The Uniform Adoption Act

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Abstract

The Spring 1993 issue of The Future of Children focused on adoption. Guest Editor Dr. Irving Schulman and the Center staff emphasized the significant societal as well as private benefits of adoption, especially for children in need of permanent families, and called for careful consideration of policies intended to remove persistent and unreasonable barriers to adoption. In an article which appeared in that issue, Joan Hollinger discussed how a complex regulatory system, as well as the lack of consensus about the functions served by adoption, produces uncertainty on issues as basic as determining who are the “parents” whose consent is required for adoption, evaluating the suitability of prospective adoptive parents for different kinds of children, deciding how much information must or may be shared between birth and adoptive families, and distinguishing between lawful placement activities and illegal “baby-selling.” Hollinger and the Center staff recommended passage of more uniform state adoption laws to facilitate adoption while adequately protecting the interests of all parties. This article describes the proposed Uniform Adoption Act (UAA) promulgated in 1994 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and discusses the likelihood of its enactment by the states.

Culminating nearly five years of drafting, debate, and discussions with adoption and child welfare experts, in August 1994 the National Conference of Commissioners on Uniform State Laws (NCCUSL) overwhelmingly approved a proposed Uniform Adoption Act (UAA) for submission to state legislatures. NCCUSL is a nonprofit, nonpartisan organization of more than 300 lawyers, legislators, judges, and academics who propose legislation to the states in areas subject to state authority, including all aspects of family law.

In addition to being approved by NCCUSL, the UAA has been endorsed by the American Bar Association House of Delegates and its Family Law Section. A number of other organizations and individuals are also urging the states to enact the UAA, despite their reservations about some of its provisions. By contrast, the UAA is opposed by the Child Welfare League of America (CWLA), the National Association of Social Workers (NASW), Concerned United Birthparents (CUB), and others who are skeptical of adoption and favor public policies to strengthen children’s ties to their birthfamilies.

The UAA legitimates both direct (parent-initiated) placements for adoption and placements by licensed public and private agencies. The act clarifies the legal
requirements for each stage of an adoption as well as the personal options available for tailoring an adoption to serve the distinctive needs of the parties. The act is designed to facilitate the completion of adoptions based on consent, expedite the resolution of contested proceedings, standardize the content and procedural fairness of consents and relinquishments, bolster the finality of adoptions, and allow birth and adoptive families to decide for themselves how “open” or “closed” they want their relationships to be.

Although the procedural provisions of the UAA apply to every type of adoption, the scope of the act is somewhat limited. First, except for a provision authorizing American states to recognize the validity of foreign adoptions without requiring a second adoption in the adoptive parents’ home state, the UAA says little about intercountry adoption. The U.S. State Department asked NCCUSL to defer to pending federal and international efforts to implement the 1993 Hague Convention on Intercountry Adoption. Second, as a state law, the UAA does not and cannot preempt the federal Indian Child Welfare Act (ICWA), which is intended to promote tribal sovereignty and the survival of tribal communities. Third, because NCCUSL is an advisory not a legislative body, it cannot raise or mandate the use of public funds for child welfare programs. Thus, the UAA does not deal extensively with the adoption of older children and children with special needs. The UAA focuses on the legal aspects of adoptions. The UAA complements but does not displace federal and state child protection laws that authorize the permanent separation of children from parents who have abused, neglected, or otherwise mistreated them.

The UAA comes into play only in the following circumstances:

1. A state-initiated child protection proceeding results in a court order terminating parental rights and the court authorizes a permanent adoptive placement of the child;

2. A child’s parent voluntarily relinquishes the child to a public or private agency with an understanding that the agency will place the child for adoption with someone selected by the agency with or without parental participation in the selection process; or

3. A birthparent with legal and physical custody of a minor, or a guardian with express court authority to make an adoptive placement, voluntarily places the child directly with a prospective adoptive parent selected by the birthparent or guardian from the pool of individuals who have had a favorable preplacement evaluation.

Features of the Uniform Adoption Act

The act’s most significant features are the following ten:

1. The UAA protects minor children against unnecessary separation from their birthparents, against placement with unsuitable adoptive parents, and against harmful delays in determining their legal status.

