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Yolanda Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE JUDICIARY

HB 1035

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
1	xx		0-42
2		xx	15-middle
Committee Clerk Signature <i>R. R. R. R. R.</i>			

Minutes: 12 members present, 1 absent (Rep. Bernstein)

Chairman DeKrey: Called the meeting to order.

Rep. Delmore: Introduced HB 1035 and turned the floor over to Jennifer Clark.

Jennifer Clark, LC, Interim Committee: I would like to defer to Julie Hoffman and will remain to answer any questions.

Julie Hoffman, Administrator of Adoption Services for the Dept. of Human Services: (see testimony). The department supports passage of this bill.

Rep. Delmore: Julie, refresh that fourth party for me, that was done more for information of a biological nature?

Ms. Hoffman: If the adoptee has died, and they have children, and they want medical information regarding the birth family, they cannot search. The adoptee has the first right to search, when the adoptee has died, the family could search.

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Chairman DeKrey: If we change the rules now how would this effect the adoptions that were done under the old rules, in previous years of adoptions?

Ms. Hoffman: We talked about this at length, whether it would start now. We weren't able to come up with something workable, because the provision doesn't change that somebody being searched for still has the right to say no to disclosure, we felt comfortable in making these changes now for all adoptions.

Chairman DeKrey: What about the birth parent, if one parent gives the information about the party not wanting information released?

Ms. Hoffman: A lot of times the birth father was not listed on the birth certificate, and so the mother can be contacted.

Chairman DeKrey: What if the birth father was identified on the birth records?

Ms. Hoffman: If he was, he would have to be contacted and if he denied disclosure, then nobody would any contact currently.

Chairman DeKrey: Currently, but under this bill, they would still have disclosure and the birth mother could certainly tell the child who the birth father was and then his confidentiality is gone.

Ms. Hoffman: We understand that risk, we know there is a risk here. People are asking us to move to more openness, and when two parties agree, that they should be able to have that contact.

Chairman DeKrey: I have three adopted children. One the old school route, one identified adoption and one special needs adoption. The rules should not be changed for those that are under the old rules.

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Rep. Galvin: If adoption procedures are initiated, there is a fee right up front and two weeks later, and you want to withdraw from this, is there no way that this fee can be recovered. Is this the case.

Ms. Hoffman: I believe if a fee has been paid and certain services have been given, even if the family withdraws at whatever point, I don't believe there would be reimbursement of that fee.

Rep. Grande: As far as contracts goes, if I signed a contract, does that make the previous contract null and void. It should not be able to my contract.

Chairman DeKrey: I think if we pass this, I would think there would a lawsuit, if they felt they went into an adoption with their identity was protected, and now two people choose to talk.

Rep. Grande: If the father's name is in the records, could the records strike his name and black it out.

Ms. Hoffman: Currently there is definition of corroborating information and if that birth father is named in any of the documents in the file, there has to be corroborating evidence in the file that he was involved in the planning. If he knew about the pregnancy, that he made some payment toward the costs of the birth mother, that he signed off on it, something corroborating. Merely having him named, is not sufficient to consider him a birth parent that must be contacted. But if there is corroborating evidence, then he would be contacted in regard to the search and he would have the right to either authorize or not authorize disclosure. But if the other two parties get together, what is to stop them from talking about the third party and disclosing his/her information.

Rep. Delmore: Some of that could still take place and if we look at the whole scenario, it could be a young father, who would like to share information about his son or daughter, it works both

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ways. We have gotten much more open as a society, and more than anything, I believe these people have a right to medical knowledge that for many years has not been passed down and some of it can very significantly affect that child's life and I think we have to look at the whole scenario because while we look out for the idea of privacy, some of that, if contact is made, would be shared even though the law says it shouldn't.

Rep. Klemin: I have a question about the distinction between identifying and non-identifying information. Could you just go over the procedures are for each category under this bill?

Ms. Hoffman: Currently, identifying information would include anything that would identify a person by name, address, phone number, etc. to allow someone to be located. Non-identifying information runs a whole gamut of other information including heritage, medical information, social situation, likes, dislikes, etc.

Rep. Klemin: What would this bill change?

Ms. Hoffman: If two people wanted disclosure and agreed to it, they would be able to receive information about each other, but the agency would not be able to disclose the name of the birth mother. The one child parented by her mother would be able to, on her own, disclose that information, and that is the risk of what we are proposing.

Rep. Onstad: When you talk about three parties involved, does one party consist of birth mother and father, is that considered one party?

Ms. Hoffman: Yes.

Rep. Onstad: And then you have the adoptee.

Ms. Hoffman: Yes. Then you have the birth sibling of the adoptee.

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Rep. Onstad: If the biological mother and father are considered one party, a lot of times, because of the pregnancy, they end up splitting, so you are no longer one party.

Ms. Hoffman: The purpose of the change, they are both considered. Today we are talking to birth fathers. They are involved in the planning and the legal processes. At the time of placement, the individual who agreed to release of identifying information about one another, would be able to do that, but they could not release identifying information about those who don't consent.

Rep. Onstad: You have agency, and then you may go to non-agencies, do they still have to follow these guidelines.

Ms. Hoffman: Yes. In North Dakota, only licensed agencies can facilitate adoption. Identified adoption is a little different, what would be called an open adoption, between two parties. The birth parent knows an adoptive family that they wish to place their child with, and no agency becomes the custodian of the child; but agencies are involved in studying the family and providing counseling to the birth parents. That is the difference.

Chairman DeKrey: I thank you for appearing before the committee. Any further testimony in support of HB 1035?

Rebecca Doll, LSW, Village Family Service Center: (see testimony)

Rep. Klemin: This term, adoptee, it's not a defined term in this bill, it gets used a lot. Just exactly who is the adoptee.

Ms. Doll: The term, adoptee, means the adopted child which has now become an adult; the adopted individual.

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Rep. Kretschmar: You said an adoptee is not the same rank as children who are natural born children. Under law, an adopted child has the same rights as a natural born child.

Ms. Doll: I think it is reflecting their ability to have access to their birth information, they don't have equal access to that information.

Rep. Wrangham: In your testimony, you say that two parties are declined contact because the birth parent cannot be located. I thought there was something in the law, that if one couldn't be located, there were provisions to get around that.

Ms. Doll: I believe that under current law, that if there is an inability to contact one of the birth parents, there can be disclosure.

Ms. Hoffman: The law currently says that if the birth parent couldn't be located, information about them cannot be released.

Rep. Wrangham: But the other two could go ahead.

Ms. Hoffman: Yes.

Chairman DeKrey: Any testimony in opposition to HB 1035. We close the hearing on HB 1035. Reopen the hearing to hear testimony from Leanne Johnson.

Leanne Johnson, Lutheran Social Services of ND, AASK Adoption Director: (see testimony) I support HB 1035.

Rep. Kretschmar: How do you describe or define a child of sexual abuse?

Ms. Johnson: In ND, a child is defined as a child who is age 5 or older, a child any age, birth to 18, that may have a medical, emotional, physical disability, a child who is a member of a minority race, or a child that is a member of an affected group.

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Chairman DeKrey: Involuntary termination. Court's don't do that lightly. If that process that took place and the rights of a parent were terminated, obviously there was a reason that was done. As a protection for the adoptee, I am struggling with, all of a sudden it's a good idea to have that terminated parent have the right to search.

Ms. Johnson: I shared that struggle with you early on, I have a child protection background and I certainly understand the severity of involuntary termination of parental rights. It would not be possible until the adopted individual is 21 or older, have would still have the ability to refuse that disclosure. The search workers would have the information in the file as to the circumstances of the termination. There are safeguards built into the bill, so I support the therapeutic experience, a healing experience.

Rep. Klemm: On the issue of disclosure, if have two birth parents, they both have to consent to disclosure or there can't be any disclosure, but under this bill, if one of the birth parents consents and the other does not, and you can have a limited disclosure of only the consenting parent. I think the concern is that consenting birth parent would then disclose the information about the non-consenting. Now is there anything in this bill that would make some type of consequence to the person that did the disclosing but shouldn't have, if they do that?

Ms. Johnson: The interim committee also struggled with that point, and there was a discussion on a type of penalty and why that was not put in because we did struggle with that. However, we recognized that the department and the licensed child placing agencies cannot control that someone else in that situation does. We recognize that might be a possibility.

Rep. Eckre: Why is a minority child considered special needs.

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Ms. Johnson: The definition often goes back to the fact that minority children have been historically harder to place for adoption. I don't know the full history, but minority children are more difficult to place. Almost all states include the minority race provision within their definition of special needs adoption.

Chairman DeKrey: Thank you for your testimony.

Rep. Klemin: Could Ms. Hoffman address that question about the consequences.

Ms. Hoffman: What is that question again.

Rep. Klemin: Well, the situation where the consenting birth parent has disclosure with the adopted person, but the non-consenting birth parent is not supposed disclosed about, but then the consenting birth parent goes ahead and does it anyway. Is there or should there be a provision regarding a consequence if that happens, like a penalty.

Ms. Hoffman: We talked about that at length. We certainly could have recourse if the agency disclosed information about a non-consenting individual, that would be a violation of the regulations. We don't have the regulatory enforcement over the individual involved in the search. We struggled with what would be a penalty, and we talked about it and attempted to craft something, but weren't very successful in figuring out how you might do that. It does happen now, and there is no penalty provision now if a birth mother and an adoptee have contact. We have little recourse over what private individuals do in their conversations.

Ms. Clark: Our existing law and the changes are not creating any gag orders on the parties. There is nothing in the bill that says birth parents, you are not to disclose any identifying information about this non-consenting birth parent. I don't think that is said in the law anywhere.

Ms. Hoffman: We don't have authority over that individual at this point.

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Rep. Delmore: Are you going to put somebody in jail, fine them? How far do you take that type of thing. Was it done willfully, or was it a case of something that was disclosed during a personal relationship, it would be hard to put a penalty on them. This is more a bill for agencies, and the agency can be punished, but not between two individuals.

Chairman DeKrey: We have three somewhat open adoptions and were done under the present law, so how is this facilitating more openness, yet protecting someone's right to privacy.

Ms. Hoffman: A lot of adoptions are moving toward more adult openness, because families are demanding that, both adoptive and birth families. The agencies are getting caught in this, who operate under statutes that are very closed, and don't have the authority to do what families want them to do.

Chairman DeKrey: I think the degree of openness in our 3 adoptions on both parts was a good thing.

Ms. Hoffman: In terms of research, the jury is still out; but I think that most professionals say a degree of openness is better for kids, better for families, and better for birth parents to have information about how their children are doing and where they're at in their lives.

Rep. Wrangham: If two people want disclosure and one party does not, my sympathy goes to the two that want disclosure. It seems that we would be stepping on their privacy rights by letting them decide, because as soon as we allow the two to make the decision to exchange information, that is opening the third party. Can we consider making it effective from henceforth, so we wouldn't be infringing on agreements made in the past.

Ms. Hoffman: If we do that, we are delaying implementation of any of these search provisions for 18 years, minimum. Only 18 and beyond can search. I understand if that is the committee's

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recommendation. I would probably not agree because I feel strongly that we have crafted what we believe are reasonable steps toward openness and a reasonable risk.

Rep. Boehning: If I was adopted and I went seeking my birth mother and I find her, and I ask her about my father or fathers, is she going to tell me he was a nice guy or tell me he was a SOB, etc. Are they going to take the other parent and rip them apart, and tell them bad things.

Ms. Hoffman: I think that currently that happens. We can't control how people relate to another in their private conversations. When the parties are involved with an agency, there is counseling provided, a lot of negotiating that goes on with those individuals to help them through the process.

Rep. Klemin: I am having trouble with the issue of a prospective application. Right now you are looking back 18 years, so someone who is adopted today, 18 years from now could do the search before he's 18 anyway. What's the problem with waiting.

Ms. Hoffman: I understand that it can be done, need to look at which provisions you would put that 18 year clause on.

Rep. Klemin: People knew what the rules were, and they made decisions based on those rules, and now we're changing the rules after they relied on those rules. Perhaps if we changed the rules now, it would only apply on a prospective basis because people will go into this process knowing what the rules are now and the parties' conduct would be regulated according to what the rules were when they made those decisions.

Ms. Hoffman: I understand what you are saying. I wish some of the adult adoptees and birth parents, to whom this provision would never apply, because it only applies to those adoptions from this day forward, to call me and are so upset that they can't have contact and disclosure.

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They feel very strongly that they are being denied a right that they have as an individual born to that person. People saying we're not moving fast enough.

Rep. Boehning: If we entered into a contract to provide sperm to a woman to provide a child for us, she gives it up for adoption, how would that apply to this situation, would that child be able to go back to find his birth mother.

Ms. Hoffman: I think the whole concept of assisted conception and all those possibilities are a huge issue that right now there's lots and lots of information about it.

Rep. Eckre: That is not an adoption, that is a surrogate. That's a legal question, if a contract was signed.

Chairman DeKrey: Thank you everyone for testifying before us on this bill.

(The hearing was closed, but reopened later in the afternoon)

Chairman DeKrey: I did want to talk a little about the adoption bill to see which direction you want to go. Just from talking to members of the committee, I'm getting the sense that the committee doesn't want to pass the bill as is. What I am hearing is two things. Number one is kill it outright because they just don't like the idea of privacy being compromised, where the other one is we change the rules from here on out, when you go into an adoption now, you will be told upfront that 18 years from now, this could happen.

Rep. Delmore: And I think we are moving in that direction anyway. You look back 18 years, and there a much different perspective on adoption than there is today. I guess I'm in favor of doing something to salvage the bill, because a great number of hours were put into this bill; however, I certainly understand the objections of privacy.

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Chairman DeKrey: I will call it a working group, Rep. Grande, Rep. Delmore, and Rep. Maragos will bring us something. the committee for that adoption bill. For technical advice, Rep. Klemin can be a resource since he was on the original interim committee. As far as the identified adoption statute, I don't think we have a problem with that. This is an area of the law that definitely needs to be fixed up.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-3-03

Tape Number	Side A	Side B	Meter #
2		x	4.5-11.7
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 12 members present, 1 member absent (Rep. Bernstein)

Chairman DeKrey: What are the committee's wishes on HB 1035.

Rep. Maragos: I move adoption of the amendments from Human Services (see attached amend)

Rep. Delmore: Seconded.

Voice vote: Unanimous yes.

Rep. Maragos: I move a Do Pass as amended.

Rep. Delmore: Seconded.

12 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Chairman

DeKrey

30113.0101
Title.0200

Adopted by the Judiciary Committee
February 3, 2003

VK
2/4/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1035 JUD 2-04-03

Page 19, remove lines 27 through 29

Page 19, line 30, replace "20." with "19."

HOUSE AMENDMENTS TO HB 1035 JUD 2-04-03
Page 21, line 1, replace "21." with "20."

Page 21, line 10, replace "22." with "21."

HOUSE AMENDMENTS TO HB 1035 JUD 2-04-03
Page 22, line 2, replace "23." with "22."

Page 22, line 9, replace "24." with "23."

HOUSE AMENDMENTS TO HB 1035 JUD 2-04-03
Page 23, line 3, replace "25." with "24."

