

2017 SENATE JUDICIARY

SB 2248

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2248
2/1/20017
27715

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to relinquishment and termination of parent and child relationship.

Minutes: Testimony attached #

1

Chairman Armstrong called the committee to order on SB 2248. All committee members were present.

Erin Oban, North Dakota State Senator of District 35, introduced and testified in support of the bill. (See attachment 1)

Senator Luick: "How would you determine time of conception?"

Senator Oban: "We would base it on what the mother says."

Chairman Armstrong: "I feel like we are perpetuating an antiquated form of notice here and I'm not sure I agree with that?"

Senator Oban: "I'm open to other suggestions but I don't know what those suggestions may be."

Erica Schively, Adoption Lawyer, testified in support of the bill. No written testimony.

"I do stand in support of this bill today. I would like to address Chairman Armstrong's comment from earlier that these notices are old and antiquated, I think we could take more steps in the future but we weren't able to do those things this legislative session."

Chairman Armstrong: "Is there anything in the law regarding notice?"

Erica Schively: "There is not. The law is silent on this. I went to Senator Oban with this issue because when we start an adoption, the North Dakota Department of Human Services is put on notice, and there have been times where I call the Department of Human Services and tell them I don't know what to do. A client believes that the father's name is Bill, and he lives in California; that's a big place to find a guy named Bill and for me to hire a private investigator and have an adoptive family pay the investigator to find a needle in a haystack

is impossible. What do I do to ensure the adopted family that I did everything I can to get the dad some notice that he has a child? Human Services doesn't give me a clear cut answer on this."

Senator Myrdal: "Is there any other media to use to put this kind of notice in?"

Erica Schively: "This is something I always like to take to other attorneys because I want to make sure we do a good job of drafting it because this will be law. The issue they have raised is did you do your due diligence? Essentially, what did you do to find dad? Is the best place to publish the place of conception if we don't know the county that the dad lives in? Sometimes we don't know last names, but we may know that we were in Fargo and that's where the baby was conceived. I try to find an unattainable fact to use to determine the location of conception. What we publish in the paper is an initial and maybe the mom's age, and where the baby was conceived, or a few facts, and maybe a 17-year-old or whoever is reading that newspaper might say, 'Hey. That's me.'"

Chairman Armstrong: "The birth dad always has the right to say, 'Hey, you know who I was?' Whatever you set the notice requirements at you have to comply with? They can always challenge it, correct?"

Erica Schively: "Correct. They can always challenge it but that is part of my concern. When I'm making up what's reasonable to do when I don't have the facts, part of my concern is that somebody will come forward and say that wasn't a reasonable way to go about doing things."

Senator Luick: "Where in the paper do you see something like that?"

Erica Schively: "There usually is a section of the paper where they do publications, or in the classified area that allows you to post the notice. But sometimes the notice can be very limited in writing which can make it hard to find the birth father."

Chairman Armstrong closed the hearing on SB 2248.

Senator Myrdal motioned a Do Pass. **Senator Nelson** seconded.

Discussion followed:

Senator Larson: "My concern is that if anyone would even notice this? I think it's good to have a clear adoption record so there are no challenges, I just don't know about this though."

Senator Myrdal: "In my experience, to protect the child and make sure the adoption goes through and the judge has some foundation in a world of many unknowns to release that child and relinquish that fatherhood. The father may come later and say he didn't know and challenge it, but I think for the safety of a child this bill would be best. We did this in my state and this is good. I think this is a no brainer."

Chairman Armstrong: "It's important to note that right now we don't require anything. This at least requires something which is more than we have now. How we deliver notice will be a very interesting notion moving forward."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Myrdal carried the bill.

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2248**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2248: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2248 was placed on the
Eleventh order on the calendar.

2017 HOUSE JUDICIARY

SB 2248

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2248
3/8/2017
28923

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to relinquishment and termination of parent and child relationships.

Minutes:

1,2

Chairman K. Koppelman: Opened the hearing on SB 2248.

