

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

**Seventy-Third Session
March 4, 2005**

The Subcommittee of the Committee on Judiciary was called to order at 8:09 a.m., on Friday, March 4, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 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.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Katie Miles, Committee Policy Analyst
René Yeckley, Committee Counsel
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada
Kevin Schiller, Children's Services Coordinator, Washoe County Social
Services, Washoe County, Nevada
Eric Stovall, Attorney, Reno, Nevada

Cynthia Lu, Chief Deputy Public Defender, Washoe County Public
Defender's Office, Reno, Nevada
Chris Escobar, Private Citizen
Rick Perry, Director, LDS [Latter Day Saints] Family Services
Wanda Scott, Program Specialist III, Social Services, Division of Child and
Family Services, Nevada Department of Human Resources

Chairman Conklin:

[Called the meeting to order. Roll called.]

This is a work session for Assembly Bill 51 in the Subcommittee of the
Judiciary Committee in the State Assembly.

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

We will not be taking any formal testimony today. We are here to discuss the
direction the Subcommittee would like to take on this particular piece of
legislation.

René Yeckley, Committee Counsel, Legislative Counsel Bureau:

The proposed amendment ([Exhibit B](#)) is in bullet points.

The first bullet point is to include a provision to provide authority to enter into
an agreement for postadoptive contact, so that natural parents and the
prospective adoptive parents of a child to be adopted, may enter into an
enforceable agreement that provides for postadoptive contact between the
parties. This provision is currently in A.B. 51.

The second provision is a provision dealing with enforceability. It would provide
that an agreement for postadoptive contact is enforceable if it's included in the
adoption decree. This is also included currently in A.B. 51 and is consistent with
the Nevada Supreme Court case relevant to this bill [*Birth Mother v. Adoptive
Parents*, 118 Nev. 972 (2002)].

The third provision is a provision that would set forth the required elements of
such an agreement. It would require that the contract be in writing, be signed
by the parties, and that the agreement must not provide for monetary damages,
in the case of any non-compliance.

[Rene Yeckley, continued.] Also, we would have a provision under this proposed amendment that the identity of the natural parent is not required to be included in the agreement, and if a natural parent wishes to remain anonymous, a person who may receive service of process for the natural parent, must be included in the agreement. That's a provision that is also currently in A.B. 51.

Next, is a new provision that would place a duty on the adoptive parents, the adoption agency, and the attorneys involved in the adoption proceedings, to inform the court if the parties have entered into an agreement for postadoptive contact. Also, the court would be required to canvas these parties, which would be the adoptive parents, the adoption agency, and the attorneys. The court would be asking them whether they have knowledge of an agreement between the parties. Both of those provisions would be new and are not currently included in the bill.

The next provision would be a provision that provides that the agreement must be included in the adoption decree, if the court finds that an agreement does exist between the parties.

The next couple of provisions deal with different parties' rights. First, we deal with the birth parents' right to petition the court. The birth parent may for "good cause" shown, petition the court for enforcement of the agreement, or to prove the existence of an agreement.

For example, if the parties, who were canvassed by the court at the adoption proceedings, had lied about the existence of an agreement, the birth mother would have a right to petition the court to prove the existence of that agreement, and to request that the court include that agreement in the adoption decree, so that it would be enforceable.

Also, there would be a provision stating that the birth mother would have a civil cause of action against the parties who had been canvassed, and who had given false responses to the court's questions.

Next is a provision dealing with modification and termination. Here, the adoptive parents may petition for modification or termination of an agreement. This is different from how A.B. 51 is currently written, where both parties may have a right to petition the court. Here, it would only be the adoptive parents who have this right.

Further, with this new proposal, any modification may only limit or decrease the contact that is provided in the agreement, and may not expand or increase that contact.

[René Yeckley, continued.] With respect to remedies under this proposal, the remedies would be left to the discretion of the court. That's also consistent with how A.B. 51 is drafted, currently.