Page 23, line 6, replace "26." with "25."

Page 23, line 8, replace "27." with "26."

Renumber accordingly

Page No. 1

30113.0101

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10/2/03
Date

Date: 2/3/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1035

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30113.0101 0200

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. DeKrey

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

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 5:16 p.m.

Module No: HR-21-1663
Carrier: DeKrey
Insert LC: 30113.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1035: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1035 was placed on the Sixth order on the calendar.

Page 19, remove lines 27 through 29

Page 19, line 30, replace "20." with "19."

Page 21, line 1, replace "21." with "20."

Page 21, line 10, replace "22." with "21."

Page 22, line 2, replace "23." with "22."

Page 22, line 9, replace "24." with "23."

Page 23, line 3, replace "25." with "24."

Page 23, line 6, replace "26." with "25."

Page 23, line 8, replace "27." with "26."

Renumber accordingly

2003 SENATE JUDICIARY

HB 1035

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10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/05/03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - End
1		X	0.0 - 12.0
Committee Clerk Signature <i>Mina R. Solberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Neutral to HB 1035

Jennifer Clark, Legislative Council for the Interim Committee Introduced Bill (meter 0.9)

discussed substantive changes vs. "house cleaning" changes.

Senator John T. Traynor, Chairman questioned the process the mother must go through to legally give up the child. Sited his own personal case where proper legal process was not done (meter 11.2) rights were not sited and relinquishment not done under proper procedure.

Testimony in Support of HB 1035

Sue Grunderson - Village Family Services discussed how the process is done today (meter 12.5)

Spoke how a mother fully understands there right before giving up the child.

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Senate Judiciary Committee

Bill/Resolution Number HB 1035

Hearing Date 03/05/03

Julie Hoffman, Administrator of Adoption Services for the Department of Human Services

(meter 17.0) Read Testimony - Attachment 1a and handed out a summary of proposed changes to ND Century Code 14-15 Attachment 1b

Sen. Traynor asked who on our Senate Judiciary was on the Family Law Committee? Sen. Dever was the only one out of fifteen.

Senator Thomas L. Trenbeath discussed what "Agency Values" (meter 30.6) Is this something that the agencies have reduced to writing or is this only a perception. It is both.

Senator Carolyn Nelson questioned page 2, what are the six agencies and are they public or private (meter 31.2).

Senator John T. Traynor, Chairman discussed (meter 32.6) a case of an adopted child looking for its birth parents and do to the fact, out of spite the father would not give permission, the child could not find out either parent.

Sen Carolyn Nelson referred to if it involves (meter 35.5) a health issue the contact process of the birth parents.

Linda Jaeger, Supervisor of Child Welfare with Catholic Family Service (meter 38) Read Testimony - Attachment #2.

Senator John T. Traynor, Chairman asked what of the bill (meter 43.9) was removed by the house and why? Paragraph 19 of section 16 in original bill.

Senator Carolyn Nelson asked if the adoptee and the birth parent (meter 44.4) but the problem is the adopting family how do you handle that situation. Discussion of foreign Adoption.

Senator Carolyn Nelson also discussed the location of records (meter 49) and what happens when an agency closes where do the records go.

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Senate Judiciary Committee
Bill/Resolution Number HB 1035
Hearing Date 03/05/03

Susan Grundyson, Licensed, clinical social worker employed by the Village Family Services
Center (meter 55) Attachment #3 Read Testimony

Senator John T. Traynor, Chairman discussed what would be in jeopardy if a child was looking
for a birth parent. More discussion on what was done in the house. (tape 1, side 2 meter 1)

Leanne Johnson, Lutheran Social Services of ND A.A.S.K. Adoption Director. (meter 8.4) Read
Testimony - Attachment #4.

Testimony in Opposition of HB 1035

None

Senator John T. Traynor, Chairman closed the hearing

Committee reopened in afternoon.

**Motion Made to DO PASS Amendment to put back in Section 19 on page 19 in Engrossed
HB 1035 Senator Carolyn Nelson and seconded by Senator Thomas L. Trenbeath**

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

**Motion Made to DO PASS Engrossed HB 1035 as amended Senator Dick Dever and
seconded by Senator Thomas L. Trenbeath**

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Senator Carolyn Nelson

Senator John T. Traynor, Chairman closed the hearing

30113.0201
Title.0300

Adopted by the Judiciary Committee
March 5, 2003

JB
3-7-3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the information disclosed by the agency may relate only to the consenting parent."

Page 19, line 30, replace "19." with "20."

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

Date: March 5, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1035

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30113.0201

Action Taken DO PASS Amendment to change language back to original Engrossed Bill

Motion Made By Sen. Nelson Seconded By Senator Thomas L. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Senator Carolyn Nelson

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

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Date: March 5, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1035

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30113.0201

Action Taken DO PASS Engrossed Bill as Amended

Motion Made By Sen. Dever Seconded By Senator Thomas L. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Senator Carolyn Nelson

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 7, 2003 1:00 p.m.

Module No: SR-41-4246
Carrier: Nelson
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REPORT OF STANDING COMMITTEE

HB 1035, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1035 was placed on the Sixth order on the calendar.

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the information disclosed by the agency may relate only to the consenting parent."

Page 19, line 30, replace "19." with "20."

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

2003 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1035

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☒ Conference Committee

Hearing Date 4/1/03

Tape Number	Side A	Side B	Meter #
1	XX		0-8.4
Committee Clerk Signature <i>APenrose</i>			

Minutes: 6 members present: Sens. Dever, Trenbeath, C. Nelson and Reps. DeKrey, Grande, and Eckre.

Chairman DeKrey: We will open the Conference Committee on HB 1035. All members of the conference committee are present, and there is a quorum. I would ask that the Senate explain what they did to the bill.

Sen. Nelson: We put section 19 back in.

Chairman DeKrey: And why.

Sen. Nelson: Because we thought it was more fair, that one person shouldn't have the veto power and under 18 it was legal to do that, yet once they reach the age of 18, the rules change.

Rep. Eckre: I make a motion to accede to the Senate amendments.

Sen. Trenbeath: Seconded.

Chairman DeKrey: Before we take a vote, obviously the information that is disclosed by the agency would only relate to the consenting parent. But say that of parent, and this was the

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House's reasoning, did not want that information, how are you going to keep that other parent's information confidential, when the other parent is going to have contact with the child and knows who the other parent is.

Sen. Trenbeath: I think you've hit it right on the head. That would be the danger. But in weighing that danger, I think we felt that if we were going to err, we would err on the side of the two people wanting to get together.

Chairman DeKrey: Personally, I have three adopted children; one under each system, a special needs adoption, a closed adoption and an open adoption. The people who did not come and testify for or against this bill, obviously are the ones, somewhere in their past, that gave up a child for adoption. Because they aren't going to come before the committee and raise their hand and say that I gave up a child, and now I'm an attorney, or now I'm a physician or school teacher and I don't want this out, so that's why I don't want you to change this bill. They weren't going to come and testify on this bill. I guess that's my problem with the bill, as a whole, because I think we're violating somebody's privacy that hasn't got the ability to come in and complain about us trying to violate their privacy. To me, what you've put back in here, makes that even greater than that can happen.

Sen. Trenbeath: I understand, the two positions are irreconcilable, without giving some latitude over the other. I wonder if we couldn't craft some language whereby the consenting parent would agree not to release the information of the other parent.

Chairman DeKrey: If there was some teeth in it, I could go along with it.

Sen. Trenbeath: I know what you are saying. At least if there was some disclosure then, the person's whose rights had been violated, would have a course of action.

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Chairman DeKrey: I think that is an amendment that would be worth looking at.

Rep. Grande: The only thing is when you are waiting for the rights to be violated and have a course of action, the damage is done, it can't be undone.

Sen. Trenbeath: You can't unring the bell

Rep. Grande: I think that you've opened the door, and these adoptions were set up in a closed adoption. There was a reason behind it. Now you've just taken that away. The contract was signed. That was an agreement that this would be stay closed, and now we're going back and telling all these people, it doesn't matter what you thought or did, we don't care how you felt about it, it doesn't matter, we're just going to open the door. I think that's just really unfair and it's not our place to do that.

Sen. Trenbeath: I understand your position, but I think it is overstated somewhat, because times and circumstances do change, and people do have a change of heart and this person who says, who's apparently gave the child up for adoption and signed the contract, should be able to come at some time, and say, "look I know my daughter is looking for me and I would just as soon she found me". I think she ought to be able to say that.

Rep. Grande: Where does the father fit in.

Sen. Trenbeath: Just as I'm saying, I think that, at that point, we could craft some language that said, presuming sex of the mother and father, that the mother could say that in order to visit with my daughter, I agree that I will not disclose any information related to the natural father and understand that an action lies against me. My language that I'm saying here is cumbersome, but LC could craft some language, that there is civil penalties for violating that, pursuable by the person who's rights were violated.

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Sen. Nelson: There is also the situation of the father, who you don't know who he is. He's never been there, and all of a sudden, 30 years later....

Chairman DeKrey: But under present law, all you have to do is advertise it, and if no one answers their advertisement, or if they don't have an address or anything, they can go ahead and release that information, but this would be specifically, they would know who both parents were and one would say yes and one would say no, and the one that said yes would get to veto the one that said no.

Sen. Nelson: The agency would know who they both are.

Chairman DeKrey: Unless the parent that gets the contact, would tell them. I would be willing to look at language like that. The other thing that I found somewhat disturbing, because I have personal experience with it, is the termination of parental rights. That is extremely hard to do. When we had the hearing, was that the person who's parental rights had been terminated by the court, not voluntarily, could come back and do a search. Now when I think back to my own children's lives, the parents' rights that we had terminated through the court process and how expensive that was and how screwed up these people were, I can't imagine in an adoption, my kids are going to know who their biological parents are. They already know that, for all three of them. The father may be questionable in the boys' case, but push came to shove, in a medical emergency, there are enough suspects, we could figure out. Here in the bill, I understand that people's lives can change. I can understand that somebody could be a really bad person, bad enough that they could have their parental rights terminated; but under this bill there is no test whatsoever on whether these people have straightened up or anything. So you could be a rotten person, have your rights terminated and you could be in prison for a AA felony, and still have the

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right to search for your biological child. I'm not so sure that giving them blanket authority like that is...

Sen. Trenbeath: But it is still subject to consent. The child has to consent.

Rep. Grande: But the child is not going to know that his father was in prison when he was searching for him. All of a sudden somebody knocks on the door, and says your dad is looking for you.

Sen. Trenbeath: We have to leave something up to the individual, the individual should have the chance to say, okay, how come the parental rights were terminated, etc. You're not going to say, "Oh good, daddy wants me".

Chairman DeKrey: We have the motion before the committee.

Rep. Grande: I call the question.

Chairman DeKrey: The clerk will call the roll on a motion that the House accede to the Senate.

4 YES 2 NO 0 ABSENT MOTION PASSES.

Chairman DeKrey: Now about further amending the bill.

Sen. Trenbeath: I don't mind at all sitting down with someone from LC to craft some language to protect the non-consenting parent.

Chairman DeKrey: We will schedule another meeting then. I'll have Sen. Trenbeath work on the amendment.

Sen. Nelson: I will not be here on the 7th.

Rep. Grande: I will not be here on the 3rd.

Chairman DeKrey: The 3rd and 7th are out. We will stand in recess until we convene again.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

Conference Committee / House & Senate Judiciary Committees

Hearing Date 4-8-03

Tape Number	Side A	Side B	Meter #
1	xx		0-7
Committee Clerk Signature <i>APenrose</i>			

Minutes: Sens. Dever, Trenbeath, C. Nelson, and Reps. DeKrey, Grande, Eckre.

Chairman DeKrey: Called the meeting to order. Roll call was taken. All members present.

Sen. Trenbeath: I think you all have a copy of the amendment that I had prepared based on our last discussion. It would add on page 19, after line 29, adding that paragraph that would allow, or at least would make it unlawful for a natural parent to give information regarding the other natural parent, to the child that was given up for adoption. There is no penalty clause in it. We didn't know if we wanted to make it a crime or not, so what this does is provide a key to the courthouse doors. So that if somebody's rights have been violated in this respect, they have statutory privilege against disclosure, if it violated that person's rights, would have access to the courts in whatever form.

Sen. Dever: Seconded.

Chairman DeKrey: Further discussion on the amendment.

Rep. Grande: Are we working off the original bill, because my amendments don't match up.

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Sen. Nelson: You need to be reading off of the blue copy, .0200.

Rep. Grande: Then the amendments don't match up. Page 19, does not have a line 30.

Rep. Eckre: Insert after line 29.

Sen. Trenbeath: After line 29, which would take you into page 20, as I understand from LC, this is how it is done.

Sen. Nelson: If you look at page 19, after line 29.

Chairman DeKrey: It kind of replaces that paragraph, #19, with new #19. Further discussion on the amendments.

Voice vote: Carries.

Rep. Grande: I guess as I look at this, I thought that we had done a good job of protecting what was already in place, as far as people who have asked for these closed adoptions, to keep them that way. That's why they set up a contract, that's why they set up a deal to do that. It doesn't matter if we have this amendment on here that says, that it gives them a doorway into the courthouse. It's like in the cartoons, the balloon is out there and the words are there, you can't pull them back in, and you can never undo the damage. It doesn't matter if you sue them for everything they're worth, or have them thrown into jail. It never corrects the wrong. It can never be fixed. I think we are taking away somebody's rights big time, here. I just don't think that that door needs to be opened.

Chairman DeKrey: I guess I agree with that. I think that people went into these adoptions, and whether it will make any difference in an adoption or not, whether up front now they know that their information may not always be confidential or not, I don't know if it will make a difference

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or not; but I do believe that the very people that this affects the most, are the very people that absolutely would not come in and testify.

Sen. Trenbeath: My feeling on that, I certainly recognize where you are coming from. There is a sanctity of contract. You signed those contracts and you should live by them. But, fortunately or unfortunately, that's not the way human beings are. Contracts are always subject to modification by mutual consent. So when you get two parties that want to contact each other, then you do what you can, in my mind, to protect the interests of the third party, but without denying the other two their desire to modify their contract.

Rep. Grande: But the contract was stated between the two adults, it wasn't with the child that was put up for adoption. It was those two adults, and those two adults have not consented to the change of that contract, and so we are breaching their contract for them.

Sen. Trenbeath: You are absolutely right, and that is what happens with government, all rights of a contract are subject to government modification. It's not to be done lightly.

Rep. Grande: And that's why I don't think we should be the government agency breaching these contracts for these people. They have no say in this.

Chairman DeKrey: Having three adoptions in which two are totally open and one is where all parties know each other, but it's not really an open adoption. I can see how adoption has changed over the years. I have a cousin that was adopted under, way back when, is only three years younger than I am, and times have changed. I still have that nagging feeling that we didn't get the whole story when we held the hearing on this bill, for the very fact that the people that would be the most affected by this bill, would be the last ones that would ever come in and testify, one way or the other on this.

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Sen. Trenbeath: That is unfortunate. However, I don't think we should be in the position of making our minds up on a proposed statute based on what we perceive would have been the testimony, had people come forward.

