

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE**

**Seventy-Third Session
February 28, 2005**

The Committee on Judiciary Subcommittee was called to order at 2:07 p.m., on Monday, February 28, 2005. Chairman Marcus Conklin presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Mr. Marcus Conklin, Chairman
Ms. Francis Allen
Mr. Bernie Anderson

SUBCOMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Katie Miles, Committee Policy Analyst
René Yeckley, Committee Counsel
Victoria Thompson, Committee Manager

OTHERS PRESENT:

Lucille Lusk, Chairman, Nevada Concerned Citizens
Helen Foley, Private Citizen, Adoptive Parent
Justin Jones, Legislative Advocate, Families Supporting Adoption
Lesa Coder, Private Citizen, Adoptive Parent
David Arnold, Private Citizen, Adoptive Parent

Rick Perry, Director, LDS [Latter-day Saints] Family Services
Chris Escobar, Private Citizen, Adoptive Parent
Amy Turner, Private Citizen, Adoptive Parent
Cynthia Lu, Chief Deputy Public Defender, Washoe County Public
Defender, Reno, Nevada
Angela Chalmers-Howald, Private Citizen

Chairman Conklin:

I'll open the hearing on Assembly Bill 51. [Roll was called.]

Before I start, I have some other housekeeping as well. We are going to be doing things a little differently today. When we are ready to take testimony, we are going to start with the folks who are in opposition to the bill. In the Committee hearing, they got a little less time than the folks who were for it, so we're going to start with them this time, and then move to the folks who were in support of the bill. That will help us also to flesh out some ideas so that we can take this bill to work session immediately following this hearing.

Assembly Bill 51: Provides procedure for parties to adoption to enter into enforceable agreement for postadoptive contact. (BDR 11-457)

Chairman Conklin:

I'd like to make a few opening remarks because it was clear at the Committee hearing that there were misconceptions about what this bill does and does not do. I do want to start by saying that this bill is very important. Unfortunately, because there has been a lot of confusion, I think that it needs some clarification.

Assembly Bill 51 currently addresses six major issues. First, it adopts the holding of the Nevada Supreme Court in the case called *Birth Mother v. Adoptive Parents*, [118 Nev. 972 (2002)]. In that case, the Court told us the law in Nevada right now is that if parents to an adoption enter into an agreement for postadoptive contact, that agreement will be enforced only if it is included in the adoption decree. Assembly Bill 51 does not change that. This bill takes the law a step further by requiring a clear notice to be provided to birth parents, and included in the adoption records, so that all parties to the adoption are aware of the law.

Second, A.B. 51 authorizes, but does not require, parties in adoption proceedings to enter into one of these agreements. That is a choice for the parties to make for themselves, and they can negotiate the level of contact that they are willing to accept. In reality, the adoptive parents may feel tremendous

pressure to enter into one of these agreements, but the fact is the bill itself does not legally require anyone to enter into an agreement.

[Chairman Conklin, continued.] Third, A.B. 51 creates a rebuttable presumption that the contact provided in the agreement is in the best interest of the child. Therefore, anyone who wants to change or terminate the agreement must overcome this presumption.

Fourth, it provides that if a party violates the agreement, that violation will not be grounds for reversing the adoption. In other words, the adoption will stand, even if someone violates the agreement.

Fifth, it provides that if a party wants to enforce the agreement, he or she must bring an action within 120 days after the violation occurs. However, the bill does not change how these agreements may be enforced. The bill relies on the same enforcement mechanism that a court could use. Now, if someone violated a valid agreement, currently the court may use its discretion to order whatever remedy it deems appropriate.

Finally, A.B. 51 provides that the agreement can be modified if the parties agree to the modification, or if one party can show that the circumstances have changed and the contact is no longer in the best interest of the child. I think that pretty much sums it up. I would like to add also that it is the Chair's intent to go to work session today. It's abundantly clear from testimony in the Committee that action really needs to be taken on this subject.

I caution everyone, as you come forward. We want to hear succinctly what issues you may have with the bill, what you support in the bill, and any suggestions you have to refine it to build some consensus. We have parties out there right now who are signing agreements that are not valid, and that is not right. I do believe it is the intent of this Body to take action to fix that. We need to get it right the first time.

Lucille Lusk, Chairman, Nevada Concerned Citizens:

I don't see a point in repeating testimony that was given in the major Committee. Although I did not personally give testimony, the points that I had with regard to the bill were made by others. I would like to, if it is possible, wait until we reach the point where we're actually discussing possible revisions, amendments, and approaches, and be able to come in on those.

I would suggest that there is a great gulf between the two sides on this bill. I appreciate your pointing out the six items that are covered in the bill. Those items are seen differently by the two sides.

[Lucille Lusk, continued.] I have reviewed the statutes from those 18 states that have statutes, and they cover a very broad spectrum. Some of them are very minimal and state something similar, that no contract can be entered into unless it's in the decree. Others are very extensive, more of the nature that we're looking at, or even more extensive. There is a wide range of things that we could do.

It has been suggested that the Committee could even consider—since the largest issue seems to be the question of making sure people know whether an item is enforceable or not—that adoption agencies, both state and private agencies, could simply be sent a letter from the Committee informing them of such, and urging them to make sure that they inform people that items are not enforceable unless they are in the decree.

You could go in the entire opposite direction and consider reversing the presumption that is in the bill now. This is the “rebuttable presumption,” as you know, that the contact agreement is in the best interest of the child. You could consider reversing that to state that there is a rebuttable presumption that the adoptive parents are acting in the best interests of the child, should there be any question.