Next is the provision dealing with statute of limitations. It would provide that an action to enforce the agreement must be brought within 120 days after the breach of the agreement. This is the provision that is currently included in A.B. 51.

The next provision deals with the presumption that is involved if an adoptive parent requests a modification or a termination of the agreement. There would be a presumption that the modification or termination would be in the best interest of the child, if that's what the adoptive parents were requesting. This changes A.B. 51 in the sense that, currently, the bill has a presumption that if the parties enter into an agreement, it's presumed that the contacts provided in that agreement are in the best interest of the child. This would sort of flip flop that presumption.

The next provision is a provision dealing with consideration of a child 12 years or older. When determining whether to modify or terminate an agreement, the court shall consider the wishes of the child, if the child is at least 12 years of age.

Next, we have a provision stating that the adoption is unaffected by noncompliance. That's the same provision that is currently in A.B. 51.

Finally, a provision dealing with the court's jurisdiction. It would provide that the court retains jurisdiction over this matter until the child reaches 18 years of age, the child becomes emancipated, or the agreement is terminated. That builds somewhat on the existing provision in A.B. 51.

Mr. Chairman, I believe that covers all of those points.

Chairman Conklin:

I have a few comments to the Committee, on this particular proposed amendment, from the Chair. On the bottom of page 1 ([Exhibit B](#)), "The birth parent right to petition the court," there is specific language here that I want to draw your attention to, and I know Mr. Anderson caught it, and I just want to make sure that everyone else has too. "The birth parent may, for good cause, petition the court." The birth parent must show good cause prior to bringing any action.

[Chairman Conklin, continued.] I know there were some concerns from some parties that they would be dragged into court. I think, "good cause," based on some of my discussions with judges, would go a long way in allowing only people to come before the court for the most correct reasons, to bring action. My hope was, that would help us along.

Also—and this may be a question for Ms. Yeckley—we have presumption on page 2 ([Exhibit B](#)), which is towards the end of the document, but I am assuming that presumption applies to modification and termination as well. Correct?

René Yeckley:

Yes, that's correct; it would apply to both modification and terminations.

Chairman Conklin:

So, the adoptive parents, it is presumed, are always acting in the best interest of the child with respect to anything that goes on in this postadoptive contact agreement, after it is placed in the decree. Is that correct?

René Yeckley:

Yes, Mr. Chairman, that would be correct.

Chairman Conklin:

For those that are listening in, we had a rebuttable presumption in the original bill. We have strengthened it by moving it to the adoptive family and then taking out the word "rebuttable," which actually places a higher standard in favor of the adoptive parents.

I will take questions and open it up to the Committee to see what people have.

Assemblyman Anderson:

I just want clarification. I believe that on page 2 ([Exhibit B](#)), the bullet point, "Presumption in favor of the adoptive parents." Is it the intent of the bill drafter to make a cross-reference to the fundamental power of the new parents, the adoptive parents, that they are in control of the child? I don't think we have to repeat here the whole statute that reaffirms the right and authority of the new adoptive parents to be acting in the best interest of the child, but I'd like to see a cross-reference so that particular right is reaffirmed in these kinds of agreements, if that's possible?

René Yeckley:

We can certainly look into that.

Assemblyman Anderson:

It would make me feel a little more comfortable.

Chairman Conklin:

I've struggled with this myself. I'd like to know if we could do that.

René Yeckley:

It's a reasonable question.

Chairman Conklin:

The irony of the postadoptive contact agreement is, by the time we reach the court to put this into the decree, the birth parent has already given up all rights to the child. In the eyes of the court the adoptive parent, as is my understanding, is the parent of the child. The postadoptive contact agreement, if someone chooses to enter into it, in some way, shape, or form may be diminishing that already, so anything that we can do to reaffirm the adoptive parent as being the parent of the child, and the party in control of the destiny of the child, I would be in support of.