Senator Erin Oban: (#1) Testimony. (#2) Proposed amendment. (:28-3:42) For all of these public notice matters this is an important step to take.

Rep. Satrom: This assumes in all these cases that the father that is missing; I am wondering about if the mother is missing? Have you thought about that potential situation?

Senator Oban: My personal experience on the father the birth father fits into one of these categories. We knew his identify but we didn't know where he was. So we couldn't serve the petition to him. We want to make sure it is fair to everybody.

Rep. Satrom: I am concerned that only the mother is not included in this.

Rep. Johnston: Would you be against us amending this to include mother and father?

Senator Oban: If that fits into what we are trying to do it would be good.

Representative Roers Jones: This is just terminating parental rights when you don't know who that person is. Abandonment is separate is already dealt with.

Rep. Magrum: When does this start? If this is printed in the paper and the person never gets the newspaper so would that male loses all his parental rights?

Senator Oban: He still could show up at the hearing. If he were not to show up at the hearing, then that is what the process in an adoption where the birth father cannot or chooses not to be involved; how that works.

Rep. Magrum: When does this start?

Representative Hanson: Rep. Magrum parental rights cannot be terminated until the birth happens.

Erica Shively, Attorney: It seems like I am running into these situations more and more having to do with publications. I think most attempts have been done already this way. I think we should put this into law what practitioners were doing anyway. If I know who the father of my child is I am going to serve him papers. This only applies once we are seeking termination of parental rights. This would be if mom decides she wants to give up her parental rights. Gave an example of giving up those rights. They go before the agency We talked about adding mom's. I think that was adequately addressed by Rep. Roers Jones. It is very seldom we don't know who mom is. The reason is we have a hospital record. Our hospital nurses and doctors are well trained in these situations. They also have social workers available to them when mom is saying I am leaving. I don't want this baby. Sometimes then we know very little about dad. We do have older children where a mother abandons a two-year-old? Typically, under the law we would seek an abandonment. We could further amend this to include this issue.

Rep. Hanson: Is ND law completely silent on birth father termination?

Erica Shively: It is silent when they aren't known. It is silent on how we publish or what we do when we don't and everybody isn't in agreement and when everybody isn't known. We default to the rules of civil procedure which does lay out how you publish. This tracks that.

Rep. Hanson: For the benefit of the committee explain why is it that the adoptive parents terminate their rights.

Erica Shively: Biological mothers who are terminating their rights it is important for adoptive parents so everyone has received all the information and for all intents and purposes this child would remain yours forever. This is really important to the child. I never want to see a two-year-old who has been with a family to be taken out of their environment because I didn't I have guidance or didn't follow the letter of the law. It is important to the terminating parents too. We not communicate more by computer and twitter than by reading our local newspaper. I think some of these changes are coming and that was a conversation on the Senate side. There is also something called a birth father registry that occurs in some states where if you have sex with somebody and you believe that could have resulted in the creation of a child you can call in a provide your information and say this is who I had sex with an if a child is born to this person I get notice. That might be something we want to do in the future.

Representative Roers Jones: Is there any recourse for fathers when mom is less than forthcoming on what they know?

Erica Shively: I know that I have had cases where this has happened. The recourse I think if fraud. For the court this is a tough balancing act. Senator Oban said there may be some information we can do by computers.

Representative Hanson: If it happens soon enough; you could request all potential parties sign off on this. We went down both rights for all potential birth rights

Erica Shively: If they actively conceal that; it has to be left up to the court. They have to look at equity and the best interest of the child. I think it is under a fraud claim.

Chairman K. Koppelman: If that claim would be brought would it be a civil action or something that a state's attorney would pursue?

Erica Shively: It would be a civil action.

Representative Paur: Would there be any merit in adding biological to the father?

Erica Shively: I think that is most correct. We also have legal fathers too. I think leaving is open would be better cover what would be required. I would publish on all of them?

Representative Paur: If you have a legal father; does a biological father have any rights?

Erica Shively: They have potential rights that they could develop under the system if they asserted them and went to court for those rights. There are some exclusions.

