

U. S. DEPARTMENT OF LABOR  
JAMES J. DAVIS, Secretary  
CHILDREN'S BUREAU  
GRACE ABBOTT, Chief

# ADOPTION LAWS IN THE UNITED STATES

A SUMMARY OF THE DEVELOPMENT OF ADOPTION  
LEGISLATION AND SIGNIFICANT FEATURES  
OF ADOPTION STATUTES, WITH THE  
TEXT OF SELECTED LAWS

By

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LETTER OF TRANSMITTAL

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U. S. DEPARTMENT OF LABOR,  
CHILDREN'S BUREAU,  
*Washington, June 1, 1925.*

SIR: There is transmitted herewith a report on adoption laws in the United States, prepared by Emelyn Foster Peck under the supervision of the director of the social-service division of the Children's Bureau.

Miss Peck received many helpful suggestions from Prof. S. P. Breckinridge, of the University of Chicago, and the bureau is further indebted to Professor Breckinridge for help in connection with the final editing of the report.

Respectfully submitted.

GRACE ABBOTT, *Chief.*

Hon. JAMES J. DAVIS,  
*Secretary of Labor.*

v

STATE OF MISSOURI

IN SENATE

January 10, 1900

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE  
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE  
MAY 15, 1899, RELATIVE TO THE LANDS BELONGING TO THE STATE  
OF MISSOURI

ST. LOUIS: 1900.

# ADOPTION LAWS IN THE UNITED STATES

## DEVELOPMENT OF ADOPTION LEGISLATION IN THE UNITED STATES

Adoption is a means of creating the legal relation of parent and child between a child deprived of the care and protection of his own parents and the person wishing to take the child into his own home. It involves the severance of relationships existing between blood kindred and the voluntary assumption of parental obligation through a legal process. The common law knew no such transfer,<sup>1</sup> but the Roman and the Civil law developed such a procedure.<sup>2</sup> This has been embodied in the legislation of every State in the Union (including the Territories under the jurisdiction of the United States), in the form of a judicial determination or in the form of transfer by deed. These statutes vary greatly among the States as well as between those of early date and those of more recent enactment.

This study is concerned primarily with the personal relationships involved in adoption. Its purpose is to bring together the main features of the various State adoption acts, as well as of certain other statutory provisions which also affect the common-law rights and duties of parents in respect to their children, and to note the trend of this legislation in the light of modern developments in child care and protection.<sup>3</sup> These statutes, whether of the older or of the more modern form, contain provisions dealing with certain essential features of the transaction, namely, jurisdiction, the procedure, the legal consequences, and provision for rehearing. Only the more recent statutes contain further provisions for certain attempted safeguards of the child's well-being. A great body of litigation under these statutes is concerned with the rights of property consequent upon adoption (see *Inheritance of property*, p. 20); but the human aspects of the question are at present of especial concern to those interested in child welfare.

<sup>1</sup>Although adoption was unknown to the law of England, a process popularly bearing this name developed there. Charitable organizations built up child-placing systems for the purpose of providing for homeless children, and this placing of children is called adoption. Reports by a committee appointed by the Secretary of State for the Home Department in 1920 recommend the passage of acts of Parliament covering adoption proper (adoption regulated by law and requiring court sanction) and of acts covering placement in family homes previous to and independent of adoption. See Reports of the Committee on Child Adoption, Home Department, Great Britain (Cmd. 1254, 1921; Cmd. 2401, 1925, London, England).

<sup>2</sup>The principal motive for adoption in the Civil law was heirship. The Roman adopter had to be without heirs or the expectation of natural heirs, and older than the person to be adopted just as a father is older than his child. The person adopted assumed the family name of his new parent in addition to his own, acquired rights of succession to this parent, and retained such rights in his own family. See *Roman Law in the Modern World*, by Charles Phineas Sherman, 2d edition, Vol. II, secs. 496-503 (New Haven Law Book Co., New Haven, Mass., 1922). The Roman law, as crystallized under Justinian, was largely drawn upon by the French in the Code Napoleon, and the law of Spain came under this influence. Hence Louisiana (whose common law was the law of France) and Texas and California (whose common law was the law of Spain) were in early days familiar with adoption. See *A Brief on the Adoption and Legitimation of Children*, by Joseph A. Joyce, p. 1 (Oakland Tribune Publishing Co., Oakland, Calif., 1890). See also *Vidal v. Commagère*, 13 La. Ann. 516; *Eckford v. Knox*, 67 Tex. 200, 204; *Ross v. Ross* (1880), 129 Mass. 243.

<sup>3</sup>In general the analysis covers legislation through May, 1925.

## ADOPTION BY DEED

Provision for adoption by a deed certified and filed as in a transfer of property or as in the making of a valid will was not uncommon in the Southern States and is still found, sometimes with another later form, in the laws of Louisiana, Texas, Iowa, and Pennsylvania.<sup>4</sup> The older law of Pennsylvania provided for adoption by duly executed and recorded deed, the person adopting being required only to be of age; but as the word "child" was used (instead of "minor") the scope of the law is not entirely certain.<sup>5</sup> In Alabama the person adopting acknowledges before the probate judge a written declaration signed by two witnesses.<sup>6</sup> A Georgia law makes provision for any one desiring to adopt a child "so as to render it capable of inheriting his estate."<sup>7</sup> Certain rulings on appeal would seem to show that "adoption by deed" may hold good for the inheritance of property but, without consent of parents, may not otherwise stand as an adoption.<sup>8</sup>

## INDENTURE, APPRENTICESHIP, BINDING OUT

The English common law of master and servant, together with statutory provisions regarding apprenticeship, indenture, and binding out, were early incorporated into American statutory law. Since they had much to do with disposing of poor children in England and in Colonial America, they exerted an influence on adoption legislation in the United States.

The English indenture system flourished in the days when some sort of apprenticeship was a prerequisite to employment. The law laid upon the guardians of the poor the duty of having all poor children indentured or apprenticed. "The poor and laborious part of the community, when past the age of nurture, are taken out of the hands of their parents by the statutes for apprenticing poor children."<sup>9</sup> The public official could so bind the child until his majority without the consent of the parent, or over his objection. The system became less prevalent with the change in the character of the industrial world. In America, however, indenture lingered as a method of providing for poor children. Several old acts, still unrepealed, permit or "require" poor-law officers, county judges, or mayors of cities to bind out until their majority destitute minors liable to become public charges. Yet the poor laws usually enjoined the support of the child by the parent, and of the indigent parent by the child when the child was of sufficient age and capacity.

Originally in some of the States it would appear that a child taken into a family to become heir-at-law was adopted; a minor taken in for his services was "bound," or "indentured."<sup>10</sup> A few of the

<sup>4</sup>Louisiana, Wolff's Constitution and Statutes of Louisiana, 1920, p. 1186; Texas, Vernon's Complete Texas Statutes, 1920, art. 1, p. 1; Iowa, Annotated Code 1924, ch. 7, sec. 10499; Pennsylvania, Statute Law 1920, sec. 57, p. 6.

<sup>5</sup>Pennsylvania, act of Apr. 2, 1872, Laws of 1872, No. 31. This law was repealed in 1925 (see Laws of 1925, act 93, approved Apr. 4, 1925).

<sup>6</sup>Alabama, Code 1923, ch. 323, sec. 9302, pp. 410-411.

<sup>7</sup>Georgia, Park's Annotated Code 1914, sec. 3016, p. 1485.

<sup>8</sup>In re Cozza (1912), 163 Calif. 514; 125 Pac. 161. This case is concerned with necessity for parental consent.

<sup>9</sup>Blackstone, Sir William: Commentaries, Book I, Ch. XLV.

<sup>10</sup>Delaware, Rev. Stat. 1915, secs. 3063-3066, pp. 1432-1433; and (the Masters, Apprentices, and Servants Law) secs. 3101-3122, pp. 1447-1453, which were repealed by act of Mar. 28, 1921, ch. 185, Laws of 1921, p. 605.



earlier adoption acts provide that the judge shall decide upon the fitness of the proposed new home "having reference to the degree and condition of the (child's) parents,"<sup>11</sup> thus intimating that children of certain parentage were not suitable for adoption. Many acts relating to destitute children provide for "indenture or adoption."<sup>12</sup>

In the latter part of the last century, when the movement to take children out of almshouses was in full swing, a tendency away from the harsh indenture laws was also evident. Objection is often raised to child placing, even when it has been carefully guarded by original investigation and subsequent oversight, because of the popular prejudice aroused long ago by the "little slaves" of the old indenture system.

#### RELATION OF ADOPTION TO THE LAW OF PARENT AND CHILD

The establishment of the legal relation of parent and child between the child and adopting parents is the purpose of the process of adoption, as has been stated. There are certain results of this relation. One is the right to bear the name of the adopting parent. Another is the right of the adopting parent to the custody of the child and to the enjoyment of his services and earnings. A third is the corresponding right of the child to support and care. Lastly appear the reciprocal rights of inheritance.

Invasion of parental rights, sacred as they have been held, was no uncommon thing in the English legal tradition. The compulsory indenture of children of laborers and of the poor has been noted. Another public right in derogation of parental power and for the good of the child and of the State was the king's duty of guarding the interests of infants and dependents. The State through chancery came to represent this power and duty, and a parent had no vested rights in the child that the State, as *parens patriæ*, might not interfere with.<sup>13</sup>

This same principle has appeared in the rulings of American higher courts. The Massachusetts Supreme Court in 1907 affirmed<sup>14</sup> that parents "have no inherent right of property in their minor child, of which they can in no way be deprived without their consent. They are the natural guardians of their child entitled to its custody \* \* \* this right is not an absolute and uncontrolled one. It will not be enforced to the detriment or destruction of the happiness and well-being of the child."

The development of child-welfare measures during the last hundred years, with the attention given to compulsory education, to regulation of child labor, and to child-health measures, expresses the intent of the State to act for the welfare of the child. The recognition of the essential unity of family life is fundamentally sound and can safely be given increasing attention in plans for the care of children who require the special protection of society as the provision for the enforcement of parental duties becomes more nearly adequate. Parental consent lies at the foundation of the original idea of adoption. The child's parent entered into a contract with the person wishing to adopt. Parental consent in the case of apparently homeless children

<sup>11</sup> As in Maine, Rev Stat. 1916, ch. 72, sec. 37 p. 1094; Washington, Remington's Comp. Stat. 1922, sec. 1698, pp. 895-896; Hawaii, act of Apr. 6, 1915, act 47, sec. 2, Laws of 1915, p. 50.

<sup>12</sup> As in Michigan, (for text of law see Appendix I, p. 44) and Montana, Rev. Codes 1921, sec. 10471, p. 645.

<sup>13</sup> *Van Matre v. Sankey* (1893), 148 Ill. 536; 36 N.E. 628.

<sup>14</sup> *Purinton v. Jamrock* (1907), 195 Mass. 187; 80 N.E. 802.

is perhaps the most perplexing point in the matter of adoption, and its treatment in the statutory provisions exhibits great variation. A tendency has been noted toward the use, not of minutely drawn statutory provisions, but of a broad grant of power to an administrative board equipped with workers trained in the investigation of problems of neglected and destitute children. Judicial action is guided by the recommendation of such State boards. The advisability of severance of the relations between the child and its parents and the suitability of the proposed foster home both receive consideration. Attention is also directed toward the preservation of family ties whenever this would promote the child's welfare,<sup>15</sup> and laws dealing with desertion and nonsupport have emphasized the duty of parents to care for their own children whenever possible.

These tendencies are in contrast with earlier policies which have seemed to encourage poor parents to give up their children. The influence of the indenture or binding-out laws was undesirable, and institutions have received children from their parents without sufficient consideration of other possibilities and without the sanction of a court or other public body. Abuses were inevitable, especially in connection with foundling asylums and lying-in homes, where in some localities it was easy to dispose of a child. People of varying degrees of fitness were anxious to adopt infants if the parents could be quickly lost to sight; and death rates were high among young babies separated from their mothers and cared for in institutions. Illegitimate children were especially likely to suffer hardship, and legislation in their behalf, making more adequate provision for paternal support and maternal care, is comparatively recent.<sup>16</sup>

Although parental consent is essential the adoption acts of the various States show a gradual development from a transaction of a contractual character toward a procedure in which human values are carefully considered and the supervisory duty of the State is recognized. All stages in this development are illustrated in statutes in force at the present time. Some have scarcely been touched for half a century. Others, notably those of Minnesota, North Dakota, Ohio, Oregon, and Virginia, are the expression of modern practical thought.

### LIMITATIONS ON TRANSFER OF PARENTAL CONTROL

Of especial interest in connection with adoption are recent sections of law covering the whole subject of the transfer of parental responsibility through organizations, through individuals, or by the parents themselves.

Minnesota provides that no person other than parents or relatives may assume permanent care and custody of any child under 14 years of age except by authorization of a court. No parent may transfer parental rights and duties. This is a prerogative of the court in proceedings for adoption.<sup>17</sup>

<sup>15</sup> See *Laws Relating to Mothers' Pensions in the United States*, by Laura A. Thompson (U. S. Children's Bureau Publication No. 63, Washington, 1919) and *A Tabular Summary of State Laws Relating to Public Aid to Children in Their Own Homes, in Effect Jan. 1, 1925*, by Lulu L. Eckman (U. S. Children's Bureau Chart No. 3, Washington, 1925).

<sup>16</sup> See *Illegitimacy Laws in the United States and Certain Foreign Countries*, by Ernst Freund (U. S. Children's Bureau Publication No. 42, 1919), and *Illegitimacy Laws of the United States Passed during the Years 1919 to 1922, Inclusive* (U. S. Children's Bureau leaflet). See also the *Uniform Illegitimacy Act Drafted by the National Conference of Commissioners on Uniform State Laws, 1922*, the provisions of which were substantially incorporated in the statutes of North Dakota, South Dakota, New Mexico, and Nevada in 1923.

<sup>17</sup> For text of law see Appendix I, p. 28.

North Dakota provides that none but the parents or relatives may assume the permanent care and custody of a child under 18 years of age, except upon court order, and that parents may not assign nor otherwise transfer such rights or duties. This does not affect the right of the parent to consent in writing to the legal adoption of his child.<sup>18</sup> Similar legislation may be observed concerning children under 17 years of age,<sup>19</sup> under 16 years of age,<sup>20</sup> under 3 years of age,<sup>21</sup> and under 2 years of age.<sup>22</sup>

In New Jersey the parent, guardian, or person having custody who fails to notify the commissioner of the department of institutions and agencies and to secure his written consent before offering through the public press to surrender a child for indenture or adoption becomes liable to prosecution for cruelty and neglect.<sup>23</sup>

Laws dealing with maternity hospitals and child-caring institutions contain prohibitions of the transfer of custody or control of children, except upon court order or permission from some specified public authority. Exceptions are made in the case of persons related by blood or marriage. In addition to the statutes there are regulations and minimum standards for the conduct of such institutions, issued under the authority given by the statutes of various States (see also State Supervision of Adoption, p. 22).

The rules of the child welfare commission in Alabama direct that "in no case shall a so-called illegitimate child or child of an unmarried mother be taken away by relatives other than the mother from such institutions without the written consent of the court having jurisdiction over adoptions and placements in the county in which the institution is located. In no case shall a so-called illegitimate child or child of an unmarried mother in such institution be taken from the State until an investigation is made by the child-welfare department and written permission is granted." The Connecticut department of public welfare similarly directs that "when a child is given up by the boarding mother it shall be given up only to the parents, guardian, or other person having the legal right to receive it." In Missouri such surrender of a child may not be made except upon petition to a juvenile court having jurisdiction and the order or approval of the court.<sup>24</sup>

In Maryland a child under 6 months of age may not be separated from its mother for placement in a foster home or institution except on court order or with the consent of the State board of charities or on the signed recommendation of two physicians qualified to practice in the State. In North Carolina the mother may not surrender her infant of this age except with the written consent of specified public authorities. In South Carolina a report of such removal must be made to the child-placing bureau of the State board of public welfare "unless the person removing said child \* \* \* knows that said child was born in wedlock and was not removed from its mother because of immoral surroundings."<sup>25</sup>

<sup>18</sup> For text of law see Appendix I, p. 30.

<sup>19</sup> Michigan. For text of law see Appendix I, p. 44.

<sup>20</sup> Alabama, act of Oct. 1, 1923, Laws of 1923, p. 725, sec. 9.

<sup>21</sup> Indiana, Burns' Annotated Stat. 1914, sec. 3678 (Acts of 1909, ch. 154, p. 369, sec. 12, p. 374)

<sup>22</sup> Nebraska, Comp. Stat. 1922, sec. 8260, p. 2563; Ohio, Gen. Code 1921, sec. 6273, p. 3025.

<sup>23</sup> New Jersey, act of Feb. 28, 1918, ch. 147, sec. 101, Acts of 1918, p. 343 as amended by act of Apr. 11, 1919, ch. 97, sec. 2, Acts of 1919, p. 222. See also Appendix I, p. 47.

<sup>24</sup> For text of law see Appendix I, p. 47.

<sup>25</sup> For text of laws see Appendix I, pp. 47 (Md.), 48 (N. C.), 48 (S. C.).

## JURISDICTION OVER ADOPTION PROCEEDINGS

The question of jurisdiction covers (1) the area over which the court exercises authority, (2) the subject matter with which the court deals and its equipment for handling adoption cases, (3) exclusive or concurrent jurisdiction, and (4) the residence of the petitioners, of the child, and of its parents.

### TERRITORIAL JURISDICTION

In most of the States jurisdiction over adoption is given to a court exercising authority over the area of a county. Courts which serve a county are vested with jurisdiction in adoption proceedings as follows: The county court in Nebraska, Oklahoma, Oregon (except in Multnomah County, where the court of domestic relations has jurisdiction), South Dakota, Texas, and Wisconsin; the probate court in Alabama, Arkansas, Idaho, Kansas, Maine, Massachusetts, Michigan, New Hampshire, and Ohio; the orphan's court in Delaware, New Jersey, and Pennsylvania (municipal court in Philadelphia County); the superior court in Arizona and California; the court of common pleas in South Carolina; the county judge or surrogate in New York (see also p. 7). Courts serving an area which may be less than a county have jurisdiction in Connecticut and Vermont, where the probate court has jurisdiction, and in Rhode Island, where the municipal or probate court of the town has jurisdiction.

In the remaining States in which adoption proceedings require judicial sanction jurisdiction is vested in a court which serves an area larger than the county unit, although in some of these a county or municipal court has concurrent jurisdiction. These States are as follows: The district court in Colorado (or county court; juvenile court in Denver), Minnesota, Montana, Nevada, New Mexico, North Dakota (or county court in counties where it has been given increased jurisdiction), Utah, and Wyoming; circuit court in Florida, Illinois (or county court), Indiana (or in case of dependent or neglected child the circuit, probate, or superior court), Kentucky, Missouri (juvenile division), Tennessee (concurrent with county court), Virginia (or corporation or hustings court), and West Virginia; the superior court in Georgia, North Carolina, and Washington; chancery court in Mississippi; and the equity court in Maryland. Iowa, Louisiana, and Texas are the only States in which adoption proceedings do not require judicial sanction. In Iowa adoption is accomplished by acknowledging the necessary papers and recording them in the office of the recorder of deeds; in Texas they must be so acknowledged and filed in the county court, and in Louisiana notarial sanction is all that is required.

### COURTS HAVING JURISDICTION

Here the questions arising are: Is the court to which jurisdiction in adoption has been given a "socialized" court, i. e., a juvenile court or domestic-relations court or one equipped for social investigation? Is it a probate, county, district, or circuit court to which has also been granted juvenile jurisdiction? Or is it a court that, apart from matters of adoption, guardianship, and trusteeship, has nothing to do with "juvenile cases" as such? These questions have come up in

States where revision of the adoption law has been under recent discussion.

Certain groups have wished to see jurisdiction in adoption cases given to the more highly socialized juvenile and domestic-relations court. Certain other groups have felt that this power should be kept exclusively in courts historically dealing with matters of probate and away from those courts popularly associated with the delinquency of children or of parents in respect to their children.

