



VIRGINIA COMMISSION ON YOUTH

# Unlawful Adoption

October 20, 2014

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# Study Mandate



- During the 2014 General Assembly session, Senator Jeffrey L. McWaters introduced Senate Bill 411. It provides that any parent, guardian, or other person responsible for the care of a child who transfers physical and legal custody of a child with the intent to do so permanently without following established adoption procedures is guilty of a Class 6 felony. These procedures attempt to ensure, among other things, that the child will not be abused or neglected by his new adoptive parents. The legislation would create an exception for kinship care arrangements for the purposes of school enrollment or other established legal procedures for transferring custody.
- Members of the Senate Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in Senate Bill 411 and report findings and recommendations by November 1, 2014.

# Study Activities



- Interview impacted stakeholders
- Conduct extensive background and literature reviews
  - Other states' initiatives and policies
  - Best-practices protecting adopted children and re-homing prevention
- Review federal legislation/statutes
  - Interstate Compact on the Placement of Children (ICPC)
  - Child Abuse Prevention, Adoption, and Family Services Act
  - Adoption Assistance and Child Welfare Act
  - Adoption and Safe Families Act
  - Child Abuse, Domestic Violence, Adoption, and Family Services Act
  - Fostering Connections to Success and Increasing Adoptions Act
  - Safe and Timely Interstate Placement of Foster Children Act
  - Adoption Promotion Act
  - Intercountry Adoption Act

# Study Activities (cont.)



- Review Virginia laws, regulations, and policies
  - Adoption statutes and regulations
  - Child welfare regulations
  - Other related practices
- Analyze Virginia practices
  - Review state and local departments of social services policies and practices
  - Review Virginia's adoption policies
- Analyze other states' practices and procedures
  - National Conference of State Legislatures (NCSL)
  - State Policy Database from Casey Family Programs
  - Child Welfare League of America literature
- Develop findings and recommendations
  - Synthesize findings of literature review and interviews
  - Develop recommendations

# Identified Stakeholders



- Virginia Department of Social Services
- Local Departments of Social Services
- Virginia Supreme Court/Office of the Executive Secretary
- Virginia League of Social Service Executives
- Department of Criminal Justice Services
- Human Trafficking Steering Committee
- Law enforcement
- Office of the Attorney General
- Advocacy Organizations
- Parent Representatives
- Private Child Placing Agencies
- CASA Representatives
- Guardians Ad Litem
- Association of Administrators of the Interstate Compact of the Placement of Children (AAICPC)
- Local Family Assessment and Planning Teams (FAPT)
- Commonwealth's Attorneys



## Dangers of Re-Homing Exposed

- 2013 Reuters and NBC News investigation: The investigation revealed an underground market of adoptive parents seeking new families for the adopted children they no longer wish to parent. The study found children went to individuals with records of violence, severe untreated mental health needs, and who had already had children removed by the state.
- Parents arranged custody transfers, bypassing the typical adoption process (including background checks and a home study), through websites like Yahoo and Facebook.



## Disrupted/Dissolved Adoptions vs. Re-Homing

- Disruption/Dissolution: The typical and lawful process of ending an adoption is referred to as “disruption” or “dissolution.”
- Disrupted adoption: An adoption where a child who has been placed with a potential adoptive family is subsequently removed from that family to be placed elsewhere but prior to the finalization of the adoption.
- Dissolved adoption: An adoption where a child was placed with an adoptive family which eventually finalized and, subsequent to the finalization, the child is removed from that family and placed elsewhere.
- Re-homing: This occurs instead of lawfully disrupting or dissolving an adoption. The practice of re-homing occurs when adoptive parents decide to find new adoptive parents or guardians for their child and proceed to place the child with the new parents without engaging any agency or court systems.



## Current Virginia Law

- Under § 18.2-371.1(A), of the *Code of Virginia*, any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child shall be guilty of a Class 4 felony.
- Under § 18.2-371.1(B), of the *Code of Virginia*, any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton and culpable as to show a reckless disregard for human life shall be guilty of a Class 6 felony.



