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## Some Problems Relating to Adoptions in West Virginia and Recommended Changes\*

WILLIAM O. MORRIS \*\*

*And the child grew, and she brought him unto  
Pharoah's daughter, and he became her son  
And she called his name Moses: and she said  
Because I drew him out of the water.*

2 Exodus 10

Adoption of children as we know it today was totally unknown to the English common law, and being in derogation of the common law is authorized entirely by legislative acts in the United States.<sup>1</sup> The practice of adoption of children is not new as evidenced by the fact that it was known to the Babylonians having been provided for by the Code of Hammurabi<sup>2</sup> which was compiled over 2000 years before the birth of Christ. Adoptions were known to the Roman law and under it were carried forth with great ceremonial dignity and carried with it far reaching results. Recognizing that adoptions had been permitted in Egypt thousands of years ago Judge Lamm said in *Hockaday v. Lynn*: "Paul, himself a lawyer profoundly instructed in Hebrew jurisprudence, assumed the doctrine of adoption to be well known to his readers, and borrows the use of that doctrine as a hammer to clinch nails driven by him on matters of faith."<sup>3</sup> Adoptions were likewise not foreign to the Spanish law and were provided for under the Code of Napoleon, and from either the Spanish law or the Code of Napoleon the practice of adoption found its way into the laws of Louisiana and Texas and thence into the laws of all of the other American jurisdictions.<sup>4</sup>

Adoptions of children was first authorized in West Virginia by a legislative act of March 20, 1882.<sup>5</sup> This act of nearly four score years remains the basic source of law relating to the subject in West

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\* This article is the text of an address delivered before the West Virginia Judicial Association at the annual meeting in Clarksburg, West Virginia, on October 21, 1960.

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<sup>1</sup> *Re Taggart*, 190 Cal. 493, 213 Pac. 504 (1923); *Wall v. McEnery*, 105 Wash. 445, 178 Pac. 631 (1919); *Hockaday v. Lynn*, 200 Mo. 456, 98 S. W. 585 (1906).

<sup>2</sup> CODE OF HAMMURABI, compiled 2285 to 2242 B. C. Sections 185 to 193.

<sup>3</sup> *Id.* at 200 Mo. 456, 461, 98 S.W. 585, 585 (1906).

<sup>4</sup> *Id.* at 456, 463, 98 S.W. at 586 (1906).

<sup>5</sup> Acts of West Virginia, 1882.

Virginia. This act has been modified and changed by amendments on several occasions, principally in 1925, 1931, 1941, 1943, 1947, 1959 and other chapters of the West Virginia Code dealing indirectly with adoptions were also amended in 1945 and 1959. These amendments have not always accomplished the desired results. In view of the number of amendments to the adoption act over the past eighty years it seems now advisable to redraft and modernize the entire act to take advantage of the present day knowledge on the subject and to eradicate certain uncertainties and ambiguities.

In calling attention to the importance of the subject of adoption to the people of West Virginia attention must be called to the fact that in 1959 the courts of West Virginia approved 1280 petitions for adoption.<sup>6</sup> In this same year 408 persons born in West Virginia were adopted in other states, while ninety-five persons born outside of West Virginia were adopted through proceedings in West Virginia courts.

It has been estimated by the present Director of Child Welfare of the Department of Public Assistance of West Virginia that based on national figures fifty percent of all adoptions in the United States during any given year are by relatives of the adoptee, that is by step-parents, grandparents and others closely related by blood or marriage. If the relative number of family adoptions in West Virginia follow the national pattern, and no reason is known why they would not, this would indicate that of the 1280 adoptions consummated in the state in 1959 approximately half or 640 of the approved petitions for adoption were by members of the adoptee's family, and approximately half or 640 adoptions were by those not related to the adoptee.

