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## Independent Adoption: The Inadequacies of State Law

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## INDEPENDENT ADOPTION: THE INADEQUACIES OF STATE LAW

Adoption is a legal process by which adopting parents take into their family the child of another.<sup>1</sup> Licensed child-placing agencies facilitate most adoptions.<sup>2</sup> Biological parents or unlicensed intermediaries also assist in the placement of children with adoptive parents.<sup>3</sup> Commentators traditionally refer to adoptions facilitated by biological parents or unlicensed intermediaries as independent adoptions.<sup>4</sup>

There are significant procedural differences between an agency adoption and an independent adoption.<sup>5</sup> In an agency adoption, a licensed child-placing agency conducts a thorough investigation of the adoptive parents before making a placement determination.<sup>6</sup> In an independent adoption, however, the state defers the investigation of the adoptive parents until after the child is placed in an adoptive home.<sup>7</sup>

Proponents and critics have debated the wisdom of independent adop-

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1. Adoption was originally developed to insure intrafamily succession of property and to carry on the family name. See Wadlington, *Adoption of Persons Under Seventeen in Louisiana*, 36 TUL. L. REV. 201 (1962).

2. Comment, *Independent Adoptions: Is the Black and White Beginning to Appear in the Controversy Over Gray-Market Adoptions?*, 18 DUQ. L. REV. 629 (1980).

3. Intermediaries are usually doctors, lawyers, or social workers. Bradley, *Black-Market Adoptions*, 22 CATH. LAW. 42, 54 (1976). Pennsylvania defines intermediary as "any person or persons or agency acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoptive placement." PA. STAT. ANN. art. 23 § 2102 (Purdon Supp. 1984). Estimates indicate that lawyers made 53% and doctors 37% of independent placements. See W. MEEZAN, S. KATZ & E. RUSSO, *ADOPTIONS WITHOUT AGENCIES: A STUDY OF INDEPENDENT ADOPTIONS* 50 (1978).

4. Independent adoptions account for 21% of the adoptions in the United States annually. Comment, *supra* note 2, at 636-37; see also Grove, *Independent Adoptions: The Case for the Gray Market*, 13 VILL. L. REV. 116, 117 (1967). For a discussion of the decline in agency adoptions, see W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 26.

Commentators also refer to independent adoptions as private placements or "the gray market." Comment, *supra* note 2, at 630.

5. Bradley, *supra* note 3, at 53. For a comparison of the procedural differences between agency and independent adoptions, see Article, *supra* note 2, at 633-34.

6. Comment, *supra* note 2, at 663-64.

7. Evans, *Independent Adoptions: In Whose Best Interest?*, 53 OKLA. B.J. 1805, 1809 (1982). See, e.g., FLA. STAT. ANN. § 63.122(6) (West Supp. 1985). Once the state places the child in the adoptive home, the procedures for agency or independent adoptions are largely the same. Investigation requirements, however, may vary. For an explanation of state investigation requirements, see *infra* notes 44-60 and accompanying text.

tions for decades.<sup>8</sup> Proponents point out that independent adoptions allow for the immediate placement of the child with adoptive parents. Proponents argue that immediate placement promotes the formation of the parent-child bond.<sup>9</sup>

Critics of independent adoption argue that the investigation of the adoptive parents in an independent adoption is inadequate to ensure that the placement serves the best interests of the child.<sup>10</sup> Moreover, opponents of independent adoptions believe that independent adoptions perpetuate "black-market" adoptions.<sup>11</sup> These opponents have coined the terms "gray-market" and "black-market" adoption to distinguish between legal and illegal independent adoptions.<sup>12</sup> A legitimate gray-market adoption becomes an illegal black-market adoption when the intermediary or biological parent accepts an illegal fee.<sup>13</sup>

As the terms gray- and black-market suggest, a market for adoptable children exists. The adoption market, like any other, is influenced by the law of supply and demand.<sup>14</sup> When demand exceeds supply, the price of a good increases. In the adoption market, the good being sold is a child.

In recent years, the availability of abortion and the increased use of contraceptives have contributed to a decrease in the supply of adoptable infants.<sup>15</sup> In states that permit independent adoptions, adopting parents compete for the short supply of adoptable infants, thereby increasing the infants' "market value."<sup>16</sup> Seizing this opportunity, unscrupulous in-

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8. Comment, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L.J. 715 (1950).

9. Evans, *supra* note 7, at 1806.

10. Comment, *supra* note 2, at 634. The interests of the child should be paramount in the adoption process. Grove, *supra* note 4, at 116.

11. Comment, *supra* note 2, at 636. For an account of black-market procedures, see Grove, *supra* note 4, at 118-21.

12. Comment, *supra* note 8, at 715 n.2.

13. Bradley, *supra* note 3, at 54.

14. *Id.* at 48 n.1 and accompanying text. Critics argue that under the black-market system, the child's interest in having fit parents is ignored. Rather, the market judges parents by their ability to pay. *Id.* at 51.

15. W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 9. Another factor contributing to this "baby shortage" is the growing number of single parents opting to keep their illegitimate children. *Id.*; see also Bradley, *supra* note 3, at 48-49.

The shortage is greatest for healthy white infants. Comment, *supra* note 2, at 49 n.6. There is, however, an abundance of so-called "hard to place" children: minority, emotionally disturbed, or handicapped children. *Id.* This Note focuses on independent adoptions of healthy white infants.

Moreover, an average five-year waiting period to receive a child through a child-placing agency evidences this shortage. J. McNAMARA, *THE ADOPTION ADVISOR* 75 (1975).

16. Intermediaries have allegedly sold infants to adoptive couples for as much as \$50,000. W.

intermediaries have secured sizeable profits by "selling" children to the highest bidders.<sup>17</sup> This abuse of the independent adoption process results from inadequate state adoption laws.<sup>18</sup>

This Note analyzes six aspects of state adoption statutes to determine their effectiveness,<sup>19</sup> identify areas for reform, and make recommendations for improved legislation. In Part I, this Note will discuss limitations on who may place children for adoption, and the problems arising from those limitations.<sup>20</sup> Part II analyzes the process of investigating adopting parents in connection with a petition for adoption.<sup>21</sup> Part III contains a brief overview of adoption residency requirements.<sup>22</sup> In Part IV, this Note examines the related issue of restrictions on the importation of children.<sup>23</sup> Part V discusses statutes requiring parents to disclose adoption expenses.<sup>24</sup> In Part VI, this Note argues that violators of adoption laws should often be subject to criminal penalties.<sup>25</sup> This Note then will conclude with a proposed model statute for regulating independent adoptions.<sup>26</sup>

## I. LIMITATIONS ON WHO MAY PLACE CHILDREN FOR ADOPTION

Statutes governing who may place children for adoption determine the legality of independent adoption in each state.<sup>27</sup> Generally, statutes provide for placement by state agencies, state licensed child-placing agen-

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MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 140-43. For a brief discussion of market values of children, see generally R. ISAAC, *ADOPTIONS-A CHILD TODAY* 75-79 (1965).

