very precise and cogent reasons mentioned by the Ohio court in the majority opinion. Without presenting all the details of the argument, it was essentially an argument that the literal words of the statute call for protection of the Ohio purchaser contrary to the comity rule, the words of the statute impart negotiability to an automobile in possession of one holding an Ohio certificate, that the *Atlantic Finance* case (which was overruled by the case) unreasonably assumed that the policy of protecting Ohio purchasers should weigh no more heavily than the protection of innocent citizens of other states, that there should not be any difference as to the strength of an Ohio certificate whether it results from the fraudulent representation of a swindler or of a thief, that there is nothing unusual about protecting innocent purchasers from a thief, as witnessed by money, warehouse receipts,[36] bills of lading.[37] To this latter argument should be added ordinary negotiable instruments,[38] and corporate stock.[39] Although the United States has not accepted the general idea of market overt, followed in some places in England,[40] that a purchaser from a thief may prevail if he buys on a market overt, the preference for a purchaser from a thief is certainly not unknown to the American law.

Of course persons may disagree as to various policy factors involved in the choice between the "owner" of a stolen car from another state and the innocent purchaser in Iowa. There also may be disagreement about the intention (largely mythical) of the Iowa Legislature in passing the Iowa Certificate of Title Law with such all-inclusive language. However, it is unfortunate that, in attempting to resolve these problems, the Court did not apparently give sufficient attention to the policy factors involved, such as reliance by an Iowa purchaser on an official document, or to all the relevant portions of the statute, which could lead to a decision that the Iowa certificate is conclusive in establishing the ownership of the Iowa purchaser. Holding for the Iowa purchaser is surely not such an absurd result as to call for disregarding the literal words of the statute.

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[36] This would not be true under Iowa's version of the Uniform Warehouse Receipts Act, IOWA CODE § 542.40 (1962).
[37] IOWA CODE §§ 487.31-.32 (1962). Also see §§ 554.33-.34 (Uniform Sales Act).
[38] *Id.* § 541.16.
[39] *Id.* §§ 493A.4-.7.
[40] WILLISTON, SALES §§ 311, 347 (Rev. ed. 1948).

PRE-ADOPTION PRACTICE IN IOWA AND RECENTLY PROPOSED CHANGES

Today, changes in child adoption laws of the various states are being studied by various professional groups in an attempt to determine whether or not the present state laws are adequate to serve the needs of a modern day society.[1]

At one time, adoption was thought to be only a statutory process whereby a status of parent and child was created between persons not so related by birth.[2] This concept of adoption has been gradually changing and at the present time, the adoption of a child is described by some as a "social process".[3] This description would indicate that not only the adoptive parent and the child should receive statutory protection and consideration, but also that the natural parent and the public at large should receive consideration in adoptive placements.[4]

The major changes which are being proposed in the adoption statutes seem to be mainly in the area of pre-adoption practice and procedure with very little emphasis being placed on changing the procedure to be followed by the courts after the adoption petition is filed.[5]

It is the purpose of this article to present a summary of present Iowa pre-adoption concepts and practices and a survey of how these concepts of adoption have developed through time. Further, it is the purpose of this article to present an explanation of how the adoption act proposed to the 60th Iowa General Assembly would change the present pre-adoption practice and procedure.

A. Iowa Adoption Statutes, Past and Present

The Iowa Territorial Assembly first enacted legislation dealing with the placement of children in 1839. At that time, the Assembly was more concerned with the child becoming a public charge as a vagrant than it was with the welfare of the child.[6] This first act dealt with child placement

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[1] In Iowa, the Interprofessional Adoption-Study Committee was formed in December of 1958 to study the various problems present in the field of adoption. Members of this committee have been drawn from the Iowa Association of Children's Agencies, from the Iowa State Bar Association and from the Iowa State Medical Society.

[2] Sheffield v. Franklin, 151 Ala. 492, 44 So. 373 (1907); Bailey v. Mars, 138 Conn. 593, 87 A.2d 388 (1952); Bilderback v. Clark, 106 Kan. 737, 189 Pac. 977, 9 A.L.R. 1622 (1920); Morrison v. Sessions, 70 Mich. 297, 38 N.W. 249 (1888).

[3] Katz, *Judicial and Statutory Trends in The Law of Adoption*, 51 GEORGETOWN L. J. 64 (1962).

[4] POLIER, PARENTAL RIGHTS, THE NEED FOR LAW AND SOCIAL ACTION. (Child Welfare League of America, 1958); U.S. SOCIAL SECURITY ADMINISTRATION, ESSENTIALS OF ADOPTION LAW AND PROCEDURE, 1-5 (1959).

[5] The proposals which have been made to the Iowa Legislature do contain changes which would affect the procedure starting with the filing of an adoption petition, but the significant changes are in the area of pre-adoption practices.

[6] Iowa Territorial Laws, *Vagrants*, § 2, (1838-39), provided that, ". . . [I]f, upon examination, it appears to the said court, that such person is within the description [of "vagrant"], and is a minor, they shall direct the sheriff to bind him to some person of useful trade, or occupation, until he shall arrive at the age of twenty-one years, the said court shall direct the sheriff to hire him out for any time not exceeding nine months . . . ."—This statute or one very similar to it appeared in the Iowa Laws until the Compiled Code of 1924 was adopted.

when the child was shown to be a vagrant, but did not concern placement for adoption, and actually had no mention of adoption. This early act illustrates the property concept of children which was taken by many early Iowa legislators, and by many legislators of other states, toward the care and supervision of children who might be dependent.