#### Juvenile and Domestic-Relations Courts.

In a few instances jurisdiction has been given to juvenile courts. This has been the case in New York State (with limitations) and in Missouri.<sup>26</sup> In Oregon jurisdiction is given in counties with a population of 200,000 or more to domestic-relations courts, which have juvenile jurisdiction and jurisdiction over certain types of adult cases affecting the family or the child.<sup>27</sup> In other counties cases of adoption go into county courts. In Arizona the juvenile court may act in the adoption of children who have been brought before it as dependent, incorrigible, or delinquent.<sup>28</sup>

#### Courts Acting in Separate Sessions as Juvenile Courts.

In certain States the county, circuit, or other court which already had jurisdiction in adoption cases is that which, by later law, may act in separate sessions as a juvenile court. In Idaho jurisdiction in adoption rests in the probate court,<sup>29</sup> which by a subsequent law was given jurisdiction, in separate sessions, in cases of dependent, neglected, and delinquent children.<sup>30</sup> In Illinois adoptions go into the circuit or county courts,<sup>31</sup> which also have juvenile jurisdiction.<sup>32</sup> In Indiana jurisdiction in adoption is placed in the circuit court; in adoption of children who have been declared neglected or dependent, jurisdiction is given to all circuit, probate, or superior courts of the State.<sup>33</sup> Juvenile courts are provided for in counties containing cities of 100,000 or more inhabitants, such courts not having probate jurisdiction. In other counties the circuit courts act as juvenile courts.<sup>34</sup> In Kansas the probate court has jurisdiction, and the probate judge sits as judge of the juvenile court.<sup>35</sup> In Nevada jurisdiction in adoption and jurisdiction in juvenile-court cases go into separate sessions of the district court.<sup>36</sup> In North Dakota the district courts and county courts when given increased jurisdiction have adoption jurisdiction. The district court has juvenile jurisdiction.<sup>37</sup> In Pennsylvania, by a law passed in 1923, the Philadelphia Municipal Court (serving Philadelphia County), which has jurisdiction in juvenile and domestic-relations cases, was given jurisdiction in adoption

<sup>26</sup> Missouri, Rev. Stat. 1919, ch. 11, sec. 1095, p. 462; New York, act of Apr. 10, 1922, ch. 547, sec. 5 Laws of 1922, pp. 1262-63. Special laws in New York State apply to certain counties. Under a 1925 decision of the appellate court this jurisdiction probably will be limited to children who are dependent, neglected, or delinquent. In New York city this limitation is expressly stated by an act of 1924 which confines such jurisdiction to cases of dependent, neglected, or delinquent children (Laws of 1924, ch. 254, sec. 7).

<sup>27</sup> Oregon, Oreg. Laws 1920, sec. 9787(c), p. 3509.

<sup>28</sup> Arizona, Rev. Stat. 1913 (Civil Code), sec. 3565, p. 1232.

<sup>29</sup> Idaho, Comp. Stat. 1919, ch. 185, sec. 4687, p. 1341.

<sup>30</sup> *Ibid.*, ch. 290, sec. 7904, p. 2232; and ch. 41, sec. 1011, p. 285.

<sup>31</sup> Illinois, Smith's Rev. Stat. 1921, ch. 4, sec. 1, p. 25.

<sup>32</sup> *Ibid.*, ch. 23, sec. 191, p. 170. In counties of over 500,000 population (i. e., Cook County) the juvenile court is a branch of the circuit court, and the county court does not have juvenile jurisdiction in that county.

<sup>33</sup> Indiana, Burns' Annotated Stat. 1914, secs. 868, p. 583, and 874a, p. 586.

<sup>34</sup> *Ibid.*, sec. 1630, p. 877.

<sup>35</sup> Kansas, Rev. Gen. Stat. 1923, sec. 38-106, p. 582, and sec. 38-401, p. 590.

<sup>36</sup> Nevada, Rev. Stat. 1912, sec. 5826, p. 1698; secs. 729, 730, p. 219.

<sup>37</sup> For text of law see Appendix I, p. 29.

proceedings.<sup>38</sup> In South Dakota adoption goes into the county court, and the county court sits also for "juvenile cases."<sup>39</sup> Tennessee places adoption in the circuit and county courts; the county judge or the chairman of the county court acts as judge in the hearing of juvenile-neglect and delinquency cases.<sup>40</sup> Texas, which provides for adoption by certified statement filed in the office of the clerk of the county court, gives jurisdiction in "juvenile cases" to the county and district courts.<sup>41</sup> Washington gives both jurisdictions to the superior court of the county.<sup>42</sup>

Where jurisdiction rests in a court that in separate sessions sits as a juvenile court or where it rests in a court whose judge is designated to preside over the juvenile court, machinery for investigation may be more readily available to the judge and, having become familiar with its use in the juvenile court, he may more readily realize its value in adoption cases.

#### Courts Having No Juvenile Jurisdiction.

In many States the courts dealing with adoption have no connection with juvenile courts, and their judges, as such, have no experience in sitting as judges of juvenile sessions. In such courts, unless special provision is made for investigation, adoption is likely to be regarded simply as one of many matters of probate, not as a matter in which protection of the child through a study of the case is an obligation resting upon the court.

#### Concurrent Jurisdiction by Two or More Courts.

Jurisdiction may be placed exclusively in one court or may be given concurrently to two or more courts. Concurrent jurisdiction given to courts some of which are with and some without provision for investigation is of special interest. Reference has been made to jurisdiction given in certain cases in New York State to the juvenile courts.<sup>43</sup>

### JURISDICTION AS TO RESIDENCE OF THE PARTIES IN INTEREST

Many of the States specify that the court before which the petition for adoption is filed be for the county of residence of the petitioner; some specify that it shall be that of the child.<sup>44</sup> Certain States provide that it may be either.<sup>45</sup> Still other States, as Oregon and South Carolina,<sup>46</sup> provide also for adoption in the county where the institution in which a destitute child has received care is situated.

### ADOPTION PROCEDURE

The first feature of a valid adoption proceeding is the presence of the necessary parties—the adopting parents, the child's parents or their substitutes, and the child. The remaining features comprise the legal steps involved in the process—the petition of the adopting parents,

<sup>38</sup> Pennsylvania, act of May 11, 1923, Laws of 1923, No. 147, p. 201.

<sup>39</sup> South Dakota, Rev. Code 1919, sec. 206, p. 49; sec. 9973, p. 2589.

<sup>40</sup> Tennessee, Thompson's Shannon's Code 1918, sec. 5402, p. 2225; sec. 4436a-37, p. 1892a.

<sup>41</sup> Texas, Vernon's Complete Stat. 1920, art. 1, p. 1; art. 2185, p. 380; Code of Criminal Procedure, art. 1198, p. 140.

<sup>42</sup> Washington, Remington's Comp. Stat. 1922, sec. 1696, p. 894; sec. 1987-2, v. 1011.

<sup>43</sup> See footnote 26, p. 7.

<sup>44</sup> For text of laws see Appendix I, pp. 27 (Minn.), 29 (N. Dak.), 30 (Va.), 35 (N. Mex.).

<sup>45</sup> For text of laws see Appendix I, pp. 38 (Mass.), 41 (N. J.), 32 (Ohio).

<sup>46</sup> South Carolina, Code 1922, sec. 5578, pp. 1698-1699. For text of Oregon law see Appendix I, p. 35.

notice to the child's parents (or their substitutes), their consent, and the judicial determination. These points will be found in all adoption laws providing for court action.<sup>47</sup>

In addition, provision is frequently made in recent statutes for the use of social agencies, either attached to the court or possibly of a private character, capable of supplying the court with such facts that the decision may rest on recognition of the child's real needs. The statutes will likewise require such other precautions as compelling the appearance of all parties at the hearing and providing for a trial period in the prospective adoptive home, together with provision for termination of the relation by means of annulment procedure.

### THE PARTIES TO ADOPTION

The parties to an adoption proceeding consist of the person or persons who seek to adopt, the child's parents who may or must consent, and the child to be adopted. Some specification or restriction concerning each of the parties appears in much of the legislation.

#### The Adopting Parent.

The age of the adopting parent is seldom specified in the statutes otherwise than by the requirement that he must be an adult. Louisiana, "a Civil-law State," directs that the person adopting shall be 4 1/2 years of age and 15 years older than the person to be adopted.<sup>48</sup> Nevada, Montana, Oklahoma, South Dakota, and Utah require at least 10 years difference in age.<sup>49</sup> Massachusetts directs merely that the person adopting be older than the person adopted.<sup>50</sup>

It is of interest to note the recommendations of the committee on child adoption in Great Britain that the person adopting be 20 years older than the child, also that husband and wife adopting jointly be at least 25 years of age, and that other persons adopting be at least 20.<sup>51</sup> But waiver of the age requirements is permitted at discretion of the judge. The Norwegian law of 1917, a carefully drafted statute, requires that the person adopting be at least 25 years of age.<sup>52</sup>

Generally there is a provision that the person adopting must be a resident of the state<sup>53</sup> or of the county<sup>54</sup> in which the adoption occurs.

#### The Child to Be Adopted.

The person to be adopted is variously referred to as a "child," "minor," "minor child," or "another person younger than himself."<sup>55</sup> Sometimes it is clearly stated that either a minor or an adult may

<sup>47</sup> Massachusetts seems to have been the first State to pass what may be considered an adoption law proper (act of May 24, 1851, ch. 324, Acts and Resolves of 1851, pp. 815-816). This provided for petition to the probate judge, written consent of the child's parents, if living, or for consent of guardian, next of kin, or next friend, if parents were deceased; the decree of adoption was to be granted by the judge if satisfied that such adoption was fit and proper. The relation between the child and his own parents was to be completely severed thereafter; and inheritance was to be as if the child were born in lawful wedlock of the adopting parents, except in case of property expressly limited to heirs of the body. The requirement of consent in case of unfit parents was modified later (act of May 18, 1871, ch. 310, sec. 3, Acts and Resolves of 1871, p. 653).

<sup>48</sup> Louisiana, Saunders' Rev. Civil Code 1920, sec. 214, pp. 33-39.

<sup>49</sup> Nevada, Rev. Laws 1912, sec. 5825, p. 1697; Montana, Rev. Codes 1921, sec. 5857, p. 51; Oklahoma, Comp. Stat. 1921, sec. 8044, p. 2783; South Dakota, Rev. Code 1919, sec. 202, p. 49; Utah, Comp. Laws 1917, sec. 11, p. 143.

<sup>50</sup> For text of law see Appendix I, p. 38.

<sup>51</sup> Home Department [Great Britain]: Report of the Committee on Child Adoption, 1925, sec. 24. See also footnote 1, p. 1.

<sup>52</sup> Norske Lovtidende, Part 2, No. 1, p. 152. Christiania, Norway, 1917.

<sup>53</sup> As in Colorado, Comp. Laws 1921, ch. 120, sec. 5512, p. 1485.

<sup>54</sup> As in California, Kerr's Civil Code, sec. 228, p. 368.

<sup>55</sup> As in Massachusetts. For text of law see Appendix I, p. 38.

be adopted.<sup>56</sup> Ambiguous clauses in certain laws<sup>57</sup> raise the question whether the father of a child born outside of marriage may or may not adopt his own child.<sup>58</sup> Some statutes prohibit this.<sup>59</sup>

The consent of the child to his adoption is necessary in Michigan and in North Dakota if the child is 10 years of age or over.<sup>60</sup> In California, Idaho, Missouri, New York, Oklahoma, Pennsylvania, South Dakota, and Utah his consent is not required unless he is 12 years of age or over.<sup>61</sup> In 14 States the age at which his consent is needed is 14 years or over. Of the 8 States providing for social investigation Arizona, Minnesota, Oregon, and Virginia make the consent of the child necessary if he is 14 years old,<sup>62</sup> Ohio if he is 13 years old, New York if he is 12 years old, Michigan and North Dakota if he is 10 years old.<sup>63</sup> Pennsylvania requires also the consent of "husband or wife, if any," of the person proposed to be adopted, and Massachusetts requires that of the husband.

An intent to protect the adopting parents appears in such legislation concerning the child as that his antecedents be investigated or his mental and physical condition be determined, or that annulment of adoption may take place if within a certain period after the granting of the decree of adoption the child prove to be feeble-minded or subject to certain diseases due to conditions prior to adoption, of which the adopting parents had no knowledge or notice at the time of the decree.<sup>64</sup>

#### The Natural Parents.

Adoption proceedings necessarily involve the parents of the child. The petition for adoption may be required to contain certain information about them or to state that such information is not available to the petitioners (see p. 11). Notice of intention to adopt is usually requisite, and lack of such notice may furnish to the natural parents the basis for an appeal (see pp. 11, 30). The consent of the living parents of a child (or of the mother of a child born out of wedlock) is almost universally required in provisions for judicial determination (see p. 12). Certain exceptions are necessary because of the existence of grounds sufficient for dispensing with parental consent or the empowering of specified persons or institutions to consent in the place of parents legally incapable of giving consent, or no longer living. The provisions for investigation seen in some of the adoption legislation likewise involve the natural parents in directing that their reasons for desiring to surrender the child be inquired into, as in Virginia, or that other relevant matters of domestic relationship be noted, as in Massachusetts, as well as that the antecedents of the child be investigated.<sup>65</sup> Parents capable of consenting to adoption are compelled by some statutes to appear at the hearing.

<sup>56</sup> As in New York (for text of law see Appendix I, p. 40) and Pennsylvania (Laws of 1925, act 93, sec. 1).

<sup>57</sup> Illinois, Smith's Rev. Stat. 1921, ch. 4, sec. 1, p. 25.

<sup>58</sup> U.S. Children's Bureau Publication No. 42, p. 23.

<sup>59</sup> For example of laws see Appendix I, pp. 27 (Minn.), 35 (N. Mex.), 30 (Va.).

<sup>60</sup> For text of law see Appendix I, pp. 45 (Mich.), 29 (N. Dak.).

<sup>61</sup> California, Kerr's Civil Code 1920, sec. 225, p. 367; Idaho, Comp. Stat. 1919, ch. 185, sec. 4686, p. 1341; Missouri, Rev. Stat. 1919, ch. 11, sec. 1096, pp. 462-463; New York, see text of law, Appendix I, p. 41; Oklahoma, Comp. Stat. 1921, ch. 70, sec. 8047, p. 2784; Pennsylvania, Laws of 1925, act 93, sec. 2, (a); South Dakota, Rev. Code 1919, sec. 205, p. 49; Utah, Comp. Laws 1917, sec. 14, p. 143.

<sup>62</sup> Arizona, Rev. Stat. 1913, sec. 1194, p. 494. See also Appendix I, pp. 27 (Minn.), 36 (Oreg.), 30 (Va.).

<sup>63</sup> For text of laws see Appendix I, pp. 32 (Ohio), 41 (N. Y.), 45 (Mich.), 29 (N. Dak.).

<sup>64</sup> For text of laws see Appendix I, pp. 28 (Minn.), 35 (N. Mex.), 31 (Va.).

<sup>65</sup> For text of laws see Appendix I, pp. 30 (Va.), 40 (Mass.).



## THE PETITION

The great majority of the statutes provide that the adopting person, if married, must petition jointly with the spouse or, if either husband or wife petitions, the consent of the other must be obtained. The point is that such steps must be taken as will make the child a child of both. Nevada and New Mexico, however, make the consent of the husband or wife of the petitioner necessary, provided he or she is capable of giving such consent.<sup>66</sup>

Many of the acts merely state that certain persons may petition and do not specify what the petition is to contain. Certain acts, however, like those of Pennsylvania and Ohio,<sup>67</sup> require the inclusion of such items as the name and age of the child; the name and address of the petitioner; the name by which the child is to be known; whether the parents are living or not; and names and addresses of the living parents, if known to the petitioners. A description of any property belonging to the child must also appear in the petition.

If a child is born outside of marriage and the statute under which he is being adopted requires that nothing be said as to illegitimacy, as in New York and Massachusetts, a statement in the petition that the child is the child of a single woman has been held not to violate such a statute.<sup>68</sup> When the act under which the petition is filed requires the name and address of both parents if living, the omission of the father's name without such a statement of explanation would render the petition incomplete.

## NOTICE

As the adoption statutes are in derogation of parental rights and liable to strict construction the matter of notice becomes very important. Many of the adoption acts specifically require notice to all those whose consent is necessary. The Minnesota act, which makes careful provision for investigation before the hearing, requires public notice in case of children whose parents are dead or have deserted, if there is no guardian within the State. It provides also that such notice as the court deems "just and practicable" shall be sent to the known kindred. If there is no duly appointed guardian, the parent who has lost custody through divorce or the father who has acknowledged paternity of a child born out of wedlock or, has been adjudged to be the father shall be notified. North Dakota has a similar provision, and Oregon also provides for notice to a divorced parent. Arizona requires that if the whereabouts of those whose consent is necessary are unknown or if such persons have gone out of the State a notice of intention to adopt shall be published once a week for three successive weeks, the last publication to be four weeks before the time appointed for hearing.<sup>69</sup> The Illinois act directs that

<sup>66</sup> Nevada, Rev. Laws 1912, sec. 5827, p. 1698; New Mexico, Stat. Annotated 1915, ch. 2, sec. 15, p. 119. The Norwegian law requires that the adoption be a joint act between husband and wife unless one spouse is mentally unsound. (Norske Lovtidende, Part 2, No. 1, p. 152.) The English report referred to in footnote, 1 p. 1, suggests waiver of consent at discretion of court.

<sup>67</sup> Pennsylvania, Laws of 1925, act 93, sec. 1. For text of Ohio law see Appendix I, p. 32.

<sup>68</sup> For text of laws see Appendix I, pp. 42 (N. Y.), 38 (Mass.), Purinton v. Jamrock (1907), 195 Mass. 187; 80 N. E. 802.

<sup>69</sup> Arizona, Rev. Stat. 1913, sec. 1191, p. 494. See also Appendix I, pp. 27 (Minn.), 29 (N. Dak.), 36 (Oreg.).

whenever it appears that a person whose consent is necessary resides outside of the State or has gone out of it or on due inquiry can not be found, publication of notice is to be made in some newspaper printed in his county or in the place of publication nearest to his county. When the address of a person whose consent is necessary and who has not given consent is within the State and known to the court the court issues summons. Rhode Island requires that if a parent does not consent in writing a copy of the petition and order shall be served on him personally, if found in the State; otherwise notice must be published once a week for three successive weeks, the last publication to be at least seven days before the time appointed for the hearing. Like notice is to be published when the child has no parent living. The court may order such further notice as it deems necessary or proper.<sup>70</sup>

#### CONSENT OF PARENTS

The consent of the child's own parents is one of the most important items of adoption procedure. Statutes providing for judicial determination almost universally require the consent of the living parents of a child born in wedlock and of the mother of a child born out of wedlock. In States permitting adoption by deed the consent of parents is not always similarly required (see p. 2).

Obviously consent of parents should not be required if they are mentally incompetent or are morally unfit to make the decision in regard to the future of the child. The circumstances in which the child's own parents may be deemed incapable of consent therefore become a matter of formal determination and are defined in many of the statutes. Likewise the proper substitutes for parents legally incapable of consenting must be specified in order that the requisite consent may be given. If the person to be adopted is over 18 years of age, parental consent may be dispensed with in the discretion of the court; and the consent of parents of persons over 21 or of full age is dispensed with in Massachusetts, New York, and Wisconsin.<sup>71</sup>

#### Parents Mentally Incompetent.

The consent of the parent, if not "hopelessly insane, intemperate, or has abandoned," is required in Colorado; Virginia and Massachusetts dispense with the consent of a parent who is "hopelessly" insane; and North Dakota dispenses with the consent of a parent "insane or otherwise incapacitated from giving consent."<sup>72</sup> The difficulties involved in determining who is hopelessly insane or intemperate or who has abandoned are obvious. Some States have attempted to make their provisions more exact. California dispenses with the consent of "a father or mother who has been declared either feeble-minded or insane by the State commission in lunacy, or by three competent persons appointed by said commission; provided, that if so declared insane, said father or mother shall have subsequently been determined to be incurably insane by the superior court of the county where he or she resides"; and Nevada dispenses with that of a parent who has been declared feeble-minded or insane by a court of

<sup>70</sup>Illinois, Smith's Rev. Stat. 1921, ch. 4, sec. 2, pp. 25-26; Rhode Island, Gen. Laws, Revision of 1923, ch. 288, sec. 4, as amended by Laws of 1925, ch. 65, sec. 4.