Chairman DeKrey: True. We need a motion on this amendment. We also need to rescind the House accedes to the Senate motion from the first conference committee meeting. That was incorrect.

Sen. Trenbeath: I make a motion that the Senate recede from its amendments as printed on pages 869-870 of the House Journal and that Engrossed House Bill 1035 be amended as follows:
30113.0202, title .0400.

Rep. Grande: Seconded.

5 YES 1 NO 0 ABSENT MOTION PASSES CARRIER: Rep. DeKrey

Salvatore Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☒ Conference Committee / House & Senate Judiciary Committees

Hearing Date 4/15/03

Tape Number	Side A	Side B	Meter #
1	xx		0-6
Committee Clerk Signature <i>Al Penrose</i>			

Minutes: 6 members present: Sens. Dever, Trenbeath, Nelson & Reps. DeKrey, Grande & Delmore.

Chairman DeKrey: Called the Conference Committee meeting to order. Roll call was taken. What the House objected to was the disclosure of information and what this amendment (.0204) intends to do is to take, on page 22, take out the word "only" so that it makes it clear that only if the petitioner demonstrates substantial harm, so that would mean that there could be more than one reason. The heart of it is adding f. on page 23, the new language would be "If both genetic parents have been located and one of the genetic parents objects to disclosure of identifying information, upon a showing of good cause the court may order disclosure of identifying information concerning the consenting genetic parent. Unless the court has already disclosed such information, the court shall order the consenting genetic parent to not disclose identifying information concerning the objecting parent." Now, I talked to a couple judges, and what they're telling us is that the Agency told us that Judges are not releasing identifying information. That's

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not exactly true; because I talked to a couple of different judges and some judges are doing it and some judges aren't. So what the intent of this paragraph f. is to make it clear to the court that they can, under good cause, release identifying information. Now, the original one we had, had medical in there, but that doesn't fit this part of the bill and also under medical reasons, we've now got the federal HIPAA law, and that pertains to adoptions too, so we have to remain consistent with HIPAA.

Sen. Trenbeath: How is this more consistent with HIPAA than the previous amendment.

Chairman DeKrey: I don't know. Well, we had put medical in there because we wanted it specifically to show that medical would be a good cause, but then it didn't fit in this part of the bill, so that is why Jennifer Clark, LC, didn't put it into this part of the bill. In the adoption law, there are already rules for releasing medical information; and hopefully, with this language in f. there, that will signal to the Court that we are easing up on letting of information, but we aren't going to the full blown level that the original bill had; where it was left up to the Agency. This changes existing law that puts it in writing that Judges are allowed to release information for good cause, where some Judges didn't feel that they could release any information the way the law was; and this specifically gives them an avenue to do that.

Rep. Grande: Can you give me an example of good cause then.

Chairman DeKrey: Well, Julie Hoffman, Dept. of Human Services, isn't here, but we will have to wrap this up in a few minutes and meet again. She gave us so many different circumstances out there. One of the circumstances she used was if the child was a result of a violent rape. They could come in and say that they want to know who their parents are, and the Agency can say to

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them, well if the circumstances aren't good, do you really want to know that. They could rethink that, but that could be an example of good cause or in this case, bad cause.

Sen. Trenbeath: My problem with the good cause language, is that it is subjective. There are 42 different definitions of good cause.

Chairman DeKrey: I realize that, but my thinking was would you rather have subjective language to an Agency or subjective language to the Court. I thought that the subjective language would be better in front of a Court, than it would be to an Agency. But what we thought we would do today, since this is the first time that anybody has had a chance to look over the amendment.

Rep. Grande: I move to adjourn and reschedule.

Chairman DeKrey: Adjourned.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☒ Conference Committee / House & Senate Judiciary Committees

Hearing Date 4/16/03

Tape Number	Side A	Side B	Meter #
1	xx		0-37
Committee Clerk Signature <i>M. Penrose</i>			

Minutes: 6 members were present: Sens. Dever, Trenbeath, Nelson & Reps. DeKrey, Grande & Delmore.

Chairman DeKrey: Called Conference Committee meeting on HB 1035 to order. Roll call was taken. Have you seen the amendment Julie.

Julie Hoffman, Dept. of Human Services, Adoption Administrator: I haven't seen it, but I have heard of it.

Chairman DeKrey: What is your opinion of it.

Ms. Hoffman: My opinion would be that I don't want to lose the whole bill, so if that's the way we have to go, I guess so. I think that people would prefer not to have to go court, they are concerned about going to court. I did talk with Jennifer Clark, yesterday, as she was working on this amendment for the Legislative Council. As I said, I don't want to see this whole bill go down because there was a lot of work from the Family Law Committee and the workers who worked with this, and I would be concerned for this one issue, which we have known to be the

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most contentious from the beginning, that we would lose all the other work that went into this bill. I do have some concern about putting this into the Court, in the sense that adoptees are already saying to me, for the few times that they have to go to court for these kinds of issues, why should I have to go to court, why should I have to retain an attorney and pay these kinds of fees for information that they feel is theirs. In this case, they would be going to court where a birth parent is actually consenting, but another birth parent is not consenting. I think there would be some difficulty in terms of how they would perceive the need for that kind of action. But I do understand that there are some concerns about the non-consenting parent, and that particular disclosure. I would remind the committee, however, that for years, adoptees have asserted that their rights in regard to information has not been attended to by this state and other states, and nationally we are moving towards more openness.

Sen. Dever: Absent the procedure with the court, what would be the procedure that an adoption agency would through under the bill as we had it before. Would there be counseling on both sides, or on all sides.

Ms. Hoffman: Currently there is, and for people who are searching for an individual and those are being sought for are provided counseling by professional social workers who are employed as search workers, who have done this for a very long time and they work with them through the whole process of search. The search is not just a one-time disclosure of a name, it's a process. Of coming to terms with the past history of how the adoption came to be, the issues around that. As well as current issues, and how you incorporate these new individuals into your family and into your sphere of influence. Those are a lot that goes into it, and the counseling would be provided. As the amendment that addressed the consenting parent would have to sign some kind

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of an assurance saying that they would not disclose the information, I thought about that. That would be pretty easy to implement. We would develop some kind of form that would be signed and notarized by the consenting parties saying that they agree not to disclose identifying information. We would probably, in general, use that form for other kinds of situations where disclosure is made as well. The individuals then would be counseled that certainly they are agreeing to not disclose identifying information and that if they would, that would probably allow the offended person to have some basis for litigation against them.

Sen. Dever: The agency interview the child, the mom, the dad, and they get a sense that maybe the child doesn't really want to meet Dad for some reason. Maybe it would be a bad situation, or dangerous to the child. Do they convey that to the child.

Ms. Hoffman: Yes, they would. Obviously the decision is the adoptee, who is now an adult and it would be theirs alone, but they would certainly counsel them, if they felt that there was some inherent danger or risk because of circumstances of the birth parent, or vice versa, the adoptee. That has happened, where individuals are mentally ill or who have been adjudicated in violent types of situations. They would provide that information but allow the individual to make the decision.

Rep. Delmore: One of the big issues who don't like this particular bill, seems to be privacy. However, are there not ways of going on the web and some people being able to track them with nobody to intercede in those circumstances.

Ms. Hoffman: There are, if you have certain kinds of information and, of course, the national move is towards registries. We talked about this before, that nationally there has been discussion of a national passive registry, which would in essence be what we are talking about, except that

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we actively search out people and those who then would register on the registry, if the match were made, then they would be able to have contact and the third party would never be contacted. There has been discussion of that on a national level, and I believe 30 some states have that passive registry system already in place on the state side.

Rep. Delmore: I know of one case where a young woman went on the web, was able to find that information, and tracked down both parents with nobody there to intervene or do anything.

Ms. Hoffman: I just had a discussion this morning with Judge Paulson from the Valley City area. He called me because a search is being requested by an adult individual who was adopted in the 1960's. Not that long ago, this individual is just about 40. His adoption decree has his birth name on it, that is no longer the practice; but he knows his birth name. He knows his birthplace, of course, and his birth date, because those are not changed on the birth certificate and with that little information he certainly could do his own search and locate those birth parents without the assistance of an agency.

Sen. Trenbeath: In your experience, don't you think that if they were to go to court and demonstrate good cause, don't you feel that the court will in every instance ask for the agency's recommendation.

Ms. Hoffman: Yes. My experience has been that the courts will contact the agency and/or the Department.

Rep. Grande: In through this discussion, and really how the discussion went on the floor, and with many other people that have said how they feel about this, when did it become the government's place to breach a contract and I really take issue with the fact that we are not to step in on individual's contracts as a government and breach them. And for us to step forward on

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this, we are going to against what we set forth as the principle in our government, we are not supposed to be getting involved in people's life, they had made this decision, they set forth on that and they wish to stick to that contract. That was their agreement and for government to interfere, I think we have caused great harm along the way. There was somebody who may have benefited from that, but it is not government's job to do that. If they want an open adoption, or they want to have that information out, then enter into that type of adoption; don't enter into the closed. That's why you have that. If you don't want it, you put the clause in that says this is what we will do in the future. As far as I am concerned, with this bill, I would like to see the elimination of Section 16 and pass the bill, instead of killing it.

Ms. Hoffman: To respond, I think that 20, 30 and 40 years ago, individuals weren't offered the kind of open adoption that they have today. People who are searching are those who didn't have the kinds of options that we have today. They were, however, told that when their child reached the age of 18 or 21, they would be able to have contact. The specific concern that we are talking about are those situations where the adoptee and one parent wish to have contact and one does not wish. You might say, that in those cases, the contract is being breached by another individual, who is denying the disclosure that the other birth parent was promised at the time of placement.

Rep. Grande: But the agreement was made in that context, it will be closed.

Sen. Trenbeath: These are not contracts in the ordinary sense of the word, the meeting of minds between two parties. These contracts are not allowed in the common law, but they are only allowed by statute, and that's a government action. So it is a government contract, not a common

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law contract, it has to do with human beings and that's why government ought to be able to modify. It still has to do with human beings and times change.

Rep. Grande: But we are going back and changing things that weren't agreed to in the past.

Sen. Trenbeath: I choose to think of it as going forward in society.

Chairman DeKrey: I think it was pretty evident on the House side, that 16 is either going to have to come out and be modified, it went down 5 (yes) to 87 (no).

Sen. Trenbeath: Let's talk about why it went down. We sat here and adopted that conference committee report and it was members of your portion of this conference committee that went to certain people in power and decided that, subsequent to us leaving the door, that they shouldn't do what we had recommended to do. It wasn't an open and free discussion on the floor. Let's be honest about it.

Chairman DeKrey: I think there was plenty open and free discussion on the floor.

Rep. Grande: I beg to differ. I voted against this the entire way.

Sen. Trenbeath: You are absolutely right, Rep. Grande. I have no quarrel with you, you have been completely consistent in your position.

Chairman DeKrey: If I'm being looked at as being inconsistent, I was consistent in that I thought that there was merit to the bill and it should be kept alive. We raised the privacy issues and we went back and that was the portion of the bill that was defeated ultimately in the house.

Sen. Trenbeath: If you look for instance, and again my references are to the previous bill that we had, and so it is a little bit inconsistent with what we now have before us, but I can certainly reference the sections. This would be prior to the section 16, authorizes the disclosure of identifying information to the child prior to adulthood. That's subsection 7, which doesn't

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involved the courts in this. If we go to subsection 18, it allows the full disclosure of identifying information when you can't find one of the adults, and the other one consents, there is no limitation on subsequent dissemination of that information.

Ms. Hoffman: That particular section is already part of the current law. It is underlined solely because it was moved within the statute, so we currently are able to disclose identifying information when we can't locate the other party.

Sen. Trenbeath: Continuing with respect to subsection 21, which has to do with siblings wanting to see each other. They are entitled to get information with respect to a consenting birth parent, no limitation as to substance or dissemination. No requirement that they go to court to get it. The new language that is being suggested with .0204 is to suggest to put that in a section of the bill, that by my reading, has to do with when there is some urgent situation where we must know the birth parents for probably genetic purposes or whatever. Because you have to say to the court there, you have to demonstrate the significant need for disclosure and then you go on and within that same section, you say there has to be a showing of good cause. If we are intending to do something in the nature of going to court, this is the wrong area in this bill to put it in, in my opinion. Even then, we go on to sub e. of that, the court may order disclosure only if the petitioner demonstrates the disclosure will not result in any substantial harm to the individual about whom identifying information is sought. The court may not order the disclosure of identifying information concerning any individual who objects to that disclosure. Fine and dandy. It says the court may not order the disclosure, it doesn't prohibit it from being disclosed. So all of these portions presently in this bill are consistent with the language we previously crafted. I just think that from a public policy perspective, I know you, Rep. Grande and I are going to

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disagree and continue to disagree because we disagree on what public policy ought to be in these regards. But I think that from a public policy perspective, this is a step in the right direction.

Rep. Grande: Are you referring to the amendment in front of us or the amendment from before.

Sen. Trenbeath: The amendment from before. I think this amendment that is in front of us, just makes it a more circuitous route. What it does it takes the time period and increases it because now you have the court involved. This is just going to be an exercise, that is just going to take a longer period of time, because the court is always going to go to the agency and ask what is your recommendation. I know a lot of courts/judges are never going to let their own judgment on a particular case stand in the way of the expert they have. It is going to get the same result anyway. It's just going to take longer and be more expensive to do it, and once again you will have an arm of the government, the court interceding in the contract.

Chairman DeKrey: I am more personally more comfortable with having a disinterested third party like the court making that decision, than the decision being made by the agency.

Sen. Trenbeath: And what I am saying, is that, practically speaking, there is no difference.

Rep. Delmore: Because if it is recommended by the agency, the court will do it. You see that all the time in the courts.

Sen. Dever: One question I would have regarding that, what burden does that put on the people involved with it. It would have to involve attorneys and those kinds of legal expenses.

Chairman DeKrey: What about the person's privacy. I find it interesting that in this state, over 70% wanted privacy on financial matters, but when we get to something that's much more personal than financial matters, we're going to throw the book out the window.

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Sen. Dever: I agree with that. But I think that when we use the terminology breach of contract, I think, first of all the child was a child when the adoption took place and had no say in that contract. So when they achieve adulthood, then I'm not so sure that they should be denied the opportunity to at least initiate an inquiry and then if Mom and Dad, or at least one of them decides that they would like to make that contact, shouldn't be prevented to. And I think the issue before us is how do we protect the privacy of the one that does not.

Chairman DeKrey: It could also be the situation that that child came even into existence, because one of the parents was assured of the fact that it could be held in confidence forever.

Sen. Dever: If you are raising the abortion issue, I think you and I are probably on the same side.

Chairman DeKrey: But I am not saying that. That might have entered into the decision to keep that child in the first place, was the fact that that could have been held in confidence forever.

Sen. Dever: I think the point of this issue is that, after some time, after 18 years has taken place, have their feelings changed on the issue. If they say, I entered into that contract because I wanted nothing more to do with this child, then we need to respect that, we need to do whatever we can to prevent that identification from taking place. I don't think that we need to, in order to do that, completely eliminate the possibility of identifying people.