17. Intermediaries use a technique called "auction blocking" to pit adoptive couples against each other in a bidding war. See Bradley, *supra* note 3, at 51 n.15.

18. See S. REP. NO. 167, 95th Cong., 2d Sess. 26 (1978), *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS 557, 571 [hereinafter cited as *Report*].

19. Ascertaining the effectiveness of adoption statutes in preventing black-market adoptions is difficult for two reasons. First, because this is essentially a black-market transaction, little case law discusses their effects. Biological mothers litigate a few actions, contending that their consent to the adoption was involuntary. Bradley, *supra* note 3, at 59.

Second, because black-market adoptions are illegal, states do not keep accurate records of the number of black-market adoptions. Commentators estimate that up to 30% of independent adoptions are made on the black-market. *Id.* at 49 n.7.

20. See *infra* notes 27-43 and accompanying text.

21. See *infra* notes 44-60 and accompanying text.

22. See *infra* notes 61-71 and accompanying text.

23. See *infra* notes 72-86 and accompanying text.

24. See *infra* notes 87-101 and accompanying text.

25. See *infra* notes 102-117 and accompanying text.

26. The proposed statute addresses those areas of independent adoption regulation focused on in this Note. The proposal is not a comprehensive statutory scheme.

27. Oklahoma and Idaho do not have statutes that stipulate who may place a child for adop-

cies, the biological parents, or intermediaries. All states permit placements by a state agency.<sup>28</sup> In addition, almost every state statute permits placements by licensed child-placing agencies.<sup>29</sup> Placements by licensed agencies benefit the adoption process first by shouldering much of the case load that would otherwise fall upon the government; second, by allowing governmental supervision of adoption through the licensing process;<sup>30</sup> and third, by providing protection against black-market sales.<sup>31</sup>

Most states permit placement by biological parents.<sup>32</sup> Several states, however, impose restrictions on biological parent placements. For example, a few states limit biological parent placement to the home of a relative.<sup>33</sup> Other states require state approval before permitting biological parent placement.<sup>34</sup>

In those states that permit biological parents, but not intermediaries, to place children for adoption, intermediary black market profiteering continues. Intermediaries arrange adoptions<sup>35</sup> and circumvent restrictive statutes by having biological parents actually hand the child to the adoptive parents.<sup>36</sup>

More than one-third of the states permit placements by intermediaries

tion. Thus, by omission, these states permit independent adoptions. *See* Evans, *supra* note 7, at 1806.

28. Examples of such state agencies include New Mexico's Social Services Division of Human Services Department, South Carolina's Children's Bureau, and Vermont's Department of Social Welfare.

29. Examples of licensed child-placing agencies include the Catholic Social Service and the United Way.

30. Many states extensively regulate licensed child-placing agencies. *See, e.g.*, TEX. HUM. RES. CODE ANN. §§ 42.041-.073 (Vernon 1980 & Supp. 1985) (including provisions for inspection of the agency, maintenance of records by the agency, license application procedures, standards for granting licenses, license renewal procedures, and license revocation procedures).

31. *See* Bradley, *supra* note 3, at 56-61.

32. The states that do not allow placement by biological parents are Mississippi, South Carolina, Tennessee, Vermont and West Virginia. *See* Appendix 1.

33. These states are Connecticut, Delaware, New Jersey, North Carolina and North Dakota. *Id.*

34. These states are Indiana, Kentucky and Massachusetts. *Id.*

35. "Necessary arrangements" includes payment of hospital expenses, physicians' fees or living expenses of the biological mother. *See generally* W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 69-71.

36. Comment, *supra* note 2, at 637. *Cf. In re Anonymous*, 46 Misc.2d 928, 261 N.Y.S.2d 439 (Fam. Ct. Dutchess County 1965) (adoption petition denied because attorney handed child over to adoptive parents).

in at least limited situations.<sup>37</sup> For example, some states require prior state approval before an intermediary places a child in an adoptive home.<sup>38</sup> Louisiana requires that intermediaries represent a specific adoptive couple before the intermediary takes the adoptable child.<sup>39</sup> Missouri limits intermediary eligibility to attorneys, physicians, or clergymen of the biological parents.<sup>40</sup> Conversely, New York imposes no limitations on intermediaries and its statutory scheme expressly provides for independent adoptions.<sup>41</sup>

States could eliminate black market adoptions by prohibiting independent adoptions.<sup>42</sup> This solution, however, would strain the capacities of already overburdened state adoption agencies.<sup>43</sup> Thus, enhanced regulation of independent adoptions best addresses the problems of the black market.

## II. INVESTIGATION REQUIREMENTS<sup>44</sup>

Each state requires investigation in connection with a petition for adoption.<sup>45</sup> Requirements, however, vary. Several states waive the investigation requirement when a state agency places the child.<sup>46</sup> In addition, states usually waive the investigation requirements when the petitioner is

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37. See Appendix 1.

38. These states are Indiana, Kentucky and Massachusetts. *Id.*

39. LA. CIV. CODE ANN. art. 9 § 422.5 (West Supp. 1985).

40. MO. ANN. STAT. § 210.481(2) (Vernon 1983).

41. N.Y. DOM. REL. LAW § 116 (Consol. 1979).

42. Comment, *supra* note 2, at 630. States cannot, however, stop all black-market adoption techniques. One technique is to bypass the adoption process entirely. The biological mother simply registers at a hospital under the adoptive mother's name, allowing the child's birth certificate to contain the adoptive parent's surname. See Sitomer, *Baby Sale—For Big Profits*, Christian Science Monitor, June 24, 1974, at 5, col. 1.

Eliminating independent adoptions may in fact increase the occurrence of black-market adoptions because the demand for children would exceed the agencies' abilities to supply children. See Comment, *supra* note 2, at 637.

43. See Bradley, *supra* note 3, at 56.

44. This Note focuses on three aspects of the investigation process: (1) whether "investigation" includes both pre- and postplacement studies, (2) the length of time within which the investigation must be completed, and (3) who can conduct the investigation. For a discussion of the substantive content of the investigation, see W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 26-27, 93; Grove, *supra* note 4, at 129-32.

45. Typically, the investigation's purpose is to determine whether the adoptive home is suitable for and in the best interests of the child. See, e.g., ALASKA STAT. § 25.23.100(d) (1983). Some states focus the investigation on verification of the allegations in the petition for adoption. See, e.g., N.Y. DOM. REL. LAW § 116(3) (Consol. 1979).