2. The UAA protects birthparents against unwarranted termination of their parental rights. Numerous procedures—including access to psychological and legal counseling—ensure that a decision by a parent to relinquish a minor child and consent to the child’s adoption is informed and vol-
untary. No parent can be required to relinquish a child at any particular time, and a relinquishment or consent is not valid unless executed after the birth of a child and given to a judge or another person whose role is to protect the birthparent’s interests. However, once a birthparent decides to relinquish a child and properly executes the consent, the decision is considered final and, with very few exceptions, irrevocable.

Involuntary as well as voluntary termination proceedings conform to constitutional standards of due process, but an individual’s biological ties to a child are not by themselves sufficient to bestow full parental rights. The act protects the parental status of women and men who have consistently performed parental duties. Even “thwarted” fathers, who have been prevented by the misdeeds of others from functioning as parents, may be prevented from blocking a proposed adoption of a child if there is clear and convincing evidence that it would be detrimental to the child to deny the adoption. Decisions to continue or dismiss an adoption proceeding, as well as decisions about a child’s ultimate custody, focus on the needs and welfare of the child and not simply on the “rights” of adults.

For example, the act’s protections against hasty and uninformed relinquishments would have prevented the initial transfer of the infants in the notorious Baby Jessica, Baby Richard, and Baby Emily cases from taking place. In these cases, the father’s identity and whereabouts would have been discovered much sooner, and his capacity to parent the child could have been assessed much earlier in the proceedings.10

3. The UAA protects adoptive parents and adopted children by insisting that they receive whatever information is “reasonably available” about the child’s background—including health, genetic, and social history—and by ensuring ongoing access to updated health information about birthfamilies which may be relevant to an adoptee’s special health needs.11

4. The UAA discourages unlawful placement activities within and across state and national boundaries by tracking minor children who are placed for adoption, delineating lawful adoption-related expenses and activities, requiring that agencies, lawyers, and others fully disclose their fees and the scope of their adoption-related services, requiring judicial approval of adoption-related expenses, and imposing sanctions against unlawful activities. Although birth and adoptive parents may seek assistance from others in locating each other, no “placement” or “finder’s fee” may be charged. It would be illegal to pay, request, or receive any fee or compensation for consenting to a child’s adoption, but adoptive parents are permitted to reimburse a birthparent’s reasonable medical, counseling, and living expenses.12

5. No one may be categorically excluded from being considered as an adoptive parent. To provide children with the opportunity to have two legal parents, the UAA explicitly permits “second parent adoptions” by individuals who are sharing a home and parental roles with a child’s custodial parent but who are not married to the custodial parent. With the consent of the custodial parent, the second de facto parent, including the parent’s gay or lesbian partner, may adopt the custodial parent’s child, subject to the general requirement that the adoption serve the child’s best interests.13 The suitability of a particular individual as an adoptive parent must be determined through pre-placement and postplacement evaluations by a reputable social worker or other state-licensed evaluator.

Prospective adopters are assumed to be acting in good faith. Under the UAA, an individual may be found “unsuitable to adopt” only if the evaluator has well-substantiated “specific concerns” that placement of a child with the individual “would pose a significant risk of harm to the physical or psychological well-being” of the child.14

6. A minor child’s foster, de facto, or psychological parents have standing to seek to adopt the child, subject to the particular child’s needs. Agencies receiving public funds are required to actively recruit prospective adoptive parents for children who are considered difficult to place because of their age, health, race, ethnicity, or various special needs. Consistent with the federal Multiethnic Placement Act, the UAA prohibits the delay or denial of an adoptive placement solely on the basis of racial or ethnic factors. A child’s guardian ad litem [that is,
a court-appointed advocate for the child] as well as other interested persons may seek equitable and other appropriate relief against discriminatory placement activities.15

7. Prompt hearings are required for contested adoptions, and a guardian ad litem or lawyer must be appointed for minors in protracted or contested proceedings. Diligent efforts must be made to serve notice of a proposed adoption to any parent or alleged parent whose rights have not previously been determined. Birthmothers are strongly encouraged to help locate the child’s father. If, after diligent efforts, the court concludes that the identity or whereabouts of a possible parent are unknown, the proposed adoption can proceed without further delay.16

