

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Dep. Director
Re: “Surrender” in the Context of Voluntary Relinquishment of Parental Rights
Date: April 08, 2024

MEMORANDUM

Project Summary

The act of adoption provides a legal and permanent family for an individual who, for various reasons, cannot be raised by their biological or legal parent(s).¹ The “legal transfer of all parental rights and responsibilities from each birth and legal parent[] to another person who desires to assume those rights and responsibilities”² begins with the *surrender* of a child.³

The voluntary surrender of child custody to an approved agency is addressed within the framework of New Jersey statutes, specifically outlined in Title 9, governing “Children – Juvenile and Domestic Relations Courts.”⁴ The surrender of a child is also detailed in Title 30, which pertains to “Institutions and Agencies.”⁵ The term “surrender” appears in twenty-one statutory sections across Title 9 and Title 30, nineteen of which concern parental rights.⁶

The New Jersey State Bar Association (“NJSBA”) requested, pursuant to N.J.S. 1:12A-8,⁷ that the New Jersey Law Revision Commission review the use of the term “surrender” in the

¹ N.J.A.C. § 3A:50-1.5(b)(1)-(6) (providing that adoptions are classified in six categories: (1) agency; (2) foreign; (3) identified or private; (4) independent; (5) stepparent; and (6) relative).

² N.J.A.C. § 3A:50-1.5.

³ N.J. STAT. ANN. §§ 9:3-38(j), 9:3-41 (West 2024).

⁴ N.J. STAT. ANN. §§ 9:2-16, 9:2-17.

⁵ N.J. STAT. ANN. § 30:4C-23 (providing that the Division of Child Protection and Permanency... may, in cases where it would be to the permanent advantage of the child, take voluntary surrenders and releases of custody and consents to adoption from the parents... having the authority to give such surrenders).

⁶ N.J. STAT. ANN. § 9:2-13 (West 2024) (definitions); N.J. STAT. ANN. § 9:2-14 (surrender of child custody; validity); N.J. STAT. ANN. § 9:2-15 (surrender or termination of rights of one parent; rights of other parent); N.J. STAT. ANN. § 9:2-16 (voluntary surrender to approved agency); N.J. STAT. ANN. § 9:2-17 (form of surrender); N.J. STAT. ANN. § 9:2-18 (action to terminate parental rights; notice; report); N.J. STAT. ANN. § 9:2-19 (determinations and declarations of court); N.J. STAT. ANN. § 9:3-38 (definitions); N.J. STAT. ANN. § 9:3-41 (surrender of child; acknowledged and signed instrument; relinquishment of rights and consent to adoption; validity; acceptance of custody by approved agency); N.J. STAT. ANN. § 9:3-41.1 (surrender of child to agency; provision of available information on child’s development to prospective parent); N.J. STAT. ANN. § 9:3-45 (notice of complaint and hearing to parent; service; contents; when notice not required); N.J. STAT. ANN. § 9:3-46 (objection by parent; prohibition of judgment of adoption; exception; guardian or person standing in loco parentis; notice and standing to object); N.J. STAT. ANN. § 9:3-47 (action of complaint for adoption; child received from approved agency); N.J. STAT. ANN. § 9:3-48 (action on complaint for adoption; child not received from approved agency); N.J. STAT. ANN. § 9:17-65 (gestational carrier agreement; requirements); N.J. STAT. ANN. § 9:17-68 (applicability of laws); N.J. STAT. ANN. § 30:4-49.2 (settlement of minor born in wedlock); N.J. STAT. ANN. § 30:4C-2. Definitions (West 2022); and N.J. STAT. ANN. § 30:4C:23. (voluntary surrenders and releases of custody and consents to adoption).

⁷ N.J.S. 1:12A-8 (providing that the Commission shall “[r]eceive and consider suggestions and recommendations from... bar associations, members of the bar and the public generally....”).

context of voluntary relinquishments of parental rights and consider replacing the term with “transfer” to describe the “nature of the issue.”⁸

In the context of parental rights, the Commission’s staff has reviewed the term “surrender” in the New Jersey statutes and fifteen other jurisdictions to determine the feasibility of replacing it with the term “transfer,” “relinquish,” or “any other comparable term,” as proposed by the NJSBA.⁹

Background

Adoption is the process through which individuals who are not biologically related establish the legal and relational status of parent and child.¹⁰ In New Jersey, there are six classifications of adoptions.¹¹ Adoptions are classified as: (1) agency adoption;¹² (2) foreign adoption;¹³ (3) identified or private adoption;¹⁴ (4) independent adoption;¹⁵ (5) stepparent adoption;¹⁶ and (6) relative adoption.¹⁷ These classifications of adoption are categorized as “agency” placement adoptions¹⁸ and “non-agency” placement adoptions.¹⁹

The birth parent’s parental rights to the adoptee must be terminated as a prerequisite for a finalized adoption.²⁰ An individual’s parental rights may be terminated in one of two proceedings.

⁸ E-mail from Lisa Chapland to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm’n, forwarding June 30, 2022, letter from Jeralyn Lawrence, President of the N.J. State Bar Ass’n (June 30, 2022, 02:22 p.m. EST), (on file with the NJLRC) [hereinafter “NJSBA letter”].

⁹ NJSBA letter at *1.

¹⁰ N.J. ADMIN. CODE § 3A:50-1.5(a) (defining adoption as “the legal transfer of all parental rights and responsibilities from each birth and legal parent(s) to another who desires to assume those rights and responsibilities.”). N.J. STAT. ANN. § 9:3-50(b) (providing that “[t]he entry of a judgment of adoption shall establish the same relationships, rights, and responsibilities between the child and the adopting parent as if the child were born to the adopting parent in lawful wedlock.”). *In re Adoption of J.E.V.*, 226 N.J. 90, 100 (2016) (“[a] completed adoption establishes the same relationship[] . . . between the child and the adopting parent as if the child were born to the adopting parent.”) (internal quotation marks omitted).

¹¹ N.J. ADMIN. CODE § 3A:50-1.5(b)(1)-(6).

¹² *Id.* (defining agency adoption as “an adoption where the birth parent(s) and the adoptive parent(s) come to an agency independent of each other and there is no prior relationship for the purpose of adoption. . .”).

¹³ *Id.* (defining foreign adoption as the adoption of a child who resides in a country other than the United States).

¹⁴ *Id.* (defining identified or private adoption as “an adoption where the agency becomes involved in providing services to each birth parent, legal parent and prospective adoptive parent who is considering a plan to place the child for adoption in the prospective adoptive parent’s home.”).