46. See, e.g., ARK. STAT. ANN. § 56-212(c) (1983). States grant this exemption because agencies conduct their own investigations prior to placement. M. LEAVY & R. WEINBERG, LAW OF

the child's stepparent.<sup>47</sup> Unless the state grants a waiver, almost every state requires investigation.<sup>48</sup>

Unfortunately, state investigation regulations for independent adoptions fail to mandate preplacement investigations.<sup>49</sup> Only five states require preplacement investigations.<sup>50</sup> Without preplacement investigation, unknown risks may threaten the adopted child.<sup>51</sup> Many couples utilize the independent adoption process because they cannot meet licensed agencies' investigation requirements. Because adopting parents may circumvent preplacement investigation through the use of the independent adoption process, all states should require preplacement investigations for independent adoptions.<sup>52</sup>

To insure protection of the child's interests, state statutes should provide for sufficient time to allow a thorough investigation.<sup>53</sup> Most state

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ADOPTION 42 (4th ed. 1979). Commentators generally recognize that agency investigations are superior to those mandated by statute. *See* Grove, *supra* note 4, at 129-31.

47. *See, e.g.*, TENN. CODE ANN. § 36-1-188(a) (1984). The Tennessee statute, in accord with several states, also provides a waiver when the petitioner is a grandparent, uncle or aunt. *Id.* *See also* ALASKA STAT. § 25.23.100(g) (1983).

48. Four states provide for optional investigation. ARK. STAT. ANN. § 56-212(b) (1983); KAN. STAT. ANN. § 59-2278(c) (1983); MISS. CODE ANN. § 93-17-11 (1973); WYO. STAT. § 1-22-111(a)(ii) (1977). In 1967, ten states provided for optional investigation. Grove, *supra* note 4, at 129.

49. Failure to investigate thoroughly an adoptive couple may lead to irreparable damage to the child. A Nevada study, for example, uncovered the adoption of a child by a man who had previously been charged with sexual molestation of children. Grove, *supra* note 4, at 121.

50. FLA. STAT. ANN. § 63.092 (West, Supp. 1984); IOWA CODE ANN. § 600.8 (West 1981); MONT. CODE ANN. § 40-8-109 (1983); NEV. REV. STAT. § 127.280 (1981); WA. REV. CODE ANN. § 26.33.180 (Supp. 1985).

51. The state must balance competing factors when considering the substantive requirements of a preplacement investigation. States should strive to place a child as soon as possible, but the possibility of mistakenly placing a child in an abusive home argues for careful consideration. In addition, unless the child is placed almost immediately after birth, the biological mother will have to keep it, which may be contrary to her desires, or the state will have to place the child in the custody of an agency during the preplacement investigation. The competing factors suggest that while there is a need to protect the child through preplacement investigations, the investigation should be limited to screening out those adoptive parents who would pose a danger to the child.

While studies do not indicate that independent adoptions are significantly less successful than agency adoptions, agency adoptions require preplacement investigations, affording maximum protection to the child. Independent adoptions do not. *See supra* note 7 and accompanying text. For a discussion of the results of surveys comparing agency adoptions to independent adoptions, see Grove, *supra* note 4, at 122-25; Podolski, *Abolishing Baby Buying: Limiting Independent Adoption Placement*, 9 FAM. L.Q. 547, 548 n.2 (1975).

52. Evans, *supra* note 7, at 1809.

53. The interests of the child are paramount in the adoption process. Time constraints on investigations should be designed to protect those interests. *See supra* note 10.

statutes require that the state complete its investigation in 30<sup>54</sup> to 180<sup>55</sup> days. A few state statutes require the state to complete its investigation within a "reasonable time."<sup>56</sup> Generally, however, ninety days should insure a thorough investigation,<sup>57</sup> while a longer period would add little to the investigation's thoroughness and would constitute an unnecessary delay.

Typically, state statutes require investigation either by a state agency or by a licensed child-placing agency.<sup>58</sup> Several states, however, allow a court to assign the investigation to another "qualified person."<sup>59</sup> Provided that the courts scrutinize qualifications to determine that the assigned person will carefully protect the child's interests, this assignment process is beneficial.<sup>60</sup>

### III. RESIDENCY REQUIREMENTS

In nearly one quarter of independent adoptions,<sup>61</sup> the adoptive parents live in one state and the adopted child was born in another state.<sup>62</sup> Few states, however, regulate the importation or exportation of children for purposes of adoption.<sup>63</sup> In addition, many states impose only minimal residency requirements on persons petitioning for adoption within their borders. These factors make evasion of strict adoption statutes simple,<sup>64</sup> and in many cases, profitable.<sup>65</sup>

Adoption statutes in most states include venue provisions that regulate the persons who may petition for adoption.<sup>66</sup> These statutes usually re-

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54. *See, e.g.*, ALASKA STAT. § 25.23.100 (1983).

55. CAL. CIV. CODE ANN. § 226.6 (Deering Supp. 1984). Several states specify time constraints within the 30 to 180-day range. *See, e.g.*, DEL. CODE ANN. tit. 13 § 912 (1981) (60 days); FLA. STAT. ANN. § 63.122(6) (West Supp. 1984); ME. REV. STAT. ANN. tit. 19 § 533 (1984).

56. *See, e.g.*, KAN. STAT. ANN. § 59-2278 (1983).

57. By allowing 90 days for the completion of the investigation, the disparity in quality between agency investigations and statutorily-mandated investigations will be diminished. *See supra* note 46.

58. *See, e.g.*, ARK. STAT. ANN. § 56-212(b) (1983). Louisiana is the only state that requires a state agency to conduct the investigation. LA. REV. STAT. ANN. § 9.427 (West Supp. 1984).

59. *See, e.g.*, ARK. STAT. ANN. § 56-212 (1983).

60. In Oklahoma, however, a statute containing the "qualified person" language resulted in persons without sufficient expertise in the psychological aspects of adoption conducting investigations. Evans, *supra* note 7, at 1810.

61. W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 49.

62. *See supra* note 19 and accompanying text.

63. *See infra* notes 72 & 75 and accompanying text.

64. Bradley, *supra* note 3, at 60-61.

65. *See supra* note 17.

66. *See, e.g.*, ARK. STAT. ANN. § 56-205 (1983).



quire the prospective parents to file for adoption in either the county in which they reside, the county in which the child reside, or the county in which the agency having custody of the child is located.<sup>67</sup> A few states *require* a prospective parent to petition in the county where he or she resides.<sup>68</sup> Most states, however, allow the prospective parent to file a petition either where the child reside, where the agency is located, or both. Adoptive parents may then locate a child and file an adoption petition in that state even if they are not residents. The parents can transport the child back to their home state, thereby circumventing their home state's more restrictive adoption laws.