Chairman K. Koppelman: So if that occurs where someone in the hospital acknowledges fatherhood; are they automatically removed from that standing then if they did a parental test or something else that they are not the father?

Erica Shively: That document makes them the legal father of that child. There are scenario's where it becomes known later that it is somebody else and there is testing and mom indicates you were never the dad. We can't undo it; because legally there are some governors in that part of the law that say if it goes past two years; then you can't undo that unless the parties all agree.

Chairman K. Koppelman: So there would be no way to go into that situation and say this was a mistake.

Erica Shively: The parties can agree. There is that way. I can get you that information if you want to know.

Rep. Magrum: You said you are getting these cases resolved now. Why do we need this law then?

Erica Shively: I am doing this by what we would do in other areas of the law. This is what I follow and other practioners follow up it is up to the court. Very often the courts hands are tied here and we have no one else taking the kid home. If they don't terminate that day we have a child who has no parent

Rep. Magrum: How is he going to know? How do you word that in the newspaper if you don't know who he is?

Erica Shively: What is published are two things. I publish the exact duplication of the hearing. This forces us to do something. If I were a dad and I think I conceived a child and I

were to go looking, then I think it would be the Bismarck Tribune. The place that I went to. Before we could publish anywhere even though we weren't sure.

Rep. Magrum: Are most of these adoptions open or closed adoptions?

Erica Shively: Most are open; probably 70%. Most of my adoptions are open with two relinquishments and believe they are going it for the child's benefit.

Rep. Satrom: Does this work. Does anyone read newspapers anymore?

Erica Shively: I appreciate this problem more than anyone else. Publication is the system we do have. We did discuss in the Senate about a better way to publish than what we are doing. We have no assure they are getting it.

Chairman K. Koppelman: The official way to notify is newspaper. It is a difficult. What methods do you use to find people?

Erica Shively: I use a local PI. My paralegals are helpful and we find most people of dating websites.

Chairman K. Koppelman: If this law passes what in the bill requires a fair measure to find the father?

Erica Shively: If we know who dad is we have to serve him. It might be better to state that out. If dad is known, he must be personally served. The rules of civil procedure spell out how that document gets to him. We try to reach that issue in letter c when we don't have a lot of information about dad. The court has to decide what is reasonable.

Chairman K. Koppelman: Is there a definition in code about reasonable diligence or is that in the judgement of the court?

Erica Shively: I would leave that in the discretion of the court.

Chairman K. Koppelman: You talked earlier about abandonment? Couldn't that be pursued if it is dad?

Erica Shively: We still have to put dad or mom on notice so he can defend themselves. We did proceed on abandonment.

Chairman K. Koppelman: Parental rights is that relinquishment parental responsibility in all cases?

Erica Shively: Yes you are giving up all rights. The court usually forgives the back support portion of that. If it is owed to the other parent, they sometimes do that.

Opposition: None

Neutral: None

Jim Fleming, State Child Support Director: There is a period of time where the legal father and the biological father can be two different people. Ms. Shively described how that could be. How do you find out who dad is? Our child services program does this. Whenever there is a benefit of establishing the legal rights of the father. In terms of the adoption field the mother could get help that child support could offer to help identify legally who the father is so we know who to terminate. These are legal actions and the way you do it is set by the supreme court. The joint procedures are currently looking at ways to have an internet based notice process rather than publishing it in a newspaper. The bill says you do rules under civil procedure. After termination they are still on the hook for child support until the court specifically says no and that is because you could have some fathers that want nothing to do with the child who will gladly abandon that child and leave the state to pick up the bills through TANA and Medicaid if they don't have to pay child support. So we say you are not going to win that game until they get adopted or the court says yes it is shut off. Sometimes the dad or mom is such a bad influence on the child's life it is better not to have the money owed and just be done with the parent in the child's life.

Hearing closed.