¹⁵ *Id.* (defining independent adoption as “an adoption where the child is received in the adoptive home from a source other than an agency.”).

¹⁶ *Id.* (defining stepparent adoption as “an adoption of a child by the birth parent’s current spouse.”).

¹⁷ *Id.* (defining relative adoption as “an adoption of a child by a person(s) who is related by blood or marriage.”).

¹⁸ See N.J. STAT. ANN. § 9:3-39.1(a) (b) (authorizing the Commissioner of Children and Families to enforce adoption law in New Jersey). See also N.J. ADMIN. CODE § 3A:50-1.3 (providing that the office of Licensing of the New Jersey Department of Children and Families is responsible for the implementation and enforcement of the law).

¹⁹ N.J. STAT. ANN. § 9:3-39.1(a) (permitting the placement of a child for adoption by other than an approved agency where: “(1) the person is the parent or guardian of the child, or . . . (3) the placement for adoption is with a brother, sister, aunt, uncle, grandparent, birth father, or stepparent of the child, or . . . (4) the placement is through an intermediary” and “certain requirements are met.”).

²⁰ N.J. STAT. ANN. § 9:3-59(c)(1); *Sees v. Baber*, 74 N.J. 201, 210 (1977) (holding “the termination of the rights of the natural parent is a condition precedent which must be met before an adoption can proceed to finality.”); *Matter of Adoption of Child by R.C.W.*, No. A-2907-17T3, 2018 WL 3732739, *12 (N.J. Super. Ct. App. Div. Aug. 7, 2018).

An approved agency which is supervising a child may institute an action to terminate the “rights of the parent of such child and... transfer... custody of such child to the agency.”²¹ In addition, an individual’s parental rights may be terminated within an adoption proceeding.²²

The New Jersey Adoption Act (“Act”) governs the adoption of children.²³ The Legislature mandated that the act be “liberally construed to the end that the best interests of the child [are] promoted” and that child safety is of paramount concern.²⁴ The rights of all individuals affected by the adoption are to be given due regard – including the rights of the biological or legal parents.²⁵

To facilitate the adoption of a child, the biological or legal parent may voluntarily “surrender” the child to an approved agency.²⁶ The term “surrender” is defined in the parental rights context as “*a voluntary relinquishment* of all parental rights by a birth parent, previous adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for purposes of allowing a child to be adopted.”²⁷ It is also described as “*relinquishment* of the person’s parental rights in or guardianship or custody of the child named therein and consent by the person to adoption of the child.”²⁸

The rights of the biological or legal parents are respected through a series of statutory safeguards. The surrender of child must be effectuated in writing and must be executed before an officer authorized to take acknowledgments.²⁹ A voluntary surrender accompanied by a written acknowledgment is valid regardless of the age of the surrendering person.³⁰ The surrender of a child is invalid if executed prior to the child’s birth or before the child is seventy-two hours old.³¹ Prior to execution of the surrender, the approved agency is required to offer counseling to the

²¹ N.J. STAT. ANN. § 9:2-18. This procedure is utilized if the agency is unable to obtain a valid surrender or if the child may not readily be placed for adoption. Because this method to terminate parental rights generally occurs in the absence of a valid surrender, further examination would exceed the scope of this memorandum.

²² N.J. STAT. ANN. §§ 9:3-48(c), 9:3-50.

²³ N.J. STAT. ANN. §§ 9:3-37— 9:3-56 (West 2024). *See Matter of Adoption of P*, 193 N.J. Super. 33, 36 (Prob. Div. 1983) (noting that “there is no right to adoption under common law” and that “any right to adopt a child...exists only by virtue of statute.”).

²⁴ N.J. STAT. ANN. § 9:3-37.

²⁵ *Id.* *See* N.J. STAT. ANN. § 9:3-41(a).

²⁶ N.J. STAT. ANN. §§ 9:2-16, 9:2-17, 9:3-41(a). The fundamental difference between N.J.S. §§ 9:2-16 and 9:3-41 lies in the rights of the parent to “notice” of further proceedings. In a “general surrender,” the parents relinquish their rights and are not entitled to notice regarding further proceedings. N.J. STAT. ANN. § 9:3-45(b)(1), (2); *N.J. Div. of Child Protection and Permanency v. P.O.*, 456 N.J. Super. 399, 408 (App. Div. 2018). In an “identified adoption” the child is adopted by a person specified by the surrendering parent. N.J. STAT. ANN. § 9:3-41. The surrendering parent is not entitled to notice of further proceedings. By contrast, under the procedure for an agency action to terminate parental rights a prior surrender pursuant to N.J. STAT. ANN. § 9:2-16 is not a waiver of notice or service of process for purposes of N.J. STAT. ANN. § 9:2-18. *Cf.* N.J. STAT. ANN. § 30:4C-15.5 (New Jersey Safe Haven Infant Protection Act referring to the voluntary delivery of a child to a hospital, police station, fire department, or ambulance, first aid, or rescue squad – with no intent to return for the child). The interpretive and possible constitutional questions regarding notice extend beyond the scope of this memorandum.

²⁷ N.J. STAT. ANN. § 9:3-38(j) (emphasis added).

²⁸ N.J. STAT. ANN. § 9:3-41(a) (emphasis added).

²⁹ N.J. STAT. ANN. §§ 9:2-16; 9:3-41. *See also* N.J. STAT. ANN. §§ 46:14.2.1; 46:14-6.1.

³⁰ N.J. STAT. ANN. §§ 9:2-16; 9:3-41.