There are certain aspects that are particularly problematic. One aspect is the ability of the birth parent to come back to court during the spectrum of 18 years, and ask for modification of the agreement. You could consider allowing only the adoptive parents to go to court to modify the agreement. There are a number of specific aspects of the legislation that you could consider doing. One very good thing in the legislation is the statement that these agreements, and the dispute over them, cannot be used to nullify an adoption.

There has been considerable discussion of applying it only to the children that are in foster care and not to infants that are being adopted. Where you're dealing with an older child, it is recognized that there may already be an attachment to a birth parent. When you're dealing with an infant, that is not the case. There's a significant difference.

You will hear a number of suggestions from people in this audience and in the Clark County audience. As you pull it together, what I would ask is that you recognize that the adoptive parent must be considered a full parent with full parental rights, and nothing that you do would in any way undermine that. In order to accomplish that, I believe you'd have to consider two very significant things: reversing the presumption, and not allowing the modification from anyone other than the adoptive parents.

Chairman Conklin:

If those two things were reached, do you think this bill would be palatable?

Lucille Lusk:

I believe there are other items to consider to make it palatable. Those will be proposed by others. There's a great concern that the notification provisions are so stringent. You stated correctly that there is nothing in this bill that requires an adoptive parent to sign a contact agreement, but there's great concern that the sense of coercion would be so great that the adoptive parents would feel that they must do so. I think you're going to be requested to deal with that. I personally believe that it is possible to do something that would be for the best interest of all parties concerned, but I do think it requires major revisions to this bill. Most of the provisions, other than the one dealing with the statement that the dispute to agreements can't nullify an adoption, need to be revised to make it palatable for adoptive parents.

Assemblyman Anderson:

In your review of the other states, did you look at Arizona?

Lucille Lusk:

I looked at several; I couldn't tell you which ones. I don't have the list in front of me.

Assemblyman Anderson:

Well, Arizona's includes the information that the court must not approve an agreement unless the court finds—and of course, it also gives the opportunity for parents, the adoptive parents which I consider to be the parents, to enter into modification—that there's been a problem after the fact. It all sets up a pretty stringent relative requirement. In reviewing the information that was provided in addition, it always amazes me, this particular issue. After we get it all lit up, often people begin to pay attention to it.

Have you noticed that the people who are adoptive parents usually have an attorney who is helping them prepare for the adoption, and who explains to them the requirements of the state agencies and all who are acting on behalf of the court? The person who is giving up their child often is unrepresented and, therefore, has to go in and hope that the state is doing the right thing. Have you noted that in your discussions with the people involved here?

Lucille Lusk:

Mr. Chairman, it's been my experience that's a mixed situation. Many times those who are wanting to adopt do have representation, but other times they

are simply families that are of modest means, that truly desire a child, and are working with an adoption agency without representation.

Assemblyman Anderson:

Of course the adoption agency then has the attorney that represents the adoption agency on a regular basis, and therefore has knowledge of how the circumstances work. I guess what bothers me about this concern is the person who comes unaware to this, unless they are fortunate enough to have someone from some state agency to be appointed as their representative. Then the court becomes concerned.

Lucille Lusk:

I understand what you are saying, Mr. Anderson. It's clear that if someone abuses a gentleman's agreement, that's wrong.

Assemblyman Anderson:

What about, in your review of these other states, the opportunity for a hearing for an arbitrator, prior to an actual court hearing? So that they have to go through arbitration, or at least appear to try to settle the differences through that methodology, rather than a formal court process.

Because sometimes it's just merely to bring people to common ground, that's what we do here in this building. Do you see in your review of those states that advantage to including that kind of part in this bill? I noticed that was one of the elements in reviewing it again, but believe it or not, I don't get it all that much earlier than all of you. You would think I would, but I don't.

Lucille Lusk:

You know I can't answer that question adequately. It's not an area that I have experience with, using a mediator. I would like to comment that I did notice some of the states utilized a requirement that the court determine that an agreement be in the best interest of the child, and I know there are some who support that. For myself, I feel very strongly that the presumption must be with the adoptive parents of the child; that they are acting in the best interest of their child, if there is a dispute.

Assemblyman Anderson:

And that would be in the appeal process?

Lucille Lusk:

Yes, that would be only if a dispute were . . .

Assemblyman Anderson:

Okay. Thank you.

Helen Foley, Private Citizen, Adoptive Parent:

We have been dealing with some of the members that you'll be hearing from a little bit later in Las Vegas, and some of the attorneys have a few more specifics than I do. One of the issues that seems very clear in reading the legislation, specifically the Legislative Counsel's digest, and then listening to Ms. Lu the other day, is where it states on line 8, page 1, "such agreements are unenforceable unless incorporated into the adoption decree." That is what the Supreme Court said, that's very clear. There are only a handful of agencies in Nevada who are, by law, designated as agencies that are allowed to be in the business of adoption. There is Catholic Charities, and LDS [Latter-day Saints] Social Services; the Jewish faith has their own. There are some "new faith," and certainly the State of Nevada, so it would be the counties and state government that deal with adoptions.

I believe that, if these adoption decrees are all being conducted, and we're going to have a hearing tomorrow on how uniform they are within the state of Nevada, that if a letter went from the Judiciary Committee or whoever else was appropriate, stating to all of them to not ask anyone to sign a postadoptive contact agreement or let everyone know that they are non-binding unless they are placed in the actual adoption decree. When there is the adoption, by that time, many times the birth mother is long gone. It might be four or five months after the relinquishment of that woman's rights. It may take longer to relinquish the father's rights, but you may never hear from her again.

