



*COMMONWEALTH of VIRGINIA*  
*Commission on Youth*

Delegate Christopher K. Peace, *Chair*  
Senator Barbara A. Favola, *Vice Chair*

*Executive Director*  
Amy M. Atkinson

General Assembly Building  
201 N. 9th Street, Suite 269  
Richmond, Virginia 23219-0406  
804-371-2481  
FAX 804-371-0574  
<http://vcoy.virginia.gov>

October 31, 2014

The Honorable Thomas K. Norment, Jr.  
Senate of Virginia  
P.O. Box 6205  
Williamsburg, VA 23188

Dear Senator Norment:

During the 2014 General Assembly Session, Senator Jeffrey L. McWaters introduced Senate Bill 411. This legislation specifies that any parent, guardian, or other person responsible for the care of a child who transfers physical and legal custody of the child with the intent to do so permanently without following established adoption procedures to be guilty of a Class 6 felony. This practice is also known as unlawful adoption or "re-homing". These procedures attempt to ensure, among other things, that the child will not be abused or neglected by his new adoptive parents.

Senate Bill 411 was referred to the Senate Courts of Justice Committee but, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Courts of Justice Committee referred the subject matter contained in Senate Bill 411 to the Commission on Youth. At the May 7, 2014, Commission on Youth meeting, the Commission adopted a plan to study the provisions set forth in Senate Bill 411. Enclosed you will find a copy of the adopted study plan.

The Commission on Youth has analyzed this issue over the past several months, conducting site visits and stakeholder interviews with representatives from agencies and organizations with expertise and/or special interest in this topic. Commission staff has also conducted an extensive literature review and analyzed state and federal laws and regulations. Commission staff presented on the study effort at the Commission's October 20<sup>th</sup> meeting. Enclosed is a copy of the presentation for your review. The Commission is currently accepting public comment on the study through November 7, 2014.

During the research process, staff uncovered a number of concerns regarding many of the possible recommendations that stem from the original intent of SB 411. A major issue identified during the course of the study is the lack of available data detailing how widespread this issue is in Virginia. An attempt to change adoption law or criminalize a practice that may not be prevalent has the potential to create a number of unintended consequences. The Commission does not want to offer draft study recommendations without such data because

The Honorable Thomas K. Norment, Jr.  
Senate of Virginia  
October 31, 2014  
Page Two

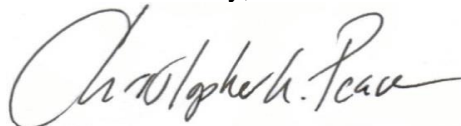
these recommendations have the potential to weaken the rights of parents in Virginia. One arrangement the Commission is concerned about harming is kinship care. Many studies, including the Commission's 2011 report on *Barriers to Kinship Care*, have highlighted the importance of this arrangement. Kinship care is the least restrictive and most family-like setting for children requiring out-of-home placement. Research has shown that children living with relatives in kinship care placements generally have a greater likelihood of being successful and a decreased likelihood of experiencing negative outcomes (e.g., dropping out of school or being incarcerated). Like other states, Virginia has increasingly turned to kinship care as a viable placement option for children when the family is in crisis. Kinship care typically occurs when local departments of social services facilitate the placement of a child with relatives to prevent a foster care placement when the child cannot remain with their parents. Kinship care is a valuable arrangement because it encourages family involvement, something extraordinarily positive that the Commission does not wish to undermine.

Overall, the Commission would like to stress the importance of the "best interest of the child" standard when formulating study recommendations. After staff met with me on October 16, 2014, we concluded that there would be too many unintended consequences and too high of a burden placed on the adoption laws in Virginia to offer recommendations that restrict custody transfers. Staff also assessed options associated with modifying Title 18.2 of the *Code of Virginia*, but concurred that those options would also not be in the best interest of the child.

The Commission has offered recommendations supporting the efforts of the previous administration as well as the current administration in the arena of adoption awareness. The Commission also looks forward to working with Department of Social Services and the Office of Comprehensive Services for At-Risk Youth and Families on improving post-adoptive preventive measures in Virginia.

The Commission will meet on November 17, 2014 at 9:30 a.m. to vote on the draft findings and recommendations. I will forward the adopted recommendations to you and to Senator McWaters once approved by the Commission. If you need any additional information, please feel free to contact me or our Executive Director, Amy Atkinson, at (804) 371-2481 or [aatkinson@vcoy.virginia.gov](mailto:aatkinson@vcoy.virginia.gov).

Sincerely,



Christopher K. Peace

cc: The Honorable Susan Clarke Schaar, Clerk of the Senate  
The Honorable Jeffery L. McWaters, Senator for the 8<sup>th</sup> Senatorial District

Enclosures

## UNLAWFUL ADOPTION OF A CHILD STUDY PLAN

### 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 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 prior to the 2015 General Assembly session.