³¹ N.J. STAT. ANN. §§ 9:3-41(e); 9:2-16, 9:2-17; N.J. ADMIN. CODE § 30:50-5.4(d)(4).

parent.³² When the surrender is to an agency, before the instrument is signed, the agency must to inform the person executing it that “the instrument is a surrender of parental rights by the signatory and means the permanent end of the relationship and all contact between the parent and child.”³³ Furthermore, the agency must inform the parent that the surrender constitutes a relinquishment of their parental rights and serves as their consent to the adoption of the child by another individual.³⁴ Once executed, the surrender, with limited exception,³⁵ is irrevocable.³⁶

The finality of a voluntary surrender aligns with the central objective of the Adoption Act. The primary purpose of the Act is to bolster the newly established family and promote the adoption of children, assuring prospective families that the involvement of biological relatives will not disrupt the cohesion of the new family unit.³⁷ To safeguard newly formed families, the Act provides for the termination of the parental rights of natural parents who have surrendered children for adoption or whose parental rights have been severed.³⁸ To that end, the Act “maintains the policy that adoption ends the parental role of the biological parents and transfers that role to the adoptive parents.”³⁹

The NJSBA expressed concern about a negative connotation of the term “surrender,” and explained that

[t]o witness a voluntary transfer of parental rights is sobering. Judges often acknowledge that parents voluntarily offering to termination their parental rights are acting in the best interest of their child and are acting selflessly by placing the child’s welfare above their own.⁴⁰

The NJSBA explained that a “parent who is inclined to surrender their parental rights in the best interests of their child may not be deterred by the use of the term ‘surrender,’ but it is often a hurdle to emotionally overcome [in] what is an already emotionally charged court proceeding.”⁴¹ The NJSBA noted that other jurisdictions use terms such as “relinquish” or “transfer of parental rights” rather than “surrender,” and asked that the Commission consider this issue.⁴²

³² N.J. STAT. ANN. § 9:3-41(a); N.J. ADMIN. CODE § 30:50-5.4(c)(1)-(2) (providing that the agency must offer the birth parents at least three counseling sessions covering adoption alternatives, present emotional issues, legal rights, surrender preparation, and external resource referrals). *See Matter of Baby M*, 109 N.J. 396 (1988).

³³ N.J. STAT. ANN. § 9:3-41(a).

³⁴ *Id.*

³⁵ *Id.* N.J. STAT. ANN. § 9:2-16. (providing for the revocation of a surrender at the discretion of the approved agency or upon the order or judgment of a court of competent jurisdiction setting aside the surrender upon proof of fraud, duress, or misrepresentation by the approved agency). *See Matter of Adoption of Child by R.C.W.*, No. A-2907-17T3, 2018 WL 3732739 (N.J. Super. Ct. App. Div. Aug. 7, 2018) (noting that although the terms “fraud, duress, and misrepresentation” are not defined in the Adoption Act, they are well-defined in the law.”).

³⁶ N.J. STAT. ANN. § 9:2-16.; N.J. STAT. ANN. § 9:3-41(a).

³⁷ *In re Adoption of Child by W.P.*, 163 N.J. 158, 174 (2000).

³⁸ *Id.*

³⁹ *Id.* (citing *In re Adoption of Child by D.M.H.*, 135 N.J. 473, 491 (1994)).

⁴⁰ *See* NJSBA letter *supra* n. 8.

⁴¹ *Id.*

⁴² *Id.* The NJSBA did not identify which states formed the basis of their analysis.

Analysis

An examination of the laws of several other states⁴³ was undertaken to ascertain how common the terms “surrender,” “relinquishment,” and “transfer” are in the context of adoption and whether there was a suitable replacement for the term “surrender” in the New Jersey statutes. Each term will be discussed in serial order.

• *Surrender and Relinquish*

The term “surrender” is commonly used in statutes across multiple jurisdictions.⁴⁴ The term surrender is used to denote the physical act of delivering a child into the lawful custody of another

⁴³ In addition to New Jersey, Staff examined the statutory and common law in the following fifteen states: Ala.; Alaska; Ariz.; Ark.; Colo.; Conn.; Del.; Ga.; Idaho; Kan.; Miss.; Neb.; S.C.; W. Va.; and Wyo.

⁴⁴ **Fig. 1, Surrender.** **AL.** ALA. CODE § 26-10E-15 (surrender of custody of minor under the age of majority); § 26-10E-22(d) (fees and charges affidavit by parents surrendering the adoptee for adoption); § 26-25-1 (anonymous surrender of infant); § 26-25-1.2 (emergency service provider to have place where infant can safely surrender an infant). **AK.** ALASKA STAT. ANN. § 11.81.500 (no prosecution for safe surrender of infant). **AZ.** The term is not found in the Arizona statutes in this context. **AR.** ARK. CODE ANN. § 9-9-101 (statutory title - surrender of custody of minor to hospital or birthing center; relinquishment of parental rights); § 9-34-202 (voluntary surrender of child - leaves child; relinquishes the child confidentially; not criminally liable for relinquishment, abandonment; termination not to be subsequently used against parent); § 9-34-203 (anonymous surrender); § 28-65-221 (stand-by guardian does not require surrender of parental rights). **CO.** COLO. REV. STAT. ANN. § 13-21-107.5 (defining “emancipated minor” as a person under eighteen years of age whose parents have surrendered parental responsibilities or custody, the right of care); § 19-3-604 Criteria for termination - abused, neglected, abandoned, parental rights surrendered); § 19-4.5-111 (court order of parentage under surrogacy agreement - surrender of child to intended parent); § 19-4.5-114 (surrogacy agreement not a surrender of custody or termination of parental rights of child by donor in violation of the requirements of Title 19); § 25-2-113.5 (record access - adoption based upon termination of parental rights - after surrender of child); § 42-4-116 (restrictions for minor drivers--defining emancipated minor as less than 18 or parent or guardian surrendered parental responsibilities); § 42-4-1716 (notice to appear or pay fine - defining emancipated minor). **CT.** CONN. REV. STAT. ANN. § 7-36 (defining foundling as a child of unknown parentage - infant voluntarily surrendered); § 10a-28 (defining emancipated person over 18 and parents who surrendered right to care, custody, earnings); § 17a-58. (physical custody of infant upon voluntary surrender by parent). **DE.** DEL. CODE ANN. § 8- 807 (gestational carrier to provide for surrender of all resulting children); § 907A (abandonment of a baby is irresponsible act by parent - surrender is preferable). **GA.** GA. CODE ANN. § 15-11-243.1 (no summons required where parental rights terminated or voluntarily surrendered); § 15-11-243.3 (summons on biological father required absent surrender of all parental rights); § 15-11-262 (right and role of attorney in termination of parental rights); § 15-11-265 (consent judgment to termination of parental rights or surrender); § 15-11-280 (termination of parental rights petition, including copy of voluntary surrender); § 15-11-283 (service of summons on biological father before termination of parental right hearing unless surrender parental rights); § 15-11-310 (statutory grounds for termination of parental right include abandonment); § 15-11-321 (placement of child in termination of parental right or surrender matters); § 15-11-322 (petition seeking adoption where parental rights terminated or surrendered); § 19-8-1 (defining “legal father” as male who has not surrendered his legal rights to a child and “legal mother” as a female who is the biological or adoptive mother of the child and who has not surrendered her rights to the child); § 19-8-4 (surrender of rights to child); § 19-8 (surrender of rights to child to non-relative); § 19-8-6 (surrender of rights to child being placed for adoption to spouse of parent); § 19-8-7 (surrender of rights to child for adoption by extended family); § 19-8-9 (withdrawal of surrender of rights); § 19-8-10 (termination of parental right not required when child abandoned or parental rights surrendered); § 19-8-11 (termination of rights of remaining parent after termination of parental right, surrender, or abandonment); § 19-8-12 (notice to biological father who is not legal father after surrender or termination of parental right); § 19-8-13 (petition to include copy of voluntary surrender or order of termination of parental right); § 19-8-15 (objections by relative where parents deceased regardless of surrender or termination of parental right); § 19-8-18 (judicial hearings on adoption - termination of parental right or surrender); § 19-8-23 (defining biological parent as