In considering the part that child welfare agencies and other public and private agencies have had in adoption matters in West Virginia it should be noted that seventy-six children were placed in trial adoptive homes by the Department of Public Assistance of West Virginia during 1959. The Children's Home Society of West Virginia (Davis Child Shelter), a private agency placed forty-two children in trial adoptive homes and the Methodist Children's Home, also a private agency, placed one child in a prospective adoptive home during the same period. Of the total of 119 child placements for adoption in trial adoptive homes by both public and private agencies operating in West Virginia represented approximately nine and three-tenths

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<sup>6</sup> Based on requests to the Department of Vital Statistics for corrected birth certificates as permitted by W. VA. CODE, ch. 48, art. 4 § 4 (Michie 1955).

percent of the adoptions in this state in 1959, or approximately eighteen and five-tenths percent of the cases involving adoption by non-relatives. It is recognized that neither public nor private agencies are usually involved or concerned with adoptions by members of adoptee's family. A further breakdown of the figures will disclose that the Department of Public Assistance was responsible for trial placements for adoption in approximately six percent of the total number of adoptions and approximately eleven and nine-tenths percent of the adoptions by non-relatives. While the two private placement agencies accounted for the placement in three and three-tenths percent of the total number of adoptions and six and six-tenths percent of the total number of non-family adoptions. If we were to deduct from the total number of adoptions those in which a public or private agency was concerned we would have to conclude that in approximately ninety to ninety-one percent of all adoptions during this period involved children not placed by either a public agency of this state or a licensed private agency, but involved children obtained as a result of private placement, or private acquisition, or worse the gray or black market. It must be recognized that these percentages are only approximate for they are based upon two assumptions, that is, that the national average relative to family adoptions and non-family adoptions holds true in West Virginia, and that the number of placements and adoptions remain constant over the years. For we cannot be sure that the placements in 1959 resulted in ultimate adoptions during the same year. If these percentages and figures do fairly represent the picture in this state, then they should be evidence of the fact that the adoption laws of West Virginia should be strengthened and the judiciary given adequate control over adoptions for the protection of the adoptees in the approximate ninety percent of the cases wherein the natural parents, petitioners and adoptees have not had the benefit of the protection and advice of a public or private license agency. No criticism of the Department of Public Welfare or of the private agencies should be inferred from the fact that they are only involved in about ten percent of all adoptions.

In recent years the legislatures of various states have endeavored to strengthen both the role of the judiciary and of the social agencies in the matter of adoptions. While the courts have been given wider latitude in granting and denying the petitions for adoption, the legislatures have likewise recognized the growth and development of the social workers and have given them greater consideration in placing children and of making the necessary investigations concerning the desirability of adoption of a child into a particular home.

To aid in determining what changes, if any, should be made to strengthen the West Virginia adoption statute and at the same time modernize the proceedings, a comprehensive study and comparison of the present laws of West Virginia and those of eleven other states was undertaken. This encompassed a detailed study of the adoption laws of each state bordering West Virginia, namely, Virginia, Pennsylvania, Kentucky, Ohio and Maryland. In addition the laws of Tennessee, North Carolina and South Carolina were selected for study because of their location and comparative size. To complete the picture, close examination of the laws of New York, Illinois and Delaware was made because of the relative largeness of New York and Illinois and the smallness of Delaware. The latter two states also have very modern acts on the subject.

To facilitate an orderly consideration of the various problems related to adoption, the subject will be divided into a number of sub-titles.

#### AGE REQUIREMENTS<sup>7</sup>

An examination of the statutes of the twelve states mentioned above will disclose that only in West Virginia does the statute provide for an age differential between the petitioners and the child to be adopted. Similar provisions, but with different age differentials are found in a number of the other states.<sup>8</sup> The wisdom of controlling such a matter by legislative act is open to question. Those who were responsible for this provision of the act must have been trying to insure that the normal minimum age difference between a natural parent and a child would be maintained in cases of adoption as nature has in part insured in the case of natural parent and child.

The provision relating to the age differential is found in Chapter 48, article 4, section 2 of the West Virginia Code<sup>9</sup> and by its language is only applicable to the adoption of a child. It would seem to be fair to infer that child in this case means anyone under twenty-one years of age. Section 6 of the same chapter and article which is

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<sup>7</sup> Summary of age requirement as to petitioners: Petitioners must be fifteen years older than the child to be adopted, WEST VIRGINIA; Must be over twenty-one years of age, Delaware, Tennessee, North Carolina, Kentucky, New York, (In New York minor may adopt child of spouse); No age requirement for petitioner, Ohio, South Carolina, Virginia, Pennsylvania, Maryland; Petitioner must be an adult unless for good cause such requirement is waived by the court, Illinois.

