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THE WAITING-PERIOD STATUTE

Chapter 204, Laws of 1939, repealing and re-enacting in different form REM. REV. STAT. § 8450, introduces four innovations into Washington marriage license practice. It provides for procurance of licenses by non-residents of the state via mail.[1] It creates, for all license applicants, a period of delay between application and issuance of the license.[2] It requires elicitation of designated information, not heretofore required by statute, from all applicants.[3] It gives legislative mandate for the discretionary refusal of license by county auditors.[4]

The non-resident must acquire his license from the county in which the marriage is to be performed but need not personally appear there in order to get a license. Were this provision not included in the statute such applicants would have to make two trips into the state or reside here during the waiting period. Washington would become a less desirable place for intermarriage by non-residents. Arguably, any statute which encourages the practice of marrying outside the home state is of doubtful social value because too frequently that state has some marriage regulation which is sought to be evaded in this manner. The objection fails where the non-resident is to marry a citizen of Washington; the new law might well have limited the mail privilege to such instances.

Chapter 204 authorizes issuance of the license only when three full days have elapsed after application. This is not a new idea. A number of states have similar enactments and some have had them for many years.[5] Sociologists have long pointed out the diminished risk of the marriage ending in separation or divorce where there is a delay after formulation of the purpose to marry. The time interval itself discourages hasty and ill-considered unions, particularly "gin" and "joke"

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[1]Wash. Laws 1939, c. 204, § 3.

[2]*Id.* 4.

[3]*Id.* 4.

[4]*Id.* 7.

[5]1 VERNIER, AMERICAN FAMILY LAWS (1931) § 16. A number of states have enacted such statutes since Vernier's work was published.

marriages. Where the interval follows application for a license additional benefits are claimed. The auditor is afforded an opportunity to verify the application—an advantage over the old system only if he does actually investigate, meaningless if he accepts at their face value the affidavits furnished him. Relatives and other interested persons are, theoretically, enabled to intervene where they regard the marriage to be improper. The statute at this point appears definitely weak. The intervention of third persons presupposes that they know the license has been applied for. Since the license need not be obtained from the county of the applicant's residence and since county auditors have been known to withhold from reporters the facts regarding issuance of licenses, this presupposition rests on a dubious foundation. The statute should be amended, requiring publication of the fact of license application, in some newspaper of general circulation[5a] in the county of residence of each applicant.[6]

That there may be on occasion justification for dispensing with the waiting period is recognized by the legislature, the superior court being empowered to direct issuance of the license at any time after application.[7] No criteria for the judge are indicated in the statute; the courts will undoubtedly interfere only where an emergency justifies.

Chapter 204 requires that the license issuer take from applicants certain data,[8] probably little different from that which auditors have for some time been insisting upon without statutory direction, in addition to that necessary under REM. REV. STAT. § 8451.[9]

County auditors have not been certain that they possess the power to withhold a license which they have cause to believe is sought on misrepresentations of fact or by an applicant who is under some impediment.[10] This difficulty is solved for them in the new statute by an express grant of such discretion, subject to review in the superior court.

[5a]*Quaere* whether a newspaper "of general circulation" would be adequate. See King County v. Superior Court, 99 Wash. Dec. 522, 92 P. (2d) 694 (1939).

[6]Wash. Laws 1939, c. 204, § 5 provides: "Any such application shall be open to public inspection as a part of the records of the office of such county auditor, and all applications which have been filed within three days shall be kept separately, and readily accessible to public examination." This seems to be a sort of recordation system, excellent so far as it goes, but failing utterly to insure notice to those persons who might come forward to protest against issuance of the license.

[7]Wash. Laws 1939, c. 204, § 6.

[8]Name, address, age, color, occupation, birthplace, whether single, widowed or divorced, whether under control of a guardian, residence during the past six months, and the name and address of a person who can testify that the residence is *bona fide*. Individual counties are permitted by the section to require additional information.

[9]This section requires affidavits regarding age, mental and physical condition.

[10]See Young, *An Evaluation of Washington Marriage Laws* (1937) 12 WASH. L. REV. 112, 125.

