevada. Ms. Lee replied there are three.

Senator Raggio asked whether an attorney can get a license to operate a child placing agency. Ms. Lee answered that he could.

Mrs. Donalee Fitzgerald stated she is an adopting mother and they went through a private adoption in the state of Nevada, which is now finalized. They were recommended a baby that was going to be born in approximately four months. They talked to attorneys and everyone but their family attorney would not touch it and said he did not deal in adoptions. She then called

the lawyers referral service, and they provided the name of a lady who specialized in adoptions. She and her husband went to talk to her and the lady told them that private independent adoptions were illegal in the state of Nevada and that if they did not believe her to go talk to Welfare. She then made an appointment with a social worker at Welfare, talked to the lady and she said it was not illegal in the state of Nevada but there were certain things a couple had to go through as with a regular agency adoption. They went through the Welfare investigation, their home was approved and everything was done even though they did not have their name on the adoption list with Welfare. The one problem they had was finding a lawyer. After working with the committee, they now know the lawyers that know what is going on but before that, they were unable to do it the right way.

Dr. Ramos stated that with reference to the letter from the Welfare Department dated December 22, 1972, he has seen the letter and it is a friendly, to-the-point letter that starts out: "Dear Doctor:" He said he has another letter dated December 26, 1980 from the Attorney General, Richard Bryan, which is very similar in tone and it starts off by saying: "Gentlemen: The Nevada State Welfare Division has requested my assistance in alerting the members of the legal and medical profession of Nevada to certain statutory requirements in connection with adoptions." He felt it was a very hostile letter, but the other one he got was even more hostile and alludes to the provisions in the Nevada Revised Statutes pertaining to adoption and, specifically, that the subsection applies to agents, servants, physicians and attorneys and prohibits placement and assisting and arranging placement. The two letters are extremely different in tone and content, and they are talking about the same law. What they would like to do is clarify the law so that everyone knows what they are, in fact, allowed to do without allowing anyone to do anything that none of them would want them to do.

Mrs. Judy Goedert stated she is also an adoptive parent. She read from a letter written by James Stone, attorney at law, attached hereto as Exhibit I. She stated she is a Nevadan and proud to be one. Her husband was born and raised in this state, but they went to California to adopt their son.

Chairman Close thanked everyone for appearing and testifying on S. B. No. 372.

Senate Committee on Judiciary
March 17, 1981

SENATE BILL NO. 112--Ratifies technical corrections made to multiple amendments of sections of NRS.

Chairman Close stated the Assembly amended S. B. No. 112 by deleting section 2, line 8. The date of March 15, 1955 was not covered. The committee did not concur with the amendment.

SENATE BILL NO. 310--Revises procedures for release without bail.

Senator Wagner stated the amendment to S. B. No. 310 did not take into consideration the other section that was addressed when she testified. If the bill was processed, the two sections had to be compatible, 178.502, which is the part that deals with releasing on own recognizance. She stated she talked to Frank Daykin and he said if the bill was processed, there had to be some reference to section 178.498. See NRS 178.498 and 178.502 attached hereto as Exhibit J. In addition, having read the amendment, Senator Wagner stated she is concerned it makes it more difficult than NRS 178.502, paragraph 1, and that was not her intent when she introduced the bill. By putting in the ABA standards, the whole thrust of the ABA standards is being turned around. What they say is that there is a presumption of being released, and these are the conditions to be looked at to determine if an individual should not be released on his own recognizance. The amendments to S. B. No. 310 are adding another layer of conditions that are not currently in the law, conditions that must be guaranteed in order to be released. It changes the whole presumption question around.

Senator Raggio stated the reason the standards were added was because the bill was silent about standards.

Senator Wagner stated the ABA standards are based upon the fact that these are the conditions that would be used to prove that someone should not be released. The presumption is they will be unless one of the conditions occurs.

Chairman Close stated he would pull S. B. No. 310 off the desk and talk to Frank Daykin about the amendment

Senator Raggio stated he had some bills which the Trial Lawyers Association requested be drafted.

The following Bill Drafting Requests were presented and received for committee introduction:

Senate Committee on Judiciary
March 17, 1981

BDR 14-1308 (Raggio) (S.B. 435)

Expands duty of agencies of criminal justice to disclose records of criminal history to certain persons.

