

**Testimony
Interim Judiciary Committee
Senator David Hogue, Chairman
January 11, 2018**

Chairman Hogue and members of the Judiciary Committee, good morning. I am Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I'm here today to provide continuing information to the committee on its study of the adoption process of this state and to answer any questions you might have about adoption issues in general. I would also like to answer the questions that were left unanswered from the committee's last meeting in October 2017.

There were questions regarding the cost of adoption, to which I gave, at that time, a general response. After meeting with the licensed child placement agencies supervisors recently, I learned that the cost of a regular agency adoption of a North Dakota child by a North Dakota family ranges from \$12,000 to \$13,000 at one agency to \$20,000 to \$21,000 at another agency. The difference in cost may be due to the way services are billed. One agency charges less when the family is adopting a second or subsequent child from that agency. In general, the agencies agreed that the costs for an "identified" adoption (or a type of adoption where the parties identify the plan for adoption outside of an agency and then are provided the services required to facilitate that plan by the agency) cost less because the family is not paying an agency placement fee. They do indicate however, that the cost varies because the birth parent counseling costs are billed hourly instead of as a flat fee.

Let me speak briefly to the specific requirements of NDCC 14-15.1, the child relinquishment to identified adoptive parent statute and the differences between it and our regular adoption process. At the time of its passage, there were individuals advocating that there be a legal alternative for

families who are adopting known children (those situations where the birth and adoptive family connect outside of the agency and wish to pursue a relinquishment/adoption) that would allow the family to accept legal custody upon the relinquishment pending the finalization of the adoption – rather than the agency getting custody of the child. This is really the main difference in this type of adoption proceeding. The requirements of the statute were designed to protect these situations from becoming “baby buying” in essence. The only additional requirement that isn’t done in a regular adoption would be the assignment of a guardian ad litem, again, a protection so that the child’s best interest is being protected in a private transaction. I don’t believe most of our agencies consider the process and requirements so very different, and in fact, identified relinquishment/adoption at some agencies costs less than a regular agency adoption because the adoptive family does not pay the “placement fee”.

Representative Delorme had noted an understanding that the termination of parental rights/adoption process can be adversarial and asked whether there are any efforts to make this process more voluntary.

Because the termination of parental rights process for children in foster care is preceded by child abuse and neglect investigations, child removal and placement in foster care, deprivation hearings, efforts at service provision and family reunification that has ultimately failed; the process can be, by the time of termination, very adversarial. But birth parents that have made unsuccessful efforts to meet case plan requirements and be reunited with their children are offered and sometimes agree to the voluntary termination of their rights so that their child may be provided a safe, permanent home and family. In many cases, birth parents know the families with whom their children will find permanency. In increasing numbers, children are placed with relative families who will go on to provide them a permanent home through guardianship or adoption. If there are no suitable relatives available

to adopt children whose parents' rights have been terminated, we would look to foster parents or current caregivers to adopt. Only when families known to the child are not available for permanency do we attempt to recruit a non-related adoptive family. In all these cases, adoption staff work with prospective adoptive parents to recognize the importance of ongoing birth family connections – both with parents, if they are safe, as well as extended family members who may not be able to provide a home but are willing to maintain a connection with the child. Additionally, if children are not able to be placed together with their siblings in a permanent home (although every effort is made to do so), adoptive families are coached in maintaining meaningful sibling connections through visits, technology, phone calls, etc. Adoptive parents are asked to provide in writing, their commitment to this ongoing contact with the birth family, for the benefit of the child, as long as it is safe and healthy for the child. So, although it is not always possible, voluntary terminations do happen for children in foster care. In cases where there is not a voluntary termination, efforts are made to maintain sibling relationships and birth family connections. Those philosophies are part and parcel of how we train, assess and support families to provide permanency for children who cannot safely be returned to their birth parents.

Representative Klemin had asked about embryo adoption. Historically adoption has been the primary alternative for family building, but increasingly we have experienced the impact of medical science on reproductive health. Medical science now offers Assisted Reproductive Technologies (ART).

Today ART tends to be the first alternative pursued by couples facing infertility. Frequently during IVF treatments more embryos are created than are eventually used. This has caused an ever-increasing number of embryos in frozen storage. Once they have completed their family, a family

undergoing ART may still have embryos in storage. Many are not prepared for this and are surprised and unsure of what to do with their remaining embryos. One of the options a family has is to donate them to another couple for family building. This choice is a life-affirming way to resolve a challenging dilemma and provide a source of hope to another person/couple. A complication however, is that the donor's children are genetically related to any children born from donated embryos. In 1997, Nightlife Christian Adoptions pioneered embryo adoption. Embryo adoption applies the adoption model to embryo donation, allowing families to be involved in the matching process and providing assistance similar to what's available in traditional adoption. Since the 1990s, it is estimated that over 7,000 babies have been born into the loving arms of their family from donated frozen embryos.