## Interstate Compact on the Placement of Children (ICPC)

- The ICPC is a statutory uniform law, adopted by all 50 states, the District of Columbia and the U.S. Virgin Islands. It is intended to ensure the protection of children placed across state lines for foster care and adoption by facilitating responsibility and communication among all involved parties until the lawful termination.
- Procedures for the interstate and inter-country placement of children are intended to ensure that the proposed placement complies with state laws and regulations and is in the best interests of the child.
- Some states attach no penalties to violations of the pact and others deem violations as misdemeanors, which are rarely prosecuted.
- While the ICPC is in place to help protect children, reports show that not all law enforcement officials are aware that it exists.



## Interstate Compact on the Placement of Children (ICPC)

- In Virginia the ICPC is codified in the *Code of Virginia*, Title 63.2, Chapters 10 and 11.
- Virginia agencies are required to inform the court as to whether or not an interstate placement for the purpose of adoption has been made in compliance with the ICPC.



## Re-Homing

- The majority of re-homing situations stem from foreign adoptions (one study indicated 70%). The same study found most children were between the age of 6 to 14 and had been adopted from countries such as Russia and China.
- Many parents can be misinformed regarding the emotional or physical well-being of the adoptive child and remain unaware of the child's special needs at the time of adoption.
- These same parents also fail to pursue post-adoptive services because they are unaware of their options and fear if they contact authorities they will be investigated for abuse and neglect.



## Parental Placement

- Commission staff first reviewed the sections of the *Code of Virginia* relating to the adoption of children as well as the abuse and neglect of children.
- Title 63.2, Chapter 12, Article 3 of the *Code of Virginia* provides the rules, processes, and procedures for a lawful parental-placement adoption. Requirements for a juvenile and domestic relations court include but are not limited to, counseling of the parents seeking to place their child with regards to alternatives available to them and a home study of the prospective parents.
- Though the *Code* addresses the requirement for a parental-placement adoption it does not prohibit a parent from permanently giving their child to another individual.



## Abuse & Neglect

- Section 18.2-371.1 of the *Code of Virginia* defines abuse and neglect of children. The definition is limited to willful acts including refusing to provide necessary care or permitting serious injury to a child's life, or an act indicating reckless disregard for the same.
- Though the language could encompass some instances of re-homing such as a parent knowingly giving their child to a pedophile/sex offender, it does not implicate all acts of re-homing.
- A number of situations, including unknowingly giving a child to a pedophile or relying on a falsified home study would not necessarily constitute abuse and neglect, according to the statute.



## Insufficiency of Data (Lack of Laws)

- The Reuters and NBC News investigation was released in September of 2013, spurring a reaction by legislative bodies throughout the country. However, prior to the investigation's release there were no federal or state laws to explicitly prohibit the practice of re-homing.
- The ability to discern the effectiveness of these remedies is difficult, and will be unknown for some time, because all of the laws were passed in response to the Reuters and NBC News investigation and are extremely new.



## Remedies of Other States (Only 3 Passed)

- The recent legislative movement seeking to address re-homing is small and hasn't seen many gains. Most states that have attempted to address re-homing have only tackled parts of the issue.
- Wisconsin, Colorado, and Louisiana are the only states appearing to have passed legislation:
  - Wisconsin: Assembly Bill 581 - April 2014
  - Colorado: House Bill 14-1372 - May 2014
  - Louisiana: Senate Bill 586 - June 2014
- Ohio and Florida introduced unsuccessful bills:
  - Ohio: introduced Senate Bill 311 in March 2014 where it has since remained in a committee assignment.
  - Florida: introduced Senate Bill 498 in March 2014 but the bill died in the judiciary committee in May 2014.



## Insufficiency of Data (Impact on Virginia)

- The ability to determine how many children, and specifically how many Virginia children re-homing impacts is limited.
- ICPC forms 100-A and B are used to ensure that an approved placement in accordance with the Compact has been made. However, there is no indicator on the form that the child being placed has been previously adopted.
- The Department of Social Services monitors disrupted foster care adoptions in its OASIS system. However, there is no way to currently keep track of disrupted foreign adoptions.