BDR 2-1309 (Raggio) (S.B. 436)

Provides variable rate of interest for judgments.

BDR 16-628 (District Attorney of Washoe County) (S.B. 437)

Broadens definitions or increases penalties for certain crimes and amends miscellaneous criminal laws.

Chairman Close asked for a motion to approve the minutes of March 3, 4, 6 and 9, 1981.

Senator Wagner moved to approve the minutes of March 3, March 4, March 6 and March 9, 1981.

Senator Don Ashworth seconded the motion.

The motion carried unanimously.

There being no further business, the meeting was adjourned at 10:55 a.m.

Respectfully submitted by:

Iris B. Parraguirre

Iris B. Parraguirre, Secretary

APPROVED BY:

Mel D. Close Jr.

Senator Melvin D. Close, Chairman

DATED: 3-24-81

EXHIBIT A

SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213

Day Tuesday, Date March 17, Time 9:00 a.m.

S. B. No. 372--Revises statutes relating to adoption of minor children.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: 3-17-81

EXHIBIT B

* PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
~~Al Dunlap~~	~~W. County D.A.~~	~~785-6259~~
Tricia Toth	13100 Virginia Foothills Dr self	852-2284
Kris Martin	Self 5025 Lakeridge Dr	825-9328
LESLIE K WEAVER	SELF 305 LORRAINE CT. RENO 89509	825-0796
LORI L. WEAVER	self 6200 Meadowood Circle #1143	826-0372
Lisa D. Weaver	self 6200 Meadowood Cir. #1143	826-0372
Kenneth F. Stiehler	SELF 4500 Rio Paso Rd. RENO NV 89502	825-2953
Lee Stiehler	self 4500 Rio Paso Rd Reno NV 89502	825-2953
William Adams M.D.	self 1100 Ryland St, Reno NV 89502	323-7060
DONALEE A. FITZGERALD	Self P.O. 727 Verdi Nev. 89439	345-0414
Judy Goedert	self 3711 La Tierra Terrace Reno 89502	826-1244
ROSE STIEHA	SELF 1312 W. WASHINGTON C.C.	882-5818
PAM KNOX	SELF 3620 LYON W CC	849-1314
Kathy Boyle	Self 4205 Garlan Lane, Reno	826-8613
Adele Campbell	self " " " "	826-8613
Mary Lee	State Welfare 251 Jeanell Dr C.C.	885 4771
Diane Hanley	State Welfare 251 Jeanell Dr. C.C.	885-4771
Susan Cook	self 7225 Wallsand Dr. Reno	853 1945
Margaret Barlie	1647 Lander	323-5787
John Barriage	Intern - Senator Raggio	
Dennis Bekourt	Intern - Sen. Wilson	
Charles Darrah	1950 Buckeye Way Sparks NV	331-1950
R.L. Stewart	175 W. 6th St Reno, Nev	323-5151
Roger Detwiler	State Bar of Nevada 300 E. 1st St Reno	329-4100
M. Kaem	Intern	323-0824