Chapter 204 gives us, in the waiting period section, a type of law which is generally regarded as beneficial both to the parties contemplating marriage and to the public interest. We should be grateful for this improvement in the marriage statutes, but not to the point of overlooking the need for further reform. We are still inadequately equipped to cope with the marriage of minors and of the mentally and physically unfit. The decisions[11] which read all meaning out of REM. REV. STAT. 8437[12] and set as the minimum legal ages for marriage in this state 14 years for males and 12 years for females should be corrected by statute. The control over the marriage of minors which can, theoretically, be exercised by the license issuer is not enough. The indifferent or careless auditor will issue licenses to minors contrary to REM. REV. STAT. § 8451;[13] the conscientious auditor can be imposed upon by appearances of maturity and false affidavits. The threat of criminal prosecution for falsification of affidavits of age has lost its potency because so infrequently consummated. Under the Washington cases, the marriage itself is not vitiated by perjury in the affidavits of age[14] and is perfectly valid if the parties are above the legal minimum ages. Parents cannot contest the marriage even though the statement of their consent be forged.[15] The statute should fix the minimum age for legal marriage without parental consent, and the minimum with such consent, with some attention to both eugenics and economics. The license statute should be amended to conform. Parental intervention by annulment proceedings should be permitted where the marriage takes place contrary to the statutory age requirements.[16]

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[11]In re Hollopeter, 52 Wash. 41, 100 Pac. 159 (1909); Cushman v. Cushman, 80 Wash. 615, 142 Pac. 26 (1914); Tisdale v. Tisdale, 121 Wash. 138, 209 Pac. 8 (1922).

[12]"Marriage is a civil contract which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years, who are otherwise capable."

[13]"He (the auditor) shall also require an affidavit of some disinterested credible person showing that . . . the female is over the age of eighteen years and the male is over the age of twenty-one years; Provided, that if the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female is under the age of eighteen years or the male is under the age of twenty-one years; Provided, that no consent shall be given, nor license issued, unless such female be over the age of fifteen years."

[14]See cases cited *supra* note 11. If the male was aged fourteen or more, the female twelve or more, even though they were below the ages indicated in REM. REV. STAT. § 8451, the marriage cannot be annulled by anyone for non-age.

[15]In re Hollopeter, 52 Wash. 41, 100 Pac. 159 (1909), cited *supra* note 11.

[16]This is the rule in several states. 1 VERNIER, AMERICAN FAMILY LAWS (1931) § 51. REM. REV. STAT. § 8449 now reads: "When either party to a marriage shall be incapable of consenting thereto, for want of legal age . . . such marriage is voidable, but *only at the suit of the party laboring under the disability* . . ." (Italics mine.)

We now have a code section which forbids marriage by indicated physical and mental incompetents[17] and one which requires of applicants for marriage licenses affidavits attesting their freedom from the inhibited ailments.[18] Fear of criminal prosecution in the incompetent and omniscience in the county auditor are thus the barriers erected against the transmission of hereditary mental disorders to children who will inevitably be social problems if not public charges, and the infecting of an innocent spouse by one suffering at the time of marriage with venereal disease. Insofar as this form of regulation is aimed at mental incompetents it approaches absurdity. Insofar as it is aimed at physical disease, suffice it to say that the auditor cannot be expected to discern such defects, and that criminal prosecutions for violations of such statutes are almost unknown. The fear of prosecution is altogether too weak a barrier against the evils sought to be prevented.[19]

Other states face this problem and an increasing number of them[20]

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[17]REM. REV. STAT. § 8439.

[18]REM. REV. STAT. § 8451. Section 8452 provides punishment for violation, "knowingly", of § 8439; § 8451 makes false swearing in the affidavits required by the section perjury.

[19]But one instance of prosecution for perjury in the affidavits required by REM. REV. STAT. § 8451 has come to my attention. That occurred in 1938 in King County. I have yet to hear of a prosecution under REM. REV. STAT. § 8452 for violation of § 8439. If readers are aware of other prosecutions for violations of these sections, I would appreciate information about them. Such statutes as REM. REV. STAT. §§ 8440 and 8454, which provide punishment for marriage officiants who knowingly marry persons forbidden by § 8439 from marrying seem to be of little practical value.

