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REPORT OF SUBCOMMITTEE ON ASSEMBLY BILL 28
TO
ASSEMBLY COMMITTEE ON JUDICIARY

Summary—Provides procedure for parties to adoption to enter into enforceable agreement for post-adoptive contact.

Members Present:

Assemblyman William C. Horne, Chairman
Assemblyman Bernie Anderson
Assemblyman Rod R. Sherer

Subcommittee Meeting:

The subcommittee met on February 26, 2003, and March 12, 2003, to hear additional testimony and discuss proposed amendments to Assembly Bill (A.B.) 28. The subcommittee received testimony in favor of and against A.B. 28. Myra Sheehan, Esq., on behalf of the Nevada Trial Lawyers Association; Kathy Baker, Esq., a private practitioner who represents adoptive parents in adoption proceedings; Cynthia Lu, Office of the Washoe County Public Defender; Helen Foley, as private citizen; Lucille Lusk, Nevada Concerned Citizens; and Michael Rasmussen, Esq., as a private citizen, presented an amendment on March 12, 2003.

The proposed amendment changes the word "natural parent" to "biological parent" throughout the bill, deletes paragraph 4 of Section 1 in its entirety, and adds new language to the bill. The additional new language limits the time period in which biological parents can bring an action for enforcement of a post-adoptive contact agreement, and provides that only adoptive parents can seek modification of an agreement. The amendment also included a new Section 4 that provides that the measure does not create any presumption or public policy in favor of open adoptions or post-adoptive contact agreements, and further provides that the bill does not create an affirmative duty upon a placing agency to advise the biological parents of post-adoptive contact agreements or of the enforceability of the agreements.

During its deliberation of the proposed amendment, the subcommittee determined to include new language to the bill consistent with *Nevada Administrative Code* (NAC) 127.210(4)(c) clarifying that only parties to an open adoption may enter into enforceable post-adoptive contact agreements and authorizing a court to consider the reasonable preference of a child in modification proceedings if the child has a preference and is of sufficient maturity to express a preference.

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ASSEMBLY JUDICIARY

DATE: 3-20-03 ROOM 3138 EXHIBIT D
SUBMITTED BY: Subcommittee on A.B. 28

D-145

Subcommittee Recommendations:

On a motion from Mr. Anderson, seconded by Mr. Sherer, the subcommittee voted unanimously to recommend to the full committee to Amend and Do Pass A.B. 28 with the amendments (and correction of typographical errors in the amendments) proposed by Myra Sheehan's group and the amendments proposed by the subcommittee.

AJ-Subcommittee Report-AB28

D-2075

PROPOSED AMENDMENT TO
ASSEMBLY BILL NO. 28

PREPARED FOR ASSEMBLY SUBCOMMITTEE ON JUDICIARY
MARCH 14, 2003

PREPARED BY THE RESEARCH DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) *green bold dashed underlining* is deleted language in the original bill that is proposed to be retained in this amendment.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 127 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. 1.** *The ~~natural~~ biological parent or parents and*
4 *prospective adoptive parent or parents of a child to be adopted in or*
5 *through an open adoption arrangement may enter into an enforceable*
6 *agreement that provides for post-adoptive contact between:*
7 (a) *The child and his ~~natural~~ biological parent or parents;*
8 (b) *The adoptive parent or parents and the ~~natural~~ biological parent*
9 *or parents; or*
10 (c) *Any combination thereof.*
11 **2.** *An agreement for post-adoptive contact must be included in an*
12 *order or decree of adoption and must include, without limitation, a*
13 *provision specifying that:*
14 (a) *Each party to the agreement agrees to the continuing jurisdiction*
15 *of the court;*
16 (b) *Each party to the agreement acknowledges that any party to the*
17 *agreement may seek enforcement of the terms of the agreement in court;*
18

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PROPOSED AMENDMENT TO AB28

1 (c) Should the adoptive or biological parent(s) move from the state of
2 Nevada the court shall allow the out-of-state party(ies) to appear
3 telephonically in any proceeding to enforce or modify the post-adoptive
4 contact agreement;

5 ~~(d) The court may award costs and attorney's fees to the prevailing~~
6 ~~party in an action seeking enforcement of the agreement; and~~

7 (d) The agreement for post-adoptive contact terminates and is no
8 longer enforceable on the date on which the adopted child attains the age
9 of 18 years or upon the date on which the adopted child becomes
10 emancipated, unless otherwise stated in the post-adoptive contact
11 agreement.