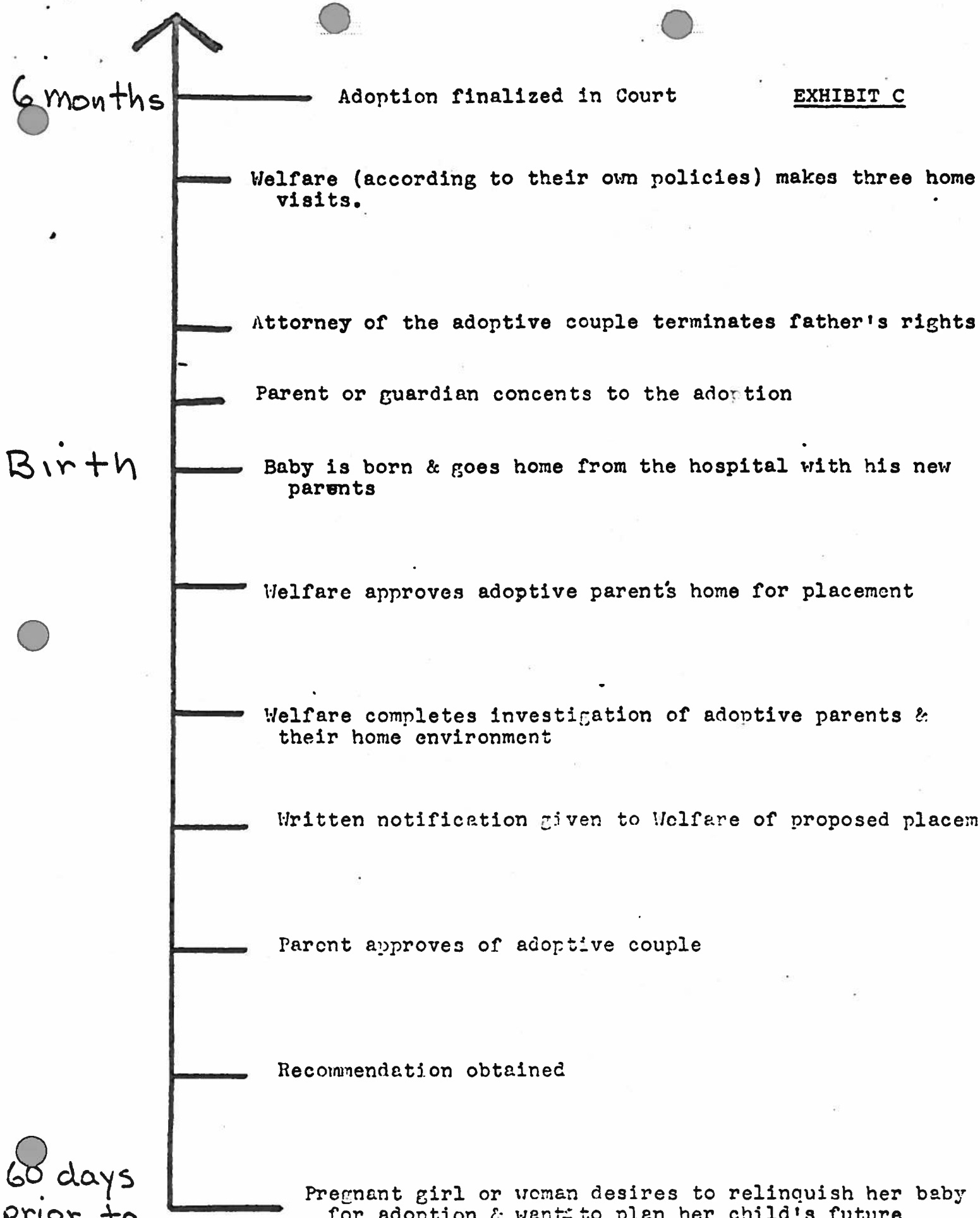
6 months
Adoption finalized in Court
EXHIBIT C
Welfare (according to their own policies) makes three home visits.
Attorney of the adoptive couple terminates father's rights
Parent or guardian concents to the adoption
Birth
Baby is born & goes home from the hospital with his new parents
Welfare approves adoptive parent's home for placement
Welfare completes investigation of adoptive parents & their home environment
Written notification given to Welfare of proposed placement
Parent approves of adoptive couple
Recommendation obtained
60 days prior to delivery
Pregnant girl or woman desires to relinquish her baby for adoption & wants to plan her child's future

EXHIBIT D

CHAPTER 127

ADOPTION OF CHILDREN AND ADULTS

GENERAL PROVISIONS

127.240 License: Requirement.

1. No person other than the parent or guardian of a child may place, arrange the placement of, or assist in placing or in arranging the placement of, any child for adoption or permanent free care without securing and having in full force a license to operate a child-placing agency issued by the welfare division of the department of human resources. This subsection applies to agents, servants, physicians and attorneys of parents or guardians, as well as to other persons.

2. Nothing in this section shall be construed to prohibit the welfare division of the department of human resources from placing, arranging the placement of, or assisting in placing or in arranging the placement of, any child for adoption or permanent free care.

