COMMENT

IN THE BEST INTERESTS OF THE CHILD: THE UNIFORM ADOPTION ACT

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Gary and Linda began living together eight months before Linda became pregnant in November 1991.[1] During the first two trimesters of her pregnancy, they lived under the same roof.[2] Until January 1992, Linda and Gary were each paying one half of all the household expenses.[3] In January 1992, Linda was injured in a car accident and subsequently was unable to work. She was, however, receiving food stamps and a monthly Aid for Families with Dependent Children check. On February 13, 1992, while they were still living together, the couple signed an agreement which required Linda to pay one half of the household expenses.[4]

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1. *In re* Adoption of Baby E.A.W., 19 Fla. L. Weekly D1336, D1336 (Fla. 4th Dist. Ct. App., June 22, 1994) [hereinafter *Baby E.A.W. I*], *withdrawn on reh'g & superseded by* 647 So. 2d 918 (Fla. 4th Dist. Ct. App. 1994) [hereinafter *Baby E.A.W. II*], *approved by* 658 So. 2d 961 (Fla. 1995) [hereinafter *Baby E.A.W. III*], *cert. denied sub nom.* G.W.B. v. J.S.W., 116 S. Ct. 719 (1996).

The full text of the Fourth District Court of Appeal's June 1994 decision, which was later withdrawn and superseded, has been included as an appendix to the November 1994 decision. Although all citations to the June 1994 opinion will be to the appendix of the November 1994 opinion, the June 1994 decision will be referenced as *Baby E.A.W. I*.

2. *Baby E.A.W. II*, 647 So. 2d at 920–21.

3. *Id*. at 920.

4. *Id*. In its earlier opinion, the court referred to the arrangement by stating "[t]o assist her application [for governmental financial assistance], Gary signed papers reciting the . . . financial arrangements." *Baby E.A.W. I*, 647 So. 2d at 941 (appendix). The court concluded that "for the first six months of her pregnancy, he contributed more than half of their expenses, and thus regularly and continuously supported her in helping to maintain the household in which she resided." *Id*. However, in its later opinion, the court

Linda later testified that during the period in which they lived together, Gary subjected her to emotional abuse.[5] In June 1992 Linda moved out.[6] She later stated that before moving out, she told Gary that she was considering adoption.[7] The parties dispute Gary's reaction to her announcement regarding adoption as an alternative: she says that his response was to "do whatever you have to do," and he says that he was "overjoyed" at the prospect of being a father.[8] During the course of her pregnancy, Gary accompanied Linda to only one doctor's visit and paid for none of her prenatal care.[9] In July 1992, the intermediary in the adoption contacted Gary at which time he stated that he would not consent to the adoption.[10] On August 12, 1992, a judge signed an order waiving Gary's consent.[11]

On August 28, 1992, Linda gave birth to a baby girl.[12] Pursuant to a preplanned agreement, she gave the baby up for adoption.[13] Since her birth more than four years ago, Baby Emily, as she has come to be known, has lived with her adoptive family.[14] She is no

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recognized the couple's practice of each person paying half of the household expenses and their agreement to continue to do so and concluded "the natural mother was . . . paying her own way." *Baby E.A.W. II*, 647 So. 2d at 920.

5. *Baby E.A.W. II*, 647 So. 2d at 921. Linda stated that Gary "spit" at her after she had used his razor and that he consistently called her "worthless" and threatened to kick her out of the apartment. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Baby E.A.W. II*, 647 So. 2d at 921; *Baby E.A.W. I*, 647 So. 2d at 941–42 (appendix). It is interesting to note the difference in the characterization of the facts. In *Baby E.A.W. I*, 647 So. 2d at 941 (appendix), the court harped on the fact that neither Linda nor Gary had health insurance or could afford the medical expenses. In *Baby E.A.W. II*, 647 So. 2d at 922, the court made no mention of this and proceeded to question how a man who was earning $300 to $400 a week could qualify for legal aid.

10. *Baby E.A.W. II*, 647 So. 2d at 921.

11. *Baby E.A.W. I*, 647 So. 2d at 943 (appendix). The order waiving Gary's consent cited two reasons: (1) Gary knew of the impending hearing but had avoided receiving notice, and (2) he had abandoned both the mother and child. *Id.* The intermediary did not, however, inform the court of her August telephone conversation with Gary at which time he indicated he would not consent to the adoption. *Id.* The court also noted the intermediary's other failings. *Id.* See *infra* note 221 for a discussion of the intermediary's actions.

12. *Id.*

13. *Baby E.A.W. I*, 647 So. 2d at 943 (appendix). Linda hoped that the baby would then grow up in a "stable two-parent home." *Baby E.A.W. II*, 647 So. 2d at 925 (Pariente, J., concurring specially).

14. *Baby E.A.W. II*, 647 So. 2d at 925 (Pariente, J., concurring specially). Baby Emily's adoptive parents seem to epitomize the "stable two-parent home" the natural

longer an infant, but a blonde, blue-eyed toddler unaware of the turmoil that began with her birth.[15] However, during the past three years, the biological father and the adoptive parents have waged a bitter war in the courts.[16] Surprisingly though, the parents have fought the war in an effort to resolve the legal issues surrounding consent to the adoption and the definition of abandonment, rather than to do what is best for Baby Emily.[17] Since Baby Emily's birth, an avalanche of motions and petitions have been filed.[18] However, on

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mother was seeking. *See supra* note 13. The couple lives in South Florida, and both are employed, the husband as a theatrical engineer and the wife as an elementary school teacher. Mark Hansen, *Fears of the Heart*, A.B.A. J., Nov. 1994, at 58, 58.

15. Hansen, *supra* note 14, at 59 (showing a photograph of Baby Emily and her adoptive parents).

16. See *infra* note 18 for a discussion of the court proceedings that followed Baby Emily's birth.

17. *Baby E.A.W. II*, 647 So. 2d at 919, 924.

18. On September 3, 1992, the natural father served a motion to set aside the order waiving his consent. *Baby E.A.W. I,* 647 So. 2d at 943 (appendix). On September 8, 1992, the prospective adoptive parents filed a petition for adoption. *Id.* at 944. On September 18, 1992, the court entered an order setting aside its August 12 order waiving the father's consent. *Id.* On October 16, 1992, the court denied a motion to waive the natural father's consent based on his abandonment of the child. *Id.* On October 17, 1992, the natural father filed a petition seeking custody of the child. *Id.* On November 3, 1992, the court granted a motion for appointment of an attorney ad litem. *Id.* On December 8, 1992, the attorney ad litem filed a motion in the name of the child for rehearing on the issue of abandonment. *Id.* The rehearing began on February 11, 1993, but an order was not issued until September 20, 1993. *Id.* at 944-45. On September 20, 1993, the court found that the natural father had abandoned the child and hence that his consent was not necessary in order for the adoption to proceed. *Id.* at 945. On June 22, 1994, the Fourth District Court of Appeal reversed and found that the natural father had not abandoned the child and that his consent was necessary. *Id.* at 951.

The court's reversal was based in part on the fact that much of the evidence considered, including the birth father's 1977 conviction for burglary and sexual battery and his 1985 arrest for sexual battery, related to the "best interests of the child." *Id*. at 947. The Fourth District Court of Appeal held that the best interests of the child were not relevant to the issue of abandonment and the necessity of the birth father's consent. *Id.*

> [M]any children might benefit from having adoptive parents instead of their birth parents. And so while much of the evidence below might call into question the ability of either this father or this mother to be the best parent for E.A.W., that is of no interest to the law until the nondependent child is available for adoption . . . .

Id. at 951. The adoptive parents filed a motion for rehearing, and on November 30, 1994, the court reversed its earlier decision, holding that the natural father had abandoned the child and advising the prospective adoptive parents to apply for a hearing on the issue of finalizing the adoption. *Baby E.A.W. II*, 647 So. 2d at 922–23. The appellate court also certified a question to the Florida Supreme Court asking whether a court may consider the father's emotional conduct toward the mother during her pregnancy in mak-

November 30, 1994, the Fourth District Court of Appeal, reconsidering its previous position,[19] reversed a decision that would have resulted in Emily's adoption being declared invalid.[20] While approving the adoption and directing the adoptive parents to apply for an ex parte hearing regarding finalization of the adoption,[21] the court certified the following question to the Florida Supreme Court as one of great public importance:

> In making a determination of abandonment . . . may a trial court properly consider lack of emotional support and/or emotional abuse of the father toward the mother during pregnancy as a factor in evaluating the "conduct of a father towards the child during the pregnancy."[22]

On review, the Florida Supreme Court first noted that the Fourth District Court of Appeal misstated Florida Statutes section 63.032(14) in the certified question.[23] The statute allows the court, in making a determination of abandonment, to consider "the conduct of a father towards the child's *mother* during her pregnancy."[24] After reframing the certified question in accordance with the language of the statute, the Florida Supreme Court answered the question in the affirmative and approved the appellate court's determination that Gary had indeed abandoned his child.[25]

Baby Emily is not alone. The facts and events surrounding her adoption are just one example of the problems with contemporary

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ing a determination of abandonment. *Id*. at 924. After rephrasing the question in accordance with the language of the statute, § 63.032(14), the Florida Supreme Court answered the certified question in the affirmative and approved the district court's decision that Gary, the birth father, had abandoned his daughter. *Baby E.A.W. III*, 658 So. 2d at 967.

19. *Baby E.A.W. I*, 19 Fla. L. Weekly D1336 (Fla. 4th Dist. Ct. App., June 22, 1994); *see also* 647 So. 2d at 941–57 (appendix).

20. *Baby E.A.W. II*, 647 So. 2d 918 (Fla. 4th Dist. Ct. App. 1994), *approved by* 658 So. 2d 961 (Fla. 1995).

21. *Id*. at 923.

22. *Id*. at 924.

23. *Baby E.A.W. III*, 658 So. 2d at 963.

24. FLA. STAT. § 63.032(14) (1993) (emphasis added); *see Baby E.A.W. III*, 658 So. 2d at 963.

25. *Baby E.A.W. III*, 658 So. 2d at 967. Then, in January 1996, the United States Supreme Court denied the birth father's petition for a writ of certiorari. G.W.B. v. J.S.W., 116 S. Ct. 719 (1996).

adoption law. The stories that mirror hers are numerous.[26] The statistics on adoption are staggering. According to a survey by the National Council for Adoption, there were 51,157 unrelated adoptions of American children in 1986.[27] Of these unrelated adoptions, approximately half were adoptions of healthy infants. The survey also indicates that an adoption plan will be developed for approximately ten percent of the children entering the child welfare system. This means that between 27,000 and 40,000 children in the child welfare system will require adoptive families.[28] It is against this background that the Uniform Adoption Act[29] appears.

In 1953, the American Bar Association and the National Conference of Commissioners on Uniform State Laws made the first attempts to create uniformity in adoption laws.[30] This early at

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26. For two of the most recent infamous cases, see *In re* B.G.C., 496 N.W.2d 239 (Iowa 1992) (Baby Jessica) and *In re* Adoption of Doe, 627 N.E.2d 648 (Ill. App. Ct. 1993), *rev'd*, 638 N.E.2d 181 (Ill. 1994), *cert. denied sub nom.* Doe v. Kirchner, 115 S. Ct. 499 (1994) (Baby Richard). For a unique, heart-wrenching perspective on contested adoptions, see ROBBY DEBOER, LOSING JESSICA (1994).

27. National Council for Adoption, Factsheet on Adoption (1993) [hereinafter Factsheet]. An unrelated adoption is the adoption of a child by an individual not related to the child. *Id*. More recent figures cited in the prefatory remarks to the Uniform Adoption Act indicate that no more than 25 to 30% of all adoptions involve infants adopted by unrelated adults. UNIF. ADOPTION ACT prefatory note (Proposed Official Draft 1994) [hereinafter UAA].

This factsheet and the National Council for Adoption's policy statement on the Uniform Adoption Act can be obtained either by writing the National Council for Adoption at 1930 Seventeenth Street, Northwest, Washington, D.C., 20009, or by phoning them at 202-328-1200.

28. Factsheet, *supra* note 27.

29. UNIF. ADOPTION ACT (Proposed Official Draft 1994). The Act's guiding principle is promotion of the welfare of children and facilitation of adoptive placements. UAA prefatory note. The Act specifically enumerates five aims: that it

> (1) is consistent with relevant federal constitutional and statutory law;
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> (2) delineates the legal requirements and consequences of different kinds of adoption;
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> (3) promotes the integrity and finality of adoptions while discouraging "trafficking" in minors;
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> (4) respects the choices made by the parties to an adoption about how much confidentiality or openness they prefer in their relations with each other, subject, however, to judicial protection of the adoptee's welfare; and
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> (5) promotes the interest of minor children in being raised by individuals who are committed to, and capable of, caring for them.

Id. At least one proponent of the Act, the National Council for Adoption (NCFA), views the Act's provisions as a forward step in adoption law. National Council for Adoption, Policy Statement on the Uniform Adoption Act 1-3 [hereinafter NCFA UAA Policy Statement]. See *supra* note 27 for information on how to obtain this policy statement.

30. Marja E. Selmann, Comment, *For the Sake of the Child: Moving Toward Uni-*

tempt and its subsequent revisions, however, met with little success.[31] Other groups also attempted to draft uniform adoption laws, but their efforts did not gain support.[32] Recently, however, a new effort has been made: the National Conference of Commissioners on Uniform State Laws has drafted a new Uniform Adoption Act.[33]

The Uniform Adoption Act [hereinafter "the Act"] is the result of five years of proposals and amendments by the National Conference of Commissioners on Uniform State Laws.[34] To ensure that this attempt would draw widespread support, the drafters sought advice from a variety of interested groups.[35] In February 1995, the Act took its first steps toward adoption by the fifty states when the American Bar Association House of Delegates voted to endorse the Act.[36] Al-

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formity in Adoption Law, 69 WASH. L. REV. 841, 848 (1994).

31. H. JOSEPH GITLIN, ADOPTIONS: AN ATTORNEY'S GUIDE TO HELPING ADOPTIVE PARENTS 32 (1987). Only seven states adopted the early versions of the Uniform Adoption Act: Alaska, Arkansas, Montana, New Mexico, North Dakota, Ohio, and Oklahoma. *Id*.

32. Selmann, *supra* note 30, at 848. For example, in 1979 the Model Adoption Legislation and Procedures Advisory Panel submitted a Model State Adoption Act with Commentary. *Id*. The proposal was rejected. *Id*. The Family Law Section of the American Bar Association also worked on a Model State Adoption Act, which never won approval. *Id*. at 848–49 & n.59.

33. *Id*. at 849. A copy of the Uniform Adoption Act can be obtained by writing the National Conference of Commissioners on Uniform State Laws at 676 North St. Clair Street, Suite 1700, Chicago, Illinois, 60611.

34. Hansen, *supra* note 14, at 58–59. See Joan Heifetz Hollinger, *Adoption and Aspiration: The Uniform Adoption Act, The DeBoer-Schmidt Case, and the American Quest for the Ideal Family*, 2 DUKE J. GENDER L. & POL'Y 15 (1995), for the reflections of the Reporter of the Uniform Adoption Act.

35. UAA (Proposed Official Draft 1994). Some of the advisors the drafters consulted include the American Bar Association, Section of Family Law; National Council for Adoption; American Academy of Adoption Attorneys; American Adoption Congress; Concerned United Birthparents, Inc.; New England Historic Genealogical Society; Child Welfare League of America, Inc.; Pro-Adoption Coalition of Iowa; and Parents for Private Adoption. *Id*.

36. Mark Hansen, *House of Delegates Backs Model Laws: Uniform Adoption Act Receives Key Endorsement from ABA*, A.B.A. J., Apr. 1995, at 120, 120.

As of February 1996, at least six states have taken steps to consider the Uniform Adoption Act in one form or another. Maine's Senate introduced the UAA in April 1995, authorizing a subcommittee to review it and to make a report on its findings by November 1995. On June 14, 1995, the subcommittee made a recommendation against adoption. Me. S. Paper 513, 117th Leg. (1995), *summary of bill's status available in* WESTLAW, ME-BILLTRK or BILLSTRK-OLD databases.

In contrast to this, while not considering wholesale adoption of the UAA, Montana enacted legislation in April 1995 providing for review of the UAA by their Department of Family Services in contemplation of amendment of the State's adoption laws. Mont. S.B. 244, 54th Leg. (1995), *summary of bill's status available in* WESTLAW, MT-BILLTRK or BILLSTRK-OLD databases. In New Jersey, the legislature is considering a

though the Act has not yet been adopted by any state, groups are already lining up both in favor of and in opposition to it.[37]

Using the Baby Emily case as a backdrop, this Comment will consider the attempt to reform adoption law through the newly drafted Uniform Adoption Act. Initially, the Comment will present an overview of the Uniform Adoption Act and its major provisions. In many ways, the Act brings the best interests of the child back into a position of primacy in adoption law.[38] Then this Comment will compare selected provisions from the Act to their equivalents under the Florida adoption statutes. Such a comparison will first demonstrate that the Act is much broader than Florida adoption law in that the Act covers many areas of adoption law that receive no mention in the Florida Statutes. Second, the comparison will highlight the Act's child-centered bias toward stability and finality. Finally, the Baby Emily case will be examined in the context of the Uniform

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bill that would adopt those portions of the UAA pertaining to "non-identifying developmental and medical history" information. N.J. S.B. 567, 207th Leg. (1995), *summary of bill's status available in* WESTLAW, NJ-BILLTRK or BILLSTRK-OLD databases. Two other states, Missouri and Pennsylvania, have introduced the UAA to their respective legislatures, and in both states the legislation has been submitted to the states' judiciary committees. Mo. S.B. 202, 88th Gen. Assembly (1995), *summary of bill's status available in* WESTLAW, MO-BILLTRK or BILLSTRK-OLD databases; Pa. S.B. 660, 179th Gen. Assembly (1995), *summary of bill's status available in* WESTLAW, PA-BILLTRK or BILLSTRK-OLD databases.