## Remedies of the Federal Government

- The United States Senate held a Subcommittee hearing in July 2014 titled “Falling Through the Cracks: The Challenges of Prevention and Identification in Child Trafficking and Private Re-homing” to discuss whether federal laws should be created to address re-homing.
- Testimony at the subcommittee focused on child sex trafficking but also touched on re-homing.
- Megan Twohey, investigative reporter for Reuters, reported the findings from her study at this meeting.
- The Intercountry Adoption Act expanded in July 2014 to cover all international adoptions. However, no third party follow up is required for adoptions finalized in foreign courts.



## Administration for Children and Families Recommendations (ACF)

- The U.S. Department of Health and Human Services (ACF) issued a memorandum in May 2014.
- The memorandum served to remind state agencies that under the Child Abuse Prevention and Treatment Act, each state is to develop their own “legal requirements relating to child abuse and neglect, guardianship and power of attorney, and adoption.”
- The ACF also recommended states “review their laws and policies to ensure that the issues that arise through the practice of re-homing are adequately addressed” and “to develop and provide a continuum of post-adoption services for adoptive families, both domestic and international.”



## Post-Adoptive Services

- In a 2010 report, the Evan B. Donaldson Adoption Institute shared the findings of the California Longitudinal Adoption Study which found clinical, post-adoption services use “grew from 9% to 19% to 31% over three waves, at two, four, and eight years after adoption.”
- In the same study general post-adoption services use (support groups, visits with caseworkers) was much higher, “increasing from 31% to 76% to 81% of families over the three waves.”
- Another study reported that 77% of adoptive parents stated they needed post-adoption services, including counseling, mental health services, and “[s]omeone to help with crises.”



## Post-Adoptive Services

- Some of the primary issues cited by adoptive parents who had re-homed their adopted children according to the Reuters study include:
  - Lack of help to handle the issues that the children presented.
  - Unprepared for the issues that the children presented.
  - Provided with misinformation about the children and their needs prior to and at the time of the adoption.
- One local board of social services indicated to Commission staff that parents are afraid to pursue post-adoptive services for fear that Child Protective Services will take their child away.
- United Methodist Family Services manages and provides for the statewide services delivery of the Adoptive Family Preservation (AFP) network.



## Post-Adoptive Services

- Post-adoptive services are provided through the Department of Social Services' grants:
  - United Methodist Family Services - \$1.5 million
  - Frontier Health - \$300,000
  - C.A.S.E - \$192,967
- In 2013 the General Assembly passed HB 2271 (Orrock) to require the Department of Social Services to utilize all federal adoption bonus payments received in a fiscal year to support post-adoptive services.
- States earn these federal bonuses when they increase adoptions of children who are in need of new permanent families.
- The amount varies greatly from year to year:

<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>\$16,000</b>	<b>\$53,647</b>	<b>\$828,734</b>



## Kinship Care Balancing

- Studies have repeatedly shown the placement of children with kin results in children with greater emotional and physical well-being than children who are placed with strangers.
- On the kinship care continuum, informal kinship care is the type of practice that would potentially be impacted by re-homing legislation in Virginia.
- It is critical, in addressing unlawful adoption, that kinship care not be impacted when in the best interest of the child.



## Prevention Services

### Recommendation 1

- Amend the *Code of Virginia* to require the State Registrar to furnish a document, to be compiled and annually reviewed by the Department of Social Services, listing post-adoptive services available to all adoptive families simultaneous to when any new birth certificate is issued due to adoption. Also make this information available on the DSS website.

### Recommendation 2

- Request the Department of Social Services, with the support of the Office of Comprehensive Services for At-Risk Youth and Families, to allow regional requests for proposals rather than state-wide requests for proposals for post-adoptive services.



## Prevention Services

### Recommendation 3

- Support the current funding level for post-adoptive services.

### Recommendation 4

- Request the Department of Social Services with the support of the Office of Comprehensive Services for At-Risk Youth and Families, to review existing policies and practices related to early prevention services. A report will be submitted to COY prior to the 2016 General Assembly Session.