However, the adoption agency is always at the hearing. If they have had the ammunition from the Committee that, if they have had them sign one of these postadoptive contact agreements they must bring that to the attention of the court, so that it could be incorporated into the decree . . . Now, Catholic Charities doesn't have postadoptive contact agreements. From what I understand, LDS Social Services never had either. It's not that they are misrepresenting or having people sign something they know isn't worth anything, but from what I understand, there are other organizations that have had people sign them.

Whether they knew if they were enforceable or not is not my issue at all. It seems to me that it could be very clear that this Committee could inform them to not sign them unless they become part of the adoption agreement; it's your obligation to make sure that they do become a part of the adoption decree if it's a signed contract.

Chairman Conklin:

I am thinking there's no enforcement mechanism to stop them from doing it anyway. We already have that situation right now; people are doing it in spite of the fact that they know it is not a legally binding contract. I understand what you're saying; the problem is, again, that people are doing it regardless of the fact that they understand that those contracts are not binding. When you have situations such as that, where two parties are not playing on equal footing, no amount of letters that we write—at least from my perspective—to private agencies without legal standing from us, are really going to have an impact. But that's just my own personal belief among those agencies.

Helen Foley:

When you say that people are still doing this, who are the people that are doing this? Ms. Lu gave, in her testimony, information that they have been signing these contracts with individuals whose rights are relinquished rather than terminated, or maybe sometimes terminated. Then they make sure they are part of the adoption decree. There are only a handful of organizations who are authorized by law to participate in adoptions this way.

I would think that the courts could ask at the time, and it might be something that was discussed; has there been a postadoptive contract agreement signed with this potential adoptive child? If the answer is yes, then it should be made part of this record, and part of this decree.

Assemblyman Anderson:

I do and I don't. I think in part, Ms. Foley, that's precisely what the bill does is to try to explain to the court, in fact to mandate to the court, that it has a responsibility. Obviously the background check is [difficult]. I know that you've been through this and have intimate knowledge of how this operates, much more than I ever will. In fact, it may be more difficult, and I hate to say this as a male, but I'm going to say it anyway. It may be even more difficult than the birth of the child itself, in some ways.

Clearly, you went through the background check: whether your home was a fit place for children; your personal life was checked into by the state agencies or the Catholic Services, or whoever your adoptive agency was; your financial background was checked into. All of those things that would show you as a fit and proper person to adopt were checked out. We don't even do that for the person who is going to give birth. That's not one of the qualities that we check. Clearly, we know that's already been done.

[Assemblyman Anderson, continued] I believe that's done to satisfy the court that you are a fit and proper parent. They're not going to do that for anybody other than the court. Do you think that's who they're doing it for? They're doing it for the judge.

Helen Foley:

They're doing it for the state of Nevada, because you mandate that anyone who is going to adopt in this state has to jump through those hoops.

Assemblyman Anderson:

So we believe very strongly on that. Why would we not also then mandate to the judge that, as you have indicated, in order to go into one of these open adoption agreements, you have to make sure this was done? The judge would have a requirement to check off that it [was done]. If you're going to plea-bargain in a court case, the judge canvasses you to make sure you're aware of the ramifications of going from here to there, and what the sentence is going to be. Why would the judge not have a responsibility to canvass both the adoptive parents, who are now going to take on the 100 percent responsibility of raising that child and making it their own, which they are going to do and the state's going to make them 100 percent responsible for the best interest of the child, and at the same time canvass the birth parent to make sure they fully recognize their loss of whatever, and to whatever degree? That "to whatever degree" question is part of the consortium.

Helen Foley:

I think what you're talking about here is a very dangerous precedent. I'm not sure you're looking at it the way that it is. A mother quite possibly relinquishes her rights to that child 72 hours after the baby is born. Then, she sometimes goes off; occasionally she will contact the agency to ask if the adoptive mother sent photos as was requested. They would say, "They are in the file. Where are you, we will get them to you." To think that mother, 6 months after she has relinquished—because you don't adopt for 6 months, but you can relinquish 72 hours after—would be in court. At least that's what I heard the judge asking the adoptive parent and asking the birth parent. How would the judge do that unless that birth parent was in court at the time of adoption?

Assemblyman Anderson:

That's the reason why the affidavit would have to be signed. As I understand it the way we constructed this bill, that when the agencies are going through this process; they need to make sure that's on file.

Helen Foley:

Absolutely.

Assemblyman Anderson:

If it's not, then the agency doesn't get to do it. It's a requirement of the agency to make you aware of, if you're going to do this, this is what's part of that. It's not that I'm trying to raise another brick in the wall, but rather to make sure that the wall is recognized, and that becomes a big thing.

Helen Foley:

Mr. Anderson, I agree with you, that if some type of postadoptive contact agreement is signed, then absolutely the agency has a responsibility to let the birth mother and the adoptive parents know that this is enforceable by law, and it will become part of the adoption decree. What this bill does, as I said . . . Most agencies in Nevada for infant adoptions don't have written contracts. What my fear, and [the fear of] many of the people who have testified before you in the last few days, is, if you have something that has big bold type, making sure that everyone knows that they can have this contact agreement, it's going to force many of them to want one of these, even though they didn't really, but they'll look like a bad mother if they don't sign it.

Assemblyman Anderson:

What would you think if we limited this, in constructing this bill, to those over two years of age?