The UAA has been put before the Florida Legislature as well. In March 1995, the Florida House of Representatives introduced a bill adopting the UAA and repealing Florida's current adoption laws. The legislation was referred to the House Committee on the Judiciary, to the House Committee on Finance and Taxation, and to the House Committee on Appropriations. However, the legislation died in the Committee on the Judiciary in May 1995 and has yet to be reintroduced. Fla. H.R. B. 65, 1995 Reg. Sess. (1995), *summary of bill's status available in* WESTLAW, BILLSTRK-OLD database. See also 29 FLORIDA LEGISLATURE FINAL LEGISLATIVE BILL INFORMATION, 1995 REGULAR SESSION 208 (1995) for a summary of the bill's treatment by legislature and its status.

37. The groups that have come out in favor of the Act include the National Council for Adoption, the American Academy of Adoption Attorneys, and the American Academy of Pediatrics. Hansen, *supra* note 14, at 60. On the other hand, groups such as Concerned United Birthparents, the Child Welfare League of America, the National Association of Social Workers, and the American Adoption Congress have expressed opposition to the Act. *Id*.

38. For instance, the Act would require that a prospective adoptive family be investigated prior to a child's being placed in their home. UAA § 2-201. At the present time, only about one-half of all states require a preplacement evaluation to be conducted before the child is placed in the home. NCFA UAA Policy Statement, *supra* note 29, at 1. In addition, the Act requires that the birth parent provide a complete social and medical history of the child and the child's biological family. UAA § 2-106. See *infra* note 47 for a discussion of other provisions that focus on the best interests of the child.

Adoption Act.

I. AN OVERVIEW OF THE UNIFORM ADOPTION ACT

Examining the goals of the drafters is critical to a comprehensive understanding of the provisions and ideology behind the Act. The very first words of the Act are "The guiding principle of the Uniform Adoption Act is a desire to promote the welfare of children . . . ."[39] The drafters' comments indicate that the best way to promote the welfare of children with respect to adoption is first to eliminate the confusion of inconsistent state laws,[40] and then to draft adoption laws with the goals of certainty, predictability, and most of all, stability.[41] The problem in adoption law is that the law simply fails to address many issues. For example, Florida adoption law does not specify who may place a child for adoption or what preference order an agency must give to prospective adoptive families in agency adoptions.[42] The Act not only addresses these two issues,[43] but many more. The Act specifies the procedures required from placing a child for adoption[44] through challenging a final decree of adoption.[45] And, most importantly, the Act addresses those areas of adoption law that provide the grounds for many of the challenges to adoptions: consent, notice, and finality. Thus, because of its detail, the Act leaves less room for adoptions to be subjected to challenge[46] and less room for children to be exposed to potential harm. The Act's provisions are a step toward a more child-centered approach to adoption.[47]

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39. UAA prefatory note, at 1.

40. *Id.* at 2. Specifically, state, federal, and international laws and regulations overly complicate the adoption process. *Id*. Moreover, there are vast differences in state laws. *Id*.

41. *Id*. at 3. The aims of the Act are to specify the legal requirements for and consequences of adoption and to promote the integrity and finality of adoption. *Id*. at 1. See *supra* note 29 for a discussion of the aims and goals of the Act.

42. FLA. STAT. ch. 63 (1993).

43. UAA §§ 2-101, -104.

44. *Id*. art. 2.

45. *Id*. § 3-707.

46. The drafters comment that if the Act's procedures are followed in good faith, there will be few cases where an adoption may be challenged. *Id*. § 3-707 cmt.

47. Examples of provisions that specifically take into consideration the best interests of the child include the requirement of a preplacement evaluation, the required appointment of a guardian ad litem in contested adoptions, the requirement that the best interests of the child be considered in a proceeding to terminate a parental relation-

The Uniform Adoption Act is divided into eight articles: (1) General Provisions; (2) Adoption of Minors; (3) General Procedure for Adoption of Minors; (4) Adoption of Minor Stepchild by Stepparent[48]; (5) Adoption of Adults and Emancipated Minors[49]; (6) Records of Adoption Proceeding: Retention, Confidentiality, and Access[50]; (7) Prohibited and Permissible Activities in Connection with

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ship with the child, and the provisions limiting the time within which a challenge may be brought. *Id*. §§ 2-201, 3-201, -504(c), -707 & cmt.

48. Since the provisions in articles four through eight are not relevant to a discussion of the Baby Emily case, they have been left out of the text. However, the major provisions of these articles are set forth in notes 48 through 52.

Article 4 pertains to stepparent adoptions. First, the Act specifies the conditions under which a stepparent has standing to petition to adopt a minor stepchild. *Id*. § 4-102. Next, the Act explains the legal consequences of adopting a stepchild. *Id*. § 4-103. One of the consequences is that adoption by a stepparent terminates the parental rights of the noncustodial parent. This is the result of the incorporation of §§ 1-103 through 1-106 into article 4. *Id*. § 4-103(a). First, § 4-102(c) allows a stepparent to join a petition for adoption with a petition to terminate the parental relationship between the adoptee and the parent who is not the stepparent's spouse. *Id*. § 4-102(c). Next, § 1-105 states "[e]xcept as otherwise provided in section 4-103 when a decree of adoption becomes final: (1) the legal relationship of parent and child between each of the adoptee's former parents and the adoptee terminates . . . ." *Id*. § 1-105(1). Sections 4-104 through 4-107 deal with the issue of consent. Section 4-104 states that unless consent is not required under § 2-402, a petition to adopt a minor stepchild requires the consent of the adoptee, if 12 years of age or older, the minor's parents as described in § 2-401(a), the minor's guardian, or the agency that placed the minor. *Id*. § 4-104. The next group of provisions specifies the required content of the consents depending upon who is consenting. *Id*. §§ 4-105, -106, -107.

Finally, article 4 allows for an agreement between the stepparent petitioning for adoption; the stepparent's spouse; the minor, if 12 years of age or older; and an individual who wishes to maintain a relationship with the child. *Id*. § 4-113(a). These agreements are subject, however, to the limitation that the court finds such an agreement to be in the best interests of the child. *Id*. § 4-113(b). Notably, the court may allow the adoptee to continue a relationship with a former parent, grandparent, or sibling. *Id*. § 4-113(c).

49. *See supra* note 48. Article 5 pertains to the adoption of adults. It covers many of the same issues that arise in the adoption of minors. Specifically, §§ 5-101 through 5-103 detail who may adopt, the legal consequences of the adoption, and whose consent is required. UAA §§ 5-101, -102, -103. In an adult adoption not only must the adoptee and the prospective adoptive parent consent, but the spouse of the adoptee is also required to consent. *Id*. § 5-103.

50. *See supra* note 48. Article 6 deals with a very emotional issue, confidentiality. This issue has caused much division among various groups involved with adoptions. Members of the Child Welfare League and the American Adoption Congress have criticized the Act for its secrecy provisions. Hansen, *supra* note 14, at 61. Section 6-102 explicitly requires that the court keep all records connected with an adoption confidential and sealed for 99 years. UAA § 6-102. For a discussion on the issue of opening adoption records, see Shara De Lorme, *Accessing Sealed Adoption Records: Considering Adoptees' Needs and Judicial Integrity*, 28 GONZAGA L. REV. 103 (1992). However, the Act allows

Adoption[51]; and (8) Miscellaneous Provisions.[52] Each of these eight articles is further subdivided into numerous sections. The text of this Comment will only detail articles 1 through 3.[53]

A. Article 1

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for the release of nonidentifying information about the adoptee's biological relatives under specified circumstances, such as upon the request of an adoptee who has reached 18 years of age, an adoptive parent, or a deceased adoptee's direct descendant. UAA § 6-103(a). Additionally, identifying information may be provided upon request if the biological parents have authorized it. *Id*. § 6-106(1). The Act also requires the state agency to establish a statewide registry that will provide for the consensual release of information. *Id*. § 6-106.

51. *See supra* note 48. Article 7 deals with actions prohibited in connection with adoption proceedings. Some of its areas of focus are the individuals who may place a child for adoption, advertisement by prospective adoptive parents, the importance of the preplacement evaluation, and individuals assisting in placing a child with a prospective family. UAA § 7-101(a)(1)-(4). Violations of these prohibitions give rise to civil liability. *Id*. § 7-101(b). Sections 7-102 and 7-103 delineate the types of payments permitted and proscribed in connection with an adoption. A person may not give or accept anything of value for placing a child for adoption or obtaining a consent or relinquishment. *Id*. § 7-102(a). An adoptive parent may, however, pay for the following: agency services, advertising expenses related to locating a child for adoption, medical and related expenses of the biological mother and the child related to the birth or illness of the child, counseling of the parent, reasonable living expenses of the mother, expenses related to obtaining the required background information, and other services or expenses which the court deems reasonable. *Id*. § 7-103(a).

Also, article 7 specifically lists the types of fees that an agency may charge a prospective adoptive parent. An agency may charge for medical and other related expenses of the mother and child in connection with the birth or illness of the child, a portion of the agency's annual cost in locating and counseling adoptees, parents, and prospective adoptive parents, reasonable living expenses of the mother, expenses related to obtaining the required background information, legal and other related costs, expenses related to the preplacement evaluation and the subsequent evaluation conducted during the adoption proceedings, and other expenses that the court deems reasonable. *Id*. § 7-104. The Act also states that a person, other than a parent, who refuses to furnish nonidentifying information is subject to a civil penalty. *Id*. § 7-105(a). Additionally, a person who furnishes an unauthorized disclosure of records in connection with an adoption proceeding is subject to civil penalties. *Id*. § 7-106.

52. *See supra* note 48. The last article of the Act concerns the provisions of the Act itself, rather than adoption proceedings. Section 8-101 specifies that the Act shall be construed consistently with its general purpose: making adoption law uniform among the states. UAA § 8-101. Article 8 also states that if any one provision is found to be invalid, the other provisions shall remain valid. *Id*. § 8-103. The last section of article 8 specifies that an adoption proceeding begun before the Act was adopted may be completed under the law in effect when it was commenced. *Id*. § 8-106.

53. The major provisions of articles 4 through 8 are discussed *supra* notes 48–52.

Under the Act, anyone may adopt or be adopted.[54] Once an adoption is final, the legal relationship of parent and child is created between the child and the adoptive parents.[55] At the same time, the adoption decree terminates the parent-child relationship between the adoptee and the birth parents.[56]

B. Article 2

1. Placing a Child for Adoption

Part 1 of article 2 lists the individuals who may place a minor child for adoption.[57] The Act details placement guidelines for both direct placements[58] and agency placements.[59] Section 2-102 pro

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54. UAA § 1-102. In contrast to this, the Florida Statutes set out a list of individuals who may adopt. FLA. STAT. § 63.042 (1993). This list is limited to the following people: a husband and wife jointly, an unmarried adult, an unmarried minor birth parent of the person to be adopted, or a married person without the other spouse joining in the petition, if the other spouse is a parent of the person to be adopted and consents, or if the court excused the failure of the other spouse to join. *Id.* Florida also specifically provides that a homosexual may not adopt a child. *Id*. § 63.042(3). The Act contains no such prohibition.

Interestingly, the National Council for Adoption (NCFA), while it supports the Act overall, would require stricter guidelines regarding who may adopt a child. The NCFA would not allow joint adoption by two single persons with no legal relationship. NCFA UAA Policy Statement, *supra* note 29, at 4. The NCFA asserts that without a legal relationship between the adopting parties, there are no "assurances that they will maintain a constant, stable family life for the child." *Id.* As an example of this, the NCFA cites the custody dispute between Woody Allen and Mia Farrow, who jointly adopted children, but who never married. *Id.*

55. UAA § 1-104.

56. *Id*. § 1-105(1). This does not, however, terminate a former parent's obligation to remit unpaid child support. *Id.*

57. *Id*. § 2-101. The following persons may place a minor child for adoption: a parent with legal and physical custody, a guardian who has been authorized by the court to place the minor for adoption, an agency to which the minor has been relinquished for the purpose of adoption, and an agency authorized by a court order terminating the parent/child relationship between the minor and the minor's parent or guardian. *Id.* In situations where only one parent has legal and physical custody of the minor child, the consent or relinquishment of the noncustodial parent is not required unless the noncustodial parent has legal custody or a right of visitation with the minor and the whereabouts of the noncustodial parent are known. *Id*. § 2-101(b), (c). However, in such a situation, if the noncustodial parent agrees to the placement in writing or, if before the placement, the parent having legal and physical custody sends notice by certified mail to the noncustodial parent's last known address that the parent intends to place the minor child for adoption, the minor child may be placed for adoption. *Id*. § 2-101(c).

58. A minor child may only be placed with a person who has been the subject of a favorable preplacement evaluation, unless the court waives such requirement under § 2-201(b) or unless the prospective adoptive parent is a relative under § 2-201(c). *Id*. § 2-

vides that the birth parents or guardian shall personally select the prospective adoptive parent.[60]

In what appears to be an attempt to limit later custody conflicts, this section of the Act also states that if a consent to the minor's adoption has not been executed at the time of placement, the placing parent or guardian shall furnish a signed writing to the prospective adoptive parents, stating that transfer of physical custody is for the purpose of adoption and that the parent has been informed of the relevant provisions of this Act.[61] In return, the prospective adoptive parents must acknowledge responsibility for the minor and also acknowledge the responsibility to return the minor to the custody of the parent or guardian if the consent is not executed within a specified time period.[62] With respect to agency placements, specific guidelines provide the order of preference among prospective adoptive families: first, the person selected by the birth parent, and second, if the agency has not agreed to place the child with the parent's choice, a placement in the best interests of the child.[63] Finally, the person

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102(a). Florida also requires that a home study be conducted before a child can be placed in the prospective adoptive parents' home. FLA. STAT. § 63.092(2) (1993).

59. When an agency places the minor for adoption, the agency must furnish to an inquiring individual a written statement of its services including a statement of the agency's procedure for selecting prospective adoptive parents and a fee schedule. UAA § 2-103(a). Additionally, the agency shall give the prospective adoptive parents authorization to provide medical care and other support for the child, and, in return, the prospective adoptive parents shall acknowledge this responsibility. *Id*. § 2-103(b). Finally, § 2-103(c) provides that upon the request of a parent placing a child for adoption, the agency shall inform the parent whether the child has been placed, whether a petition has been granted, denied, or withdrawn, and if the petition was not granted, whether another placement has been made. *Id*. § 2-103(c).

60. *Id*. § 2-102(b). A lawyer or health-care provider may assist the birth parents in selecting an adoptive family. *Id*.

61. *Id*. § 2-102(d).

62. *Id*.

63. UAA § 2-104(a)(1), (2). In an agency placement the factors to be considered when determining the best interests of the child are:

> (b)(1) an individual who has previously adopted a sibling of the minor and who makes a written request to adopt the minor;
>
> (2) an individual with characteristics requested by a parent or guardian, if the agency agrees to comply with the request and locates the individual within a time agreed to by the parent or guardian and the agency;
>
> (3) an individual who has had physical custody of the minor for six months or more within the preceding 24 months or for half of the minor's life, whichever is less, and makes a written request to adopt the minor;

placing the child must disclose detailed background information.[64]

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(4) a relative with whom the minor has established a positive emotional relationship and who makes a written request to adopt the minor; and

(5) any other individual selected by the agency.

(c) Unless necessary to comply with a request under subsection (b)(2), an agency may not delay or deny a minor's placement for adoption solely on the basis of the minor's race, national origin, or ethnic background. A guardian ad litem of a minor or an individual with a favorable preplacement evaluation who makes a written request to an agency to adopt the minor may maintain an action or proceeding for equitable relief against an agency that violates this subsection.

Id. § 2-104(b), (c). This provision is especially significant as it has no counterpart under Florida law.