<sup>8</sup> See codes of Arizona, Georgia, Idaho, Massachusetts, Montana, Nevada, North Dakota and others for variations on age differential.

<sup>9</sup> The petitioner must be fifteen years older than the adoptee.

entitled "Adoption of Adults" makes no mention of an age differential. If an age differential is meritorious in one situation it surely should be in the other. This inconsistency has resulted from the policy of amending the statute so often without an over-all working plan.

#### RESIDENCY REQUIREMENT OF PETITIONER<sup>10</sup>

Should West Virginia or any other state be made the situs of an adoption by non-resident petitioners? A residency requirement of the petitioners is required in over half of our states. The residency period ranges from no specified period to a maximum of one year. In some instances the court is given permission to waive the residency requirement.<sup>11</sup> If a thorough investigation is to be made of the petitioners to determine the advisability of granting their petition for adoption, and to determine whether the best interest of the child would be served by the adoption, a specified residency requirement should be determined by the legislature. The present adoption act of West Virginia only requires residency on part of the petitioners. It is thought that some specific period should be inserted into the statute. Neither the court nor the state should be charged with the responsibility of determining the fitness of a non-resident to become a parent by adoption in West Virginia, nor chance an investigation by an incompetent agent or agency of another jurisdiction.

#### UNMARRIED PETITIONER

As far as has been determined, no state presently requires the petitioner for adoption to be married. The legislature of the state should make careful examination of the pros and cons on this point and make its decision based upon what is normally for the best interest of the child. In 1959 there were thirty-nine adoptions by one person and from January through September, 1960, there were fifty adoptions by one person. It is reasonable to assume that the

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<sup>10</sup> Summary of residency requirement of petitioners: Statute does not require petitioners to be residents of the state, Ohio, North Carolina, South Carolina, New York, Pennsylvania, Maryland; Petitioners must be residents of the state, Delaware, Kentucky, Virginia, WEST VIRGINIA; Physically present in state for one year or maintained a residence in the state for one year, Tennessee; Six months residence requirement except for adoption of "related child" or child placed by an "agency," Illinois; To adopt an adult petitioners must be residents of this state, WEST VIRGINIA.

<sup>11</sup> This is permitted in different degrees in South Carolina, Wisconsin, North Dakota and Minnesota.

one person involved was not married. The writer personally is of the belief that adoptions should only be permitted by married couples.

#### CONSENT OF OR JOINDER OF SPOUSE TO PETITION<sup>12</sup>

West Virginia is more lenient than some, and more strict than some other states, on the question of joinder of one's spouse to an adoption proceeding. The West Virginia statute provides that the spouse of the petitioner must consent to or join in the petition to adoption of a child.<sup>13</sup> Chapter 48, article 4, section 7 of the West Virginia Code entitled "Adoption of an Adult" does not require the consent of the other spouse, let alone joinder of such spouse in the petition. This should be rectified. In 1959 the natural mother was involved as a petitioner in 154 adoptions and the natural father in twelve cases or one natural parent was involved in thirteen percent of the adoptions. It is questionable whether permitting one spouse alone to petition for an adoption of a child with merely the consent of the other, or the adoption of an adult without the consent of or joinder in by the spouse lends itself to the promotion of family tranquility.

It is recognized that in the event a married couple is separated and only one spouse desires to petition for an adoption, it might well be difficult to obtain the consent of the other spouse. It is doubtful that it would be in the best interest of any child to be adopted into an already broken home. The Kentucky statute permits the court for good cause to waive the requirement of joinder by the other spouse to the petition to adopt.<sup>14</sup>

The joinder of the natural parent with the stepparent in an adoption proceeding should not affect the legal right of the child as a natural child of the natural parent, but such joinder would be only for the purpose of showing the consent of the natural parent to the adoption.

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<sup>12</sup> Consent or joinder of spouse to petition: Consent of spouse alone sufficient, WEST VIRGINIA, Pennsylvania; Must be joint adoption, Delaware, Ohio, Illinois, Virginia and probably New York; Must join in petition if spouse competent, Tennessee, North Carolina; Need not have joinder, South Carolina, Pennsylvania, Maryland; Must be joinder unless court waives requirement, Kentucky.