<sup>71</sup>For text of laws see Appendix I, pp. 38 (Mass.), 41 (N. Y.), 46 (Wis.).

<sup>72</sup>Colorado, Comp. Laws 1921, ch. 120, sec. 5512, p. 1486. See also Appendix I, pp. 30 (Va.), 38 (Mass.), 29 (N. Dak.).

competent jurisdiction.<sup>73</sup> Michigan provides for the consent of the general guardian of an insane or mentally incompetent parent; while New York dispenses with the consent of a parent who is insane as defined by the insanity law or judicially declared incompetent or who is a mental defective as defined by the mental deficiency law.<sup>74</sup> New Jersey dispenses with the consent of a parent who is habitually intemperate; Virginia, that of a parent addicted to drugs or intoxicating liquor; New York, that of a parent adjudged to be a habitual drunkard; Massachusetts, that of a parent who has been sentenced to imprisonment for drunkenness upon a third conviction within one year and neglects to provide for the child; Pennsylvania, that of a parent who has been adjudged a lunatic or habitual drunkard.<sup>75</sup>

#### Parents Deprived of Custody or Civil Rights.

The laws of a considerable number of States make unnecessary the consent of a parent deprived of civil rights, or of one who has lost custody through divorce proceedings or the order of a juvenile court.<sup>76</sup> Illinois provides that the parent's consent is unnecessary if he has been deprived of custody by a court and, by order of the same court, a guardian has been appointed authorized to consent to adoption without notice to parents; and the Illinois juvenile court law provides for such a decree.<sup>77</sup> South Dakota provides that the consent of a parent is unnecessary when the parent has been deprived of custody and the judgment sustained on appeal, or the time for appeal has expired.<sup>78</sup> As experience has brought out possibilities of harsh application of the law there have been amendments in modification. In Minnesota notice must be given to a parent deprived of custody through a divorce proceeding.<sup>79</sup>

#### Parents Who Have Deserted or Abandoned.

The vexing question of when a parent may be considered to have deserted the child has long been debated. When the child has been declared by a juvenile court to be deserted or abandoned, a court later acting in adoption would seem to have the path cleared. Otherwise the decision is often difficult.

Provisions as to desertion or abandonment, either direct or through leaving in care of children's organizations, appear in many of the adoption acts. There has been considerable confusion about the legal status of children left in institutions by parents who later neglected to pay for their maintenance. Several States, as Indiana and Pennsylvania, provide that when it is proved to the court of adoption that the child has been deserted and has no legal guardian, the court may allow adoption as if the parents were dead.<sup>80</sup> Illinois dispenses with the consent of a parent who is proved to have deserted for more than six months; Massachusetts, "if he has willfully deserted and neglected to provide proper care and maintenance for such child for

<sup>73</sup> California, Kerr's Civil Code 1920, sec. 224, as amended by act of May 23, 1921, ch. 229, Stat. of 1921, p. 307; Nevada, Rev. Laws 1912, sec. 5828, as amended by act of Mar. 22, 1921, ch. 216, Stat. of 1921, p. 324.

<sup>74</sup> For text of laws see Appendix I, pp. 45 (Mich.) 41 (N. Y.).

<sup>75</sup> New Jersey, Comp. Stat. 1910, Infants' sec. 13, p. 2807. Pennsylvania, Laws of 1925, act 93, sec. 2 (c). See also Appendix I, pp. 30 (Va.), 38 (Mass.), 41 (N. Y.).

<sup>76</sup> As New York. For text of law see Appendix I, p. 41. Consent of parent divorced because of adultery is unnecessary, but notice must be given.

<sup>77</sup> Illinois, Smith's Rev. Stat. 1921, ch. 23, sec. 209, pp. 173-174. See also Appendix I, p. 44.

<sup>78</sup> South Dakota, Rev. Code 1919, sec. 204, p. 49.

<sup>79</sup> Minnesota, Gen. Stat. 1913, sec. 7154, as amended by act of Apr. 14, 1917, ch. 222, Laws of 1917, p. 336.

<sup>80</sup> Indiana, Burns' Annotated Stat. 1914, sec. 3098, p. 169; Pennsylvania, Laws of 1925, act 93, sec. 2 (d).

two years last preceding the date of the petition; or if he has suffered such child to be supported for more than two years continuously prior to the petition by an incorporated charitable institution, or as a pauper by a town or by the commonwealth, and the Rhode Island law is similar.<sup>81</sup> Missouri dispenses with the consent of a parent who has abandoned or neglected to provide, or has left the child to the care of an institution for two years; Montana dispenses with the consent of parents who have willfully deserted or, without payment, have left the child one year in an orphan asylum. The Oregon law is very similar. California dispenses with the consent of "the father or mother of any child deserted by its parents without provision for their identification."<sup>82</sup> In Montana the provision as to parental consent is very unusual. This act makes possible the adoption of a half orphan on the consent of a majority of the board of an orphan asylum, if the parent, when able (in the opinion of that majority) to do so, has not contributed 60 per cent of the cost of the child's maintenance during the year previous to the time of filing the petition. And when the parent is not a resident of the State, a child left in the asylum over a year, whether such parent pays board or not, may be so adopted. A majority of the board may also decide whether or not the child has been abandoned.<sup>83</sup>

#### Parents Found Unfit.

In the instances noted above parental consent is dispensed with on grounds of unfitness specifically stated. The Arizona act goes further, providing that adoption may be decreed without the consent of parent, guardian, or next of kin, "where the judge considers that the interests of the child will be promoted thereby."<sup>84</sup> The Illinois statute is almost as broad, including "depravity" with four other specified grounds upon which a parent may be found unfit.<sup>85</sup> The Illinois Supreme Court has held that an adoption was not legal when the unfitness of the parent who had not consented had not been determined in the court entering the decree:<sup>86</sup> "Where the only question tried in a habeas corpus proceeding by a father for the custody of his child is whether a certain decree of adoption is valid the fact that the appellate court finds such decree was void as to the parent and reverses the order of the lower court does not necessarily establish the father's right to the custody of the child, and the cause should be remanded to permit that question to be adjudicated according to the best interests of the child." Massachusetts directs that the unfitness be determined largely by previous public record against the parents, thus causing it to rest upon more specific and therefore limited grounds in addition to those constituted by insanity, deprivation of civil rights, etc.<sup>87</sup>

<sup>81</sup> Rhode Island, Gen. Laws, Revision of 1923, ch. 288, sec. 3. See also Appendix I, pp. 44 (Ill.), 38 (Mass.).

<sup>82</sup> Missouri, Rev. Stat. 1910, ch. 11, sec. 1096; Montana Rev. Codes 1921, sec. 5859, p. 52; California, Kerr's Civil Code 1920, sec. 224, as amended by act of May 23, 1921, ch. 229, Stat. of 1921, p. 307. For text of Oregon law see Appendix I, p. 36.

<sup>83</sup> Montana, Rev. Codes 1921, sec. 5859, p. 52. See also discussion of the transfer of parental responsibility by other process than legal adoption, p. 4.

<sup>84</sup> Arizona, Rev. Stat. 1913 (Civil Code), sec. 1193.

<sup>85</sup> For text of the law see Appendix I, p. 44.

<sup>86</sup> *Sullivan v. The People*, 224 Ill. 468 (1906).

<sup>87</sup> For text of law see Appendix I, p. 38.

## CONSENT OF PERSON OR INSTITUTION IN LOCO PARENTIS

**Next Friend.**

If there be neither parent nor guardian to consent, some States provide for the appointment by the court of a next friend, guardian ad litem, or (Louisiana) "tutor" who is to represent the interests of the child, and give or withhold consent. He is the precursor of the modern social investigator. For example, Ohio provides that investigation be made through a court-appointed "next friend" found to be a "discreet and suitable person," as well as through an approved child-caring organization or the board of State charities.<sup>88</sup>

**Public Official.**

When there is no parent or guardian the consent to adoption may be given in Vermont, Connecticut, and Iowa by the poor-law official, selectmen, or mayor; in Minnesota by the State board of control; and in North Dakota by the State board of administration.<sup>89</sup> It is interesting to note that the later development of responsibility on the part of a central authority in the matter of adoption is a direct development of the local responsibility of selectmen and poor officials here shown.

**Institutions or Agencies (after court commitment).**

When children have been committed to a child-caring institution or agency by a court of competent jurisdiction the right of consent is often given to such institution or agency. Thus Ohio juvenile courts may commit to the State board or a private association or a person as guardian. But the consent given by this guardian must be approved by the juvenile court which committed the child.<sup>90</sup> Arizona gives the person or institution receiving a dependent child committed by court the right to place for adoption and to consent to adoption unless the court orders otherwise.<sup>91</sup> In Illinois juvenile courts may appoint a guardian with the power to consent to adoption, in which case no other consent is necessary.<sup>92</sup> In Indiana a petition for adoption of a child who has been adjudged dependent or neglected must be accompanied by written consent of the court or of the public board of which the child is a ward,<sup>93</sup> unless consent be given by the board of State charities. The Minnesota act provides that when the court has committed dependent or neglected children to the State board of control or to any association or individual such board, association, or individual may consent to adoption. It is specified, however, that the board of control is not authorized to consent to the adoption of a child committed for delinquency.<sup>94</sup> Kentucky makes the consent of an institution sufficient if the child has been committed to it one year prior to the petition, provided the proposed adoption has been advertised for four weeks in the county of the child's residence and provided the judge shall hear and determine any objection that may be made.<sup>95</sup> In Oregon incorporated and licensed child-caring

<sup>88</sup> For text of law see Appendix I, p. 32.

<sup>89</sup> Vermont, Gen. Laws 1917, sec. 3757, pp. 646-647; Connecticut, Gen. Stat. 1918, sec. 4878, p. 1361; Iowa, Code 1924, ch. 7, sec. 10,500. See also Appendix I, pp. 27 (Minn.), 29 (N. Dak.).

<sup>90</sup> For text of law see Appendix I, p. 32.

<sup>91</sup> Arizona, Rev. Stat. 1913 (Civil Code), sec. 3567, p. 1233-1234.

<sup>92</sup> Illinois, Smith's Rev. Stat. 1921, ch. 23, sec. 209, pp. 173-174. See also Appendix I, p. 44.

<sup>93</sup> Indiana, Burns's Annotated Stat., 1914, sec. 874b, p. 586.

<sup>94</sup> Minnesota, act of Apr. 10, 1917, ch. 194, sec. 1, Laws of 1917, p. 279. See also Appendix I, p. 27.

<sup>95</sup> Kentucky, Carroll's Stat. 1922, sec. 2072, as amended by act of Mar. 23, 1922, ch. 70, Acts of 1922, p. 215.

organizations have power to consent to the adoption of wards committed to them through permanent orders by courts of competent jurisdiction.<sup>96</sup>

Under certain statutes the court is to accept the consent of an institution or society which has been caring for a child in case the parents of the child have formally surrendered him to the organization. This is the case in Idaho, Michigan, New Jersey, and Washington.<sup>97</sup> In Massachusetts a surrender in writing by the parents operates as a consent to any adoption approved by the institution to which the child has been surrendered. The State department of public welfare may receive a child under 3 years of age by written surrender from its parents, such surrender to be equivalent to a commitment by court.<sup>98</sup> According to the Wisconsin statutes county homes for dependent children may consent, in place of parents, to the adoption of children surrendered to them by parents, and the State board of control may consent to adoption of children in the State public school,<sup>99</sup> but the supreme court of the State has held that the written consent of the State board of control or of any guardian is not a sufficient substitute for the written consent of the living natural parents where such consent is required, unless there has been an actual abandonment by such parents and a finding of such fact.<sup>1</sup> In Michigan if the child is legally an inmate of the State public school the superintendent of this school and the county agent of the State welfare commission for the county wherein the person adopting such child resides may consent to adoption.<sup>2</sup>

New York provides that the guardianship of the person and the custody of a destitute or dependent child may be "committed" to an authorized agency by the parents or, under certain specified circumstances, by one of the parents. There is no mention of consent in case of subsequent adoption of the child, and the adoption law makes no provision dispensing with the consent of parents who have so committed a child to an authorized agency.<sup>3</sup> Oregon allows parents to surrender their children to institutions or organizations but requires a specific surrender of rights in respect to adoption in order to qualify the institution to consent in the place of the parents. Six months must elapse between the surrender and the adoption. However, parents willing to consent are allowed to waive their personal appearance in court and "file their appearance and consent" to an immediate adoption.<sup>4</sup> It would seem anomalous to permit a parent to transfer by a simple written renunciation his responsibilities established by both common and statutory law; as, for instance, laws on mutual support.<sup>5</sup> A tide of legislation in a contrary direction has already set in. (For treatment of the general subject of transfer of parental responsibility otherwise than by adoption see p. 4.)

<sup>96</sup> For text of law see Appendix I, p. 36.

<sup>97</sup> Idaho, Comp. Stat. 1919, ch. 290, sec. 7902, subdiv. 1, p. 2231; Michigan, for text of law see Appendix I, p. 44; New Jersey, Comp. Stat. 1910, Infants' sec. 13, p. 2807; Washington, Remington's Comp. Stat. 1922, sec. 1700, p. 897.

<sup>98</sup> Massachusetts, Gen. Laws 1921, ch. 119, sec. 15, pp. 1176-1177.

<sup>99</sup> Wisconsin, Stat. 1923, sec. 48.28, pp. 548-549; sec. 48.22, p. 547.

<sup>1</sup> Lacher v. Venus (1922), 188 N. W. 613.

<sup>2</sup> Michigan, Comp. Laws 1915, ch. 234, sec. 14139, as amended by act of Apr. 20, 1923, ch. 70, sec. 2, subdiv. 5, Public Acts of 1923, p. 95.

<sup>3</sup> New York, State Charities Law, sec. 308, as amended by act of May 24, 1923, ch. 706, Laws of 1923, p. 1268. See also Appendix I, p. 41.

<sup>4</sup> For text of law see Appendix I, p. 37.

<sup>5</sup> See New York, Code of Criminal Procedure, sec. 914.

## INVESTIGATION BY DESIGNATED AGENCY

The most important development in recent adoption legislation is the provision for investigation by the court or through some person, agency, or board appointed or designated by the court. Especially notable is the plan of referring the matter for investigation to the State board of public welfare or to some similar body well acquainted with the problems of neglected and dependent children. Recent statutes providing for investigation—those of Arizona, Minnesota, New York, North Dakota, Ohio, Oregon, New Mexico, Pennsylvania, and Virginia—usually lay down few elaborate and absolute requirements in the matter of parental consent. The considerable space in the Virginia law devoted to this subject deals rather with general rules for the guidance of the person making the investigation.<sup>6</sup> Evidently in so delicate a matter as that of finding the point at which the relationship between parent and child should be severed, it is recognized that inflexible and just provisions are difficult to formulate. Much is left to the discretion of the court, which, through its equipment for investigation, may have access to the facts of each particular case.

The Michigan act was one of the first to require that the judge make investigation before entering the decree. By a later amendment investigation is to be made by the county agent of the county (who works under the general oversight of the State board) or a probation officer. No children may be placed in homes for adoption or otherwise by State or private institutions without the consent of the agent of the county in which the foster parents reside or of the State agent of the State institution from which the child comes. The agent must visit the children until they are legally adopted. The provision in many of the earlier acts for the appointment of a "next friend" or a guardian ad litem to act in protection of the child who had no parent or guardian, and to consent in loco parentis was an expression of public responsibility toward the child. The Ohio law makes provision for the appointment by the court of a next friend, who may be a representative of a child-caring agency or of the board of State charities. If the child is a ward of the State board or of a private agency this board or the agency must report conditions and give its recommendation. A notable point is that the State board is to furnish suitable report blanks.<sup>7</sup>

In Minnesota the court must notify the State board of control when the petition has been filed. That board is required to inquire into the condition and antecedents of the child and the suitability of the proposed home, to submit a report in writing, and to advise whether the petition should be granted. The investigation may be waived by the court for good cause shown or when the court is otherwise satisfied.<sup>8</sup> North Dakota similarly requires notice to the State board of administration and investigation by it.<sup>9</sup> In New Mexico the State board of public welfare is to be notified, and it must make

<sup>6</sup> For text of law see Appendix I, p. 30.

<sup>7</sup> For text of laws see Appendix I, pp. 45 (Mich.), 32 (Ohio).

<sup>8</sup> For text of law see Appendix I, p. 27. For discussion of the work of this State board of control in regard to adoption see "The Children's Bureau of the State Board of Control (Report of the Director of the Bureau to the Board for the Biennial Period Ended June 30, 1922), pp. 6-8 (St. Paul, Minn., Sept. 1, 1922).

<sup>9</sup> For text of law see Appendix I, p. 29.

investigation and submit a full report in writing within six months. The judge may act upon a recommendation of the board that the petition be not granted, and deny the petition, "but if the person or persons petitioning shall request a hearing, then the court shall hold such a hearing," and a representative of the board may present the views of the board. In Arizona the judge may order the proper probation officer to examine into the facts concerning the case and to report to him thereon. He may allow to the probation officer "a reasonable fee" for such service.<sup>10</sup> New York requires investigation by some person or agency specifically designated by the court.<sup>11</sup>

In Oregon the State child-welfare commission must be notified of the filing of the petition. Action is delayed for 20 days thereafter in order that the commission may furnish the court information concerning the child and the petitioner. Virginia provides that upon the filing of the petition the court shall direct a probation officer or other officer of the court, or other specified person, to investigate thoroughly and report in writing to the court. It must be ascertained why the parents (if living) desire to surrender the child, whether they have abandoned the child or are morally unfit, and whether the proposed foster parents are suitable. The physical and the mental condition of the child are also to be reported. For this the investigator may secure the opinion of a reputable physician or competent mental examiner. In Tennessee the child-caring organization consenting to adoption must submit to the court a written indorsement of the adopting parties, after "sufficient and satisfactory" investigation. Vermont authorizes investigation in the discretion of the court, which may require written reports from specified public officials within whose jurisdiction the parties to the proposed adoption reside. In Massachusetts any judge of a probate court may appoint a guardian ad litem to find the facts in any proceeding relating to or involving questions of the care, custody, or maintenance of minor children, or any matter involving domestic relations except those for the investigation of which there is provision elsewhere. In Pennsylvania the court may cause investigation to be made by some person or agency specifically designated.<sup>12</sup>

#### HEARING AND DECREE

In many of the laws it is specified that the petitioner must appear and the parent or guardian must appear and consent, provision being made for certified consent in writing when those persons whose consent is necessary live outside the county or the State or when for other reason the court deems personal appearance unnecessary.<sup>13</sup> Recent laws of Minnesota, North Dakota, Oregon, and Virginia, which provide for social investigation, specify merely that the parent or guardian must consent.<sup>14</sup> Adequate investigation and written con-

<sup>10</sup> Arizona, Rev. Stat. 1913 (Civil Code), sec. 1192. For text of New Mexico law see Appendix I, p. 35.

<sup>11</sup> For text of law see Appendix I, p. 42. The attorney general of New York held (in an opinion dated Nov. 26, 1924) that adoption of a child, whether from an individual or from an institution or authorized agency, can be made only after investigation and report made pursuant to this law.

<sup>12</sup> Pennsylvania, Laws of 1925, act 93, sec. 3. See also Appendix I, pp. 35 (Oreg.), 30 (Va.), 46 (Tenn.), 47 (Vt.), 40 (Mass.).

<sup>13</sup> As in Pennsylvania (Laws of 1925, Act 93, Sec. 3) and New York (for text of law see Appendix I, p. 41).

<sup>14</sup> For text of laws see Appendix I, pp. 27 (Minn.), 29 (N. Dak.), 36 (Oreg.), 30 (Va.).



sent of the parents may perhaps be a sufficient measure of protection, and in some cases the obligatory presence of a parent who has already recorded his consent may not be of advantage to the child or conducive to the success of the new arrangement. The importance of the hearing in those cases where the parent has not consented has already been discussed. Proof must be made of any allegations that the parent's consent is unnecessary under the adoption act, whether stated in the petition or presented otherwise, so that the parent may have fair opportunity to refute them.