64. UAA § 2-106. As early as possible before a prospective adoptive parent takes physical custody of the minor, the person placing the child for adoption shall provide the prospective adoptive parent with the following information:

(a)(1) a current medical and psychological history of the minor, including an account of the minor's prenatal care, medical condition at birth, any drug or medication taken by the minor's mother during pregnancy, any subsequent medical, psychological, or psychiatric examination and diagnosis, any physical, sexual, or emotional abuse suffered by the minor, and a record of any immunizations and health care received while in foster or other care;

(2) relevant information concerning the medical and psychological history of the minor's genetic parents and relatives, including any known disease or hereditary predisposition to disease, any addiction to drugs or alcohol, the health of the minor's mother during her pregnancy, and the health of each parent at the minor's birth; and

(3) relevant information concerning the social history of the minor and the minor's parents and relatives, including:

(i) the minor's enrollment and performance in school, results of educational testing, and any special educational needs;

(ii) the minor's racial, ethnic, and religious background, tribal affiliation, and a general description of the minor's parents;

(iii) an account of the minor's past and existing relationship with any individual with whom the minor has regularly lived or visited; and

(iv) the level of educational and vocational achievement of the minor's parents and relatives and any noteworthy accomplishments;

(4) information concerning a criminal conviction of a parent for a felony, a judicial order terminating the parental rights of a parent, and a proceeding in which the parent was alleged to have abused, neglected, abandoned, or otherwise mistreated the minor, a sibling of the minor, or the other parent;

(5) information concerning a criminal conviction or delinquency adjudication of the minor; and

(6) information necessary to determine the minor's eligibility for state or federal benefits, including subsidies for adoption and other financial, medical, or similar assistance.

Id. This provision of the Act also states that this information must be edited to exclude

2. Preplacement Evaluations

Individuals must have received a favorable preplacement evaluation before a child may be placed with them.[65] The evaluator must complete a preplacement evaluation within forty-five days after requested.[66] The evaluator must base his or her conclusion on a personal interview and a visit to the residence of the person being evaluated.[67] Finally, section 2-203 lists the personal information a preplacement evaluation must contain.[68]

3. Consent

Part 4 of article 2 deals with the thorny issue of consent in adoption proceedings.[69] Part 4 begins by specifically prescribing whose consent the Act requires or exempts in both direct placement[70] and agency adoptions.[71] The comment to section 2-403 makes

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any identifying information and may not be used as evidence in a civil or criminal proceeding. *Id*. § 2-106(d), (e).

The medical and social history required under Florida's adoption statutes is not nearly so well defined. The medical history forms "must contain such biological and sociological information, or such information as to the family medical history . . . as is required by the department." FLA. STAT. § 63.082(3)(a) (1993).

65. UAA § 2-201(a). The Act also allows the flexibility for the court to excuse such an evaluation prior to placement for good cause. *Id*. § 2-201(b). If the court excuses the preplacement prospective adoptive parent evaluation, then an evaluation must be performed during the pendency of the proceedings. *Id*.

66. *Id*. § 2-203(b).

67. *Id*. § 2-203(c).

68. A preplacement evaluation must contain the following information regarding the applicant: age and nationality, marital status, family history, physical and mental health history (including any history of drug or alcohol abuse), property holdings and income statement, criminal convictions, charges for domestic violence, and whether the applicant has located a person interested in placing a child with the applicant. UAA § 2-203(d). The Act also requires the subject of an evaluation to submit to fingerprinting. *Id*. § 2-203(e). If the evaluation raises no "specific concern," the individual is "suited to be an adoptive parent." *Id*. § 2-204(b). The Act then provides for the filing of a preplacement evaluation, for review of the evaluation, and for action to be taken by the Department of Health and Rehabilitative Services if a minor is placed with an individual who is found unsuitable. *Id*. §§ 2-205, -206, -207.

69. See *infra* notes 154–81 and accompanying text for a more detailed discussion of the Act's consent provisions.

70. UAA § 2-401(a). The court can grant an adoption petition only if the birth mother, the birth father under certain circumstances, the child, the child's guardian (if authorized by the court), and any adoptive or other legally recognized parent have executed a consent. *Id*. In addition to specifically stating whose consent is required, the Act

clear that the term "consent" is used to describe the document that a parent must execute in the case of a direct placement adoption.[72] In a direct placement, the Act specifies that both the birth mother[73] and the child,[74] if he or she has reached twelve years of age, must consent. The circumstances under which the Act requires a father's consent are less absolute.[75]

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goes one step further and also states those individuals whose consent is not required. The Act does not require the consent of the following individuals: a person who has relinquished a child to an agency for the purpose of adoption, a person whose parental relationship to the child has been terminated, a parent who has been declared incompetent, a man who has not been married to the natural mother and, who after the minor is conceived, executes a statement that either denies paternity or disclaims interest in the child, a representative of a deceased parent's estate, and a parent or other person who has not executed a consent or relinquishment and who fails to file an answer in an adoption proceeding. *Id*. § 2-402(a).

71. *Id*. § 2-401(b). In an agency placement, the petition for adoption cannot be granted unless the agency and anyone in subsection (a) who has not relinquished the minor to the agency (e.g., the natural mother or a man who meets the requirements of § 2-401(a)) executes a consent. *Id*.; *see supra* note 70. Additionally, as in a direct placement adoption, *see supra* note 70, the consent of the child is required if the child is 12 years of age or older, and the court has not dispensed with the child's consent. UAA § 2-401(c).

72. UAA § 2-403 cmt. However, in the case of an agency placement, *the parent or guardian turning the child over* to an agency for the purpose of placing the child for adoption must execute not a consent, but a "relinquishment." *Id*. In an agency adoption, the parent or guardian is in fact "relinquish[ing] all rights with respect to the minor to the agency." *Id*.

73. UAA § 2-401(a)(1).

74. *Id*. § 2-401(c).

75. The birth father's consent is required if he falls into any of the following categories:

> (a)(1) the man, if any, who:
>
> (i) is or has been married to the woman if the minor was born during the marriage or within 300 days after the marriage was terminated or a court issued a decree of separation;
>
> (ii) attempted to marry the woman before the minor's birth by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, if the minor was born during the attempted marriage or within 300 days after the attempted marriage was terminated;
>
> (iii) has been judicially determined to be the father of the minor, or has signed a document that has the effect of establishing his parentage of the minor, and:
>
> (A) has provided, in accordance with his financial means, reasonable and consistent payments for the support of the minor and has visited or communicated with the minor; or
>
> (B) after the minor's birth, but before the minor's placement for adoption, has married the woman who gave birth to the minor or attempted to marry her by a marriage solemnized in apparent compliance

A parent or guardian cannot execute a consent until after the child is born.[76] Before a parent executes a consent, the parent must be advised of the consequences of the consent, the availability of personal and legal counseling, the consequences for misidentifying the other parent, the procedure for releasing information about the parent, and the procedure for the consensual release of the parent's identity.[77] The Act details the individuals qualified to confirm or verify the consent or relinquishment[78] and also requires the confirming individual to certify that he or she explained to the signer the "contents and consequences" of signing the consent or relinquishment.[79] In return, the prospective adoptive parent named in the consent must sign a statement stating that he or she intends to adopt the minor and agrees to return the child to the birth parents if they revoke their consent.[80] The required contents of the consent or relinquishment are specifically delineated[81] and include, among others, statements by the parent that the consent is voluntary[82] and

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with the law, although the attempted marriage is or could be declared invalid; or

(iv) has received the minor into his home and openly held out the minor as his child;

Id. § 2-401(a)(1).

76. *Id*. § 2-404(a).

77. *Id*. § 2-404(e).

78. UAA § 2-405(a). For a detailed discussion of the distinction between a consent and a relinquishment, see *supra* notes 71–72 and accompanying text.

Because the signing of a consent or relinquishment has such permanent consequences, those who are qualified to witness and confirm the signing should have knowledge about adoptions and also should not have any conflicts of interest. *Id*. § 2-405 cmt. Also, if a lawyer oversees the execution of a consent or relinquishment, neither that lawyer nor a lawyer who works in the same firm should represent the adoptive parents. *Id*.

79. UAA § 2-405(d). These very explicit explanations are likely the result of the number of adoptions later challenged on grounds that the birth parent did not understand the serious and irrevocable consequence of signing the document. Probably the most recent of these contested adoption cases is the Baby Jessica case. *In re* Adoption of B.G.C., 496 N.W.2d 239 (Iowa 1992). In *B.G.C.*, the child's birth mother later alleged that the consent she signed was defective in that it was obtained by fraud, coercion, and misrepresentation of material facts. *Id*. at 242.

80. UAA § 2-405(e).

81. *Id*. § 2-406. The list of required contents is lengthy to "ensure that all issues relevant to the parent's or guardian's understanding of the adoption process are fully covered." *Id*. § 2-406 cmt.

82. *Id*. § 2-406(b). This provision of voluntariness should negate later claims by the birth parent that the consent was obtained by coercion. *See*, *e.g.*, *In re* Adoption of B.G.C., 496 N.W.2d at 242 (reviewing the birth mother's claim that her consent was

that the consent is final.[83] A consent executed in "substantial compliance" with sections 2-405 and 2-406 is final and irrevocable[84] and terminates the parent's right to object to the minor's adoption.[85]

4. Revocation of a Consent or Relinquishment

Finally, the last two sections of part 4 make a distinction between the revocation of a consent and the revocation of a relinquishment. Under section 2-408 an individual may only revoke his or her consent at will within 192 hours after the birth of the minor, and the revocation must be in writing.[86] After the passage of 192 hours, the Act permits revocation only if the court finds that the consent was obtained under fraud or duress,[87] if a petition for adoption was not filed within sixty days after the child was placed for adoption,[88] or if any one of three enumerated conditions has occurred.[89] Section 2-

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invalid since it was obtained by coercion).

83. UAA § 2-406(d)(1). A provision that requires that a statement of the consent's finality be included among the terms of the consent itself may prevent birth parents from later challenging the consent on the basis that their personal circumstances have changed or on the basis that they thought they could later change their minds. *See In re* Adoption of Doe, 543 So. 2d 741, 743 (Fla.), *cert. denied*, 493 U.S. 964 (1989). In *Doe*, although the terms and finality of the consent were explained to the birth mother, she nonetheless subsequently challenged her consent, asserting that she had consented under "the duress of personal circumstances." *Id*. On appeal, the Florida Supreme Court held that her consent was indeed irrevocable. *Id*. at 744. In the meantime, the stability of the adoption hung in the balance.

84. UAA § 2-407(a).

85. *Id*. § 2-407(a)(3). See *supra* note 83 for an example of a case where the birth mother unsuccessfully challenged the validity of her consent.

86. *Id*. § 2-408(a)(1). The birth parents' right to revoke their consent within the 192-hour period is absolute. *Id*. § 2-408 cmt. Changes in the birth parent's status as a "legal parent" do not necessarily require that the child be placed in the birth parent's custody. *Id*. This type of attitude is reflective of the Act's general concern that the interests of the child prevail. For a more detailed discussion of the issue of consent, see *supra* notes 70–72 and accompanying text.

87. *Id*. § 2-408. The standard for the court's finding that the consent was obtained by fraud or duress is by "clear and convincing evidence." *Id*.

88. *Id*. § 2-408(b)(2).

89. UAA § 2-408(b)(3). The provisions that allow for revocation are set out in § 2-406(f):

> (f) [A] consent or relinquishment may provide for its revocation if:
>
> (1) another consent or relinquishment is not executed within a specified period;
>
> (2) a court decides not to terminate another individual's parental relationship to the minor; or
>
> (3) in a direct placement for adoption, a petition for adoption by a

409 specifies that a parent who has relinquished a child to an agency may revoke the relinquishment within 192 hours after the birth of the child[90] or if the individual who executed the relinquishment and the agency agree to its revocation.[91]

C. Article 3

Article 3 of the Act outlines the procedures the parties must follow in adoption proceedings. Article 3 is further divided into eight parts: jurisdiction and venue, general procedural provisions, petition for adoption of a minor, notice of pendency of proceeding, petition to terminate relationship between parent and child, evaluation of adoptee and prospective adoptive parent, dispositional hearing and decree of adoption, and birth certificate.

1. Appointment of Counsel

The Act requires the court to appoint a lawyer for any "indigent, minor, or incompetent individual who appears in the proceeding and whose parental relationship to a child may be terminated."[92] Additionally, the court must appoint a guardian ad litem to represent a minor adoptee in a contested adoption proceeding.[93] Other procedural requirements include provisions stating there is no right to a jury in an adoption proceeding,[94] requiring the proceedings to be heard in closed court,[95] providing for the minor adoptee's custody during the proceedings,[96] and limiting removal of the adoptee from

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> prospective adoptive parent, named or described in the consent, is denied or withdrawn.

Id. § 2-406(f). Even if the birth parents establish that one of the provisions allowing revocation has occurred, they are not automatically entitled to custody of the child. *Id*. § 2-408 cmt.

90. *Id*. § 2-409(a)(1).

91. *Id*. § 2-409(a)(2).

92. *Id*. § 3-201(a). The court need not appoint an attorney for individuals who can afford to hire their own lawyers. *Id*.

93. UAA § 3-201(b). The purpose of this provision is to protect the interests of the child. *Id*. § 3-201 cmt. In contrast to this mandatory appointment, chapter 63 of the Florida Statutes contains no provision requiring appointment of a guardian ad litem for the child.

94. *Id*. § 3-202.

95. *Id*. § 3-203.

96. UAA § 3-204. The court is required to make such a determination according to the best interests of the child. *Id*. Further, this provision is designed to require that the

the state in which the petitioner resides.[97]

2. The Petition to Adopt

Article 3 defines those parties who have standing to file a petition to adopt. Only an individual with whom the child has been placed, or an individual who has not been selected as a prospective adoptive parent but who has had physical custody of the child for at least six months prior to filing the petition, may petition to adopt.[98] Article 3 also details the necessary contents of a petition to adopt[99] and the documents that must be filed prior to the hearing.[100]

3. Notice

Notice, another problem area in the adoption arena, is the subject of part 4 of article 3. First, the Act sets out provisions regarding on whom notice of the adoption must be served,[101] the con

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court take an active role in any contested adoption from the inception of the proceedings. *Id*. § 3-204 cmt.

97. *Id*. § 3-205.

98. *Id*. § 3-301.

99. UAA § 3-304(a). A petition for adoption must contain the following personal information with respect to the petitioner or provide explanations for any omissions: name, age, and residence; marital status; resources for care and support of child; and whether a preplacement evaluation has been prepared. *Id*. The petition must also provide the following information on the minor adoptee: name, age, sex, and date and place of birth, the circumstances under which petitioner gained custody of the child; the length of time the child has been living with the petitioner; an estimate of the minor's property, and the names and relationship of any individuals who have executed a consent or whose consent must be obtained. *Id.* These provisions are essentially consistent with those required in Florida. *See* FLA. STAT. § 63.112(1) (1993).

100. UAA § 3-305.

101. *Id*. § 3-401. The Act requires that notice be served within 20 days after a petition for adoption is filed upon the following individuals, unless notice has been waived:

> (a)(1) an individual whose consent to the adoption is required under Section 2-401, but notice need not be served upon an individual whose parental relationship to the minor or whose status as a guardian has been terminated;
>
> (2) an agency whose consent to the adoption is required under Section 2-401;
>
> (3) an individual whom the petitioner knows is claiming to be or who is named as the father or possible father of the minor adoptee and whose paternity of the minor has not been judicially determined, but notice need not be served upon a man who has executed a verified statement, as described in Section 2-402(a)(4), denying paternity or disclaiming any interest in the minor;
>
> (4) an individual other than the petitioner who has legal or physical

tent of the notice,[102] and the manner of service.[103] One of the more controversial provisions is section 3-404, which articulates the procedures regarding investigation and notice to unknown fathers.[104] If the court finds that an unknown father has not received notice of

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> custody of the minor adoptee or who has a right of visitation with the minor under an existing court order issued by a court in this or another State;
> (5) the spouse of the petitioner if the spouse has not joined in the petition; and
> (6) a grandparent of a minor adoptee if the grandparent's child is a deceased parent of the minor and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent's parental relationship to the minor had not been terminated.
>
> (b) The court shall require notice of a proceeding for adoption of a minor to be served upon any person the court finds, at any time during the proceeding is:
> (1) a person described in subsection (a) who has not been given notice;
> (2) an individual who has revoked a consent or relinquishment pursuant to Section 2-408(a) or 2-409(a) or is attempting to have a consent or relinquishment set aside pursuant to Section 2-408(b) or 2-409(b); or
> (3) a person who, on the basis of a previous relationship with the minor adoptee, a parent, an alleged parent, or the petitioner, can provide information that is relevant to the proposed adoption and that the court in its discretion wants to hear.

Id.

The provisions of the Act set out a more extensive list of individuals entitled to notice than do the Florida Statutes. Florida requires that notice of a petition for adoption be given to the following individuals:

> (a) The department or any licensed child-placing agency placing the minor.
> (b) The intermediary.
> (c) Any person whose consent to the adoption is required by this act who has not consented, unless such person's consent is excused by the court.
> (d) Any person who is seeking to withdraw consent.

FLA. STAT. § 63.122(4) (1993). One very important distinction between § 3-404 of the Act and the Florida provisions is the absence in Florida's statutes of provisions regarding unknown fathers. This distinction is discussed more fully in the text accompanying notes 184–204 in section II of this Comment.

102. UAA § 3-402. The notice must include a "conspicuous statement" of the method of responding to the notice and of the consequences for failing to respond. *Id*. § 3-402(5); *id*. § 3-402 cmt.

103. *Id*. § 3-403.