In 1858, Iowa enacted its first Adoption Act.[7] This Act was primarily concerned with making adoption a matter of public record.[8] The Act provided that after the instrument was recorded, the "rights, duties and relations between the parent and child by adoption should be the same as the rights, duties and relations between the natural parent and child."[9] The only provision in the first act which might be said to have influenced the development of recent day attitudes is found in the last section which provided that the child could be taken from the adoptive parent in case of mistreatment with custody to be vested in another at the expense of the adoptive parent.[10]

From 1858 until 1925, no major changes were made in the Iowa law with regard to child placement and adoption laws. Several significant minor changes were made which indicate that the legislators had started to change their attitudes toward the care and protection of dependent, delinquent and neglected children. In 1868, the Iowa Legislature passed an act providing for the establishment of three Soldiers and Orphans Homes in the State.[11] This Act provided that the Board of Trustees should approve all adoptions before they were made from these homes.[12] In 1878, the forerunner of modern child placing agencies came into being by enactment of a bill providing that "any home for the friendless, incorporated under the laws of this state, shall have authority to receive, control and dispose of minor children. . . ."[13] In 1904, the Juvenile Court was established by the Legislature.[14] Various powers were conferred on the Court, including the power to approve adoptive placements in certain situations.[15] These acts increased the tendency to give consideration to all parties of an adoption and to insure the protection of the child.

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[7] Iowa Laws ch. 67 (1858).

[8] The material portions of the act as to the property concept are: § 2 "In order [to adopt], the consent of both parents, if living and not divorced or separated, and if divorced or separated, or if unmarried, the consent of the parent lawfully having the care, and providing for the wants of the child, or if either parent is dead, or the child shall have been and remains abandoned by them, then the consent of the mayor of the city where the child is living, or if not in a city, then of the county judge of the county where the child is living, shall be given to such adoption, by an instrument in writing, signed by the parties or party consenting, and stating the names of the parents, if known, the name of the child if known, the name of the person adopting such child, and the residence of all if known, and declaring the name by which such child is hereafter to be called and known, and stating also that such child is given to the person adopting for the purpose of adopting as his own child."; § 3 "Such instrument in writing shall be also signed by the person adopting, and shall be acknowledged by all the parties thereto *in the same manner as deeds affecting real estate are rquired to be acknowledged. . . .*" (emphasis added).

[9] *Id.* § (4).

[10] *Id.* § (5).

[11] Iowa Laws ch. 66 (1868).

[12] *Id.* § 7.

[13] Iowa Laws ch. 176 § 1 (1878).

[14] Iowa Laws ch. 11 (1904).

[15] *Id.* § 9, "*Guardianship—decree for adoption.* In any case where the court shall award a child to the care of any association or individual in accordance with

During this period of time, from 1858 to 1925, the courts were very strict in determining whether an adoption was valid under the statutes due to the fact that the adoption provisions were in derogation of the common law. Where the smallest defects were found in the adoptive proceedings, the judges would not grant the adoption, or where it had been granted, it would be set aside.[16]

In 1925, the Legislature took a major step toward modernizing methods of adoptive placement by passage of the Child-Placing Agencies Act, which gave the state control over child placing agencies.[17] This Act provided that all child placing agencies must be licensed by the State Board of Control, "to the end that the health, morality, and general well-being of children placed by them shall be properly safeguarded".[18]

The passage of the Child-Placing Agencies Act by the 41st Iowa General Assembly and the elimination of the old Indenture Act of 1839[19] by the Code Revision of 1923 led to the enactment of what for all practical purposes constitutes the present day Iowa Adoption Act, passed by the General Assembly in 1927.[20] This Act provided that there must be a judicial proceeding in all adoption matters and the prospective adoptive parents must petition a court of record in the county where either the petitioner or child resided so that the court could make "appropriate inquiry to determine whether the proposed foster [adoptive] home is a suitable one for the child."[21] Thus, the first statutory requirement for court protection of the rights of the individual parties involved in an adoptive proceeding was provided by the Iowa Legislature.

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the provisions of this act, the child shall, unless otherwise ordered, became a ward and subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall have authority to place such child in a family home, with or without indenture, and may be made party to any proceedings for the legal adoption of the child, and may by his or its attorney or agent appear in any court where such proceedings are pending and assent to such adoption. And such assent shall be sufficient to authorize the court to enter the proper order of decree for adoption." Although the court did not directly approve the adoption it could place the child where dependency or neglect was shown and the child could then be adopted by consent of those having custody.

[16] In Gill v. Sullivan, 55 Iowa 341, 7 N.W. 586 (1880), the Court held that where the written instrument of adoption was destroyed by accident soon after its execution, by reason of which it became impossible to make record of it, the adoption was invalid. In this same line see also: Tyler v. Reynolds, 53 Iowa 146, 4 N.W. 902 (1880); Long v. Hewitt, 44 Iowa 363 (1876). In Hopkins v. Antrobus, 120 Iowa 21, 94 N.W. 251 (1903), the Court held that to render the instrument of adoption effectual, there must be substantial compliance with all the requirements. See also: Holmes v. Derrig, 127 Iowa 625, 103 N.W. 973 (1905); and Miller v. Miller, 123 Iowa 165, 98 N.W. 631 (1904).