Adoptive parents can also circumvent statutes requiring the filing of the petition in the county in which they reside. Many states only require the prospective parents to reside in the county of adoption at the time that they file their petition.<sup>69</sup> In states imposing longer residency requirements, adoptive parents can establish temporary residences solely for purposes of meeting these requirements.<sup>70</sup>

All states may more effectively prevent the circumvention of adoption laws by requiring petitioners to be residents. In addition, a longer petitioner residency period may prevent the temporary residence problem raised above.<sup>71</sup> The facilitation of black-market activity through interstate adoptions<sup>72</sup> calls for the establishment of residency requirements that will deter, if not wholly prevent, interstate black-market adoptions.

#### IV. RESTRICTIONS ON THE IMPORTATION OF CHILDREN FOR ADOPTION<sup>73</sup>

In addition to residency requirements, statutes restricting the importa-

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67. *See, e.g.*, DEL. CODE ANN. tit. 13, § 902 (1981) (petition to be filed where petitioner resides or where agency is located); HAWAII REV. STAT. § 578-1 (1976) (petition to be filed where petitioner or child resides, or where agency is located); NEB. REV. STAT. § 43-102 (1984) (petition to be filed where petitioner resides); S.C. CODE ANN. § 20-7-1680 (Law. Co-op. Supp. 1985) (petitioner must be a bona-fide resident; petition to be filed where petitioner or child resides).

68. *See, e.g.*, NEB. REV. STAT. § 43-102 (1984).

69. *See, e.g.*, TEX. FAM. CODE ANN. § 16.02 (Vernon Supp. 1985).

70. *See, e.g.*, *infra* note 85.

71. KY. REV. STAT. § 199.470(1) (1984) (requiring petitioners to be residents *or* have resided in the state for 12 months); MISS. CODE ANN. § 93-17-3 (Supp. 1984) (90-day residency requirement); N.C. GEN. STAT. § 48-4(c) (1984) (6-month residency requirement).

72. *See infra* note 74 and accompanying text.

73. Florida and Minnesota have statutes regulating exportation of children for purposes of adoption. FLA. STAT. ANN. § 63.207 (West Supp. 1985); MINN. STAT. ANN. § 257.06 (West Supp. 1984). Exportation statutes were useful in deterring illegal placements outside the state. Note,

tion of children for purposes of adoption<sup>74</sup> will effectively eliminate interstate black-market adoptions. Most black-market adoptions occur in states with weak adoption laws.<sup>75</sup> This fact suggests the need for legislation restricting the importation of children into a state for purposes of adoption. Only eleven states, however, have enacted such legislation.<sup>76</sup> Typically, these statutes require a person who is importing a child into the state for purposes of placement or adoption to obtain the prior consent of the state.<sup>77</sup>

Other restrictions on the importation of children for adoption differ greatly. Kansas, for example, prohibits bringing a child into the state absent proof that the child is not incurably diseased, feebleminded, or of vicious character.<sup>78</sup> Rhode Island requires that persons importing an unrelated child into the state file a report within fifteen days of entry.<sup>79</sup> North Dakota, taking a tougher position, requires written notification of the *intent* to bring a child into the state.<sup>80</sup> Connecticut exempts from its reporting requirement children brought into the state for placement in the home of a resident relative.<sup>81</sup>

The purpose of reporting requirements is to notify the state of the need to conduct an investigation of the adoptive parents<sup>82</sup> and to insure that

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however, that the Minnesota exportation statute does not prevent the technique set out at *infra* note 85.

74. See *infra* notes 75-86 and accompanying text.

75. Report, *supra* note 19 *passim*. Testimony before the Senate Subcommittee also suggested that uniform adoption regulations would significantly reduce black-market activities. State legislators have ignored the need for uniformity among the states. Only five states have enacted versions of the Uniform Adoption Act. MONT. CODE ANN. §§ 4-8-101 to -202 (1983); N.M. STAT. ANN. §§ 40-7-1 to -11, 40-1-15 to -17 (1984); N.D. CENT. CODE §§ 14-15-01 to -23 (1981); OHIO REV. CODE ANN. §§ 3107.01 to .19 (Page 1981); OKLA. STAT. ANN. tit. 10, §§ 60.1 to .23 (West Supp. 1984).

76. ALA. CODE § 38-7-15 (1977); CONN. GEN. STAT. § 17-51 (1983); DEL. CODE ANN. tit. 13 § 926 (1984); KAN. STAT. ANN. § 38-315 (1981); MINN. STAT. ANN. § 257.05(1) (West 1982); NEB. REV. STAT. § 43-704 (1978); N.H. REV. STAT. ANN. § 170-B:23 (1978); N.D. CENT. CODE § 50-12-14.1 (1982); R.I. GEN. LAWS § 15-7-3 (1981); S.C. CODE ANN. § 20-7-1880 (Law. Co-op. Supp. 1983); S.D. CODIFIED LAWS ANN. § 26-6-10 (1984).

77. See, e.g., N.H. REV. STAT. ANN. § 170-B:23 (1977).

78. KAN. STAT. ANN. § 38-315 (1981).

79. R.I. GEN. LAWS § 15-7-3 (1981).

80. N.D. CENT. CODE § 50-12-14.1 (1982).

81. CONN. GEN. STAT. § 17-51 (1981). In addition, Minnesota provides an exemption only when the child is brought into the state by a relative for placement in the relative's home.

This exemption extends to a parent, stepparent, grandparent, brother, sister, or aunt or uncle of the first degree of the child. MINN. STAT. ANN. § 257.05(2) (West 1982).

82. See, e.g., ALA. CODE § 38-7-15(a) (1975).

the child will not later become a public charge.<sup>83</sup> The judiciary's failure to enforce strictly state reporting requirements, however, impairs the utility of these statutes.<sup>84</sup>

The absence of restrictive importation statutes in neighboring states also impairs the effectiveness of otherwise tough state reporting requirements.<sup>85</sup> Adoptive couples may evade state statutes restricting the importation of children by taking advantage of a neighboring state's less restrictive laws.<sup>86</sup> Unless states adopt uniform restrictions on the importation of children for purposes of adoption, state statutes imposing importation restrictions will remain largely ineffective. Although

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83. See, e.g., ALA. CODE § 38-7-15(a) (1975); MINN. STAT. ANN. § 257.05(1) (West 1982) (requiring the posting of a \$1,000 bond and stipulating that the state will remove a child who becomes a public charge).