104. UAA § 3-404. Although the National Council for Adoption supports the Act overall, one of the areas of concern listed in its policy statement is notice. The NCFA would not place the burden of providing notice to the birth father on the child's birth mother, adoption agencies, or prospective adoptive families. NCFA UAA Policy Statement, *supra* note 29, at 3. Instead, the NCFA would require the state to establish a putative fathers' registry. *Id*. Fathers would have a limited time period within which to register and assert their intent to parent and assume responsibility for the child. *Id*. The NCFA feels that this would shift the responsibility to the birth father. *Id*.

the adoption proceedings, the court must undertake an investigation and serve notice on the individual where possible.[105] The last section of part 4 states that an individual may waive notice, but a person who has done so may not later appear in the adoption proceeding.[106]

4. Termination of Parent/Child Relationship

Termination of the parent/child relationship is covered by part 5 of article 3. Subject to some limitations, a parent or guardian, a parent whose spouse has filed a petition to adopt, a prospective adoptive parent, or an agency that has selected a prospective adoptive parent may file a petition to terminate the parent/child relationship between the adoptee and his or her birth parents.[107] The Act also discusses the timing,[108] content,[109] and service of notice[110] of a petition to terminate parental rights. If a biological parent challenges the petition to terminate the parent/child relationship, the court shall conduct a hearing to determine if grounds for termination exist and if termination of the parent/child relationship is in the

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105. UAA § 3-404. Subsection (e) of this section provides further incentive for the unknown father to receive notice by requiring that the natural mother be advised that a failure to disclose the identity of the child's father may subject the adoption proceedings to delay or a later challenge. *Id*. § 3-404(e). The significance of this section lies in the fact that such notice can prevent last minute challenges to adoptions and avoid potentially devastating consequences to the child. *See* Canaday v. Gresham, 362 So. 2d 82 (Fla. 3d Dist. Ct. App. 1978) (final judgment of adoption void where father did not receive notice and it appeared that his whereabouts could have been ascertained). For further discussion of the consequences of this and other provisions regarding notice, see text accompanying notes 195–204.

106. UAA § 3-405. The individual may waive his or her right to notice either by indicating such waiver in the consent or relinquishment document or by appearing before the court. *Id*. § 3-405(a).

107. *Id*. § 3-501.

108. *Id*. § 3-502(a). A petition to terminate the parent/child relationship may be filed at any time between the filing of a petition to adopt and the entry of a final decree of adoption. *Id*.

109. *Id*. § 3-502(b). A petition to terminate the parent/child relationship must contain the name of the petitioner, name of the child, name and address of the parent whose relationship is sought to be terminated, factual grounds for termination, whether the petitioner is a prospective adoptive parent, a statement to the effect that the petitioner intends to proceed with the adoption, and if the petitioner is a parent, guardian, or agency, a statement that a prospective adoptive parent has been selected. *Id*.

110. UAA § 3-503. This notice must also inform the recipients that they have the right to representation. *Id*. § 3-503(b)(1). Additionally, in the case of a putative father who has received notice, failure to file a paternity claim within 20 days will result in termination of the parent/child relationship. *Id*. § 3-503(b)(2).

best interests of the minor.[111] If the court denies a petition to termi-

111. UAA § 3-504(c). The Act sets out the following grounds for termination of the parent/child relationship:

> (c)(1) in the case of a minor who has not attained six months of age at the time the petition for adoption is filed, unless the respondent proves by a preponderance of the evidence a compelling reason for not complying with this paragraph, the respondent has failed to:
>
> (i) pay reasonable prenatal, natal, and postnatal expenses in accordance with the respondent's financial means;
>
> (ii) make reasonable and consistent payments, in accordance with the respondent's financial means, for the support of the minor;
>
> (iii) visit regularly with the minor; and
>
> (iv) manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent;
>
> (2) in the case of a minor who has attained six months of age at the time a petition for adoption is filed, unless the respondent proves by a preponderance of the evidence a compelling reason for not complying with this paragraph, the respondent, for a period of at least six consecutive months immediately preceding the filing of the petition, has failed to:
>
> (i) make reasonable and consistent payments, in accordance with the respondent's means, for the support of the minor;
>
> (ii) communicate or visit regularly with the minor; and
>
> (iii) manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent;
>
> (3) the respondent has been convicted of a crime of violence or of violating a restraining or protective order, and the facts of the crime or violation and the respondent's behavior indicate that the respondent is unfit to maintain a relationship of parent and child with the minor;
>
> (4) the respondent is a man who was not married to the minor's mother when the minor was conceived or born and is not the genetic or adoptive father of the minor; or
>
> (5) termination is justified on a ground specified in [the State's statute for involuntary termination of parental rights].

Id. A father can attempt to stop his parental rights from being terminated under § 3-504(c)(1) by proving either that he had no reason to know of the minor's birth or that his parenting attempts have been "thwarted" by the birth mother, an agency, the prospective adoptive parent, or another person. *Id*. § 3-504 cmt. Although the father is "`excused' for his earlier failures to perform parental duties," he nonetheless has not had a relationship with the child. *Id*. The drafters comment that it is not unconstitutional to balance the father's right to be a parent against any harm that may be caused to the child. *Id.*; UAA § 2-401 cmt. In the comment to § 2-401 the drafters string cite and paraphrase the holdings of the following decisions: Caban v. Mohammed, 441 U.S. 380 (1979) ("[E]qual [P]rotection [C]lause violated by state law that gives unwed mothers but not unwed fathers who support and care for their child a right to block an adoption"); Quilloin v. Walcott, 434 U.S. 246 (1978) ("[E]qual [P]rotection [C]lause not violated by State's rule that unwed father who has `never shouldered any significant responsibility' for the care of his child, despite opportunities to do so, cannot veto the child's adoption

nate the parent/child relationship, it must dismiss the petition for adoption.[112]

5. Granting or Denial of the Petition to Adopt

Part 7 of article 3 sets out the consequences of granting[113] or denying[114] a petition for adoption. This portion of the Act also requires that the petitioner, the lawyer for the petitioner, and the lawyer for each parent or guardian file an affidavit that itemizes the disbursement or receipt of any fees in connection with the adoption proceeding.[115] The Act then names every requirement that must be met before the court grants a petition to adopt.[116] The very first of

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by the mother's husband"); Stanley v. Illinois, 405 U.S. 645 (1972) (holding that "[D]ue [P]rocess [C]lause [was] offended by denial of parental fitness hearing to unwed father who wanted custody of the three children he had both `sired and raised'"). *Id*. § 2-401 cmt. (quoting the holdings as set forth by the drafters). Further, the interests of the child must be considered independently of any "possessory" claims. UAA § 3-504 cmt. Finally, in deciding the duration and under what circumstances the interests of a "thwarted" birth father will be protected, the Act will balance the following interests:

> (1) the birth mother's interest in placing her child for adoption without interference from a man whom she believes has no genuine interest in the child,
> (2) the minor's interest in remaining with suitable prospective adopters with whom the minor may already have bonded,
> (3) the minor's interest in being raised by biological parents, especially if, in addition to the biological connection, there is also evidence of the father's parental capacity,
> (4) the efforts by the birth mother or others to interfere wrongfully with the father's efforts to grasp his parental opportunities, and
> (5) society's interest in protecting minors against "legal limbo" and detrimental disruptions of custodial environments in which they are thriving.

Id. The grounds for termination of the parent/child relationship in § 3-504(c) and the requirements in § 2-401 that define when a man is required to consent are quite similar. Both provisions focus on factors such as the birth father's financial support of his child and his communication and visitation with his child. *Id*. §§ 2-401(a)(1)(iii)(A), 3-504(c)(1)(ii), (iii).

112. UAA § 3-506(a).

113. *Id*. § 3-703. The most important consideration in deciding whether to grant the petition to adopt is whether the adoption is in the best interests of the child. *Id*. § 3-703 cmt. Even if the provisions of the Act have been violated, the violation should not be remedied at the expense of the child. *Id*.

114. *Id*. § 3-704. Upon denial of a petition to adopt, the court must make a determination regarding custody, considering the best interests of the child in making this decision. *Id*. § 3-704 cmt.

115. *Id*. § 3-702.

116. *Id*. § 3-703.

these requirements is that the adoption be in the best interests of the child.[117] The remaining requirements represent a checklist that compiles many of the requirements specified in other sections of the Act.[118] For example, section 3-705 provides a list of information or statements that a decree of adoption must contain, while section 3-706 discusses the finality of a decree of adoption.

The final section of part 7 of article 3 limits the time within which an adoption may be challenged.[119] Section 3-707 sets out guidelines with respect to challenges to a decree of adoption.[120] Subsection (d) of this provision has received much attention because it limits the time in which any person can challenge the adoption to six months.[121] Part 8 sets forth the requirements for issuing a new birth certificate.[122]

II. FOCUSING ON THE CHILD'S BEST INTERESTS: THE UNIFORM ADOPTION ACT VERSUS FLORIDA ADOPTION LAW

The Uniform Adoption Act's position is best described by the adage that the best offense is a good defense. When an adoption is contested, no one ever really wins. All of those involved, the natural

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117. UAA § 3-703(a).

118. The checklist includes provisions that require, among other things, that the child has been in the custody of the prospective adoptive parent for at least 90 days, that notice has either been served or dispensed with by the court as required, that all of the necessary consents have been signed and filed with the court, and that an accounting of all expenses in connection with the adoption has been performed. *Id*. § 3-703(a).

119. UAA § 3-707. The six-month limitation on challenges to the validity of an adoption is one of the Act's more drastic provisions. In contrast, Florida allows one year in which to challenge the validity of the adoption. FLA. STAT. § 63.182 (1993).

120. UAA § 3-707. These guidelines include provisions stating that an appeal must be heard expeditiously, that a decree of adoption may not be challenged by an individual who waived notice or who was served but failed to answer, that a decree of adoption may not be challenged for failure to comply with an agreement allowing visitation or communication with the adoptee, and finally that the decree may not be challenged after six months. *Id*.

121. *Id*. § 3-707(d). One of the principal authors of the Act recognizes the firm stance that the Act has taken stating, "We've taken a really radical stand for finality by saying that once it's over, it's over. After six months, the act says that an order of adoption is final, that it cannot be challenged for any reason. And that apparently has struck a lot of raw nerves." Hansen, *supra* note 14, at 60–61 (quoting Joan Hollinger, the UAA's reporter). By way of comparison, Florida allows an adoption to be challenged for up to one year. FLA. STAT. § 63.182 (1993). For a discussion of the finality of a decree of adoption see notes 206–12 and accompanying text.

122. UAA §§ 3-801, -802.

parents, the prospective adoptive parents, and the child, suffer heartbreak and emotional anxiety. Thus, the secret to ending the heartbreak and turmoil of contested adoptions lies in preventing the challenge in the first place. No matter what procedural defect provided the grounds for the challenge, there is one common thread in all of the infamous contested adoptions[123] that have brought adoption into the spotlight: the adopted children spend the first months or even years of their lives with their new adoptive families.[124] When the adoptive parents retain custody of children during the pendency of the adoption proceedings, the children become familiar with the adoptive parents.[125] These are the people that the children know as their parents. These are the people that the children equate with safety and security. When the court battles drag on, it is the children's futures that hangs in the balance. The Act combats the potential harm of contested adoptions primarily through two shifts in ideology. First, the detailed provisions of the Act are aimed at preventing the challenge.[126] Second, the Act concentrates on the best interests of the child.[127]

There are three primary areas where there is great potential to prevent an adoption from being subject to later challenge. This sec-

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123. *See, e.g.*, *In re* B.G.C., 496 N.W.2d 239 (Iowa 1992) (Baby Jessica). For a discussion of Baby Jessica see *supra* note 26.

124. Many states, including California, Georgia, Kansas, and New York, allow adoptive parents to have custody of the child during the pendency of the adoption proceedings. Daniel C. Zinman, *Father Knows Best: The Unwed Father's Right to Raise His Infant Surrendered for Adoption*, 60 FORDHAM L. REV. 971, 986 n.140 (1992). Florida also allows such a custody arrangement. FLA. STAT. § 63.092 (1993).

125. Baby Emily has lived with her adoptive parents almost since her birth on August 28, 1992. *Baby E. A. W. II*, 647 So. 2d at 925 (Pariente, J., concurring specially).

Interestingly, Florida Supreme Court Justice Kogan, writing separately, took issue with the practice of placing children with their prospective adoptive parents when a challenge from a biological parent was pending: "Such action may in fact be unconstitutional, and it certainly contributes to the horrendous psychological damage done to the child when and if it must be returned to the biological parent." *Baby E.A.W. III*, 658 So. 2d at 976 (Kogan, J., concurring in part and dissenting in part).

126. UAA § 3-707 cmt. See *supra* note 46 for the drafters' comments regarding the expected frequency of adoption challenges under the Act.

127. See *supra* notes 38 and 47 for examples of some areas of adoption law where the Act focuses on the best interests of the child.

In *Baby E.A.W. III*, Justice Kogan expressed his view that the Uniform Adoption Act represents a combination of two standards: (1) a "`best interests' [of the child] standard . . . favor[ing] the `psychological parent'" and (2) a "biological rights standard . . . emphas[izing] . . . the rights of genetic parents." *Baby E.A.W. III*, 658 So. 2d at 972 (Kogan, J., concurring in part and dissenting in part).

tion of the Comment will identify each of these areas and compare the ways they are dealt with under the Act and under Florida law.

A. Consent

Consent is one of the unavoidable issues in adoption proceedings. In order for the court to grant a petition to adopt, either the petitioner must have obtained the requisite consents or the court must have excused their absence.[128] There is no dispute that both the birth mother[129] and the child,[130] if the child has attained a designated age, must consent to the adoption of a minor child by a nonrelative. However, it was not until 1972 that unwed fathers were held to have a recognized interest in the parent/child relationship.[131] Since that time, the United States Supreme Court has attempted to define the boundaries of the rights of an unwed father with respect to his children.[132] The focus of this Comment is not to take issue

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128. Consent is a prerequisite to granting a petition to adopt under both the Florida Statutes and the Uniform Adoption Act. FLA. STAT. § 63.062(1) (1993); UAA § 2-401(a).

129. *See, e.g.*, ALA. CODE § 26-10A-7(2) (1992); ALASKA STAT. § 25.23.040(1) (1994); ARIZ. REV. STAT. ANN. § 8-106(A)(1) (Supp. 1994); ARK. CODE ANN. § 9-9-206(a)(1) (Michie 1993); CONN. GEN. STAT. ANN. § 45a-724(a)(1) (West 1993); D.C. CODE ANN. § 16-304(b)(2)(A) (1989); GA. CODE ANN. § 19-8-4(a)(1) (1991); IDAHO CODE § 16-1504 (Supp. 1995); ILL. ANN. STAT. ch. 750, para. 50/8 (Smith-Hurd 1993); IND. CODE ANN. § 31-3-1-6(a)(1), (2) (West 1994).

There are circumstances, however, where the birth mother's consent can be waived. For example, Florida permits the birth mother's consent to be waived if she has deserted or abandoned the child. FLA. STAT. § 63.072(1) (1993).

130. *See, e.g.*, ALA. CODE § 26-10A-7(1) (1992); ALASKA STAT. § 25.23.040(5) (1994); ARIZ. REV. STAT. ANN. § 8-106(A)(3) (Supp. 1994); ARK. CODE ANN. § 9-9-206(a)(5) (Michie 1993); COLO. REV. STAT. ANN. § 19-5-203(2) (West 1990); CONN. GEN. STAT. ANN. § 45a-724(a)(1) (West 1993); D.C. CODE ANN. § 16-304(b)(1) (1989); GA. CODE ANN. § 19-8-4(b) (1991); IDAHO CODE § 16-1505 (1979); ILL. ANN. STAT. ch. 750, para. 50/12 (Smith-Hurd 1993); IND. CODE ANN. § 31-3-1-6(a)(5) (West 1994).

131. Stanley v. Illinois, 405 U.S. 645 (1972). In *Stanley*, the birth parents, Joan and Peter Stanley, had lived together on and off for 18 years, but were not married. The couple had three children during this time. Upon Joan Stanley's death, the children became wards of the State. The Illinois statute in effect at the time of Joan Stanley's death considered the children of unmarried women wards of the state upon the mothers' deaths. *Id*. at 646. The Supreme Court held that the conclusive presumption of an unwed father's unfitness as a parent violated Peter Stanley's due process rights. *Id*. at 657–58.

132. Lehr v. Robertson, 463 U.S. 248, 261 (1983) ("full commitment to the responsibilities of parenthood," rather than biology alone, entitles the unwed father to due process protection); Caban v. Mohammed, 441 U.S. 380 (1979) (under the circumstances, a New York statute that gave an unwed mother, but not an unwed father, the right to veto the adoption of illegitimate children deprived the unwed father of equal protection);

with the fact that unwed fathers should have a protected interest in their children.[133] Rather, this Comment takes the position that regardless of a father's custodial interest in his child, the focus in an adoption proceeding should be the best interests of the child.[134]

1. Florida Law

Under Florida law, the issue of consent in many cases is a two-part analysis. First, chapter 63 of the Florida Statutes defines the individuals required to consent to a child's adoption. The child's mother and the child,[135] if twelve years of age or older, must always consent to the adoption.[136] However, Florida requires the father's consent only under certain circumstances. The father must consent to the adoption only if the child was conceived or born while the father was married to the mother, the father has adopted the child, a court has established paternity, the father has acknowledged that he is the child's father and has filed the acknowledgment with the Office of Vital Statistics of the Department of Health and Rehabilitative Services,[137] or the father has provided the child with support in a repetitive and customary manner.[138] Ultimately, Florida law

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Quilloin v. Walcott, 434 U.S. 246 (1978) (holding constitutional a Georgia statute that required only the mother to consent to the adoption of an illegitimate child, because the unwed father had never had or sought custody of the child and the adoption was in the child's best interests). For a history of the rights of unwed fathers, see Linda R. Crane, *Family Values and the Supreme Court*, 25 CONN. L. REV. 427, 433–48 (1993); Zinman, *supra* note 124, at 974-80.