Chairman DeKrey: This doesn't do that, it just makes it a little bit harder to get that information, so it isn't going to be done on a whim. You have to be thoughtful and really have to desire to present good cause to have that.

Sen. Dever: So I guess the question there then is, who is in a better position, the adoption agency through their processes, or the court.

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Chairman DeKrey: I think the court is, because the adoption agency and the social services are going to be sympathetic just by nature to the person seeking.

Sen. Trenbeath: What we're really doubting here, which I think we all recognize where we've been from the start, and that's how to protect the non-disclosing parent.

Rep. Grande: Non-disclosing person, because it might be the child who doesn't want two parents to interfere in their life now.

Sen. Trenbeath: Okay, I don't think that has been brought out before, so the non-consenting person is what we're after to protect. I think the prior amendment recognized that. Maybe it didn't go far enough, because you and I had spoken, Mr. Chair, about whether there should be a penalty attached to it and with the present proposed amendment, that's there because, at least by inference, if it is disclosed there is a contempt of court citation.

Chairman DeKrey: Right.

Sen. Trenbeath: I think we recognize that, and how best to accomplish that. I have been very free with my opinion here, I think that the presently opposed amendment is too cumbersome and throws up roadblocks that don't need to be there. I would rather work toward the previously adopted amendment with respect to the penalty provision that the person whose rights have been violated would have an action, because it would be difficult, I would guess under the amendments we have adopted, it would be difficult for a person to go into court and prove a monetary damage, just because of disclosure. So maybe if you put a presumption of monetary damages in there in a particular amount, if that would work. I want to stay away from a criminal penalty for one reason, it is in the best interests of the person who has been damaged. When it comes time to go to court to make the point, you can imagine how in the course of time, there is

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going to be a lot of finger-pointing about who told who, what, when and in criminal court it is proof beyond a reasonable doubt. In civil court, it is more likely than not. So the person who is actually damaged, has a much better chance of being redressed and having his/her damages redressed in a civil court. So an idea that I would throw out is that we look at that penalty section, make it a little stronger, with input probably from Legislative Council to try and craft something like that and whether there is precedent in the law for that sort of thing, and I believe there is. To presume a damage, and make it substantial, as more of a deterrent than as a recompense.

Rep. Grande: If we're going to go back and work off of these Senate amendments, if there was something we can do, something that would make it palatable for me, was that if this is going to be breached, that we state that it can be breached if life or death is proven. And that be the only time we breach that contract. If there is a need to know, life and death reason, the child has developed a genetic disease and he needs to know what his history is, is this might be the only kidney available to him, fine. But unless that's the case, leave it as it is.

Rep. Delmore: Another concern I have under this, a child might want to know because I'm getting married and I want to have kids; and I have no idea about either one of my birth parents. I agree with your life and death being the exception, but I think there are other loopholes that, if we make hard and fast rules, we're not going to cover.

Sen. Nelson: When we were down in Senate Judiciary we talked about long, gone adoption agencies that existed 40 years ago and where those records are, if they are anywhere. Most of them we were able to find that they went to somebody. How extensively or how long do you

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actually search for someone. Is it until you actually come to the conclusion that the person is dead or alive, or is there a time frame, if we couldn't find them in a month so

Ms. Hoffman: Currently, the law says that an agency has 90 days, and we did make some changes in that provision, which is why I wouldn't want to lose this whole bill, that would allow the agency to gain consent from the individual to continue searching. In practicality, they've continued to do that today and sometimes, these searches can take years. Searchers have located individuals in Europe, all over the world. Sometimes it is very time consuming. It isn't always as easy as we think it might be today with the Internet; because people's names change, they marry, they divorce, they move, etc. but the searchers are very persistent and will continue until they find somebody or the individual says they are satisfied they we made enough effort. They will also attempt to validate death. If they are able to validate death, then they can make disclosure.

Rep. Grande: I understand that the focus really has been on whether or not we're dealing with parents here. But I think we have to keep in mind that we're dealing with a child who has been adopted, lived a wonderful life and doesn't want to know and be bothered by the past. Now all of a sudden we've got two people searching out this person and they say no. I don't want to know anything about that past. I was raised by these people, I love these people and this is my family. They shouldn't have to hunt them, to know these people, because they got together and decided, they want to interfere in a life that doesn't have anything to do with these people just because they bore a child.

Ms. Hoffman: I believe that the way this is written, it applies to the situation where a parent is refusing disclosure. I don't think we would be in the position of an adoptee refusing disclosure

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and then disclosing without their permission. I would have to look at the engrossed bill, but I believe that is how we crafted it.

Sen. Dever: I'm not sure I agree.

Sen. Trenbeath: In subsection 17 says, an adopted individual, genetic parent or genetic sibling, with respect to whom a disclosure of identifying information has been requested. That would say that the genetic parent could request information regarding the adopted person; however, I don't see that as the problem because the only reason we have a problem here is because you have two people that need to agree, the two genetic parents. It the decision of the adoptee, the adoptee can say yes or no with respect to both of these and that's the end of it. It's only when you have one parent that is saying yes and one saying no that you've got a problem.

Ms. Hoffman: This still doesn't have the original language that was proposed, it was former paragraph 19, and that was the section that indicated that if the child placing agency is locating genetic parent, one consents and one doesn't consent, then the disclosure would be able to be made regarding the consenting parent, not regarding the non-consenting parent. That was the original paragraph 19, that the House originally amended out, the Senate amended back in. It is no longer in this version.

Rep. Grande: So you are saying that subsection 17 safeguards that if the child doesn't want to be disclosed, the child doesn't have to be disclosed.

Sen. Trenbeath: Correct.

Rep. Grande: That's a guarantee there.

Sen. Dever: Authorize disclosure, refuse to authorize disclosure, or take no action.

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Sen. Trenbeath: I don't know why take no action is in there. My understanding is if you take no action, it would be a refusal.

Ms. Hoffman: It goes on to say that. If no action is taken, the child placing agency must treat it as a refusal. So if the adoptee is contacted and does not wish contact, or doesn't even respond, disclosure regarding them would not be made, would not be authorized.

Sen. Dever: The refusal on the part of the child would be absolute anyway.

Ms. Hoffman: Yes.

Sen. Trenbeath: It is presumed to be no unless they say yes.

Ms. Hoffman: And when we crafted this original bill with the section .8, section 18 was already in the law, we just moved it. We added the section 19 because currently if you locate one parent and cannot locate the other parent, you can have disclosure. So the next step is what happens if you are able to locate one parent and the other parent, and there is a disagreement. It seemed to us that there was a piece missing here and many adoptees pointed that out.

Chairman DeKrey: Well, I guess where we are at, the Senate doesn't like the proposed amendment.

Sen. Trenbeath: Well, I only speak for myself.

Sen. Dever: As Sen. Trenbeath has mentioned putting a penalty in the Senate amendment, and I am wondering if it maybe it would be appropriate to maybe add some language as to the confidentiality of it. But if you do that, doesn't the non-consenting parent still have the opportunity to go to the court and stop the process by injunction.

Chairman DeKrey: There would have to be language in there that the non-consenting is going to be notified that that is going to happen. If we took the Senate amendments, and we put in

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there that the non-consenting would have the option to go to court and have it heard and if there was a disclosure, there was a fairly stiff penalty and Sen. Trenbeath talked about it, I think I could probably go along with it.

Rep. Delmore: I think it would be a stronger amendment than the one you've offered because it sends a very clear message.

Chairman DeKrey: The other side of that, though, is that the person who's privacy is being attempted to be violated, is the one that has to pay the bill if it has to stop.

Rep. Grande: And then you have to go into court, which now everybody is going to know that you are in there denying disclosure of who you are.

Sen. Dever: Well, the question I had with the existing amendment, how did the parties come together in the court without identifying themselves.

Sen. Trenbeath: I think this is going back to page 16, line 1, it says that all hearings held in actions under this chapter, must be held in closed court without admittance of any individual other than essential officers of the court, the parties, their witnesses, counsel, individuals who have not previously consented to the adoption but are required to consent, etc.... It provides a fairly limited hearing process. This is all the same chapter I believe.

Ms. Hoffman: In section 24, there is some instructions to the court about how to handle situations such as you mentioned. This would be section 16, subsection 23, sub subsection d. It says that if those persons participate in the proceeding, they must be permitted to do so in a manner, to be determined by the court, which avoids disclosure of identifying information except when disclosure is ordered by the court. That is the existing language in the law.

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Chairman DeKrey: Well you are never going to get to 23 though, if it happens within the agency, because 23 is a part of the present law, except this cleans it up that you can petition the court now. So I guess you would have to have language in there somewhere that the agency would have to notify the non-consenting individual that they are going to release, but they have so many days to respond in district court to deny it.

Sen. Trenbeath: I am confused. I am not sure that 23 applies. I haven't had a chance to look at it closely enough. It seems to relate to an adopted individual, genetic parent, genetic sibling or guardian of any of those individuals may petition the district court for an order directing the disclosure of identifying information.

Ms. Hoffman: I was thinking that if we were building something, where somebody would be petitioning the court, that was just my thought that there is language.

Chairman DeKrey: The language is cleaned up. Because some judges I've talked to said some will do it and some won't, they will automatically deny. That was the thought with this amendment was to give a clear signal to the judges that they can do it.

Sen. Dever: What would happen if in that section, on line 11 we put "directing or denying" disclosure and do whatever we need to in a further amendment.

Chairman DeKrey: Why would this section even be needed anymore, if we are going to let the agency do it, because they would never petition the court.

Sen. Trenbeath: I think you have a valid point.

Chairman DeKrey: I said, why would this section ever be used if we are going to let the agency disclose, the only reason you would petition the court is if the agency had denied it.

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Sen. Trenbeath: It says, that even after your petition, it says that the court cannot release any information about individuals who object.

Chairman DeKrey: That is taken out on this amendment.

Sen. Nelson: This latest set of amendments, part f of this section, we're never going to get to this section?

Sen. Trenbeath: I think that is what he is saying, is that if we were to go back and do what we were talking about and modify the language, this section may not even be needed.

Chairman DeKrey: May not even be needed because it is not going to go anywhere.

Sen. Trenbeath: It provides for a procedure that wouldn't be used.

Rep. Grande: We have more work to do.

Chairman DeKrey: We have agreed that we are going to take a second look at Senate amendments and modifications.

Sen. Trenbeath: I am certainly comfortable with that.

Rep. Grande: I would be willing to look at them again.

Chairman DeKrey: I am getting the sense that the amendment that was brought this morning, there is no support on the Senate side.

Sen. Dever: I think it is important that when we leave this conference committee for the last time, that we all feel comfortable with it, because it is an important bill and needs to each floor.

Rep. Grande: I still say that I don't feel very comfortable with the rest of this bill because of section 16.

Sen. Dever: And I would feel comfortable with the whole bill if we can craft language that Rep. Grande would feel comfortable with.

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Rep. Delmore: I think there is a reason that that section is in there, and we can as policy makers avoid all the tough decisions or we can modify it so that it meets the needs of us, and I think it is a cop out for us to take that whole section out of this because it was worked on for a long time and there is a need for it. I understand your discomfort with it, but I think there are some things that we can put in there that can make it work.

Sen. Trenbeath: I would volunteer to talk with Jennifer Clark about redrafting the amendment.

Rep. Grande: I would like to sit in on the discussion with Ms. Clark, if that would be possible.

Sen. Trenbeath: Sure, no problem.

Chairman DeKrey: We will adjourn until the next meeting.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☒ Conference Committee / House & Senate Judiciary Conference Committee

Hearing Date 4/17/03

Tape Number	Side A	Side B	Meter #
1	xx		0-12.9
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: Sens. Dever, Trenbeath & Nelson; Reps. DeKrey, Grande & Delmore.

Chairman DeKrey: Conference committee on HB 1035 was called to order. Roll call was taken. Sen. Trenbeath: You have .0205 amendment before you. In my conversation with Jennifer Clark yesterday, I told her of our conversations here about the suggestion that there be some sort of set of presumptive civil damages and I said I wasn't sure, if that was generally done in the law. She said, sure no problem.

Chairman DeKrey: Did you talk to her at all about that section 23, petition the court, and the question was why would anyone petition the court if the agency is going to handle that.

Sen. Trenbeath: We had a general conversation, and that was part of it.

Rep. Grande: Are we to keep in subsection 23 or not, is that going to be necessary. Isn't that where the petition the court is found.

Chairman DeKrey: Yes. Do we need that section.

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Sen. Trenbeath: I am inclined to say no, we don't need it, but I haven't very thoroughly thought that through. Maybe we could have some help.

Rep. Delmore: Would there be relevancy in doing this if there is a life or death situation, I guess that is what I would look at in going in to the court. "I really need to find that parent for a bone marrow transplant or something like that", and then the court would determine is this a situation where it's okay. That is where I would look at that as being, and therefore I think it is necessary in the bill.

Julie Hoffman, Dept. of Human Services: That would be my concern, if we take this out, there can always arise a situation where we may need the court's assistance, and if we don't have this provision, I would prefer just to have it left in. There are sometimes very unusual cases that come up and we need to have the assistance of the court in determining what can be released, and to whom.

Rep. Grande: That is fine with me, I know we discussed this yesterday. As far as throughout these amendments, have you had an opportunity to think about what I was talking about.

Sen. Trenbeath: I have. Rep. Grande and I had a telephone conversation earlier today, and she was commenting that she would have no problem with these amendments if they were prospective only, only for adoptions happening from this date forward. I guess my one comment, because I don't favor that position, to analogize it, it would be like being married prior to the no-fault divorce law and having to go through fault. It is not a direct analogy, but it is the closest I could come to, because marriage is a contract also.

Rep. Grande: I know that that spot had really come up with me after our conversation I had after the session we had yesterday. I think that we had discussed that a little bit during the

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committee also. All along, my objection to all of this is something is already set, and if we do it where it is prospective, we can at least know that when they set up these, for lack of a better word, I'll keep calling them contracts, to set up a contract that has that written in there. This is how it will work from hence forward. Otherwise, people from before, never had that opportunity. Now if we're going to change it, let's make sure everybody has the opportunity to know that this is how it is going to work. Otherwise, we are going back and hearing the bill and we shouldn't be.

Rep. Delmore: Under this provision, you still have the one person who can say, I don't want any part of it, but you have two people who really want to allow the meeting to take place, and one person is not allowing that to happen. It is already consensual between the two that want to meet. With this provision, it should be a safeguard for the third party who did not wish to be known.

Sen. Trenbeath: Recognizing that there is never a guarantee, nor is there now.

Rep. Delmore: No, but there are ramifications, we put teeth in that, if someone doesn't want to be known, at the same time we are facilitating two individuals who really do want to meet.

Sen. Dever: Would it be part of the rules, I'm sure part of the process; but does it need to be spelled out that as far as the process, that this kind of thing is communicated to all the parties involved.

Rep. Grande: I would certainly hope that if we're doing this, that this would be the communication from now on; but what happens to the past.