Since the power of the court in adoption proceedings to deprive a parent of his child is a special power conferred by statute, such statute must be strictly construed. In order to warrant the exercise of the power and sustain an order for adoption made in opposition to the wishes and against the consent of the parent, on the ground that conditions prescribed by statute exist which make that consent unnecessary, the existence of such conditions must be clearly proved and the evidence must bring them within the terms and intent of the statute.<sup>15</sup>

It is in connection with hearing and decree that many of the statutes, as in Minnesota, emphasize the aim of adoption to be the welfare of the child and stipulate that before he enters the decree the judge shall make sure that the petitioners are suitable persons and able to care for, rear, and educate the child. Here also the provision for change of name, if desired, often appears.<sup>16</sup>

Although records of judicial decisions are generally public, the peculiar nature of the adoption transaction is recognized by provisions in some of the statutes. Minnesota and North Dakota provide that, except on court order, the records shall be open only to the parties in interest and their attorneys, and to the State board of control. In New York and Pennsylvania the written report of the investigation, together with all relevant papers, becomes a permanent record of the court, which may by the judge at his discretion be closed and withheld from inspection. No person is allowed access to such sealed records except upon a court order granted for good cause shown. It is further directed that the fact of illegitimacy shall not appear upon these records.<sup>17</sup>

An interesting suggestion is given in the report of the committee on child adoption in Great Britain<sup>18</sup> in connection with their recommendation that the records of adoption be not open to inspection by any person without an order of the court: "Notice should be given to the registrar of births, deaths, and marriages in the district where the birth of the child was originally registered, that an order of adoption has been made by the court in question, and that the records of the court are filed in that court; but such notice should not contain any information which would lead to the identification of the adopter."

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<sup>15</sup> *In re Cozza* (1912), 163 Calif. 514; 126 Pac. 161.

<sup>16</sup> For text of law see Appendix I, p. 27.

<sup>17</sup> Pennsylvania, Laws of 1925, act 93, sec. 4. See also Appendix I, p. 28 (Minn.), 29 (N. Dak.), 42 (N. Y.).

<sup>18</sup> Home Department (Great Britain): Report of the 1921 Committee on Child Adoption, secs. 50, 51. See also the 1925 Report, mentioned in footnote 1, p. 1.

## TRIAL PERIOD IN PROSPECTIVE ADOPTIVE HOME

The recent laws of Georgia, Minnesota, New York, New Mexico, North Dakota, Ohio, and Virginia show a significant development in providing that the child must have lived for a certain length of time in the proposed home before the adoption decree shall be granted. Minnesota, New York, and North Dakota require six months' residence but provide that for good cause shown the judge may waive the requirement, and the provisions of Ohio and New Mexico are similar. Georgia also requires six months' residence. Virginia requires residence of one year, with quarterly visits by the probation officer or agent of the State, county, or city board of public welfare, or other person appointed by the court. The act also provides for revocation of the interlocutory decree before the expiration of the year if this seems best.<sup>19</sup>

The Vermont law, which represents an older type of legislation, was amended in 1923 to provide that adoption shall not become final until one year after the date of the filing of the instrument of adoption, during which the adoption is a matter pending before and within the control of the court, subject to annulment for cause shown, although of full force and effect until such annulment take place.<sup>20</sup>

## APPEAL

The omission of any of the essential features of the adoption procedure may invalidate adoption. Many States provide specifically for appeal. Others, as Illinois, make no mention of it. In Massachusetts a parent who had no personal notice of the adoption may appeal within one year of the decree of adoption, provided he make oath that at the time of the adoption he was not undergoing imprisonment, or, if so imprisoned, has since been pardoned on the ground of innocence or has had his sentence reversed. Oregon provides that an appeal may be taken in like manner as appeals from other decrees of the same court, and Rhode Island permits appeal to the superior court from the decree of the probate court. A child may appeal through a next friend, but no bond may be required or costs awarded against the child or next friend. In Wisconsin any person "having the authority or right" was permitted to appeal within one year from the taking effect of the relevant section of the adoption law, being otherwise "forever barred from questioning such adoption proceeding, provided that this shall apply only in case of illegitimate or abandoned children."<sup>21</sup>

## INHERITANCE OF PROPERTY

It is evident that the consummation of the adoption process permits the adopting parent to do for the adopted child whatever he may do for his own children; but there is no compulsion that he do so except as created by express statutory provision. The fact that adoption legislation is "in derogation of the common law" makes it

<sup>19</sup> Georgia, act of Aug. 19, 1922, No. 521, sec. 8, Acts and Resolves of 1922, p. 75. See also text of laws in Appendix I, pp. 27 (Minn.), 35 (N. Mex.), 42 (N. Y.), 29 (N. Dak.), 34 (Ohio), 31 (Va.).

<sup>20</sup> For text of law see Appendix I, p. 47.

<sup>21</sup> Rhode Island, Gen. Laws, Revision of 1923, ch. 288, sec. 8. See also Appendix I, pp. 39 (Mass.), 37 (Oreg.), 47 (Wis.).

subject to strict interpretation. Hence adoption has not been held to confer upon the adopted child any other rights of inheritance than those expressly indicated in the statute.<sup>22</sup> Provision is made in the statutes of most of the States for establishing the legal relationship of parent and legitimate child by the process of adoption. This, under the laws of descent or succession, includes reciprocal inheritance. In Michigan, for example, the law directs that persons adopting shall stand in the place of parents to the adopted child in law, and be liable for all parental duties as well as entitled to all parental rights, and that the child shall become heir-at-law of the adopting parents as if he were in fact their child; and the laws of Minnesota, North Dakota, and Pennsylvania are similar.<sup>23</sup>

It has generally been held that a statute making the adopted child the heir of the adopting parent does not entitle the child to inherit through him from the ancestors of the adopting parent, nor does it make the adopted child an heir of the kindred of those who adopted him. Oregon and Rhode Island provide that the adopted child shall for the purposes of inheritance and all other legal consequences and incidents of the natural relation of parents and children be the same to the adopting parents as if he were their child, except that he may not take property expressly limited to "the heirs of the body or bodies of the parent by adoption, nor property from the lineal or collateral kindred of such parents by right of representation."<sup>24</sup> Some courts, however, have taken a more liberal view under statutes which in effect seem to place the adopted child in the status of the adopting parent's own child; and in such cases the adopted child may inherit from the children and the ancestors of the adopting parent.<sup>25</sup> The children of an adopted child (or his heirs if he dies without issue) may inherit by representation from the estate of the adopting parent,<sup>26</sup> but adopting parents can not inherit from the adopted child unless the statute so provides.<sup>27</sup>

New Jersey, New York, West Virginia, and Massachusetts provide that adoption shall not prevent a child from inheriting from his natural relatives.<sup>28</sup> In Florida the child loses no rights of property he possessed at the time of adoption; in Maine and Ohio he is not debarred from inheriting from his own parents; and in Virginia the law stipulates that in case of vacation of an order of adoption "the court shall see that all the property rights of such child, as well as of

<sup>22</sup> The relation of adoption to inheritance can be traced, with the aid of full case references, under the chapters on adoption in several digests: *Ruling Case Law*, edited by William H. McKinney and Burdett A. Rich, Vol. 1, pp. 591-629, secs. 1-41 (1914); *Corpus Juris*, edited by William Mack and William Benjamin Hale, Vol. 1, pp. 1367-1403, secs. 1-138 (American Book Co., 1914); *The American Digest* (West Publishing Co., St. Paul, Minn.). Treatises on the law of domestic relations also contain chapters on adoption. See *A Treatise on the Law of Marriage, Divorce, Separation, and Domestic Relations*, by James Schouler, 6th edition by Arthur A. Blakemore, Vol. 1, Ch. IV, secs. 713-735, pp. 760-781 (Matthew Bender & Co., Albany, N. Y., 1921).

<sup>23</sup> Pennsylvania, Laws of 1925, act 93, sec. 4. See also Appendix I, pp. 45 (Mich.), 28 (Minn.), 29 (N. Dak.).

<sup>24</sup> Rhode Island, Gen. Laws, Revision of 1923, ch. 288, sec. 6. For text of Oregon law see Appendix I, p. 36. See also Schouler, sec. 728. Among the cases cited are: *Phillips v. McConica*, 59 Ohio Stat. 1; 51 N. E. 445, 69 Am. St. R. 753; *Cooley v. Powers*, 63 Ind. App. 59; 113 N. E. 382; *Wallace v. Noland*, 246 Ill. 535, 92 N. E. 956; *Merritt v. Morton*, 143 Ky. 133, 136 S. W. 133, 33 L. R. A. (N. S.) 139; *Helms v. Elliott*, 89 Tenn. 446, 14 S. W. 930, 10 L. R. A. 535.

<sup>25</sup> Schouler, sec. 728. Among the cases cited are: *Stearns v. Allen*, 183 Mass. 404, 67 N. E. 349, 97 Am. stat. R. 441; *McManus v. Lloyd* (Wash.) 183 Pac. 93; *Shick v. Howe*, 137 Iowa 249, 114 N. W. 916, 14 L. R. A. (N. S.) 980.

<sup>26</sup> *Ibid.*, sec. 732. Among the cases cited are: *In re Herrick's Estate*, (*Fiske v. Lawton*), 124 Minn. 85, 144 N. W. 455; *Franklin v. Fairbanks*, 99 Kan. 271, 161 Pac. 617.

<sup>27</sup> *Ibid.*, sec. 731, citing *In re Darling's Estate* (Calif.), 159 Pac. 606, and other cases.

<sup>28</sup> New Jersey, Comp. Stat. 1910, Infants' sec. 15, p. 2808; West Virginia, Barnes' Code 1923, ch. 123, sec. 4, pp. 2136-37; New York, Laws of 1925, ch. 608, sec. 2; Massachusetts, see Appendix I, p. 39.

the person or persons adopting it, are protected, and may make such order as may be proper in the premises so that no injustice may be done.<sup>29</sup>

### ANNULMENT

The tie created between a child and his parents by adoption may become quite as strong as that between a child and his natural parents—which is of a permanent character so far at least as blood relationship is concerned and which produces responsibilities that can not usually be avoided otherwise than by open dereliction. But conditions sometimes arise that make it desirable to dissolve the relationship between the foster parent and the adopted child. The law recognizes this fact, and provisions for making void the decree of adoption are therefore found in some recent statutes. In New Mexico the judge may remove the child on proof that the person adopting is not complying with the terms of the agreement.<sup>30</sup> In Alabama the judge may annul the adoption in whole or in part “for good cause shown.” In Oregon and Rhode Island provision is made that when a parent has not had personal notice before the hearing of the petition, and appeals within one year of actual notice, the court after due notice may in its discretion reverse the decree if it appears that any material allegations in the petition were untrue.<sup>31</sup> In Minnesota the adopting parents are protected by the provision that if within five years the adopted child develops feeble-mindedness, insanity, epilepsy, or venereal disease from conditions prior to the adoption and not known to the adopting parents the decree may be annulled and the child committed to the State board of control. The interests of the child are to be represented by the county attorney. Ohio, Missouri, and Utah have similar provisions.<sup>32</sup> In Virginia the natural parents, the adopting parents, the child, or the State board of public welfare may at any time petition for vacation of adoption and restoration of the former name. If the child is under 21 years of age he is represented by a next friend. If he is over 14 years of age the court must ascertain his wishes, although it need not be controlled by them. The court must hear evidence in any such petition and is directed to see that property rights of both child and adopting parent are protected. Notice must be given to the adopting parents if they are then residents of the State.<sup>33</sup>

### STATE SUPERVISION OF ADOPTION

Recognition of the advisability of public supervision of adoption is of comparatively recent appearance in adoption legislation. The need of such supervision is suggested by two facts; namely, that the ties created by the process of adoption are not necessarily so strong as those of blood and that complex situations may conceivably arise through the very performance of their functions by agencies and institutions organized for the purpose of placing out children who are

<sup>29</sup> Florida, Rev. Gen. Stat. 1920, sec. 3273, p. 1753; Maine, Rev. Stat. 1916, ch. 72, sec. 38, as amended by act of Apr. 7, 1917, ch. 243; Acts and Resolves of 1917, p. 277. See also Appendix I, pp. 34 (Ohio), 31 (Va.).

<sup>30</sup> New Mexico, Stat. Annotated 1915, ch. 2, sec. 23, p. 121.

<sup>31</sup> Alabama, Code 1923, ch. 326, sec. 9302, pp. 410-411; Rhode Island, Gen. Laws, Revision of 1923, ch. 288, sec. 9. For text of Oregon law see Appendix I, p. 37.

<sup>32</sup> For text of laws see Appendix I, pp. 28 (Minn.), 34 (Ohio); Missouri, Rev. Stat. 1919, ch. 11, sec. 1102, p. 464; Utah, act of Mar. 13, 1919, ch. 1, Laws of 1919, p. 1.

<sup>33</sup> For text of law see Appendix I, p. 31.

homeless or destined to become so. This latter fact rests in turn upon the undeniable truth that there are children born to parents who are unable or unwilling to assume the responsibilities of parenthood.

In addition to an effort to prevent children from being placed out in a temporary or undefined status (especially by persons not directly responsible to public authorities), control has been further attempted by regulation of the child placement which child-caring institutions or organizations undertake to do. The requiring of reports from responsible individuals or organizations is one method of accomplishing supervision. Alabama requires the judges of its probate courts to make monthly reports to the child-welfare department on all adoptions handled during the preceding month.<sup>34</sup>

Most of the statutes attempt to secure supervision at an early stage in the process; that is, at the time when the children are placed in homes for adoption or otherwise. If provision is made that the State board must investigate before a decree is granted, as in Minnesota, North Dakota, Oregon, and Virginia, or when it may be called upon for such investigation, as in Ohio, the State board thus exercises supervision over adoption. Massachusetts secures direct oversight of the adoption of public wards by providing that when a petition is entered in behalf of a child who is a public dependent the court must notify the State department of public welfare or the local authority responsible for the child.<sup>35</sup> Minnesota makes mandatory a report to the State board of control concerning all children placed out by child-caring organizations.<sup>36</sup> North Dakota places the licensing and supervising of child-placing work under the State board of administration and requires that all child-placing agencies report to the board concerning the placing of children.<sup>37</sup> Organizations in Illinois in receipt of public funds must report placements to the State department of public welfare.<sup>38</sup> In Indiana the State board of charities must inspect institutions and homes receiving children on court commitment.<sup>39</sup> In Missouri the State board of charities and corrections licenses boarding homes and institutions, except those under "well-known religious orders."<sup>40</sup> In Georgia child-placing work is under license of the circuit court after investigation and report by the State board of public welfare.<sup>41</sup> In New York it is the policy of the State to maintain with the State board of charities a central confidential registration of children under institutional care or placed out or boarded out by requiring child-caring institutions and agencies to make to that board reports of children whom they receive, place out, or board out.<sup>42</sup> The following paragraph occurs in the standards for child-placing agencies issued by the State Board of Charities and

<sup>34</sup> Alabama, Code 1923, ch. 11, sec. 110, p. 522.

<sup>35</sup> For text of laws see Appendix I, pp. 27 (Minn.), 29 (N. Dak.), 35 (Oreg.), 30 (Va.), 32 (Ohio), 40 (Mass.).

<sup>36</sup> Minnesota, Gen. Stat. 1913, sec. 6544, p. 1417.

<sup>37</sup> North Dakota, act of Mar. 2, 1923, ch. 162, Laws of 1923, p. 162.

<sup>38</sup> Illinois, Smith's Rev. Stat. 1921, ch. 23, sec. 288, p. 180, as amended by act of June 25, 1923, Laws of 1923, p. 170.

<sup>39</sup> Indiana, Burns' Annotated Stat. 1914, sec. 1638, p. 883.

<sup>40</sup> Missouri, act of Mar. 25, 1921, sec. 6, Laws of 1921, p. 192.

<sup>41</sup> Georgia, act of Aug. 19, 1922, No. 521, secs. 1, 2, Acts and Resolves of 1922, pp. 72-73.

<sup>42</sup> In an opinion dated Dec. 18, 1924, the attorney general of New York has held that Article 16 of the State Charities Law, as amended by ch. 437, Laws of 1924, requires child-caring institutions and agencies to make to the State board of charities reports of children whom they receive, place out, or board out, whether or not such institutions or agencies are granted public funds for the maintenance of any children for whom they care. He holds that the powers and duties thus conferred upon the State board of charities are not in conflict with constitutional provisions relating to the board and are a proper exercise of the authority of the State (Bulletin, New York State Board of Charities, Jan. 1, 1925).

Corrections of California April 27, 1921: "No agency should consent to the adoption of any of its wards until the child has been in one home under the supervision of the agency for at least six months."

Wisconsin forbids any one other than a parent or guardian to place out any child without license from the State board of control.<sup>43</sup> Massachusetts requires any one receiving an infant under 2 years of age for adoption or for giving it a home, or for procuring a home for adoption for it, to give notice to the State department of public welfare, which may investigate and at any time before adoption may take the child into its own custody. Ohio prohibits giving a child under 2 years of age into the temporary or permanent custody of any person, association, or institution which is not certified by the division of charities (department of public welfare) without the written consent of this division or by commitment of a juvenile court; and provides that records of such temporary and permanent surrenders be kept.<sup>44</sup>

Adoption and child placing effected by maternity homes or by patients in such homes have been placed under supervision by a number of statutes. In Ohio maternity homes must keep a record of children given out for adoption (on the form prescribed by the State board of health); and a copy of this record is sent to the local health board. Although in this State the supervision (and licensing) of maternity homes is a duty of the State board of health any transfer of custody of children (aside from juvenile-court commitment) must be made with the consent of the State department of public welfare. Thus Ohio undertakes to bring the child under the oversight of both health and child-caring authorities.<sup>45</sup> A difficulty in the arrangement which places inspection of maternity homes under only the health department is that the social aspects of the problem, as distinguished from the health aspects, may not always receive adequate consideration. In Virginia, which provides for licensing of maternity homes by the State board of public welfare and for inspection by that board, the State board of public health, and the local board of health, no maternity hospital may engage in child placing. Any child born therein who is destitute must be committed through the proper court to the State board of public welfare or any agency licensed for child placing.<sup>46</sup> In Illinois no child from a maternity hospital may be placed in a family home or adopted until after investigation and approval of the home by the State board of public welfare; and Wyoming forbids private individuals, lying-in homes, hospitals, and "other unqualified institutions" to place out children.<sup>47</sup> Statutory provision for supervision of child-placing or adoption from maternity hospitals, as well as for the granting of licenses to such institutions, occurs in the acts of many States dealing with inspection of child-caring institutions.<sup>48</sup>

<sup>43</sup> Wisconsin, Stat. 1923, sec. 58.03 (1), p. 594.

<sup>44</sup> For text of laws see Appendix I, pp. 40 (Mass.), 34 (Ohio).

<sup>45</sup> Ohio, Gen. Code 1921, secs. 6269, 6266, 6267, pp. 3023-3024. See also Appendix I, p. 34.

<sup>46</sup> Virginia, act of Mar. 27, 1922, ch. 486, Acts of 1922, pp. 847-849.

<sup>47</sup> Illinois, Smith's Rev. Stat. 1921, ch. 127, sec. 53, p. 1887 (see also Appendix I, p. 44); Wyoming, Comp. Stat. 1920, ch. 247, sec. 3903, subdiv. 4, p. 745.

<sup>48</sup> California, Henning's Gen. Laws, 1920, act 805a, p. 344; Georgia, act of Aug. 19, 1922, No. 521, sec. 1, Acts and Resolutions of 1922, p. 72; Indiana, Burns' Annotated Stat. 1914, secs. 3678a (Vol. II), p. 382, and sec. 3678f, p. 383; Kansas, Rev. Gen. Stat. 1923, ch. 65, sec. 65-501, p. 1012; sec. 65-504, p. 1013; Illinois, Smith's Rev. Stat. 1921, ch. 23, secs. 341, 344, p. 186, and ch. 127, sec. 53, p. 1887; New Hampshire, Chase's Public Stat., Supplement 1913, pp. 161, 164, 165; North Dakota, act of Mar. 2, 1923, ch. 164, Laws of 1923, p. 165; Tennessee, see Appendix I, p. 46.