Helen Foley:

Selfishly, I would say you bet. But I know that Ms. Lu said the other day that the vast majority, or almost all of the women that she deals with, are alcoholics and drug addicts. I'm working with the Adoption Exchange in southern Nevada, and they do Wednesday's Child. It's a fabulous organization. So my interest in adoption has expanded since my selfish early days.

It's wonderful that some public defenders want to reduce the time that it takes to terminate people's rights. Maybe if they can get a situation where you relinquish, plus some visitation, that will reduce the time, and these children will become adoptable.

Sometimes that's marvelous, and other times it is the biggest nightmare in the world. I have a friend whose child was left for three days without food or water. She is the most darling little girl, and her mother adores her. But if she had to sign something in order to get that baby a little bit earlier, she probably would have done it, and it would have been the worst thing in the world for that mother to ever see that little girl. It's traumatic.

When these mothers have their babies taken—and I don't mean to not include fathers but unfortunately it is so often the mothers—when they have their babies taken away from them, they get three strikes. The babies keep going back into the homes and back into foster care. These are unfit mothers. They do not deserve to have their children. The children, once they are in a loving, adoptive home, to think that they have to be . . . To tell my baby, "I hate to tell you this but the court is telling me that I have to let you go visit this woman"; that's the thing that is so scary to us, Assemblyman. It is a horrifying, scary situation.

Assemblyman Anderson:

Of course those worst-case scenarios are always frightening. I can tell you about students who leave my classroom, get into cars and drive down the roads on the wrong sides of the streets, and those are frightening things. I guess I could talk about the fact that no child should be allowed to cross the street unescorted. In reality, whether they're 2 years old or 18 years of age, I can find examples of worst-case scenarios in anything I do here. That does not help us with the public policy that I think we're trying to deal with, Ms. Foley; I guess one that has failed to convince me. The reason why it continues to come up, from my point of view, is what happens to the person who is having problems? [This person] makes an emotional decision that their child would be better off not being with them for economic reasons, for social reasons, for drug-dependency questions, because of the abusive nature of somebody else in the household, or because of other kinds of family situations. They want the simplest of things, just as you do. They want that child to know that at one point in their life, they were loved.

Helen Foley:

Mr. Anderson, I agree wholeheartedly with you. I have letters from the birth mothers of my babies, and I cherish them, because they talk about how much they loved their babies. It just wasn't [enough]; they couldn't mother them, and they knew they were in a nice family now. The problem is, as Ms. Lu said, that almost all of the people that she deals with are drug addicts and alcoholics. If we could totally limit this [bill], and if you have to pass it, that it could only be the pictures and the letters, absolutely.

But when I think that there might be some visitation to a woman that should never see a child again, who has probably created emotional scars in the little person, that's when I fight like a bearcat. I really worry about it. I think that these postadoptive contact agreements are the exception to the rule. The vast majority of adoptions in Nevada are becoming more and more open, but always, it is the best interests of that child that is kept in mind. The presumption is that the new adoptive parents can decide what is in the best interest of the child.

Justin Jones, Legislative Advocate, Families Supporting Adoption:

I just wanted to clarify, quickly, that the law under *Birth Mother v. Adoptive Parents* already instructs the family courts on what the law is. I'm not sure that legislation will have a greater effect on the family courts than the law already stated. I also clarify that all the adoptive couples that I'm familiar with don't have counsel present at the time of the termination of parental rights and placement. They would generally have an attorney present at the adoption decree, but again, the birth mother is not involved in the adoption decree. I just wanted to clarify that.

I believe Ms. Foley and Ms. Lusk have gone over a couple of the points that both of them, and a couple of other people, have been discussing over the past week since the Committee hearing. I wanted to focus real quickly on a concern that was raised in the Committee hearing last week; that is on remedies.

One of the problems that we have had with this bill is that it really—although you have referred to it as enforcing a postadoption contract—elevates a standard contract to the level of a judicial order. Basically, you're including the terms of the agreement in the adoption decree, so if a couple or a birth mother violates the terms of the agreement, they are in effect violating a judicial order.

If I violate a standard contract, the remedies that are available are generally just damages or something along those lines. If I violate a judicial order, I subject myself to contempt of court, which could involve civil fines. It also could involve jail time. I sent up for the Committee a couple of handouts, examples of postadoption contract statutes from other states ([Exhibit B](#), [Exhibit C](#), [Exhibit D](#)). I just wanted to point out the Washington statute, which was the first statute of this kind in the country, passed in 1990.

In subsection 4 under the *Revised Code of Washington*, Section 26.33.295, it states that, "an agreed order entered pursuant to this section may be enforced by a civil action and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees." Now, this doesn't specifically bar the court from holding someone in contempt; it does appear to at least put the contract back on the level of any other contract, which I think is very important. In terms of coercion, the fact of these agreements, that by including them in the adoption decree, you really are putting the adoptive couple in a bad position. If you put them back in the position of a simple party to a contract, the adoptive couple can more readily assess the penalties that might be assessed if they were to breach the contract.

Chairman Conklin:

I heard this in testimony on more than one occasion. Ms. Yeckley, is contempt an actual potential out of page 3, Section 5 of the bill? I believe that's the section I'm looking at. What are the potential remedies here for the court?

René Yeckley, Committee Counsel:

I think that the remedies, as you have said in your opening remarks, under the bill, are the same as they are currently right now. I believe those remedies would include anything from ordering specific performance to possibly some monetary damages, and I think in certain situations, it could involve contempt of court orders. I think that the testimony we've heard today has informed us that it typically is not ordered. Usually, what the courts are doing is ordering that the visitation or contacts occur.