<sup>13</sup> W. VA. CODE, ch. 48, art. 4 § 1 (Michie 1955).

<sup>14</sup> KY. REV. STAT. ANN. § 194.470(2) (Baldwin 1955).

<sup>15</sup> Consent of the adoptee: Consent of adoptee required if adoptee is twelve years of age, WEST VIRGINIA; Consent of adoptee required if adoptee is over fourteen years of age unless such consent waived by the court,

CONSENT OF THE ADOPTEE<sup>15</sup>

Of the twelve previously enumerated states which were the subject of detailed study, all except South Carolina require the consent of the adoptee to the adoption if he or she has reached a specified age.

This section has particular importance when considered with the West Virginia Code section which provides in part ". . . such child shall not inherit from his or her natural parent or parents, nor their lineal or collateral kindred, except that a child legally adopted by a husband or wife of a natural parent shall inherit from the natural parent of such child as from the adopting parent."<sup>16</sup> (A query might be raised as to whether under the language of the section such child could inherit from the lineal or collateral kindred of the natural parent in the event of the adoption when such natural parent remarried and an adoption is consummated by the stepparent. Also the question is present whether the section applies to the adoption of an adult.)

Being mindful that it is possible to dispose of one's property by will, we should not lose sight of the number of persons who die intestate. In the event of death of the natural parent intestate after an adoption, with the exception mentioned above, the adoptee would be barred from inheriting from his natural parents or collateral or lineal kindred of such parents. This being the law, the question must be answered whether a twelve year old child is capable of evaluating whether he or she wishes to surrender this possibility of inheritance from one group in exchange for the possibility of inheriting from another. The importance of the problem is in part diminished by the necessity of the consent to the adoption by some

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Delaware, New York; Consent of adoptee required if adoptee is over fourteen—must consent to the adoption in chambers before judge, Tennessee; Consent of adoptee required if adoptee is over twelve years of age unless the child had resided in home of petitioner continuously for a period of eight or more years immediately preceding filing of petition, Ohio; Consent of adoptee required if child is twelve years of age or becomes twelve before granting final order, North Carolina; No provision for consent of child, South Carolina; Consent of child twelve years of age given in court unless consent required is waived by court, Kentucky; Consent of adoptee is required if over fourteen years of age, unless child is mentally ill in which case court may waive consent requirement, Illinois; Consent of adoptee required if adoptee is over fourteen years of age, Virginia; Consent of adoptee if over twelve years of age together with the consent of the adoptee's spouse if any, Pennsylvania; Consent of adoptee if over ten years of age, Maryland.

<sup>16</sup> W. VA. CODE, ch. 48, art 4 § 5 (Michie 1955).

other person than the child. As an additional safeguard it would be desirable to require the appointment of a guardian ad litem to represent the interest of the child in every case.

It would not at all be improper to dispense with the necessity of the consent of the child when said child had resided in the petitioners' home for a definite number of years. Ohio statutes so provides in the event the child has resided in the petitioners' home for eight years preceding the filing of the petition.<sup>17</sup>

#### CONSENT OF THE NATURAL PARENT<sup>18</sup>

With the exception of South Carolina all states studied require the natural parents or the survivor thereof to consent to the adoption of their child. However, the necessity of such parental consent is dispensed with for various and numerous reasons in the different states. While the detailed provisions of the state laws differ widely, the more common reasons for dispensing with the requirement of parental consent to the adoption are: (1) Father of child born out

<sup>17</sup> OHIO REV. CODE § 107.06 (Supp. 1959, Anderson).

<sup>18</sup> Necessity of consent of natural parents: Consent of parent or surviving parent is necessary, WEST VIRGINIA, Delaware, Tennessee, Ohio, North Carolina, Kentucky, Illinois, Virginia, New York, Maryland; No provision in statute for parental consent, South Carolina; Consent of parent unless adoptee has reached eighteen years of age, Pennsylvania, Tennessee; Consent of parent is unnecessary if adoptee has reached twenty-one years of age, WEST VIRGINIA, New York, Maryland, Kentucky, Virginia (to a limited degree); If child was born out of wedlock only mother needs to consent, WEST VIRGINIA, New York, Tennessee, Ohio, North Carolina, Illinois, Virginia, Pennsylvania, Maryland.