Not only has child placing from maternity homes and hospitals frequently taken place without adequate consideration of the welfare of the child and without supervision by any public authority, but it was inevitable that such action should lead to offers of collusion, and to open advertisement of opportunities for such disposal of young children. In this connection a definition of a maternity home may be quoted from a statute embodying a phrase not found in most of the legislation on this subject: "A house or other place maintained or conducted for the care and treatment of women during pregnancy and subsequent to the birth of children, and usually advertised for such work and the disposition of unwanted children."<sup>49</sup>

Recent laws have dealt with the matter of collusion, and especially of advertising, and the problem has also received attention from State boards empowered by statute to regulate such institutions. Thus the Missouri regulations for government of maternity hospitals, adopted June 8, 1922, direct that "No maternity hospital shall be permitted to advertise that it will procure the adoption of children." Prohibitions of such advertising may be observed in the legislation of Georgia, Minnesota, Nebraska, and North Dakota.<sup>50</sup> The laws in Kansas and Ohio seem more far-reaching. Kansas directs that "no personal firm, corporation, or association shall offer to adopt, find a home for, or in any manner offer to dispose of any child as an inducement to a woman to come to his or its place during pregnancy, or at or after delivery; or shall offer such as an inducement to any parent, guardian, or custodian of an infant or child to place such infant or child in his or its home, institution, or establishment." Ohio also uses the phrase "hold out inducements."<sup>51</sup>

## CONCLUSIONS

The importance and the complexity of the subject of adoption legislation have been indicated in the foregoing pages. The tendency of recent legislation and the standards which are being developed by those engaged in child-welfare work emphasize as the primary consideration the welfare of the child and also provide for safeguarding the rights of all the parties in interest.

The requirement of notice to the State department of public welfare and of investigation and recommendation by the department is a recognition of the State's interest in children placed for adoption and gives the State a method of fulfilling its responsibility toward the children who have been placed. If the jurisdiction is vested in a court equipped to make social investigations the law may properly direct that investigations be made either by the court or by the State department, but in any case the State department should be vested with ample supervisory powers covering all aspects of the placement of children.

The relative advantage of granting jurisdiction to juvenile courts or to those traditionally connected with matters of probate seems still an open question, but it is generally agreed that in whatever

<sup>49</sup> Tennessee, Public Acts of 1917, ch. 120, sec. 4 (Thompson's Shannon's Code 1918, sec. 4436a-65a9).

<sup>50</sup> Georgia, Laws of 1922, No. 521, sec. 7; Minnesota, Laws of 1919, Extra Session, ch. 50, sec. 3; Nebraska, Comp. Stat. 1922, secs. 8261-8262; North Dakota, Laws of 1923, ch. 164, sec. 10.

<sup>51</sup> Kansas, Rev. Stat. 1923, ch. 65, sec. 509; Ohio, see Appendix I, p. 35.

court jurisdiction may be placed, provision for social investigation is essential.<sup>52</sup>

In drafting adoption acts the welfare of the child, the rights of the parents and the possibilities of their assuming the care of the child under proper conditions, and the rights of the adopting parents must be borne in mind. Provision for social investigation, for trial period in the home either before petition is filed or before a final decree is granted, and for State supervision will safeguard the interests of all the parties. The investigation should include the fitness of the natural parents to care for the child, the physical and mental condition and the antecedents of the child with a view to determining whether he is a proper subject for adoption, and the financial ability and moral fitness of the adopting parents and general suitability of the proposed home.

Among the items in adoption procedure which are of especial importance with reference to the child's welfare are those providing that if the petitioner is married the spouse shall join in the petition, and those safeguarding records from publicity. The provisions of the statute with reference to the consent of the parents and the conditions under which their consent is dispensed with should be carefully drawn. Where social investigation is required the provision need not be so specific in its terms as when no such provision is made, but surrender of rights by parents otherwise than through a court proceeding or upon action of a responsible public agency should not be permitted. The law should provide for the consent of the child if he has reached an age at which his judgment is of value (probably 12 or 14 years).

Other important points to be considered in connection with adoption legislation include provision for appeal, for vacation of order or annulment for good cause, and for inheritance rights. The statute should specifically provide that adoption shall establish between the child and the adopting parents the legal relationship existing between parents and their children born in lawful wedlock. Either in the adoption law or in related laws the transfer of parental rights and responsibilities without order or decree of court should be prohibited.<sup>53</sup> Administration of adoption laws for the welfare of the child is to a large extent dependent upon the administration of related laws governing children's institutions and the placing of children in family homes.

<sup>52</sup> Juvenile-Court Standards; report of the committee appointed by the Children's Bureau, August, 1921, to formulate juvenile-court standards, adopted by a conference held under the auspices of the Children's Bureau and the National Probation Association, Washington, D. C., May 18, 1923, p. 1. U. S. Children's Bureau Publication No. 121. Washington, 1923.

<sup>53</sup> The minimum standards for child welfare adopted by the Washington and Reginal Conferences on Child Welfare (1919) would permit the transfer of the legal guardianship of a child either through a court of proper jurisdiction or with the consent of a properly designated State department. U. S. Children's Bureau Publication No. 82, p. 13. Washington, 1920.



## APPENDIX I.—SECTIONS FROM RECENT ADOPTION AND RELATED LAWS OF SELECTED STATES<sup>1</sup>

### MINNESOTA

*Adoption; petition and consent.*—Any resident of the State may petition the district court of the county in which he resides for leave to adopt any child not his own. If the petitioner be married the spouse shall join in the petition. All petitions for the adoption of a child who is a ward or pupil of the State public school shall be made jointly by the person desiring to adopt such child and the superintendent of the State public school. The State board of control may determine by resolution that the joinder of the superintendent in the petition shall be its consent to the adoption of the ward or pupil, as prayed for in the petition. A person of full age may be adopted. [Gen. Stat. 1913, sec. 7151, as amended by Laws of 1917, ch. 222, p. 335.]

*Investigation by board of control.*—Upon the filing of a petition for the adoption of a minor child the court shall notify the State board of control. It shall then be the duty of the board to verify the allegations of the petition, to investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing, with a recommendation as to the granting of the petition and any other information regarding the child or the proposed home which the court shall require. No petition shall be granted until the child shall have lived for six months in the proposed home: *Provided, however,* That such investigation and period of residence may be waived by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other. [Ibid., sec. 7152, as amended by Laws of 1917, ch. 222, p. 335.]

*Consent, when necessary.*—Except as herein provided, no adoption of a minor shall be permitted without the consent of his parents, but the consent of a parent who has abandoned the child, or who can not be found, or who is insane or otherwise incapacitated from giving such consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one, or, if there be no guardian, by the State board of control. In case of illegitimacy the consent of the mother alone shall suffice. In all cases where the child is over fourteen years old his own consent must be had also. [Ibid., sec. 7153, as amended by Laws of 1917, ch. 222, p. 335.]

*Notice of hearing.*—When the parents of any minor child are dead or have abandoned him, and he has no guardian in the State, the court shall order three weeks' published notice of the hearing on such petition to be given, the last publication to be at least ten days before the time set therefor. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable: *Provided,* That if there be no duly appointed guardian, a parent who has lost custody of a child through divorce proceedings, and the father of an illegitimate child who has acknowledged his paternity in writing or against whom paternity has been duly adjudged shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. [Ibid., sec. 7155, as amended by Laws of 1917, ch. 222, p. 336.]

*Decree; change of name.*—If upon the hearing the court shall be satisfied as to the identity and relationship of the persons concerned, and that the petitioners are able to properly rear and educate the child, and that the petition should be granted, a decree shall be made and recorded in the office of the clerk, setting forth the facts and ordering that from the date thereof the child shall be the

<sup>1</sup> Given in approximately the order of interest in connection with the foregoing analysis.

## MINNESOTA—Continued

child of the petitioners. If desired, the court, in and by said decree, may change the name of the child. [*Ibid.*, sec. 7156, as amended by Laws of 1917, ch. 222, p. 336.]

*Status of adopted child.*—Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents, with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption, he shall inherit from his adopting parents or their relatives the same as though he were the legitimate child of such parents, and shall not owe his natural parents or their relatives any legal duty; and in case of his death intestate the adopting parents and their relatives shall inherit his estate as if they had been his parents and relatives in fact. [*Ibid.*, sec. 7157, as amended by Laws of 1917, ch. 222, p. 336.]

*Annulment.*—If within five years after his adoption a child develops feeble-mindedness, epilepsy, insanity, or venereal infection as a result of conditions existing prior to the adoption, and of which the adopting parents had no knowledge or notice, a petition setting forth such facts may be filed with the court which entered the decree of adoption, and if such facts are proved the court may annul the adoption and commit the child to the guardianship of the State board of control. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child. [*Ibid.*, sec. 7158, as amended by Laws of 1917, ch. 222, p. 336.]

*Records of adoption.*—The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties in interest and their attorneys and representatives of the State board of control, except upon an order of the court expressly permitting the same. [*Ibid.*, sec. 7159, as amended by Laws of 1917, ch. 222, p. 337.]

*Placing out; surrender of parental rights.*—No person other than the parents or relatives may assume the permanent care and custody of a child under fourteen years of age unless authorized so to do by an order or decree of court. Except in proceedings for adoption no parent may assign or otherwise transfer to another his rights or duties with respect to the permanent care and custody of his child under fourteen years of age, and any such transfer hereafter made shall be void. [Laws of 1919, extra session, ch. 51, sec. 2.]

*Penalty.*—Every person who violates any of the provisions of this act, or who shall intentionally make any false statements or reports to the board of control with reference to the matters contained herein, shall, upon conviction of the first offense, be guilty of a misdemeanor. A second or subsequent offense shall be a gross misdemeanor. [*Ibid.*, sec. 9.]

*Guardianship; adoption.*—In any case where the court shall award a dependent or neglected child to the care of the State board of control or of any association or individual in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the State board of control or of the association or individual to whose care it is committed; but such guardianship shall not include the guardianship of any estate of the child, except as provided in section 17 of this act. Such board, 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 proceeding for the legal adoption of the child, and may by its or his attorney or agent appear in any court where such proceedings are pending and consent to such adoption: *Provided, however,* That when adoption proceedings for any such child are commenced in any other court than the court which originally committed such child, then notice of the filing of the petition in such adoption proceedings shall be filed in the office of the clerk of the court which originally committed such child, at least thirty days before any final decree of adoption shall be entered. [Laws of 1917, ch. 397, sec. 12.]

## NORTH DAKOTA

*Adoption of minor.*—Any minor child or adult person may be adopted by any adult person in the cases and subject to the rules prescribed in this chapter. [Comp. laws, 1913, sec. 4441, as amended by Laws of 1919, Special Session, ch. 1.]

*Relative age limited.*—A person adopting a child must be at least ten years older than the person adopted. [*Ibid.*, sec. 4442.]

*Consent of husband and wife.*—A married man not lawfully separated from his wife can not adopt a child without the consent of his wife, nor can a married

woman not thus separated from her husband without his consent, provided the husband or wife not consenting is capable of giving such consent. [Ibid., sec. 4443.]

*Consent of parents, guardian, or board of administration.*—Except as herein provided no adoption of a minor child shall be permitted without the consent of its parent or parents, but the consent of a parent who has abandoned the child, or who can not be found, or who is insane or otherwise incapacitated from giving consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one, or if there be no guardian by the board of administration. In case of illegitimacy the consent of the mother shall suffice: *Provided, however,* That her consent may be dispensed with for any of the reasons hereinbefore stated.

When the parents of any minor child are dead, or have abandoned it, and can not be found, and such child has no duly appointed guardian in the State, the court shall order a hearing, with three weekly published notices to be given, the last publication to be at least 10 days before the time set for the hearing. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable: *Provided,* That if there be no duly appointed guardian, a parent who has lost custody of the child through divorce proceedings, and the father of an illegitimate child who has acknowledged its paternity in writing, or against whom paternity has been duly adjudged, shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. [Ibid., sec. 4444, as amended by Laws of 1923, ch. 151.]

*When child must consent.*—The consent of a child, if over the age of ten years, is necessary to its adoption. [Ibid., sec. 4445.]

*Petition for adoption; notice to State board; residence requirement before granting petition.*—Any person may petition the district court, or county court having increased jurisdiction, in the county in which he is a resident, for leave to adopt a minor child, and if desired for a change of the child's name. Such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.

Upon the filing of such petition the court shall require notice to be sent to the board of administration, together with a copy of the petition so filed. It shall then be the duty of the board to verify the allegations of the petition; to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption; and to make proper inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing with a recommendation as to the granting of the petition and any other information regarding the child or the proposed foster home which the court shall require, and no petition shall be granted until the child shall have lived for six months in the proposed foster home: *Provided, however:* That such investigation and period of residence may be waived by the court in exceptional cases upon good cause shown and when the court is satisfied that the proposed home and the child are suited to each other: *Provided,* That in all such cases the board shall receive notice of the filing of the petition and a copy thereof, together with the order of the court waiving investigation.

The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties interested and their attorneys and representatives of the board of administration, except upon an order of the court expressly permitting the same. [Ibid., sec. 4446, as amended by Laws of 1923, ch. 151.]

*Proceedings on hearing; decree.*—If upon the hearing of the petition so presented and consented unto as aforesaid, the court shall be satisfied of the identity and relations of the persons concerned, and that the petitioner is or, in case of husband and wife, that the petitioners are of sufficient ability to bring up the child and to furnish him suitable nurture and education and that it is fit and proper that the petition for leave to adopt such child be granted, a decree shall be made setting forth the facts and ordering that from and after the date of the decree the child shall be deemed and taken to be the child of the petitioner or petitioners, and the court may if desired in and by the same decree change the name of such child. [Ibid., sec. 4447.]

*Status of adopted child.*—The child so adopted shall be deemed, as respects all legal consequences and incidents of the natural relation of parent and child, the

## NORTH DAKOTA—Continued

child of such parent or parents by adoption the same as if he had been born to them in lawful wedlock. [Ibid., sec. 4448.]

*Effect of decree.*—The natural parents of such child shall be deprived by the decree aforesaid of all legal rights respecting the child and such child shall be free from all obligations of maintenance and obedience respecting his natural parents. [Ibid., sec. 4449.]

*Illegitimate child.*—The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such with the consent of his wife if he is married, into his family, and otherwise treating it as if it was a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption. [Ibid., sec. 4450.]

*Powers and duties of board of administration.*—In addition to the other duties prescribed by law the board of administration shall have the following duties and powers.

\*            \*            \*            \*            \*            \*            \*

(b) To investigate the homes into which children are placed for permanent care or adoption and to withdraw all such children who are found to be in unsuitable homes.

(c) To investigate petitions for the adoption of children, as such petitioners are referred by courts of competent jurisdiction to the board, and to report to such courts as to the suitability of the home and the child each to the other [Laws of 1923, ch. 150, sec. 1.]

*Assignment of children prohibited.*—No person, partnership, voluntary association, or corporation, other than the parents or relatives of a child, may assume the permanent care and custody of a child under the age of eighteen years unless authorized so to do by an order or decree of a district court having jurisdiction. No parent shall assign or otherwise transfer his rights or duties with respect to the care and custody of his child under eighteen years of age, and any such transfer or assignment, written or otherwise, hereafter made shall be void: *Provided*, That this section shall not affect the right of the parent to consent in writing to the legal adoption of his child, but such written consent shall not operate to transfer any right in the child in the absence of a decree by the district court. [Laws of 1919, ch. 77, as amended by Laws of 1923, ch. 152, sec. 1.]

*Penalty.*—Any person who violates any of the provisions of this act shall upon conviction be guilty of a misdemeanor. [Laws of 1923, ch. 152, sec. 3.]

## VIRGINIA

*Adoption of minor children by adult persons.*—A resident of this State who is not married, or a husband and wife (residents of this State) jointly, may petition the circuit or corporation or hustings court of a city, or the circuit court of a county, in which city or county they reside, for leave to adopt a minor child not theirs by birth and for a change of the name of such child; but a written consent, duly acknowledged, must be given to such adoption by the child if of the age of 14 years or over and by each of his or her known living parents, who is not hopelessly insane or otherwise incapacitated from giving such consent, or who is not habitually addicted to the use of drugs or of intoxicating liquors, or has not abandoned such child, or has not lost custody of the child through the order of a court; or if the parents are disqualified as aforesaid, then by the legal guardian, or if there be no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child; but if such parents or guardian join in said petition it shall be deemed such consent in writing.

Upon the filing of said petition the court shall direct a probation officer or other officer of the court, or an agent of the State or county or city board of public welfare, or some other discreet and competent person, to make a careful and thorough investigation of the matter and report his findings in writing to said court. The person so directed to make such investigation shall make inquiry, among other things, as to—

(1) Why the natural parents, if living, desire to be relieved of the care, support, and guardianship of such child.

(2) Whether the natural parents have abandoned such child or are morally unfit to have its custody;

(3) Whether the proposed foster parent or parents is or are financially able and morally fit to have the care, supervision, and training of such child;

(4) The physical and mental condition of such child. For this purpose, said investigator may secure the opinion of a reputable physician or competent mental examiner, if the court is satisfied that the natural parents have just cause for desiring to be relieved of the care, support, and guardianship of said child, or have abandoned the child, or are morally unfit to retain its custody; that the petitioning foster parent or parents is or are financially able and morally fit to have the care, supervision, and training of such child; that said child is suitable for adoption in a private family home, and that such change of name and guardianship is for the best interests of said child, it shall make an interlocutory order setting forth the facts and declaring that from the date of the final order of adoption in such case, if such final order be afterwards entered, as hereinafter provided, such child, to all legal intents and purposes, will be the child of the petitioner or petitioners and that its name may be thereby changed. Such final order of adoption shall not be granted until the child shall have lived for one year in the proposed home and shall have been visited during the said period at least once in every three months by a probation officer, an agent of the State or county or city board of public welfare or other person designated by the court for the purpose. At any time before the entry of such final order of adoption the court may revoke its interlocutory order for good cause, either of its own motion, or on the motion of the natural parent or parents of such child, the original petitioner or petitioners, or the child itself by its next friend; but no such revocation shall be entered unless 10 days' notice in writing shall have been given to the original petitioner or petitioners, unless he or they make the motion or have removed from the State nor unless the original petitioner or petitioners if residents of the State shall have been given an opportunity to be heard.

Upon the entry of such final order of adoption the judge or the clerk of the court shall notify the State board of public welfare and the county or city board of public welfare, if there be one, of the action taken, giving the names and addresses of the natural parents, if known, or of the child's next of kin, the age and the name of such child both before and after adoption, and the names and addresses of the foster parents. Said boards of public welfare shall likewise be notified of any subsequent modification or revocation of such order or adoption.

The natural parents shall, by such final order of adoption, be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them; such child shall, from and after the entry of the interlocutory order herein provided for, be, to all intents and purposes, the child and heir at law of the person so adopting him or her, unless and until such order is subsequently revoked, entitled to all the rights and privileges and subject to all the obligations of a child of such person begotten in lawful wedlock; but on the decease of such person and the subsequent decease of such adopted child without issue, the property of such adopting parent still undisposed of shall descend to his or her next of kin, and not to the next of kin of such adopted child.

At any time after the final order of the court permitting such adoption and change of name, the parent or parents of such minor child, the State board of public welfare, or the child itself, if 21 years of age, and if not 21 years of age, then the child by its next friend or the adopting parent or parents, may petition the court which entered such order of adoption to vacate the same and terminate the adoption and restore the former name. And the court shall hear evidence for and against such petition, and if from such evidence it appears that a termination of such adoption and restoration of name is manifestly right and proper, and especially if it be for the best interests of the child, the court shall vacate said final order of adoption and change of name, and thereupon such child shall be restored to the position and name which it held before such final order of adoption. But before the court acts upon such petition, 10 days' notice in writing shall be given to the person or persons who had been permitted to adopt said child, if then residents of the State; and if said petition be filed by the next friend of said child, or by its parent or parents, and said child be over fourteen years of age, the court shall require said child to appear before it and ascertain its wishes in the matter, though the court need not be controlled thereby.