(Added to NRS by 1963, 1298; A 1965, 1321; 1973, 1406)

This is interpreted as meaning "HANDS OFF" I can't help you!

127.250 Notice of proposed placement of child to be given welfare division, department of human resources; investigation by welfare division; court order prohibiting placement; procedure when notice not given welfare division.

1. No child shall be placed in the home of prospective adoptive parents for the 30-day residence in such home required by NRS 127.110 prior to the filing of a petition for adoption, except where a child and one of the prospective adoptive parents are related within the third degree of consanguinity, unless the welfare division of the department of human resources, hereinafter in this section referred to as the welfare division, first receives written notice of the proposed placement from:

(a) The prospective adoptive parents of the child; or

(b) The person recommending such placement; or

(c) A licensed child-placing agency,

and until the investigation required by the provisions of this section has been completed.

what does recommend mean?

What are the limitations on persons recommending placements?

[redacted]

EXHIBIT E

127.285 Amendment

2. Any attorney who does not have in full force a license to operate a child placing agency may not:

1.285 Amendment

(a) Place or arrange the placement of any child for adoption or permanent free care.

(b) Advertise in any periodical or newspaper or by radio or other public medium, that he will place children for adoption, or accept, supply, provide or obtain children for adoption, or cause any advertisment to be published in or by any public medium soliciting, requesting or asking for any child or children for adoption.

INFORMATIONAL PACKET CONCERNING S.B. 372 **Exhibit F**

I. Outline defining purpose of S.B. 372.

II. 1A. is a copy of the Notification of Proposed Placement form which has been used for years by those who knew it existed.

2A. is the amendment to NRS 127.280 we are requesting to clarify the remainder of the attorney's limitations in adoption matters.

3A. attempts to demonstrate where the existing law has been misinterpreted over the past 15 years by various individuals.

III. Two letters from attorneys who wanted to be present but were only able to address the Judiciary Committee in this form.

IV. List of known persons wishing to testify in behalf of S.B. 372:

1. Kris Martin, adoptive parent.
2. Judy Goedert, adoptive parent who will read letters from; Sylvia Thompson, attorney at law James Stone, attorney at law
3. Dr. Robert L. Stewart c/o Dr. Steven Thurm, OB-GYN physicians.
4. Dr. William Ramos, OB-GYN physician.
5. Gloria Handley, Department of Human Resources, Welfare Division.

S.B. 372 THIS BILL PROPOSES TO CLARIFY NEVADA LAW AS APPLIED TO SPECIFIC ADOPTIONS

This bill is non controversial.

It does not attempt to change the existing law but only to clarify.

As a product of negotiations with the Welfare division it has their approval.

A BRIEF DESCRIPTION OF THE CURRENT INDEPENDENT ADOPTION PROCESS

a. A pregnant girl or woman desiring to relinquish her child for adoption receives a recommendation of a prospective adoptive couple for her child.
b. She approves of them.
c. Written notification is given to Welfare of this proposed placement.
d. Welfare completes an investigation of the prospective adoptive parents and determines suitability.
e. Upon their approval (Welfare's) the baby, when born, may go directly into the adoptive couple's home.
f. The adoptive couple's attorney terminates the father's rights.
g. Welfare makes three home visits to observe parents and child.
h. After six months has passed the child's adoption is finalized in Court.

WHY CLARIFY?

- It is legal for anyone to recommend placement of a child for adoption. However the clarity of this statement is missing from the existing statutes!
- To provide continuity in the above stated process S.B. 372 defines 'recommend' and states the limitations on persons recommending placements.

- The existing law allows very limited participation for attorneys in adoption matters.
- S.B. 372 redefines limitations on attorney's participation in and receipt of compensation for services in adoption matters.

- In an attempt to avoid cases appearing in Court where termination has not been done prior to adoption proceedings S.B. 372 makes it clear to attorneys, that a petition to terminate fathers rights be filed concurrently with a petition for adoption.