133. There is certainly not a shortage of articles discussing the issue of an unwed father's rights with respect to his children. *See, e.g.,* Kara L. Boucher & Ruthann M. Macolini, *The Parental Rights of Unwed Fathers: A Developmental Perspective*, 20 N.C. CENT. L.J. 45 (1992); Crane, *supra* note 132; Alexandra R. Dapolito, Comment, *The Failure to Notify Putative Fathers of Adoption Proceedings: Balancing the Adoption Equation*, 42 CATH. U. L. REV. 979 (1993); Zinman, *supra* note 124.

134. For an overview of the considerations involved in determining the best interests of the child, see JOSEPH GOLDSTEIN ET AL., IN THE BEST INTERESTS OF THE CHILD (1986); JOSEPH GOLDSTEIN ET AL., BEFORE THE BEST INTERESTS OF THE CHILD (1979).

135. A court, however, may excuse the minor's consent, if it determines that doing so is in the best interests of the child. FLA. STAT. § 63.062(1)(c) (1993).

136. *Id*. § 63.062.

137. *Id*. § 63.062(1)(b)(4). The statute makes no mention of the timing of the filing of such an acknowledgment. This is one more area of potential vulnerability to the soundness of the adoption. For a more detailed discussion of this issue of timing, see Donald I. Pollack, *The Timely Assertion of Parental Rights in Contested Adoption Proceedings*, FLA. B.J., Apr. 1986, at 69, 69–71.

138. FLA. STAT. § 63.062(1)(b) (1993).

makes no demand that the father have maintained any sort of relationship with the child in order for his consent to the adoption to be required.[139]

The second part of a consent inquiry begins with the section of the Florida Statutes that defines whose consent is excused in an adoption proceeding.[140] Section 63.032(14) allows a means to circumvent the necessity of either parent's consent — abandonment. If parents have abandoned their child, the Florida Statutes do not require their consent in an adoption proceeding.[141] The legislature added the definition of abandonment to the Florida adoption statutes in 1992[142] and defined the term as

> a situation in which the parent or legal custodian of a child, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If, in the opinion of the court, the efforts of such parent or legal custodian to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. In making this decision, the court may consider the conduct of a father toward the child's mother during her pregnancy.[143]

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139. *Id*. *See, e.g*., Stevens v. Johnson, 427 So. 2d 227 (Fla. 3d Dist. Ct. App. 1983). The *Stevens* court held that the birth father had standing to contest the petition to adopt. The court's holding was based solely on the fact that the birth father had provided financial support to the child in a "repetitive, customary manner." The court did not once mention or give consideration to whether the birth father had maintained any sort of contact with his child. *Id*. at 228.

140. FLA. STAT. § 63.072(1) (1993).

141. *Id*.

142. 1992 Fla. Laws ch. 92-96.

143. FLA. STAT. § 63.032(14) (1993). Prior to the addition of this definition to chapter 63 of the Florida Statutes, many courts were using a definition of abandonment from chapter 39, "Proceedings Relating to Juveniles." *See infra* note 148. Until Florida Statutes § 39.01(1)'s 1994 amendment, the chapter 39 definition was virtually identical to the current chapter 63 definition. FLA. STAT. § 39.01(1) (1993), *amended by* 1994 Fla. Laws ch. 94-164; *Id*. § 63.032(14). The notable distinction between the two statutes was the variance in the last sentence of each. *Id*. § 39.01(1) (1993), *amended by* 1994 Fla. Laws ch. 94-164; *Id*. § 63.032(14).

The abandonment definition in chapter 39 was added to the statutes pertaining to juveniles in 1978. 1978 Fla. Laws ch. 78-414. When the definition was incorporated into the adoption statutes in 1992, the final sentence was added. The addition of this sentence is consistent with the Florida Supreme Court's holding in *In re* Adoption of Doe, 543 So. 2d 741, 749 (Fla.), *cert. denied*, 493 U.S. 964 (1989), in which the Florida Supreme Court held that the father's prebirth conduct toward the mother was relevant

In making the statutory determination as to when section 63.062(1)(b) requires a father's consent, the statute mentions only monetary support; no mention is made of any type of father/child relationship.[144] However, when making an abandonment determination under section 63.032(14), which excuses consent, both monetary support and communication with the child are relevant factors.[145]

Florida's approach to the consent and abandonment inquiries falls far short of certainty. It allows for situations where the parties to the adoption proceeding are uncertain as to whose consent the law requires. This ambiguity is the result of both a fact driven standard and the allowance for the court to look to the intent of the parties.[146] The problem presented in the application of the abandonment definition is that it is very fact-specific[147] and thus provides no clear guidelines.[148] Fact-specific standards are time-consuming, rely to a large extent on judgment calls, and are, therefore, inherently unpredictable.[149] In order for adoptions to remain stable and solid, it

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to the issue of abandonment. Thus, on the whole, Florida's definition of abandonment is the result of an ad hoc approach.

144. FLA. STAT. § 63.062(b)(1).

145. *Id*. § 63.032(14).

146. See *infra* note 149 for a discussion of the application of this fact-specific standard.

147. Compare the statement of the facts in the June 1994 opinion of the Baby Emily case, *Baby E.A.W. I*, 647 So. 2d at 941 (appendix), to the court's later November opinion, *Baby E.A.W. II*, 647 So. 2d at 918. The June 1994 opinion indicates a disinclination to take the emotional support of the mother during pregnancy into account in making the abandonment determination. *Baby E.A.W. I*, 647 So. 2d at 949-50 (appendix). The November 1994 opinion, however, seems to favor consideration of the father's emotional support of the mother during pregnancy. *Baby E.A.W. II*, 647 So. 2d at 923–24. The *E.A.W.* decisions demonstrate how the same set of facts can result in two very different conclusions when judgment is based upon a fact-specific standard.

148. Prior to the addition of the abandonment definition to the Florida adoption statutes in 1992, the courts were nevertheless using a similar standard. Some courts were using the definition of abandonment found in chapter 39 of the Florida Statutes. *E.g.*, *In re* Adoption of Doe, 543 So. 2d 741 (Fla.), *cert. denied*, 493 U.S. 964 (1989). Others were defining abandonment as "conduct which manifests a settled purpose to permanently forego [sic] all parental rights and the shirking of responsibilities cast by law and nature." *In re* Adoption of Prangley, 122 So. 2d 423, 428 (Fla. 2d Dist. Ct. App. 1960). This standard was affirmed in later opinions. Webb v. Blancett, 473 So. 2d 1376, 1378 (Fla. 5th Dist. Ct. App. 1985); *In re* D.A.H., 390 So. 2d 379, 381 (Fla. 5th Dist. Ct. App. 1980).

149. In order to appreciate the unpredictability of a fact specific standard, it is necessary to look at several cases and compare the factual scenarios and respective decisions. For example, in *In re* Adoption of Doe, 543 So. 2d at 742–43, 749, where the birth

is essential that all parties to the proceeding be certain as to whose

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father knew of the birth mother's pregnancy but did not want marriage and encouraged the mother to have an abortion, the Florida Supreme Court found abandonment and remanded the case. The birth mother refused to abort the pregnancy, and when the subject of adoption was initially brought up, the birth father made no objections. *Id*. at 742–43. During the mother's pregnancy, the father provided neither emotional nor financial support and the mother was forced to go on welfare. *Id*. at 743. Consequently, the birth mother advised the father that adoption plans were in progress. *Id*. The child was born on September 12, 1986, and placed with the adoptive parents three days later. *Id*. Four days after the child's placement, the birth father announced his opposition to the adoption and proposed marriage to the birth mother. *Id*. In May 1987, the trial court approved the adoption, but the Florida Supreme Court opinion, finding that the father had abandoned his child, was not issued until April 13, 1989. *Id*. at 743, 749.

In contrast, another appellate court applied the same definition to a similar circumstance and did not find abandonment. Smith v. Fernandez, 520 So. 2d 654, 655 (Fla. 3d Dist. Ct. App. 1988). In *Smith,* the court stated that "[t]he trial court based its adoption order upon Smith's nonpayment of child support and his infrequent contacts with [the child]. Neither reason may serve to deprive Smith of his parental rights." *Id*. This position is contrary to the very definition of abandonment, which states that abandonment is a "situation in which the parent . . . while being able, makes no provision for the child's support and makes no effort to communicate with the child." *Id*. at 655 n.2.

A third example of an abandonment analysis can be found in Solomon v. McLucas, 382 So. 2d 339 (Fla. 2d Dist. Ct. App. 1980). In *Solomon*, the appellate court found that the facts did not give rise to abandonment. *Id*. at 346. The natural mother gave birth to her child when she was only 16 years old. *Id*. The mother's aunt and uncle took both their niece and her new daughter into their home. The baby remained in the aunt and uncle's home and under their care, while the mother lived there only sporadically. *Id*. at 341. In October 1975, the natural mother removed her child from the aunt and uncle's home. Both mother and child took up residence in Delaware with a man with whom the mother had been living. Approximately four months later, the aunt and uncle brought the mother, her live-in, and the child back to Florida. *Id*. at 341. The child's natural mother left her child with her aunt and uncle in February 1976, and subsequently made inquiries at an HRS office about giving custody of her child to them. *Id*. at 344. In contesting the adoption, the natural mother asserted that she never intended for the aunt and uncle to have permanent custody of the child. *Id*. at 342. Then in July 1977, more than one year later, the natural mother consulted a lawyer to attempt to regain custody of her child. *Id*. at 345. In October 1977, the aunt and uncle filed a petition to adopt the child. *Id*. at 342. The *Solomon* court used the "conduct which manifests a settled purpose to permanently forgo all parental rights and the shirking of the responsibilities cast by law and nature" standard and found that the child's mother had not abandoned her daughter. *Id*. at 344, 346. It is interesting to note that the court took judicial notice of the abandonment definition recently added to chapter 39 of the Florida Statutes. *Id*. at 343 n.3. However, since these adoption proceedings had begun before the adoption of the statute, the court declined to apply the definition or to determine if the chapter 39 definition should be applied to adoption proceedings. *Id*.

Finally, in *In re* Adoption of J.G.R., 432 So. 2d 735, 735–36 (Fla. 4th Dist. Ct. App. 1983), the district court of appeal held that the trial court had erroneously found abandonment where the father's child support payments were current at the time of the hearing on the adoption petition, the father had sent birthday and Christmas presents to his son, and had taken advantage of court-ordered visitation until a dispute arose.

consent the law requires.[150]

The most recent issue raised under the definition of abandonment has come about in the Baby Emily case.[151] The Fourth District Court of Appeal certified to the Florida Supreme Court the question of whether the court may consider the father's emotional abuse and lack of emotional support toward the mother during pregnancy as a factor in making a determination of abandonment.[152] The Florida Supreme Court upheld the Fourth District's determination that Gary had abandoned Emily and held that the father's prebirth conduct toward the child's mother comes within the meaning of the word "conduct" as used in the Florida statute.[153] While adoptive parents may view the decision as a victory and biological parents as a loss, either way the Florida Supreme Court's decision does nothing to alleviate the uncertainty of the standard. If stable adoptions and the best interests of the child are the goals of adoption, a more predictable standard is necessary. A more predictable standard that leaves less room for manipulation will help ensure that the parties to an adoption can be certain as to whose consent the law requires. This certainty will result in fewer adoptions being challenged based upon erroneous conclusions that a parent's consent was not neces-

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150. Before the addition of the abandonment definition to the Florida adoption statutes, courts were weighing the facts to determine if they were the equivalent of "conduct which manifests a settled purpose to permanently forego [sic] all parental rights." *Id.* at 735 (citing *In re* Adoption of Prangley, 122 So. 2d 423, 428 (Fla. 2d Dist. Ct. App. 1960)). Subsequently, under both the chapter 39 definition of abandonment and the new statutory definition of abandonment in chapter 63, *see supra* note 143, courts are required to determine if the parent's conduct is "sufficient to evince a willful rejection of parental obligations." FLA. STAT. § 63.032(14) (1993). The contrary case decisions indicate the need for a standard that is easier to apply and allows for less manipulation. See *supra* note 149 for examples of the conflicting decisions.

The Uniform Adoption Act requires an unwed father's consent when paternity has been established and when he has both provided financial support to the child and visited or communicated with the child. UAA § 2-401(a)(1)(iii)(A). Under the standard prescribed by the Act, a father either has or has not been providing support for his child. *Id*. The father either has or has not been visiting or communicating with his child. *Id.* This standard does not attempt to determine what the parent's state of mind was regarding the treatment of his or her child.

151. *Baby E.A.W. II*, 647 So. 2d 918 (Fla. 4th Dist. Ct. App. 1994), *approved by* 658 So. 2d 961 (Fla. 1995).

152. *Id.* at 924. The Florida Legislature has already included a provision in the definition of abandonment allowing the courts to consider the father's prebirth conduct toward the mother in making a decision regarding abandonment. FLA. STAT. § 63.032(14) (1993); *see supra* note 143.

153. *Baby E.A.W. III*, 658 So. 2d at 967.

sary.

2. The Uniform Adoption Act

The very first requirement of the Act with respect to the issue of consent is to mandate that the parent signing the consent be made aware that both personal and legal counseling are available.[154] Additionally, the parent signing the consent must be made aware of the consequences of his or her signature.[155] The consent itself must contain provisions stating that the individual is signing the consent voluntarily,[156] that the consent is final and may not be set aside,[157] and that the consent will terminate the signer's parental rights.[158] The person acknowledging the consent must certify in writing that he or she orally explained the consequences and contents of the consent.[159] Florida law requires none of this.[160]

The advantage that the Act represents not only to the child, but also to both the birth and prospective adoptive parents, is that this mandatory acknowledgment of the availability of counseling and mandatory acknowledgment of finality may prevent a subsequent tug-of-war over the child.[161] Counseling may very well provide reluc-

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154. UAA § 2-404(e).

155. *Id*.

156. *Id*. § 2-406(b).

157. *Id*. § 2-406(d)(1).

158. *Id*. § 2-406(d)(2).

159. UAA § 2-405(d). For a more detailed discussion of the Act's provisions with respect to signing the consent, see *supra* notes 76–85 and accompanying text.

160. The Florida provisions dealing with the issue of consent do not specify the content of the consent. FLA. STAT. § 63.082 (1993). The closest that Florida comes to taking steps to help prevent parents from making decisions that they are later unable to live with is the requirement that when the petition to adopt is filed (after the consents have been obtained), the surrender document, which must be filed with the petition, must include documentation that an interview was conducted with the birth mother if her parental rights have not yet been terminated and with the birth father, if his consent is required and his parental rights have not yet been terminated. *Id*. § 63.112(3)(c)(1)–(3). However, the court may waive the requirement that an interview be conducted. *Id*. § 63.112(2)(c).

161. These requirements could also possibly provide further grounds for the adoption to be challenged. For instance, the birth parents may assert that they did not, as the Act requires, receive the finality and irrevocability warnings or were not offered counseling. Perhaps out of concern for this result, the Act requires that individuals qualified to confirm the consent or relinquishment have knowledge about adoptions. UAA § 2-405(a). See also *supra* note 78 for a discussion of this provision and the drafter's comments.

tant parents with the guidance and insight to change their minds.[162] They may decide that adoption is not the best option for their child. Nonetheless, the key is that the parent makes this decision before the child comes to know another set of parents.

Next, while many of the conditions that trigger the necessity of a father's consent to the adoption under Florida law are the same under the Act,[163] there are some very critical distinctions. The most important distinction is that the Act requires an unwed father's consent to the adoption only if a court has determined him to be the father or if he has signed a document that establishes that he is the child's father and either he has provided reasonable and consistent payments and has visited or communicated with the child, or he has married or attempted to marry the child's mother.[164] The Act does not use abandonment as a way to circumvent the necessity of the father's consent.[165]

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162. *See, e.g.*, *In re* Doe, 627 N.E.2d 648 (Ill. App. Ct. 1993) (Baby Richard), *rev'd*, 638 N.E.2d 181 (Ill.), *cert. denied sub nom*. Doe v. Kirchner, 115 S. Ct. 499 (1994). A newspaper article chronicling the thoughts of Baby Richard's mother indicates that counseling might very well have made a difference in that situation. Adrienne Drell, *Mom Feared for Her Newborn; She Didn't Want Dad to Take Son*, CHI. SUN-TIMES, Aug. 22, 1994, at 5. Daniela Kirchner, Baby Richard's birth mother, admitted that she had made the decision to place her child for adoption at least partly motivated by a desire to keep the child's father and his former girlfriend from attempting to get custody of the child. *Id*. Kirchner also stated that when she went to the social services office to sign away her parental rights, "'[s]trangers gave me this paper to fill out. There was no counselor, no options, no time to think.'" *Id*.