And the court shall see that all the property rights of such child, as well as of the person or persons adopting it, are protected, and may make such order as may be proper in the premises so that no injustice may be done. [Code 1919, sec. 5333, as amended by Acts of 1922, ch. 484, p. 839, approved March 27, 1922.]

## OHIO

*Who may petition for adoption of minor child.*—Any proper person or a husband and wife jointly, may petition the probate court of the county in which he or they have a legal settlement, of the county in which the child resides or of the county in which the child had a legal residence when it became a public charge, for leave to adopt a child and for a change of the name of such child. Such petition for adoption shall specify the name, age and place of residence of the petitioner of the child, and the name by which the child shall be known; whether such child is possessed of any property, and the full description of the property, if any; whether the child has one or both parents living; in case one or both are alive, then the name or names and place of residence of such father and mother shall be given unless proven to be unknown to the petitioner: *Provided*, That if such child sought to be adopted is, by previous order of a juvenile court, under the legal guardianship and permanent custody of a State board or of an institution or agency certified by the board of State charities for the care of children, or has been legally surrendered to the guardianship of such institution or agency, then the names of parents shall be omitted from such petition, but the court shall cause such allegation and the petition to be verified. [Gen. Code, sec. 8024, as amended by Laws of 1921 (vol. 109), p. 177.]

*Hearing on petition and examination of parties; appointment of next friend who may be designated as such.*—Upon the presentation of such petition the same shall be filed with the court and the said court shall appoint a day for the hearing of said petition and the examination, under oath, of the parties in interest, not less than 10 nor more than 30 days from the filing of the petition. It shall be at the option of the court to adjourn the hearing of said petition or the examination of the parties in interest, from time to time, as the nature of the case may require. If it shall be necessary, under the provisions of this act, that a discreet and suitable person shall be appointed as next friend to the child sought to be adopted, the court shall make such appointment and shall thereupon assign a day for the hearing of said petition and examination of the parties in interest, not less than 10 nor more than 30 days from the time of appointing the next friend. In case there is in the county an institution or agency approved by the board of State charities, such institution or agency may be designated as next friend and consent be given as indicated in section 8025. Or the court may order the board of State charities through an authorized representative to act in such capacity. Such person, institution, agency, or board thus designated shall proceed to verify the allegations of the petition, shall make appropriate inquiry to determine whether the proposed foster parents and their home are suitable for such child, and whether such child is a proper subject for adoption in such home. If such child is under the legal guardianship of a State board or of any certified institution or agency, no next friend shall be appointed, but such board, institution, or agency shall prepare the report required by this section. As soon as practicable, there shall be submitted to the court a full report in writing, with a recommendation as to the proposed adoption and any other information concerning such child or the proposed home as the court may require. Upon the day so appointed the court shall proceed to a full hearing of the petition and the examination of the parties in interest, under oath, with the right of adjourning the hearing and examination from time to time as the nature of the case may require. The board of State charities shall prepare and furnish to the probate court a suitable blank for use by persons designated to make the report required by this section. [Ibid., sec. 8024-1, added by Laws of 1921 (vol. 109), p. 178.]

*Written consent required.*—In any adoption proceedings written consents must be given to such adoption as follows:

- (a) By the child sought to be adopted if more than thirteen years of age.
- (b) By each of the living parents or by the mother of an illegitimate child, except as follows:
  - (c) By the parent or person awarded the legal custody and guardianship by a juvenile court because of dependency, or because of the mental, moral or other unfitness of one or both parents: *Provided*, That such juvenile court approves of such consent whereupon the jurisdiction of such court over such child shall cease.
  - (d) By the parent awarded custody of child by divorce decree, provided the court which granted such decree approves of such consent, and because of such approval the jurisdiction of such court over such child shall thereupon cease.

(e) By legal guardian of the person of such child, if parents are dead or their residence has been unknown for at least one year, or if the parents have, because of mental, moral, or other unfitness, been deprived of legal custody and guardianship of such child by juvenile court; but if there is no guardian and such child is not the ward of a State board or of a certified institution or agency, a next friend shall be appointed as hereinbefore provided, to give consent.

(f) If the parent or parents having the legal custody give the custody of such child for the full term of its minority to any institution or agency established under the laws of the State to care for children and under the approval of the board of State charities, or if such institution or agency has otherwise legally acquired the custody and control of such child, the president or secretary of such institution or agency shall file a certified copy of the consent of the board of trustees, or of the proper officers authorized by such institution or agency to act in matters of adoption; and if such child is a ward of the board of State charities or other State board, the secretary of such board shall file a certified copy of the consent given in accordance with its rules.

All such consents to such adoption shall be acknowledged and witnessed. [Ibid., sec. 8025, as amended by Laws of 1921 (vol. 109), p. 178.]

*Adoption by step-father or step-mother.*—An inhabitant of this State, the husband of a woman who has a minor child or children by a former husband, or an inhabitant of this State the wife of a man who has a minor child or children by a former wife, may petition the probate court of his or her proper county for leave to adopt such minor child or children and, when the application is made by the husband alone, or jointly with his wife, for a change of the name or names of such child or children. When each have such minor child or children, the application may be made jointly by the husband and wife. [Ibid., sec. 8026.]

*Law applicable as to consent.*—In any adoption in accordance with section 8026 the provisions of section 8025 shall apply in the matter of consent, so far as applicable. [Ibid., sec. 8027, as amended by Laws of 1921 (vol. 109), p. 179.]

*How consent of wife ascertained.*—When the petition is filed by the husband and wife, the court shall examine each separate and apart from the other and refuse leave for such adoption unless satisfied from the examination that each petitioner of his or her own free will and accord desires it. [Ibid., sec. 8028 as amended by Laws of 1921 (vol. 109), p. 179.]

*Decree of adoption.*—If the court, from the testimony, shall be of the opinion that the facts stated in the petition are true, and that the petitioner or petitioners are of good moral character and of reputable standing in the community, and of ability to properly maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption and that such child is found to be suitable for adoption, and is satisfied that all the provisions relative to adoption have been complied with, then the court shall make a decree reciting the facts at length, and the name by which the child shall hereafter be known. [Ibid., sec. 8029, as amended by Laws of 1921 (vol. 109), p. 179.]

*Record of petition, decree, and proceeding.*—The petition, decree, and proceeding shall be recorded in a book kept for that purpose and properly indexed; such book shall become part of the records of the probate court and all reports and affidavits shall be properly filed. Except when such child is adopted under the provisions of sections 8026 and 8027, upon such decree of adoption the natural parents of the child, if living, shall be divested of all legal rights and obligations due from them to the child or from the child to them; and the child shall be free from all legal obligations of obedience or otherwise to such parents; and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child as if said child had been born to them in lawful wedlock; and the child shall be invested with every legal right, privilege, obligation, and relation in respect to education, maintenance, and the rights of inheritance to real estate, or to the distribution of personal estate on the death of such adopting parent or parents as if born to them in lawful wedlock; provided, such child shall not be capable of inheriting property expressly limited to the heirs of the body of the adopting parent or parents; and provided also, on the death of the adopting parent or parents and the subsequent death of the child so adopted without issue, the property of such deceased parent or parents shall descend to and be distributed among the next of kin of said parent or parents and not to the next of kin of the adopted child; and provided also, if such adopting parent or parents shall have other child or children, then the children by birth and adoption shall, respectively, inherit from

## OHIO—Continued

and through each other as if all had been children of the same parents born in lawful wedlock. Nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin. [Ibid., sec. 8030, as amended by Laws of 1921 (vol. 109), p. 179.]

*Residence in home six months before decree.*—No decree of adoption shall be made until such child has resided in the home of the petitioner for at least six months, unless the court for some special reason which shall be entered in the record deems it best to waive this requirement. [Ibid., sec. 8030-1, added by Laws of 1921 (vol. 109), p. 180.]

*Decree may be annulled because of epilepsy, feeble-mindedness, etc.*—If after its adoption and before it becomes fourteen years of age, a child develops feeble-mindedness, epilepsy, insanity, or venereal disease as a result of conditions existing prior to adoption, and of which the adopting parent had no knowledge or information, a petition setting forth such conditions may be filed in the court which entered the decree of adoption, and if such conditions are proved to the satisfaction of the court such adoption may be declared null and void. The court shall thereupon make proper disposition of such child by commitment to an appropriate State institution as provided in the laws of Ohio or refer such child to the juvenile court. [Ibid., sec. 8030-2, added by Laws of 1921 (vol. 109), p. 180.]

*Placing of child in public or private institution.*—The parents, parent, guardian, or other person or persons having the custody of a child may enter into an agreement with any public, semipublic, or private association or institution of this State established for the purposes of aiding, caring for, or placing children in homes, and which has been approved and certified by the division of charities, department of public welfare, placing such child in the temporary custody of such institution or association; or such parent, guardian, or other person may make an agreement surrendering such child into the permanent custody of such association or institution, to be taken and cared for by such association or institution, or placed in a family home. Such agreements provided for herein shall be in writing, on forms prescribed and furnished by the division of charities, department of public welfare, and may contain any and all proper and legal stipulations for proper care of the child, and may authorize the association or institution when such agreements are for permanent care and custody to appear in any proceeding for the legal adoption of such child, and consent to its adoption as provided in section 8025 of the General Code. The adoption order of the judge made upon such consent shall be binding upon the child and its parents, guardian, or other person, as if such persons were personally in court and consented thereto, whether made party to the proceeding or not. [Ibid., sec. 1352-12, added by Laws of 1923 (vol. 110), p. 265.]

*Placing of children under two years of age.*—No child under two years of age shall be given into the temporary or permanent custody of any person, association, or institution which is not certified by the division of charities, department of public welfare, as provided in sections 1352-1 and 1352-6 of the General Code without the written consent of the division of charities or by a commitment of a juvenile court: *Provided*, Such child may be placed temporarily without such written consent or court commitment with persons related by blood or marriage, or in a legally licensed boarding home which is not established for the purpose of placing children in free foster homes or for legal adoption. Persons, associations, and institutions duly certified and licensed under sections 1352-1 and 1352-6 for the purpose of placing children in free foster homes or for legal adoption, shall keep a record of such temporary and permanent surrenders of children under two years of age. This record shall be available for separate statistics, which shall include a copy of an official birth certificate and all information concerning the social, mental, and medical history of such children which will aid in an intelligent disposition of them in case that becomes necessary because the parents or guardians fail or are unable to reassume custody. No child placed on a temporary surrender with an association or institution shall be placed in a free foster home or for legal adoption, and all such surrendered children who are placed in foster homes or for adoption must have been permanently surrendered and a copy of such permanent surrender must be a part of the separate record kept by the association or institution. [Ibid., sec. 1352-13, added by Laws of 1923 (vol. 110), p. 266.]

*Unlawful to advertise unless with approval of division of charities.*—It shall be unlawful for any persons, organizations, hospitals, or associations which have



not been approved and certified by the division of charities, department of public welfare, to advertise that they will adopt children or place them in foster homes, or hold out inducements to parents to part with their offspring, or in any manner knowingly become a party to the separation of a child from its parent, parents, or guardians, except through a juvenile court commitment. [Ibid., sec. 1352-14, added by Laws of 1923 (vol. 110), p. 266.]

*Penalty.*—Whoever violates any of the provisions of sections 1352-12, or 1352-13, or 1352-14 of the General Code shall be fined not more than \$300 or imprisoned not more than three months, or both fined and imprisoned. Each act of violation shall be considered a separate offense and it shall be the duty of the division of charities, department of public welfare, to enforce the provisions of this act. [Ibid., sec. 12789-1, added by Laws of 1923 (vol. 110), p. 267.]

## NEW MEXICO

*Adoption; jurisdiction, petition.*—District courts are hereby given exclusive jurisdiction of all applications for the adoption of minor children. Any resident of the State may petition the district court for the county in which he resides for permission to adopt any minor child not his own, using for said application a form furnished the district court by the State board of public welfare. [Laws of 1925, act of February 21, 1925, sec. 1.]

*Investigation; trial period.*—Upon the filing of such petition or application for the adoption of a minor child, the district court shall notify the State board of public welfare, transmitting to the board a copy of the petition or application. It shall then be the duty of the board of public welfare to verify the allegations of the petition; to investigate the condition and antecedents of the child, for the purpose of ascertaining whether the child is a proper subject for adoption; and to make appropriate inquiry to determine whether the proposed foster home is a suitable one for the child. As soon as practicable after the receipt from the district court of the copies of the petition and the notice of filing of the same, and in any event within six months after such notice has been received by it, the board shall submit to the court a full report in writing, giving its reasons why the petition should or should not be granted by the court. The court may place the child directly in the proposed foster home for temporary care, pending investigation by the board of public welfare and prior to the final granting of the petition of adoption. No petition shall be finally granted until the child shall have lived six months in the proposed foster home, nor yet until the recommendations of the State board of public welfare shall have been received by the district court, provided that the six months' period before final adoption may be shortened by the district court, but only after notice of application for reduction of time shall have been given to the said board and hearing thereon had, at which the said board shall be represented and heard. [Ibid., sec. 2.]

*Hearing.*—In the event the board of public welfare shall recommend the petition be not granted, the court may act upon such recommendation and, without further hearing, deny the petition, but if the person or persons petitioning shall request a hearing, then the court shall hold such a hearing. At such hearing an authorized representative of the State board of public welfare may present the views of the board regarding the proposed adoption. [Ibid., sec. 3.]

## OREGON

*Regulation of adoptions.*—Any person may petition the county court for leave to adopt a child and, if desired, for a change of the child's name, but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife join therein. Such petition may be filed in the county where the petitioner resides, if a resident of Oregon, or in the county where the parent or guardian resides; or, where the petition is for the adoption of a child committed to any institution incorporated under the laws of this State that cares for dependent or delinquent children, in the county where such institution is located. A copy of such petition, together with a statement containing the full names and permanent address of the petitioners, shall be served on the State child welfare commission of Oregon by serving the president or secretary thereof, by registered mail or by personal service, and no petition or adoption shall be granted by any court until said commission has been given twenty days from the date of filing of such petition in which it may file for the consideration of the judge before whom the petition for adoption is pending

## OREGON—Continued

such information regarding the status of the child and evidence as to the suitability of the proposed foster home as the child welfare commission shall desire to submit. [Oreg. Laws 1920, sec. 9766, as amended by General Laws of 1921, ch. 215, p. 429.]

*Consent of parents, guardian, next of kin, etc.*—The parents of the child, or the survivor of them, shall, except as herein provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or if there is no guardian, the next of kin in this State, may give such consent; or if there is no next of kin, the court may appoint some suitable person to act in the proceedings as next friend of the child, and to give or withhold such consent: *Provided*, That in case said child is an illegitimate child, the consent of the mother shall be sufficient, or in case the mother is dead or unknown, the provisions above mentioned applicable in case neither parent is living shall apply; in case the legal custody of such child shall have been awarded in divorce proceedings, the consent of the person to whom such custody has been so awarded may be held by the court sufficient, but in such case citation to show cause why the proposed adoption shall not be made shall be served upon the parent of such child not having the custody in the manner provided by law for the service of citation in probate matters, and the objections of such parent shall be heard, if appearance be made: *Provided, further*, That the provisions of this section shall not be so construed as to limit or qualify the provisions of section 9829. [Ibid., sec. 9767.]

*Either parent insane, under sentence, etc.*—If either parent is insane or imprisoned in the State prison, under a sentence for a term not less than three years, or has willfully deserted and neglected to provide proper care and maintenance for the child for one year next preceding the time of filing the petition, the court shall proceed as if such parent were dead, and in its discretion may appoint some suitable person to act in the proceedings as next friend of the child, and give or withhold the consent aforesaid. [Ibid., sec. 9768.]

*Parent not consenting, notice to.*—If a parent does not consent to the adoption of his child, the court shall order a copy of the petition and order thereon to be served on him personally, if found in the State; and if not, a copy of the order shall be published once a week for three successive weeks in such newspaper printed in the county as the court directs, the last publication to be at least four weeks before the time appointed for the hearing. Like notice shall also be published when the child has no parent living, and no guardian or next of kin in this State. The court may order such further notice as it deems necessary or proper. [Ibid., sec. 9769, as amended by Gen. Laws of 1923, ch. 203, p. 292.]

*Child of fourteen; consent must be obtained.*—If the child is of the age of fourteen years or upward, the adoption shall not be made without his consent. [Ibid., sec. 9770.]

*Decree of adoption; when made and effect.*—If, upon such petition so presented and consented to, the court is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, and that it is fit and proper that such adoption should take effect, a decree shall be made setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner. [Ibid., sec. 9771.]

*Adopted child takes by inheritance; exception.*—A child so adopted shall be deemed, for the purposes of inheritance of such child and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them by lawful wedlock; except that he shall not be capable of taking property expressly limited to the heirs of the body or bodies of the parent by adoption, nor property from the lineal or collateral kindred of such parents by right of representation. [Ibid., sec. 9772.]

*Adoption terminates relation of parent and child.*—The parents of such child shall be deprived by the same of all legal rights as respects the child, and the child shall be freed from all obligations of maintenance and obedience as respects his parents. [Ibid., sec. 9773.]

*Appeals; by whom may be taken.*—Any petitioner may appeal to the circuit court from the decree of the county court on such petition, in like manner as appeals may be taken from the other decrees of that court; and any child made the subject

of such petition may, by a next friend, appeal in like manner; but no bond shall be required or costs awarded against such child or next friend. [Ibid., sec. 9774.]

*When parent may appeal; power of circuit court.*—A parent who has not before the hearing upon a petition for the adoption of his child, had personal notice thereof, may, at any time within one year after actual notice, apply to the circuit court to reverse the decree; said court, after due notice, may in its discretion reverse the same if it appears that any of the material allegations in the petition were not true. [Ibid., sec. 9775.]

*Change of adopted child's name.*—If in a petition for the adoption of a child a change of the child's name is requested, the court upon decreeing the adoption may also decree such change of name, and grant a certificate thereof, without the notices required by the preceding section. [Ibid., sec. 9778.]

*Guardianship; delinquent and dependent children.*—In any case where the court shall award a child to the care of any association or individual in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall have the authority to place such child in a family home, with or without indenture, and may be made party to any proceeding for the legal adoption of the child, and may by its or his 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 or decree of adoption. Such guardianship shall not include the guardianship of any estate of the child. [Ibid., sec. 9827.]

*Guardianship of dependent and delinquent children.*—Guardianship and consent to adoption for dependent and delinquent children shall be held or given as follows: Incorporated private child-caring agencies, societies, or institutions, duly licensed under the provisions of this act, shall be the guardians of the persons of all dependent or delinquent children committed to them through permanent orders by courts of competent jurisdiction. They may retain such children in institutional care or may place them in private family homes, either temporarily or as members of families; and, where they deem such action proper and desirable, may consent in loco parentis to the legal adoption of such wards. [Ibid., sec. 9828.]

*Release and surrender of dependent children.*—Such agencies, societies, or institutions may receive needy or dependent children from their parents or legal guardians for special, temporary, or continued care; and the parents or guardians may sign releases or surrenders giving to such organizations guardianship and control of the persons of such children during the period of such care, which may be extended until the children arrive at legal age: *Provided, however,* That such releases are understood not to surrender the rights of such parents or guardians in respect to the adoption of such children, and do not entitle such organization to give consent to the adoption of said children unless such release or surrender expressly recites that it is given for the purpose of adoption, and that any entire severance of family ties by adoption or otherwise be accomplished only by the order of a court of competent jurisdiction: *And provided further,* That it shall be unlawful to present a child surrendered to an agency, society, or institution, by a parent or parents or a guardian, for a court to pass upon the adoption of said child, until at least six months have elapsed after signing of said surrender. Parents or legal guardians of children whom they have by releases or surrender agreements given into the guardianship of incorporated child-caring organizations subsequent to such action may waive their right to personal appearance in court in matters of the adoption of said children and file their appearance and consent by a duly signed and attested certificate, which the court shall recognize as a valid basis for judicial consent in such cases, in which event said child-caring organizations may use the release or surrender as provided in section 9829 without the necessity of said six months period having expired. [Ibid., sec. 9829.]