[20]The following table indicates the states which now require medical examination and certification, and the scope of the examination. In addition to the states listed, I have been advised that Pennsylvania, South Dakota and Tennessee enacted similar legislation during 1939. The session laws of these states for 1939 are not yet available.

State		*Applicant Affected*	*Scope*
Alabama	CODE 1928, § 1156.	Male	Venereal disease.
Colorado	Laws 1939, c. 128.	Both	Venereal disease.
Illinois	Laws 1937, p. 910.	Both	Venereal disease.
Indiana	Laws 1939, c. 100.	Both	Venereal disease.
Louisiana	GEN. STAT. (Dart. 1932) § 2180-2184.	Male	Venereal disease.
Michigan	Laws 1937, c. 207.	Both	Venereal disease.
New Hampshire	Laws 1937, c. 186.	Both	Venereal disease.
North Carolina	Laws 1939, c. 314.	Both	Venereal disease, tuberculosis, mental diseases.
North Dakota	COMPILED LAWS 1913, § 4375.	Male	Venereal disease, tuberculosis, mental diseases.
Oregon	CODE 1930, 33-118 *et seq.*; Laws 1937, c. 434.	Both	Venereal disease.
Wisconsin	STATUTES 1927, 245.10, 11; Laws 1937, c. 311.	Both	Venereal disease.
Wyoming	REV. STAT. 1931, § 103-227.	Male	Venereal disease.

are meeting it by statutes which, although varying in scope and detail, are all grounded on the idea that the way to prevent a syphilitic from marrying is to detect the disease when the license is applied for, and refuse a license—in other words, that physical examination and certification of freedom from those ailments which the legislature regards as inimical to a socially desirable marriage should accompany the license to marry.[21] The doctor's certificate may not be an infallible shield against improper license procuration. It is incomparably superior to the applicant's affidavit, if the examinations are properly made. Cooperation of the medical profession is vital to success of the certification plan. Perfunctory examinations will defeat its whole purpose.[22]

Another type of statute, as yet uncommon, vests in some public official in each county discretionary power to bring annulment proceedings against marriages which violate statutory requirements.[23] A few of these marriages will take place despite all precautions, and in the absence of such a statute the parties can continue their marital relations in the teeth of the statute which forbade them from marrying. In the case of persons suffering from ailments which can be transmitted to children surely the public interest justifies the intervention of a public representative.[24]

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[21]In 1909 the Washington legislature enacted a medical certification statute (Wash. Laws 1909, c. 174, § 3); the chapter covered other marriage regulations also. In the following extraordinary session a bill was passed which covered the same ground as Chapter 174 and in identical language save that the medical certification clause was omitted. Wash. Laws Ex. Sess. 1909, c. 16. This implied repealer was followed in 1929 by an express one. Wash. Laws 1929, c. 23, § 1. The motives actuating the special session cannot now be determined. Possibly the provision repealed was ahead of the times. Our ideas regarding the proper scope and value of social legislation have undergone various transformations since 1909.

[22]The matter of fees for such examinations has occasioned debate. Some states set the maximum fee by statute, others do not. Doctors complain that the statutory fee is inadequate, particularly where laboratory tests are necessary. When the statute does not set the maximum fee, applicants complain that fees are oppressive and arguments that the state should bear the cost of examinations are heard.

[23]1 VERNIER, AMERICAN FAMILY LAWS (1931) § 51 indicates two states having such legislation. The circumstances under which one of the spouses can secure annulment of the marriage by reason of his own physical or mental incapacity, or that of the other spouse, and the problem of collateral attack on the marriages of insane persons, are outside the scope of this paper. Notice, however, In re Hollingsworth's Estate, 145 Wash. 509, 261 Pac. 403 (1927); Waughop v. Waughop, 82 Wash. 69, 143 Pac. 444 (1914); REM. REV. STAT. § 8449.