Sen. Trenbeath: I think the situation is, is that will be prospective in the sense that every adoptee or birth mother or birth father that comes forward, that says I would like information and

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is about to receive that information, is going to have to sign one of these. I'm sure that the form of the recognition of the formal adoption will recite in it the penalty for failure to comply.

Rep. Grande: I understand that part. I'm just saying, I think this is all fine and good, and I am in favor of doing this, that's not the problem, but I want this to happen forward, not backward. They didn't have this information when they signed, but now they will forward.

Sen. Trenbeath: I understand your position. I personally can't agree with it.

Chairman DeKrey: I understand it too, Rep. Grande. It's kind of time that we've got to do something and move this forward, so I am willing to take this to the House floor and explain it to them and see what the Floor does on the conference committee report. I like this a whole lot better than I liked the first one. I'm not sure that I can wholeheartedly support it, but I think it is time that we get it down to the Floor and explain to the Floor and see if they accept the conference committee report and if they do, I think the bill will pass.

Rep. Grande: I would like to offer one more change. As we're looking at amendment .0205, we get down to page 19, line 29, on line 7 of the amendment, after the word "the" insert "by the agency or consenting parent".

Sen. Nelson: We have gotten a lot of e-mail in the last couple days, and a lot of them relate back to the '50s, and a number of my classmates had some of these problems. In some of the cases, the decisions weren't even made by them, they were made by others for them. I think we need to take that into consideration; whether or not it was a contract or agreement. I think we need to take that into consideration, whether or not it was a contract or agreement. In some cases, they were told that somewhere down the line, you will get to have this reconciliation. But those were the days when you just kind of pushed them in a little box and parents made decisions for their

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children and these are some of the people that are coming out now that want to know. In some cases, they just want to know is that child still alive and in some cases, they just want to know if their parents are still alive, they don't even want to know who they are, but they want to know something about them. I think we need to do something for children in the past that were adopted.

Chairman DeKrey: The Senate has to recede from the prior amendment.

Sen. Trenbeath: Which is the way that this reads.

Chairman DeKrey: Okay. By writing this "agency or" we don't have to include that in our motion, that is part of this amendment.

Sen. Trenbeath: What I would suggest, is that I move 30113.0205 with the amended language of adding the words "agency or" in the line that Rep. Grande has suggested. And if that motion were successful, then we would just have it redrafted with that change.

Sen. Dever: Seconded.

Chairman DeKrey: Okay, the Senate recedes from its amendment and adding the language Rep. Grande has suggested "agency or". Further discussion.

Rep. Grande: I will stay quiet on the Floor about this, but you also know what my position is.

Rep. Dever: As regards identifying information, I just want to make sure that I understand correctly, that if the agency were to say, we don't think that you really don't want to go forward with this, because the parent is as long as they don't give something that identifies who the person is, they are still able to do that.

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Sen. Trenbeath: My feeling is that you would. Identifying information to me would be information to me, would be information such that purely with that you would be able to proceed on your own and find out who the person is.

Ms. Hoffman: I think earlier in this bill, we have defined identifying information at the very beginning, and identifying information is that information as name, address, and those kinds of issues. So in that particular case, a search worker could reasonably share with an adoptee who is being sought that the situation regarding the birth parent reflects these concerns and then the adoptee would be able to make that decision about whether they consent to the disclosure.

Chairman DeKrey: Sen. Trenbeath, would this still give the person who does not want to give up information, the option of petitioning the court to stop it.

Sen. Trenbeath: I don't believe so. I don't know that there would be anything to prevent it from happening.

Sen. Nelson: But it is not written in there.

Chairman DeKrey: Any further discussion.

Rep. Grande: My further discussion would be that I certainly hope that the negative e-mails and name-calling stops.

Chairman DeKrey: I have really been quite upset with that, because I have three adopted kids and how anybody can accuse me of doing this for personal gain, I don't know. The clerk will call a roll on this amendment.

5 YES 1 NO 0 ABSENT

MOTION CARRIED

Carrier: Rep. DeKrey &

Sen. Nelson

Yolanda Rickford
Operator's Signature

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1035

House Judiciary Committee

☒ Conference Committee

Hearing Date 4/21/03

Tape Number	Side A	Side B	Meter #
1	xx		0-3.2
Committee Clerk Signature <i>W Penrose</i>			

Minutes: Six members present. Roll call was taken.

Chairman DeKrey: Called the Conference Committee on HB 1035 to order.

Sen. Trenbeath: Subsequent to some conversations you and I have had, I had another amendment prepared which should be before you, .0207, which incorporates the idea that you had, Mr. Chair, with respect to involving the court's system, but expanding it somewhat and relocating it to the now infamous paragraph 19, which was in the same area as the other disclosure information paragraphs. It basically says that when one spouse authorizes and one doesn't, then you can make application to the court, the child placing agency can make application to the court, and the court shall issue an order authorizing disclosure of information identifying consenting parent. The order must include any conditions that the court determines sufficient to reasonably ensure the continued nondisclosure of information identifying the objecting genetic parent. Conditions placed on disclosure may include a sworn statement by the consenting genetic parent to refrain my disclosing to the adopted individual any information

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identifying the objecting genetic parent. That, of course, is what that sentence does, it authorizes the contempt of court citation if it is violated. I would submit that for the conference committee's consideration.

Chairman DeKrey: Are you moving that.

Sen. Trenbeath: I move the amendment .0207.

Sen. Nelson: Seconded.

Chairman DeKrey: Further discussion on the amendment.

Rep. Grande: This amendment then is in replacement of the other amendment.

Chairman DeKrey: Correct.

Rep. Grande: In doing so, since they are going directly to the court, there is no need then for the penalty phase here.

Sen. Trenbeath: That would be up to the court on the bringing of a contempt citation, should it be violated.

Chairman DeKrey: The clerk will call the roll.

5 YES 1 NO 0 ABSENT MOTION PASSES CARRIER: Rep. DeKrey

Chairman DeKrey: Are there any further amendments to present.

Rep. Grande: The only thing I offer is that I still stand by, for the record, the fact that it should be from this day forward. If that is not agreeable, you know where I stand.

Chairman DeKrey: If no further discussion, we will stand adjourned.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

4/1/03

Bill Number HB 1035 (, as (re)engrossed):

Your Conference Committee

For the Senate:

For the House:

Sen. Dever	no	Rep. DeKrey	yes
Sen. Trenbeath	yes	Rep. Grande	no
Sen. C. Nelson	yes	Rep. Eckre	yes

recommends that the (SENATE/HOUSE) (ACCEDE) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) --

and place on the Seventh order.

, adopt (further) amendments as follows, and place on the
Seventh order:

having been unable to agree, recommends that the committee be discharged and a
new committee be appointed.

((Re)Engrossed) was placed on the Seventh order of business on the calendar.

DATE: 4/1/03

CARRIER:

LC NO. of amendment
LC NO. of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

30113.0202
Title.0400

Prepared by the Legislative Council staff for
the Conference Committee
April 2, 2003

Conference Committee Amendments to Engrossed HB 1035 - 04/02/2003

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14." with "13."

Page 3, line 15, replace "15." with "14."

Conference Committee Amendments to Engrossed HB 1035 - 04/02/2003

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the information disclosed by the agency may relate only to the consenting parent. Before an agency discloses information under this subsection, the parent consenting to disclosure shall sign a statement that the consenting parent will not disclose to the receiving party any information identifying the nonconsenting parent."

Page 19, line 30, replace "19." with "20."

Conference Committee Amendments to Engrossed HB 1035 - 04/02/2003

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Conference Committee Amendments to Engrossed HB 1035 - 04/02/2003

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Conference Committee Amendments to Engrossed HB 1035 - 04/02/2003

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HB 1035 (, as (re)engrossed):

Your Conference Committee - House & Senate Judiciary Committee

For the Senate:

For the House:

Sen. Dever	yes	Rep. DeKrey	yes
Sen. Trenbeath	yes	Rep. Grande	no
Sen. C. Nelson	yes	Rep. Eckre	yes

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 869 -- 870

_____ and place _____ on the Seventh order.

xx , adopt (further) amendments as follows, and place HB 1035 on the
Seventh order:

having been unable to agree, recommends that the committee be discharged and a
new committee be appointed.

((Re)Engrossed) HB 1035 was placed on the Seventh order of business on the calendar.

DATE: 4/8/03

CARRIER: Rep. DeKrey

LC NO. 30113.0202 of amendment
LC NO. .0400 of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

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Operator's Signature

Date

REPORT OF CONFERENCE COMMITTEE (420)
April 8, 2003 3:01 p.m.

Module No: SR-63-7117

Insert LC: 30113.0202

REPORT OF CONFERENCE COMMITTEE

HB 1035, as engrossed: Your conference committee (Sens. Dever, Trenbeath, Nelson and Reps. DeKrey, Grande, Eckre) recommends that the **SENATE RECEDE** from the House amendments on HJ pages 869-870, adopt further amendments as follows, and place HB 1035 on the Seventh order:

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14." with "13."

Page 3, line 15, replace "15." with "14."

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the information disclosed by the agency may relate only to the consenting parent. Before an agency discloses information under this subsection, the parent consenting to disclosure shall sign a statement that the consenting parent will not disclose to the receiving party any information identifying the nonconsenting parent."

Page 19, line 30, replace "19." with "20."

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

30113.0204
Title.

Prepared by the Legislative Council staff for
Representative DeKrey
April 15, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1035

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14," with "13."

Page 3, line 15, replace "15," with "14."

Page 22, line 29, overstrike "The" and insert immediately thereafter "In applicable circumstances, the" and overstrike "only" and insert immediately thereafter "of identifying information"

Page 22, line 30, overstrike "any"

Page 22, line 31, overstrike "The court may not order the"

Page 23, line 1, overstrike "disclosure of identifying information concerning any", remove "individual", and overstrike "who"

Page 23, overstrike line 2

Page 23, after line 2, insert:

- "1. If both genetic parents have been located and one of the genetic parents objects to disclosure of identifying information, upon a showing of good cause the court may order disclosure of identifying information concerning the consenting genetic parent. Unless the court has already disclosed such information, the court shall order the consenting genetic parent to not disclose identifying information concerning the objecting parent."

Renumber accordingly

30113.0206
Title.0500

Adopted by the Conference Committee
April 17, 2003

Conference Committee Amendments to Engrossed HB 1035 - 04/17/2003

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14." with "13."

Page 3, line 15, replace "15." with "14."

Conference Committee Amendments to Engrossed HB 1035 - 04/17/2003

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the identifying information disclosed by the agency may not relate to the objecting parent. Before an agency discloses information under this subsection, the parent consenting to disclosure shall sign a statement that the consenting parent will not disclose to the receiving party any information identifying the objecting parent. In an action in which wrongful disclosure of identifying information by the agency or consenting parent is claimed by the objecting parent, there is a disputable presumption of damages in the amount of fifty thousand dollars. In such an action, the court may award the objecting parent costs, including reasonable attorney's fees."

Page 19, line 30, replace "19." with "20."

Conference Committee Amendments to Engrossed HB 1035 - 04/17/2003

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Conference Committee Amendments to Engrossed HB 1035 - 04/17/2003

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Conference Committee Amendments to Engrossed HB 1035 - 04/17/2003

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB 1035 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen. Dever yes
Sen. Trenbeath yes
Sen. Nelson yes

For the House:

Rep. Dekrey yes
Rep. Grande no
Rep. Delmore yes

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)
the (Senate/House) amendments on (SJ/HJ) page(s) 869 - 870

☐ and place _____ on the Seventh order.
727

☒ , adopt (further) amendments as follows, and place
1035 on the Seventh order:

☒ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) 1035 was placed in the Seventh order of business on the
calendar.

DATE: 4/17/03

CARRIER: Rep. Dekrey

LC NO. 30113 . 0205 of amendment . 0206

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Yolanda Rickford
Operator's Signature

10/2/03
Date

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) 1035 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Dever ✓
Trenbeath ✓
Nelson ✓

For the House:

DeKrey ✓
Grande ✓
Edmore ✓

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) 869 - 870

☐ and place _____ on the Seventh order.

☒ , adopt (further) amendments as follows, and place
_____ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) 1035 was placed on the Seventh order of business on the
calendar.

DATE: 4/17/03

CARRIER: DeKrey

LC NO. 30113 . 0206 of amendment 0500

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Salista Rickford
Operator's Signature

10/2/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 17, 2003 2:16 p.m.

Module No: HR-70-7881

Insert LC: 30113.0206

REPORT OF CONFERENCE COMMITTEE

HB 1035, as engrossed: Your conference committee (Sens. Dever, Trenbeath, Nelson and Reps. DeKrey, Grande, Delmore) recommends that the **SENATE RECEDE** from the House amendments on HJ pages 869-870, adopt amendments as follows, and place HB 1035 on the Seventh order:

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14." with "13."

Page 3, line 15, replace "15." with "14."

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the identifying information disclosed by the agency may not relate to the objecting parent. Before an agency discloses information under this subsection, the parent consenting to disclosure shall sign a statement that the consenting parent will not disclose to the receiving party any information identifying the objecting parent. In an action in which wrongful disclosure of identifying information by the agency or consenting parent is claimed by the objecting parent, there is a disputable presumption of damages in the amount of fifty thousand dollars. In such an action, the court may award the objecting parent costs, including reasonable attorney's fees."

Page 19, line 30, replace "19." with "20."

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

Engrossed HB 1035 was placed on the Seventh order of business on the calendar.

30113.0207
Title.0600

Prepared by the Legislative Council staff for
Senator Trenbeath
April 21, 2003

Conference Committee Amendments to Engrossed HB 1035 - 04/21/2003

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14." with "13."

Page 3, line 15, replace "15." with "14."

Conference Committee Amendments to Engrossed HB 1035 - 04/21/2003

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one genetic parent authorizes disclosure, the child-placing agency may not disclose identifying information regarding the consenting parties unless there is a court order authorizing the disclosure. Upon application to the court by the child-placing agency, the court shall issue an order authorizing disclosure of information identifying the consenting parties. The order must include any conditions the court determines sufficient to reasonably ensure the continued nondisclosure of information identifying the objecting genetic parent. Conditions placed on the disclosure may include a sworn statement by the consenting genetic parent to refrain from disclosing to the adopted individual any information identifying the objecting genetic parent."

Page 19, line 30, replace "19." with "20."

Conference Committee Amendments to Engrossed HB 1035 - 04/21/2003

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Conference Committee Amendments to Engrossed HB 1035 - 04/21/2003

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Conference Committee Amendments to Engrossed HB 1035 - 04/21/2003

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

2 of 2

30113.0207

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Operator's Signature

Salvatore Rickford

Date

10/2/03

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB 1035 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen. Dever Yes
Sen. Jumbo Yes
Sen. Nelson Yes

For the House:

Rep. Dekey yes
Rep. Grande no
Rep. Delmore yes

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) 869 - 870

☐ and place _____ on the Seventh order.
127

☒ adopt (further) amendments as follows, and place
1035 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 600/815

((Re)Engrossed) 1035 was placed on the Seventh order of business on the
calendar.

DATE: 4/21/03

CARRIER: Dekey

LC NO. 30113 . 0207 of amendment . 0600

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Yolanda Rickford
Operator's Signature

10/2/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 21, 2003 4:37 p.m.