Assemblyman Anderson:

Having dealt with repetitive parts of NRS [*Nevada Revised Statutes*], I believe the bill drafter has, over time, tried to not have us be redundant. But I do want to make sure that when you pick up the statute, it reaffirms that, if it's possible. I just want to see if that would be part of the bill drafters' choice and I'm sure, obviously, if we're fortunate enough to get this out of the Subcommittee, and get to the full Committee and make the presentation, we'll have something harder in hand. Not necessarily, I don't want to take the bill drafter's time away from putting legislation out, to do this. I have just one other observation relative to this.

The remedies that we left to the discretion of the court. Clearly, the remedies are not that of removing the child from the ... Also, it says up here in bullet point 3 ([Exhibit B](#)), "Not provide for monetary damages for non-compliance." So, the fact that the remedies will be left to the discretion of the court would really be centered around whether the canvas itself was done, not the reality of the adoption itself, but rather the fact that this party withheld information from the court. It's between the court and the adoptive parents, not between the birth parent and the adoptive parents. Is that what the thinking is here, and that's what I need a little bit of clarification on?

Chairman Conklin:

Ms. Yeckley is going to be my backup here, and I'm going to do my best to explain the thought process here.

[Chairman Conklin, continued.] It is abundantly clear that many parties involved in the debate on this issue do not want to have to disclose that postadoptive contact agreements are available. There are lots of agencies out there that do not offer it as part of their adoptive program and we want to respect that right, which is how this particular bullet point, number 3 ([Exhibit B](#)), "Required elements of the agreement," came into play. We have to stop them from taking place without disclosing.

What we've done here is we've basically forced all parties to disclose to the court if they have an agreement. The way we discussed it; they have an affirmative responsibility to tell the court that they've entered into one. The court will then canvas to make sure that they did their affirmative duty, if they've entered into one, and that goes into the agreement.

Within the postadoptive contact agreement itself, it cannot have monetary damages as part of the agreement. When we sat down to go through this we ran many scenarios, not that anybody would ever go that far. That's why we put that in there. It was the feeling of the folks in the room at the time that we do not want the parties to determine monetary damages, should somebody violate the agreement that they get into. We wanted to leave that in the jurisdiction of the court, and the court alone. That's the reason for that clause. I know we said it in the second to last bullet point ([Exhibit B](#)), "Failure to comply with the agreement will not affect the adoption." I'm going to ask Ms. Yeckley, should we not put that as also prohibited, from the postadoptive contact agreement? In other words, should there be a prohibition that you cannot put in the postadoptive contact agreement that the adoption can be terminated if the agreement is not followed? I think that's something that might belong in there as well—I don't know—I'm asking for your opinion.

René Yeckley:

I think that's up to the Subcommittee's choice. I think that the provision would prohibit that from happening anyway, but you could definitely also require that it be a term in the agreement.

Chairman Conklin:

Presumed and assumption are very close, aren't they? I think I'd like to see that in there.

Assemblyman Anderson:

Even though I say it again, and again, I hate redundancy when I pick up the statutes, and so I think it's a kind of a bill drafter kind of question. I think if we get this in place, we're clearly laying down the definition that State agencies and private parties are going to go to court, and they're going to have an

affirmative responsibility to inform both parties of the open-adoption requirements.

[Assemblyman Anderson, continued.] We see the consequences of that action if they do not. The court has a responsibility to canvas, and if they do not, then coming back, the responsibility really rests with the birth parent to make the affirmative statement to the court. The only one that's going to have standing is the birth parent and they have the responsibility to meet ... I think we've really got it kind of covered here, maybe I'll feel differently when I see the actual final draft, but I think we're in good shape.

I don't have heartburn one way or the other about it. If it makes you feel more comfortable, Mr. Chair, I'll be happy to see it there.

Chairman Conklin:

Let's go this route. I think it's Legal's opinion, because it states clearly ([Exhibit B](#)), "The failure to comply with the agreement will not affect the adoption. It's my belief that because that is already in statute that would supercede anything that is written into the contract. Is that correct?"