[24]Young, *An Evaluation of Washington Marriage Laws* (1937) 12 WASH. L. REV. 112, contains an excellent discussion of the various Washington marriage statutes.

ADOPTION—RELINQUISHMENT ORDERS

Chapters 162 and 163, Laws of 1939, amended REM. REV. STAT. Sections 1696, 1698 and several subsections of 1700. Section 1697 was repealed. It is the purpose of this paper to indicate the changes made and to discuss briefly the purpose and effect of Sections 1700-1 *et seq.*

REM. REV. STAT. § 1696 confers jurisdiction on the superior courts to decree adoption and sets out generally the conditions upon which such decrees may be had. Chapter 163 makes two changes in this section. Venue is invested in the county of the adoptee's residence. Formerly only the county where the petitioner resided had venue. This amendment subserves no vital purpose. It merely enables the petitioner to proceed where the adoptee lives if this be more convenient.

The old statute made consent of a natural parent to the adoption of a minor child unnecessary if he or she had been "unconditionally deprived of custody and control of such child by the judgment or decree of a court of competent jurisdiction, in an action, suit or proceeding, in which such parent has been given notice and a right to be heard". This provision has been important to parents deprived of custody under the Juvenile Court Act[1] or in connection with divorce or separate maintenance actions. The phrase "unconditionally deprived" occasions argument if the divorce or separate maintenance decree divides custody between the parents, or awards custody to one and stipulates that the other may visit the child. The 1939 amendment resolves the difficulty by deleting this phrase and requiring consent of both parents to the adoption in those cases in which the custody decree provided for divided custody or visitation. In so doing it codifies the results which our court has been reaching.[2] The amendment says that consent of a parent is not necessary "where the child shall have been awarded to the custody and control *of the other parent*".[3] The words "of the other parent" are new and seem to mean that the consent of a parent deprived of custody under the Juvenile Court Act is now required save as proceedings in the juvenile court have, in establishing parental abandonment or non-support of the child, brought the case within REM. REV. STAT. § 1696 (4).[4] If this be the correct interpretation of the amendment, the change is to be

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[1]REM. REV. STAT. § 1987-8, § 1987-9.

[2]In re Force, 113 Wash. 151, 193 Pac. 698 (1920); In re Walker, 170 Wash. 454, 17 P. (2d) 15 (1932).

[3]The italics are added.

[4]This subsection now reads: "From a father, or mother, who has been found by a court of competent jurisdiction to have deserted or abandoned such child without provision for his or her identification or support." The phrase "or support" was added by Wash. Laws 1939, c. 163.

applauded. It is in accordance with the general spirit of the Juvenile Court Act.[5]

If adoption involved merely a change in the child's custody, the rule with regard to parental consent would work very well. But adoption does much more. It destroys a status—that of parent and child, existing between the natural parent and his offspring. It creates a new status of parent-child between the adopting parent and the child. The parent who has lost the right to custody has the other incidents of parenthood.[6] And custody itself is not irrevocably lost. The decree is always subject to change and many custody orders are modified in response to changes in the circumstances.[7] If the spouse to whom custody has been awarded dies, the other parent is entitled to again have the child.[8] Contests over children, incident to divorce and separate maintenance litigation, frequently turn on such things as the age of the child, or the relative ability of the spouses to care for and educate it, and not on misconduct or morel unfitness of one of the contestants.[9] Adoption destroys practically all hope of the natural parent again regaining the child save through another adoption proceeding. A parent who has lost custody to the other spouse has nevertheless so substantial an interest in the child that his consent should be a requisite to its adoption.[10]

REM. REV. STAT. § 1697, which required separate examination of the wife with regard to her acquiescence, where husband and wife petition together for adoption, is repealed by Chapter 163. The section had no utility and will not be missed.[11]

REM. REV. STAT. § 1698 sets up criteria to be regarded by the court in weighing the merits of an adoption petition—ability of the petitioner to bring up and educate the child properly, the fitness and propriety of the adoption. It is impossible in the larger counties and may be

[5]See REM. REV. STAT. § 1987-14; State ex rel. Everitt v. Superior Court, 178 Wash. 90, 33 P. (2d) 897 (1934).