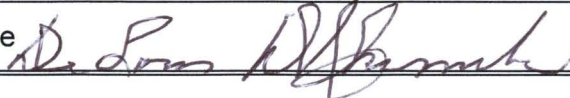
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2248
3/13/2017
29116

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to relinquishment and termination of parent and child relationship.

Minutes:

1

Chairman K. Koppelman: Opened the meeting on SB 2248.

Representative Roers Jones:(#1) Passed out proposed amendment. Includes all the previous proposed amendments in these. Went through the amendment. (1:21-4:44)

Representative Klemin: We have personal service and service by publication. That is the term logy that is used throughout the century code and the rules of civil procedure. First technical amendment is a. third line; the father or mother must be personally served with the petition and notice; so I add the word with. Subdivision a. instead of saying by publishing a copy; we would say notice must given by publication of the petition. C. notice must be given by publication and subdivision d. 2 sentence; proof of publication of the notice must be made.

Chairman K. Koppelman: In this section of code it would replace the language beginning on line 6 of the bill, but it says section 1; a new subsection to 14-15-19 of the ND Century Code is created as follows; and I am not sure this is what we want.

Representative Klemin: They would renumber accordingly when this amendment happened.

Representative Roers Jones: We are saying the service is complete so long as they meet the requirements of one of the sections below. The issue was none of these things were laid out in the rules of civil procedure.

Lots of discussion on how to set this up on the century code.

Representative Klemin: Remember the service is complete so the service is complete and the person still has the time in which to answer. Let's say you are serving a complaint and

you had 21 days to answer the complaint and service is complete 10 days after the last publication in the newspaper. Then you have 21 days after that to answer.

Representative Roers Jones: I think the attorneys are just trying to establish when the service is complete to make sure they are giving proper notice; not necessarily affecting related to the response time. I think we are fine. Just say service is complete upon a.b.c. or d. Whether we refer to the Rules of Civil Procedure or not; I am not sure that is necessary.

Chairman K. Koppelman: maybe we should wait and get the terminology right. Representative Roers Jones maybe you could work with Legislative Counsel and get this right.

Closed.

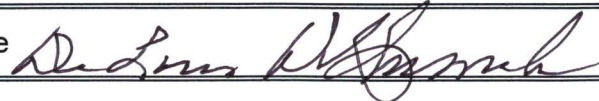
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2248
3/21/2017
29492

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to relinquishment and termination of parent and child relationship.

Minutes:

1

Chairman K. Koppelman: Opened the meeting on SB 2248.

Representative Roers Jones: (#1) handed out updated proposed amendment. Went over the proposal. (:17-3:30) The purpose of the amendment is to put the same information into bullet points to apply to the different types of scenarios. Section a we added mother; if the dad is known or his identity is obtained he needs to be personally served so they made that more clear. Senator Oban had come with some amendments and we added in.

Motion Made to Move amendment 17.0865.01003 by Rep. Roers Jones; Seconded by Representative Hanson

Discussion:

Representative Paur: Should 14-15-19 be taken out?

Representative Roers Jones: I don't have the whole code in front of me but there were two different locations that they were looking at. I believe it would be appropriate to leave that so they know where this section is going to be placed.

Chairman K. Koppelman: What this does is names father and mother as you indicated earlier. It indicates that service must be accomplished. Gives a definite timeline and procedure.

Voice vote carried.

Do Pass as Amended by Representative Roers Jones: Seconded by Rep. Hanson.

Roll Call Vote: 15 Yes 0 No 0 Absent **Carrier: Rep. Roers Jones**

House Judiciary Committee

SB 2248

March 21, 2017

Page 2

Closed.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, replace lines 6 through 13 with:

- "a. If the identity of the father or mother is known and an address for service is also known, or the address can be ascertained with reasonable diligence, the father or mother must be personally served the petition and notice for termination of parental rights in compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father or mother is unknown but the father's or mother's location is known, and the identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father or mother is located.
- c. If the identity and location of the father or mother are unknown and the location and identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publication of the notice must be made at or before the hearing and filed in the proceeding."

Renumber accordingly

Date: 3-21-17
Roll Call Vote 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2248

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0865.01003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote Carried.