[17] Iowa Laws ch. 80 (1925).

[18] *Id.* § 2. The act had provisions for filing of reports with the board of control, inspection of adoptive homes and issuance of licenses for their operations. The board of control was to make sure that the "health, morality, and general well-being of children placed by them shall be properly safeguarded."

[19] See note 6, *supra.*

[20] Iowa Laws ch. 218 (1927).

[21] *Id.* §§ 1-2. The Act further provided that the natural parent should give consent to the adoption except in certain enumerated cases (§ 3); that the child's name should be changed to that of the adopters (§ 5); and that the child was to inherit from adoptive parents as though it were a natural child (§ 6). It also provided for annulment in case some defect developed in the child within five years (§ 7), and for a record of the adoption to be sent to the State Board of Control (§ 8).

This change moved Iowa into the category of states requiring judicial authorization and supervision of adoptive proceedings and nearly eliminated the property concept long present in the Iowa law. The changes promulgated in 1925 and 1927 have remained to the present time, with some minor modification. The most important modification was the amendment of 1947 which provided for the inclusion of more specific information in the petition, required an investigation of the adoptive home, and required a waiting period before finalization of the proceedings.[22] The 1947 amendment mentioned the State Department of Social Welfare for the first time.[23] Since the time this Act was passed, the Department has been given increasing responsibilities in adoptive proceedings.[24] Other minor modifications occurred in 1951[25] and in 1959.[26]

These changes in the placement of children and the adoption statutes of Iowa clearly illustrate the change in attitude towards children. The Legislature has become increasingly aware that all parties to an adoption must receive adequate protection.

B. Proposed Changes

In 1959, the Iowa State Senate Committee on Social Security appointed a Special Advisory Committee on children's problems and asked the Iowa Legislative Research Bureau to conduct a study on the need of modernizing the Iowa "Children's Code".[27]

The findings of the Advisory Committee in the area of adoption resulted in the introduction of two bills during the 60th Iowa General Assembly of 1963. The proposed acts were House File 273, which was intended to amend, revise and codify the statutes relating to adoption (and the major topic of discussion in the remainder of this article), and Senate File 321, which was intended to revise and codify the statutes relating to Juvenile Court structure and to dependent, neglected and delinquent children.[28] These two bills were based on the Model Adoption Act,[29] The Model Termination of Parental Rights Act,[30] and the Uniform Adoption Law.[31]

Basically, House File 273, 60th Iowa General Assembly as coupled with Senate File 321 of the 60th General Assembly, would provide three major changes over existing pre-adoption practice and procedure:

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22 Iowa Laws ch. 281 (1947).

23 *Id.* § 2.

24 IOWA CODE §§ 600.1, 600.2 (1962) contain nearly the same provisions as were referred to in notes 22 and 23, but the discretionary studies and work carried out by the Department continue to grow.

25 Iowa Laws ch. 204 (1951), amending the consent provisions of the Adoption Act, so that judges might consent to adoptive placements in some situations.

26 Iowa Laws ch. 152 § 191 (1959), changing the provision of IOWA CODE § 600.3 (1962), regarding cases where consent of parent is not required from "hopelessly insane" to "hopelessly mentally ill."

27 REPORT OF THE LEGISLATIVE ADVISORY COMMITTEE ON THE STUDY OF CHILDREN'S LAWS IN IOWA 1 (1961).

28 Neither of these Bills were adopted by the 60th Iowa General Assembly, but may be introduced in a later Assembly.

29 U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, CHILDREN'S BUREAU, LEGISLATIVE GUIDES FOR THE TERMINATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND THE ADOPTION OF CHILDREN 49 (Pub. # 394-1961).

30 *Id.* 37.

31 9 UNIFORM LAWS ANNO. (Supp. 1963).

(1) Placements would be made by licensed child placing agencies only.[32]
(2) A judicial proceeding to terminate all parental rights would be required before placement.[33]
(3) Pre-placement investigation of the prospective adoptive home by an authorized agency would be required.[34]

1. Change With Regard to Placement Being Made by a Licensed Child Placing Agency

As adoptive practices have developed in Iowa under the present statutes, three different methods of adoptive placement are available. These are:

(A) Public Agency placements, which would include those made through the Iowa Department of Social Welfare. The Department of Social Welfare does not make direct placement of children, but does make home studies for the Holt Adoption Program, The International Social Service Placements and certain interstate placements;[35] the Iowa State Board of Control;[36] and those placements made by courts.[37]

(B) Private Agency placements, which include those made by the licensed child placing agencies in Iowa.[38]

(C) Independent or private placements which include those made by doctors, lawyers and other individuals.[39]

In public agency placements, there is very little thought of changing the procedures involved as there are adequate measures readily available to protect all parties to the adoption process. The public agencies serve a very important function in making homes available for children who might not otherwise receive any introduction to family life. The State Board of Control places children from the Annie Wittenmeyer Home and the Iowa Juvenile Home after these children have been placed in their care and guardianship. The courts need to have adoptive placement available to them as one of the possibilities for placement when a child is removed from his own home as neglected, dependent or delinquent. The Department of Social Welfare through its county agencies performs an important function by investigating homes before an interstate or foreign child placement is made.