[6]The parent, for example, will inherit from a child who died intestate in another's custody. It is highly doubtful that he will inherit from a child which has been adopted by another. The child in this jurisdiction, however, will inherit from the natural parent even though adopted. In re Roderick, 158 Wash. 377, 291 Pac. 325 (1930).

[7]See for example Clark v. Clark, 110 Wash. 293, 188 Pac. 456 (1920); Sorge v. Sorge, 112 Wash. 131, 191 Pac. 817 (1920); Penny v. Penny, 151 Wash. 328, 275 Pac. 710 (1929). The principle of these cases is applicable irrespective of whether the custody decree be absolute or provide for visitation or for divided custody.

[8]In re Neff, 20 Wash. 652, 56 Pac. 383 (1899); In re Kneeland, 160 Wash. 64, 294 Pac. 562 (1930); Note (1931) 74 A. L. R. 1352.

[9]See for example Smith v. Smith, 15 Wash. 237, 46 Pac. 234 (1896); Koontz v. Koontz, 25 Wash. 336, 65 Pac. 546 (1901); Freeland v. Freeland, 92 Wash. 482, 159 Pac. 698 (1916); Mason v. Mason, 163 Wash. 539, 1 P. (2d) 885 (1931).

[10]The law in other states is unsettled. See 4 VERNIER, AMERICAN FAMILY LAWS (1936) § 259; Note (1934) 91 A. L. R. 1387.

[11]Colorado is the only other state having a statute similar to the section repealed. 4 VERNIER, AMERICAN FAMILY LAWS (1936) § 259.

difficult in even the smaller ones for the court to marshall the facts upon which intelligent action on an adoption matter must be based. The parties cannot usually be relied upon to present the needed information as the petition really becomes an adversary action. Chapter 163, Laws of 1939, recognizes this problem and authorizes the superior courts to appoint investigators to advise them in adoption proceedings. This amendment regularizes the procedure which has heretofore been followed in a few counties and is in line with similar development in other states.[12] The statute is silent with regard to the source of payment for such advisors, or to the inclusion of their expenses in the costs of the actions. The duration of the investigatory period is fixed by reference to REM. REV. STAT. § 1700-5.[13]

Section 1698 is further amended by Chapter 163 to provide that denial of a petition for adoption shall be made only after notice to interested parties and a hearing, which shall be private, and after entry of a finding of fact.

It is impossible to comprehend Chapter 162, Laws of 1939, without some understanding of its background. The law amended is Chapter 150, Laws of 1935, brought into the code as REM. REV. STAT. § 1700-1 *et seq.* The 1935 statute seemed to be directed at certain definite objectives. It sought to control the practice of "baby-farming"—the informal transfer of the person of a minor with the idea that the transferee should have possession of it, the right to its earnings or work, and be obliged to support it until majority;[14] it also attempted to control the practices of doctors and maternity home operators of selling or otherwise disposing of infants born under their care, and to control the operations of orphanages and similar enterprises by requiring them to keep records with regard to each child coming into their hands. It was an amplification of REM. COMP. STAT. § 1700 which covered some of these points to a lesser extent. Control over custody transfers was gained in the 1935 law by making it unlawful to transfer permanent custody of a minor child save on court order. We then had and still have separate code treatment of guardianship, adoption, habeas corpus, delinquent or dependent children and children of divorced parents. These chapters are complete in themselves and each involves as a part of its procedure the power to decree a transfer of custody which will be effective until modification of the order. Each of these is, however, permissive in nature, permissive in the sense that the superior court is given jurisdiction and final action depends on

[12]4 VERNIER, AMERICAN FAMILY LAWS (1936) § 257.

[13]Section 1700-5 is discussed below.