DEPARTMENT OF HEALTH, WELFARE AND REHABILITATION
WELFARE DIVISION
NOTICE OF PROPOSED PLACEMENT

1A

NRS Chapter 127.280 provides:

"Except where a child and one of the prospective adopting parents are related within the third degree of consanguinity, no child shall be placed in the home of prospective adopting parents for the 30-day residence in such home required by NRS 127.110 prior to the filing of a petition for adoption unless the welfare division of the department of health, welfare and rehabilitation, hereinafter in this section referred to as the welfare division, first receives written notice of the proposed placement from:

(a) The prospective adopting parents of the child; or
(b) The person recommending such placement; or
(c) A licensed child-placing agency,

and until the investigation required by the provisions of this section has been completed."

In accordance with the above provisions, I, the undersigned, hereby notify the Welfare Division of the proposed placement of:

_____, born _____ at _____
(Child's Name) (Birthdate) (City) (State)

If child unborn, the approximate date of delivery is _____

If child is born, address of child and with whom living _____

The mother of the above-named child is _____
(Mother's Name)

Present address _____
(No.) (Street) (City) (State)

Permanent address _____
(No.) (Street) (City) (State)

The father of the above-named child is _____
(Father's Name)

Present address _____
(No.) (Street) (City) (State)

Permanent address _____
(No.) (Street) (City) (State)

The prospective adoptive parents are _____
(Name)

who reside at _____
(No.) (Street) (City) (State)

The person recommending the placement is _____
(Name)

Whose address is _____
(No.) (Street) (City) (State)

Dated this ___ day of _____, 19___.

_____
(Signature of person giving notification)

Complete in duplicate and return to:

Nevada State Welfare Division
[redacted]
Carson City, Nevada 89701

(No.) (Street) (City) (State)

DISTRIBUTION:
White - District Office
Canary - Central Office

929 3-027

Senate Judiciary Committee
March 17, 1981
Room 213

Senator Melvin D. Close, Chairman.

Known persons wishing to testify in behalf of S.B. 372.

1. Kris Martin, adoptive parent.
2. Judy Goedert, adoptive parent who will read letters from:
   Sylvia Thompson, Attorney at Law.
   James Stone, Attorney at Law.
3. Dr. Robert L. Stewart OB-GYN &/or Dr. George Furman, OB-GYN physicians.
4. Dr. William Ramos, OB-GYN physician.
5. Gloria Handley, Department of Human Resources, Welfare Division.

EXHIBIT G

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
CARSON CITY 89710
(702) 885-4170

RICHARD H. BRYAN
ATTORNEY GENERAL

LARRY D. STRUVE
CHIEF DEPUTY ATTORNEY GENERAL

December 26, 1980

Roger Detweiler, Esquire
Executive Director
Nevada State Bar Association
Post Office Box 2125
Reno, Nevada 89505

Richard Pugh, M. D.
Executive Director
Nevada State Medical Association
3660 Baker Lane
Reno, Nevada 89502

Gentlemen:

The Nevada State Welfare Division has requested my assistance in alerting the members of both the legal and medical professions in Nevada to certain statutory requirements in connection with adoptions. I am advised that in some cases the private sector has acted on misinformation or has been left uninformed concerning notice and other procedural requirements in these cases. Because of the potential for criminal, as well as civil, liability, I am providing the following information for distribution to all members of the bar and medical associations in Nevada.

Every adoption in Nevada is governed by the provisions of NRS Chapter 127. The prospective adoptive parents must be at least ten years older than the child to be adopted, and if the child is over the age of 14 years, he or she must consent to the adoption. NRS 127.020.

Furthermore, the consent of the natural parents or legal guardian is required, in writing, to the specific adoption contemplated, or the parents must formally relinquish the child to a licensed child-placement agency, before the child may be legally adopted. In cases where the natural parents do not formally consent or relinquish, the legal relationship which exists between the child and the natural parents must be severed by a court order before an adoption may proceed. NRS 127.040; 127.050; 127.053; 127.055; 127.070; 127.080; 127.090. It should be noted that the fact that the child may have been born out of wedlock

[redacted]

does not change these requirements. The only case where the consent, relinquishment, or termination of parental rights of only one of the natural parents is sufficient is when the other parent is deceased. If a legal guardian has been appointed for the child by the court, he or she is empowered to execute the consent to or relinquishment for adoption.

