

## **GOOD JOB INDIANA LEGISLATORS!**

By Steven M. Kirsh\*

In the last issue of Adoption Briefs, I complimented the Indiana General Assembly for its wisdom, and, in some cases, its restraint in legislating adoption laws in Indiana. In my opinion, Indiana has a very workable procedure which encourages adoption while at the same time protecting the rights of birth parents, adoptive parents, and most importantly, the children who are adopted.

In the just ended session, the Indiana General Assembly enacted a new law, House Bill 1108, which significantly enhances the already very good adoption law in Indiana. Before explaining the new law, let me begin by explaining the problem which House Bill 1108 addresses. By the way, this problem arises in every state. To date, Indiana is one of a very few states which has legislated a solution.

### **The Problem**

Under the laws of most states and under Indiana law, prior to the enactment of House Bill 1108, when a birth mother identified a man, who is not her husband, as the father of an unborn child, she had no way of compelling him to commit to either parent the child or to participate in an adoption plan for the child until after the baby was born. This proved problematic because not every man who voiced opposition to an adoption plan truly wanted to share or assume parental responsibilities. Furthermore, neither the birth mother nor the adoptive parents had any tangible way to judge a man's sincerity when he said that he opposed the adoption.

Under the laws of most states, not until after the baby is born can a birth father be given legal notice that an adoption is pending. In many cases, the adoptive parents will already have custody of the child when the alleged father is given the statutorily prescribed notice of the intended adoption. This is what is often referred to as a "legal risk" placement. In assuming custody of the child, the adoptive parents take a risk as to whether or not the father will challenge the adoption. If he successfully challenges the adoption and the adoptive parents have already assumed custody of the child, they would have to relinquish the child. The emotional and psychological harm caused to the adoptive parents and the child is obvious under those circumstances.

As an attorney who exclusively practices adoption law and is involved in between 135

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and 155 adoptions each year, although a few men will voice opposition to an adoption, rarely will a man initiate legal proceedings to challenge an adoption. However, the possibility exists that a man who has known about the pregnancy and the intended adoption, prior to the birth of the child, will mount a successful challenge, depriving the adoptive parents of custody of the child.

Until the passage of House Bill 1108, no procedure existed enabling a father to assert his parental rights prior to the birth of the child. Likewise, neither the adoptive parents nor the birth mothers had any way to determine whether or not a man, who voiced opposition to an adoption, would really assume a parental role with respect to the child.

### The Solution

The breakthrough encompassed in House Bill 1108 is that now Indiana has a procedure to put a birth father on notice of an intended adoption prior to the birth of the child. House Bill 1108 enables the agency or the attorney representing the prospective adoptive parents to give written notice to the alleged father prior to the birth of the child. He then has thirty days within which to file a paternity case. If he does not take advantage of this right, he will be barred from challenging the adoption after the expiration of the thirty day time period, whether or not the child has yet been born.

House Bill 1108 significantly changes Indiana law in regards to notice to alleged fathers and sets Indiana apart from most other states. This new procedure benefits everyone including birth fathers. Firstly, from the birth father's perspective, if a man truly wants to assume a parental role with respect to his child, he is given an opportunity to file a paternity case which will effectively prevent the child's adoption. The general feeling is that if a man is willing to initiate paternity proceedings and make himself legally and financially responsible for the child, he ought to have the same rights as he would have had he been the birth mother's husband. By filing a paternity case, and establishing in that case his paternity of the child, the father acquires an absolute veto over any adoption.

House Bill 1108 benefits the birth mother in that it provides her a concrete way to judge the father's sincerity if he says he opposes the adoption. While many women will consider adoption for the child, few are willing to relinquish custody of the child to the father who has not supported, or assisted, her during her pregnancy.

With the passage of House Bill 1108, if a man has not filed a paternity case within the thirty day time period, the woman can proceed with an adoptive placement without fear that her plan will be derailed by the father.

The benefits to the adoptive parents are obvious. While there will be some situations in which a father will exercise his right to file a paternity case and assume parental responsibility for the child, in all likelihood, that birth father would have been able to successfully challenge the adoption after the baby was born. At least with the passage of House Bill 1108, the adoptive parents will know prior to their assuming custody of the child, that they will not be able to adopt the child.

As any family, who has waited for a child whom they later found they would not be able to adopt, will tell you, it is an extremely disappointing event. However, it is nothing like the emotional and psychological devastation of actually having to relinquish custody of a child after the family has had the child in their home for any period of time.

### Conclusion

We should commend all Indiana legislators for their efforts in enacting House Bill 1108. The following legislators deserve special recognition: Speaker of the House Michael Phillips, along with Representatives Dennis Avery, Brad Bayliff, John Day, and John Gregg; President Pro Tem of the Senate Robert Garton, and Senators Maurice Doll, Jean Leising, William Soards, and Thomas Weatherwax.