

4/1/80

Memorandum 80-38

Subject: Study F-400 - Adoption

The Law Revision Commission has been authorized to study the law relating to adoption. It is anticipated that a new comprehensive statute on this subject will be prepared and recommended for enactment. The Commission has not yet considered this topic.

The Commission has retained Professor Brigitte M. Bodenheimer of the Law School, University of California at Davis, as its consultant on this topic. She submitted a background report which was published in a law review in 1975. In addition, the Executive Secretary is a member of the drafting committee which will be preparing a new Uniform Adoption Act which will be recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws.

This memorandum is written to bring to the Commission's attention a recent development on the federal level. The United States Department of Health, Education, and Welfare has prepared a Model State Adoption Act which has been printed in the Federal Register. The department has requested comments on the model act by May 16, 1980.

We bring this new federal development to Commission attention at this time because we believe it would be desirable for the Executive Secretary (or the Commission) to submit a general comment on the draft of the model act published in the Federal Register. The federal model act, when revised and approved, will be urged for adoption by the states.

We enclose a copy of the material printed in the Federal Register. We do not expect you to read this material with care or even to read a major portion of it. The basic philosophy of the federal model act is to provide legislation "[d]esigned to express commitment by states to providing services for all children in need of adoption." [Introduction, on page 10624 of enclosed material.] The federal model act requires various types of counseling and social and rehabilitative services as essential elements of the court procedure for an adoption. The high level of mandated services provided in the model act severely

limits the usefulness of the act as a starting point for a state that wishes to modernize and improve its existing statute relating to the court procedures for an adoption. The usefulness of the model act would be substantially increased if the act were redrafted to deal only with the court procedure for an adoption and with the procedure for terminating parental rights. A separate, nonstatutory statement of desirable services in connection with adoption would be useful for public entities and adoption agencies but should not be a part of the statute governing the legal aspects of adoption.

If the Commission agrees with the staff view outlined above, we suggest that the letter set out as Exhibit 1 be sent as a comment on the federal model act.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

Diane D. Broadhurst, Executive Secretary
Model Adoption Legislation and Procedures
Advisory Panel
Children's Bureau
P.O. Box 1182
Washington, D.C. 20013

Dear Ms. Broadhurst:

This letter presents a general comment on the Model State Adoption Act and Model State Adoptions Procedures as published in the Federal Register on February 15, 1980.

I am the Executive Secretary of the California Law Revision Commission. The Commission is a state agency that has been directed by the California Legislature to study the California law relating to adoption and to submit its recommendations to the Governor and Legislature. The Commission plans to recommend enactment of a new adoption statute. This project is in its early stages; the Commission's staff is now reviewing the Uniform Adoption Act prepared by the National Conference of Commissioners of Uniform State Laws (which we understand the Uniform Laws Commissioners will soon review and substantially revise), law review articles, judicial decisions, recent proposals for legislation in this field, and the laws of other states.

My review of the Model State Adoption Act published in the Federal Register reveals that the act requires various types of counseling and social and rehabilitative services as essential elements of the court procedure for an adoption. I believe that the high level of mandated services under the model act will severely limit its usefulness as a starting point for a state which seeks to modernize and improve its statute governing court procedures for adoption. I believe that the usefulness of the model act as a model for the states would be substantially increased if the act were redrafted to deal only with the court procedures for an adoption, the procedures for terminating parental rights, and related legal aspects of an adoption proceeding. A separate document covering model state adoption procedures, recommending the desirable services in connection with a possible adoption, would be useful for state and local entities and adoption agencies but should not be a part of a model statute governing the legal aspects of an adoption proceeding. This separation of the two different aspects of adoption (which are now consolidated in the model act published in the Federal Register) would permit a state to adopt a modern statute covering the legal aspects of adoption and, in addition, would provide a separate nonstatutory guide that would be useful in determining the types of services, training, qualifications of personnel, and the like, that

should be provided in connection with a possible adoption (to the extent that funds are available to provide those services).

The Commission plans to give careful consideration to the model state adoption act that will result from your review of the comments you receive on the model act published in the Federal Register. For this reason, I am hopeful that the final product of your work will be presented in a form that will be more useful to us.