It is in the area of private agency and independent adoptive placements that a significant change would have been made upon passage of House File 273 and Senate File 321. The House File expressly provided that: "except where a petition is filed by a step-parent or by relatives of the child, no petition for adoption shall be entertained unless prior to filing of the petition . . . the child sought to be adopted has been placed for adoption with the petitioner by a child placement agency . . . ."[40] The present statute provides that "any person of lawful age may petition the District Court of the county in which he or the child resides for permission to adopt *any* child

[32] H.F. 273, 60th G.A., § 6.2 (Iowa 1963)
[33] *Id.* § 6.1; S.F. 321, 60th G.A., § 59 (Iowa 1963).
[34] H.F. 273, 60th G.A. § 6.3 (Iowa, 1963).
[35] IOWA CODE §§ 600.2, 238.33 (1962).
[36] *Id.* §§ 238.2, 244.9, 600.3.
[37] *Id.* §§ 232.21, 600.3.
[38] *Id.* Ch. 238.
[39] *Id.* §§ 600.1, 600.3.
[40] H.F. 273, 60th G.A., § 6.2 (Iowa 1962).

not his own . . . .[41] There is no express language in the present statute in regard to the placement of children.

By virtue of this section of the present law, a child can be placed where a friend, attorney, doctor, or other person knows of a natural parent who wishes to give up its child for adoption and knows of a person who wishes to adopt the child. The friend, doctor, or attorney arranging the adoption without resort to a child placing agency for assistance would constitute an "independent placement."[42]

It has been urged that under the present Iowa Child Placing Law, this type of placement should not be allowed.[43] This contention has never been expressly passed upon by the courts of the state, but the Iowa Attorney General interpreted the prior adoption law to be distinct and apart from the child placing statutes, and said that "the provisions of Chapter 473 [much the same as the present day adoption statute] deal with the *direct* [italics added] adoption of children from those primarily responsible for them and without the use of an intermediate or intervening agency such as child-placing agencies referred to in Chapter 80, Laws of the 41st General Assembly [much the same as the present Chapter 238, Iowa Code, 1962, relating to Child Placing Agencies]."[44] This opinion further states: "The language used in the title is plain and will submit to no such interpretation. The title refers only to those engaged in the child-placing business or vocation. It does not refer to individuals who adopt children as their own, or who relinquish their own children to such individuals who seek to become their foster parents."[45] This interpretation is open to some question as it would seem to be in direct conflict with the wording and meaning of the Child-Placing Agencies Act.[46]

Whether or not the present Iowa statute should be interpreted as forbidding private placements, it can be readily observed that the proposed statute would eliminate this type of placement altogether.

There are arguments both pro and con as to whether these proposed bills should be adopted by the Iowa Legislature.

The attitude of many lawyers toward this proposed change could be summarized by stating that, "if a nice couple can find a child through some source and acquire him, by say, paying the expenses of the mother's care of confinement, nothing should stand in the way."[47] It is sometimes believed that, "the natural parent or parents have a natural and inherent right to determine who will adopt their child, that the adoption proceeding is non-

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[41] IOWA CODE § 600.1 (1962).

[42] Note, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L. J. 715 (1950); see also, Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV., 228, 237 (1955).

[43] Iowa State Dep't of Soc. Welfare, Comments on Weaknesses in Iowa Adoption Law 2-3 (unpublished, 1953)

[44] 1925-26 O.A.G. 213, 215.

[45] *Id.* at 216. This opinion was cited with approval in 1960 O.A.G. 292, 293.

[46] IOWA CODE § 238.26 (1962), provides that; "No person may assign, relinquish, or otherwise transfer to another his rights, or duties with respect to the permanent care or custody of a child under fourteen years of age unless specifically authorized or required so to do by an order or decree of court, or unless the paent or parents sign a written release attested by two witnesses, of the permanent care and custody of the child to an agency licensed by the state board of social welfare."

[47] Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 238 (1955).

adversary with the attorney a qualified counselor to all parties concerned; that drastic inroads are being made on the fields from which lawyers derive their income and that licensed agencies cannot handle the volume of adoptions."[48]

There are several reasons which can be given for the proposal of this portion of the adoption act. This type of practice helps to promote a "black market" or "gray market" in children.[49] This type of adoptive placement leaves both the adoptive and natural parents unprotected,[50] as well as the child.[51]

Thus, if the proposed bill were to be adopted, it would provide another link in protecting all parties to the adoptive placement processes.[52]

2. Change With Regard to Terminating Parental Rights Before Placement

Throughout history, courts and legislative bodies have considered that parents have certain "parental rights" with regard to their children.[53] These rights have generally included "control, custody, natural guardianship, determination of living standards, of religion, of education, earnings, inheritance and the right to notice and appearance at judicial proceedings involving their children."[54] In addition to the rights involved, there are responsibilities "for care, support, guidance and supervision" of the children and those responsibilities are governed by the standards applicable in the community of residence".[55] Even after the legal custody of a child has been transferred to another, or a guardian has been appointed, the natural parent still has residual rights which include the right of reasonable visitation, consent to adoption, the right to determine the child's religious affiliation and the responsibility for support.[56]

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[48] Callister, *The Lawyer and the Independent Adoption*, 29 L.A.B. BULL. 375, 376-7 (1954).