163. See *supra* note 75 and accompanying text for a discussion of the circumstances that trigger the necessity of the birth father's consent.

164. UAA § 2-401(a)(iii).

165. However, the Act uses factors similar to those articulated in Florida's abandonment definition as grounds for termination of the parent/child relationship in § 3-504. UAA § 3-504(c)(1). Section 3-501 allows a parent or guardian who has selected a prospective adoptive parent, a parent whose spouse has filed a petition to adopt his or her stepchild, a prospective adoptive parent, or an agency that has selected a prospective adoptive parent to file a petition to terminate the parent/child relationship in an adoption proceeding. *Id*. § 3-501. Termination of the parent/child relationship excuses the necessity of that parent's consent to the adoption. *Id*. § 2-402(a)(2). For a comment on this aspect of the Uniform Adoption Act and its tie to abandonment under Florida law, see *Baby E.A.W. II*, 647 So. 2d at 932 (Pariente, J., concurring specially). Judge Pariente expressed a concern that "the present standards for judging the biological father's prebirth conduct are subjective, uncertain, and vague, both for the courts, the biological parents and the prospective adoptive parents. Such standards ultimately create a time-consuming, fact-finding process at the end of which the facts, as determined, still remain subject to varying interpretation and significance." *Id.* at 931.

Judge Pariente also offered an alternative suggestion to the way in which courts handle the prebirth abandonment issue currently. *Id.* She suggested that if the

The Act asks two simple questions. First, has the father been providing support for his child? And second, has the father been visiting or communicating with his child?[166] While these factors are also a part of Florida's abandonment determination, the Act allows less room for manipulation of these standards. The Act, unlike

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legislature's purpose is to encourage unmarried fathers to act responsibly during the pregnancy, it should consider a statutory scheme that requires the birth mother to provide the birth father with "formal notice of her intent to place the child for adoption." *Id*. The biological father would then have a fixed period of time within which to assert his parental rights and his intent to seek custody. *Id*. If the father chose to seek custody, during the course of the pregnancy he would be required to pay a court-ordered amount of prebirth support. *Id*. The father may also be required to attend parenting classes during this period. *Id*. If the father does not comply with the court order, at the time of the child's birth, the court would be free to declare that the father had waived his right to consent. *Id*. With respect to the issue of parental consent, Judge Pariente also encouraged the legislature to consider the Uniform Adoption Act. *Id*. at 932.

166. UAA § 2-401(a)(1)(iii). By limiting the inquiry to these two questions, the Act runs the risk of violating due process and equal protection concerns. The due process concerns are the result of limiting the birth father's right to have a voice where the future of his biological child is concerned without notice and an opportunity to be heard. Since the necessity of the birth father's consent to the adoption is conditioned on his behavior, due process concerns are triggered. Similarly, equal protection concerns also arise in the context of the consent issue. Since the requirements regarding the necessity of the birth mother's consent and the birth father's consent are not the same, this raises potential equal protection issues. *Id*. § 2-401(a).

The Supreme Court has addressed both the due process and equal protection issues. See *supra* notes 111 and 132 for a discussion of these decisions. Essentially, these decisions have held that in order for the birth father's due process and equal protection rights to be violated, the birth father must be similarly situated to the birth mother, but be treated differently under the law. *See, e.g*., Caban v. Mohammed, 441 U.S. 380 (1979); Quillion v. Walcott, 434 U.S. 246 (1978).

Given these parameters, it seems likely that the Act will pass constitutional muster. The Act requires the unwed birth father to have provided financial support for his child and to have maintained some relationship with his child. UAA § 2-401(a)(1)(iii). These requirements mandate that the father take affirmative action with respect to the care of his child. By requiring that the birth father be in some way involved with his child, the Act puts the father in a situation similar to that of the birth mother. The birth mother has supported her child, at the very least during her pregnancy, and has had a relationship with the child. The Act requires the same from the birth father in order to entitle him to the same veto power that the birth mother has with respect to the child's adoption. See *supra* note 75 for a discussion of the circumstances under which the Act requires the birth father's consent to the adoption. These requirements fall within the range of behavior held constitutional by the Supreme Court.

The drafters have considered the United States Supreme Court opinions defining the rights of biological fathers in adoption proceedings and have concluded that the Act is consistent with these opinions. *Id*. § 2-401 cmt. Specifically, the drafters cite Michael H. v. Gerald D., 491 U.S. 110 (1989); Lehr v. Robertson, 463 U.S. 248 (1983); Caban v. Mohammed, 441 U.S. 380 (1979); Quillion v. Walcott, 434 U.S. 246 (1978); and Stanley v. Illinois, 405 U.S. 645 (1972). UAA § 2-401 cmt.

Florida adoption law, does not speak in terms of "evinc[ing] willful rejection of parental obligations."[167] Florida's abandonment determination requires the court to look at the parent's actions and to determine the intent of these actions.[168] This standard has yielded conflicting results and uncertainty as to the necessity of a parent's consent to the adoption.[169] In contrast, the Act does not consider the intent of the parents. The Act looks only at whether the father has paid reasonable support within his means and whether the father has visited or communicated with his child.[170] While the Act does not avoid fact-specificity entirely, it is a move toward a more predictable and easier-to-apply standard. This type of certainty benefits the child in at least two respects: first, it provides a father with an incentive to maintain a relationship with his child, and second, it prevents the potential upheaval of the child's life when courts disagree on how to interpret abandonment.

Despite all of the steps that the Act takes toward ensuring that the best interests of the child are advanced, it nonetheless addresses some areas of the consent issue inadequately.[171] When a father is not aware of his child's birth, it is impossible for him to provide support payments or to visit or communicate with the child. Therefore, unless the father married or attempted to marry the child's mother, the Act does not require his consent to the adoption.[172] However, he may nonetheless be able to intercede in the adoption proceedings.[173]

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167. FLA. STAT. § 63.032(14) (1993).

168. *Id*. Specifically, the language asks the court to determine if the "situation is sufficient to evince a willful rejection of parental obligations" or if the parent's actions are only "marginal efforts that do not evince a settled purpose to assume all parental duties." *Id*.

169. See *supra* note 149 for examples of these conflicting results.

170. UAA § 2-401(a)(1)(iii).

171. The reasons for this in some instances are constitutional due process and equal protection concerns. See *supra* notes 131, 132, and 166 for a discussion of these concerns.

172. UAA § 2-401(a)(1). See *supra* note 75.

173. This right to intervene, although a potential threat to the adoption's stability, is a constitutional necessity. The drafters specifically note that due process requirements mandate that parental rights cannot be terminated except on specified grounds by "clear and convincing evidence." UAA § 3-504 cmt. (citing Santosky v. Kramer, 455 U.S. 745 (1982)).

A "thwarted" father may be able to "assert parental rights during the pendency of the adoption proceeding or in response to a petition to terminate his parental relationship to a minor." UAA § 2-401 cmt. The Act defines a "thwarted" father as

> a man who has been prevented from meeting his parenting responsibilities . . .

Since there are no specific time limitations to the father's challenge based upon his failure to consent, the adoption is vulnerable.[174]

However, the Act indirectly attempts to confront the problem of the unwed father in two respects. First, the Act limits a father's right to challenge the adoption based upon his failure to consent through the Act's general proscription on challenges brought six months after the court grants a final decree of adoption.[175] This limitation is not, however, an adequate solution. Section 3-707(d) requires only that the challenge be begun within six months after the court grants the petition to adopt. It does not require that the court hear the challenge or that the appeals be completed within six months.[176] During the pendency of these proceedings, the stability of the child's adoption is questionable. Neither the biological parents nor the adoptive parents can move forward with their lives.[177]

Second, the Act also attempts to address the issue of the unwed

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> because the mother did not tell him of the pregnancy or birth, lied about her plans for the child, disappeared after the child's birth, named another man as the father, or was married to another man in a State that maintains a version of the conclusive presumption of paternity . . . , or because the State, acting through its licensed agency, placed the child with prospective adoptive parents before he was aware of his child's existence or could assume parenting responsibilities . . . .

Id. A thwarted father can only succeed in blocking the adoption if he can show that he had a "compelling" reason for not assuming his parental duties. *Id*. § 3-504(d), (e). The thwarted father's parental rights may nonetheless be terminated if the adoptive parents, the birth mother, or the agency can establish that termination of his parental rights is necessary to prevent harm to the child. *Id*.

174. Florida courts have struggled with this issue and have ultimately held that objections based upon failure to consent may be raised after the initial petition to adopt has been filed. "We do not think that the legislature intended to curtail the rights of a natural father who did not consent to the adoption of his natural child and who properly filed an acknowledgment of paternity, albeit one month after the institution of the adoption proceedings." Guerra v. Doe, 454 So. 2d 1, 2 (Fla. 3d Dist. Ct. App. 1984). However, it is important to note that Guerra did not learn of the birth of his child until after the child had been placed for adoption. *Id*. at 1. Under facts where the father knew about the birth of his child before the child was placed for adoption, the courts have been less forgiving. Wylie v. Botos, 416 So. 2d 1253 (Fla. 4th Dist. Ct. App. 1982). The *Wylie* court determined that the father consented orally and that written consent was not required by the statute. *Id*. at 1257. The court, however, stated, "This section clearly contemplates that action be taken by the natural father prior to the filing of the petition for adoption." *Id*. at 1256.

175. UAA § 3-707(d).

176. Section 3-707(a) requires that an appeal to a decree of adoption be heard "expeditiously." *Id*. § 3-707(a).

177. See *supra* note 104 for a discussion of the National Council for Adoption's position regarding challenges to adoptions.

father's consent in several other respects. The Act requires that the birth mother be told that if she fails to disclose the identity of the child's father, the adoption may be delayed or subject to challenge.[178] Next, the Act places the responsibility for serving notice upon the child's father on both the prospective adoptive parents[179] and the court.[180] The Act cannot purport to force the birth mother to reveal the identity of the child's father. However, by requiring not only the mother, but also the prospective adoptive parents and the court to take responsibility for providing notice to the child's father, the Act has attempted to provide a means to afford notice to the father when it is possible to determine his identity. By ensuring that notice is served upon the father, the Act limits challenges to an adoption founded upon failure to consent because failure to respond to notice waives rights to later appear in the adoption proceeding.[181]

B. Notice

Notice is another tenuous area of adoption law and an additional place where adoptions are vulnerable to attack. If all the necessary parties have not received notice of the petition to adopt, the adoption becomes subject to being overturned.[182] Again, the solution

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178. UAA § 3-404(e).

179. *Id*. § 3-401(a)(3).

180. *Id*. § 3-404(a). See *infra* notes 195–204 and accompanying text for a discussion of investigations of and notice to unknown fathers. By way of comparison, Florida does not have any provisions for a court investigation into potential unknown fathers. *See* FLA. STAT. § 63.122(4) (1993).

181. UAA § 3-403(b). Additionally, if a father receives notice of a petition to terminate his parental rights and fails to respond within 20 days, his parental rights will be terminated. *Id*. § 3-503(b)(2).

182. *See, e.g.*, Soucek v. Melvin, 32 So. 2d 912, 912 (Fla. 1947) (trial court improperly proceeded to an adoption hearing where the petitioner knew that birth father was in the state but made no efforts to serve notice on him); Fielding v. Highsmith, 13 So. 2d 208, 209 (Fla. 1943) (where notice was not served on birth father, although his whereabouts could have been ascertained, the order of adoption was invalid as against him); *In re* Adoption of Baby Doe, 572 So. 2d 986, 990 (Fla. 1st Dist. Ct. App. 1990) (two days notice to natural father of adoption proceeding was not proper notice); *In re* Adoption of Minor Child, 570 So. 2d 340, 344 (Fla. 4th Dist. Ct. App. 1990) (grandparents were entitled to notice of adoption proceedings under Florida Statutes § 63.0425 and were entitled to intervene in the adoption where they did not receive such notice); Guerra v. Doe, 454 So. 2d 1, 2 (Fla. 3d Dist. Ct. App. 1984) (birth father had a right to intervene in the adoption proceeding where he did not receive proper notice); Canaday v. Gresham, 362 So. 2d 82, 83 (Fla. 3d Dist. Ct. App. 1978) (notice is a "fundamental prerequisite to adoption proceedings").

is not to fight the court battle and win, but to never have to fight. If all parties with a potential interest in the child receive notice and a limited time within which to respond, the adoption will not be as vulnerable to challenge. Florida's notice provisions lack the teeth necessary to be effective.[183]

1. Florida Law

Under Florida law, notice of a petition to adopt must be served on the Department of Health and Rehabilitative Services or any agency that has placed the minor, the intermediary, any person whose consent to the adoption is required but who has not consented,[184] and any person seeking to withdraw his or her consent.[185] Thus, under circumstances where the birth mother does not wish to name the child's father,[186] claims that she does not know the identity of the child's father,[187] or no longer knows how to contact the child's father, the adoption is vulnerable. Florida places responsibility on the prospective adoptive parents only with respect to the issue of consent. The statute requires the prospective adoptive parents to make "good faith and diligent efforts to notify, and obtain written

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183. FLA. STAT. ch. 63 (1993). Florida does not provide for civil penalties to the birth mother in the event that she intentionally misnames the child's father. The adoption statutes also do not require that the birth mother be advised of the consequences to the stability of the adoption if her failure to provide the father's identity prevents him from receiving notice of the adoption proceedings.

184. Determining whose consent is required can itself present a problem. Parental consent is not required if the court finds the parents have abandoned their child. FLA. STAT. § 63.072(1) (1993). Thus, parents who have abandoned their children will not receive notice of the adoption proceedings. However, if the abandonment determination is incorrectly made, parents who were entitled to notice of the adoption proceedings would not receive such notice. *See, e.g., In re* Adoption of R.M.H., 538 So. 2d 477 (Fla. 2d Dist. Ct. App. 1989) (final judgment of adoption should be vacated because the trial court had erred in granting summary judgment in favor of the prospective adoptive parents with respect to the issue of the unwed father's abandonment of the child).

185. FLA. STAT. § 63.122 (1993).

186. In many instances women have legitimate reasons, such as fear of abuse, for refusing to name the child's father. UAA § 3-404 cmt.

187. *See, e.g.*, Doe v. Watson, 507 So. 2d 1164, 1165 (Fla. 5th Dist. Ct. App. 1987) (suit was begun to set aside the adoption by an unwed father who claimed that the birth mother had fraudulently stated she did not know the identity of the child's father); Guerra v. Doe, 454 So. 2d 1, 2 (Fla. 3d Dist. Ct. App. 1984) (where birth mother placed the child for adoption and declared the father unknown, the birth father should be permitted to intervene in the adoption proceedings even though he did not file an acknowledgment of paternity until after the proceedings were begun).

consent from, the persons required to consent to adoption."[188] Under this provision, the prospective adoptive parents must notify and obtain the consent of a father only under the following circumstances: if the minor was conceived or born while the father was married to the mother, if the minor is his child by adoption, if a court has established that the minor is his child,[189] if he has acknowledged in writing that he is the child's father, or if he provides the child with customary support.[190]

The problem of notice to fathers becomes especially difficult when the abandonment issue is intertwined. If a parent, in this case a father, has been determined to have abandoned his child, under the provisions of the Florida Statutes, he will not receive notice of the petition to adopt.[191] If the adoption is subsequently appealed and the appellate court determines that the finding of abandonment was erroneous, a father entitled to notice did not receive it.[192] Many adoptions are challenged on abandonment grounds,[193] which can lead to drawn-out legal battles.[194] This is where the danger for harm

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188. FLA. STAT. § 63.062(3) (1993).

189. It seems highly unlikely that either an absentee father or a father who does not know of the birth of his child would have been judicially determined to be the child's father.

190. FLA. STAT. § 63.062(1)(b) (1993).

191. *Id*. § 63.122. Notice is only required to be sent to those individuals whose consent to the adoption is required, but who have not yet consented. *Id*. Additionally, parents who have abandoned their children need not consent to the adoption. *Id*. § 63.072(1).

192. Under the provisions of the Florida Statutes, parents who have abandoned their children need not consent to the adoption. *Id*. § 63.072(1). The notice provisions of the Florida Statutes require only that notice of a petition to adopt be served upon an individual whose consent is required and who has not yet consented to the adoption. *Id*. § 63.122(4)(c). An example of an appeal on the determination of abandonment can be found in Durden v. Henry, 343 So. 2d 1361, 1362 (Fla. 1st Dist. Ct. App. 1977). In *Durden,* the appellate court reversed the trial court's entry of a final judgment of adoption. *Id*. at 1361. The appellate court held that the petitioners, the child's grandparents, had not demonstrated that the natural father had indeed abandoned his child. *Id*. at 1362. Many adoptions are appealed on the issue of abandonment. *See, e.g*., *In re* Adoption of Doe, 543 So. 2d 741 (Fla.), *cert. denied*, 493 U.S. 964 (1989); *In re* Adoption of Doe, 572 So. 2d 986 (Fla. 1st Dist. Ct. App. 1990); *In re* Adoption of R.M.H., 538 So. 2d 477 (Fla. 2d Dist. Ct. App. 1989); Smith v. Fernandez, 520 So. 2d 654 (Fla. 3d Dist. Ct. App. 1988); Hinkle v. Lindsey, 424 So. 2d 983 (Fla. 5th Dist. Ct. App. 1983); *In re* Adoption of J.G.R., 432 So. 2d 735 (Fla. 4th Dist. Ct. App. 1983); La Follette v. Van Weelden, 309 So. 2d 197 (Fla. 1st Dist. Ct. App. 1975).