Consent of parent is unnecessary when: (a). Parents are dead: All states; (b). Parents are unknown: WEST VIRGINIA; (c). Parent is insane: WEST VIRGINIA, Delaware, Tennessee, Ohio, Virginia and New York; (d). Parent has abandoned the child: WEST VIRGINIA, Delaware, Tennessee, Virginia and New York; (e). Parent has been deprived of custody of child by law: WEST VIRGINIA, Delaware, New York; (f). Valid surrender of child to authorized agency: Tennessee, Ohio, North Carolina, Virginia, Illinois, New York; (g). Parent has not supported the child for two years: Ohio; (h). No provision for consent found in statute: South Carolina; (i). Parent adjudicated insane for more than one year: Kentucky; (j). Parental rights have been terminated by law: WEST VIRGINIA, Kentucky, Illinois, Virginia, Maryland; (k). Parent insane for three years, two doctors appointed by court to determine likelihood of recovery, if doctors find that recovery is not likely in foreseeable future, then guardian ad litem appointed for insane person who may give consent: Illinois; (l). Parent has cruelly abused child: Virginia; (m). Court may waive requirement of parental consent: Virginia; (n). Parent has been deprived of his civil rights: New York; (o). Parent has been divorced because of adultery: New York; (p). Parent has been adjudicated a habitual drunkard: New York, Pennsylvania; (q). Has been adjudicated incurably insane: Pennsylvania; (r). Parent has abandoned child for six months: Pennsylvania.

of wedlock need not be consulted; (2) Death of a parent; (3) Insanity; (4) Parent has surrendered child to person or agency to be placed for adoption; (5) Abandonment of the child; (6) Parental rights have been terminated by law.

It should be noted that at least six of the twelve mentioned states provide that if the adoptee has reached a specified age, namely 18 years in Pennsylvania and Tennessee, 21 years in West Virginia, Maryland, Kentucky, and Virginia, the consent of the natural parent is no longer required.

Illinois, in its new adoption act, provides for the determination of incurable insanity to be made by two doctors appointed by the court and that the parent has been insane for three years, before the necessity of the parental consent may be dispensed with.

New York and Virginia to a limited degree provide that a parent may lose his right to withhold his consent to an adoption of his or her child when that parent has been divorced and custody of the child awarded to the other spouse. This is a most desirable provision and would prevent grave hardships in some cases.

#### CONSENT BY OTHERS THAN ADOPTEE OR NATURAL PARENT<sup>19</sup>

Because of the variation in needs and judicial practices in the sister states, it is not practical to evaluate the advantages and disadvantages of the various statutes on this point. It should suffice to state that the provisions in the West Virginia Code<sup>20</sup> on this point

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<sup>19</sup>Consent by others than adoptee or natural parents of adoptee: When parental consent cannot be given or is not required, consent to the adoption is given by: (a). Person who is legal guardian or person having legal custody of adoptee: WEST VIRGINIA; (b). If no legal guardian or person having legal custody by next friend appointed by the court: WEST VIRGINIA; (c). Person with parental rights: Delaware; (d). Guardian ad litem of parent if parent is incompetent: Tennessee, Ohio; (e). If no one to give consent then by Director of Public Welfare of county shall be appointed next friend: Tennessee; (f). If parents are dead or place of their residence unknown and there is no guardian then by next friend appointed by the court: Ohio; (g). By guardian if one has been appointed: Ohio, Illinois, Pennsylvania, Maryland; (h). When child has been surrendered to the Department of Public Welfare the head thereof may consent to the adoption: North Carolina; (i). Statute provides for guardian ad litem: South Carolina, Kentucky; (j). Agency head when child has been surrendered to agency: Illinois, Virginia, Maryland, (WEST VIRGINIA by (a) above.); (k). Person having legal custody when parental rights have been terminated with consent of court having jurisdiction of custody: Illinois; (l). When not otherwise provided by head of Commission: Virginia; (m). Any person or authorized agent having lawful custody of child: New York.

<sup>20</sup>W. VA. CODE, ch. 48, art. 4 § 1 (Michie 1955).

are ambiguous and should be redrafted with greater clarity as to the order of persons to give the necessary consent.