[49] Katz, *Judicial and Statutory Trends in the Law of Adoption*, 51 GEORGETOWN L. J. 64 (1962). Note, 59 YALE L. J. 715, 722-30 (1950); Des Moines Register, Oct. 29, 1961, p. 1-L, col. 8.

[50] Herman v. McIver, 248 Iowa 619, 80 N.W.2d 500 (1957); Savery v. Eddy, 242 Iowa 822, 45 N.W.2d 872, 47 N.W.2d 230, 48 N.W.2d 230 (1951).

[51] The lack of protection for all parties can be summarized by pointing out that: (1) no legal guardian of the child exists during the period after the natural parent surrenders the child and before final decree is granted; (2) the foster child is secured for the adopting parents and in some cases the child's interests are not considered; (3) there is no study made of the natural parent or of the adoptive home before placement is made; (4) there are no funds or personnel to care for the child if the adoption should fail; (5) there is danger of interference from the natural parents, since they know who has the child, due to interpretation of the Iowa consent statute; (6) some adoptions are never completed and the child has no legal status; (7) there is little concern for the natural mother in most cases and she is considered only as a biological necessity; (8) there is no planning available for the adoptive parents nor any help available to them when problems arise. Report of the Interprofessional Adoption-Study Committee, Feb. 2, 1960, (Unpublished).

[52] Connecticut and Delaware have taken such a step and now require that all adoptive placements be through a licensed child placing agency. CONN. GEN. STAT. §§ 45-63, (1958); DEL. CODE ANN. tit. 13, § 904 (Supp. 1963).

[53] *In re* Adoption of Anderson, 235 Minn. 192, 50 N.W.2d 278 (1951); Lacher v. Venus, 177 Wis. 558, 188 N.W. 613 (1922); CHILDREN'S BUREAU Pub. #394-1961, *op. cit. supra*, note 29, 2-5; POLIER, *op. cit. supra*, note 4, 4-5.

[54] *Id.* See also; Denton v. James, 107 Kan. 729, 193 Pac. 307 12 A.L.R. 1146 (1920); McKeown v. Argetsinger, 202 Minn. 595, 279 N.W. 402, 116 A.L.R. 398 (1938).

[55] Gannon v. Gannon, 258 Minn. 57, 102 N.W.2d 677 (1960); Bolich v. Robinson, 106 Neb. 449, 184 N.W. 218 (1921).

[56] CHILDREN'S BUREAU Pub. #394-1961, *op. cit. supra*, note 29, 2-5.

In recent years legislatures and courts have believed it to be in the best interests of the child and his natural and adoptive parents to hold an informal court proceeding to terminate parental rights and responsibilities before an adoptive placement is made and to provide for guardianship and legal custody of the child in the termination decree. The necessity of termination arises (1) when the natural parent wishes to release the child voluntarily for adoption and (2) when the parent has been proven to be inadequate, to have abandoned the child or where there is some other reason why the natural parent should be divested of legal custody and guardianship.[57]

At the present time, the statutory provisions for termination of parental rights in Iowa are merged with the provisions for consent to adopt, and there is no express statutory proceedings to terminate the rights and responsibilities of a parent except for the voluntary transfer to a child placing agency as is heretofore brought out. The Iowa Code provides that, "no person may assign, relinquish, or otherwise transfer to another his rights to the permanent care or custody of a child under fourteen years of age except in accordance with this chapter."[58] The Code goes on to state that, "[t]he consent of both parents shall be given to such adoption unless one is dead, or is considered hopelessly mentally ill, or is imprisoned for a felony, or is an inmate or keeper of a house of ill fame, or unless the parents are not married to each other, or unless the parent or parents have signed a release of the child in accordance with the statute on child placing, or unless one or both of the parents have been deprived of the custody of the child by judicial procedure because of unfitness to be its guardian. If not married to each other, the parent having the care and providing for the wants of the child may give consent."[59]

This Section would indicate that once the natural parent has voluntarily given consent to an adoption, the parental rights which had existed would be terminated. It would further indicate that in the enumerated situations the rights and duties toward a child are terminated by other factors.

(a) Voluntary Consent

In a voluntary relinquishment of natural parental rights under the consent statute very few problems arise, as the natural parents usually have no

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[57] Several states now provide that there must or may be a termination of parental rights before a placement is made. CONN. GEN. STAT. § 45-43 (1958); DEL. CODE ANN. tit. 13, §§ 1101-11 (Supp. 1963), LA. REV. STAT. § 9:403-404 (Supp. 1962); MICHIGAN STAT. ANN. §§ 27.3178 (552) 27.3178 (598.20) (1962); N.J. STAT. ANN. §§ 9:2-16 — 9:2-20 (1960); WIS. STAT. ANN. § 48.40 (1955); WYO. STAT. ANN. § 14-53 (1957).

[58] IOWA CODE § 600.3 (1962).