and the relinquishment of parental rights as considered a separate act.⁴⁵ In *Delgado v. Fawcett*, Justice Erwin's dissent highlighted the challenges arising from parents who resisted consenting to their child's adoption.⁴⁶ He wrote that historically, "children were... viewed as chattels and adoptions were viewed as a contractual relationship...."⁴⁷ Several of the statutes examined utilize

mother or father who surrendered or had their rights terminated); § 19-8-26 (form for the surrender or relinquishment of rights); Title 29 Guardian & Ward - § 24-6-603 (define parent using surrender and terminated). **ID.** IDAHO CODE ANN. § 7-1607 (child to be surrendered to the intended parent); Title 16 Juvenile Proceedings, Ch. 15 Adoption - § 16-1504 (unmarried biological father who does not comply with the conditions of this section have waived and surrendered any right in relation to the child); § 16-1504 (registration of paternity or waived and surrendered right in relation to the child); Title 39, Ch. 82 - Safe Haven Act - § 39-8206 (claim of parental rights to abandoned child before termination of parental rights if not waived or surrendered). **KS.** KAN. STAT. ANN. § 21-5605 (no abandonment if child safe surrendered). **MS.** Miss. Code Ann. § 43-15-201 (safe surrender of child, leave child for emergency medical services provider); § 43-15-207 ("Surrender" or "Surrenders" means the action of a parent in leaving an infant on the premises of an emergency medical services provider, with a facility employee or member of the professional medical community at the facility, or in a newborn safety device, without expressing an intention to return for the infant); § 43-15-211 (baby safety device with instructions to surrendering parent); § 93-15-109 (to accomplish the surrender of child to DCPS); § 93-15-111 (voluntary release of parental rights for purposes of termination of parental rights court must acknowledge home to which the child has been surrendered); § 93-17-6 (petition for determination of rights - alleged fathers after mother surrendered child, termination of parental rights); § 93-17-8 (surrender of child for adoption is not evidence of abandonment). **NE.** The term "surrender" is not defined in the context of adoption. **NJ.** N.J. STAT. ANN. § 9:2-13 (defining custody to include written surrender to an approved agency); § 9:2-14 (no surrender of custody of child valid unless made to an approved agency); § 9:2-15 (surrender or termination of parental rights of one parent does not affect the other); § 9:2-16 (voluntary surrender to approved agency); § 9:2-17 (surrender shall be such that person desires to relinquish custody of the child and acknowledge the termination of parental rights); § 9:2-18 (agency may seek termination of parental rights and the transfer of custody of such child to the agency); § 9:2-19 (surrender under certain circumstances parent shall have no further right to custody of the child); **§ 9:3-38(j).** ("Surrender" means a voluntary relinquishment of all parental rights by a birth parent, previous adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for purposes of allowing a child to be adopted); § 9:3-41 (surrender of child relinquishment of rights); § 9:3-41.1. (surrender of child to agency - to conduct investigation); § 9:3-45 (no notice required where valid surrender to approved agency; or termination of parental rights); § 9:3-46 (guardian who meets time qualifications is entitled to notice of adoption proceedings and entitled to object); § 9:3-47 (complaint shall describe circumstances surrounding the surrender of the child); § 9:3-48 (adoption when child not received from approved agency must state facts and circumstances surrounding the surrender of custody by child's parents); § 9:17-65 (Gestational carrier agreement to provide for surrender of the child); § 9:17-68 (gestational carrier agreement not surrender or termination of parental rights in violation of Title 9); § 26:8-40.35 (safe haven children surrendered); § 30:4-49.2 (settlement of minor born in wedlock by surrender of custody); §30:4C-2 (defining custody as "continuing responsibility" for the person of a child, established by a surrender & release of custody or consent to adoption); § 30:4C-23 (voluntary surrenders, releases, or consents to DCCP - "irrevocable" except at the discretion of DCCP or order of court). **SC.** S.C. CODE ANN. § 59-112-10 (defining emancipated minor to mean a minor whose parents have entirely surrendered the right to the care, custody and earnings of such minor and are no longer under any legal obligation to support or maintain such minor); § 63-7-20 (defining abandonment as the willful desertion or willful surrender of physical possession of a child without adequate arrangements for the child's care; Legal Guardianship relationship between a child and caretaker intended to be permanent and transfers certain PR - does not terminate parental rights including right of inheritance). **WV.** W. VA. CODE § 48-22-108 (defining consent as the voluntary surrender to an individual, not an agency, by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child). Ch. 49. Child Welfare - § 49-4-112 (legal guardianship may not require TPR or surrender of PR); § 49-4-206 (safe surrender of child). **WY.** The term surrender is not used in the context of adoption.

⁴⁵ *Black's Law Dictionary* 1444 (6th ed. 1990) (defining "surrender" to mean "to deliver into lawful custody, or to give up completely in favor of another."). See discussion of relinquishment *infra*.

⁴⁶ *Delgado v. Fawcett*, 515 P.2d 710, 716 (Alaska 1973).