84. See, e.g., *Wolf v. Smith*, 435 So. 2d 749 (Ala. Civ. App. 1983). In *Wolf*, the court held that adoption statute requirements must be closely followed. The court, however, found failure to comply with the statute insufficient grounds for rendering an adoption void. The statute required the petitioner to obtain the Department of Pensions and Security's consent before bringing the child into the state for adoption. *Id.* at 752. The court reasoned that the best interests of the child would not be served by setting aside the adoption after the child had lived with the adoptive parents for two years. *Id.*

*Wolf* raises the dilemma that courts face when individuals violate adoption statutes. Often, as in *Wolf*, a child has lived with adoptive parents for such a length of time that removal would not be in the best interests of the child. But, failure to remove the child undermines the deterrence value of the statute. See generally J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 31-52 (1973). See also *In re Adoption of Child by I.T. and K.T.*, 164 N.J. Super. 476, 397 A.2d 341 (App. Div. 1978) (court refused to remove a child from an adoptive home even though the child was placed in a home illegally). But see *Ex parte Sullivan*, 407 So. 2d 559 (Ala. 1981) (court directed the return of a child to the biological mother because the adoptive parents failed to comply with Alabama's importation statute).

The proposed statute (see *infra* text accompanying notes 122-28) attempts to meet the problem of punishing the adoptive parent. Section 6(c) of the proposed statute affords courts considerable discretion in punishing participants in illegal adoptions. The statute permits the courts to make a case-by-case determination of whether the parents should be punished (if at all) or the adoption should be voided. Courts must consider the seriousness of the violation and the length of time that the child has lived with the adoptive parents. Courts can only resolve this issue by balancing the interests of the child against society's interests in punishing violators, deterring illegal conduct, and eliminating the black-market in children.

85. See *supra* note 75 and accompanying text.

86. In Minnesota, for example, the state requires the Commissioner of Public Welfare's consent before a person can bring a child into the state for purposes of placement or adoption. MINN. STAT. ANN. § 257.05(1) (West 1982). Minnesota law also provides that no petitioner may file for adoption unless a licensed agency places the child. The Minnesota statute provides an exception, however, for a child lawfully adopted in another state if the child and adoptive parents reside in the other state. MINN. STAT. ANN. § 259.22 (West 1982). Thus, Minnesota law permits a couple to obtain an independent adoption of an out-of-state child if the couple establishes a temporary residence and adopts a child in a state that has more lenient placement laws, and then moves back to Minnesota. See Comment, *supra* note 2, at 631 n.15.

restrictions against importation alone will not prevent illegal placements, they will help insure compliance with state adoption statutes.<sup>87</sup>

## V. DISCLOSURE OF EXPENSES REQUIREMENTS

States may also discourage the black market in children, while maintaining the independent adoption system, by requiring the disclosure of placement or adoption expenditures.<sup>88</sup> Thirteen states' statutes already require disclosure of adoption expenses.<sup>89</sup> Seven states<sup>90</sup> with similar provisions<sup>91</sup> require the adoptive parents to disclose expenditures<sup>92</sup> made in connection with: (1) the birth of the child; (2) the placement of the child with the adoptive parents; (3) the medical or hospital care received by the biological mother or the child;<sup>93</sup> and (4) services received by any-

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87. See Report, *supra* note 19.

88. See Bradley, *supra* note 3, at 56-58.

89. ALASKA STAT. § 25.23.090 (1983); ARIZ. REV. STAT. ANN. § 8-144 (1974); ARK. STAT. ANN. § 56-211 (Supp. 1983); CAL. CIV. CODE § 244r (Deering 1971 & Supp. 1985); FLA. STAT. ANN. § 63.132 (West Supp. 1985); GA. CODE ANN. § 74-407(b) (Supp. 1984); IOWA CODE ANN. § 600.9(1) (West 1981); MICH. COMP. LAWS § 710.54(2) (1979); N.J. STAT. ANN. § 9:3-55 (West Supp. 1985); N.D. CENT. CODE § 14-15-10 (1981); OHIO REV. CODE ANN. § 3107.10(a) (Page 1980); PA. CONS. STAT. ANN. tit. 23 § 2531(b)(4) (Purdon 1985); WIS. STAT. ANN. § 48.837(2)(d) (West Supp. 1984).

90. ALASKA STAT. § 25.23.090 (1983); ARIZ. REV. STAT. ANN. § 8-114 (1974); ARK. STAT. ANN. § 56-211 (Supp. 1983); GA. CODE ANN. § 74-407(b) (Supp. 1984); IOWA CODE ANN. § 600.9(1) (West 1981); N.J. STAT. ANN. § 9:3-55 (West Supp. 1985); N.D. CENT. CODE § 14-15-10 (1981).

91. See, e.g., ALASKA STAT. § 25.23.090 (1983). The Alaska statute provides:

Report of petitioner's expenditures. (a) Except as specified in (b) of this section, the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The report shall show any expenses incurred in connection with

- (1) the birth of the minor;
- (2) placement of the minor with petitioner;
- (3) medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and
- (4) services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person.

(b) This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.

(c) Any report made under this section must be signed and verified by the petitioner.

*Id.*

92. States require disclosure of all expenditures including any value paid or agreed to be paid. See, e.g., ARIZ. REV. STAT. ANN. § 8-144 (1974).

93. New Jersey requires disclosure of payment of medical expenses of the biological mother during the pre- and postnatal period. N.J. STAT. ANN. § 9:3-55(a)(3) (West Supp. 1985). The other six states limit disclosure to expenses incurred during the prenatal period. See *supra* note 89.

one in connection with the placement or adoption.<sup>94</sup> These statutes exempt from the reporting requirements adoptions by stepparents.<sup>95</sup> Six other states have less standardized disclosure statutes.<sup>96</sup>

Most disclosure statutes, however, do not require adoptive parents to disclose the recipients of their expenditures.<sup>97</sup> Without recipient disclosure, a court is unable to verify the petitioner's report.<sup>98</sup> But by requiring adoptive parents to disclose the recipients of their expenditures, a court could investigate the validity of the disclosures. California, for example, requires adoptive parents to disclose the names and addresses of each person who receives payment in connection with a placement or adoption.<sup>99</sup> Michigan law states that persons involved in the placement of an adopted child must testify to their adherence to statutory requirements.<sup>100</sup> A combination of Michigan's mandatory testimony rule, California's disclosure of the recipients of expenditures requirement, and the existing disclosure<sup>101</sup> requirements of most states<sup>102</sup> would prove an effective verification method that would deter black-market adoptions.

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94. Typically, the statutes require disclosure of expenses incurred in connection with services rendered by or on behalf of the adoptive parents, the biological parents of the child, or any other person. *See, e.g.*, ARK. STAT. ANN. § 56-211(a)(4) (Supp. 1983).

95. *See, e.g.*, ALASKA STAT. § 25.23.090(b) (1983).