[59] *Id.* It continues: "If the child is not in the custody of either parent, but is in the care of a duly appointed guardian, then the consent of such guardian shall be necessary. Where the child is a ward of the state in a state institution the consent of the board of control of state institutions shall be first obtained before said adoption shall be effective. If the child has been given by written release to a licensed child welfare agency in accordance with the statute on child placing, the consent of the agency to whom the release was made shall be necessary . . . . When the child adopted is fourteen years of age or over, his consent shall also be necessary. [The Acts which have been proposed would place these provisions in a different section and the procedure would be handled differently, but basically these provisions have been retained.] The consent shall be in writing and verified and a copy shall be attached to the petition. The consent shall refer to and be applicable only to the specific adoption proposed by the petition."

desire to regain the rights and duties. However, on some occasions the natural parent has a change of mind and wishes to regain the custody of his child. In a recent case the Iowa Court decided that whether the natural parents or other consenters can or cannot revoke the consent depends on the circumstances of each case after consideration is given to the interests of the child, the natural parent and the adoptive parent.[60] In another recent Iowa case the Court stated that where the provisions of the consent statute are not carried out expressly, the consent can be withdrawn and the adoption invalidated.[61] The Court has also held that a second release and consent to adopt is invalid as to one already granted in conformity with the statute.[62] Recent cases from other jurisdictions would seem to indicate that a parent who freely gives consent to adopt cannot arbitrarily withdraw the consent so as to bar the court from decreeing an adoption.[63]

There is no express provision for a determination of whether or not the parental rights and duties are terminated by giving of the consent to adopt. Even if the present statutes were interpreted as providing a termination, the question would be present as to who the guardian of the child is in the interim between consent and final decree of adoption.[64]

(b) Involuntary Termination

The exceptions enumerated in Section 600.3, Iowa Code, as to when parental consent need not be given could be construed as a termination of parental rights and duties involuntarily. Some of the enumerated exceptions are self-explanatory in providing when parental consent is not needed. The provision that no consent need be given by a parent or parents where one or both are dead or hopelessly mentally ill, causes very little problem. The provisions that when the parent or parents are imprisoned for a felony or are a keeper or inmate of a house of ill fame seem to be for the purpose of promoting the welfare of the child and also present very little problem as to construction.[65]

The provision that parental consent is not needed from the parent not having the care or providing for the wants of the child sometimes presents problems, but the Iowa cases have consistently held that where one parent has no duties or responsibilities toward the child, his consent is not needed as to that child.[66]

The provision allowing placement where the parent has been deprived of custody by judgment of unfitness probably presents the most problems insofar as the consent statute is involved. This provision relates back to the

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[60] *In re* Adoption of Cannon, 243 Iowa 828, 53 N.W.2d 877 (1952).
[61] Herman v. McIver, 248 Iowa 619, 80 N.W.2d 500 (1957).
[62] Mabbitt v. Miller, 246 Iowa 712, 68 N.W.2d 740 (1955).
[63] *In re* Adoption of a Minor, 79 App. D. C. 191, 144 F.2d 644, 156 A.L.R. 1001 (1944); Lee V. Thomas, 297 Ky. 858, 181 S.W.2d 457 (1944); Wyness v. Crowley, 292 Mass. 461, 198 N.E. 758 (1935); *In re* Adoption of Lawless, 216 Ore. 188, 338 P.2d 660 (1959); 2 AM. JUR. 2d *Adoption*, § 46 (1962).
[64] There is no mention of to whom custody should go in case the adoption fails. Under the child placing agencies sections, the home to which the child was released is responsible for the care and expense of a child where the adoption fails. 1940 O.A.G. 498.
[65] Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 242 (1955).
[66] *In re* Chinn's Adoption, 238 Iowa 4, 25 N.W.2d 735 (1947); see *In re* Adoption of Perkins, 242 Iowa 1374, 49 N.W.2d 248 (1951).

chapter on care of "Dependent, Delinquent and Neglected Children" and at times has presented harsh results in the adoption area.[67] By construction, the Iowa Supreme Court has held that the state is *parens patriae* of a child adjudged neglected and dependent and parents' rights are foreclosed by judicial decree whether the child is placed in a private home under contract (old law), or adopted.[69] The Iowa Attorney General has stated that where the jurisdiction of the juvenile court has been properly invoked and the court determines a child is dependent, neglected or delinquent, that child is in the protective custody of the court and continues therein until it is legally adopted, committed to a state institution or reaches its majority.[69]

Problems have arisen under this procedure, as in *Savery v. Eddy*[70] where the children of a large family were removed from the parents and committed to the care of two child-placing agencies and later adoptions were granted. The natural parents appealed to the Iowa Supreme Court which reversed the lower court and held that the children should have been left in the custody of the natural parents.

Upon commitment of the children in the manner prescribed by Chapter 232, there is still no indication that all the rights and duties are terminated and upon a proper showing of being able to care for the children, the natural parents have been allowed to regain custody.

