

IDENTIFIED OR UNIDENTIFIED ADOPTION BACKGROUND MEMORANDUM

Section 4 of House Bill No. 1206 (2017) directs the Legislative Management to consider studying adoption by an identified or unidentified adoptive parent. The study must include an evaluation and a comparison of the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or unidentified adoptive parent.

BACKGROUND

According to the Department of Human Services, the state had a total of 152 adoptions, including 140 special needs adoptions, 20 infant or regular adoptions, 6 international adoptions, and 6 identified parent adoptions during fiscal year 2017. North Dakota Century Code Section 14-15.1-01 provides definitions for "relative" and "identified adoptive parent," but Century Code does not provide a specific definition for "unidentified" adoptive parent. "Relative" means a brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent of the child by marriage, blood, or adoption and "identified adoptive parent" means "the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child." Section 14-15-03 provides the following individuals may adopt:

1. A husband and wife together although one or both are minors.
2. An unmarried adult.
3. The unmarried father or mother of the individual to be adopted.
4. A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not the adopting person's spouse, and if:
 - a. The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;
 - b. The petitioner and the other spouse are legally separated; or
 - c. The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

The Department of Human Services describes an identified adoption as a type of adoption in which "birth [parents have identified a specific adoptive parent apart from the assistance of a licensed child placement agency] with whom they wish to place their child."

Adoption Procedure - Unidentified Parent

Section 14-15-09(1)(j) requires a petitioner to include all reasonable fees, such as an adoption assessment, expenses for travel, medical expenses, and legal fees in the petition for adoption. After a petition is filed, Section 14-15-11 requires a licensed child-placing agency to complete an investigation as to the conditions of the minor to be adopted and of the petitioner to determine if the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. An investigation and report is not required in cases involving a petitioner who is a stepparent or in cases in which the individual being adopted is an adult. Section 14-15-11(5) provides the court may waive the investigation and report "if the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor."

Section 14-15-13 requires the petitioner and the individual to be adopted to appear at the hearing on the petition. At the conclusion of the hearing, the court determines whether the adoption is in the best interest of the individual. The court also must make a finding as to the reasonableness of reported expenses.

Adoption Procedure - Identified Parent

Chapter 14-15.1 sets forth the legal process governing an identified parent adoption. In an identified adoption, the custody of the child passes directly from the birth parent to adoptive parent through a legal process when the birth parents relinquish their parental rights pending the final adoption of the child at a later date. Section 14-15.1-03 requires the court to set a time and place for a hearing on the petition for relinquishment of parental rights. Section 14-15.1-04 requires the report of a child-placing agency to be filed with the court before a hearing under this chapter. House Bill No. 1206 (2017) amended Section 14-15.1-04 to create a distinction between the required

report of a child-placing agency in an adoption by an identified adopted parent and an adoption by an identified adoptive parent who is a relative. An identified parent who is a relative must have written character statements from three adult witnesses describing various characteristics, such as the emotional maturity and stability of the home environment. An identified adoptive parent who is not a relative must complete a preplacement adoption assessment.

Section 14-15.1-05 requires a report of agreements, whether oral or written, and a full accounting of any disbursement of anything of value to be filed with the court. Within 180 days after entry of an order for relinquishment under Chapter 14-15.1, the identified adoptive parent must file a petition for adoption under Chapter 14-15.

Home Study or Preplacement Inquiry

The "home study" or "preplacement inquiry" required by Sections 14-15-11 and 14-15.1-04 includes an evaluation of prospective adoptive families and of the physical and emotional environment into which a child would be placed. The inquiry also includes a series of interviews with a social worker, including at least one interview in the home. According to the Department of Human Services, a home study is usually completed in a few months, depending on the agency's requirements and the number of other clients.

Financial Impact

In North Dakota, private adoption agencies facilitate infant adoptions, the adoption of children from the foster care system, and foreign-born adoptions. According to the Department of Human Services, the state implements the Adults Adopting Special Kids Program, which contracts with three private agencies to provide adoption services for children adopted from the foster care system. The state does not provide any specific tax exemptions or credits relating to adoption.

Fees charged by private adoption agencies in the state range from \$5,000 to \$11,000 or more for domestic and intercountry adoptions. Adoption services provided through the Adults Adopting Special Kids Program are available for a modest fee.

Although North Dakota offers no state tax credits or deductions relating to adoptions, federal or state subsidies may be available to assist families adopting a child with special needs. In North Dakota, a child may be designated as a child with "special needs" for the purposes of an adoption subsidy through the Department of Human Services if the child is over the age of 7; is a member of a minority race; is a member of a sibling group that is placed together for adoption; is diagnosed with a physical, mental, or emotional disability; or has been determined to be at high risk for a physical, mental, or emotional disability by a licensed physician. The state must also determine a reasonable but unsuccessful effort was made to place the child without a subsidy, unless the child is being placed with a family that has a significant relationship to the child. Children placed through the state, a county social service officer, a licensed agency in the state, or a North Dakota tribe may be eligible for a subsidy. A subsidy may be a monthly payment, medical assistance, or reimbursement of nonrecurring adoption expenses. Private (nonagency) adoptions do not qualify for a subsidy.

STUDY APPROACH

The committee may consider inviting the Department of Human Services, adoptive parents, and representatives of private child-placing agencies to provide information on the adoptive process and the procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or unidentified adoptive parent. The committee should prepare recommendations, together with any legislation required to implement the recommendations, to the 66th Legislative Assembly.