*Consent of private agency, society; how given.*—In the adoption of a ward of a private agency, society, or institution, to give formal consent to such adoption, it shall be required that such organization shall file with the clerk of the court in which the adoption proceedings are pending two documents, as follows: (1) A certified copy of an order of a court of competent jurisdiction formally and permanently assigning the child to its guardianship, or, for the information of the court, a copy of a written surrender from a parent or parents or a guardian; and written formal consent by the organization to the proposed adoption, which consent shall show that sufficient and satisfactory investigation of the adopting

## OREGON—Continued

parties has been made, and which consent shall recommend that the petition for adoption be granted. [Ibid., sec. 9830.]

*Judge may give consent to adoption of foundlings.*—When foundlings or other abandoned children, whose parentage is unknown and who have not been assigned by a permanent court order to any child-caring organization, are presented for adoption, the judge having competent jurisdiction in the county of the residence of the parties desiring to adopt, or the judge in the county where are located the headquarters or institution of the society or institution having the child in care, may record his consent to the adoption in loco parentis. The court consenting to and consummating the adoption of any foundling, abandoned, or illegitimate child, at his discretion, may require that all papers relating to the personal history of such child or its family history, if any is of record, be sealed and filed in the county archives, to be unsealed only on judicial order. [Ibid., sec. 9831.]

## MASSACHUSETTS

*When adoption permitted.*—A person of full age may petition the probate court in the county where he resides for leave to adopt as his child another person younger than himself, unless such other person is his or her wife or husband, or brother, sister, uncle, or aunt of the whole or half blood. If the petitioner has a husband or wife living competent to join in the petition, such husband or wife shall join therein, and upon adoption the child shall in law be the child of both. If a person not an inhabitant of this commonwealth desires to adopt a child residing here, the petition may be made to the probate court in the county where the child resides. [Gen. Laws 1921, ch. 210, sec. 1.]

*Written consent of certain persons required.*—A decree for such adoption shall not be made, except as hereinafter provided, without the written consent of the child, if above the age of fourteen; of her husband, if she is a married woman; of the lawful parents or surviving parent; of the parent having the lawful custody of the child, if the parents are divorced or are living separately; of the guardian of the child, if any; of the mother only of the child, if illegitimate; or of the person substituted for any of the above named by this chapter. Illegitimacy shall in no case be expressly averred upon the record. A person whose consent is hereby required shall not thereby be debarred from being the adopting parent. If the child has been previously adopted, the consent of the previous adopting parent shall also be required. [Ibid., sec. 2.]

*Consent not required in certain cases.*—The consent of the persons named in the preceding section, other than the child or her husband, if any, shall not be required if the person to be adopted is of full age, nor shall the consent of any such person other than the child be required if such person is adjudged by the court hearing the petition to be hopelessly insane, or is imprisoned in the State prison or in a house of correction in this Commonwealth under sentence for a term of which more than three years remain unexpired at the date of the petition; or if he has willfully deserted and neglected to provide proper care and maintenance for such child for two years last preceding the date of the petition; or if he has suffered such child to be supported for more than two years continuously prior to the petition by an incorporated charitable institution or as a pauper by a town or by the commonwealth; or if he has been sentenced to imprisonment for drunkenness upon a third conviction within one year and neglects to provide proper care and maintenance for such child; or if such person has been convicted of being a common nightwalker or a lewd, wanton, and lascivious person, and neglects to provide proper care and maintenance for such child. A giving up in writing of a child, for the purpose of adoption, to an incorporated charitable institution shall operate as a consent to any adoption subsequently approved by such institution. Notice of the petition shall be given to the department of public welfare, if the child is supported as a pauper by a town or by the Commonwealth, and if the child is supported by a town, notice shall also be given to the overseers of the poor thereof, and in Boston said notice shall be given both to the overseers of the poor and to the trustees for children. [Ibid., sec. 3.]

*Notice.*—If the written consent required by the two preceding sections is not submitted to the court with the petition, the court shall order notice by personal service on the parties of a copy of the petition and order thereon, or, if they are not found within this Commonwealth, by publication of the petition and order once in each of three successive weeks in such newspaper as the court orders, the last publication to be seven days at least before the time appointed for the

hearing, and the court may require additional notice and consent. But if such child is of unknown parentage and is a foundling, publication as herein set forth shall not be required; but notice of the petition shall be given to the department of public welfare. [Ibid., sec. 4.]

*Proceedings upon failure to object after notice.*—If, after such notice, a person whose consent is required does not appear and object to the adoption, the court may act upon the petition without his consent, subject to his right of appeal, or it may appoint a guardian ad litem with power to give or withhold consent. [Ibid., sec. 5.]

*Decree of court and its effect.*—If the court is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability to bring up the child and provide suitable support and education for it, and that the child should be adopted, it shall make a decree, by which, except as regards succession to property, all rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the child and the petitioner and his kindred, and such rights, duties and legal consequences shall, except as regards marriage, incest, or cohabitation, terminate between the child so adopted and his natural parents and kindred or any previous adopting parent; but such decree shall not place the adopting parent or adopted child in any relation to any person, except each other, different from that before existing as regards marriage, or as regards rape, incest, or other sexual crime committed by either or both. The court may also decree such change of name as the petitioner may request. If the person so adopted is of full age, he shall not be freed by such decree from the obligations imposed by section 6 of chapter 117 and section 20 of chapter 273. [Ibid., sec. 6.]

*Rights of adopted child as to succession to property.*—A person adopted in accordance with this chapter shall take the same share of the property which the adopting parent could dispose of by will as he would have taken if born to such parent in lawful wedlock, and he shall stand in regard to the legal descendants, but to no other of the kindred of such adopting parent, in the same position as if so born to him. If the person adopted dies intestate, his property acquired by himself or by gift or inheritance from his adopting parent or from the kindred of such parent shall be distributed according to chapters 190 and 196 among the persons who would have been his kindred if he had been born to his adopting parent in lawful wedlock; and property received by gift or inheritance from his natural parents or kindred shall be distributed in the same manner as if no act of adoption had taken place. The apportionment and distribution shall be ascertained by the court. A person shall not by adoption lose his right to inherit from his natural parents or kindred. [Ibid., sec. 7.]

*Rights of adopted child under wills, trust, etc.*—The word "child," or its equivalent, in a grant, trust settlement, entail, devise, or bequest shall include a child adopted by the settlor, grantor, or testator unless the contrary plainly appears by the terms of the instrument; but if the settlor, grantor, or testator is not himself the adopting parent, the child by adoption shall not have, under such instrument, the rights of a child born in lawful wedlock to the adopting parent, unless it plainly appears to have been the intention of the settlor, grantor, or testator to include an adopted child. [Ibid., sec. 8.]

*Rights in this Commonwealth of the child adopted in another State.*—An inhabitant of another State, adopted as a child in accordance with the laws thereof, shall upon proof of such fact be entitled in this Commonwealth to the same rights of succession to property as he would have had in the State where he was adopted, except so far as such rights are in conflict with this chapter. [Ibid., sec. 9.]

*Effect of second adoption.*—If the child has been previously adopted, all the legal consequences of the former decree shall, upon a subsequent adoption, determine, except so far as any interest in property may have vested in the adopted child, and a decree to that effect shall be entered on the records of the court. [Ibid., sec. 10.]

*Appeals.*—The supreme judicial court may allow a parent, who, upon a petition for adoption, had no personal notice of the proceedings before the decree, to appeal therefrom within one year after actual notice thereof, if he first makes oath that he was not, at the time of filing such petition, undergoing imprisonment as specified in section three, or that, if so imprisoned, he has since been pardoned on the ground of innocence or has had his sentence reversed. [Ibid., sec. 11.]

*Petitions for a change of name.*—A petition for the change of name of a person may be heard by the probate court in the county where the petitioner resides.

## MASSACHUSETTS—Continued

No change of the name of a person, except upon the adoption of a child under this chapter or upon the marriage or divorce of a woman, shall be lawful unless made by said court for a sufficient reason consistent with public interest. [Ibid., sec. 12.]

*Notice and certificate.*—The court shall, before decreeing a change of name, require public notice of the petition to be given, and any person may be heard thereon. It shall also require public notice to be given of the change decreed, and on return of proof thereof may grant a certificate under the seal of the court of the name which the person is to bear, which shall thereafter be his legal name. [Ibid., sec. 13.]

*Annual return of changes.*—Each register of probate shall annually, in December, make a return to the State secretary of all changes of names made in his court. [Ibid., sec. 14.]

*Investigations in certain probate proceedings.*—Any judge of a probate court may appoint a guardian ad litem to investigate the facts in any proceeding pending in said court relating to or involving questions as to the care, custody, or maintenance of minor children and as to any matter involving domestic relations except those for the investigation of which provision is made by section 16 of chapter 208. Said guardian ad litem shall, before final decree in such proceeding, report in writing to the court the results of the investigation, and such report shall be open to inspection to all the parties in such proceeding or their attorneys. The compensation shall be fixed by the court and shall be paid by the county where the proceeding is held, together with any expenses approved by the court, upon certificate by the judge to the county treasurer. The State police, local police, and probation officers shall assist the guardian ad litem so appointed, upon his request. [Ibid., ch. 215, sec. 56A, added by Acts and Resolves of 1923, ch. 432.]

*Adoption of infants.*—Whoever receives an infant under two years of age for adoption or for giving it a home, or for procuring a home for adoption for it, shall before receiving the same, ascertain its name, age, and birthplace, and the name and residence of its parents, and shall keep a record of the same and of the date of such reception. He shall forthwith, upon the reception of said infant, give written notice thereof to the department, and upon its request shall give information and render reports required by it concerning such infant, and within two days after its discharge shall give written notice to the department of the discharge and disposal of such infant. The department may investigate the case, and at any time prior to a decree of adoption take any such infant into its custody if in its judgment public interest and the protection of the infant so require. [Ibid., ch. 119, sec. 14.]

*Notice to department before child is placed out.*—A child shall not be adopted or placed in charge of any person from a State institution until notice of an application therefor has been given to the department and until its written report, made after investigation into the propriety thereof, has been filed with such institution. All applications for the release or discharge of any children so placed in charge shall in like manner be given to the department for its report. [Ibid., ch. 121, sec. 18.]

## NEW YORK

*Definitions; effect of article.*—Adoption is the legal act whereby an adult person takes another adult person or a minor into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect to such adult or minor. Hereafter in this article the person adopting is designated the "foster parent." A voluntary adoption is any other than that of a destitute and dependent child, or one who is a public charge from an "authorized agency," orphan asylum, or charitable institution. "Lawful custody" in this article shall mean "custody" pursuant to and in compliance with expressed provisions of statute law.

An adult unmarried person, or an adult husband and his adult wife together, may adopt a person of the age of twenty-one years and upward or a minor in pursuance of this article,<sup>2</sup> and a child shall not hereafter be adopted except in pursuance thereof. Proof of the lawful adoption of a person of the age of twenty-

<sup>2</sup>By an amendment in 1925 the following is inserted: "And an adult husband or an adult wife may also adopt a natural child of the other spouse of the age of twenty-one years and upward, or a minor, in pursuance of this article." (Laws of 1925, ch. 608, sec. 1.)

one years and upward or a minor heretofore made may be received in evidence, and any such adoption shall not be abrogated by the enactment of this chapter and shall have the effect of an adoption hereunder. Nothing in this article in regard to an adopted child inheriting from the foster parent applies to any will, devise, or trust made or created before June 25, 1873, or alters, changes, or interferes with such will, devise, or trust; and as to any such will, devise, or trust, a child adopted before that date is not an heir so as to alter estates or trusts or devises in wills so made or created; and nothing in this article in regard to an adult adopted pursuant hereto inheriting from the foster parent applies to any will, devise, or trust, made or created before April 22, 1915, alters, changes, or interferes with such will, devise, or trust, and as to any such will, devise, or trust, an adult so adopted is not an heir so as to alter estates or trusts or devises in wills so made or created. [Domestic Relations Law, sec. 110, as amended by Laws of 1924, ch. 323.]

*Whose consent necessary.*—Consent to adoption is necessary as follows: 1. Of the minor, if over twelve years of age;

2. Of the foster parent's husband or wife, unless lawfully separated or unless they jointly adopt such minor;

3. Of the parents or surviving parent of a legitimate child; and of the mother of an illegitimate child, but the consent of a parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery, or who is insane as defined by the insanity law or judicially declared incompetent or who is a mental defective as defined by the mental deficiency law, or adjudged to be an habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary; excepting, however, that where such parents are divorced because of his or her adultery, notice shall be given to both the parents personally or in such manner as may be directed by a judge of a court of competent jurisdiction.

4. Of a person of full age having lawful custody of the child, if any such person can be found, where the child has no father or mother living, or no father or mother whose consent is necessary under the last subdivision. If such child has no father or mother living, and no person can be found who has the lawful custody of the child, the judge or surrogate shall recite such facts in the order allowing the adoption.

5. Where a minor to be adopted is of the age of eighteen years or upward, the judge or surrogate may direct, in his discretion, that the consent of the persons referred to in the preceding subdivisions of this section shall be waived, if, in his opinion, the moral or temporal interests of such minor will be promoted thereby and such consents can not, for any reason, be obtained. Where the person to be adopted is of the age of twenty-one years and upward, the consents of the persons referred to in the preceding subdivisions of this section shall not be required. [Ibid., sec. 111, as amended by Laws of 1924, ch. 323.]

*Requisites of voluntary adoption.*—In adoption the following requirements must be followed:

1. The foster parents or parent, the person to be adopted, and all the persons whose consent is necessary under the last section, must appear before the children's court judge, county judge, or the surrogate of the county where the foster parent or parents reside, or if the foster parents or parent do not reside in this State, in the county where the minor resides, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate a verified instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parents or parent to adopt and treat the minor as his, or her, or their own lawful child, and a statement of the date and place of birth of the person to be adopted, as nearly as the same can be ascertained, the religious faith of the parents and of the child, the manner in which the foster parents obtained the child, which statement shall be taken prima facie as true. If a change in the name of the minor is desired, such instrument may also state the new name by which the minor shall be known. The instrument must be signed by the foster parents or parent and by each person whose consent is necessary to the adoption, and severally acknowledged by said persons before such judge or surrogate.<sup>3</sup> In all cases where the consents of the persons mentioned in sub-

<sup>3</sup> By an amendment in 1925 the following is inserted: "But where the consent of a parent or person whose consent is necessary to the adoption is duly acknowledged and certified as conveyances are required to be certified to entitle them to record in this state, such judge or surrogate may grant the order of adoption without the personal appearance of such person or persons so executing such consent or consents." (Laws of 1925, ch. 607.)

## NEW YORK—Continued

divisions 1, 2, 3, and 4 of section 111 have been waived as provided in subdivision 5 of such section, or where the person to be adopted is of the age of twenty-one years or upward, notice of such application shall be served upon such persons as the judge or surrogate may direct.

3. Where the child to be adopted is under sixteen years of age, the petition must show that the child to be adopted resided continuously with the foster parents at least six months prior to the date of petition. In the discretion of the judge or surrogate, a child may be adopted when the period of residence is less than six months upon his certifying in the order the necessity of such adoption.

4. Before any adoption shall be made the court shall make or cause to be made an investigation by some person or agency specifically designated by the court to verify the allegations set forth in the instrument and such other facts relating to the child and foster parents as will give the court full knowledge as to the desirability of confirming the adoption. A written report containing the results of such investigation shall be submitted before the adoption is granted. [*Ibid.*, sec. 112, as amended by Laws of 1924, ch. 323.]

*Order.*—If satisfied that the moral and temporal interests of the person to be adopted will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption and directing that the person to be adopted shall henceforth be regarded and treated in all respects as the child of the foster parent or parents. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order must also direct that the name of the minor be changed to such name as shall have been designated in the instrument mentioned in the last section. Such order must be filed and recorded in the office of the county clerk of such county and shall be open to the public. The fact of illegitimacy shall in no case appear upon the record. The written report of the investigation, together with all other papers pertaining to the adoption, shall be kept by the judge or surrogate as a permanent record of his court, which may be sealed by him in his discretion and withheld from inspection by a proper order. No person shall be allowed access to such sealed records except upon an order of a court of record, and such order shall not be granted except on good cause shown. [*Ibid.*, sec. 113, as amended by Laws of 1924, ch. 323.]

*Adoption from charitable institutions or an authorized agency.*—An orphan asylum or charitable institution, incorporated for the care of orphan, friendless, or destitute children or an authorized agency may place children for adoption. The adoption shall be effected in the same manner as provided heretofore in relation to voluntary adoptions by the execution of an instrument containing substantially the same provisions as the instrument provided in this article for voluntary adoption, signed and sealed in the corporate name of such corporation or authorized agency by the officer or officers authorized in writing by the director thereof to sign the corporate name of such institution or authorized agency to such instruments, and signed by the foster parent or parents and each person whose consent is necessary to the adoption; and may be signed by the child if over twelve years of age; all of whom shall appear before the children's court judge, county judge, or surrogate of the county where such foster parents reside or, if such foster parents do not reside in this State, in the county where such institution or authorized agency is located, and be examined except that such officers need not appear. In granting letters of adoption the court must, when practicable, only give custody through adoption to persons of the same religious faith as that of the child in accordance with article 16 of the State charities law; and such judge or surrogate may thereupon make the order of adoption provided by this article. Such instrument and order shall be filed and recorded in the same manner as provided heretofore in relation to voluntary adoptions and the adoption shall take effect from the time of such filing and recording. [*Ibid.*, sec. 115, as amended by Laws of 1924, ch. 323.]

*Abrogation of adoption from a charitable institution or an authorized agency.*—An authorized agency or/and any institution or corporation which shall have been a party to the agreement by which a child was adopted, or/and a minor who shall have been adopted in pursuance of this chapter or of any act repealed thereby, from an authorized agency or/and an orphan asylum or charitable institution, or/and any person on the behalf of such child, may make an application to the



children's court judge, county judge, or the surrogate's court of the county in which the foster parent then resides, or, if the foster parent resides without the State, where the original papers of adoption are on file, or where the natural parent or parents or persons whose consent would be necessary to an original adoption reside, for the abrogation of such adoption, on the ground of cruelty, misusage, refusal of necessary provisions or clothing, or inability to support, maintain, or educate such child, or attempt to or actually change or fail to safeguard the religion of such child, or of any violation of duty on the part of such foster parent toward such child; which application shall be by a petition setting forth the grounds thereof, and verified by the person or by some officer of the corporation or authorized agency making the same. A citation shall thereon be issued by such judge or surrogate, in or out of such court, requiring such foster parent to show cause why the application should not be granted. The provisions of the civil practice act and the surrogate's court practice relating to the issuing, contents, time, and manner of service of citations issued out of a surrogate's court, and to the hearing on the return thereof, and to enforcing the attendance of witnesses, and to all proceedings thereon, and to appeal from decrees of surrogates' courts, not inconsistent with this chapter, shall apply to such citation and to all proceedings thereon. Such judge or court shall have power to order or compel the production of the person of such minor. If on the proofs made before him, on the hearing on such citation, the judge or surrogate shall determine that either of the grounds for such application exists, and that the interests of such child will be promoted by granting the application, and that such foster parent has justly forfeited his right to the custody and services of such minor, an order shall be made and entered abrogating the adoption, and thereon the status of such child shall be the same as if no proceedings had been had for the adoption thereof.

After one such petition against a foster parent has been denied, a citation on a subsequent petition against the same foster parent may be issued or refused in the discretion of the judge or surrogate to whom such subsequent petition shall be made. [Ibid., sec. 117, as amended by Laws of 1924, ch. 323.]