⁴⁷ *Id.*

the term “surrender” to denote the physical act of turning a child over to another individual or entity and thereafter the surrender of one’s rights to the child.⁴⁸

Of the sixteen jurisdictions surveyed, however, only two jurisdictions offer a statutory definition for the word surrender. Among the states whose laws were reviewed, Mississippi is one of the few states that explicitly define the term “surrender.” The Mississippi statutes sets forth a definition of the term surrender in the context of the state’s safe haven laws. This statute defines surrender as “the action of a parent in leaving an infant on the premises of an emergency medical services provider, with a facility employee or member of the professional medical community at the facility, or in a newborn safety device, without expressing an intention to return for the infant.”⁴⁹

In 1953, the New Jersey Legislature enacted the New Jersey’s Act Concerning the Adoption of Children.⁵⁰ The Act contained seven definitions but did not include a definition for the word “surrender.”⁵¹ Forty years later, the Legislature added a definition for the word surrender to the definition section of the Act.⁵² To this time, New Jersey’s statutory definition of surrender means “a voluntary relinquishment of all parental rights by a birth parent, previous adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for purposes of allowing a child to be adopted.”⁵³

New Jersey’s definition of surrender, along with various statutory safeguards,⁵⁴ underscores the solemnity and gravity of surrendering one’s child and parental rights to an approved agency. The Legislature’s decision to incorporate the term “relinquishment” in the definition of surrender prompts an examination of this term to determine whether it would serve as a suitable replacement for the term “surrender” in New Jersey’s Adoption Act.

⁴⁸ ALA. CODE § 26-25-1.2 (emergency service provider to have place where individual can safely surrender an infant); ARK. CODE ANN. § 9-34-202 (parent of the child leaves the child or voluntarily delivers the child to a medical provider, law enforcement agency or fire department); CONN. GEN. STAT. ANN. § 17a-58 (parent voluntarily surrenders physical custody of the infant to designated employee at the hospital); DEL. CODE ANN. TIT. 16, § 907A (expressing a preference for delivering a baby to as safe place as opposed to abandonment and designating places of surrender); IDAHO CODE ANN. § 7-1607 (noting that in context of gestational agreements child to be surrendered to the intended parent); MISS. CODE ANN. § 93-15-111 (providing that a court may accept the voluntary release of parental rights if it identifies the governmental agency or home to which the child has been surrendered); § 43-15-207 (defining surrender as the action of leaving an infant with a medical provider, facility, or medical professional for purposes of adoption); **N.J. STAT. ANN. § 9:2-16 (voluntary surrender of a child shall be to an approved agency)**; S.C. CODE ANN. § 63-7-20 (defining abandonment as the willful surrender of physical possession of a child without making arrangements for the child’s needs); W. VA. CODE § 48-22-108 (defining consent as the voluntary surrender to an individual for purposes of adoption).

⁴⁹ MISS. CODE ANN. § 43-15-201.

⁵⁰ See L. 1953, c. 246, p. 1769 § 2 (noting that the definition section, then N.J.S. 9:3-18 did not set forth a definition of the term “surrender.”)

⁵¹ *Id.* (defining approved agency; child; custody; forsaken parental obligations; mentally incompetent; parent; and the word “may.”)

⁵² See L. 1993, c. 345, § 23 (amending L. 1979, c. 292, amending and supplementing L. 1977, c. 367).

⁵³ N.J. STAT. ANN. § 9:3-38(j). The two subsequent legislative amendments to this statute, L. 2006, c.47 and L. 2012, c. 16, did not alter New Jersey’s definition of the term surrender in this context.

⁵⁴ See discussion *supra* regarding statutory safeguards at p. 3-4.

Similar to the term “surrender,” the term “relinquishment” is also widely used in statutes across multiple jurisdictions.⁵⁵ In common parlance, the term relinquish means “[t]o abandon, to

⁵⁵ **Fig. 2**, relinquishment. **AL.** ALA. CODE § 12-15-301(1) (defining abandonment as the voluntary and intentional relinquishment of a the custody of a child by a parent); § 26-10E-2(1)(c) (defining abandonment as the voluntary and intentional relinquishment, without good cause or excuse, of the custody of a minor by a parent); § 26-10E-7 (a) (consent to adoption or relinquishment for adoption); § 26-10E-8 (consent to adoption or relinquishment for adoption by a minor parent); § 26-10E-9 (consent to adoption or relinquishment for adoption - implied consent); § 26-10E-10 (consent to adoption or relinquishment for adoption - consent not required); § 26-10E-14 (express consent or relinquishment - withdrawal); § 26-10E-16(c) (petition for adoption to include relinquishments); § 26-10E-17 (notice of pendency of adoption proceeding - relinquishment and termination); § 26-17-103 (surrogate permitted to relinquish all rights). **AK.** ALASKA STAT. ANN. § 13.26.157 (guardianship after voluntary relinquishment); § 25.23.050 (consent to and notice of adoption not required if parent relinquished the right to consent under AS25.23.180); § 47.10.013 (discussing abandonment; leaving; and relinquishment of parental rights); § 47.10.089 (voluntary relinquishment of parental rights and termination proceedings); § 47.70.010 (interstate compact on the placement of children, relinquishment of parental rights). **AZ.** ARIZ. REV. STAT. ANN. § 8-116.01 (failure to comply with agreement regarding communication not reason to set aside adoption decree or relinquishment of parental rights); § 8-533 (petition based upon termination, relinquishment, or abandonment); § 8-847 (review proceedings unless parental rights have been terminated or relinquished); § 25-218 (surrogacy and voluntary relinquishment of parental rights); § 25-503 (voluntary relinquishment of physical custody in support context); § 36-551.01 (services to children with developmental disability does not require relinquishment or restriction of parental rights). **AR.** ARK. CODE ANN. § 5-26-204 (West) (unlawful solicitation for relinquishment of parental rights); § 9-9-101 (statutory title - surrender of custody of minor to hospital or birthing center; relinquishment of parental rights); § 9-9-206 (no fee permitted as consideration for the relinquishment of a minor); § 9-9-207 (persons as to who consent and notice no necessarily required if parent abandons child, relinquished rights, or had rights terminated); § 9-9-212 (relinquishment petition requirements); § 9-9-220 (relinquishment of parental rights and termination of parental rights); § 9-14-105 (petition for support by Office of Child Support Enforcement where physical custody has been relinquished); § 9-14-210 (Arkansas real party in interest where physical custody of child has been relinquished); § 9-14-236 (recovering arrearages where custody relinquished); § 9-34-202 (voluntary surrender of child - leaves child; relinquishes the child confidentially; not criminally liable for relinquishment, abandonment; termination not to be subsequently be used against parent). **CO.** COLO. REV. STAT. ANN. § 13-90-107 (testimony without consent in proceeding for voluntary relinquishment of the parent-child relationship); § 19-1-115 (guardianship - child out of home for greater than 90 days no termination or relinquishment of parental rights required); § 19-3-308 (action upon report of intrafamilial, institutional, or third-party abuse and petitions for relinquishment); § 19-3-612 (reinstatement of parent-child relationship after termination or voluntary relinquishment); § 19-5-100.2 (legislative declaration - parental relinquishment and adoption of children are important to facilitate permanent placement of minor children); § 19-5-101 (termination of the parent-child legal relationship - no parent shall relinquish the parent-child relationship except as provided for in this article); § 19-5-102 (Venue for purposes of relinquishment and termination proceedings); § 19-5-103 (relinquishment procedure); § 19-5-103.5 (expedited relinquishment procedure - parental rights to be terminated); § 19-5-103.7 (anticipated expedited relinquishment - contest termination of parental rights); § 19-5-104 (final order of relinquishment - may occur after relinquishment - which may be revoked under certain circumstances; or, after termination); § 19-5-105 (proceeding to terminate parent-child relationship after relinquishment); § 19-5-105.7 (termination of parent-child relationship after - sexual assault - no conviction; relinquishment by consent); § 19-5-108 (notice of relinquishment - required); § 19-5-109 (birth parent access to records - relinquishment); § 19-5-203 (availability for adoption - termination, voluntary relinquishment of the parent-child relationship, parent deceased; abandonment); § 19-5-205.5 (nonpublic agency interstate and foreign adoptions to look at termination and relinquishment documents); § 19-5-206 (Placement for purposes of adoption - relinquishment); § 19-5-207 (home study - child's desire to contact relinquishing parent; reason for termination of parental rights); § 19-5-207.3. Placement of sibling groups - relinquishment); § 19-5-208 (Petition for adoption - termination - relinquishment); § 19-5-305 (access to adoption records after termination or relinquishment); § 19-5-305.5 (access to personal records relating to a former ward of the state home - termination, relinquishment, temporary waiver); § 22-20-114 (funding of student programs where parental rights terminated or relinquished); § 23-7-103 (college - presumption regarding emancipation - relinquishment of rights). **CT.** The term relinquishment is not found in the Connecticut statutes. **DE.** DEL. CODE ANN. § 8-103 (authorizing agreement between a woman and another after relinquishing all rights as a parent); § 1103 (grounds for termination of parental rights); §