### Identified Issues

- Currently, § 18.2-371.1(A) of the *Code of Virginia* creates a Class 4 felony for any parent, guardian, etc., either by willful act or omission, to cause or permit serious injury to a child. Under § 18.2-371.1(B), a parent, guardian, etc., showing reckless disregard for human life by a willful act or omission while caring for a child that is sufficiently gross, wanton, and culpable to is guilty of a Class 6 felony.
  - The section also creates an affirmative defense for parents who safely deliver a child to a hospital or rescue squad within the first 14 days of the child's life.
- Virginia law does not currently acknowledge the existence of anything resembling "re-homing," (also called rehoming) which is when a child is removed from one adoptive family and placed in another home. The new family can re-adopt him, take guardianship through the court, or take custody of the child via a power of attorney.<sup>1</sup>
- The proposed legislation stemmed from a joint Reuters and NBC News investigation<sup>2</sup> in 2013 revealing an underground market of adoptive parents seeking new families for children they no longer wish to parent. Parents arranged custody transfers, bypassing the typical adoption process (including background checks and a home study), through websites like Yahoo and Facebook. These children are extremely vulnerable and are at great risk for human trafficking and abuse.<sup>3</sup>
- The Interstate Compact on the Placement of Children (ICPC) is statutory uniform law in 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. It strives to ensure responsibility and communication among all parties involved until lawful termination. Procedures for the interstate and intercountry placement of children are intended to ensure that the proposed placement is in

<sup>1</sup> Twohey, M. (2013). Americans use the Internet to abandon children adopted from overseas. <http://www.reuters.com/investigates/adoption/#article/part1> (April 2014).

<sup>2</sup> Twohey, M. (2013). Americans use the Internet to abandon children adopted from overseas. <http://www.reuters.com/investigates/adoption/#article/part1> (April 2014).

<sup>3</sup> McWaters, J. (2014). Report from Richmond: Week Three. <http://www.jeffmcwaters.com/news.php?q=122>. (April 2014).

compliance with state laws and regulations and is not contrary to the interests of the child.<sup>4</sup>

- While the ICPC is in place to help protect children, reports show that not all law enforcement officials are aware that it exists.<sup>5</sup>
- Illinois lawmakers have held a hearing about re-homing. Additionally, the U.S. Representative from Illinois,<sup>6,7</sup> and state leadership in Colorado<sup>8</sup> and Florida<sup>9</sup> drafted bills aimed at preventing it. The Wisconsin legislature passed legislation, adding a penalty of up to nine months in jail or up to \$10,000 in fines for anyone not licensed by the state to advertise a child over age one for adoption or any other custody transfer. Governor Scott Walker signed it into law on April 16, 2014.<sup>10</sup>

## Study Activities

- Interview impacted 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
- 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

<sup>4</sup> Virginia Department of Social Services. (2013). Interstate/Intercountry Placement of Children (ICPC). <http://www.dss.virginia.gov/family/icpc/index.cgi>. (April 2014).

<sup>5</sup> Twohey, M. (2014). Girl spent months harboring secret, fearing she would be sent away again. <http://www.reuters.com/investigates/adoption-follows/#article/part2>. (April 2014).

<sup>6</sup> Langevin, J. (2014). 113th Congress (2013 - 2014), H.R.3423. To ensure the safety and well-being of adopted children. <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:h.r.3423>: (April 2014).

<sup>7</sup> Langevin, J. (2013). Rehoming Letter to WAM. <https://s3.amazonaws.com/s3.documentcloud.org/documents/812773/2013-10-29-re-homing-letter-to-wam.pdf>. (April 2014).

<sup>8</sup> Conti, K. (2014). Concerning Making Acts Related to The Advertisement of Children for the Purposes of Transferring their Care to Others Trafficking in Children. [http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont2/8A17B9A7A273775687257C360075ED69/\\$FILE/1149\\_01.pdf](http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont2/8A17B9A7A273775687257C360075ED69/$FILE/1149_01.pdf). (April 2014).

<sup>9</sup> Children, Families, and Elder Affairs Committee (2014). SB 498: Adoptions. <http://www.flisenate.gov/Session/Bill/2014/0498>. (April 2014).

<sup>10</sup> Twohey, M. (2014). Wisconsin passes law to curb private custody transfers of children. <http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416>. (April 2014).

- 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
- 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
- Solicit feedback on draft recommendations from impacted stakeholders
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report



VIRGINIA COMMISSION ON YOUTH

# Unlawful Adoption

October 20, 2014

Will Egen

# 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.