[14]The agreements litigated in Lovell v. House of the Good Shepherd, 9 Wash. 419, 37 Pac. 660 (1894); St. Clair v. Williams, 23 Wash. 552, 63 Pac. 206 (1900); In re Smith, 118 Wash. 1, 202 Pac. 243 (1921), are illustrative.

the validity of the cause presented to the court. The Juvenile Court Act, the divorce and habeas corpus statutes also expressly permit entry of temporary custody orders *pendente lite*. Nothing in REM. REV. STAT. § 1700-1 as adopted in 1935 showed any purpose by the legislature to trench upon these procedures. It simply required that one of them be used where it was desired to transfer permanent control over a minor. But some of the superior courts insisted that this statute introduced a new element into adoption proceedings, that the child could be handed over to the petitioner by the one having possession, pending the final decree, only on an order of the court and that such a transfer would otherwise be unlawful under Section 1700-1. This construction of the 1935 statute is highly debatable.[15] Such a transfer is not "permanent" either in fact or in purpose. It is temporary, contingent upon adoption being decreed. In so far as Section 1700-1 requires a court order before a transfer of permanent custody can lawfully be made, the decree of adoption satisfies the requirement. So also does the decree appointing a guardian or granting custody or committing a delinquent or dependent child satisfy the requirement. An adoptive parent is, as a matter of law, entitled to custody just as is a person to whom permanent custody has been decreed. A guardian of the person will or will not be so entitled, depending on the terms of the decree. The Juvenile Court Act specifically confers such right on the person or institution to whom the child is given.[16]

Moreover, so far as the applicability of the 1935 statute is concerned, there is no basis for distinguishing adoption from other litigation in which custody of a minor is in issue. On the reasoning of the superior courts already mentioned, an order would be necessary before the person in possession of a child could legally transfer that possession *pendente lite* in every case involving custody. Under the rulings of these courts, what is generally known as a "temporary custody decree" became in certain instances a "relinquishment order". And while we usually associate the temporary custody order with a quarrel over possession of the child, the "relinquishment order" became something which was required before a change of possession ardently desired by everyone interested could be legally made.

The 1939 amendment's greatest importance lies in its inferential approval of the construction given the 1935 statute by some superior

[15]The language of § 1700-1 lends no support to this construction. Section 1700-4, reading in part: "No licensee of a maternity hospital, physician, midwife or nurse or any other person shall undertake directly or indirectly to dispose of infants by placing them in family homes for adoption or otherwise, until after the order of relinquishment shall become final", seems properly to mean simply that the designated persons shall not undertake to dispose of children save through a recognized judicial proceeding such as adoption or the Juvenile Court Act procedure.

[16]REM. REV. STAT. § 1987-8, § 1987-9.

courts as discussed above. The amendment assumes that relinquishment orders are necessary under REM. REV. STAT. § 1700-1 and regulates them. Interestingly enough, the regulation is in part merely a device employed to achieve an entirely unrelated goal—that of limiting the time which the court can consume in pondering over an adoption petition. REM. REV. STAT. § 1700-1 *et seq.* is now a hodge-podge. It continues the objectives of the 1935 statute. It superimposes the new relinquishment order procedure, surely on adoption, and arguably on all litigation involving custody of infants. It regulates the relinquishment order to some extent. It tries to speed up adoption proceedings. A dubious construction of Section 1700-1 was crystallized into law in order to solve some of the problems that construction was creating in the superior courts. The new hybrid chapter, however, raises more difficulties than it settles.

Chapter 162 does two things specifically. REM. REV. STAT. § 1700-1 forbids permanent change in the custody of a minor child save upon court order. REM. REV. STAT. § 1700-4 forbids any person from undertaking "directly or indirectly to dispose of infants by placing them in family homes for adoption or otherwise, until after the order of relinquishment shall become final." The amendment removes from the operation of these sections those cases in which one spouse is undertaking the adoption of a child of the other. It was necessary because, under the relinquishment order procedure, Section 1700-1 was thought to forbid a petitioner for adoption from taking the child into his home pending action on the petition even though the child was that of the petitioner's spouse.