193. See *supra* note 192 for a discussion of some of the many cases appealed on abandonment grounds.

194. For example, in *In re* Adoption of Doe, 572 So. 2d 986, 987 (Fla. 1st Dist. Ct.

to the adopted child lies. While the parties are fighting the legal battles, the adopted child is adjusting to his or her environment and the people in it.

2. The Uniform Adoption Act

The Act takes steps beyond those allowed under the Florida Statutes to ensure that all interested parties receive notice. In turn, this adds stability to adoptions. First, the Act provides that a birth mother who knowingly misidentifies the child's father in an attempt to deceive the actual father, an adoption agency, or the prospective adoptive parents is subject to monetary fines.[195] Second, the Act requires that notice be served upon any individual whose consent to the adoption is required.[196] Under the provisions of the Act, even those persons who have already consented to the adoption will receive notice that the prospective adoptive parents have filed a petition to adopt.[197] The Act requires that notice be given to a man who is claiming to be or who is named as the child's father.[198] This notice is independent of whether the Act will ultimately require the father's consent to the adoption. The provisions determining who is entitled to notice under the Act are broader than those that define the category of "fathers" required to consent to the adoption.[199] Therefore, under the provisions of the Act, even though a father's consent may not ultimately be required for the court to grant the petition to adopt,[200] a known potential father will receive notice of

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App. 1990), the child was born on December 20, 1989, the petition to adopt was filed in February 1990, and the court's opinion, remanding the case, was not issued until December 20, 1990, the child's first birthday. *Id*. In *In re* Adoption of Doe, 543 So. 2d 741, 743 (Fla.), *cert. denied*, 493 U.S. 964 (1989), the child was born on September 12, 1986, and placed with the adoptive family on September 15, 1986. The birth father challenged the adoption four days later. *Id*. at 743. The court's opinion, remanding the case, was not issued until April 13, 1989. *Id*. at 741.

195. UAA § 3-404 cmt.; *id*. § 7-105(e).

196. *Id*. § 3-401(a)(1). However, notice need not be served on an individual whose parental rights have been terminated. *Id*.

197. *Id*.

198. UAA § 3-401(a)(3). This provision requiring notice is limited to those men whose "paternity . . . has not been judicially determined." *Id*. Also, it is not necessary to serve notice on a man who has executed a statement either denying paternity or disclaiming any interest in the child. *Id*.

199. Compare the provisions in § 2-401(a)(1), *see supra* note 75, to those in § 3-401, *see supra* note 101.

200. For example, the father's consent to the adoption may not be required because

the pendency of the adoption proceedings.[201] The Act also eliminates the difficulty of determining who is entitled to notice in light of the abandonment issue, as it does not use the abandonment exception to consent in evaluating the necessity of a parent's consent.

Finally, the Act places the responsibility for providing notice to a potential father not only on the natural mother,[202] but also on the prospective adoptive parents[203] and the court.[204] By requiring several parties to assume this responsibility, the Act increases the chances that an unknown or unnamed father will receive notice. Although self-interest may compel one party to withhold notice, the same motives will not likely apply to all parties involved. Thus, where the natural mother, because of fear or other motives, declines to pursue serving notice on the child's father, this same interest will not drive the prospective adoptive parents. Instead, the prospective adoptive parents will likely want to ensure that the adoption proceeding cannot later be challenged. Their motivation to protect their new family may very well provide the necessary incentive to ensure that the child's birth father does indeed receive notice of the adoption proceedings. Also, the court's required investigation of unknown fathers

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he had not provided financial support to the child, or because he has either not been judicially determined to be the child's father or has not signed a document establishing his paternity. UAA § 2-401(a).

201. This is because the notice provisions of the Act require that the prospective adoptive parents take responsibility for serving notice on any man who is named as or who is claiming to be the child's father. *Id*. § 3-401(a)(3). The Act also requires the court to undertake an investigation if at any time during the proceeding it determines that an unknown father may not have received notice. *Id*. § 3-404(a). The Act requires the court to inquire whether the natural mother was married at the time of conception, whether the woman was living with any man at the time of conception, whether the woman has received financial support or promises of support with respect to her pregnancy, whether the mother has named a father in the birth certificate, and whether anyone has acknowledged paternity. *Id*. § 3-404(b). If the court is able to identify the child's father, notice must be served on him. *Id*. § 3-404(c).

202. The Act requires that the natural mother be advised that if she fails to name or misnames the father, the adoption will be subject to attack. *Id*. § 3-404(e).

203. UAA § 3-401(a)(3). Specifically, the provision states that the prospective adoptive parents are responsible for serving notice on "an individual whom the petitioner knows is claiming to be or who is named as the father or possible father of the minor adoptee." *Id*. Thus, the prospective adoptive parents would not be required to undertake an investigation to determine the identity and whereabouts of any and all potential fathers. However, under circumstances in which they are aware of the identity of a potential father, the prospective adoptive parents have an obligation to ensure that this individual receives notice of the adoption proceeding.

204. *Id*. § 3-404(a).

places the responsibility on a party that does not have an emotional stake in the proceedings.

C. Finality

This aspect of adoption proceedings allows the greatest potential to protect adoptions from challenge. By setting an outside time limit after which an adoption may no longer be challenged, despite any procedural defects, the adoptive parents and the child can be assured that their parent/child relationship is secure.

1. Florida Law

Under Florida's adoption provisions, an adoption may be challenged for a period up to one year.[205] After a year has elapsed from the entry of the final adoption decree, the adoption may no longer be challenged. However, the Florida Statutes require only that the challenge be initiated within one year. They do not require that the court hear the appeals and reach a final decision within that one-year period.

2. The Uniform Adoption Act

In contrast to Florida's very limited provisions with respect to adoption challenges, the Act's provisions are more numerous and restrictive. The Act limits the time for challenging an adoption to six months.[206] The terms of the Act also limit the individuals who have

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205. FLA. STAT. § 63.182 (1993).

206. UAA § 3-707(d). Under the adoption laws of many states, it is simply not clear how long an adoption may be challenged for "fraud, undue influence, duress, failure to provide notice, lack of subject matter jurisdiction, or other alleged irregularities or constitutional violations." *Id*. § 3-707 cmt. Thus, the mere fact that the Act sets a specific limit will be a large step toward finality in many states.

The Act's six-month limitation to the challenge of an adoption is on the edge of constitutional due process limits. The comments to this provision state six months is sufficient since there will be few instances in which an adoption is subject to challenge if the Act's provisions are followed. *Id*. The drafters cite several cases where courts have upheld time limitations regarding the challenge of an adoption: Street v. Hubert, 491 N.E.2d 29 (Ill. App. 1986) ("one year limitation for challenging an adoption does not violate due process, even if alleged fraud is not discovered until after statute has run; limitations period is reasonably related to interests of the state and children in finality of adoptions"); D.L.G. v. E.L.S., 774 S.W.2d 477 (Mo. 1989) ("one year limitation for challenging adoption is not unconstitutional; failure to serve father was `mere procedural irregularity' in light of his failure to accept responsibility for his child within reasonable

standing to challenge the adoption. The Act provides that a person who was served with notice of the adoption proceedings, but who failed to respond, appear, or file an answer or paternity claim cannot challenge a final decree of adoption.[207] Even if an individual whose parental relationship to the child was terminated without personal service of notice begins a challenge to the adoption within the six-month time limit, the adoption will be presumed valid.[208] The challenging party must establish by clear and convincing evidence that the adoption is not in the child's best interests.[209] Oth

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period of time; rights of adoptive family should not remain in limbo"); Maertz v. Maertz, 827 P.2d 259 (Utah App. 1992) ("birth mother's effort to vacate adoption three years after it became final was not brought within reasonable time under Rule 60(b), especially because child's need for stability creates a `special need' for finality in adoption proceedings"). UAA § 3-707 cmt. (quoting the holdings as phrased by the drafters). However, in all the state cases cited by the drafters, none of the time limitations was less than one year.

Whether the courts will hold a six-month limitation constitutional is questionable. The one-year limitation currently in effect in Florida, *see supra* note 205, which has been held constitutional, is simply an arbitrary line. Even with a six-month limitation, an individual challenging the adoption will likely have had close to one year to discover the child's birth and the adoption proceedings. The six-month limitation does not begin to run until after the adoption has been finalized. Thus, the individual potentially has the nine-month pregnancy term plus the amount of time it takes to place the child and finalize the adoption plus another six months after finalization to challenge the adoption.

As a matter of policy, the six-month limitation promotes the interests of the child by providing finality. The interests being balanced in the drawing of such a line are the due process concerns of the individuals who may potentially challenge the adoption against the interests of the child and the adoptive parents in finality. If an arbitrary line is to be drawn, such a line should be drawn with the best interests of the child in mind. As Justice Holmes wrote, "[T]he fact that some cases . . . are very near the line makes it none the worse. That is the inevitable result of drawing a line where the distinctions are distinctions of degree; and the constant business of the law is to draw such lines." Dominion Hotel v. Arizona, 249 U.S. 265, 268 (1919).

207. UAA § 3-707(b).

208. *Id*. § 3-707 cmt. In order to defeat this presumption the individual who is challenging the adoption must establish that the adoption is not in the best interests of the child. *Id*.

209. *Id*. By way of comparison, Florida courts have specifically stated that in a challenge to an adoption based on a defect in the consent, "[t]he best interests of the child are not . . . a factor which will obviate the necessity of consent to adoption." *In re* Adoption of Cottrill, 388 So. 2d 302, 304 (Fla. 3d Dist. Ct. App. 1980). In her concurring opinion in *Baby E.A.W. II*, Judge Pariente noted:

> [A]t the outset, we are faced with a legal dilemma. We are not to consider the best interests of the child unless the child is legally available for adoption; yet the supreme court has also told us that `[t]he child's well-being is the *raison d'etre* for determining whether a child has been abandoned by a parent or parents.' We are not to consider the bonding that has taken place between the

erwise, the court will deny the challenge and uphold the adoption.[210] A policy of "minimiz[ing] the risks of serious harm to minor children and their adoptive families which arise if the finality of adoptions and termination orders is not secure" motivates the Act's firm stance with regard to the finality of adoptions.[211]

Although the Act provides that an appeal from an adoption decree must be heard "expeditiously,"[212] no concrete provisions are made to ensure that this happens. This failure leaves the six-month limit without as much effect as it might otherwise have.

III. BABY EMILY CASE UNDER THE ACT

The Act will succeed if it can promote certainty and stability in adoptions. Certainly, it will be a triumph if it can prevent the horror story adoption cases like those of Baby Emily, Baby Jessica, and Baby Richard.[213] The question is whether the Act can prevent a child from being taken from the only home that he or she has known after two, three, or four years have passed. In Baby Emily's case, it seems as if the Act would have indeed prevented the long court battles and uncertainty.[214] Under the Act's provisions, it is unlikely that the birth father's consent to the adoption would have been required.

A. Counseling

First, the Act would have had an impact through its counseling provisions.[215] Since the birth mother was not attempting to revoke her consent or to object to the adoption,[216] it is unlikely that coun

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> adoptive parents and the child; yet we know from the testimony in the record in this case that the child may possibly suffer serious psychological damage upon being removed from the only home she has ever known.

Baby E.A.W. II, 647 So. 2d at 925 (Pariente, J., concurring specially).

210. UAA § 3-707 cmt.

211. *Id*.

212. *Id*. § 3-707(a).

213. For a discussion of the Baby Jessica and Baby Richard cases see *supra* note 26.

214. For Joan Hollinger's similar analysis of the outcome of the Baby Jessica case under the Act's provision, see Hansen, *supra* note 14, at 63.

215. UAA § 2-404(e). Prior to executing a consent the parent must have been informed of the availability of both personal and legal counseling. *Id*. See *supra* text accompanying notes 76–85 and 154–62 for a discussion of the Act's provisions with respect to the parents' signing the consents.

216. In fact Linda, Emily's birth mother, supports the adoption. Sherri Winston, *Panel to Review Baby Emily Case*, SUN-SENTINEL (Palm Beach Ed.), Sept. 10, 1994, at

seling would have made a difference with respect to her. Linda, the birth mother, conditioned her consent on a finding that the child's birth father had indeed abandoned the child.[217] She specifically stated that it would be detrimental to the child and not in the child's best interests for the birth father to have custody.[218]

However, counseling may have made a difference with respect to Emily's birth father. When Linda first told Emily's birth father that she was considering putting the child up for adoption, he responded that she should "do whatever you have to do."[219] During Linda's pregnancy, Gary did not indicate any objection to the child being placed for adoption.[220] Then, in July 1992, Gary spoke to the intermediary in the adoption proceeding and indicated that he would not consent to the adoption.[221] Perhaps, if he had been offered counseling at the time when he spoke to the intermediary or when his written consent was sought, it would have made a difference. The facts do not indicate Gary's reasons for not objecting to the idea of adoption at the time Linda first mentioned it. If the objections were motivated by feelings of ill will toward the birth mother, perhaps counseling could have made an impression. Counseling might also have made a difference if the birth father was withholding his consent based on a concern that the adoptive parents could not or would not provide a good home for the child.

B. Six-Month Limit to Challenge the Adoption

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217. *Baby E.A.W. II*, 647 So. 2d at 925 (Pariente, J., concurring specially).

218. *Id*.

219. *Baby E.A.W. II*, 647 So. 2d at 921. Although Gary disputes this characterization of his reaction, his subsequent behavior and lack of involvement during the pregnancy simply do not support his contention that he was "overjoyed" at the prospect of being a new father. *Id*.

220. *Id*.

221. *Id.* at 931 (Pariente, J., concurring specially). The court questioned the intermediary's conduct in several respects. First, the intermediary knew that the birth father would not consent to the adoption, yet she still sought and obtained a prebirth order stating that the birth father had waived his rights. *Id*. at 930. On August 12, 1992, Charlotte H. Danciu, the intermediary, filed papers with the court stating that "the birth father's consent has been waived by the court." *Id*. However, it was not until August 12, 1992, that the court signed an order waiving the birth father's consent. *Id*. Danciu also did not inform the adoptive parents of the stance taken by the birth father. *Id*. at 931.

Gary made known his objections to the adoption as early as July 1992,[222] although Emily was not born until August 1992.[223] The court fully tried the issue of abandonment in October 1992, and entered a judgment that the birth father had not abandoned his daughter.[224] Under these circumstances, the Act's six-month limitation on challenges brought against a decree of adoption[225] would not have prevented the long court battle. It is possible, however, that the Act's requirement that an "appeal from a decree of adoption . . . be heard expeditiously" would have made a difference.[226] Although the challenge to Baby Emily's adoption was begun well within the six-month time limit, the hearings and rehearings were very lengthy and delayed.[227] By the time the court ordered the adoptive parents to seek to finalize the adoption, Emily was over two years old.[228] Admittedly, the Act does not have explicit provisions to implement the requirement that appeals be heard "expeditiously." Clearly, though, a delay in the hearing from February 1992 until September 1992 could not be expeditious under any definition of the word.[229]

C. Appointment of Guardian Ad Litem

Counsel was not appointed to represent Emily until November 3, 1992.[230] By that time, the trial court had already entered a judgment that the birth father did not abandon his child and that his consent to the adoption was necessary.[231] Under the terms of the Act, however, the court must appoint a guardian ad litem in any

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222. See *supra* note 221 for a discussion of the birth father's contacts with the intermediary.

223. *Baby E.A.W. I*, 647 So. 2d at 943 (appendix).

224. *Baby E.A.W. II*, 647 So. 2d at 934 (Klein, J., dissenting).

225. UAA § 3-707(d). See supra notes 119–121, 206–12 and accompanying text for a discussion of the Act's provisions regarding the finality of adoptions.

226. *Id*. § 3-707(a).

227. See *supra* note 18 for a detailed discussion of the court proceedings.

228. *Baby E.A.W. II*, 647 So. 2d at 922–23.

229. These court proceedings began in September 1992 and concluded in July 1995, with the Florida Supreme Court determining that the father's lack of emotional support toward the child's mother during pregnancy may be considered in making a determination of abandonment. *Id*. at 924; *Baby E.A.W. III*, 658 So. 2d at 965, 967. In January 1996, the United States Supreme Court denied the birth father's petition for a writ of certiorari. G.W.B. v. J.S.W., 116 S. Ct. 719 (1996).

230. *Baby E.A.W. I*, 647 So. 2d at 944 (appendix).