Module No: HR-72-7999

Insert LC: 30113.0207

REPORT OF CONFERENCE COMMITTEE

HB 1035, as engrossed: Your conference committee (Sens. Dever, Trenbeath, Nelson and Reps. DeKrey, Grande, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 869-870, adopt amendments as follows, and place HB 1035 on the Seventh order:

That the Senate recede from its amendments as printed on pages 869 and 870 of the House Journal and pages 684 and 685 of the Senate Journal and that Engrossed House Bill No. 1035 be amended as follows:

Page 3, line 12, replace "14." with "13."

Page 3, line 15, replace "15." with "14."

Page 19, after line 29, insert:

"19. If the child-placing agency has located both genetic parents and only one genetic parent authorizes disclosure, the child-placing agency may not disclose identifying information regarding the consenting parties unless there is a court order authorizing the disclosure. Upon application to the court by the child-placing agency, the court shall issue an order authorizing disclosure of information identifying the consenting parties. The order must include any conditions the court determines sufficient to reasonably ensure the continued nondisclosure of information identifying the objecting genetic parent. Conditions placed on the disclosure may include a sworn statement by the consenting genetic parent to refrain from disclosing to the adopted individual any information identifying the objecting genetic parent."

Page 19, line 30, replace "19." with "20."

Page 21, line 1, replace "20." with "21."

Page 21, line 10, replace "21." with "22."

Page 22, line 2, replace "22." with "23."

Page 22, line 9, replace "23." with "24."

Page 23, line 3, replace "24." with "25."

Page 23, line 6, replace "25." with "26."

Page 23, line 8, replace "26." with "27."

Renumber accordingly

Engrossed HB 1035 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HB 1035

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Yolanda Rickford
Operator's Signature

10/2/03
Date

House Judiciary Committee

House Bill 1035

January 14, 2003

Chairman DeKrey and members of the House Judiciary Committee, my name is Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I am here today to present testimony regarding House Bill 1035. The Department supports the passage of House Bill 1035 related to the Uniform Adoption Act.

Adoption practice is changing across the country and has been the focus of recent federal legislation and national interest. The passage of the federal Adoption and Safe Families Act, the Multi Ethnic Placement Act and the Interjurisdictional provisions of ASFA have challenged adoption practice as we have known it. The rise in the use of the Internet has connected individuals in increasing numbers across state and national boundaries, resulting in increased costs to families and difficulties in meeting the requirements of both the sending and receiving jurisdictions. Openness in adoption and the desire of the adult adoptee to open previously sealed records has been the focus of statutory change in many states.

In light of these many changes, the 57th Legislative Session undertook to study adoption law in North Dakota through SCR 4014. To assist the Family Law Committee in its study of adoption law in North Dakota, the Department collaborated with representatives of licensed child placement agencies in an informal work group to review adoption law and practice in our state and propose changes to that law. The result was six prefilled bills that are being heard in committee this week having to do with adoption law. HB 1035 is one of those and deals with the broad spectrum of adoption issues, including adoption search and disclosure.

As background, let me give you some data. In State Fiscal Year 2002 (July 1, 2001 through June 30, 2002) there were 166 agency-facilitated adoptions. Of those, 97 were adoptions of children with special needs, 16 were of foreign-born children and 53 were of healthy infants (either through an agency placement or through an identified adoption). Additionally, there were 197 stepchildren adopted by their stepparents in this same period. Adoption search is reported to the Department on yearly licensing applications. In calendar year 2001, the three agencies that provide adoption search services indicated that there were 130 requests by adopted individuals and 14 requests by birth parents/ birth siblings for these services. Currently there are six licensed child placement agencies in the state - Catholic Family Services, Christian Family Life Services, Lutheran Social Services, LDS Family Services, New Horizons Adoptions and the Village Family Service Center. All of these agencies have been licensed to provide adoption services in this state for many years.

The State provides adoption services for children being adopted from the foster care system through collaboration with three of these agencies - Catholic Family Service, Lutheran Social Services and the Village Family Services. In addition, the program has collaborated with the Turtle Mountain Band of Chippewa to provide adoption services to the people of their reservation. The AASK Program (Adults Adopting Special Kids) is a model program of partnership between the public child welfare system and private adoption programs to provide the spectrum of adoption services to children being placed for adoption from the foster care system and the families who adopt them. Referrals for adoption service are made primarily by county social services. The number of finalized adoptions of children with special needs has increased significantly over the last few years (SFY 1998 - 44, SFY 1999 - 61, SFY 2000 - 40, SFY 2001 - 113 and SFY 2002 - 97).

4

The changes proposed in House Bill 1035 can be characterized in one of three ways; as 1) a housekeeping change - cleaning up language, moves within the statute for better understanding, formatting changes, etc., 2) clarification - by adding definitions and making minor changes that reflect current practice, or 3) substantive changes - those which are major changes or will change current practice.

Let me speak in general regarding the substantive changes, the most significant of which is openness in adoption. Currently, there is no federal legislation that governs the release of adoption records or disclosure in adoption. Subsequently, each State deals with the release of information differently. Research findings on agency practices suggest that agencies are offering more open and mediated adoptions because of demand by birth mothers and competition from non-agency adoptions and other agencies offering openness, and because of changes in agency values.

Most people see adoption as closing a door to which there is no key. And until the early 1970's, that was an accurate perception. Adoption was cloaked in secrecy. Adoptions were arranged by an agency that chose the adoptive parents. A birthmother had no control over who would adopt her child. She was rarely given the opportunity to hold her baby because it was believed that she would then find it too difficult to place him for adoption, she may or may not have seen him. Adoptive parents were assured that the courts would seal the final adoption records and that they need not fear future intrusion from the birthmother. Today that scenario can be dramatically different. There is a new openness in adoption that is seen by a growing number of child welfare and mental health experts as a long-awaited solution to problems created by the traditional secrecy.

Open adoption means that birthparents and adoptive parents have some knowledge about one another. The birthparents know something about the adoptive parents and may even help choose them. Adoptive parents and their children know medical and genetic information about the birth family and other information that might help in dealing with the emotional issues that often accompany adoption.

There is no universally accepted definition of open adoption. While informal open adoptions have occurred for centuries, whereby grandparents, aunts and uncles, or godparents raised children not born to them but whose parents were known to them, the concept of formal open adoption is quite new—less than 20 years old. Open adoption can take many forms. In some cases, a birthmother may leaf through a book containing photographs and descriptions of prospective adopters and choose a couple or person she feels would give her baby a good home. She may never meet the adopters, and this may be her only contact with them. At the other extreme, a birth family may meet the adoptive parents, visit their home, and have ongoing contact throughout the child's life.

In its recommendations to the Family Law Committee, the informal work group that struggled with this issue wanted to make changes to North Dakota's law that would move us toward more openness, without unduly compromising the confidentiality of those who do not give their consent to such disclosure. What you have before you perhaps could best be describes as "reasoned but small" steps toward more openness. It may not go far enough for some, but may be too much openness for others.

At this time in North Dakota, our adoption search/ disclosure law allows for search by an adopted individual, a birth parent or a birth sibling when the adopted individual is an adult. It does not allow for disclosure of identifying information at the time of adoption placement. This of course, presents a problem when dealing with special needs adoption, where most

children are placed with foster families who already have a varying amount of identifying information about the birth family. Additionally, in more and more infant situations, the birth and adoptive families want to share identifying information and may do so without the knowledge of the agency when they meet or in correspondence exchanged through the agency.

At the point of adoption search, the statute requires that in order for there to be disclosure of identifying information, all the parties must agree to that disclosure. This restriction has not allowed for disclosure when two of three parties agree, but a third does not. This has presented great difficulty for those who wish to have contact in these situations. Birth parents and birth siblings are not allowed to search for an adoptee if the birth parents rights were terminated involuntarily. Because of this restriction, two siblings who were placed separately for adoption may not be able to have contact.

As a response to this, we are proposing that, both at the time of placement and during the search period, if two parties to the adoption consent to sharing identifying information, that information could be shared. Information regarding a non-consenting party will not be shared. We are also proposing that a birth parent and birth sibling may search for an adoptee, even when the termination of parental rights was involuntary, remembering that the adoptee always has the right to refuse disclosure when they learn of the circumstances. Additionally, we are recommending that a fourth party be allowed to search – the adult child of an adoptee who is deceased.

Another change of substance that we are proposing is the incorporation into this statute of a definition of reasonable adoption expenses. As the cost of adoption increases and there is increasing competition for a limited number of available infants – the fees and

expenses that adoptive parents are asked to pay is often very high. We believe the additions we are proposing will give a guideline to families, agencies and attorneys regarding the kinds of fees that the adoptive parent may be expected to pay. The court will have an opportunity to review the expenses paid and make a finding as to their reasonableness. We hope that this addition will be preventative in nature, but should a court find that a family has paid unreasonably high adoption fees, that finding may give a parent the ability to file a civil action.

There are many other changes of a housekeeping or clarification nature. I would be happy to walk through the bill at this time and detail those for you. You will find an attachment with this testimony that details the proposed changes section by section. Please interrupt me if you have any questions so that I can answer them as they arise.

In summary, I believe that the work of the Family Law Committee and the Informal group that assisted me in making recommendations to that committee, have crafted a bill that will make initial steps at updating our adoption law. As in most things, this is a process and we believe that additional changes may be required in the future. The Department was very involved in the discussion and drafting of this bill and supports a "do pass" recommendation from this committee.

**SUMMARY OF PROPOSED CHANGES TO
NORTH DAKOTA CENTURY CODE 14-15
House Bill 1035**

- Section 1** Added definitions for abandonment, department, identifying information, investigation and stepparent. Limited the definition of "person" for the purposes of this chapter to an individual. Moved definition for genetic sibling and relative from other parts of the statute. Reordered the listing of relatives.
- Section 2** Clarification of language.
- Section 3** Clarification of language.
- Section 4** Clarification of language.
- Section 5** Clarification of language.
- Section 6** Statute not in accordance with North Dakota adoption practice, we propose it would be deleted.
- Section 7** Clarification of language.
- Section 8** In addition to language clarifications, we have attempted (page 7, line 15 and following) to define what are reasonable expenses related to adoption (patterned after a Minnesota Statute) and incorporate that into the petition for adoption.

Section 9 Incorporating the reasonable fee definition into a report of petitioner expenses that is to be filed with the court in all adoptions other than those by step parents.

Section 10 Clarification of language. On page 11 lines 27-29 we are proposing additional specificity of information provided to the court at time of finalization. This is consistent with current practice. We have also moved definition of "relative" to the beginning of the chapter.

Section 11 Clarification of 6 months residency requirement as it applies to various adoption situations.

Section 12 Clarification of language.

Section 13 Formatting change, with a new requirement for post placement supervision during an interlocutory period of a decree of adoption. Also requiring the court to make a finding with regard to the reasonableness of adoption expenses.

Section 15 Deletion (page 15, line 2 & 3) as this is not thought to happen in North Dakota.

Section 16 Changes to NDCC 14-15-16, the section devoted to adoption search and disclosure. In addition to clarifications of language throughout this section, specific changes addressed in the following paragraphs include:

- In paragraph 2 we have moved definitions of "Department" and "Genetic Sibling" to the beginning of the chapter, moved the definition of "notify" from the body of this section and

clarified language. By deleting language (found on page 18, line 29) restricting contact by mail, the searcher would now be able to attempt contact through confidential mailing.

- In paragraph 4 we have clarified the term "information pertaining to the adoption" and added a new statutory requirement of retention of records (by policy this is already being done).
- Paragraph 5 clarifies that a fee may be charged for non-identifying information. It adds that a birth parent may request and receive non-identifying information regarding their birth child, upon their written request.
- In paragraph 7 on page 16, lines 25 and following, we are attempting to clarify that during the placement period and while the adopted child is a minor, information may be shared between consenting parties in an adoption. If a party does not consent to disclosure of identifying information, that information may not be shared. (Former letters a. through f. of this section will be placed in policy manual.) This will statutorily allow for more openness in current adoption practice, if the parties involved give consent. This is consistent with current adoption practice in this state and moves us toward more openness in adoption.
- In paragraphs 10 & 11 we have removed the requirement that birth parents and birth siblings may not search where there was an involuntary termination of parental rights, remembering that the adoptee always has the right to refuse disclosure of identifying information when they learn the circumstances of the situation.
- In paragraphs 12 & 13, we have added a party that may initiate a search – an adult child of a deceased adopted

person. That person, however, may not initiate a search while the adopted individual is living.

- In paragraph 14, the changes reflect the addition of numbers 12 and 13 above.
- The changes in paragraph 15 reflect the addition of numbers 12 and 13 above. The definition of "notify" was moved. The allowance of additional search time is consistent with current practice if the search is not completed within 90 days.
- Paragraph 18 was moved (see page 20).
- Paragraph 19 is an addition that is consistent with paragraph seven. In a search, identifying information may only be released regarding consenting parties. A non-consenting party may not stop the disclosure of information between consenting individuals.
- Paragraph 21 aligns with paragraph 19. It allows consenting parties to receive identifying information, but only regarding those individuals who provide consent.
- Paragraph 22 allows the Department to communicate with Indian tribes, in addition to the Bureau of Indian Affairs when assisting with an adoptee's application for enrollment in an Indian tribe. Allows an agency to charge a reasonable fee to assist an individual in applying for tribal enrollment.
- Paragraph 24 is reformatted into subsections.

Section 19 Language clarification. Removes the 10-day withdrawal period of a birth parent signing a relinquishment under this subsection. In almost all cases, these individuals currently waive this right so that the hearing may go forward. Reformatted paragraph 3 into sections. Provided that a proposed custodian would be given notice of the proceedings.

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Additionally, we have substituted "biological" parent for "natural" parent where the term occurs in this section.

1/11/2003

Summary of Proposed Changes to NDCC 14-15, Session Version

Yolanda Rickford
Operator's Signature

10/2/03
Date

HB 1035 Judiciary Committee

January 14, 2003

Good Morning Chairperson DeKrey and members of the Judiciary Committee.

My name is Rebecca Doll. I am a licensed social worker employed by The Village Family Service Center. Our program, The Adoption Option, is a collaboration between The Village and Lutheran Social Service of ND providing pregnancy counseling, adoption services, and search and disclosure services. Both agencies are licensed child-placing agencies by The ND Department of Human Services. I am here today to provide testimony in support of HB 1035.

The bill proposing changes to The Uniform Adoption Act has a majority of housekeeping type changes, however, there are a few significant changes proposed that deserve your attention. The trained professionals employed by child-placing agencies have a significant role in the placement and transition of children into their permanent homes. They provide supportive and educational services when adoptive families face issues such as openness and medical concerns. Mandated post placement support and supervision by child-placing professionals is vital to the success of building families through adoption.

The disclosure section of this bill, after much research and discussion by a variety of professionals in the adoption field, has undergone several changes, all of which are being recommended to assist those who wish to communicate with another party to the adoption. Adoption is a positive life choice, and for two parties to be declined contact because a birth parent can not be located or is not ready/willing to deal with the adoption is penalizing the very people who made the loving, selfless choice of adoption. Adoptees do not have the same rights as children and adults who are biologically related to their family. By supporting the proposed changes within HB 1035, you can ensure those persons who are living with the loving choice of adoption have equal access to vital information and communication when it is available.