Lesa Coder, Private Citizen, Adoptive Parent:

[She gave the Subcommittee her testimony, [Exhibit E](#).] I would also tell you that I have testified on many occasions, and I am not representing myself professionally here, but rather personally. For Section 2(2), it states, "The identity of a natural parent who is a party to an agreement . . . is not required to be included in the agreement." I guess I'm asking for a little bit of clarification. Are we not to contact them directly, or some of these folks are to remain anonymous?

Chairman Conklin:

I'm sorry—could you ask that one more time? I stepped away for a moment.

Lesa Coder:

Yes, on page 3, I believe it is page 3, Section 3(3). I said 2(2), but it's 3(3). It says the identity of a natural parent who is a party to an agreement for postadoptive contact is not required to be included in the agreement. For clarification, does that mean they are to remain anonymous, and we're to deal with a third party?

Chairman Conklin:

I believe it means they can remain anonymous. Some of these decrees will require just that pictures be sent, or they may be sent to the agency with no names ever exchanged. I will ask Legal to confirm if that's the case.

René Yeckley:

Yes, that is how I read that provision.

Lesla Coder:

Likewise, I didn't recall seeing it in here. Does that mean that the contact information of the adoptive parent is also to remain anonymous? How would that work for visitation?

Chairman Conklin:

Not all postadoptive contacts require visitation. In many, actually I believe in most of these cases, we're talking about sending a lettered update, maybe a photograph or two, something of that nature. It is very possible that this is done through a third-party organization where the identities of both parties remain anonymous.

Lesla Coder:

If that is your intent, I would simply ask that we clarify it in here, if it's not for visitation. I would never want to subject my adopted child to third party handling with something who's an unknown. Another question would be regarding Section 2(2). It says that the adoption proceedings are not to be finalized until or unless the natural parent signs. What if they can't be found? What if they can't sign timely? Would we simply not have an adoption as a result of non-signature?

Chairman Conklin:

I'm not sure I understand your question. If the parent can't be found, how can you have a postadoptive contact agreement in the first place?

Lesla Coder:

So, again, if we could clarify that, if not timely, if there is no signature, then the courts will mandate approving the adoption without the agreement.

Chairman Conklin:

We'll certainly take a look at it. Next item?

Lesla Coder:

I have one other point. Regarding legal representation, I would tell you that I am fully capable of hiring some of the best attorneys in this state. I did not. My child was adopted through DCFS [Division of Child and Family Services]. Quite frankly, and this is a resounding acknowledgement of what Ms. Foley pointed out, children who are with DCFS are not coming from loving homes. They have either been sexually abused, mentally abused, or physically abused in some way. I was wondering when the child's rights are going to be represented, far and way above any biological parent. If they need legal counsel, by all means let's do it as taxpayers and hire them public counsel. I paid \$125 for mine to read the adoption decree. I would be more than happy to post the bail, or the

bond, or the amount, to make sure that the biological parent, if they can be found, can be legally represented.

[Lesa Coder, continued.] I would also implore you not to make this a bill that applies to DCFS or otherwise children who have been forced out of their home due to the incapacitating nature or abuse by the biological parents. I realize, and I've heard here today, that other states target children who are in the state welfare system. I would tell you that, as I moved to adopt my daughter, she was 17 months old. At the ripe age of 5 months old, she was the child who was left abandoned for three days, as a five-month-old infant, with no food or water. I would tell you that I don't care if that's a temporary insanity plea on the part of a biological parent; I would fight to the death to prevent that child from always and forever, in her adult life, being spoon-fed to an abusive parent.

When will the adoptive parents ever have the way cleared for them, rather than continuous hurdle after hurdle after hurdle? I realize that it may not be your intent to hold adoptive parents hostage in the eleventh hour; and while that may be true, this bill does not make this clear.

I will be following the bill, so as you entertain suggested changes to it, I'll be happy to come back and tell you what my thoughts might be on that.

David Arnold, Private Citizen, Adoptive Parent:

I'm an adoptive parent, not an attorney, so pardon me if I'm not as well-spoken as some of those who have spoken previously. I don't have a lot to add that's new; I'd like to reiterate what Ms. Foley said, what Ms. Coder said, and what Mr. Jones has said previously.

Also, I'd like to say a couple of things about the points that were made, the six points that you believe the purpose of this bill does. Frankly, I disagree with all six items. I think the best thing you can do with this bill is to put it into the shredder. I think it's really bad legislation; it's completely unfair and one-sided. It does not represent adoptive parents.

I would reiterate what Ms. Coder said; it essentially holds adoptive parents hostage. It would create a situation, were I to enter into one of these contracts, even if it were just for cards and letters, where I would be looking over my shoulder for 18 years. [I would be] wondering if I had ever done anything that the birth parent disagreed with, so they could call me into court and accuse me of violating a contract, even if I had provided those letters. How am I to prove my innocence? There's no provision in this bill to limit the number of times that I can be accused.

[David Arnold, continued.] Essentially, what you're going to do it to create an unfriendly environment for adoptive parents where they will choose to go elsewhere, whether it be out of the country for a foreign adoption, or out of state where someone can actually become a parent, and not a conditional parent where you're continually having to answer to the state for 18 years.