In approximately a half dozen states, California, Delaware, Massachusetts, New Jersey, New York, Ohio, and Rhode Island, it is required that all placements for adoption, except those involving stepparents and certain close relatives, to be handled through a licensed agency.

#### VALIDITY OF CONSENT OF NATURAL PARENT WHEN A MINOR<sup>21</sup>

The best interest of the child would, in most instances, be best served by permitting the natural parent, whether a minor or adult, to decide whether to permit the adoption of his or her child. It is felt that if one is of sufficient age to be a parent then he or she is of such age to give a valid consent to the adoption. A number of states expressly provide that the surrender of a child for adoption by a minor parent is valid.

The West Virginia Code section entitled "Private Child Welfare Agency" provides in part: "The parents or the surviving parent of a child or the mother of an illegitimate child may relinquish the child to a child welfare agency licensed to place children for adoption by a written statement . . . . Provided however that if either of the parents of such child is under twenty-one years of age, such relinquishment shall not be valid unless the same shall have been approved in writing by a judge of a juvenile court of the county in which such parent may reside or in which such relinquishment is made. . . ." <sup>22</sup> This section is not desirable in its entirety. The provision requiring certain formalities to the validity of a surrender of a child for adoption and for the revocation of such consent should either apply to all surrenders of a child or none. If the proposed adoption act be adopted, this section should be repealed as the desirable provisions are incorporated into the adoption act.

#### AGE OF ADOPTEE AT TIME OF PARENTAL CONSENT TO ADOPTION

At least two states now require the child to be of a minimum specified age at the time the consent to the adoption is given by the

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<sup>21</sup> Validity of consent of natural parent when a minor: Express provisions dealing with consent to adopt given by a minor natural parent is found in several statutes. Provides for validity of consent given by a minor parent to the adoption of his or her child: Delaware, North Carolina, Kentucky, Virginia. The statute in Kentucky requires a guardian ad litem for such minor parent.

<sup>22</sup>W. VA. CODE, ch. 49, art. 3 § 1 (Michie 1955).

parent. The Illinois act provides the parental consent to adoption may not be validly given within seventy-two hours of the birth of the child, while the Virginia statute provides no consent shall be given until the child is at least ten days of age. Such a provision is desirable.

#### ADOPTION OF AN ADULT<sup>23</sup>

The states are well divided as to whether it is proper to adopt an adult. Some states, Illinois and Virginia, limit the instances in which one may adopt an adult. In 1959 there were twenty-nine adoptions of persons over twenty-one years of age and in the first nine months of 1960, seventeen such adult adoptions were consummated from the total of 759 adoptions in the same period. It is recommended that such adoptions be limited to where certain relationships by blood or marriage exist.

#### TRIAL RESIDENCY REQUIREMENT<sup>24</sup>

The West Virginia statute now provides that the child to be adopted must have resided in the home of the petitioner or petitioners for six months before the filing of the petition to adopt. A number of states now provide for an interlocutory order of adoption with the postponement of the final order until the passing of some specified period, the adoptee living with the petitioners during the interval between the interlocutory order and final decree.

The use of the interlocutory decree is thought to be superior to the present residency requirement of six months because: (1) It permits certain important matters to be finally determined at an earlier date, e.g., whether the residency requirements have been satisfied and the validity of the consent to the adoption; (2) The court is alerted to and aware of the placement of the child in a home for

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<sup>23</sup> Adoption of an adult permitted: Permit adoption of an adult: WEST VIRGINIA, Delaware, Kentucky, New York, Pennsylvania, Maryland; Do not permit the adoption of an adult: Tennessee, Ohio, North Carolina, South Carolina; Limitations on the right to adopt an adult expressly provided for in the following states: Illinois, Virginia.

<sup>24</sup> Trial residency requirement or interlocutory decree: Adoptee must have resided in home of petitioners for six months: WEST VIRGINIA, Ohio, New York (if child is under eighteen), Pennsylvania (unless related by blood); Adoptee must have resided in home of petitioner for one year: Delaware (by waiver of court the period may be reduced to six months), Virginia (with some minor exceptions); Adoptee must have resided in home of petitioner for three months: Kentucky; May file petition for interlocutory order within thirty days after child has become available for adoption: Illinois.

adoption for a longer period than under our present arrangements. This fact alone permits the court a longer period in which to investigate and consider the interest of the parties involved.