The amendment also greatly expands REM. REV. STAT. § 1700-5. This subsection formerly read: "No order for the relinquishment of any minor child shall become final or binding until the expiration of ten days from the entering of such order," and evidently meant that any decree transferring permanent custody should be provisional for ten days and thereafter final without further order. The new statute provides that upon the filing of a petition for adoption the court "shall enter its order of relinquishment and transfer forthwith: Provided, There is filed with the petition the written waiver of the parent or parents of the person to be adopted." The section says nothing about when such an order shall be entered in other types of proceeding involving custody. The proviso is important because it apparently excludes those petitions in which the child sought to be adopted is in the hands of an institution,[17] or is orphaned or abandoned. The value

[17]It may have been contemplated by the draftsmen here that orphanages and such institutions, vested with power to consent to adoptions under the Juvenile Court Act (REM. REV. STAT. § 1987-9), would come within the designation of "parent" as used in the amendment. If so, it would have been better to have expressly so provided. In REM. REV. STAT. § 1696.

of this part of the amendment, which is directed at speeding things up in adoption actions, is questionable. If court control over *pendente lite* custody changes be desirable at all, entry of relinquishment orders should always be discretionary with the court. The parent's consent does not mean *ipso facto* that the change is for the child's benefit. Under the amendment the order becomes a matter of right if accompanied by such consent.

The 1939 amendment further purports to fix at ten days the period of investigation after a relinquishment order has been entered. This is at once qualified by a proviso: "If the court shall be satisfied that ten days is an insufficient period in which to make the necessary investigation, then the time may be extended not to exceed ninety days." The amendment continues: "It being intended by this section to fix and define the period of time during which the court may make or cause to be made the investigation to determine the fitness and propriety of relinquishment, transfer, or adoption." It is apparently hoped by this provision to prod the court's advisor, and that the ninety-day extension will be available only for cause shown. Shown by whom? The advisor? Is there to be a hearing? Notice that statutory provision for an advisor is found only in the adoption and Juvenile Court Acts. The new statute could have been amplified here to advantage, indicating precisely the procedure by which ten days will be extended into one hundred days.

The mechanics used by the draftsmen for determining the period of investigation are interesting. The order of relinquishment is said not to be final until the investigatory period indicated above has elapsed, leaving to inference the correlative that it shall be final after such time even though the court has not actually completed its investigation; but the amendment goes on to say that the order of relinquishment shall also not be final "until an order for adoption shall have been entered." The 100-day maximum is an attempt to control the time during which the court may investigate but does not fix the time within which the adoption decree must be entered. It is accordingly not clear just what is going to prevent the court from investigating as long as it pleases. Of course in most instances the court, having before it the report of its investigator, will not unduly delay action thereafter. But if it appear expedient to do so the court can, despite this amendment, continue indefinitely its inquiry into the circumstances. Any attempt to speed up the ordinary case and leave open

"parent" is evidently used in its normal connotation, and a separate provision, without exceptions, is made for the consent of the guardian, if any, of the child sought to be adopted. The orphanage seems more accurately to be a guardian, not a parent. That a guardian may be in *loco parentis* for some purposes hardly justifies the assumption that the term "parent" as used in Chapter 162 will be construed to mean "guardian" as well.

a means whereby the unusual one can be given the time it requires—which seems to be the aim of the draftsmen—will be productive of confusion where that purpose is not expressly set out. The phraseology of the amendment is at this point very cumbersome. Moreover, since the evils of delay are present in any instance where custody of a minor is in issue, the phrase above, "until an order for adoption shall have been entered", should have been made to read: "until an order for adoption or of permanent transfer of custody . . ." The amendment of REM. REV. STAT. § 1700-5 was apparently prepared without recognition of the fact that custody issues reach the courts in a variety of ways, as an accompaniment of divorce, separate maintenance and guardianship litigation, and in direct actions for custody, as well as in adoption; and that if REM. REV. STAT. § 1700-1 forbids voluntary interim transfers of possession in one such type of proceeding, it must forbid such transfers in all of them.