An adoption proceeding is initiated in the district courts by the filing of a petition for adoption by the prospective adoptive parents. That petition may not legally be filed until the child has lived in the home of the petitioners for a period of at least 30 days. NRS 127.110.

The Nevada State Welfare Division must receive notice of the proposed adoption and complete an investigation of the prospective adoptive parents before the child has been placed in the home of the prospective adoptive parents, unless one of the prospective parents is related to the child within the third degree of consanguinity. NRS 127.280. (That could be any blood relative to the adoptive child no more distant than a great-grandparent, aunt or uncle, or nephew or niece who is at least ten years older than the child.) Where the placement is recommended by a licensed child-placement agency, notice before placement must be provided, but an investigation by the Welfare Division is not required prior to the placement. Any violation of the notice or investigation-before-placement requirements as outlined above is a misdemeanor. NRS 127.310; NRS 127.240.

NRS 127.310 provides that it is a misdemeanor for any person to place, arrange the placement of, assist in placing or arranging the placement of a child for adoption or permanent free care in violation of NRS Chapter 127. And NRS 127.240(1) provides that "no person may place, arrange the placement of, or assist in arranging the placement of any child for adoption or permanent free care without . . . a license to operate a child-placing agency . . . This subsection applies to agents, servants, physicians, and attorneys of parents or guardians, as well as other persons." (Emphasis added.)

The individuals responsible for providing the notice to the Welfare Division are the prospective adoptive parents, the person recommending the placement, or a licensed child-placement agency. NRS 127.280(1). An attorney representing the prospective parents is the legal agent of those parties and, therefore, may act on their behalf.

Where a Consent to Adoption is executed by the parents, the statutes require that the Welfare Division receive a copy of the Consent within 48 hours of its execution, along with a statement of the permanent address of the person or persons in whose favor the consent was executed. NRS 127.050; 127.057. The Consent must be delivered to the Welfare Division by the prospective adoptive parents, and any violation of the requirement is a misdemeanor. NRS 127.050(3).

[redacted]

I hope this information will be helpful to you. If you require further information or clarification of Nevada's adoption law, please don't hesitate to contact Terrance Warren, Supervising Deputy Attorney General, in Clark County at 385-0145 and for the remainder of the State, Claudia K. Cormier, Deputy Attorney General, in Carson City at 885-5035.

Sincerely yours,

RICHARD H. BRYAN
ATTORNEY GENERAL

State of Nevada

EXHIBIT H

Department of Human Resources and Rehabilitation

DIVISION OF WELFARE

December 22, 1972

Dear Doctor:

This letter is being written at the suggestion of many physicians in the Reno area. The purpose of this letter is to inform all physicians, in the State of Nevada, of the legal procedure to be followed when recommending the placement of a specific child for the purpose of adoption by a specific family. Also, this letter will include a brief overview of our present adoption policies, procedures and services.

In Nevada, the state law requires that any person recommending a specific adoption or the prospective adopting parents must notify the Nevada State Welfare Division, in writing, of the proposed placement. Following this written notification, the Welfare Division will, within sixty days, complete an investigation of the medical, mental, financial and moral backgrounds of the prospective adopting parents to determine the suitability of the home for the placement of the child for adoption. Upon completion of the investigation, the Welfare Division will inform the person recommending the placement, and/or the prospective adopting parents, of their decision to either approve or deny the placement. Unless the child and at least one of the prospective adopting parents are related within the third degree of consanguinity, the child may not be placed in the home of the prospective adopting parents until the required investigation has been completed and a favorable recommendation rendered.

Attached, is a "Notification of Proposed Placement," form [illegible]27, which is to be used when a physician, or any other person, is recommending a specific adoption. Additional forms can be obtained from your local State Welfare Division Office.

It is legal for anyone to recommend placement of a child for adoption. However, unless a person is a parent or guardian, or is licensed to place children, no placement may be made until final approval is given by the Welfare Division. If the Welfare Division finds a proposed placement unsuitable, the Division must file an application with the District Court for an order prohibiting placement. The court then makes the final determination on whether or not the placement will be approved.

Prospective adoptive parents will be screened for physical and mental health, individual and family adjustment, economic situation and money management, moral character, motivation and readiness to adopt, criminal records, and any other relevant factors relating to their suitability to adopt. In addition, they are required to provide the names of at least five character references. This investigation usually requires about two months to complete.