Embryo donors using an embryo adoption agency may select the recipient of their embryos from a pool of potential adopting families. They are encouraged to pursue open relationships with the adopting family and are allowed to determine the desired level of future communication with them. An agency gives peace of mind by assuring that the adopting family has been:

- evaluated for any health issues that may affect their ability to parent
- screened for any criminal/child abuse issues
- educated concerning potential issues of parenting a non-genetically related child

An embryo adoption uses best practices of a domestic adoption plan to protect all parties, especially the child, allows the adopting couple to experience pregnancy and childbirth and simply begins the adoption process nine months earlier than 'normal'. Embryos are considered property, not people, in the United States and embryo adoption is governed by property

law. Ownership is transferred by legal contract. The embryos will be owned by the adopting family before their frozen embryo transfer, meaning the donor family has already relinquished their parental rights. By law, the adopting mother is legally the child's mother at birth, and her legal husband is the father.

North Dakota licensed child placement agencies have had some involvement with embryo adoption. They have reported working with several families over the years to complete required education and home study requirements of embryo adoption agencies that are located in other parts of the country. They were not aware of any fertility clinics in our state, which facilitate embryo adoptions, though there are clinics that provide ART.

Senator Grabinger asked if it might not be helpful to have parents who have gone through the adoption process share their experience. In my discussion with the agency supervisors, they indicated that, if the committee was interested, they could invite families to submit information or provide testimony. Additionally, all of the agencies have either formal or informal quality assurance processes and protocols that allow families to provide feedback regarding their adoption experience. The agencies then work toward service improvement based on that feedback.

Additionally, Chairman Hogue, you asked for my recommendations for changes to adoption law. I did facilitate a conference call with child placement agency supervisors to discuss and would offer the following:

It is generally agreed that allowing adoptees access to their sealed, original birth certificates is something that should carefully be considered in our state. One agency is currently meeting with some individuals interested in

statutory changes that would allow for more openness of the original birth records.

For many years, adults adopted as children who wanted to find out who their birth parents were ran up against a brick wall because they had no legal right to simply get a copy of their original birth certificate in most states. But that's been changing, as a growing number of states have been giving adult adoptees more — and in some cases, unrestricted access to those records. Today about half of all states allow adult adoptees some form of access to their original birth certificate outside of going to court. In at least nine states — Alabama, Alaska, Colorado, Hawaii, Kansas, Maine, New Hampshire, Rhode Island (for those 25 and older) and Oregon — adult adoptees have unfettered access to those records, according to Nina Williams-Mbengue, who works on this issue at the National Conference of State Legislatures.

There was a bill before the Legislature in our last legislative session which would have opened the birth certificates of all adoptees, without any barriers. I and the agencies agree that a more cautious, measured implementation of the openness of birth records is warranted, in order to protect the confidentiality of birth parents that have placed children for adoption in the past and were promised confidentiality. There was agreement among the agencies that birth parents should have an alternative to indicate they do not wish such a disclosure, or to “opt-out” of having their information disclosed. Many states have gone through the process of progressively opening birth records, so if this was an area the committee wishes to address, there is information available through the National Conference of State Legislatures and through other means to direct the work.

In our discussion, we also addressed the issue of a paternity registry. There is not consensus about the benefit of a paternity registry for our state. There was concern expressed from those agencies that have had experience with the Minnesota paternity registry. They indicated they don't believe that the paternity registry there has been of much help in addressing issues and believe it has resulted in "sloppy work" on the part of some agencies in doing the hard work of locating and interacting with potential birth fathers. Concern was also expressed that if it was not funded sufficiently to provide extensive public information about its availability, it would not be an effective tool.

We also had discussion regarding the topic of adoption "re-homing" or the practice of some adoptive parents of placing their children informally with new families without the protections of state and interstate adoption protocols when an adoption has "failed." This has become a topic of national media attention in the last years. We are aware of at least a couple of such situations in our state, but of the cases we are aware, the families involved did use adoption agencies and attorneys to assure that there were protections in place before children were transferred to another family.

[North Dakota Statute does address this issue in several places](#) (NDCC 12.1-31-05. Child Procurement – Penalty; NDCC 14-10-05. Assignment of children prohibited – Penalty; NDCC 50-12-14.1. Conditions for placement of children in state – Consent of department required; NDCC 50-12-16. Taking children from state for placement in family homes – Consent of department – Report) and I have attached those excerpted sections.

Thank you for the opportunity to address the committee today. In summary, I would recommend, based on my discussions with licensed child placement agency supervisors and my many contacts over the years with adoptees, birth parents and adoptive parents, that the area most ripe for

change in our current statute is that related to an adoptees access to his/her original birth certificate and to provide more openness in adoption. But I would further recommend that changes to the statute be measured and consider the historical promise for confidentiality of many in the adoption triangle.

This concludes my prepared testimony. I would be happy to answer any questions you might have.