René Yeckley:

That's correct, Mr. Chairman. And, just to expand a little bit on your point, the language that we would be looking at is to make it clear that noncompliance with these agreements would not affect the adoption. It's the same language that is currently in the bill, which I think is very clear and very strong, that "Failure to comply with the terms of an agreement for a postadoptive contact may not be used as grounds to set aside an order or decree of adoption, or revoke, nullify, or set aside a valid release for, or consent to, an adoption, or a relinquishment for adoption."

Assemblywoman Allen:

Just to speak to duplication again. First page, last bullet point ([Exhibit B](#)), "Birth parent may petition the court for enforcement of the agreement, or to prove the existence of agreement." That "or" there "to prove the existence of an agreement." Is that duplicative because of bullet point 4 ([Exhibit B](#)), "duty to inform the court of the agreement?" That's already taken place. I just want to make the roles very clear. The adoptive parents' portion is that they can petition the court for modification or termination, and the birth parent can only come into court for enforcement. Let's not muddy up the waters, don't be repetitive, and make that as clear as possible.

René Yeckley:

Ms. Allen, yes, we'll do that in the drafting stage. This is just language for conceptual ideas, but we'll make that clear this is only for the enforcement and not for modification or termination rights.

Chairman Conklin:

The thought process here is, in the very rare occasions, if at all—and hopefully it would never happen—where parties enter into an agreement, the duty to inform the court of the agreement ... the court meets with the adoptive parents and agency. The birth parent is not there. They've been gone for months from the proceeding. There's nothing to prevent—other than now statute—those people from lying that they've entered into an agreement, to the court. Part of the reason that's there is, if the court has been lied to, we now have a full record. The birth parent has a signed notarized contract; the court has canvassed and has made written record that no one spoke of it; and we have a track record there to show what's going on. Does that make sense?

Assemblywoman Allen:

Yes.

Chairman Conklin:

We've put that in place so that people do not have to disclose and we're allowing the agencies and other parties to do as they see fit, within their particular adoption process. It is how we're getting at the same issue without restricting the way the marketplace, and I hate to use the term marketplace for adoption, and the varying agencies go about their business, so we wanted to allow them the freedom to do so. Any other questions from the Committee?

Assemblywoman Allen:

Just for the benefit of those watching, I know we spoke in the past about the remedies portion, remedies left to the discretion of the court. If you could elaborate a little bit about why that is significant, and why perhaps we shouldn't put any restraints there.

Chairman Conklin:

I'm going to give it a try. In some discussion with a judge from Clark County, it was felt that because this is a jurisdiction of the court, they needed every remedy possible for those people who choose to enter into an agreement to make that agreement enforceable. We put enough language in here to protect the adoptive parent from being dragged into court, and I'm using the terms that the opposition has used. On the rare occasions when they do come to court, and somebody is simply not following the terms of the agreement that they

have entered into, the court needs to have enough ability to make that agreement enforceable.

If somebody has a postadoptive contact agreement and they get a better job in Florida and want to move, it was my opinion that is a completely legitimate reason to do so. The presumed action would be that it would be in the best interest of the child. The family that they are with has a better opportunity for career advancement and future ability to provide resources for the family and the child. That would be incredibly hard to overcome in a postadoptive contact agreement which is why we left that particular clause out. I say that because the thought here was, if we put it in there, then that clause would find its way into every postadoptive contact agreement that you can't move. We left it out because we felt it was adequately covered by the protections we've put into the bill. Is that correct?

Assemblyman Anderson:

It seems to me that the original piece of legislation on an open adoption agreement could raise a concern of the agencies, which they felt would be disquieting people who might be entering into such an agreement. All of the sudden they had to raise the spectrum, where it had never been part of the discussion. By moving the burden to this other area and by putting the duty to inform the court of the agreement, if one exists, does not require the agency to inform the birth parent of the whole cadre of things.

