

Capital University

1903 Law School

National Center for
Adoption Law & Policy

National Center for Adoption Law & Policy
Comments on Substitute House Bill 307-3
January 14, 2014

Representative Wachtmann and members of the House Health & Aging Committee:

The National Center for Adoption Law and Policy at Capital University Law School works to improve the laws, policies and practices that govern child welfare, foster care, and adoption systems through research, education, training, and advocacy. Our focus is always on the best interests of the children and youth who are involved in these systems.

We applaud your efforts to make adoption a more accessible option for potential adoptive families and your interest in making the adoption process work more efficiently. Although we support many of the proposed changes to the law, we have identified a number of issues of concern in relation to Substitute House Bill 307-3.

Thank you for your time and consideration of the following comments:

- **Sec. 3107.055 Payment of Living Expenses**

NCALP supports making more explicit the types of birth mother living expenses that are appropriate for payment by adoptive parents as reflected in the amendments to this Section. We understand that some adoption service providers may charge adoptive families for the entire amount of the living expense up front and that adoptive parents may pay the cost regardless of whether the birth mother actually incurs covered expenses. While this may not be common practice, by requiring that payments be made directly to a service provider where feasible, this provision will help ensure that does not happen.

- **Sec. 3107.062 Putative Father Registration Deadline**

NCALP does not support the proposal to shorten the timeframe within which a putative father may register with the putative father registry to preserve his right to notice of an adoption proceeding from 30 days to 7 days after the birth of the child and suggests that additional thought be given to this provision. NCALP urges you to look at this provision within the backdrop of constitutional law related to the rights of unmarried fathers. Unlike birth mothers, fathers cannot

rely on biology alone to establish paternal rights or, in many states, even putative father rights. A purported father typically must demonstrate that he has taken steps to establish and preserve a relationship with the child and provided support for the child and/or pregnant mother. The proposed amendment may not provide putative fathers a meaningful opportunity to meet this requirement.

In Ohio, if a putative father does not register on the Ohio Putative Father Registry any time prior to a child's birth and no later than 30 days after the child's birth, the child may be legally adopted without his knowledge or consent. While Ohio law presumes that a man who has sex with a woman is on notice that he must register to preserve his right to adoption notice and the right to consent to an adoption of a child born of that encounter, the reality is that the existence of the registry is largely unknown. It would be very difficult for a putative father to meet this requirement within 7 days after birth. |

In addition, we note that a "putative father" is not equivalent to a "birth father." A putative father under RC 3107.01(H) is one who might be the father, but who:

- is not married to the child's mother on or before the date that the child is born; or
- has not established paternity of the child in a court or administrative agency proceeding in this or another state before the date the child is to be adopted; or
- has not completed an acknowledgement of paternity affidavit before the filing of an adoption petition for the child.

Merely registering on a timely basis does not confer paternal rights. If a search of the registry reveals a putative father, that person has the right to notice of an adoption petition and the opportunity to consent. That right is not absolute; the putative father's consent is not required if the court finds that he is not the father of the minor, or that he has willfully abandoned or failed to care for and support the minor, or that The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor or the minor's placement in the home of the petitioner. With these limitations and safeguards in place, the reduction of time during which a putative father may register appears unnecessary and could place a nearly insurmountable barrier to putative fathers who want to and are suitable to parent a child.

NCALP believes that having an adoption system that recognizes the rights and interests of all parties best serves the primary focus: the best interest of the child. The adoption process is aimed at finding suitable parents for infants and children who need a safe, permanent family. Through the current process, a putative father has the opportunity to be notified of a planned adoption and the opportunity to either consent or to prove his paternity and attempt to demonstrate that it would be in the child's best interest for him to parent the child. In addition to being equitable, we believe that this approach actually decreases the risk of litigation that could delay or disrupt an adoptive placement.

- **Sec. 3107.067 Pre-birth notice**

Although NCALP supports providing putative fathers a process for pre-birth notice, we do not agree with shortening the time period in which fathers who receive such notice must register with the putative from 30 days after the birth of the child to 30 days after receipt of notice, nor do we support conditioning the right to consent or object to an adoption on registering within 30 days after notice. The proposed change will increase differential treatment as between birth mothers and putative fathers under Ohio law. A putative father who is noticed of his status is only given 30 days from the time of notice to register or lose his right to consent. A birth mother cannot provide consent until 72 hours after birth.

We can conceive of no benefit for adoptive children through such a change. The vast majority of stakeholders with whom we have discussed this issue do not support this process change. In fact, Section does not eliminate the potential that other men who do not receive notice may claim paternity or putative father status to the child and register as provided for if notice is not received. If the goal is to decrease the chance that a potential father may appear late in the game, we are not sure that this provision will have that effect. Putative or legal fathers who are not so identified will still have the opportunity to take measures to protect their rights – as they should.

NCALP supports this provision to the extent that a putative father who may actually be the birth father may be identified earlier in the process and provided education and counseling about the adoption process (which is required for birth mothers who chose to place a child for adoption). This type of early information may assist an adoptive family to better assess the risk to a placement and provide the putative father a meaningful opportunity to take required steps to preserve his right to consent or object to the adoption. However, as drafted, the process is inconsistent with other code sections that have been carefully drafted to ensure the integrity of the adoption process for all involved—birth parents, adoptive parents and, most importantly, the adoptive child. We believe that the current system, while not perfect, provides a much better system for all adoption stakeholders.

- **Sec. 3107.16 Finality of Decrees**

NCALP has no objection to decreasing the time within which an adoption decree may be challenged, assuming that current safeguards for all parties' interests mentioned above are not removed, although the provision appears inconsistent with Ohio Rule

- **Sec. 5103.17 Advertising**

NCALP has no objections to this Section.

- **Sec. 5747.37 Tax Credit**

NCALP fully supports the proposed increase in the tax credit but suggests that it should be expanded to cover more families and make adoption affordable for lower income families by providing for a refund rather than a credit.

Although NCALP has always supported adoption and adoptive parents and we sympathize with families who long for a child, we urge the Committee to remember that the purpose of adoption is to provide a

family for a child who needs a forever home. A child who has a father who is willing and competent to parent is not a child in need of a forever home.

Respectfully submitted,

Denise St. Clair, Executive Director
National Center for Adoption Law & Policy
Capital University Law School
dstclair@law.capital.edu
614.236.6593