96. CAL. CIV. CODE § 224r. (Deering 1971 & Supp. 1985); FLA. STAT. ANN. § 63.132(1)(d) (West Supp. 1985) (also requiring the adoptive parents to disclose any payments made for the living expenses of the biological mother); MICH. COMP. LAWS § 710.54(2) (1971); OHIO REV. CODE ANN. § 3107.10(A) (Page 1980) (Ohio's broader approach requires the adoptive parents to file a full accounting of all disbursements made in connection with the placement or adoption of the child); PA. STAT. ANN. tit. 23 § 2531(b)(4) (Purdon Supp. 1985) requiring only an itemized accounting of all payments made to an intermediary).

97. *See supra* note 90.

98. One study points out that black-market adoptions cannot succeed unless the adoptive parents cooperate with the intermediary. W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3. Many adoptive parents, however, are willing to cooperate with the intermediary even to the point of perjuring themselves. Bradley, *supra* note 3, at 59 n.56.

99. CAL. CIV. CODE § 224r. (Deering 1971 & Supp. 1985). The California statute also requires the disclosure of any party who participates in any way, directly or indirectly, in the handling of such payments. Wisconsin imposes disclosure requirements similar to those of California. WIS. STAT. ANN. § 48.837(2)(d) (West Supp. 1984). Increased disclosure requirements will not be effective, however, unless the state couples the requirements with penalties severe enough to deter adoptive parents from conspiring with black-marketers to file false disclosure reports. *See supra* note 97.

100. MICH. COMP. LAWS § 710.54(3) (1979). The Michigan statute applies to persons ". . . who were involved in any way in informing, notifying, exchanging information, identifying, locating, assisting, or in any other way participating in the contracts or arrangements which, directly or indirectly, led to placement of the person for adoption." *Id.* Michigan, however, does not require disclosure of the recipients of payments. *See* MICH. COMP. LAWS § 710.54 (1979).

101. *See supra* note 98.

102. *See supra* note 90.

## VI. CRIMES AND PENALTIES

A number of states impose criminal penalties for violation of statutes regulating: (1) placement of children for purposes of adoption without a license;<sup>103</sup> (2) payment or receipt of compensation for placement;<sup>104</sup> (3) advertising placement services without a license to place children for adoption;<sup>105</sup> and (4) inducing a parent to part with his child.<sup>106</sup> Twenty-four states impose penalties for violation of their placement statutes.<sup>107</sup> Fourteen states penalize violators of their compensation statutes.<sup>108</sup> Nine states impose penalties for violation of their statutes prohibiting the advertisement of placement services without a license to place children for adoption.<sup>109</sup> Ten states prohibit inducing parents to offer their children for adoption.<sup>110</sup> States ineffectively preclude these criminal activities either because they have no statutory penalty provisions<sup>111</sup> or because their sanctions are insufficient to compel adherence.<sup>112</sup>

Without penalties, individuals will not comply with adoption statutes. Surprisingly, some of the states that regulate independent adoptions frequently omit penalty provisions.<sup>113</sup> Thus, to insure maximum compliance with their adoption laws, states should impose appropriate sanctions.<sup>114</sup>

Moreover, absent *adequate* penalties, individuals will ignore state adoption laws. One state levies a \$25 to \$200 fine for operating a child

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103. See, e.g., ME. REV. STAT. ANN. tit. 22 § 8204 (1980).

104. See, e.g., MICH. COMP. LAWS §§ 710.54-.69 (1979). In addition, courts interpret several compensation statutes as prohibiting payments to surrogate mothers. See, e.g., *Doe v. Kelley*, 106 Mich. App. 169, 307 N.W.2d 438 (1981), *cert. denied*, 459 U.S. 1183 (1983) (Michigan law precludes payment to surrogate mother); see also Atty. Gen. No. 83-162 (Sept. 29, 1983) (Oklahoma statute prohibits payments to surrogate mothers in excess of statutory limits).

105. See, e.g., ALA. CODE § 26-10-8 (1977).

106. See, e.g., GA. CODE ANN. § 74-418(a) (Supp. 1984).

107. See Appendix II.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* Alabama, for example, imposes a fine of \$100 or imprisonment for up to three months, or both, for inducing parents to part with their children. ALA. CODE § 26-10-9(a) (1977). The imposition of a short jail term for buying a baby is not a "meaningful" penalty. See W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 186.

113. W. MEEZAN, S. KATZ & E. RUSSO, *supra* note 3, at 186. Delaware, for example, outlaws independent adoptions but does not provide a statutory penalty for violations. Delaware's prohibition of independent adoptions, however, apparently effectively deters doctors and lawyers from placing children. Bradley, *supra* note 3, at 56.

114. See, e.g., GA. CODE ANN. § 74-418(k) (Supp. 1984) (up to \$10,000 fine or ten years in prison, or both).

placement agency without a license.<sup>115</sup> Another jurisdiction imposes a \$300 or ninety-day penalty, or both, for violation of its placement statute.<sup>116</sup> These penalties insufficiently deter black-marketers from taking risks.

Other states, however, classify violations of their placement statutes as felonies.<sup>117</sup> One state imposes a fine of up to \$5,000 or imprisonment of up to five years, or both, for placing a child for adoption without a license.<sup>118</sup> This penalty more accurately reflects the seriousness of the crime and provides greater deterrence.

### CONCLUSION

Independent adoptions, if properly regulated, provide a useful alternative to agency adoptions.<sup>119</sup> Currently, however, many state adoption statutes are inadequate and easily circumvented.<sup>120</sup> Other state adoption statutes suggest that state legislatures have ignored independent adoption practices.<sup>121</sup> Independent adoption need not be prohibited. But states must regulate independent adoption to preclude black-market activity. The following proposed model statute would remedy many of the inadequacies of existing state statutes.<sup>122</sup>

§ 1. *Who may place a child for adoption.*

(A) A child may be placed for adoption only by:

- (1) the department;
- (2) a licensed child-placing agency;
- (3) the child's biological parents, without the assistance di-

115. LA. REV. STAT. ANN. § 46-1406 (West 1982).

116. D.C. CODE ANN. § 32-1009 (1981).

117. These states are Florida, Maine and North Dakota. See Appendix II.

118. N.D. CENT. CODE § 50-12-17 (1974). For an argument that the adoption market should be governed by the law of supply and demand, see Krones, *Stimulation of Independent Adoption*, 6 ORANGE COUNTY B.J. 192 (1979).

119. See *supra* note 9 and accompanying text. Proponents also claim that the independent adoption procedure allows parents to avoid embarrassing interviews and impossible-to-meet standards of agency adoptions. See Bradley, *supra* note 3, at 52 n.19.