I have an adopted daughter who is eight months old. Her adoption was finalized two months ago. I don't know if any of you are adoptive parents, but I can't tell you what a tremendous weight that is to have off your shoulders. Those six months of waiting for that adoption to become final, even though it was uncontested, even though I knew there would be no problems—there was always that little thing in the back of your mind saying something could happen, someone could turn up, someone could contest. With the bang of the gavel after the six months, and the court order that the child be mine forever; that was a tremendous weight off my shoulders.

What you're talking about is putting another weight on for 18 years. Even though you clearly stated that these contracts are completely optional, what you're doing, by making the agency disclose that there is the possibility for that birth parent to enter into a contract, as Ms. Foley pointed out, you are going to, by default, create a contract where they will either have to sign away their rights, or say there is a contract but I do not wish it. That in a sense becomes a default contract. I think more commonly you're going to encourage those contracts, and then you're going to create the situation that I just discussed, where a parent now is no longer a parent. We're conditional parents constantly looking over our shoulders.

Chairman Conklin:

Mr. Arnold, we have that in testimony on numerous occasions already. While I appreciate your passion, I have to move this meeting along. Do you have any other points, specifically, that have not been addressed, that you'd like to get on the record?

David Arnold:

No, but I would just like to say that it has been abundantly clear in this Committee, as well as in the previous Judiciary Committee, that the Chairman, this one as well as the previous one, are clearly biased as proponents of this bill. They have not allowed us in opposition to speak without interruption. I feel that both Chairmen have been disrespectful. I'd just like to state that for the record.

Chairman Conklin:

Well, Mr. Arnold, let me ask you. Is there something that you want to add that we have not already heard?

David Arnold:

I don't believe so, but I don't know what all you've heard. I apologize if I repeated something that was said earlier.

Rick Perry, Director, LDS (Latter-day Saints) Family Services:

I have a couple of thoughts that I would like to share, and then something I would like the Committee to consider as a possible alternative or compromise, considering the points that have been brought up.

After having read the literature that was distributed at the last hearing, I had an opportunity to contact 12 of my colleagues who practice in the states that are mentioned as having enforceable adoption contracts. It was interesting to find that nearly all of them were unaware that an enforceable contract existed. When I began to examine the issue a little further, I found that it primarily applied to the child welfare system and for children that had come through the foster care system. Certainly, there were no bold-type agreements that were a part of the relinquishment document that these organizations and these colleagues of mine had participated in.

I can say that, within LDS Family Services who have been practicing adoption for 40 years, we've been able to establish policies and procedures that we feel act in the best interest of all clients, birth mothers, adoptive parents, and the child alike. We have certain policies that are in force, and we explain them clearly to birth parents and to adoptive parents. We would never venture out and have some agreement that would be forged and would go on outside of our agency policies.

I wanted to bring to the attention of the Committee that, in the *Nevada Revised Statutes* (NRS), there are two types of adoption agencies that are identified, and a definition is given of each one. The one is the public agencies, those that are involved in the various counties. They are referred to in the *Nevada Revised Statutes* as an agency which provides child welfare services, and are defined as in a county whose population is less than 100,000, in the local office of the Division of Child and Family Services.

The second definition is in a county whose population is 100,000 or more, the agency of the county which provides or arranges for necessary child welfare services. Now this is a definition that includes LDS Family Services, Catholic Charities, Jewish Family Services, and so on. In the *Nevada Revised Statutes*, they are referred to as child placing agencies. The definition is that they are a nonprofit corporation, organized pursuant to Chapter 82 of the NRS, and licensed by the Division to place children for adoption or permanent free care.

[Rick Perry, continued.] Now Assemblyman Anderson suggested the possibility of perhaps having children that are 2 or more years of age. The fact of the matter is that nearly all of the placements done by child placing agencies are infants who can be placed as early as 72 hours after birth. I believe there is quite a difference, which you begin to think about a 13-year-old child who perhaps has lived 9 or 10 years with their mother, and they have brothers and sisters and such, as opposed to a child that is 3 days old.

I think that one simple resolution here may be to have this particular bill apply to the agencies which provide child welfare services. I think it's this population that could best benefit from the provisions of this bill, and exclude the child placing agencies, because you notice that in the regulations there are some differences, and different policies that apply, to these different organizations because of the different ways in which they practice adoption. I think that would be something that I would propose that the Committee take a look at.

Chairman Conklin:

Regarding LDS Family Services, do you currently offer postadoptive contact agreements?

Rick Perry:

We do not. I have discussed it with our headquarters; we have 60 agencies throughout the United States. They have indicated that, because of our experience in adoption, we do not think it is good adoption practice, and would not participate.

Chairman Conklin:

I thought I had heard that, so I am trying to clarify. I guess from your point of view, there is no point in disclosing something that you do not believe should be a part of the adoption process for any of your clients in the first place. Is that correct?

Rick Perry:

That's correct. We have what we refer to as "Birth Parent Statement of Understanding," which we use to make sure that they understand our policies relative to future contact, letters, pictures, and so on. We also have an "Adoptive Parent Statement of Understanding" that clarifies our policies and helps them understand what this would be.

If this bill were passed, as it currently stands, the state would then include in their code a requirement that we would either have each birth mother sign a waiver, or we would have her sign some sort of document telling her that she would have an opportunity to have a contract if she wished to. At that point we

would have to tell the birth mother, we're sorry, that's just not something that we provide. That would require her to go elsewhere.

[Rick Perry, continued.] I think there are also misunderstandings about how involved attorneys are. You know, there's a lot of professionalism that goes into adoption with adoption agencies. Adoptive couples are not coming with an attorney in hand, nor are birth mothers. They're working with the adoption agency, and the first time the legal system becomes involved is at least six months after the placement occurs at the time of the adoption. Then the adoption decree is handed to the adoptive couple and it's filed in the clerk's office, and then handed to them. You're not going to be crafting a new document at that point in time; these decisions are made at the time of the relinquishment and placement.