On the other hand, it does put the burden on the agencies—the State agencies and the private agencies—if they have knowledge of the existence of such an agreement that it is included. It doesn't have to be the red flag that it was in the other. Plus, it puts the integrity of the court, at least in reading through this and reviewing those other states at stake, to be truthful to the court, not necessarily to the birth parent. If you're lying as a State agency, or if you're lying as a private agency, of the existence of one of these contracts, the burden, therefore, falls that way.

And, while it is the birth parent's right to bring the fact that their rights were ignored here, the protective qualities of this redraft, as it would appear, is going to be the new parents, the adoptive parents, who are more protected in point of fact with the child. We reaffirm that this child is their child, and they're going to raise this child, and, therefore, we keep the spirit of what the Supreme Court said, because they were unprotected before, in reality.

It also reaffirms the position that they are the parents of this new child, for all intents and purposes, and that the only standing that comes from the birth parent—if there was a violation here of the agreement, and all they're looking

for is the agreement, not monetary damages to them—is the court can fine that person for lying to the court. The integrity of the court is reaffirmed and your responsibility as a party in that agreement is through the court—and your responsibility to be truthful to the court. That’s my short read of this.

Chairman Conklin:

That would be my take on it as well. Also, my take on it is, the majority of adoptions that happen in private agencies, from the testimony that we received, they do not do postadoptive contact agreements at all, and so this bill just simply won’t apply to them. That would be my read. Is that correct Ms. Yeckley?

René Yeckley:

Yes, to the extent that an adoption agency doesn’t use these agreements and the parties haven’t otherwise entered into one of these agreements. When they’re canvassed, they will just simply reply that they are not aware of any agreement.

Chairman Conklin:

Just for my own satisfaction, so that I have it on the record, Ms. Yeckley, nothing in this bill changes adoption parents’ rights who do not have postadoptive contact agreements? Is that correct?

René Yeckley:

That is correct, Mr. Chairman.

Assemblyman Anderson:

Is the Chair willing to entertain a motion?

Chairman Conklin:

I am definitely willing to entertain a motion provided that everyone is in agreement. Is there anyone in the public that would like to make a very brief statement?

Lucille Lusk, Chairman, Nevada Concerned Citizens:

On the bullet point, third from the bottom, on the back page ([Exhibit B](#)), Consideration of child 12 years or older it says, “When determining whether to modify or terminate an agreement, the court shall consider.” I wonder if you would want to put “may consider?” So that the court feels full discretion to either accept or not.

I had one question that I’m probably not the best person to ask. There are probably others with greater knowledge than I but maybe I’ll just ask it and you

can determine. Whether in the duty to inform the court of the agreement, is there any problem with the statements of understanding that the agencies do use that are not postadoptive contact agreements but are statements of the policies of the agency, which do sometimes include the sharing of pictures and such. Does that, under this law, rise to the level of being considered a postadoptive contact agreement? It has not been used in that way; it has been used as simply a statement of what the agency recommends, encourages, and participates in.

Assemblyman Anderson:

I'd probably have to ask the agencies because they do this, rather than you, but your concern rests with what the effect is when the State agencies are using their closed-adoptive agreements, rather than their open-adoptive agreements?

Lucille Lusk:

Not really with the State agencies, but with the private agencies who are having closed adoptions. Even with a closed adoption it's a policy of the agency to encourage the sharing of pictures for the first five years, or something like that. It's not really with the State agencies, but with the private agencies, and I'm not the best person to answer it, but I do think it's a valid thing to be raised at this stage.

René Yeckley:

I haven't seen these forms that you're talking about, Ms. Lusk, but I would just say that this bill is only applying to actual agreements between the adoptive parents and the birth parents, where it's written and signed by the parties, and they're agreeing to this contract. I would say it has to be more than just statements of encouragement from the agencies.

Chairman Conklin:

I think that raises some concern with the Committee.