The 1939 amendment of Section 1700-5, as a part of its regulation of relinquishment orders, attempts to define the status of the child affected thereby. Until the order has become "final",[18] "the child shall continue to all intents and for all purposes the child of the person or persons so relinquishing or transferring as if no order had been entered." Had the relinquishment order been recognized as merely a decree of temporary custody under another name, this provision would have been unnecessary. A temporary custody order leaves the status of the child unchanged, simply because the order is temporary. If we label such a decree "relinquishment order", we have something new and strange and of course doubt about what happens if the order does not become final at once appears. The draftsmen surely intended that the relinquishment order transfer a right to possession of the child *pendente lite*. The language of the amendment is then more sweeping than is consonant with that purpose as the child is not "for all purposes the child of the person so relinquishing" while the relinquishment order is outstanding.

Chapter 162 contains an additional provision: "In the event no order for adoption is entered but the court determines from its investigation that the welfare of the child requires, then the court may order said child committed as a dependent child." The language of the amendment is not clear. Is it contemplated that the child is to be "com-

[18]The amendment uses the term "final" in connection with relinquishment orders as though it meant something. In fact it is meaningless. The order amounts to no more than a direction that the person of the child be surrendered *pendente lite*. It never becomes "final" in the sense that the surrender so directed will become permanent; permanent custody is decreed if at all as a part of the principal litigation before the court. The relinquishment order is surely subject to modification at any time, both before and after the period of investigation set in the statute has passed.

mitted" as under REM. REV. STAT. § 1987-8, even though no hearing pursuant to the Juvenile Court Act has been had, and even though, as in the larger counties, another department exercises the functions of the juvenile court? Or does the amendment mean that the proceedings shall be transferred to the juvenile court just as though a petition had been filed under REM. REV. STAT. § 1987-5?

It is perhaps desirable that the superior courts supervise every change of possession of a minor intended by the parties to be a permanent change with transfer of the legal rights and responsibilities which constitute "custody". REM. REV. STAT. § 1700-1 *et seq.* as enacted in 1935, plus the guardianship, adoption, divorce, habeas corpus and juvenile court statutes adequately accomplished that purpose.

The need for supervision over changes in possession of a minor pending litigation directly or indirectly involving its custody may or may not exist. In some instances it will be proper that the change be made, in others not. The child's welfare should control. The power of the court to decree temporary custody is clear. Maybe the court and not the parties should have the say, and maybe such a decree should be made a requisite to the change. If so, a statute expressly and specifically so providing would much more clearly and simply achieve that objective than does REM. REV. STAT. § 1700-1 *et seq.* as these sections now read.

Careful investigation of the circumstances is necessary in any case where permanent custody of a child is in issue. The authorization for appointment of an advisor by the superior court, contained in Chapter 163, is limited to adoption proceedings. A separate and general authorization would have been more appropriate.

Delay in any case involving custody of a minor child frequently works great hardship, far greater than delay in other civil litigation. Some limitation on the time which the superior court can take to reach a decision may be proper. To frame a statute so dictating, which would be both rigid and flexible, is no simple matter.

Chapter 162 represents a drive on certain difficulties which lawyers, in some counties at least, were encountering. It is regrettable that the method of attack used was to engraft upon REM REV. STAT. § 1700-1, § 1700-4, and § 1700-5, the curatives deemed expedient. The resultant composite is puzzling and involved.

The various Washington statutes which deal with children have, like Topsy, "just growed". Some of them need redrafting. Modern and sensible statutory treatment of the problems of illegitimate children is needed. The adoption statute should be amended to make adoption decrees subject to revision, inasmuch as defects in the adopted child or in the adopting parent, which make the adoption socially undesirable,

are not always ferreted out before entry of the adoption order. The divorce statute should be amended to require segregation in divorce decrees between the sum awarded the wife for her support, and the sum awarded to her for the support of the child, custody over which has been decreed to her. Adoption, custody and juvenile court matters frequently tend to dovetail, and correlation of the several statutes covering each would be worth while. There are no doubt other points at which an overhauling of these statutes would be of great benefit to the state and which could be ascertained by inquiry among the bar and the several judges. The need for redrafting and correlating these various statutes would seem to merit the careful consideration of the Washington Bar.