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When a specific adoption is recommended, it is necessary for a representative of the State Welfare Division to interview the expectant Mother to explain the various adoption policies and procedures, and to obtain information concerning her background and the background of the putative father.

Occasionally, we have found that, unknown to all parties concerned, a relinquishment from the putative or legal father is necessary before an adoption petition can be filed.

The Nevada State Welfare Division is staffed and equipped to provide counseling for unwed mothers and will aid the unwed mother in planning for her unborn child regardless of whether she intends to keep the child or relinquish it for adoption.

Over the past two years, there has been a steady and rapid decline in the number of healthy infants who are available for adoption. This is a national trend and it is expected to continue. Consequently, adoption agencies have found themselves with long waiting lists of adoptive applicants. Because of the present situation, we have found it necessary to temporarily cease taking new applications for easy to adopt children as we do have a sufficient number of approved families awaiting a child. We are continuing to seek adoptive families for children over five years of age, or those who are of a minority race and/or have a mental or physical disability.

I hope this letter has been successful in answering some of the questions you may have had concerning adoption laws and present adoption policies.

Sincerely,

George E. Miller

GEORGE E. MILLER
STATE WELFARE ADMINISTRATOR

Attachment

[redacted]

Byrd & Stone
ATTORNEYS AT LAW
885 Tyler Way
Sparks, Nevada 89431
(702) 358-1056

William A. Byrd
James A. Stone

EXHIBIT I

March 11, 1981

Senate Judiciary Committee
Nevada State Legislature
Carson City, Nevada 89701

Re: Changes in the Adoption Laws of the State of Nevada

Ladies and Gentlemen:

Today you are considering some changes which have been proposed for the Adoption Laws of this State. It was my distinct pleasure to participate in the final discussion which took place between the Department of Human Resources, Senator Cliff McCorkle, and the group which has sponsored these changes.

At the end of our discussion we were all in agreement that the changes did not materially effect the quality of enforcement contained in the Adoption Laws. The sole purpose for these changes was to clarify the existing Law, so that attorneys, doctors, and ministers, would know the exact limitation of their participation in the adoption process. It was not the intent of the group to lessen the qualifications, nor make it easier to recommend adoptions to prospective parents.

I understand that there has been a great deal of legislative concern over the black marketing of babies. I am, as a practicing attorney in this State, as opposed to that practice as are the members of this committee. It was never our intent to make these practices easier, and I do not believe that the changes which have been proposed to the adoption laws accomplish this. I have discussed the adoption process with several of my compatriots in the legal profession, and the verdict seems to be that none of us actively seek independent adoptions. They involve far more work than the fees would seem to cover. As near as I can determine most attorney's charge from $250.00 to $500.00 to do an independent adoption. Considering the amount of paperwork and time involved this is not one of the more remunarative undertakings for a lawyer.

I would urge you to give serious consideration to passage of the proposed amendments as they do not in any way make it easier for attorneys, doctors, and ministers to become involved in independent

[redacted]

adoptions, but simply clarify the existing Law. As this committee knows there has been a great deal of confusion over the years concerning the extent of the allowable participation on the part of the above groups in the adoptive process. Certainly these changes correct the problems which have existed prior to now.

I urge you to pass favorably upon the proposed changes and to vote the bill out of committee with a recommendation for passage by the full Senate.

Thank you for your consideration and your time.

Very truly yours,

James A Stone

James A. Stone, Esq.
Attorney at Law
JAS:aem

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786-0105

March 13, 1981

Senate Judiciary Committee
Carson City, Nevada

Dear ladies and gentlemen of the committee:

It was my urgent desire to be present to give testimony at your hearing on the proposed changes in the Nevada adoption law. However, a previously set trial, unfortunately, has prevented that. Consequently, I take this method of addressing you.

It is my opinion, as well as that of many other lawyers and laymen, that the present adoption law (Chapter 127 NRS), as it is written is far too stringent. The statute makes it a crime for the parents of an unwed mother to counsel her as to what she should do with her baby - whether to keep it, place it with the State Welfare for adoption, or place it privately. It is likewise criminal for her minister, doctor, attorney, nurse, or professional counsellor to suggest what she should do. The very people to whom a girl would naturally turn for advice in time of trouble are legally forbidden to help her.