It does appear that under the present Iowa laws the termination for unfitness must take place before the adoption proceeding.[71] The determination of whether a parent is unfit is usually made in divorce cases,[72] habeas corpus trials,[73] juvenile court proceedings,[74] and probate hearings.[75] If there

[67] IOWA CODE § 232.2 (1962) provides: "The term 'dependent child' or 'neglected child' shall mean any child who, for any reason: (1) Is destitute, or homeless, or abandoned. (2) Is dependent upon the public for support, (3) Is without proper parental care or guardianship, or habitually begs or receives alms. (4) If under ten years of age, is engaged in giving any public entertainment in public places for pecuniary gain for himself or for another, or who accompanies, or is used in aid of, any person so doing. (5) Is found living in any house of ill fame, or with any vicious or disreputable person. (6) Is living in a home which is unfit for such child; or is living in a home wherein because of carelessness or neglect of a person or persons having a transmissible disease of a serious nature as determined by the local board of health, local health officer or the state department of health, the health of said child may be in danger. (7) Is living under such other unfit surroundings as bring such child, in the opinion of the court, within the spirit of this chapter." § 232.21 provides that the juvenile court, in the case of any neglected, dependent, or delinquent child, may: (1) continue proceedings and commit the child to the care and custody of a probation officer or other discreet person; (2) commit the child to some suitable family home or allow it to remain in its own home; (3) commit the child to any institution in the state, incorporated and maintained for the purpose of caring for such children; (4) cause the child to be placed in a public or state hospital for treatment or special care, or in a private hospital which will receive it for such purpose, when such course seems necessary for the welfare of the child, or (5) at any time terminate the proceedings and order the child released from the control of the court.

[68] Stephens v. Treat, 202 Iowa 1077, 209 N.W. 282 (1926).

[69] 1938 O.A.G. 899.

[70] 242 Iowa 822, 45 N.W.2d 872, 47 N.W.2d 230, 48 N.W.2d 230 (1951).

[71] Herman v. McIver, 248 Iowa 619, 80 N.W.2d 500 (1957); *In re* Adoption of Cheney, 244 Iowa 1180, 56 N.W.2d 145, 59 N.W.2d 685 (1953); *In re* Adoption of Cannon, 243 Iowa 828, 832, 53 N.W.2d 877, 880, (1952); Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 243 (1955).

[72] Brodie v. Brodie, 244 Iowa 201, 56 N.W.2d 487 (1953).

[73] Watters v. Watters, 243 Iowa 741, 53 N.W.2d 162 (1952).

[74] Savery v. Eddy, 242 Iowa 822, 45 N.W.2d 872, 47 N.W.2d 230, 48 N.W.2d 230 (1951).

is no finding before the adoption proceeding that the parent is unfit, and the adoption is decreed without regard to the natural parental rights, it would appear that the natural parent will be allowed to recover the custody of the child.

(c) Proposed Termination of Parental Rights

The proposed adoption bill would clarify some of the problems which arise under the present statute.[76] Section 6 of House File 273 and Section 59 of Senate File 321 would have replaced the current provisions of Section 600.3 and although consent still would have been required of the guardian of the child, no consent at the time of the adoption would be required from the parent.[77] Once the termination is effected, "the court shall order guardianship of the person and legal custody of the child transferred to: (1) The county or state department of social welfare; (2) A licensed child placing agency; (3) A reputable individual of good moral character, or (4) The state board of control for placement at the Iowa Annie Wittenmyer Home or the Iowa Juvenile Home."[78]

It is quite obvious that this legislation to cut off parental rights before the adoption petition is filed is based on the same grounds as those listed for the dispensing with consent to adopt. The policy argument is the same, the parent has acted in such a way that he has forfeited all rights in the child or is incapable of caring for the child.

This statute would eliminate the two largest problems which exist under the present Iowa Statute. The natural parental rights can be terminated where the parent has placed the child in a foster home but refuses to give consent for adoption. The termination would also prevent the natural parent from finding where the child is located, which can be done under the present statute.[79] Under the provisions of this statute, the natural parent cannot harass the adoptive parents as the natural parent will not know where to look for the child.

This proposal represents another step in protecting all parties to an adoptive placement.

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[75] *In re* Adoption of Cheney, 244 Iowa 1180, 59 N.W.2d 685 (1953).

[76] H.F. 273, 60th G.A., § 6 (Iowa 1963), provided that: "Except where a petition is filed by a stepparent or by relatives of the child, no petition *shall* be entertained unless prior to the filing of the petition: (1) a decree of termination of the parent-child relationship with respect to each living parent of the child sought to be adopted has been entered". This in turn relates to Section 59 of S.F. 321, 60th G.A., which provided that the Court may terminate parental rights where the natural parents desire to terminate the parent-child relationship, if the Court would find one or more of the following conditions existing: "(a) That the parents have abandoned the child. (b) That the parents have substantially and continuously or repeatedly refused to give the child necessary parental care and protection. (c) That although financially able, the parents have substantially and continuously neglected to provide the child with necessary subsistence, education, or other care necessary for his physical or mental health or morals or have neglected to pay for his subsistence, education or other care when legal custody is lodged with others. (d) That the parents are unfit by reasons of debauchery, intoxication, habitual use of narcotic drugs, repeated lewd and lascivious behavior, or other conduct found by the court likely to be detrimental to the physical or mental health or morals of the child. (e) That following an adjudication of neglect or dependency, reasonable efforts under the direction of the court have failed to correct the conditions leading to the termination."

[77] H.F. 273, 60th G.A., § 9 (Iowa 1963).

[78] S.F. 321, 60th G.A., § 66 (Iowa 1963).