Chris Escobar, Private Citizen, Adoptive Parent:

I just wanted to add one thing that was touched on, but I don't know if it was completely understood. That has to do with the nature of contracts. I know that the Judiciary Committee, as well as the Subcommittee, has mentioned that they want to have contracts that are enforceable. When I went through law school, one of the things that I learned in my contracts class is that all contracts are made to be broken. Typically, from the economic point of view, when you're in a business contract, it is more economical to break that contract than to contract with someone else. As long as you pay the first person, you can do that.

One of the challenges I see with this bill is that what we're getting out of a contract perspective, where we can have contractual damages, to where we're making it a judicial enforcement action where there isn't an opportunity to just have contractual damages. Of course, where this comes in isn't with just providing pictures and letters. I think all of us would agree that should be done. What happens is when we get to the exceptional case, like the case that resulted in the Supreme Court decision. As you may recall, there was a companion case to that. This birth mother, as she testified to last time, tried to challenge her relinquishment.

If you have a birth mother who has relinquished a child, and who has been placed with an adoptive couple, and then she wants to take that child back, I don't know many adoptive couples that would consent to having that birth mother have visitation with the child. Those are the exceptional cases; that's what brought that case out in the open. Prior to that time, I'm not sure that people understood one way or the other as to whether these contracts are enforceable. That's all I would add; I think you need to have contractual damages if you maintain it the way it is.

Assemblyman Anderson:

Mr. Escobar, I've wrestled with this particular dilemma now for some time. I continue to wrestle with it, trying to find what I think could be some potential middle ground. I'm hearing, knowing the fact that you both have a legal background of arbitration and are a parent caught up in, and having gone through, the adoptive process. Do you think there would be a disadvantage if there is an agreement of some sort to facilitate the birth parents' concerns; that there be a requirement before you step up to the contractual agreement that you have to go to arbitration of some sort?

I guess it's because when I write my name to a contract, I intend to do what it tells me to do. When the bank tells me I'm buying a car from them or with them, and they give a loan to me, they get very upset if I don't follow through. So when I sign my name to a contract, I anticipate that my good name goes with it. I have not been to law school. I went to another kind of school, so I take contracts very seriously. I think most people do. I appreciate the fact that at law school they tell you to look for the loopholes, but I try to have a different point of view.

How am I going to do this so that people are aware of what they're giving up, and do so with open eyes? The people who are adopting children, who I consider to be among the most remarkable people in the world, should feel that they have confidence to move forward with their child, and in the best interests of that child. They should be protected so that they can't become hit again from something that they said, such as, "I got the kid, that's all I care about." Could you help me with that?

Chris Escobar:

I'll try to. I appreciate that. Let me just explain, with regard to contracts, that I honor contracts too. All of us do. It's just that the basic principle is, in an economic situation, that they are made to be broken if something is more advantageous, as long as the first person receives the benefit of the bargain. That's all that comment was about.

I don't think arbitration is what you're really talking about. I think what you're talking about is mediation, in the situation where you will have people come together and perhaps have a mediator or facilitator to help solve the issues between the two of them. I think that's what agencies do, particularly child placing agencies here in Las Vegas that I've worked with. Frankly, I've worked with virtually all of them. They are at that level where they have the initial contact with the birth mother; they have the contact with the adoptive couple; they help facilitate that match; they work on both sides of that, and they bring

a level of professionalism. It's virtually across the board in terms of their level of professionalism.

[Chris Escobar, continued.] One of the concerns that I have is that the state is then mandating that you've got to provide this information or that information, which takes away from their professionalism and how they do the job. I have real reservations in that regard, and I think you don't give enough credence to what those professional agencies do. Perhaps what Mr. Perry suggested is a way to show a difference. It's the state, the public defenders that say, "I can avoid having termination hearings if I can get a written contract that I can have enforceable." I've been practicing in this adoption area for 11 years. Virtually all of mine has been with private agencies or private adoptions. I have yet to have a termination contest that I've had to go through trial. It just doesn't happen, because you're consenting virtually all the time, or you have a birth father that can't be found and we're doing what is called a "John Doe" termination, and it's a perfunctory hearing.

We have one case that resulted in a Supreme Court decision that is in a private agency area. Then we have the public agencies that say, "This is a tool I can use to prevent my needing to go through these termination proceedings and go through that trial." It provides the continuity because there's already contact with the adoptive child and the birth mother that is of long standing. I think that might be a solution.

Amy Turner, Private Citizen, Adoptive Parent:

I would like to echo all of the opposing testimony that's been presented today, and I have previously submitted testimony. One thing that I want to pull to the forefront, before you go to working session, is another aspect that hasn't been touched on today. That is number 1 in Section 4, regarding our ability to change our circumstances as adoptive parents, and having to notify the court first.

If I'm in a situation where I need to relocate to another state for a job or any other reason, I would have to go to court first. That is something that I find to be a fundamental right, to be able to move around wherever, just like any other parent who is not an adoptive parent would be able to do. I'm trying to figure out how I would explain to a prospective employer my delay in being able to take a position with them, and having to take care of this as part of my arrangements for another position. I'd ask that you consider that in your working session this afternoon also. Thank you.