8. The UAA clarifies the relevance to adoption proceedings of the Uniform Child Custody Jurisdiction Act (UCCJA), the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. 1738A, and the Interstate Compact on the Placement of Children (ICPC). The UAA treats adoption as a “custody proceeding” subject to the jurisdictional requirements of the UCCJA and the PKPA. However, the UAA modifies the UCCJA to take account of the distinctive characteristics of interstate adoptions of infants and intrafamily adoptions of older children who are subject to prior custody or visitation orders.17

9. The UAA supports the finality of adoptions by imposing strict time limits for appeals or other challenges and by presuming the validity of an adoption decree issued in accord with the act’s procedures. Unlike most existing state laws, the act provides that a final adoption may not be challenged by anyone for any reason more than six months after the decree is issued. If a challenge is begun within six months, the adoption may not be set aside unless the challenger proves with clear and convincing evidence that the adoption is contrary to the child’s best interests.18

10. The UAA explicitly permits mutually agreed-upon communication between birth and adoptive families. Adoptive families are entitled to the same constitutional protections against state intervention as are birthfamilies. The validity of an adoption may not be challenged because of the existence of a private agreement allowing someone, including a member of an adoptee’s birthfamily, to visit or communicate with the adoptee. However, except in the distinctive context of stepparent adoptions, the act refrains from mandating that adopted children must or must not have contact with anyone else. The UAA leaves the question of judicial enforcement of postadoption visitation agreements to be answered by the states on a case-by-case basis.19

The act’s mutual consent registry is a “user friendly” approach to the contentious issue of whether and when to disclose identifying information to and about the members of an adoptee’s birth and adoptive families. Birthparents and adoptive parents are free to remain anonymous or to maintain contact with each other. Alternatively, birthparents can indicate at any time their willingness to have their identities disclosed to an adopted child when the adoptee is 18 or older. The registry can easily be tailored to accommodate differing state policies, including the confidential intermediary services that many states now have.20

No issue was more bitterly contested by NCCUSL than the question of whether the members of birth and adoptive families should be prohibited from, allowed to, or required to know each other’s identities or maintain contact with each other. This issue polarizes the wide spectrum of views about adoption into two extremes. One extreme is that adoption reinscribes the “natural family” by creating a complete psychosocial as well as legal wall of separation between a child’s birth and adoptive families, which precludes nonconsensual communication between them. The opposing view is that, except in the narrowest of legal terms, adoption is “unnatural” and can never displace a child’s birthfamily. In this view, unless there is clear proof that an adoptee would be significantly harmed by contact with the birthfamily, openness and access to identifying information should be the norm. Because the UAA takes a middle path between these extremes, it potentially displeases those at either extreme.
Current Status of the Uniform Adoption Act

As of July 1995, the UAA was being considered by legislative committees or special task forces on adoption in at least a dozen states. Although no state had yet enacted the entire eight articles of the UAA, a number of the act's provisions have been included in less comprehensive statutory proposals that many states have recently enacted.21

The prospects for prompt and widespread enactment of the UAA remain clouded. This is largely due to the intense opposition of well-organized lobbying groups like Concerned United Birthparents (CUB), the American Adoption Congress (AAC), and the Child Welfare League of America (CWLA). Most of the UAA’s critics want greater public control by agencies over a wide range of adoption practices that the UAA leaves to a combination of private determination and judicial oversight. While antagonistic to the role of lawyers in adoptions, the critics also want greater agency discretion. In particular, they resist the UAA’s efforts to end barriers to transracial adoption.

The Uniform Adoption Act seeks to carve a procedurally fair and consistent path through the thicket of conflicting views about the functions and consequences of adoption, consistent with constitutional principles and federal law.22 Given the potential of adoption to serve so many private and public interests and, most important, to provide a permanent family for otherwise parentless children, the UAA is likely to win more support as state legislatures come to understand how and why it facilitates adoption. Precisely because the UAA does not allow genetic ties by themselves to trump the interests of children in having secure legal as well as psychosocial ties to the people who are actually parenting them, the act will eventually be appreciated by those who can get beyond the view that families are exclusively the product of “blood and genes.”