*Abrogation by foster parent of such adoption.*—A foster parent who shall have adopted a minor in pursuance of this chapter or of any act repealed thereby, from an authorized agency, orphan asylum, or charitable institution, may apply to the children's court judge, county judge, or surrogate's court of the county in which such foster parent resides, or, if the foster parent resides without the State, where the original papers of adoption are on file, or where the natural parent or parents or persons whose consent would be necessary to an original adoption reside, for the abrogation of such adoption on the ground of the willful desertion of such child from such foster parent, or of any misdemeanor or ill behavior of such child, which application shall be by petition, stating the grounds thereof, and the substance of the agreement of adoption, and shall be verified by the petitioner; and thereon a citation shall be issued by such judge or surrogate in or out of such court, directed to such child, and to the authorized agency or/and corporation which was a party to such adoption, or, if such corporation or agency does not then exist, to the board, commission, or official charged with the jurisdiction of the poor of such county, requiring them to show cause why such petition should not be granted. Unless such agency or/and corporation shall appear on the return of such citation, before the hearing thereon shall proceed, a special guardian shall be appointed by such judge or court to protect the interests of such child in such proceeding, and the foster parent shall pay to such special guardian such sum as the court shall direct for the purpose of paying the fees and the necessary disbursements in preparing for and contesting such application on behalf of the child. If such judge or surrogate shall determine, on the proofs made before him, on the hearing of such citation, that the child has violated his duty toward such foster parent, and that due regard to the interests of both require that such adoption be abrogated, an order shall be made and entered accordingly; and such judge or court may make any disposition of the child as and in a new proceeding. If such judge or surrogate shall otherwise determine, an order shall be made and entered denying the petition. [Ibid., sec. 118, as amended by Laws of 1924, ch. 323.]

## ILLINOIS

*Hearing; decree.*—On default of answer of all the defendants, the court shall proceed to hear evidence, and if the court shall find that (1) the parents or surviving parent of a legitimate child or the mother of an illegitimate child, or if the child has no parent living, the guardian, if any, of the child, or if there is no parent living and the child has no guardian or the guardian is not known to petitioner, then a near relative of the child, if any there be, consents to the adoption; or (2) that one parent consents and the other is unfit for any of the reasons hereinafter specified to have the child, or that both parents are, or that the surviving parent or the mother of an illegitimate child is so unfit for any of such reasons—the grounds of unfitness being (a) depravity, (b) open and notorious adultery or fornication, (c) habitual drunkenness for the space of one year prior to the filing of the petition, (d) extreme and repeated cruelty to the child, (e) abandonment of the child, or (f) desertion of the child for more than six months next preceding the filing of the petition; or (3) that the person or persons whose consent is required, has been deprived of the custody of such child by a court of competent jurisdiction, and such court in the order appointing a guardian over the person of the child has authorized such guardian to consent to the adoption of such child without notice to or assent by the parents, and that such guardian consents to such adoption, and if the court further finds that the facts stated in the petition are true, and that the petitioner is of sufficient ability to bring up the child and furnish suitable nurture and education, and that it is fit and proper and for the best interest of the child that such adoption should be made, a decree shall be made, setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner or petitioners, and may decree that the name of the child be changed according to the prayer of the petition. [Smith's Rev. Stat. 1921, ch. 4, sec. 3.]

*Investigation and approval.*—No child from such maternity or lying-in hospital shall be placed in a family home, or be legally adopted until such home shall have been investigated and approved by the State Board of Administration. [Ibid., ch. 23, sec. 343.]

## MICHIGAN

*Applicant for child must be approved by county agent, etc.*—No child shall be indentured, adopted, or otherwise placed in charge of any person by any State institution during minority, or for any other period, unless the applicant for any child shall be first approved in writing by said agent for the county where the applicant resides, or by the State agent of the State institution to which the child belongs, in such form as may be prescribed by the board of such institution. Such approval shall be filed with the superintendent of the State institution to which the application is made before the child shall be indentured or adopted. [Comp. Laws 1915, sec. 1993.]

*Written approval of institution required for placement, etc.*—Any child found to be dependent, neglected or delinquent under this act shall not be indentured, apprenticed, or otherwise disposed of, except as is herein provided, and in no case shall any child under the age of seventeen years be placed in any home by indenture, apprenticeship, adoption, or on trial by any person, corporation, or institution, without the written approval of the home where the child is so placed by the county agent of the county being filed with the probate judge of the said county. [Ibid., sec. 2021.]

*Consent required.*—Such adoption and, in case a change of name is desired, such change of name shall be with the consent of the persons hereinafter described, viz.:

1. In case the parents of such child, or either of them, are living, then with the consent of such parents or the survivor of them.
2. In case said child be illegitimate, then with the consent of its mother; and if such mother be a minor, then with the additional consent of a guardian ad litem to be appointed for her by the judge of probate in the county where such proceedings are pending.
3. In case such child is an orphan, then with the consent of the nearest of kin or guardian of such child, or of the principal officer of any incorporated

society, asylum, hospital or home to which said child may have been duly committed by a court of competent jurisdiction.

4. In case the parents or surviving parent of such child, or the mother, if such child be illegitimate, has or have surrendered and released in writing, duly executed and acknowledged before the judge of probate or a register of the probate court of the county in which said parents reside or may be, all his, her, or their parental rights in and to such child, and the custody and control thereof, to an incorporated society, asylum, hospital, or home, of which such child may be an inmate, for the purpose of enabling such incorporated society, asylum, hospital, or home to have such child adopted by some suitable person, and its name changed when a change is desired, and the child made an heir at law under the provisions of this chapter, then with the consent of the principal officer of such incorporated society, asylum, hospital, or home, and the aforementioned release executed by the parent or parents, as aforesaid, to said society, asylum, hospital or home, shall be filed with the instrument of adoption in the probate court. The effect of the surrender and release as herein provided shall be fully explained by the judge of probate or probate register to the parent or parents executing same.

5. In case said child is legally an inmate of the State public school then with the consent of the superintendent of such school and the county agent of the State welfare commission for the county wherein the person adopting such child resides.

6. In case said child shall have been committed by an order of a court of competent jurisdiction to the care of any incorporated society, asylum, hospital, or home, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, which has been duly licensed and approved by the State welfare commission, then with the consent of the principal officer of such society, asylum, hospital, or home.

7. In any case heretofore described, if such child be over the age of ten years, then with the additional consent of such child.

8. In case any person herein designated as a parent with whose consent such adoption or change of name is desired shall be insane or mentally incompetent, then such adoption or change of name shall be with the consent of the general guardian of such insane or mentally incompetent parent, and such consent of the general guardian shall have the same force and effect as if made by the insane or mentally incompetent person while in sound mind. [Ibid., sec. 14139, as amended by Public Acts of 1923, No. 70, sec. 2, p. 94.]

*Acknowledgment.*—The execution of such instrument shall be acknowledged by the person or persons so signing the same before an officer authorized by law to take acknowledgments, and thereupon the same shall be presented to and filed with the judge of probate of the county where such person or persons adopting such child reside. [Ibid., sec. 14141, as amended by Public Acts of 1923, No. 70, sec. 4, p. 96.]

*Investigation by county agent.*—Such judge of probate with whom such instrument is filed shall thereupon direct a full examination and investigation by the county agent of said county or a duly appointed probation officer of said court, who shall file a report in writing of his findings with such judge of probate; and if such judge of probate from an examination of said report, and after due consideration of said matter, shall satisfy himself as to (1) the genuineness of consent to such adoption and the legal authority of the person or persons signing such consent, (2) the good moral character, ability to support and educate such child, and the suitability of the home of the person or persons adopting such child, and (3) that the best interests of such child will be subserved by such adoption, he shall make an order to be entered on the journal of the probate court that such person or persons do stand in the place of a parent or parents to such child, and in case a change of name is desired, that the name of such child be changed to such name as shall be designated in said instrument for that purpose. Whereupon such child shall, in case of a change of name, thereafter be known and called by said new name, and the person or persons so adopting such child shall thereupon stand in the place of a parent or parents to such child in law, and be liable to all the duties and entitled to all the rights of parents thereto, and such child shall thereupon become and be an heir at law of such person or persons, the same as if he or she were in fact the child of such person or persons. [Ibid., sec. 14142, as amended by Public Acts of 1923, No. 70, sec. 5, p. 96.]

## WISCONSIN

*Adoption of child; consent, who to give; notice of hearing.*—No such adoption shall be made without the written consent of the living parents of such child unless the court shall find that one of the parents has abandoned the child or gone to parts unknown, when such consent may be given by the parent, if any, having the care of the child. In cases where neither of the parents is living, or if living are unknown or mentally incompetent or have abandoned the child, such consent may be given by the guardian of such child, if any. If such child has no guardian such consent may be given by any of the next of kin of such child residing in this State or, in the discretion of the court, by some suitable person to be appointed by the court. In case of a child not born in lawful wedlock such consent may be given by the mother, if she is living and has not abandoned such child: *Provided*, That unless the living parent or parents of a minor consent to such adoption it shall be the duty of the court having jurisdiction of the proceedings, upon the filing of any petition for adoption, by order to appoint a time and place for hearing such petition and cause notice of such time and place to be given to such parent or parents, by personal service of said notice on such parent or parents at least ten days before the hearing or, if to the satisfaction of the court personal service can not be obtained, by publication thereof in a newspaper in the county at least three weeks successively prior to said hearing, and when notice is duly given as herein provided the parent of any minor shall be bound by the order of adoption as fully as though he had consented thereto. And in case such child has arrived at the age of twenty-one years such consent may be given by such child alone, and the consent of no other person in behalf of such child shall be required. [Statutes of 1923, ch. 150, sec. 4022.]

*Action to test adoption; limitation.*—Any person having the authority or right to question the validity of any adoption heretofore made in good faith on the part of the persons adopting any child, pursuant to section 4022, shall bring any action of proceeding therefor to vacate or nullify the same, in the court in which such adoption was had, within one year from the taking effect of this section or be forever barred from questioning such adoption proceeding, provided that this shall apply only in case of illegitimate or abandoned children. [Ibid., sec. 4022a.]

## TENNESSEE

*Adoption from institution; requisites of.*—In the adoption of a ward of a private agency, society, or institution, to give formal and legal consent to such adoption, it shall be required that such organization shall file with the proper official of the county in which the parties desiring to adopt the child reside a copy of the order of a judge formally assigning the child to its guardianship, a written statement of indorsement of the adopting parties after sufficient and satisfactory investigation and formal consent to the proposed adoption; or in cases where the agency, society, or institution has received the child on a written release or agreement signed by the natural parents or legal guardian, the duly recorded consent of a judge of a court of competent jurisdiction shall precede the completion of articles of adoption for any such child or children.

Parents or legal guardians of children whom they have by releases or agreements assigned to the guardianship of child-caring agencies, societies, or institutions may waive their right to personal appearance in court in matters of adoption and file their appearance and consent by a duly signed and attested certificate, which shall be a valid basis for judicial consent in such cases; and when such parental or guardian's certificate can not be obtained the judge must base his decision upon the best evidence available. When foundlings or other abandoned children whose parentage is unknown, and who have not been assigned by court order to a child-caring organization, are presented for adoption, the judge having proper jurisdiction in the county of the residence of the parties desiring to adopt may record his consent in loco parentis. The judge consenting to and consummating the adoption of any foundling, abandoned, or illegitimate child, at his discretion, may require that all papers relating to the personal history of such child or family history, if any is of record, be sealed and filed in the county archives, to be unsealed only by judicial order. [Thompson's Shannon's Code 1918, sec. 4436a-65a15, p. 1899e (Public Acts of 1917, ch. 120, sec. 5, subsecs. 3, 4).]

## VERMONT

*Investigation.*—A probate court, before accepting an instrument of adoption for filing and record, may, in its discretion, make an investigation of the conditions and circumstances attending the proposed adoption and may require the parties desiring to file an instrument of adoption to prove the suitability of such adoption. State's attorneys, grand jurors, overseers of the poor, and selectmen shall, upon request of a judge of the probate court before which an adoption is pending, furnish him a written report of the conditions and circumstances of the parties to the proposed adoption residing within their respective jurisdictions. If, after investigation or hearing, the court disapproves of such adoption, it may refuse to file and record the instrument of adoption and the same shall be of no force and effect. [Laws of 1923, No. 60, sec. 5.]

*Time of going into effect.*—The adoption of a minor shall not become final until one year after the date of the filing of the instrument of adoption in the probate court where it is required to be filed, during which time the adoption shall be a matter pending before and within the control of the court in which the instrument of adoption is filed, and such adoption may be vacated and annulled, for cause shown, during said term of one year, but until such adoption has been canceled or annulled it shall be of full force and effect in respect to the rights of the parties to the instrument of adoption. [Ibid., sec. 7.]

## NEW JERSEY

*Consent necessary to give notice for adopting child.*—Any parent, guardian, or person having the custody or control of any minor child or children who desires to offer through the medium of the public press to surrender custody and control of such child or children to any person or persons whatsoever, for the purpose of indenture or adoption, shall, before making such public offer, notify the commissioner of charities and corrections of this State of such intention and secure from him his consent and approval in writing; and any such parent, guardian, or person who shall fail to comply with this requirement shall be deemed guilty of "cruelty and neglect of children" and liable under the act to which this is a supplement to the penalty therein specified: *Provided, however,* That this supplement shall not apply to the New Jersey State Board of Children's Guardians or any children's home or orphan asylum or children's aid society incorporated under the laws of this State and indorsed by the commissioner of charities of this State. [Laws of 1920, ch. 180, p. 366, approved April 15, 1920.]

## MISSOURI

*Prohibiting transfer of custody of child.*—No person shall surrender control or custody of a child or transfer the control or custody of a child to another, and no person shall take possession or charge of a child so transferred, without having first filed a petition before a juvenile court having jurisdiction, praying that such surrender or transfer may be made, and having obtained such an order from such juvenile court, approving or ordering transfer of custody. Any person violating the terms of this section shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than three months or by a fine of not less than \$50, or by both such fine and imprisonment. [Rev. Stat. 1919, ch. 11, sec. 1103.]

## MARYLAND

*Placement of children under 6 months of age.*—It shall be unlawful to separate a child under the age of six months from its mother for the purpose of placing such child in a foster home or institution for the maintenance of such child, or to assist or participate in such separation, or to place, receive, or retain any child in a foster home or institution for the maintenance of such child, or to assist or participate in so placing, receiving, or retaining such child, unless it be necessary for the physical good of the mother or of such child that they be separated or that such child be placed, received, or retained in a foster home or institution for the maintenance of such child, and two physicians, qualified to practice medicine in the State of Maryland, and who shall have been engaged in active practice for at least five years, shall have signed a certificate setting out the reasons for such necessity, or unless a court of competent jurisdiction shall have so ordered, or unless within the discretion of the board of State aid and charities such separation is necessary and said board gives its written consent thereto. [Laws of 1916, ch. 210, sec. 484, p. 416.]

## NORTH CAROLINA

*Separating child under 6 months old from mother.*—It shall be unlawful for any person to separate or aid in separating any child under six months old from its mother for the purpose of placing such child in a foster home or institution, or with the intent to remove it from the State for such purpose, unless the consent in writing for such separation shall have been obtained from the clerk of the superior court and the county health officer of the county in which the mother resides, or of the county in which the child was born; and it shall be unlawful for any mother to surrender her child for such purpose without first having obtained such consent. Any person violating this section shall, upon conviction, be fined not exceeding \$500 or imprisoned for one year, or both, in the discretion of the court. [Consolidated Stat. 1919, ch. 82, sec. 4445.]

## SOUTH CAROLINA

*Placement of infants.*—All private individuals, including midwives, physicians, nurses, and hospitals and the officers of all private institutions, as well as agencies and organizations, who shall remove a child within six months after its birth from its natural mother shall report to the child-placing bureau [of the State board of public welfare] the names and addresses of the parents of the child and names and addresses of the persons with whom said child is left, unless the person removing said child from its natural mother knows of his or her own knowledge that said child was born in wedlock and was not removed from its mother because of immoral surroundings. [Laws of 1924, No. 728, sec. 7, p. 1191.]

*Penalty.*—Any person who shall violate any of the provisions of this act, or who shall make any false statements or reports to the child-placing bureau with reference to the matters contained herein, and any parent or guardian or person receiving a child who shall give a false name or address to the child-placing bureau shall upon conviction, be guilty of a misdemeanor. [Ibid., sec. 8, p. 1191.]

That the provisions of this act shall not apply to persons related by blood or marriage to such children within the sixth degree. [Ibid., sec. 8½, p. 1192.]

## APPENDIX II

### OUTLINE FOR STUDY OF ADOPTION LAWS AND ADMINISTRATION

The following outline is presented for the use of persons and organizations interested in analyzing and studying the adoption law of their own State and its administration:

#### 1. JURISDICTION.

As to kind of court.

As to locality.

Petitioner's residence.

Child's residence.

Institution in which child cared for.

#### 2. WHO MAY ADOPT.

Any reputable resident of State.

Person of specified age.

Younger person.

#### 3. WHO MAY BE ADOPTED.

Minor only.

Other person.

#### 4. PETITION.

Who may petition.

Joint action of husband and wife mandatory or discretionary with court.

Consent of husband or wife when action not joint.

Provision if husband or wife under 21 years.

Contents of petition.

Name of child, sex, age, date of birth.

Name of petitioner, sex, age, address.

Name by which child is to be known.

Name and address of parents of child, if living and known to petitioner; date and place of death of parents if dead.

Name and address of mother of illegitimate child.

Name and address of father (if paternity established or acknowledged by father and he has regularly supported).

Description of child's property.

#### 5. CONSENT OF PARENTS.

Both parents (if living) of legitimate child.

Mother of illegitimate child.

Father of illegitimate child (if paternity established or acknowledged or if he has supported).

Exceptions.

When parent—

Insane (so declared by competent authority).

Feeble-minded (so declared by competent authority).

Habitually intemperate.

Drug addict.

Abandoned or willfully deserted child.

Neglected to provide for specified period.

Left child dependent on public relief (time not stated).

Can not be located.

Deprived of custody or civil rights.

Serving sentence in State prison.

Found to be unfit.

If child is foundling

Reasons noted on the record when consent is dispensed with.

#### 6. CONSENT OF OTHERS THAN PARENTS.

Guardian, next friend, or guardian ad litem.

Public official or public or private child-caring organization.

## 7. CONSENT OF CHILD.

Aged 12 years.

Aged 14 years.

Objection of child over 10 years considered.

## 8. CONSENT RECORDED ON PETITION.

## 9. INVESTIGATION.

Notice of petition sent to—

State board of public welfare.

County board.

Other.

Investigation by—

Probation officer.

Other court official.

Next friend.

Child-placing agency.

Other.

Points covered in the investigation.

Allegations in the petition.

History and condition of child.

Reasons found for separation from parents, if living.

Age, character, financial condition of adopting parents.

Suitability of proposed home.

Report of investigation to court in writing

Whether required.

When made.

Contains recommendation.

Copy filed with the petition.

Duplicate sent to—

State board of public welfare.

County board.

Other.

## 10. NOTICE.

Persons served.

Those whose consent is necessary but who have not consented in writing.

Parent who has lost custody or civil rights.

Father of child born out of wedlock if paternity established or he has acknowledged paternity and supported, if residence known.

Known kindred.

Degree of relationship.

Service by publication.

Place of publication.

Time required.

## 11. TRIAL PERIOD IN ADOPTING HOME.

Before decree.

Length of period.

After filing petition.

Length of period.

Kind of supervision.

## 12. HEARING AND DECREE.

Admission of evidence for grounds of dispensing with consent of parents who fail to consent.

Admission of evidence on other grounds for dispensing with parental consent.

Whether decree is immediately recorded in the office of the clerk setting forth facts if, upon hearing, the court is satisfied on all grounds.

Presence of parents required in court.

Presence of adopting parents required.

Provision for adopting parents and natural parents to appear at different times.

Presence of child required.

## 13. STATUS.

Child adopted becomes legal child of person adopting.

Liability of adopting parents for support.

Provisions with reference to inheritance.



## 14. ANNULMENT.

Time within which adoption may be annulled.

Conditions under which annulled.

Persons making application for annulment.

## 15. RECORDS.

Open to inspection of—

Parties in interest.

Their attorneys and representatives.

State board of public welfare.

Others.

Inspection forbidden by order of court.

Records sealed by order of court.

Information on the records.

Name of child, age, date, decree, identifying information concerning persons adopting, information concerning natural parents.

Whether term "illegitimate" appears on the records.

Whether phrase "child of single woman" used.

Copy of record sent by clerk—

To locality where child's birth is recorded, if place known.

To registrar of vital statistics of county in which adoption takes place.