Assemblyman Anderson:

Mr. Stovall and Ms. Lu we're concerned about those agreements that come through you, either as the public defender's office, or through your agencies. Do we need to make an affirmative statement in all adoptions that have certain kinds of contact agreements between the birth parent and the adoptive parents that they be included whether they are open or closed? Do they have to be part of the canvassing that the court does when it goes through to make sure that becomes a statute kind of thing? I'm trying to see what the implications are going to be here.

Kevin Schiller, Children's Services Coordinator, Washoe County Social Services, Washoe County, Nevada:

In the previous testimony that was given, I had submitted a written document specific to the types considered open and semi-open types of adoptions. I think that's where some clarity needs to be given.

On a semi-open or an open-type adoption, in Washoe County we do both. We are an agency of child welfare services, but we are responsible for all types of adoptions, both child welfare and private. I think the issue is those are types of adoptions. So, when you say open or semi-open, you're referencing a type of adoption based on identifying information. Specific to this bill, I think there needs to be some clarity that there could be discussion about pictures and information being exchanged, but a specific postadoptive contact agreement is separate from that type of adoption.

I think the contact agreement has to be specific to what's going to be provided.

Eric Stovall, Attorney, Reno, Nevada:

I understand this question. The contact agreement, regardless of what it provides for, in my opinion, should be included in the process regardless of the adoptions being considered open or closed. As we usually view the open or closed or semi-open, it's more of an identity of whether or not the birth parents are going to know the adoptive parents.

Chairman Conklin:

What we are concerned about is with respect to Mr. Anderson's question, and Ms. Lusk's concerns. We encourage everybody to share pictures for the first five years. We are trying to determine if that rises to the level of a postadoptive contact agreement?

If you have something to share specific to that, then we'd like to hear it.

Kevin Schiller:

My clients would not consider that as part of a postadoptive contact agreement. As we view it, a contact agreement is going to be something that is in writing. If it's not in writing, there's nothing else to talk about.

Chairman Conklin:

That was most helpful.

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

I would also agree that if the terms used are "encouragement," and it's not a written signed agreement by both parents, it shouldn't rise to the level of statute. I think that still needs to be made clear to the birth parents; this is not a formal agreement. That would still be my concern. I know in the birth mother case [*Birth Mother v. Adoptive Parents*, 118 Nev. 972 (2002)], it was a signed, written agreement that was found not to be enforceable. I want to clarify that I think the birth parents still need to be informed.

Chairman Conklin:

Any more questions for the folks up here? Can you speak to the question we have at hand here?

Chris Escobar, Private Citizen, Las Vegas, Nevada:

Yes, I can. As I view that, in order to be a postadoptive contact, both the birth parent and the adoptive couple would have to sign the same agreement. I think many agencies don't have that occurring. There are some that do, and to the extent they do, I think they may have a postadoptive contract. To the extent they don't, there is not a postadoptive contract.

Chairman Conklin:

I think that is the understanding of the Committee now. I think we're getting a hand here. It was just indicated, it's clear.

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

Not to be redundant, but we have birth parents' statement of understandings and adoptive statement of understandings that clarify our policy. They're only signed by either the birth parent or the adoptive contact. After consulting with counsel, we don't believe that it would fit under the definition of an enforceable adoption contract because it's not really signed by both parties. We're happy with the language as it appears in your bill. I just want to say, I'm grateful to the Subcommittee and the Committee. We're very happy with the process and want to thank you for what you've done, and certainly feel very comfortable with nearly all of the components of the modified bill.

Chairman Conklin:

Mr. Perry, I have a follow up question for you. When you testified previously—and now you've mentioned it again—you have a form that you have them sign, and it talks about the process and everything else. Is that form part of the petition to the court? Do you turn that into the court?

Rick Perry:

We don't, but what we do turn in is a confidential report to the court, before every finalization and that includes the relinquishments. I think if this bill is passed, there will be a provision that in the confidential report to the court we will indicate whether or not there is a contract, and if there is, it will probably include the contract so that it could be part of the final adoption decree.