[79] Herman v. McIver 248 Iowa 619, 80 N.W.2d 500 (1957).

3. Change with Regard to Pre-placement Investigation

The last major change proposed by the two acts introduced during the 60th Iowa General Assembly with regard to pre-adoption procedure is that an investigation must be completed before the placement occurs.[80] The pre-placement investigation would be separate and apart from the investigation which is now made after the petition is filed.[81]

The present statute has no provision for an investigation before placement. In many cases the child is not suited for placement with the particular adoptive parents due to mental, or physical defect in the child, unfitness of the adoptive parents or some other defect or problem, and because of this unfitness, the adoption fails.[82] The reason why this unfitness is not seen before the placement is made is due in part to the failure to investigate any of the parties by the person arranging the placement. In many cases a child is placed where a "friend" has found a child for the adopters without the friend knowing anything of the child's background or of the adoptive parents' ability to care for the child.[83]

Investigation after the placement is made comes too late in many instances. When the child has lived in the home for some time, emotional ties are formed between the child and the new parent and courts are reluctant to break these ties.[84] The courts would often leave the child in an unsatisfactory home rather than subject it to the trauma of uprooting it from familiar surroundings.[85]

In the pre-placement study by a licensed child placing agency, there is an investigation of the natural parents, a study of the child, an evaluation of the prospective adoptive parents, and a supervised probationary period.[86]

The requirement of having a pre-placement investigation would almost completely eliminate independent placement of children, due to the fact that the person arranging the adoption would have no place to keep the child while conducting an investigation of the physical and mental aspects of the particular child.[87]

The Inter-Professional Committee has suggested that the pre-placement investigation is unnecessary, but has recommended that immediately after opening of adoption proceedings, the investigation be started.[88]

It would appear that the pre-placement investigation could be used as an alternative proposal to the mandatory agency placement provision. This provision would control the "black market" situation without completely foreclosing the attorney and other professional persons from making child

[80] H.F. 273, 60th G.A., § 6 (Iowa, 1963). "Except where a petition is filed by a stepparent or by relatives of the child, no petition for adoption shall be entertained unless prior to the filing of the petition: . . ."
"3. An investigation has been made by a child-placing agency prior to placing the child in the home of the petitioners. The investigation shall include the social history, the suitability of the home, and a statement that the child is suitable for adoption."

[81] IOWA CODE § 600.2 (1962).

[82] Perlman & Wiemer, *Adoption of Children, 1953: A Statistical Analysis*, 40 IOWA L. REV., 336 (1955).

[83] Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 237-38 (1955).

[84] Comment, 59 YALE L.J. 715, 731-32 (1950).

[85] *Ibid.*

placements. This is another indication of the continuing change in attitude to protect the children in adoptive placements.

CONCLUSION

The Iowa legislators have gone far in recognizing all three parties to the adoption proceeding. They have progressed from the deed and property concept to the social investigation and judicial decree type of adoption. The question now is whether they should go still further and provide that many of the discretionary functions left to the court be vested in the social agencies.

It may be that certain investigations and proceedings should be held before an adoption decree is granted, as it is clear that judges do not always make adequate inquiry or avail themselves of resources that would touch on the propriety of particular adoptions.[89] It is, however, questionable as to whether discretionary powers of the court to grant an adoption should be cut off by giving social workers a free hand in guiding the adoption process.[90] The policy of removing a child from the home of a foster parent just because the social worker "doubts" the foster mother's stability is to be questioned and should be ruled upon by the court.[91] Thus, the provision for allowing all child placements to be made by public and private child placing agencies should be checked quite carefully by the legislators.

The clarification of procedures for termination of parental rights is badly needed. The proposed legislation presents no substantial substantive changes over the present statute, but does rearrange the procedural processes. The statute would be very helpful to judges, social workers, and lawyers in arranging for the adoption of a child.

The provision for pre-placement investigation would add much to the present day Iowa adoption law. This amendment would discourage those people who are interested in placing children only for profit. It would also provide some assurance that all parties to the adoption process receive some degree of protection.

In regard to the pre-adoption procedure, these Acts would utilize the talents of both the social workers and the judges. To the extent that the amendments are in aid of the judge in deciding the propriety of an adoptive placement without cutting off his discretionary authority, the amendments are quite adequate. The primary considerations are moving toward the ultimate goal of providing protection and consideration for the natural parent, the adoptive parent, and, especially, — the child.

JOHN T. WARD (June 1964)

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[86] I SCHAPIRO, A STUDY OF ADOPTION PRACTICE 67-68 (1956); Comment, 59 YALE L.J. 715, 718 (1950).

[87] *Ibid.*; see also Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 267 (1955).

[88] Report of the Interprofessional Adoption - Study Committee 4 (Feb. 2, 1960, unpublished).

[89] *In re* Adoption of Cannon, 243 Iowa 828, 53 N.W.2d 877 (1952), KORNITZE, CHILD ADOPTION IN THE MODERN WORLD 22, 43, 311 (1952).

[90] Newbold, *Jurisdictional and Social Aspects of Adoption*, 11 MINN. L. REV. 605, 622 (1927).

[91] Adoption of Lingol, 107 Cal. App. 2d 457, 237 P.2d 57 (1952).