381 Art. V. (appropriate consents or relinquishments). **GA.** GA. CODE ANN. § 19-2-4 (relinquished custody); § 19-8-26 (form for the surrender or relinquishment of rights). **ID.** IDAHO CODE ANN. § 7-1126 (court shall not consider relinquishment of parental rights in determining best interest of child); § 16-1505 (notice of proceedings unless PR terminated by waiver, relinquishment or previously terminated); § 16-2005 (conditions for termination include abandonment); § 16-2402 (services do not require parents relinquish custody); § 56-203 (State Dep't may take custody of children committed to district court where child legally relinquished); § 56-204A (services to unmarried parents - counseling regarding relinquishment). **KS.** 38-2264 (permanency hearing circumstances relinquishment); 38-2268 (voluntary relinquishment); 38-2271 (court to termination of parental rights upon finding of abandonment); 38-2403 (host family program – termination of parental rights); 59-2111 (Kansas adoption and relinquishment act); 59-2115 (consent or relinquishment to adoption); 59-2124 (relinquishment and effect upon termination of party's rights); 59-2128 (petition contents must cite knowledge of TPR proceedings & facts to eliminating the necessity for relinquishment if neither obtained); 59-2136 (relinquishment & adoption - TPR proceedings). **MS.** MISS. CODE ANN. § 93-15-103 (“Abandonment” means any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to relinquish all parental claims and responsibilities to the child). **NE.** NEB. REV. STAT. ANN. 43-101 (adult child eligible for adoption where parent relinquished the child for adoption or abandoned the child); 43-104 (consent to adoption not required where rights are relinquished, child abandoned; or TPR); 43-104.07 (foreign adoption must show parents termination of parental rights, abandoned, or relinquished their rights); 43-104.13 (born out of wedlock, father, relinquish and consent to adoption waiver of parental rights); 43-104.14. (notice); 43-105 (substitute consent from third party okay when parent relinquished minor child for adoption); 43-106.01 (relinquishment shall be relieved of parental duties); 43-106.02 (ramifications of relinquishment explained to parent); 43-109 (no decree for adoption unless record contains confirmation of relinquishment); 43-143 (relinquishment or consent before 2002 parent permitted to file a notice of nonconsent - no release of information prior to death); 43-163 (guardian ad litem in relinquishment cases); 43-164 (failure to comply with order after relinquishment); 43-166 (communication agreement between relinquishing parent and adoptive parent(s)); Art. 2, Juvenile Code - 43-247 (juvenile court to have jurisdiction over abandonment cases, TPR, and voluntary relinquishment); 43-906 (termination of parental rights, adoption, and relinquishment); 43-1103 (placement upon receipt of appropriate relinquishments); 43-1506 (procedure upon voluntary relinquishment or termination); 43-1512 - improper removal from custody, or retention, after voluntary relinquishment). **NJ.** N.J. STAT. ANN. § 9:2-15 (surrender or TPR of one parent does not affect the other); 9:2-16 (voluntary surrender to approved agency); § 9:2-17 (surrender shall be such that person desires to relinquish custody of the child and acknowledge the TPR); § 9:3-41 (surrender of child relinquishment of rights); § 9:3-45 (no notice required where valid surrender to approved agency or court finding); § 30:4C-15.7 (safe surrender Division to search children to ensure that the relinquished child has not been reported as missing). **SC.** S.C. CODE ANN. § 59-63-31 (providing for attendance at a school as a result of relinquishment by parent or guardian of complete control of the child as evidenced by failure to provide substantial financial support and parental guidance); § 63-9-30(8) (defining “relinquishment” to mean the informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption and to whom the parent has given the right to consent to the adoption of the child.); § 63-9-80 (biological medical history to be disclosed if provided at time of relinquishment); § 63-9-310 (persons who must give consent or relinquishment - unless deceased or TPR); § 63-9-320 (persons not required to give consent or relinquishment - person TPR); § 63-9-1360 (informational brochure relinquish child to DSS). **WV.** W. Va. Code § 16-5-16 (certificate of adoption to include information from non-relinquishing parent); Art. 22, Adoption - § 48-22-102 (defining abandonment as relinquishment of all parental rights); § 48-22-115 (relinquishment defined as voluntary surrender of PR); § 48-22-302 (timing of relinquishment); § 48-22-303 (content of relinquishment including warning of TPR effects); § 48-22-304 (consent to relinquishment by minor); § 48-22-305 (revocation of relinquishment); § 48-22-501 (petition for adoption after consent or relinquishments obtained and rights of nonconsenting terminated); § 48-22-601 (grandparent to receive notice where deceased parent had not executed a consent or relinquishment to their parental rights); Ch. 49, Child Welfare - § 49-4-114 (consent by agency after relinquishment or TPR petition); § 49-4-203 (Emergency petition for relinquishment); § 49-4-204 (no prosecution for relinquishment within 30 days from child's birth). **WY.** WYO. STAT. ANN. § 1-22-109 (relinquishment and consent in petition by guardian if PR-T); § 1-22-201 (defining confidential intermediary as person able to inspect confidential relinquishment & adoption records); § 14-2-309 (grounds for termination - including abandonment, relinquishment); § 14-2-403 (parentage allows birthing agreement where woman relinquishes all rights as a parent when conceived by assisted reproduction); Art. 7, Wyoming Indian Children Welfare Act - § 14-6-705