Date: 3/21
Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2248

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0865.01003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Ross Jones Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

0
Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Ross Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2248: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2248 was placed on the Sixth order on the calendar.

Page 1, replace lines 6 through 13 with:

- "a. If the identity of the father or mother is known and an address for service is also known, or the address can be ascertained with reasonable diligence, the father or mother must be personally served the petition and notice for termination of parental rights in compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father or mother is unknown but the father's or mother's location is known, and the identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father or mother is located.
- c. If the identity and location of the father or mother are unknown and the location and identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publication of the notice must be made at or before the hearing and filed in the proceeding."

Renumber accordingly

2017 TESTIMONY

SB 2248

①

SB 2248

9:30 am | Wednesday, February 1, 2017
Senate Judiciary Committee

Mr. Chairman, members of the Committee, for the record, Erin Oban, Senator for District 35 here in Bismarck. I am hear to introduce and discuss with you SB 2248 which would create a new subsection to the section relating to the relinquishment and termination of parent and child relationship within the Uniform Adoption Act.

What it does, Mr. Chairman, is define in code how, where, and when a notice of a hearing on a petition for adoption must be published in the event the birth father is either unknown or cannot be located in order to serve the petition.

- HOW: in the official newspaper
- WHERE: the county in which conception occurred
- WHEN: at least once a week for 3 consecutive weeks, the last of which must be at least ten days before the hearing

The fact is, in an adoption process, there are times – I’m not certain how frequently, but it definitely happens – that the birth father cannot or chooses not to be found or may be unknown. In those cases, for respect for the rights of and peace of mind of all individuals involved, I believe the state has an interest in providing guidance for how that publication is handled. The last thing anyone involved would ever want is for a birth father to question at a later date, rightly or wrongly, why a publication was done the way it was and who determined that that was fair.

Mr. Chairman, that’s it. I do have one of my attorney friends (who happens to work on a number of adoption cases, one that’s particularly important to me) who can probably answer any questions better than I can with regard to her experience in this process on behalf of her clients.

14-15-19. Relinquishment and termination of parent and child relationship.

1. The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or before an adoption action as provided in this section.
2. All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent:

- a. In the presence of a representative of an agency taking custody of the child, whether the agency is within or outside of the state or in the presence and with the approval of a judge of a court of record within or outside this state in which the minor was present or in which the parent resided at the time it was signed; or
 - b. In any other situation if the petitioner has had custody of the minor for two years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long-continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.
3. In addition to any other action or proceeding provided by law, the relationship of parent and child may be terminated by a court order issued in connection with an adoption action under this chapter on any ground provided by other law for termination of the relationship, and in any event on the ground:
- a. That the minor has been abandoned by the parent;
 - b. That by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper Page No. 12 parental care and control, or subsistence, education, or other care or control necessary for the minor's physical, mental, or emotional health or morals, or, by reason of physical or mental incapacity the parent is unable to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof the minor is suffering or probably will suffer serious physical, mental, moral, or emotional harm; or
 - c. That in the case of a parent not having custody of a minor, the noncustodial parent's consent is being unreasonably withheld contrary to the best interest of the minor.
4. For the purpose of proceeding under this chapter, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption action other than as provided in this section.
5. A petition for termination of the relationship of parent and child made in connection with an adoption action may be made by:
- a. Either parent if termination of the relationship is sought with respect to the other parent;
 - b. The petitioner for adoption, the guardian of the individual, the legal custodian of the child, or the individual standing in parental relationship to the child;
 - c. An agency; or
 - d. Any other individual having a legitimate interest in the matter.
6. Before the petition is heard, notice of the hearing on the petition and opportunity to be heard must be given the parents of the child, the guardian of the child, the person having legal custody of the child, any proposed custodian of the child, and, in the discretion of the court, a person representing any party.
7. Notwithstanding the provisions of subsection 2, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship under this section may be vacated by the court upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

#1
2248
3-8-17
Page 1

SB 2248

9:30 am | Wednesday, March 8, 2017
House Judiciary Committee

Mr. Chairman, members of the Committee, for the record, Erin Oban, Senator for District 35 here in Bismarck. I am here to introduce SB 2248 which would create a new subsection to the section relating to the relinquishment and termination of parent and child relationship within the Uniform Adoption Act.