#### CHANGE OF NAME OF ADOPTEE

All states permit the name of the adoptee to be changed as part of the adoption proceedings. No change is recommended in this procedure.

#### ADOPTEE'S RIGHT TO INHERIT<sup>25</sup>

The states are not in agreement as to whether an adopted child should sacrifice his or her right to inherit from his natural parents or collateral or lineal kindred of the natural parents because of the adoption. West Virginia denies to the adopted child the right to inherit from his natural parents. Only slight modifications of the pertinent statute are recommended and discussed previously.

#### INHERITANCE FROM THE ADOPTEE<sup>26</sup>

West Virginia is in accord with the more modern thinking and permits the adopting party or parties to inherit from the adoptee as through the adoptee were the natural child of the adoptors.<sup>27</sup> In some jurisdictions the adoptors are only permitted to inherit property which was acquired by the adoptee after the adoption and not from the natural parents or their collateral or lineal kindred by gift, devise or where permitted, by inheritance. No change in the West Virginia Code is recommended on the right of the adopting parties to inherit from the adoptee.

#### REVOCATION AND FINALITY OF ADOPTION<sup>28</sup>

It is felt that at some specified period after an adoption decree has been signed, it should become final for all purposes and no longer

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<sup>25</sup> Adoptee's right of inheritance: Adoptee may inherit from adopting parents: WEST VIRGINIA, Delaware, Tennessee, Ohio, North Carolina, South Carolina, Virginia, Pennsylvania, Illinois, Maryland, New York, Kentucky; Adoptee may inherit from natural parents: New York, Maryland, Illinois; Adoptee may not inherit from natural parents: WEST VIRGINIA, Delaware, Ohio, Tennessee apparently, Virginia, Kentucky.

<sup>26</sup> Inheritance from the adoptee: Adopting parents inherit from adoptee: WEST VIRGINIA, Delaware; Adopting parents right of inheritance limited to property acquired after adoption: Kentucky; Apparently in most states the adopting parents inherit from the adoptee without any limitations.

<sup>27</sup> W. VA. CODE, ch. 48, art. 4 § 5 (1960 Supp. Michie).

<sup>28</sup> Revocation and finality of adoption: Parent or guardian who had no notice of proceedings may petition court to revoke adoption within one year after notice thereof: WEST VIRGINIA; When one has been adopted while a minor, the adoptee may upon reaching majority or within one year there-

subject to either a direct or collateral attack. Many states provide that the validity of the adoption can only be questioned by an appeal. This, of course, limits the time in which an attack can be made upon validity of an adoption. Other states provide a definite fixed period after which the decree cannot be questioned.

The West Virginia statute giving the right to have an adoption revoked is not to be recommended and is perhaps the poorest section of the adoption act.

#### SUMMARY

It must be recognized that the primary purpose of any adoption act should be to protect children from unnecessary separation from their natural parents who might give them good homes and loving care, to protect them from adoption by persons unfit to have the responsibility of their care and rearing, and to protect them from interference, long after they have become properly adjusted to their adoptive homes, by persons who may have in the past had a legal claim because of defective adoption proceedings.

It is of equal importance to protect the natural parents from hurried decisions, made under strain and anxiety, to give up a child, and to protect adopting parents from assuming responsibilities for a child of whose heredity or mental or physical condition they know nothing, and to prevent later disturbance of their relationship to the child by the natural parents whose legal rights have not been fully protected.

If the discussion of the present West Virginia Adoption Act has in any degree shed light on the problems relating to adoption in this state and if the suggestions for changes show any merit and they are accepted by the legislature of this state, then this presentation has served its purpose.

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after have the adoption vacated on filing such notice with county clerk: WEST VIRGINIA; Irregularities in adoption cannot be raised after two years: Delaware, Kentucky (one minor exception); Only method of questioning adoption proceedings is by appeal: Tennessee, North Carolina; Only interlocutory decrees may be set aside: Ohio, Illinois; Any time after final order upon petition: Virginia; Nothing found in statute on point: Pennsylvania, South Carolina. Appeal within 30 days, set aside on jurisdictional ground up to one year: Maryland.

New York has very detailed provisions concerning this point.