120. See *supra* notes 35 & 36 and accompanying text. See also *supra* note 86 and accompanying text.

121. See, e.g., *supra* note 27. There are also indications that state legislatures do not update state adoption laws to eliminate antiquated statutes. In South Carolina, for example, until 1981 it was illegal to grant permanent custody of a white child to a black person. S.C. CODE ANN. § 16-17-460 (1976), *repealed by* 1981 Act No. 71 § 3 (effective May 19, 1981).

122. The proposed model statute is not intended as a comprehensive statutory scheme for the regulation of independent adoptions. See *supra* note 26.

rectly or indirectly, of an intermediary in the home of a relative of the child within the 3rd degree; or

- (4) an intermediary.
- (B) Prior to placement of the child, the party so placing shall notify the department in writing of the intent to place a child for adoption.
- (C) The requirement of (B) shall not apply in cases coming within (A)(1) or (A)(2).<sup>123</sup>

§ 2. *Investigation Required.*

- (A) Except as provided in § 1, a child shall not be placed with prospective adoptive parents until a preplacement report has been filed with the court in which the petition for adoption is filed.
- (B) The preplacement report shall be a written document setting forth all relevant information relating to the fitness of the prospective adoptive parent. The report shall be based on a study that shall include an investigation of the home environment, family life, health, facilities, and resources of the prospective adoptive parent. The report shall include a list of the sources of information on which the report is based. The report shall include a recommendation as to the fitness of the prospective parent to be an adoptive parent.
- (C) Except as provided in § 1, the court shall order a postplacement report made to determine if the placement is in the best interests of the child. The report shall be prepared by the department, a licensed child-placing agency, or an individual approved by the court. The report shall be in writing and contain all reasonably available information concerning the physical and mental condition of the child, home environment, family life, health, facilities, and resources of the prospective adoptive parent, and any other facts and circumstances relating to the propriety and advisability of the adoption. The report shall be filed within ninety days of the date of appointment. The preplacement report shall be made available to the person appointed to make the postplacement report.<sup>124</sup>

§ 3. *Jurisdiction and venue.*

- (A) Proceedings for adoption may be brought by bona fide residents of this state only. The adoption petition may be brought in the court of the county in which the petitioner resides, in which the child resides, or in which the agency having custody

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123. Cf. MONT. CODE ANN. § 40-8-108 (1983).

124. Cf. WASH. REV. CODE ANN. §§ 26.33.180-200 (Supp. 1985).



of the child is located.<sup>125</sup>

§ 4. *Importation of children for adoption.*

Any person, partnership, association, corporation, charitable agency, or other entity undertaking to bring or to send a child into this state for placement in foster care or as a preliminary to a possible adoption shall furnish the department with written notice of the intention to send, bring, or place the child in the state and shall obtain prior written consent from the department for each child to be so placed. The notice shall contain:

1. The name, date and place of birth of the child.
2. The identity and address or addresses of the parent or legal guardian.
3. The name and address of the person, agency or institution to or with which the child is proposed to be placed.
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.
5. Such supporting or additional information as the department may deem necessary under the circumstances.

This section shall not apply to the sending or bringing of a child into this state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in this state.<sup>126</sup>

§ 4a. *Exportation of children for adoption.*

- (A) No person except the department or a licensed child-placing agency shall take or send a child out of the state for purposes of placement for adoption unless the child is to be placed with a relative within the third degree or a stepparent.
- (B) No intermediary shall counsel the natural parents to leave the state when it is the intention that the child is to be placed for adoption outside the state.<sup>127</sup>

§ 5. *Report of petitioner's expenditures.*

- (A) Except as specified in (D) of this section, the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in

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125. Cf. S.C. CODE ANN. § 20-7-1680 (Law. Co-op. 1985).

126. Cf. N.D. CENT. CODE § 50-12-14.1 (1982).

127. Cf. FLA. STAT. ANN. § 63.207 (West Supp. 1985).

connection with the adoption. The report shall show any expenses incurred in connection with:

- (1) the birth of the minor;
  - (2) placement of the minor with petitioner;
  - (3) medical or hospital care received by the mother of the minor for adoption that were received by or on behalf of the petitioner, either biological parent of the minor, or any other person.
- (B) The accounting report shall be itemized in detail and shall show the dates of each payment and the names and addresses of each attorney, doctor, hospital, licensed adoption agency, or other person or organization who received any funds of the petitioners in connection with the adoption or the placement of the child with them, or participated in any way in the handling of such funds, either directly or indirectly.
- (C) To assure compliance with limitations or requirements imposed by this section, the court may require sworn testimony from persons who were involved in any way with the placement of the child for adoption.
- (D) This section does not apply to an adoption by a stepparent whose spouse is a biological or adoptive parent of the child.<sup>128</sup>

§ 6. *Penalties.*

- (A) It is unlawful for any person:
- (1) To place a child for adoption in violation of § 1.
  - (2) To sell or surrender or to arrange for the sale or surrender of a child to another person for money or anything of value or to receive such minor child for such payment or thing of value; however, nothing herein shall be construed as prohibiting any person who is contemplating adopting a child from paying actual pre- or post-natal care and living expenses of the mother of the child to be adopted, nor from paying actual living expenses of such mother for a reasonable time, not to exceed 30 days, after the birth of the child.
  - (3) Having the rights and duties of a parent with respect to the care and custody of a minor to assign or transfer such parental rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties.

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128. Cf. ALASKA STAT. § 25.23.090 (1983); CAL. CIV. CODE § 224r. (Deering 1971); MICH. COMP. LAWS § 710-54(3) (1979).

- (4) To assist in the commission of any acts prohibited in paragraphs (1), (2), or (3).
- (B) It is unlawful for any intermediary to charge any fee other than for actual documented medical costs, court costs, and hospital costs unless such charges are approved by the court prior to payment to the intermediary.
- (C) Whoever violates any provision of §§ 1-5 is guilty of a felony, punishable by a fine of up to \$10,000 or imprisonment of up to 5 years, or both.<sup>129</sup>

*Paul T. Fullerton*

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129. Cf. FLA. STAT. ANN. § 63.212 (West Supp. 1985).