What this bill would do, Mr. Chairman, is define in code how, where, and when a notice of a hearing on a petition for adoption must be published in the event the birth father is unknown, cannot, or chooses not to be located in order to serve the petition.

- HOW: in the official newspaper
- WHERE: the county in which conception occurred
- WHEN: at least once a week for 3 consecutive weeks, the last of which must be at least ten days before the hearing

That's the bill as passed by the Senate. Since that time, however, Mr. Chairman, as we've worked to make sure this bill addresses as many scenarios as adoption cases are faced with, we've come up with another that wouldn't best be served by the bill in its current form. If you'd allow, I have an amendment drafted that would provide guidance in the event that the father's identity is unknown but his location (a city, for example) is known. It would not be in the best interest of any parties involved to publish in the county paper of conception rather than the county paper of his location.

The amendment, as drafted, would now present the following options:

- Subsection a - If the father identity and location is known, the father will be served the petition.
- Subsection b - If the father's identity is unknown but location is known, the publication will be in the official county newspaper of the father's location.
- Subsection c - If the father's identity is AND location are unknown, the publication will be in the official county newspaper where conception occurred.

We're hoping this committee would be willing to accept this amendment during your discussion of the bill.

With or without the amendment, the fact is, in an adoption process, there are times that the birth father cannot or chooses not to be found or may not be known. In those cases, in the best interest of, rights of, and peace of mind of all individuals involved, from the child, the birth parents, the adoptive parents, and the State, I believe our State has an interest in providing clear guidance for how that publication is handled. Currently, Century Code is silent on that guidance. The last thing anyone involved in an adoption would ever want is for a birth father to question at a later date, rightly or wrongly, why a publication was done the way it was and who determined that that was fair.

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(For what it's worth, I would love to figure out a more "21st Century" way to publish these notifications, but until we do for any and all of these "public notice" matters, I think this is an important step to take.)

Mr. Chairman, that's it. I have with me an attorney friend of mine who works on a number of adoption cases in North Dakota each year, one particular adoption that is especially near and dear to me. She can probably answer any questions better than I can with regard to her experience in this process on behalf of her clients.

Thank you for your time and consideration on this issue.

March 8, 2017

#2
2248
3-8-17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, replace lines 6 through 13 with:

- "a. Service of the petition is complete upon compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father is unknown but the father's location is known, and the identity of the father cannot be ascertained with reasonable diligence, notice must be given by publishing a copy of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father is located.
- c. If the identity of the father and the father's location are unknown and the location and identity of the father cannot be ascertained with reasonable diligence, notice must be given by publishing a copy of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publishing the notice must be made at or before the hearing and filed in the proceeding."

Renumber accordingly

#1
2248
3-13-17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, replace lines 6 through 13 with:

- "a. If the identity of the father or mother is known and an address for service is also known, or the address can be ascertained with reasonable diligence, the father or mother must be personally served the petition and notice for termination of parental rights in compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father or mother is unknown but the father's or mother's location is known, and the identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publishing a copy of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father or mother is located.
- c. If the identity and location of the father or mother are unknown and the location and identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publishing a copy of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publishing the notice must be made at or before the hearing and filed in the proceeding."

Renumber accordingly

#1
2248
3-21-17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, replace lines 6 through 13 with:

- "a. If the identity of the father or mother is known and an address for service is also known, or the address can be ascertained with reasonable diligence, the father or mother must be personally served, the petition and notice for termination of parental rights in compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father or mother is unknown but the father's or mother's location is known, and the identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father or mother is located.
- c. If the identity and location of the father or mother are unknown and the location and identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publication of the notice must be made at or before the hearing and filed in the proceeding."

Renumber accordingly