Wanda Scott, Program Specialist III, Social Services, Division of Child and Family Services, Nevada Department of Human Resources:

Just one quick comment and it's in response, or at least clarification for the question that Ms. Lusk raised. It has to do, perhaps, with the statement of understanding. Is it the request that we want a statement in a birth parent's statement of understanding, so clearly we have something additional in writing, as to their knowledge, about the postadoption agreement? I want to be sure I understand the context in which she asked her question.

Chairman Conklin:

It is, and hopefully, I understand your question. It is under this proposed amendment, Ms. Scott, that we are suggesting that it is the parties' responsibility to disclose that there's an agreement to the court, and it is the court's responsibility to canvas if there's an agreement.

We have taken out of the original bill the disclosure requirement. Is that answering your question?

Wanda Scott:

Yes, it does.

Assemblyman Anderson:

If we're ready to proceed in this, I feel comfortable. I think that the question of consideration of a child that the court "may" consider the wishes of a child at least 12 years of age, rather than "shall," is not inordinate. I'm happy that we raised the spectrum of a 12-year-old child's wishes. The court may take those into consideration, but does not have that obligation, and I think that's a good thing. If the bill drafter will, given latitude to reaffirm in the presumption area, reaffirm the right of the adoptive parents, although it's in the other part of the statutes, I'm comfortable with the amendment that we have in front of us.

Chairman Conklin:

Does that mean, Mr. Anderson, you would like to make a motion that I will entertain?

Assemblyman Anderson:

I would move that proposed amendments to Assembly Bill 51 from the Subcommittee, be those that are presented in our document today, ([Exhibit B](#)), with a modification of the "shall" to "may," and the possibility left up to the bill drafter to find out whether it's possible to reaffirm the rights of the adoptive parents. It may not be necessary, and I don't want to push for redundancy.

Chairman Conklin:

There is a motion by Mr. Anderson, seconded by Ms. Allen, to accept proposed amendment ([Exhibit B](#)) on Assembly Bill 51 that was brought forth by Research: changing the third from the last bullet point on the second page, second line, from, "The court shall consider," to "The court may consider," although this has to come out in drafting. And then in the third bullet point on the front page, the possible opportunity to include that within the adoption postadoptive contact agreement you may not take away the adoptive parents' right to continue to have the child, to affect the original adoption. Have I accurately stated your motion, Mr. Anderson?

Assemblyman Anderson:

And the opportunity to reaffirm the rights of the adoptive parents.

Chairman Conklin:

And the opportunity to reaffirm the rights of the adoptive parents, for the bill drafter to take that into consideration when drafting.

ASSEMBLYMAN ANDERSON MOVED TO AMEND
ASSEMBLY BILL 51 WITH THE AMENDMENTS IN THE
SUBCOMMITTEE RESEARCH DOCUMENT ([EXHIBIT B](#)) INCLUDING
THE FOLLOWING ADDITIONS:

- PAGE 2, BULLET POINT 5, CHANGE "SHALL" TO "MAY"
- PAGE 1, BULLET POINT 3, POSSIBLY REAFFIRM WITHIN THE
ADOPTION POSTADOPTIVE CONTACT AGREEMENT THE
ADOPTIVE PARENTS' RIGHT TO KEEP THE CHILD

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Ms. Yeckley, is there any housekeeping that we need to take care of beyond this, with respect to this measure?

Assembly Committee on Judiciary

March 4, 2005

Page 17

René Yeckley:

No, Mr. Chairman, I don't think there is any.

Chairman Conklin:

It is my understanding then, that we will no longer be meeting in Subcommittee for Assembly Bill 51. That the language will be drafted and it will be brought before the full Judiciary Committee at a later date. [Adjourned meeting at 9:02 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Subcommittee Name: Judiciary

Date: March 4, 2005 Time of Meeting: 8:09 a.m.

[illegible]