231. *Id*.

contested adoption.[232] From the time that the birth father filed a motion to set aside his consent waiver in early September 1992, Emily's interests would have been represented under the Act, which specifically states that the very purpose of such a requirement is so that the needs and interests of the child remain the focus of the proceeding.[233] It is impossible to state with certainty whether the guardian ad litem could have made a difference in the proceeding. But at the very least, Emily's guardian ad litem could have continually reminded the court of the increasing potential harm to Emily with every day that passed.[234]

D. Birth Father's Consent

The single most important issue in the Baby Emily case is whether Gary, Emily's birth father, was required to consent to the adoption. This is the crux of the issue that was litigated in the courts for over three years. Unless the court found that Emily's birth father had abandoned her, his consent to the adoption was required.[235] Ultimately, the courts held that Gary had abandoned his child, and thus that his consent was not necessary.[236]

Under the Act's provisions, Gary, Emily's birth father, would be required to consent to her adoption if he had either married or at-

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232. UAA § 3-201(b). See *supra* notes 92–97 for a discussion of the Act's provisions regarding court appointment of a guardian ad litem.

233. *Id*. § 3-201 cmt.

234. While the best interests of the child were not a consideration at this point under Florida law, see *supra* note 18, the best interests are considered under the Act. Specifically, the drafters note that the appointment of a guardian ad litem is designed to encourage both the court and the parties to the adoption proceeding to focus on the "needs of the minor." UAA § 3-201 cmt.

235. "Simplistically stated, the birth father's consent to the adoption was required in this case unless the evidence shows that he `abandoned' the child." *Baby E.A.W. II*, 647 So. 2d at 920. However, in neither opinion did the court state under which provision of the Florida Statutes the birth father's consent is required. Under the Florida Statutes, the consent of Emily's birth father would be required under the following circumstances: (1) if the minor was conceived or born while the father was married to the child's mother; (2) if the minor has been adopted by the man; (3) if a court has established the minor to be his child; (4) if the father has acknowledged in writing that he is the child's father; or (5) if the father has consistently provided support for the child. FLA. STAT. § 63.062(1)(b) (1993).

236. The Fourth District Court of Appeal determined that Gary had abandoned his daughter and, therefore, that his consent to her adoption was not required. *Baby E.A.W. II*, 647 So. 2d at 922. The Florida Supreme Court approved the finding of abandonment. *Baby E.A.W. III*, 658 So. 2d at 967.

tempted to marry her mother, if a court had determined that Gary was Emily's father and Gary both had provided "in accordance with his financial means" reasonable and consistent payments for her support and had visited or communicated with Emily, or if he had openly accepted Emily into his home and held her out as his child.[237] Clearly, Gary neither married nor attempted to marry Emily's birth mother. Thus, the necessity of Gary's consent turned on whether he provided reasonable and consistent support payments for Emily and whether he visited or communicated with her.[238]

From November 1991 until February 1992, Gary did no more than pay for his half of the household expenses.[239] Subsequent to Linda's accident, the couple entered into an agreement. The agreement provided that Linda must pay one half of the household expenses.[240] After Linda moved out in June 1992, she did not receive any financial support from Gary.[241] Under these facts, Gary failed to

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237. UAA § 2-401(a).

238. *Id*. § 2-401(a)(1)(iii)(A).

239. *Baby E.A.W. II*, 647 So. 2d at 920–21. The facts of the case indicate that Gary was earning between $300 and $400 per week as a painter. *Id*. at 921–22. In its June 1994 opinion, the court made much of the fact that Gary was unable to provide for prenatal care and focused on the fact that Linda was a recipient of Medicaid. *Baby E.A.W. I*, 647 So. 2d at 947–49 (appendix). The court stated that there is "no reasonable basis to charge Gary with failing to pay for all or part of her prenatal medical costs, when the governmental standards establish that persons with Gary and Linda's joint income *required* Medicaid assistance." *Id*. at 949 (emphasis in original). Early in its opinion the court acknowledged that Gary was indeed earning between $300 and $400 per week. This results in an annual income of between $14,400 and $19,200 per year. Yet, in its June 1994 opinion, the court did not recognize that Gary could have in some way contributed to the support of his child. Perhaps he could not have afforded to singlehandedly pay for Linda's prenatal care. However, that is not what is required of him under either the Florida Statutes or the Act.

240. *Baby E.A.W. II*, 647 So. 2d at 920. But see how the same court stated these facts in its June 1994 opinion: "Hence, for the first six months of her pregnancy, he contributed more than half of their expenses, and thus regularly and continuously supported her in helping to maintain the household in which she resided." *Baby E.A.W. I*, 647 So. 2d at 941 (appendix).

241. *Baby E.A.W. II*, 647 So. 2d at 921. Although this was the finding made by the trial court, the court noted that the father's testimony at the October 1992 hearing was contrary to this. In fact, the father testified at the hearing that he was financing all of the food and shelter for the natural mother. *Id*. The appellate court, however, specifically found that

> even if the [c]ourt accepts the natural father's testimony that he was supplying in excess of one-half of the finances of the natural parents, there can be no doubt that he was living off her food stamps and demanding her Aid to Dependent Children check to supplement the money he was bringing in as a painter.

Id. at 922.

provide reasonable and consistent support payments for the benefit of his child. Thus, under the Act, Gary's consent to Emily's adoption would not be required.

In holding that Gary had indeed abandoned his child, the court also pointed to his failure to exhibit any affections for the child.[242] The court was quick to point out that Gary

> did not rush to the mother's side, offer her any financial assistance, or attempt to become a `prospective father.' What he did was rush to the Legal Aid Society of both Broward and Palm Beach Counties in an effort to get a free lawyer to start fighting for some supposed legal right that he had . . . . More importantly, it is a simple fact that during the time he was seeking a lawyer, he was still completely out of contact with the natural mother and the unborn infant, both financially and emotionally. Other than attempting to assert his legal rights, that sad fact has never changed.[243]

The Act does not indicate whether the visitation or communication requirement pertains to unborn infants. It is unlikely that the Act could have intended such a provision to apply to the unborn. Assuming arguendo that this is a correct interpretation of the provision, Gary's conduct toward Emily before her birth is irrelevant to determining whether his consent to the adoption is required. However, this does not excuse his conduct subsequent to her birth. There is no indication that Gary ever attempted to see his child. It is unlikely that under the provisions of the Act Gary would have been required to consent to Emily's adoption. However, even if he were required to consent based upon his limited financial contributions and the fact that Linda placed Emily for adoption very soon after her birth, his consent could be obviated if his parental relationship to Emily was terminated.

E. Termination of the Parent/Child Relationship and the Child's Best Interests

The Act states that an individual whose parental relationship to the child has been terminated is not required to consent.[244] A num-

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242. *Id.*
243. *Id.*
244. UAA § 2-402(a)(2). See *supra* notes 107–12 and accompanying text for a discus-

ber of individuals,[245] including the birth mother[246] and the prospective adoptive parents, may institute termination of the parent/child relationship.[247] Thus, in the Baby Emily case, once Gary indicated that he would not consent to the adoption, either Linda or the prospective adoptive parents could have begun proceedings to terminate his parental relationship to the child. Once Gary was served with such a petition, he would have twenty days within which to respond.[248] Assuming that Gary responded and filed a paternity claim within the twenty days, the court would then hold a hearing.[249]

The Act lists five grounds for termination of the parent/child relationship.[250] Essentially the grounds are failure to make reasonable prenatal, natal, postnatal,[251] and support payments[252] and failure to visit the child,[253] if the child is six months of age or younger. In addition, the parent/child relationship may be terminated if the parent has been convicted of a violent crime and the facts of the crime or the parent's behavior indicate that the parent is unfit to maintain a parent/child relationship with the minor.[254] The Act requires the court to determine whether one of these grounds exists and then whether termination is in the best interests of the child.[255]

If either Linda or the prospective adoptive parents filed the petition to terminate at the outset of the proceedings in September 1992, Gary's parental relationship could have potentially been ter-

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sion of the Act's provisions regarding termination of the parent/child relationship.

245. Under the Act, proceedings for the termination of the parent/child relationship may be begun by a parent or guardian who selected prospective adoptive parents, a parent whose spouse has filed a petition to adopt his or her stepchild, a prospective adoptive parent, or an agency. UAA § 3-501. The typical child protection laws only allow termination proceedings to be instituted by the state. *Id*. art. 3, part 5 cmt.

246. *Id*. § 3-501(1).

247. *Id*. § 3-501(3).

248. UAA § 3-504(a). During this 20-day period, Gary would also have to file a claim of paternity. *Id*.

249. *Id*. § 3-504(c).

250. *Id*. See *supra* note 111 and accompanying text for a discussion of the grounds for termination of the parent/child relationship.

251. UAA § 3-504(c)(1)(i).

252. *Id*. § 3-504(c)(1)(ii).

253. *Id*. § 3-504(c)(1)(iii).

254. *Id*. § 3-504(c)(3). This provision is designed to cover violent criminal offenses by one parent against another. *Id*. § 3-504 cmt. However, the language of the provision does not limit the application of the provision to that particular scenario.

255. UAA § 3-504(c).

minated under the Act on several grounds. First, although Gary was earning between $300 and $400 a week, he paid for none of Linda's prenatal, natal, or postnatal expenses.[256] Also, Gary made no payments of any kind toward Emily's support.[257] Gary may, however, be able to provide a compelling reason for failure to provide support payments since Linda placed Emily for adoption very soon after her birth.[258] Finally, although the court never explicitly stated in the opinion, the facts indicate that Gary did not ever visit his child.[259] Based on these facts, a court would probably have terminated Gary's parental rights.

In Baby Emily's case, there exists a second ground for termination of Gary's parental relationship under the Act. In 1977 Gary was convicted of burglary and sexual battery.[260] In 1985 he was again arrested for sexual battery.[261] Based on the violent nature of his criminal conviction for burglary and sexual battery, his parental rights could potentially be terminated under the Act.[262] In addition to considering the violent criminal conviction, the Act looks at the circumstances of the crime and whether the parent's behavior indicates that he or she is unfit to maintain a parent/child relationship.[263] In the instant case, the court could consider both Gary's 1985 arrest[264] and Linda's testimony regarding Gary's drinking and physical and emotional abuse toward her[265] in deciding whether to terminate the relationship. Based on the combination of the 1977 conviction for burglary and sexual battery, the 1985 arrest for sexu-

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256. *Baby E.A.W. II*, 647 So. 2d at 920–21. In fact, during the course of Linda's entire pregnancy, Gary bought Linda one pair of stretch pants, which she denies receiving, and a $40 crib, for which Gary's mother actually paid. *Id*.

257. *Id*. at 922.

258. *Baby E.A.W. I*, 647 So. 2d at 943 (appendix).

259. *Baby E.A.W. II*, 647 So. 2d at 922. See *supra* text accompanying note 243 for a discussion of the court's description of Gary's behavior.

260. *Baby E.A.W. I*, 647 So. 2d at 945 (appendix). The Fourth District Court of Appeal's June opinion indicated that these convictions became the focus of the rehearing. *Id*. The court noted that when the sole issue is whether a father has waived his right to consent to the adoption, evidence that tends to show whom the child would be better off with is not relevant. *Id*. at 947.

261. *Id*. at 945. The 1985 arrest for sexual battery resulted in an acquittal. *Id*.

262. *See* UAA § 3-504(c)(3). See *supra* notes 107–12 and accompanying text for a discussion of the Act's provisions regarding termination of the parent/child relationship.

263. UAA § 3-504(c)(3). *See supra* note 262.

264. *Baby E.A.W. I*, 647 So. 2d at 945 (appendix).

265. *Baby E.A.W. II*, 647 So. 2d at 921. For examples of Gary's behavior towards Linda, see *supra* note 5.

al battery, and Linda's testimony, it seems likely a court would find that Gary was unfit to maintain a parent/child relationship with Emily and that termination of the relationship was in her best interests.

IV. CONCLUSION

While Baby Emily is not the focus of this Comment, she and other children like her should be the focus of adoption laws. Cases like hers demonstrate what is wrong with contemporary adoption law. There is no valid reason for the future of an adopted child to be in limbo for a period of over three years.[266] Both Emily and her adoptive parents are entitled to a sense of closure. All the parties involved in an adoption suffer when adoptions are handled the way hers was. To avoid similar problem adoptions, Florida should adopt the Uniform Adoption Act. The Act is designed to ensure that there will never be another adoption similar to that of Baby Emily, Baby Jessica, or Baby Richard.[267]

Adoption proceedings ultimately require the court to consider the interests of at least three parties: the birth parents, the adoptive parents, and the child. The Uniform Adoption Act has taken the position that the best interests of the child should be of primary importance.[268] Although the Act is by no means a perfect solution to all of the potential pitfalls that may arise in the course of an adoption, it is a step in the right direction. The Act's strength is its detail. It attempts to address all potential issues that may arise in the course of an adoption. However, the single most important step that the Act takes is the recognition that the best interests of the child should be of paramount concern.

The Act's consent provisions require that the individual signing

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266. Baby Emily was placed for adoption soon after her birth in August 1992. *Baby E.A.W. I*, 647 So. 2d at 943 (appendix). The Fourth District Court of Appeal's decision advising the adoptive parents to seek to finalize the adoption was not issued until November 1994. *Baby E.A.W. II*, 647 So. 2d 918, 923 (Fla. 4th Dist. Ct. App. 1994). Finally, in July 1995, the Florida Supreme Court approved the Fourth District's decision that Gary had abandoned his daughter and that his consent was not necessary in order for Baby Emily to have been placed for adoption. *Baby E.A.W. III*, 658 So. 2d at 967.

267. For a discussion of the Baby Jessica and Baby Richard cases see *supra* notes 26 and 161.

268. See *supra* note 29 for a discussion of the goals and aims of the Act.

the consent must be made aware of the consequences.[269] This stance alone represents a huge step toward preventing subsequent challenges to adoptions. Also, the Act sets very specific provisions about who must consent.[270] Further, in determining the circumstances under which an unwed birth father must consent, while the Act does not get away entirely from the inherent uncertainty in fact-specific standards, it takes a step in the right direction. Unlike Florida adoption law, it moves away from being concerned with the intent and motivations of the birth parents and instead concerns itself only with their actions. The Act takes the position that if the unwed birth father has not taken some affirmative steps to support and maintain a relationship with his child, he is not entitled to a veto power regarding the adoption. Such a stance is clearly in the best interests of the child. It prevents an adoption from being vetoed by an individual who has no ties, other than biological ones, to the child.

With respect to the issues of notice and finality the Act is an improvement simply because it deals with issues that have been left unaddressed. The Act's provisions with respect to notice are lengthy and explicit. Potential challenges to adoptions by unwed fathers are limited through provisions that concentrate on serving notice on them.[271] Lastly, the Act cuts in half Florida's one-year time limit within which an adoption may be challenged. Under the Act, after six months the adoption is final, period.[272] Although such a time limit does not address the problems of court delays and the extended periods of time that reaching a final decision can take, it is a step toward focusing more on the interests of the child.

The analysis of the Baby Emily case makes it clear that the Uniform Adoption Act will make a positive difference in the lives of adopted children. Florida adoption laws allowed Baby Emily's future to linger in the court system for over three years.[273] Florida adoption laws resulted in a Florida appellate court stating that the best inter-

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269. See *supra* note 77 and accompanying text for a discussion of the Act's requirement that the birth parent be made aware of consequences of signing a consent to adopt.

270. See *supra* notes 69–75 and accompanying text for a discussion of the necessary consents.

271. For a detailed discussion of these provisions see *supra* notes 101–06, 195–204 and accompanying text.

272. See *supra* notes 119–21, 206–12 and accompanying text for a discussion of the Act's finality provisions.

273. *See supra* note 266 and accompanying text.

ests of Emily were not an issue in the proceedings.[274] At the time the court made this statement Baby Emily had been living with her adoptive family for almost two years.[275]

At several different stages in the proceedings, the Act would have made a difference to Baby Emily. First, the Act would have made a difference through provisions regarding counseling[276] and the mandatory appointment of a guardian ad litem.[277] More importantly, the issue of the necessity of Gary's consent would have been clearer under the Act's provisions. In its November opinion, the court makes it clear that Gary did not provide reasonable support for his child.[278] This fact alone eliminates the necessity of Gary's consent. Also, Gary's consent to Emily's adoption would have been unnecessary had his parental rights been terminated.[279] Under the Act both Linda and the adoptive parents could have petitioned the court to terminate Gary's parental rights.[280] In ruling on such a petition the court would have been required to consider Emily's best interests.[281]

The only true test of the Act's provisions will be through their application. If the provisions are applied in accordance with the comments and intent of the drafters and with the goals of the Act in mind, the Act will benefit adopted children. If Baby Emily is indicative of the Act's potential for furthering the goals of the best interests of the child, it appears that it will be a success.

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274. *Baby E.A.W. I*, 647 So. 2d at 946–47 (appendix). See *supra* note 18 for the court's language.

275. *See supra* note 266.

276. See *supra* notes 215–21 and accompanying text for a discussion of the ways in which the counseling provisions of the Act would have affected the Baby Emily case.

277. See *supra* text accompanying notes 230–34 for a discussion of the potential effect on the Baby Emily case of the Act's guardian ad litem provisions.

278. See *supra* text accompanying notes 239–41 for a discussion of Gary's financial support of his child.

279. UAA §2-402(a)(2). See *supra* text accompanying notes 244–65 for a discussion of the application of this provision of the Act to the Baby Emily case.

280. *Id*. § 3-501.

281. *Id*. § 3-504(c).