12 3. The identity of ~~a natural parent who is a~~ the party(ies) to an
13 agreement for post-adoptive contact is not required to be included in the
14 agreement. If such information is withheld, an agent who may receive
15 service of process for the ~~parent~~ unidentified parties must be provided in
16 the agreement.

17 ~~4. An agreement for post-adoptive contact that is included in an~~
18 ~~order or decree of adoption creates a rebuttable presumption that the~~
19 ~~contact provided for in the agreement is in the best interests of the child.~~

20 An action for breach of the post-adoptive contact agreement must be
21 brought by the biological parent(s) within 60 days of said breach.
22 Should the biological parent(s) prevail in an action for enforcement of a
23 post-adoptive contact agreement, the court may award appropriate
24 sanctions against the adoptive parent(s) if the adoptive parent(s) have
25 acted in bad faith and unreasonably denied the agreed upon contact.
26 Those sanctions shall be limited to a judgment in favor of the biological
27 parent(s) which may be a monetary award and/or a judgment ordering
28 the adoptive parent to comply with the agreement. Such a monetary
29 award shall not exceed a fine of \$50.00 per occurrence up to \$1,000
30 maximum.

31 5. Failure to comply with the terms of an agreement for post-
32 adoptive contact may not be used as the grounds to:

33 (a) Set aside an order or decree of adoption; or

34 (b) Revoke, nullify or set aside a valid release for or consent to an
35 adoption or a relinquishment for adoption;

36 (c) Require the adoptive parent(s) to remain living in the proximity of
37 the biological parent(s); or

38 (d) Require the adoptive parent(s) to pay the costs of the biological
39 parent(s) to access any privileges in the agreement (such as travel or
40 lodging costs).

41 Sec. 3. An agreement that provides for post-adoptive contact,
42 entered into pursuant to section 2 of this act, may be modified by the
43 adoptive parent(s) by applying to the court that issued the order which
44 included the agreement. The court may grant a request to modify the
45 agreement only if:

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1 1. ~~The party requesting the modification establishes a change in~~
2 ~~circumstances that warrants the modification and establishes that the~~
3 ~~agreement is no longer in the best interests of the child; or~~
4 2. ~~Each~~ Every party to the agreement consents to the modification.
5 In determining whether the post-adoptive contact agreement is no longer
6 in the best interests of the child, the court shall consider the reasonable
7 preference of the child, if the child has a preference, and if the child is
8 determined to be of sufficient maturity to express a preference.
9 Sec. 4. This statute does not create any presumption or public
10 policy that open adoptions are preferred or in the best interests of the
11 child. Nor does this statute create an affirmative duty upon a placing
12 agency to advise the biological parent(s) of post-adoptive contact
13 agreements or the incorporation of the same into the order or decree of
14 adoption.
15 Sec. 5. NRS 127.005 is hereby amended to read as follows:
16 127.005 The provisions of NRS 127.010 to 127.186, inclusive, and
17 sections 2, ~~and 3~~ and 4 of this act, govern the adoption of minor children,
18 and the provisions of NRS 127.190, 127.200 and 127.210 and the
19 provisions of NRS 127.010 to 127.186, inclusive, where not inconsistent
20 with the provisions of NRS 127.190, 127.200 and 127.210, govern the
21 adoption of adults.
22 ~~Sec=5.=6.~~ NRS 127.171 is hereby amended to read as follows:
23 127.171 1. ~~It~~ Except as otherwise provided in section 2 of this
24 act, in a proceeding for the adoption of a child, the court may grant a
25 reasonable right to visit to certain relatives of the child only if a similar
26 right had been granted previously pursuant to
27 NRS 125C.050.
28 2. The court may not grant a right to visit the child to any person
29 other than as specified in subsection 1.

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PROPOSED AMENDMENT TO AB28