1. Among the regular participants at the always-open meetings of the committee were representatives from the ABA Family Law Section; the National Council for Adoption (NCA), a coalition of private adoption agencies; the American Academy of Adoption Attorneys (AAAA), more than 300 lawyers who represent birth and adoptive parents in all types of adoptions; Concerned United Birthparents (CUB), primarily birthparents who view adoption as much less desirable than efforts to preserve birthfamilies; American Adoption Congress (AAC), primarily adoptees and birthparents who advocate the immediate release of identifying information from previously confidential adoption records; a number of adoptive family support groups from different states; family court judges; and all types of adult adoptees.

2. NCCUSL’s influential family law statutes include the Uniform Child Custody Jurisdiction Act (UCCJA), the Uniform Parentage Act (UPA), and uniform acts that deal with probate, marriage and divorce, child support enforcement, and premarital agreements. The UAA and the official Comments are reprinted in 9 Uniform Laws Annotated, Part I (West Co., 1995 Supp.) [cited as Uniform Adoption Act (1994), 9 U.L.A. Part I].

3. The UAA has had enthusiastic editorial support from newspapers throughout the country, especially in the context of media coverage of the bitterly contested adoptions of the children who came to be known as Baby Jessica, Baby Richard, and Baby Emily. The organizations that have endorsed all or most of the UAA include the National Council for Adoption (NCA), the American Academy of Adoption Attorneys (AAAA), the Pennsylvania Adoptive Family Rights Council, the New York Adoptive Parents Committee, and the Michigan and District of Columbia Metro Area Families for Private Adoption.

4. The CWLA, NASW, CUB, and other opponents of the UAA generally oppose adoption except as a last resort after efforts to preserve a child’s ties to birthparents have failed. The CWLA and CUB positions are spelled out in papers on file with NCCUSL.

5. Although the U.S. State Department was instrumental in drafting the 1993 Hague Convention on Intercountry Adoption, efforts to modify U.S. Immigration and Naturalization Service rules with respect to children adopted in other countries and to secure Senate ratification of the Hague Convention have bogged down. For further information, see Pfund, P.H., Intercountry adoption: The 1993 Hague Convention, Family Law Quarterly (1994) 28,1:53–88.

6. ICWA is codified at 25 U.S.C.A. Sec. 1901 et seq. See Mississippi Band ofChoctaw Indians v. Holyfield, 490 U.S. 30 (1989)—any state court ruling that would “permit individual Indian parents to defeat the ICWA’s jurisdictional scheme is inconsistent” with congressional intent to ensure tribal survival.
7. CWLA, NASW, and other critics complain about the act’s failure to provide services for children with special needs. However, NCCUSL has no authority to raise or spend revenues on child welfare programs.

8. For example, pursuant to federal law (P.L. 96-272), state agencies that separate children from abusive or neglectful parents must make “reasonable efforts” to reunify these families. The state cannot terminate parental rights unless periodic court reviews demonstrate that reunification is not feasible and that adoption, long-term foster care, or some other “permanency plan” is more appropriate for the child. Proceedings under the UAA would not interfere with the operation of these child protection laws.

9. Under the UAA, the only persons who can “place” a minor for adoption are the minor’s existing legal parent (usually a birthparent), an agency to which the minor has been voluntarily relinquished, or an agency or guardian specifically authorized by a court order to place the minor for adoption. Other entities and individuals, including lawyers, may only advise the persons making the legal placement; UAA Art. 2 Part 1; Art. 7.


12. UAA Art. 7 distinguishes lawful from unlawful placement activities and specifies the kinds of payments that can be made by agencies or adoptive parents. Although many states now require court review of adoption-related expenses, the current lack of uniformity concerning permissible payments often leaves the parties uncertain about who can pay whom for what without violating the basic principle that children should not be purchased.