I want to thank the Judiciary Committee and strongly encourage their vote in support of the positive changes within HB 1035.

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10/2/03
Date

HOUSE JUDICIARY COMMITTEE

House Bill 1035

January 14, 2003

Good morning Chairman DeKrey and members of the House Judiciary Committee. My name is Leanne Johnson and I am employed by Lutheran Social Services of North Dakota and serve as the A.A.S.K. Adoption Director. I am providing this written testimony to support the passage of House Bill 1035 related to the Uniform Adoption Act.

The A.A.S.K. program is a collaborative effort between Lutheran Social Services of North Dakota, The Village Family Service Center, Catholic Family Service and the North Dakota Department of Human Services. Turtle Mountain Child Welfare and Family Services is affiliated with A.A.S.K. This program is responsible for the adoption of children with special needs who are in the custody of the Department of Human Services. Since the program began in 1993, a total of 522 children have been placed for adoption - 85 children during calendar year 2002. A significant number of these adoptions were by the child's foster parents, resulting in an 89% foster-adopt rate. This is higher than the national average of 65% - 80%. The average age of the children placed was approximately 9 years with the range being from fourteen months to sixteen years during CY2002.

Currently, the program is actively working with 112 children towards adoptive placement, including approximately 25 children who do not have an identified family and recruitment efforts are necessary. We are working with 39 families, who are approved adoptive resources, and 53 families in the process of completing an adoptive home study. In addition, our program is aware of 85 additional families awaiting an adoptive home study

Page 1 of 4

Yolanda Rickford
Operator's Signature

10/2/03
Date

and working with 112 children in the early permanency planning stages, referred to as "concurrent planning".

I have had the opportunity to work with the Informal workgroup of the Family Law Committee, referenced in Ms. Hoffman's testimony. I support not only the housekeeping revisions contained in this bill, but also all the substantive changes this bill proposes. I would like to take this opportunity, though, to draw your attention to two specific provisions: the openness in adoption provisions and the search-related provisions.

While there is no universal definition of open adoption, openness in adoption is best described as a continuum of contact between members of the adoption triad – the adoptive child, the adoptive parents and the birth parents. It can range from the adoptive parents knowing genetic and medical background for the birth parent to all members of the triad having regular contact and visits throughout the child's life. Oftentimes, what we have seen in the A.A.S.K. program with the majority of our foster-adoptions is that the foster family and child already have a great deal of identifying information regarding the birth family, as the foster parents may have initially assisted with reunification efforts and participating in visits between the child and their birth family. Older children certainly have first-hand memories of their birth family. However, at the point of adoptive placement, our staff must "de-identify" the child's record for any information that might identify the name and location of the birthparents, even if this information is already known by the parties. The changes proposed in HB 1035 would eliminate the need for this. They would not alter the need to de-identify this information if the birthparent was not already known and/or did not consent to the release of this information.

As it relates to some of the proposed changes in the adoption search provisions, many adoption experts have identified that one of major

challenges for adopted individuals is forming their own identity – a process often referred to as “identity formation”. While this is a lifelong process, the ability to have accurate information regarding an individual's genetic background and adoption circumstances is crucial to the healthy development of one's identity. National trends certainly have recognized this and states are moving to remove the shroud of secrecy of adoption. The changes proposed here still respect the individual's right to consent to such disclosure while supporting those who wish to open the door of information for the adopted individual.

The A.A.S.K. program is committed to the placement of siblings in the same home when feasibly possible. However, we must recognize that it is not always possible. We certainly have seen a number of sibling groups that have been placed for adoption with separate families after it was agreed that this was in the best interest of the child. Also, there are times when the birth parent may have an older child that was not placed for adoption or has given birth to a child subsequent to an earlier child's adoption. Circumstances regarding the legal termination of parental rights should in no way negatively affect a sibling relationship. However, if the courts involuntarily terminated a parent's rights, current North Dakota law does not permit those siblings to search and may not be able to form an adult sibling relationship. Current law only permits genetic siblings to search for an adopted individual who is over the age of 21 if there was a voluntary termination of parental rights. The recommended changes still respects an adopted individual's right to refuse disclosure. This modification, therefore, is one the A.A.S.K. program encourages.

In closing, I would respectfully request that the members of this committee seriously consider the request to update North Dakota's adoption law and give a “do pass” recommendation to House Bill 1035. Thank you for the

Page 3 of 4

Yalissa Rickford
Operator's Signature

10/2/03
Date

opportunity to provide information to your committee regarding this important matter. I would be happy to answer any questions.

Page 4 of 4

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10/2/03
Date

House Judiciary Committee

House Bill 1035

January 27, 2003

Chairman DeKrey and members of the House Judiciary Committee, I am Julie Hoffman, Administrator, Adoption Services for the NDHS and I am providing additional information as requested by the committee regarding House Bill 1035, and specifically the provisions of Section 16, paragraphs 18 and 19 on page 19 of the bill. I have attached an amendment that attempts to address the concerns of the committee.

Let me clarify that we have not attached the amendment to paragraph 18, since that is a current statute regarding adoption search. It is underlined on this page because it has been relocated within the statute (see the struck through paragraph 18 on page 20).

Paragraph 19 deals with adoption search, where two parties (the adopted adult and a birth parent) consent to disclosure of identifying information, but a third party (the other birth parent) does not consent. As initially proposed, identifying information would be allowed to be disclosed regarding the consenting parties in this situation, but not regarding the non-consenting party. We are proposing an amendment that would make the provisions of paragraph 19 applicable only to those adoptions that occurred on or after August 1, 1987. We chose this date, since this is the date the Child Relinquishment to Identified Adoptive Parents (NDCC 14-15.1) was enacted by the legislature – a date when the legislature moved statutorily toward more openness in adoption in North Dakota. We believe that since this date, culturally and in practice, adoption has become more open and individuals involved with adoption have had the expectation of more openness as they have related with one another.

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If I can be of any further assistance, please let me know. I can be reached at 320-4805 or by e-mail at sohoff@state.nd.us.

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Prepared by the North Dakota
Department of Human Services
01/27/03

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1035

Page 19, line 29, after the period insert "This subsection applies only to those adoptions adjudicated on or after August 1, 1987."

Renumber accordingly

Page No. 1

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10/2/03

Prepared by the North Dakota
Department of Human Services
01/31/03

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1035

Page 19, remove lines 27 through 29

Renumber accordingly

Page No. 1

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AH #1a

**Senate Judiciary Committee
Engrossed House Bill 1035
March 5, 2003**

Chairman Traynor and members of the Senate Judiciary Committee, my name is Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I am here today to present testimony regarding Engrossed House Bill 1035. The Department supports the passage of this bill related to the Uniform Adoption Act.

Adoption practice is changing across the country and has been the focus of recent federal legislation and national interest. The passage of the federal Adoption and Safe Families Act, the Multi Ethnic Placement Act and the Interjurisdictional provisions of ASFA have challenged adoption practice as we have known it. The rise in the use of the Internet has connected individuals in increasing numbers across state and national boundaries, resulting in increased costs to families and difficulties in meeting the requirements of both the sending and receiving jurisdictions. Openness in adoption and the desire of the adult adoptee to open previously sealed records has been the focus of statutory change in many states.

In light of these many changes, the 57th Legislative Session undertook to study adoption law in North Dakota through SCR 4014. To assist the Family Law Committee in its study of adoption law in North Dakota, the Department collaborated with representatives of licensed child placement agencies in an informal work group to review adoption law and practice in our state and propose changes to that law. The result was six prefiled bills that are being heard in committee this week having to do with adoption law. HB 1035 is one of those and deals with the broad spectrum of adoption issues, including adoption search and disclosure.

As background, let me give you some data. In State Fiscal Year 2002 (July 1, 2001 through June 30, 2002) there were 166 agency-facilitated adoptions. Of those, 97 were adoptions of children with special needs, 16 were of foreign-born children and 53 were of healthy infants (either through an agency placement or through an identified adoption). Additionally, there were 197 stepchildren adopted by their stepparents in this same period. Adoption search is reported to the Department on yearly licensing applications. In calendar year 2001, the three agencies that provide adoption search services indicated that there were 130 requests by adopted individuals and 14 requests by birth parents/ birth siblings for these services. Currently there are six licensed child placement agencies in the state - Catholic Family Services, Christian Family Life Services, Lutheran Social Services, LDS Family Services, New Horizons Adoptions and the Village Family Service Center. All of these agencies have been licensed to provide adoption services in this state for many years.

The State provides adoption services for children being adopted from the foster care system through collaboration with three of these agencies - Catholic Family Service, Lutheran Social Services and the Village Family Services. In addition, the program has collaborated with the Turtle Mountain Band of Chippewa to provide adoption services to the people of their reservation. The AASK Program (Adults Adopting Special Kids) is a model program of partnership between the public child welfare system and private adoption programs to provide the spectrum of adoption services to children being placed for adoption from the foster care system and the families who adopt them. Referrals for adoption service are made primarily by county social services. The number of finalized adoptions of children with special needs has increased significantly over the last few years (SFY 1998 - 44, SFY 1999 - 61, SFY 2000 - 40, SFY 2001- 113 and SFY 2002 - 97).

The changes proposed in House Bill 1035 can be characterized in one of three ways; as 1) a housekeeping change - cleaning up language, moves within the statute for better understanding, formatting changes, etc., 2) clarification - by adding definitions and making minor changes that reflect current practice, or 3) substantive changes - those which are major changes or will change current practice.

Let me speak in general regarding the substantive changes, the most significant of which is openness in adoption. Currently, there is no federal legislation that governs the release of adoption records or disclosure in adoption. Subsequently, each State deals with the release of information differently. Research findings on agency practices suggest that agencies are offering more open and mediated adoptions because of demand by birth mothers and competition from non-agency adoptions and other agencies offering openness, and because of changes in agency values.

Most people see adoption as closing a door to which there is no key. And until the early 1970's, that was an accurate perception. Adoption was cloaked in secrecy. Adoptions were arranged by an agency that chose the adoptive parents. A birthmother had no control over who would adopt her child. She was rarely given the opportunity to hold her baby because it was believed that she would then find it too difficult to place him for adoption, she may or may not have seen him. Adoptive parents were assured that the courts would seal the final adoption records and that they need not fear future intrusion from the birthmother. Today that scenario can be dramatically different. There is a new openness in adoption that is seen by a growing number of child welfare and mental health experts as a long-awaited solution to problems created by the traditional secrecy.

Open adoption means that birthparents and adoptive parents have some knowledge about one another. The birthparents know something about the adoptive parents and may even help choose them. Adoptive parents and their children know medical and genetic information about the birth family and other information that might help in dealing with the emotional issues that often accompany adoption.

There is no universally accepted definition of open adoption. While informal open adoptions have occurred for centuries, whereby grandparents, aunts and uncles, or godparents raised children not born to them but whose parents were known to them, the concept of formal open adoption is quite new—less than 20 years old. Open adoption can take many forms. In some cases, a birthmother may leaf through a book containing photographs and descriptions of prospective adopters and choose a couple or person she feels would give her baby a good home. She may never meet the adopters, and this may be her only contact with them. At the other extreme, a birth family may meet the adoptive parents, visit their home, and have ongoing contact throughout the child's life.

In its recommendations to the Family Law Committee, the Informal work group that struggled with this issue wanted to make changes to North Dakota's law that would move us toward more openness, without unduly compromising the confidentiality of those who do not give their consent to such disclosure. What you have before you perhaps could best be described as "reasoned but small" steps toward more openness. It may not go far enough for some, but may be too much openness for others.

At this time in North Dakota, our adoption search/ disclosure law allows for search by an adopted individual, a birth parent or a birth sibling when the adopted individual is an adult. It does not allow for disclosure of identifying information at the time of adoption placement. This of course, presents a problem when dealing with special needs adoption, where most

children are placed with foster families who already have a varying amount of identifying information about the birth family. Additionally, in more and more infant situations, the birth and adoptive families want to share identifying information and may do so without the knowledge of the agency when they meet or in correspondence exchanged through the agency.

At the point of adoption search, the statute requires that in order for there to be disclosure of identifying information, all the parties must agree to that disclosure. This restriction has not allowed for disclosure when two of three parties agree, but a third does not. This has presented great difficulty for those who wish to have contact in these situations. Birth parents and birth siblings are not allowed to search for an adoptee if the birth parents rights were terminated involuntarily. Because of this restriction, two siblings who were placed separately for adoption may not be able to have contact.

As a response to this, we are proposing that, at the time of adoption placement, if two parties to the adoption consent to sharing identifying information, that information could be shared. Information regarding a non-consenting party will not be shared. We are also proposing that a birth parent and birth sibling may search for an adoptee, even when the termination of parental rights was involuntary, remembering that the adoptee always has the right to refuse disclosure when they learn of the circumstances. Additionally, we are recommending that a fourth party be allowed to search – the adult child of an adoptee who is deceased.

You will note at this point that one of the proposals of the initial bill (former paragraph 19 of section 16) was amended out by the House. This particular provision would have allowed disclosure of identifying information in an adoption search situation when two parties agreed to the disclosure, but a third party specifically did not agree to the disclosure. In

such an instance, the proposed disclosure would have been only regarding the consenting parties. As you can well imagine, this was the proposal that has caused the greatest concern in terms of the confidentiality of a party to the adoption. We were aware from the outset that this would be the largest of the public policy debates that would arise from this bill. The Department drafted the amendment eliminating this paragraph from the bill at the request of a subcommittee of the House Judiciary Committee, when it became apparent that the bill itself might have been in jeopardy if that paragraph remained.

Another change of substance that we are proposing is the incorporation into this statute of a definition of reasonable adoption expenses. As the cost of adoption increases and there is increasing competition for a limited number of available infants — the fees and expenses that adoptive parents are asked to pay is often very high. We believe the additions we are proposing will give a guideline to families, agencies and attorneys regarding the kinds of fees that the adoptive parent may be expected to pay. The court will have an opportunity to review the expenses paid and make a finding as to their reasonableness. We hope that this addition will be preventative in nature, but should a court find that a family has paid unreasonably high adoption fees, that finding may give a parent the ability to file a civil action.

There are many other changes of a housekeeping or clarification nature. I would be happy to walk through the bill at this time and detail those for you, if you wish. You will find an attachment with this testimony that details the proposed changes section by section.

In summary, I believe that the work of the Family Law Committee and the informal group that assisted me in making recommendations to that committee, have crafted a bill that will make initial steps at updating our

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adoption law. As in most things, this is a process and we believe that additional changes may be required in the future. The Department was very involved in the discussion and drafting of this bill and supports a "do pass" recommendation from this committee on Engrossed House Bill 1035.

HH #16

SUMMARY OF PROPOSED CHANGES TO
NORTH DAKOTA CENTURY CODE 14-15
Engrossed House Bill 1035

We have substituted the term *individual* for *person* and *biological* parent for *natural* parent where they occur in this chapter, in an effort to clarify and update language.