## Appendix I

<u>State</u>	<u>Statute</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Alabama	38-7-3	x	x	x	x	
Alaska	25.23.080	x	x	x	x	x <sup>14</sup>
Arizona	8-126	x	x	x	x	x
Arkansas	83-1211	x	x	x	x	x
California	224q	x	x	x	x	
Colorado	19-4-108	x	x	x	x	
Connecticut	45-63(3)	x <sup>1</sup>	x	x		
Delaware	13 904	x	x	x		
District of Columbia	32-1005(a)	x	x	x <sup>13</sup>	x <sup>13</sup>	
Florida	63.092(1)	x	x	x	x	x
Georgia	74-403	x	x	x	x	
Hawaii	346.14(4)	x				
Idaho						
Illinois	1506	x	x	x	x	x
Indiana	31-3-1-3	x	x	x	x <sup>2</sup>	x <sup>2</sup>
Iowa	238.5	x	x	x	x	x <sup>16</sup>
Kansas		x	x	x	x	x
Kentucky	199.470(4)	x	x	x	x <sup>3</sup>	x <sup>3</sup>
Louisiana	9 422.5	x	x	x	x	x <sup>4</sup>
Maine	22 8204	x	x	x	x	x
Maryland	5-507	x	x	x <sup>5</sup>	x <sup>5</sup>	
Massachusetts	28A 11(c)	x	x	x	x <sup>3</sup>	x <sup>3</sup>
Michigan	25.358(24)	x	x	x <sup>15</sup>	x <sup>15</sup>	
Minnesota	259.22(2)	x	x	x	x <sup>1</sup>	x <sup>1</sup>
Mississippi	93-17-9	x	x			
Missouri	210.486	x	x	x	x	x <sup>12</sup>
Montana	40-8-108	x	x	x	x <sup>6</sup>	
Nebraska	43-701	x	x	x	x	
Nevada	127.240(1)	x	x	x	x <sup>7</sup>	x <sup>7</sup>
New Hampshire	170.B:14	x	x	x	x	x
New Jersey	9:3-39(a)	x	x	x		
New Mexico	40-7-19	x	x	x	x <sup>8</sup>	x <sup>1</sup>
New York	116	x	x	x	x	x
North Carolina	131D-10.3	x	x	x		
North Dakota	50-12-17	x	x	x		
Ohio	5103.16	x	x	x	x <sup>1</sup>	
Oklahoma						
Oregon	418.240	x	x	x	x	
Pennsylvania	23 2102	x	x	x	x	x
Rhode Island	15-7-1	x	x	x	x	
South Carolina	20-7-1830	x <sup>9</sup>				
South Dakota	26-6-8	x	x	x <sup>10</sup>	x <sup>10</sup>	
Tennessee	14-10-104	x	x			
Texas	42.041	x	x	x	x	
Utah	55-8a-1	x	x	x	x	x <sup>11</sup>
Vermont	15 432	x	x			
Virginia	63.1-220.1	x	x	x	x	
Washington	74.15.020	x	x	x	x	x
West Virginia	49-2B-3	x	x			
Wisconsin	48-837(2)(c)	x	x	x	x	x
Wyoming	1-22-101	x	x			

### Appendix I Key

#### Key

1. Placement by state agency allowed.
2. Placement by licensed child-placing agency allowed.
3. Placement by biological parent with relative allowed.
4. Placement by biological parent with nonrelative allowed.
5. Placement by intermediary allowed.

#### Key

1. Agency placement requirement may be waived.
2. Written approval of the Department of Public Welfare is required, but may be waived.
3. Approval of the state department in charge of adoption is required.
4. The intermediary must be representing a specific couple at the time that the child is surrendered to him.
5. Placement by parent or grandparent is allowed, but only after a petition for adoption has been filed and the court sanctions the placement.
6. Biological parents may place with nonrelatives only after they file a notice of parental placement and the court approves of the placement after investigation.
7. Placement may be made only after an investigation by the Welfare Division.
8. Placement requirement is not imposed when the petitioner is the child's sponsor at baptism, named in the deceased parents' will, or when placement is made through a nationally recognized religious organization.
9. The South Carolina statute makes reference to nonagency adoptions, but there are no provisions expressly permitting such adoptions.
10. Relatives within the second degree may also place the child.
11. An intermediary may locate a child or adoptive parent, but may not receive, accept, or provide care for the child without a license.
12. The intermediary must be the attorney, physician, or clergyman of the biological parents.
13. Relatives within the third degree may also place the child.
14. An intermediary may place without a license if he is one who "occasionally" places children for adoption.

15. A person related to the child by blood, marriage, or adoption may also place the child.

16. Op. Atty. Gen. (Regen), Dec. 28, 1979.

O = "Relative" typically includes stepparents, brothers, sisters, aunts, uncles, and grandparents. *See, e.g.*, N.Y. STAT. ANN. 9:3-39(a) (West Supp. 1984).

X = This state has no provision expressly stipulating who may place, but the statute implies who may place.

APPENDIX II

<u>State</u>	<u>1</u>	<u>C</u>	<u>2</u>	<u>C</u>	<u>3</u>	<u>C</u>	<u>4</u>	<u>C</u>
Alabama	38-7-16	M			26-10-8	M	26-10-8	M
Alaska								
Arizona			8-126C	M				
Arkansas	83-1221	M						
California	224q	M			224p	M		
Colorado			19-4-115(1)	M				
Connecticut	17-49A	M						
Delaware								
District of Columbia	32-1009	M						
Florida	63.212(1)(a)	F	63.212(1)(b)	F				
Georgia					74-418(a)	F	74-418(b)	F
Hawaii	346-17	M						
Idaho							18-1511	F
Illinois			40 1701	M				
Indiana							35-46-1-4	F
Iowa			600.9	M				
Kansas								
Kentucky			199.590(2)	M	199.590(1)	M		
Louisiana	46 1406	M						
Maine	22 8204	F	22 8204	F	22 8204	F		
Maryland	5-507	M						
Massachusetts			210 11A	F				
Michigan	25.358(24)	M	27.3178(555.54)	M				
Minnesota	245.783	M						
Mississippi								
Missouri	210.486	M						
Montana	53-4-407	M						
Nebraska	43-701	M						
Nevada	127.280	M	127.300	F	127.310	M		
New Hampshire								
New Jersey	9:3-39	M	9:3-54	M				
New Mexico	40-7-19	M						
New York								
North Carolina	131D-10.3	M	48-37	M	48-38	M		
North Dakota	50-12-17	F						
Ohio	5103.16	M						
Oklahoma					5103.17	M	5103.17	M
Oregon							21 866	M
Pennsylvania								
Rhode Island	15-7-1	M						
South Carolina								
South Dakota							25-6-4.1	F
Tennessee	14-10-116	M						
Texas			26.06	F	42.075(3)	M		
Utah							76-6-203	F
Vermont								
Virginia	63.1-215	M						
Washington							9A.64.030	F
West Virginia	49-2B-3	M						
Wisconsin			946.716	F				
Wyoming								

Appendix II KeyKey

1. Violation of placement statute.
2. Violation of compensation statute.
3. Violation of advertisement statute.
4. Violation of inducement statute.

C = Classification of crime

F = Felony

M = Misdemeanor