Chairman Conklin:

Ms. Turner, I definitely appreciate that. That's the first time we've heard of that in our Committee. A quick check from our Legal staff here indicates that not

only is that the case for you, that's the case with any custodial parent, I believe.

René Yeckley:

Yes, for custodial and non-custodial parents who have gone through a divorce, if one of them wishes to move from the state, they do have to go to court, and they need to try to get consent from the other parent before doing so.

Amy Turner:

Mr. Chairman, this is not a divorce proceeding.

Chairman Conklin:

Precisely. We'll definitely keep this testimony in mind as we go to work session. That was a very good point. Ms. Turner, is that all you'd like to add to the record? You are in support of everything else that's been said, and opposed to the bill, correct?

Amy Turner:

Opposing, yes.

Cynthia Lu, Chief Deputy Public Defender, Washoe County Public Defender, Reno, Nevada:

I do have written testimony that I'll submit ([Exhibit F](#), [Exhibit G](#)). I had prepared some written testimony that I think will address statements made, address statements taken my previous comments out of context, and I'll provide that. I'll just be available for any questions in regards to any revisions.

Assemblywoman Allen:

Mr. Anderson mentioned an exemption for children under the age of two, and then it was also brought up [to add] perhaps a distinction between infants and children in foster care. Could you respond to that, if you, in your perspective, can talk about it?

Cynthia Lu:

In some email and in my current testimony, actually, it indicates that the birth mother case itself did involve a newborn. If this legislation is, in part, in response to that, it would be appropriate to differentiate the different types of children, age groups, and foster care versus private adoptions, because again the birth mother case was a newborn case involving a private adoption. I think the key issue there is the whole issue of informed consent to the birth parent. I don't think birth parents, regardless if they're the parent to a newborn or an older child, should be then differentiated into whether or not they should be informed. That's how I would respond to that question.

Chairman Conklin:

One of the things that I'm uncomfortable with is the rebuttable presumption that's currently in this particular bill. I think many of my colleagues are as well. I'd like to get your opinion on a presumption that the adoptive parents are always acting in the best interest of the child with respect to changes in this contract or decree.

Cynthia Lu:

I believe Professor [Annette] Appell [University of Nevada, Las Vegas, William S. Boyd School of Law] spoke to this issue previously as well. Part of the issue of why there was a suggestion of a rebuttable presumption is because I think everyone in the case is presuming that the adoptive parents are already acting in the best interest of their children. To whether or not they're agreeing to have a postadoptive contact agreement, obviously if an adopting family doesn't want to be subject to the statute, they simply don't have to have a postadoptive contact agreement. In that case, they don't have to file anything that's in this legislation. They can make their own decisions, and they can relocate wherever they want. That's the point I would stress, because the presumption is that both parties are thinking of best interest while they're making this postadoptive contact agreement; that's why there is a rebuttable presumption.

Chairman Conklin:

Are there any other questions? Thank you, Ms. Lu. Are there any others in support wishing to testify?

Angela Chalmers-Howald, Private Citizen:

[Submitted prepared testimony, [Exhibit H](#).] I just wanted to make a point that adoption agencies do not automatically mediate between birth parent and adoptive parent if something goes wrong. When contact was cut off between me and my child, I did go to New Hope, and they basically said, "You're just going to have to get an attorney. We're not going to assist you in this matter." So mediation is not necessarily automatically a service provided for the agencies.

I wanted you to also make note that LDS said that they do not offer the postadoption contact agreements. They did not say that they opposed it. I just wanted you to make a note that adoption agencies are not here opposing [A.B. 51](#), and that legally and legislatively the postadoption contract to date has not hurt any adoptive parent, based on evidence. There have been no lawsuits and no legislation brought forth. I did bring you the postadoption contract agreement that I signed ([Exhibit I](#)), and it does say this would not overturn an adoption, and it gives you something tangible to touch and to see what I signed, what New Hope signed, and what the adoptive parents signed.

[Angela Chalmers-Howald, continued.] This just shows you how legitimate I thought it was. It gives you something to touch, and to see what I went through, so that you're not just trying to guess what it looks like, or what it is, what it states adoptive parents agreed to, without force.

Chairman Conklin:

Seeing no more testimony available, I'm going to close the hearing of the Subcommittee on A.B. 51. I'm going to hold our work session to a future date. I'm hopeful that we can get it in this week. We have received probably another 50 pages of material to read through as a Committee. That can't be done in this form. So, what I'd like to do is adjourn this Subcommittee for Assembly Bill 51 until further notice. The next meeting we have will be a work session. Many of you have expressed an interest in helping find some common ground for this bill. If you have input, I would encourage you to email me or other members of the Committee. If you have suggested amendments, that wouldn't be a bad idea as well.

It has been brought to my attention that the National Clearinghouse on Child Abuse and Neglect document was provided to this Committee, which lists post-adoptive language in all of the other states in the United States. This is a 32-page document; we would like to make sure that's entered into the record as part of testimony for this Subcommittee ([Exhibit J](#)). It's certainly a document I think every Committee member is taking a good hard look at, at some of the options that we see out there in other states. With that, if I have no other objections, I would also like to make sure that all of the documents which were provided today, and I believe there were 7 or 8 of them, get into the record as well. I'm getting a good nod, so that means we're set to go. With that, I'd like to go ahead and adjourn this meeting until the call of the Chair. [Meeting adjourned at 3:38 p.m.]

RESPECTFULLY SUBMITTED:

Victoria Thompson
Committee Manager

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Judiciary

Date: February 28, 2005 Time of Meeting: 2:00 p.m.

[illegible]