- Section 1 Added definitions for *abandon*, *department*, *identifying information*, *investigation* and *stepparent*. Limited the definition of "*person*" for the purposes of this chapter to an *individual*. Moved definition for *genetic sibling* and *relative* from other parts of the statute. Reordered the listing of relatives.
- Section 2 Clarification of language regarding stepparent adoption.
- Section 6 Lines 12-15 detail a situation that is not in accordance with North Dakota adoption practice, we propose it would be deleted.
- Section 7 Clarification of language.
- Section 8 In addition to language clarifications, we have attempted (page 7, line 15 and following) to define what are reasonable expenses related to adoption (patterned after a Minnesota Statute) and incorporate that into the petition for adoption. This is an attempt to provide guidance to adopting families, child placing agencies and attorneys regarding the expenses that may be paid for by an adopting family.
- Section 9 Here we are incorporating the reasonable fee definition into a report of petitioner expenses that is to be filed with the court in all adoptions other than those adoptions by stepparents.
- Section 10 In paragraph 4, page 10, lines 27-29 we are proposing additional specificity of information provided to the court at time of finalization. This is consistent with current practice. We have also moved

Yalosta Rickford
Operator's Signature

10/2/03
Date

definition of *relative* to the beginning of the chapter, section 1 and have clarified the language of paragraph 6.

Section 11 This proposed change clarifies the 6 months residency requirement as it applies to various adoption situations.

Section 13 Formatting changes, with a new requirement for post placement supervision during an interlocutory period of a decree of adoption. Also requiring the court to make a finding with regard to the reasonableness of adoption expenses.

Section 15 Propose to delete lines 2 & 3 on page 15 as this is not thought to happen in North Dakota.

Section 16 Changes to NDCC 14-15-16, the section devoted to adoption search and disclosure. In addition to clarifications of language and renumbering throughout this section, specific changes addressed in the following paragraphs include:

- In paragraph 2 we have moved definitions of *Department* and *genetic sibling* to the beginning of the chapter. We have also moved the definition of *notify* from the body of this section (page 18) to this location and deleted the phrase "restricting contact by mail" (found on page 18, line 29). The searcher would now be able to attempt contact through confidential mailing.
- In paragraph 4 we have clarified the term "information pertaining to the adoption" and added a new statutory requirement of retention of records (by policy this is already being done).
- Paragraph 5 clarifies that a fee may be charged for non-identifying information. It adds that a birth parent may request and receive non-identifying information regarding their birth child, upon their written request.
- In paragraph 7 (on page 16), lines 25 and following, we are attempting to clarify that during the placement period and

while the adopted child is a minor, information may be shared between consenting parties in an adoption. If a party does not consent to disclosure of identifying information, that information may not be shared. (Former letters a. through f. of this section will be placed in policy manual.) This will statutorily allow for more openness in current adoption practice, if the parties involved give consent. This is consistent with current adoption practice in this state and moves us toward more openness in adoption.

- In paragraphs 10 & 11 we have removed the requirement that birth parents and birth siblings may not search where there was an involuntary termination of parental rights, remembering that the adoptee always has the right to refuse disclosure of identifying information when they learn the circumstances of the termination situation during the course of an adoption search.
- In paragraphs 12 & 13, we have added a fourth party that may initiate a search – an adult child of a deceased adopted person. That person, however, may not initiate a search while the adopted individual is living.
- In paragraph 14, the changes reflect the addition of numbers 12 and 13 above.
- The changes in paragraph 15 reflect the addition of numbers 12 and 13 above. The definition of *notify* was moved. The allowance of additional search time is consistent with current practice if the search is not completed within 90 days.
- Paragraph 18 was moved (see page 20) from another location in this section. There has been no change to the content of the paragraph.

- The content of deleted paragraph 17 (page 20) is now addressed in the new language of paragraph 15 on page 19, lines 4-6.
- As it regards a search by an adopted adult for a sibling (or vice versa), paragraph 20 allows disclosure of identifying information where the living birth parent has been notified, but may not have consented to the disclosure.
- Paragraph 21 allows the Department to communicate with Indian tribes, in addition to the Bureau of Indian Affairs when assisting with an adoptee's application for enrollment in an Indian tribe. Allows an agency to charge a reasonable fee to assist an individual in applying for tribal enrollment.
- Paragraph 23 is reformatted into subsections and there are clarifications of language, however the substance of the paragraph is unchanged.

Section 19 Removes the 10-day withdrawal period of a birth parent signing a relinquishment under this subsection. In almost all cases, these individuals currently waive this right so that the hearing may go forward. Reformatted paragraph 3 into subsections. Provided that a proposed custodian would be given notice of the proceedings.

Revised 3/4/2003



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Catholic Family Service

Senate Judiciary Committee

House Bill 1035

March 5, 2003

Chairman Traynor and members of the Senate Judiciary Committee, I am Linda Jaeger, Supervisor of Child Welfare with Catholic Family Service. I am here today in support of House Bill 1035 related to the Uniform Adoption Act.

As a member of the informal work group that reviewed the adoption laws I was pleased with the progress made, the proposed changes and the concern for clients who receive adoption services in our state. Much of this House Bill 1035 is concerned with "housekeeping" tasks but we also addressed the "real concerns" of the clients we work with each day. Adoption is changing across the country allowing more open contacts between birth parents and adoptive families. This has been a positive step for adoption and gives much peace to birth parents choosing this option for their children. It also allows for the background and hereditary information of the adopted child to be known and shared with them as they feel they have a right to this important information. The beauty of openness within adoption is that the best interests of children are being met as you have birth and adoptive parents working together to plan for a safe, stable and permanent home for the child.

Improving terminology such as "biological" from the former word "natural" is a good first step in presenting adoption in a more positive light. The previous terminology "natural"

implied that if I did not give birth to my children I would be an "unnatural" parent, which is a negative connotation for adoptive parents. Families are built and people can become parents not only by giving birth but also by the loving choice of adoption. We know that adoption is a wonderful way to build a family.

The addition of "reasonable fees" is a safeguard to adoptive families pursuing adoption and insures appropriateness of assisting the birth mother with some necessary needs she may have in her prenatal time without concern for exorbitant fees. This section also is consistent with House Bill 1036, NDCC4-15.1, relating to Child Relinquishment to Identified Adoptive Parents.

As a child welfare social worker I find post placement services to adoptive families an excellent resource for education, information and support. As new parents learning our roles it is an advantage to have a worker available to answer questions, obtain additional information when needed and have a source of support to learn and become comfortable in this new role. Specific questions relating to adoption, the adoption triad and sharing information with one's child are all relevant concerns and interests of new parents. Ongoing support assists parents to positively deal with these concerns.

The practice of search and disclosure is a challenging and emotionally complex process. We hear stories from all members of the adoption triad in regard to their adoption experiences and their desire to connect "with their roots". The support and mediation offered by staff has made most reunions a positive experience in their life and has added much needed information as well as possible new relationships to develop. Adopted adults feel angry and betrayed when they are unable to obtain identifying information regarding their birth parents. A common statement made when a request is denied is "I am an innocent victim in this adoption. I had no choice in my adoptive placement and now I have no choice in knowing about my background". If we as

search workers are able to explain why a birth parent chose not to disclose information it can offer understanding and consolation. The real difficulty lies when one birth parent agrees and longs for disclosure while the other chooses to ignore or not disclose. Without both consents we are unable to share any information with the adopted adult. Currently we are working on two cases such as these and it has been devastating for the adopted adult and the birth mother. The birth mother recently stated to her worker, "He (the birth father) wasn't around when I was pregnant, he made my life difficult in planning for the placement of our child, he offered no support and now without assisting this child in anyway, he can block our chance to connect and have a relationship". The search laws protect all members of the adoption triad but I believe we need to allow a little more flexibility in order to reunite adopted adults with their birth families. Based on the experiences of our search workers, I would like to see reinstated the provision regarding search that was amended out by the house. Specifically I am referring to paragraph 19 of section 16 of the original bill and I quote "If the child-placing agency has located both genetic parents and only one parent authorizes disclosure, the information disclosed by the agency may only relate to the consenting parent."

Our role as a licensed child placing agency is to find permanent, stable and nurturing homes for children and work with birth parents who are making this selfless choice of love. The best interests of the child is always our paramount concern. We hope to continue to meet the needs of the members of the adoption triad throughout their lifetime and at their request for service.

I would ask you to support a "do pass" recommendation in regard to House bill 1035.

Thank you.

I would be happy to answer any questions you may have at this time.

Att #3

FIRST ENGROSSMENT
Engrossed HB 1035 Judiciary Committee
February 19, 2003

Good Morning Chairman Traynor and members of the Senate Judiciary Committee. My name is Susan Grundysen. I am a licensed, clinical social worker employed by The Village Family Service Center. Our program, The Adoption Option, is a collaboration between The Village and Lutheran Social Service of ND providing pregnancy counseling, adoption services, and search and disclosure services. Both agencies are licensed child-placing agencies by The ND Department of Human Services. I am here today to provide testimony in support of HB 1035.

The bill proposing changes to The Uniform Adoption Act has a majority of housekeeping type changes and a few significant proposed changes that deserve your attention and support.

Sections 8 & 9 mandate the exchange of money between parties to an adoption be kept appropriate, minimizing the potential for fraud or duress.

Sections 11 & 13 supports families in their transition to new roles, which thereby supports the well-being of children.

It is recognized section 16, the disclosure portion of this bill, is the most controversial. The House Judiciary Committee has taken part of this section out of the first engrossment. Without this piece of section 16, two consenting parties are denied from exchanging identifying information when the third party is unwilling to consent to the other parties communicating with one another.

Adoption is a positive life choice, and for two parties to be declined contact because a birth parent is not ready/willing to deal with the adoption is penalizing the very people who are living the selfless, loving choice of adoption. Adoptees believe they do not have the same rights as persons who are biologically related to their family.

It is difficult to get the people here to testify because of the very personal and private nature of adoption. Let me share with you an example of how the omission of this piece of section 16 impacts North Dakotans. We had an adult adoptee (AA) who requested a search for his birth mother (BM). Because paternity was established, we were required by law to also search for the birth father (BF). Upon locating the BM, she was ecstatic! Upon locating the BF, he immediately hired an attorney, and would not discuss the matter except through legal counsel. He would not even consent to contact between the AA & the BM. What must it feel like to know this major decision of your life is being controlled by someone else? How unfair this must seem, as it renders AA's powerless.

One of the ways to establish paternity is by paying for medical or maternity care related to the care and/or birth of the baby. For those cases where the court ordered the alleged father to contribute financially – paternity was established! Even when the birth father disappeared after being told of the pregnancy, and would have nothing to do with the BM, but \$20.00 was paid by the BF's parents, established paternity. Now this man has the power to deny contact between the AA & BM.

You might wonder how we can change the law now, after all these birth families have been promised unconditional confidentiality? This would not be the first time. In 1979 the laws did change, allowing AA's to search for birth parents. This was our ND legislature responding to the uniqueness of adoption. Unfortunately, a piece was missed. Without this piece of section 16, two consenting parties are denied from exchanging identifying information when the third party is unwilling to consent to the other parties communicating with one another.

Your support of the proposed changes within HB 1035, AND your consideration of returning the piece of section 16 that was removed by the House Judiciary Committee, can ensure those persons who are living with the loving choice of adoption receive vital information and communication when it is available.

Thank you for your time, and I strongly encourage your support for HB 1035.

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HH #4

SENATE JUDICIARY COMMITTEE

House Bill 1035

March 5, 2003

Good morning Chairman Traynor and members of the Senate Judiciary Committee. My name is Leanne Johnson and I am employed by Lutheran Social Services of North Dakota and serve as the A.A.S.K. Adoption Director. I am providing this written testimony to support the passage of House Bill 1035 related to the Uniform Adoption Act.

The A.A.S.K. program, Adults Adopting Special Kids, is a collaborative effort between Lutheran Social Services of North Dakota, The Village Family Service Center, Catholic Family Service and the North Dakota Department of Human Services. Turtle Mountain Child Welfare and Family Services is affiliated with A.A.S.K. This program is responsible for the adoption of children with special needs who are in the custody of the Department of Human Services. Since the program began in 1993, a total of 522 children have been placed for adoption - 86 children during calendar year 2002. A significant number of these adoptions were by the child's foster parents, resulting in an 89% foster-adopt rate. This is higher than the national average of 65% - 80%. The average age of the children placed was approximately 9 years with the range being from fourteen months to sixteen years during CY2002.

Currently, the program is actively working with 111 children towards adoptive placement, including approximately 24 children who do not have an identified family and recruitment efforts are necessary. We are working with 42 families, who are approved adoptive resources, and 51 families in the process of completing an adoptive home study. In addition, our program is aware of 116 additional families awaiting an adoptive home

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study and working with 122 children in the early permanency planning stages, referred to as "concurrent planning".

I have had the opportunity to work with the Informal workgroup of the Family Law Committee, referenced in Ms. Hoffman's testimony. I support not only the housekeeping revisions contained in this bill, but also all the substantive changes this bill proposes. I would like to take this opportunity, though, to draw your attention to two specific provisions: the openness in adoption provisions and the search-related provisions.

While there is no universal definition of open adoption, openness in adoption is best described as a continuum of contact between members of the adoption triad - the adoptive child, the adoptive parents and the birth parents. It can range from the adoptive parents knowing genetic and medical background for the birth parent to all members of the triad having regular contact and visits throughout the child's life. Oftentimes, what we have seen in the A.A.S.K. program with the majority of our foster-adoptions is that the foster family and child already have a great deal of identifying information regarding the birth family, as the foster parents may have initially assisted with reunification efforts and participating in visits between the child and their birth family. Older children certainly have first-hand memories of their birth family. However, at the point of adoptive placement, our staff must "de-identify" the child's record for any information that might identify the name and location of the birthparents, even if this information is already known by the parties. The changes proposed in HB 1035 would eliminate the need for this. They would not alter the need to de-identify this information if the birthparent was not already known and/or did not consent to the release of this information.

The A.A.S.K. program is committed to the placement of siblings in the same home when feasibly possible. However, we must recognize that it is

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not always possible. We certainly have seen a number of sibling groups that have been placed for adoption with separate families after it was agreed that this was in the best interest of the child. Also, there are times when the birth parent may have an older child that was not placed for adoption or has given birth to a child subsequent to an earlier child's adoption. Circumstances regarding the legal termination of parental rights should in no way negatively affect a sibling relationship. However, if the courts involuntarily terminated a parent's rights, current North Dakota law does not permit those siblings to search and may not be able to form an adult sibling relationship. Current law only permits genetic siblings to search for an adopted individual who is over the age of 21 if there was a voluntary termination of parental rights. The recommended changes still respects an adopted individual's right to refuse disclosure. This modification, therefore, is one the A.A.S.K. program encourages.

In closing, I would respectfully request that the members of this committee seriously consider the request to update North Dakota's adoption law and give a "do pass" recommendation to House Bill 1035. Thank you for the opportunity to provide information to your committee regarding this important matter. I would be happy to answer any questions.

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