give up, *to surrender*, to renounce some right or thing.”⁵⁶ Of the sixteen jurisdictions surveyed, however, only two jurisdictions offer a statutory definition for the word relinquish.⁵⁷

Among the states whose laws were reviewed, South Carolina and West Virginia define the term “relinquish,” specifically within the context one’s parental rights. In South Carolina relinquish means “the informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption...”⁵⁸ Similarly, in West Virginia, relinquish means “the *voluntary surrender* to an agency by a minor child’s parent or guardian, for purposes of the child’s adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.”⁵⁹

Some states use the term relinquish in connection with the termination of parental rights, without defining the term.⁶⁰ By contrast, other states use the term in connection with the physical custody of the child.⁶¹

In the examination of adoption terminology, it is evident that the terms “surrender” and “relinquish” are synonymous, with the selection between the two often reflecting legislative

(voluntary relinquishment proceedings); § 14-6-711 (improper removal of Indian child or retained custody after temporary relinquishment); § 14-11-103 (relinquishment of newborn child); § 14-11-106 (relinquishment is not a criminal act); § 20-2-201 (parental responsibility in divorce to relinquish care to the other parent); § 35-1-401 (Gestational Agreement - carrier agrees to relinquish parental rights).

⁵⁶ *Black’s Law Dictionary* 1292 (6th ed. 1990)

⁵⁷ See generally Fig. 2.

⁵⁸ S.C. CODE ANN. § 63-9-30(8).

⁵⁹ Compare W. VA. CODE ANN. § 48-22-115 (emphasis added) (defining “relinquish” as a voluntary surrender) with N.J. STAT. ANN. § 9:3-38(j) (defining “surrender” as a voluntary relinquishment).

⁶⁰ ALASKA STAT. ANN. § 47.10.089 (voluntary relinquishment of parental rights and termination proceedings); ARIZ. REV. STAT. ANN. § 8-847 (review proceedings unless parental rights have been terminated or relinquished); ARK. CODE ANN. § 9-9-101 (statutory title - surrender of custody of minor to hospital or birthing center; relinquishment of parental rights); § 9-9-220 (relinquishment of parental rights and termination of parental rights); COLO. REV. STAT. ANN. § (testimony without consent in proceeding for voluntary relinquishment of the parent-child relationship); § 19-5-101 (no parent may relinquish the parent-child relationship except as provided in this article); DEL. CODE ANN. § 1103 (grounds for termination of parental rights - relinquish parental rights); IDAHO CODE ANN. § 16-1505 (notice of proceedings unless Parental rights terminated by waiver, or relinquishment); KAN. STAT. ANN. § 38-2268 (voluntary relinquishment of parental rights to the secretary); N.J. STAT. ANN. § 9:3-41 (in the context of adoption, surrender shall constitute relinquishment of the person’s parental rights and consent to adoption of the child); S.C. CODE ANN. §§ 63-9-30(8) (informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption); W. VA. CODE § 48-22-501 (petition for adoption after consent or relinquishments obtained and rights of nonconsenting terminated).

⁶¹ ALA. CODE § 12-15-301(1) (defining abandonment as the voluntary and intentional relinquishment of the custody of a child by a parent); ARIZ. REV. STAT. ANN. § 25-503 (voluntary relinquishment of physical custody in support context); ARK. CODE ANN. § 9-14-210 (Arkansas real party in interest where physical custody of child has been relinquished); IDAHO CODE ANN. § 56-203 (State Dep’t may take custody of children committed to district court where child legally relinquished); NEB. REV. STAT. ANN. 43-101 (adult child eligible for adoption where parent relinquished the child for adoption or abandoned the child); N.J. STAT. ANN. § 9:2-17 (surrender shall be such that person desires to relinquish custody of the child and acknowledge the termination of parental rights); § 30:4C-15.7 (safe surrender division to search children to ensure that the relinquished child has not been reported missing); WYO. STAT. ANN. § 14-11-103 (providing a means to relinquish the child safely to a safe haven provider).

preference. New Jersey, in its adoption statutes, utilizes the term “surrender” to signify the physical act of handing a child over to an authorized agency and to denote the relinquishment of parental rights. Merely substituting “surrender” with “relinquish” may not alleviate the emotional challenges faced by parents when relinquishing their parental rights for the betterment of their child’s welfare. Given this, Staff examined the term “transfer” to determine whether this term is an appropriate substitute for “surrender,” “relinquish,” or both.

- *Transfer*

While less prevalent in the statutes considered, the term “transfer” appears in a number of state statutes often in the context of transferring custody or guardianship. The word transfer means “[t]o convey or remove from one place, person... to another; pass or hand over from one to another, specifically, to change over the possession or control...”⁶² The term, however, is not defined in the statutes examined as part of this project.⁶³ The term must therefore be examined as it is used in its statutory context.

As noted in the context of the terms “surrender” and “relinquish” the term transfer may relate to the physical location, or custody, of the child; or the rights of the parents.⁶⁴

States whose statutes reference the transfer of physical custody include: Alabama;⁶⁵ Alaska;⁶⁶ Arkansas;⁶⁷ Connecticut;⁶⁸ Idaho;⁶⁹ Nebraska;⁷⁰ New Jersey;⁷¹ and West Virginia.⁷² In certain statutes, the physical transfer of a child may be temporary. In Alaska, the word transfer defines the term “custodian” as the person to whom a parent has transferred *temporary* physical care, custody or control of the child to for a period of time.⁷³ Similarly, in Nebraska an Indian

⁶² *Black’s Law Dictionary* 1497 (6th ed. 1990).

⁶³ See generally Fig. 3.