13. UAA Sec. 4-102 and Comments. By treating these second-parent adoptions as if they were traditional stepparent adoptions, the UAA enables the custodial parent to retain parental rights: the second adoptive parent is, in effect, “added on” and does not displace the custodial parent. The highest courts of at least four jurisdictions—DC, MA, NY, and VT—have construed their adoption statutes to reach similar results, as have trial courts and intermediate appellate courts in many other states: In re M.M.D., 622 A.2d 837 (DCCA 1995); Adoption of Tammy, 619 N.E.2d 315 (Mass. 1993); In re Jacob, 1995 N.Y. Lexis 3579; Adoption of B.L.V.B., 628 A. 2d 1271 (Vt. 1995). But, see the Wisconsin Supreme Court’s four-to-three ruling that its statute does not permit second-parent adoptions: In re Angel Lace M., 516 N.W. 2d 678 (Wis. 1994). See also Patterson, C.J. Children of lesbian and gay parents. Child Development (1992) 63,5:1025–42.

14. UAA Art. 2 Part 2 and Art 3. Part 6 set forth the minimal requirements for favorable pre- and postplacement evaluations. Some critics of the UAA favor evaluations aimed at finding “the best” parents. The UAA presumes everyone is suitable except for individuals who have violent or abusive histories or are demonstrably likely to harm a child.

15. Enacted after a great deal of controversy about the constitutionality and long-term effects of racial matching policies, the federal Multiethnic Placement Act of 1994 (MEPA), H.R. 6-539, Sec. 553 et seq, prohibits the delay or denial of foster care or adoptive placements by any publicly funded agency solely on the basis of race, color, or national origin but does allow racial and ethnic factors to be considered when deciding on the placement of a specific child. The implementing federal guidelines explicitly provide that the current widespread agency practice of using “holding periods” to make a same-race adoptive placement is impermissible and clearly violates the federal law. See Department of Health and Human Services and Office of Civil Rights. Policy guidance on the use of race, color, or national origin as considerations in adoption and foster care placements. Federal Register (April 25, 1995) 60,79:20272. The UAA would extend the ban of racial matching policies to private as well as public agencies.

16. UAA Art. 3 Part 4 and Comments. The drafting committee concluded that, despite the importance of encouraging birthmothers to help locate a child’s father, it serves no one’s interest—and least of all the child’s—to punish a mother who does not disclose the father’s name. However, a birthparent may be liable for a civil penalty for intentionally misidentifying the other parent to deceive an agency or adoptive parents.

17. UAA Art. 3 Part 1 and Comments. Consistent with the goals of the UCCJA, the UAA allows an adoption proceeding to originate in either the child’s home state or another forum that
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has significant connections to and substantial evidence about the child and the adoptive parents. For the role of the ICPC, see UAA Sec. 2-107 and Comments; J.D.S. v. Franks, 893 P.2d 732 (1995).

18. UAA Sec. 3-707 and Comments.

19. The CWLA, NASW, and CUB favor more explicit recognition and enforcement of postadoption visitation agreements. The drafting committee concluded that neutrality with respect to visitation agreements was preferable. Knowledge of the long-term effects of continued contact between birth and adoptive families remains limited, and birth and adoptive families are too diverse to justify either mandating or preventing visitation. Most states, like the UAA, permit grandparents to seek postadoption visitation when a child is adopted by a stepparent. Minnesota, New Mexico, and Washington have laws that permit the specific enforcement of postadoption visitation agreements if in the adoptee’s best interest. Other states have regulations that permit these agreements in adoptions of older children with special needs.

20. UAA Art.6 deals with confidential and sealed adoption records and provides that nonidentifying information may be released to the relevant parties upon request. The UAA creates a mutual consent registry for identifying information as well as a court action for obtaining information upon proof of "good cause." For information on current state practice, see Adoption Law and Practice, J.H. Hollinger, ed. New York: M. Bender, 1995 Supplement, Appendix 13–A.

21. NCCUSL is the best source of information about which states are considering the UAA or have enacted all or part of the act.

22. The Spring 1993 issue of The Future of Children contains an excellent discussion and analysis of this thicket.

Copies of the Uniform Adoption Act (UAA) with the Official Comments and copies of the Reporter’s response to the concerns expressed by the critics of the UAA may be obtained from NCCUSL for a nominal sum to cover photocopying and postage. Write or call NCCUSL (request UAA of 1994), Suite 1700, 676 North St. Clair, Chicago, IL 60611, 312-915-0195; FAX 312-915-0187. The UAA is also available through Westlaw and in the 1995 Supplement to West’s Uniform Laws Annotated, Vol. 9, Part I.