The committee for the revision of the present law, of which I am a member, has had several meetings with representatives of the State Welfare, and those representatives have told us, as a matter of policy, that it is not amiss for a girl's doctor to suggest prospective adoptive parents for her baby. A letter which I have seen from George E. Miller, State Welfare Director, to a physician back in 1972 states: "It is legal for anyone to recommend placement of a child for adoption". That is as it should be, but unfortunately, it is not the way the present law reads.

Recently, the Attorney General circulated a letter to all members of the bar and medical associations in the state, attempting to clear up widespread misunderstanding concerning our adoption statute. He pointed out in that letter:

> "NRS 127.319 provides that it is a misdemeanor for any person to place, arrange the placement of, assist in placing or arranging the placement of a child for adoption or permanent free care in violation of NRS Chapter 127. And NRS 127.280(1) provides

> that no person may place, arrange the placement of, or assist in arranging the placement of any child for adoption or permanent free care without.....a license to operate a child-placing agency.....This subsection applies to agents, servants, physicians, and attorneys (Underlining mine) of parents or guardians, as well as other persons."

What the Attorney General did not mention was a section even more stringent than the above, i.e. NRS 127.280(4) reading as follows:

> "Any person who places, accepts placement of, or aids, abets or counsels (underlining mine) the placement of any child in violation of the placement provisions of this section is guilty of a gross misdemeanor".

The prohibition against counseling is a ridiculous extreme which I am sure the Legislature never contemplated when enacting the statute.

We have no desire to contribute to what is termed a "black market" in babies. We do not propose to tamper with the necessity for a Welfare investigation (except in cases of close blood relationship) nor with the penalty provisions of the present law. Those have assured and will continue to assure that there will be no such black market in this state.

Having been in practice in Nevada since 1951, I have, of course, handled many adoptions. Under the law as it is presently written, I have felt that I cannot even tentatively suggest to an unwed mother who calls me, the names of prospective adoptive parents, though I generally know of any number of well qualified couples wanting to accpt a child.

Consequently, I strongly urge that you consider favorably the bill before you and recommend to the Senate that it do pass.

Very respectfully yours,

SJP:s

EXHIBIT J

3. Pending appeal or certiorari to the supreme court, bail may be allowed by the district court or by any judge thereof or by the supreme court or by a justice thereof.

4. Any court or any judge or justice authorized to grant bail may at any time revoke the order admitting the defendant to bail.

5. The court or judge by whom bail may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

(Added to NRS by 1967, 1452; A 1969, 10)

178.494 Bail for witnesses. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpena, the magistrate may require him to give bail for his appearance as a witness, in an amount fixed by the magistrate. If the person fails to give bail the magistrate may:

1. Commit him to the custody of a peace officer pending final disposition of the proceeding in which the testimony is needed;
2. Order his release if he has been detained for an unreasonable length of time; and
3. Modify at any time the requirement as to bail.

(Added to NRS by 1967, 1452)

178.498 Amount of bail. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the magistrate will insure the presence of the defendant, having regard to:

1. The nature and circumstances of the offense charged;
2. The financial ability of the defendant to give bail; and
3. The character of the defendant.

(Added to NRS by 1967, 1452)

178.499 Increase in amount of bail.

1. At any time after a district or justice's court has ordered bail to be set at a specific amount, and before acquittal or conviction, the court may upon its own motion or upon motion of the district attorney and after notice to the defendant or to his counsel, increase the amount of bail for good cause shown.
2. If the defendant has been released on bail prior to the time when the motion to increase bail is granted, the defendant shall either return to custody or give the additional amount of bail.

(Added to NRS by 1969, 385)

178.502 Form of bail; extension of bond, undertaking to proceedings in other courts; exoneration; place of deposit.

1. A person required or permitted to give bail shall execute a bond for his appearance. The magistrate or court or judge or justice, having regard to the considerations set forth in NRS 178.498, may require one or more sureties, may authorize the acceptance of cash or bonds or

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