⁶⁴ See discussion *supra*.

⁶⁵ ALA. CODE § 12-15-315 (transfer of legal and physical custody to a relative after termination of parental rights).

⁶⁶ ALASKA STAT. ANN. § 47.10.084 (legal custody after termination of parental rights and residual rights after transfer of custody).

⁶⁷ ARK. CODE ANN. § 9-9-702 (order transferring custody required before newborn placed with adoptive parents); Ark. Code Ann. § 9-27-327 (adjudication hearing and transfer of custody); § 9-27-332 (transfer of custody where family in need of services); § 9-27-335 (order transferring custody in dependency-neglect cases).

⁶⁸ CONN. GEN. STAT. ANN. § 45a-728b (Discharge of newborn identified for adoption from hospital - physical transfer of custody to be arranged by hospital).

⁶⁹ IDAHO CODE ANN. § 16-1602 (defining commit as the transfer of legal and physical custody).

⁷⁰ NEB. REV. STAT. ANN. § 43-1503 (defining Indian custodian to mean any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child); § 43-1514 (transfer of the child to the jurisdiction of the appropriate Indian tribes); § 43-2929 (transfer of child for visitation - parenting plan); Art. 29, Parenting Act - 43-2934 (manner of transfer of child for custody, parenting time, visitation, or other access).

⁷¹ N.J. STAT. ANN. § 9:3-38(g) (defining “placement for adoption” as the transfer of custody of a child to a person for the purpose of adoption by that person).

⁷² W. VA. CODE ANN. § 48-22-303 (content of consent or relinquishment - (5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified; (6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption).

⁷³ ALASKA STAT. ANN. § 47.10.990.

custodian is any Indian person who has legal custody of an Indian child or to whom temporary physical care, custody, and control has been transferred by the child's parent.⁷⁴

States whose statutes reference the transfer of legal custody or parental rights include: Alabama;⁷⁵ Delaware;⁷⁶ Georgia;⁷⁷ Idaho;⁷⁸ New Jersey;⁷⁹ South Carolina;⁸⁰ West Virginia;⁸¹ and Wyoming.⁸² In Georgia, a court is authorized to transfer temporary legal custody of a child to certain individuals or entities.⁸³ Similarly, in Wyoming a court may transfer temporary legal custody to a relative, suitable adult, or state or local agency to care for a child.⁸⁴

In New Jersey, parents may become confused about the permanency of a surrender or relinquishment of rights under adoption statutes if those terms were replaced by the word "transfer." To this time, neither the kinship legal guardianship statutes nor the standby legal guardianship statutes terminate one's parental rights.⁸⁵ Unlike surrender or relinquishment, which typically denote a permanent and irrevocable termination of parental rights, the term "transfer" may imply a more temporary or conditional action, leading to ambiguity regarding the extent and duration of parental rights termination. This confusion could arise in cases where parents

⁷⁴ NEB. REV. STAT. ANN. § 43-1503.

⁷⁵ ALA. CODE § 12-15-315 (transfer of legal and physical custody to a relative after termination of parental rights).

⁷⁶ DEL. CODE ANN. § 1105 (termination of parental rights petition may contain consent to transfer parental rights to organization until adoption is finalized); § 1106 (consent requirements termination of parental rights and transfer); § 1106A (consent to terminate and transfer); § 1106B (revocation of consent to terminate and transfer); § 1108 (order of termination and transfer of parental rights); § 1109 (transfer of the parental rights of deceased parents); § 1113 (effect of termination of parental rights and transfer of parental rights).

⁷⁷ GA. CODE ANN. § 15-11-212 (transfer of temporary legal custody).

⁷⁸ IDAHO CODE ANN. § 16-1602 (defining commit as the transfer of legal and physical custody).

⁷⁹ N.J. STAT. ANN. § 3B:12A-4 (kinship legal guardian permanently transfers to caregivers certain parental rights but does not allow the guardian to consent to the adoption of the child or a name change for the child; and the birth parent retains the obligation to pay child support, the opportunity to visit and have parenting time with the child). *Cf.* N.J. STAT. ANN. § 3B:12-73(g) (permitting a parent, under the Standby Guardianship Act to revoke a standby guardianship by executing a written revocation).

⁸⁰ S.C. CODE ANN. § 63-7-20. Definitions. (defining abandonment as the willful desertion or willful surrender of physical possession of a child without adequate arrangements for the child's care; Legal Guardianship relationship between a child and caretaker intended to be permanent and transfers certain PR - does NOT TPR including right of inheritance).

⁸¹ W. VA. CODE ANN. § 48-22-303 (content of consent or relinquishment - (5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified; (6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption).

⁸² WYO. STAT. ANN. § 14-3-402 (defining "Deprivation of Custody" as the transfer of legal custody by the court from a parent or to another person, agency, organization or institution. § 14-6-201 ("Deprivation of custody" defined to mean transfer of legal custody by the court from a parent to another person, agency, organization or institution); § 14-6-402 ("Deprivation of custody" defined to mean transfer of legal custody by the court from a parent to another person, agency, organization or institution); § 14-6-429 (providing for the temporary transfer of custody if child is in need of assistance); § 14-6-433 (order transferring custody may be stayed by juvenile or supreme court); § 14-6-702 (defining child custody proceeding to include termination of parental rights and "Indian custody" control may be transferred to another).

⁸³ GA. CODE ANN. § 15-11-212.

⁸⁴ WYO. STAT. ANN. § 14-6-429.

⁸⁵ *See supra* note 79.

previously opted for kinship legal guardianship or standby legal guardianships, which allow them to maintain certain rights and responsibilities over the child without completely relinquishing their parental rights. The use of “transfer” in place of surrender or relinquishment could lead to misunderstandings about the legal implications and permanency of the decision to relinquish parental rights and potentially impact the clarity and effectiveness of the current adoption statutes and procedures.

There is no single term that would abate or eliminate the weight of a person’s decision to willingly entrusting their child to another individual or agency for the purpose of adoption. In New Jersey, the Legislature’s use of the term “surrender” within the adoption framework, thoughtfully conveys the relinquishment of parental rights while simultaneously conveying the permanence of such a decision.

Pending Bills

There are no bills currently pending in New Jersey that address the use of the term “surrender,” “relinquish,” or “transfer” in the context of parental rights.

Conclusion

Staff requests guidance from the Commission regarding whether to continue to examine the feasibility of replacing the term “surrender” in the context of voluntary relinquishments of parental rights or to discontinue work in this area.