

MAJOR CONTENT REVISIONS TO ADOPTION PROCEDURE LAW

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Objective: The Korean Public Interest Lawyers' Group, Gong-Gam, in collaboration with adoptee organizations TRACK and ASK, KoRoot, non-affiliated adoptees, single parents, and other interested parties in Korea and abroad is currently drafting a bill to address revisions to adoption procedure law in Korea. In an effort to inform and include feedback from as many interested parties as possible during the revision process, an outline of the first draft is provided below. Please understand that this is a "work in progress" and is continually undergoing revisions as more recommendations and feedback are taken into account.

Feedback: This is an exciting yet crucial time in Korea to change the future of adoption practices (both domestic and intercountry) to ensure the best interests of the child. The contents of the revisions not only include amendments to adoption procedures, but also address adoptee rights related to post-adoption services and access to adoption records. If you have any comments, feedback and/or suggestions please email khsMarch@gmail.com and your ideas will be passed on to Gong-Gam. Any and all opinions and comments are welcome. As this is a time sensitive project, it is appreciated if you can send your feedback before **SEPTEMBER 1st** so that we can ensure that your thoughts are heard.

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MAJOR DRAFT REVISION CONTENTS (last modified: July 23, 2009)

**All revision suggestions are made to the Special Adoption Law only.

Note: this is an **outline that covers major revisions only.

**Please refer to italicized writing for clarifications and simple explanations when available.

SECTION ONE:

Unify adoption procedures by integrating adoption procedural laws under the 'Civil Law' and the 'Special Act Relating to the Promotion and Procedure of Adoption [hereafter 'Special Adoption Law'].

(Currently, adoption procedures are under the jurisdiction of Civil Law and the Special Act Relating to the Promotion and Procedure of Adoption. If similar contents are covered in both laws, the Special Adoption Law takes precedent.)

● Present Condition

- **Civil Law:** Addresses matters about adoption related to "all children." Indicates that adoptive parents need to receive permission to adopt from the court.
- **Special Adoption Law:** Only protects "children in need." Simplifies adoption procedures, specifically for intercountry adoptions by adoption agencies.

● Proposed Revisions to the Special Adoption Law:

1. Delete "adoption promotion" contents for children in need and add legislation to protect the birth family. The purpose of the Special Adoption Law will change from focusing on welfare policies aimed at children in need of protection to focusing on policies that protect birth families and prospective children to be adopted, as well as

promotion of welfare policies.

2. The Special Adoption Law's focus will be extended to include "all children" and not just "children in need." The Special Adoption Law will take precedent over the Civil Law. Regulations relating to the protection of "children in need" in the Special Adoption Law will be deleted (Article 4).

Article 4 in the Special Adoption Law, "Eligibility for Adopted Children" specifies who is eligible to be an adopted child under the Special Adoption Law. Because we are changing the Special Adoption Law to cover "all children" and not just "children in need," Article 4 is not necessary. Children eligible for adoption will be determined by the guidelines specified by the Civil Law.

3. The name of the Special Adoption Law will be revised from "The Special Act Relating to the Promotion and Procedure of Adoption" to "The Special Act Relating to Adoption Procedures." ("Promotion" will be deleted)

SECTION TWO:

Strengthening state and local government responsibilities for the protection of birth families (Article 3)

● Proposed Revisions to the Special Adoption Law:

1. Establish supportive policies that address childbirth and child rearing education for single mothers and one-parent families.
 - A. According to Article 3-2, "The State and local government shall take and make any measures and support necessary for offering another home to bring up a child soundly who experiences difficulties being brought up at the home where he/she was born." For the protection of the child and the child's birth family, we would like to make the duties of the state and local government more concrete. For example:
 - i. Develop supportive policies addressing childbirth and child rearing education for single mothers and one-parent families.
 - ii. Provide child rearing related information and counseling to adoptive parent applicants for the protection of the child to be raised in a safe environment.
 - B. Include in Article 3-3, that the State and local government shall make their adoption conditions, processes and effect compatible with international standards as specified by the United Nations Convention on the Rights of the Child (CRC) and the Hague Convention on Protection of Children and Children and Co-operation in Respect of Intercountry adoption (hereafter Hague Adoption Convention).
 - C. A new section will be added to Article 3 indicating that the State and local government can authorize professional organizations to enforce the items indicated in section 3 and 4.

Article 3 of the Special Adoption Law outlines the responsibilities of State and local governments and citizens to ensure that children are brought up in the home where he/she is born in if possible. Our proposed revisions aim to increase the government's responsibilities in protecting the right of birth families to remain together and in ensuring the rights of the child are protected as per international standards according to the CRC and The Hague Adoption Convention.

SECTION THREE:

Reforming adoption conditions and procedures to conform with international standards

Under the Civil Law, there are two types of adoptions: 일반 입양, which is similar to “open adoption” processes in the U.S. and 친양자 입양, which is similar to “closed adoption” processes. Although differences exist between “open adoptions” and “closed adoptions” in Korea and in the U.S., for the purpose of simplicity, “closed adoption” and “open adoption” will be used to refer to the two types of adoptions hereafter. I will briefly explain some of the major differences:

**“Open adoption” (일반 입양): Allows for an adoptee to maintain a relationship with his or her birth family, he/she is eligible to get the inheritance of his/her birth parents and adoptive parents. In this type of adoption an adoptee maintains the last name of his/her birth family. Adoption occurs through a “reporting” system with the court.*

**“Closed adoption” (친양자 입양): By law, the adoptive parents are perceived as the adoptee’s birth parents. All ties with the birth parents are legally severed. The adoptee is only eligible to get the inheritance of his/her adoptive parents, and the adoptee’s last name is changed to his/her adoptive parents. Adoption requires permission from family court.*

1. Strengthening the requirements of adoptive parents (example recommendations are provided below): **For both types of domestic adoption*
 - Require pre-adoption education (Article 5-2 establish a clause)
 - Check for prior criminal records of child mistreatment or family violence, any past records of drug or alcohol abuse, and assess psychological, material and physical states (Article 5-1(5) make more concrete)

2. Strengthen adoption agreement conditions (Article 6)
 - Settle the adoption agreement age to be lowered to 10 years old. A child 10 years or more is required to give consent to his or her adoption (Civil Law Article 869 of the Special Adoption Law provision). *Currently if a child is 15 years or older, he or she is required to give consent to be adopted.*
 - Strengthening the adoption agreement effective requirements: (1) Consent for adoption can be given only after 30 days of child birth; (2) Birth parents are required to receive counseling prior to consenting to adoption (counseling should address child rearing education and adoption related issues); (3) financial gains are prohibited

3. Introduction of pre-adoption counseling and education
 - (1) Birth parents
 - Offer information for the protection of keeping the birth family together (local government, authorized organizations)
 - Adoption related legal counseling (local organization, authorized organization)

“Before adoptive parents formally consent to adoption, they must receive appropriate explanations from national and local government organizations as well as professional authorized organizations regarding childrearing education and the legal effects of adoption” (Article 6-2(2)).

(2) Adoptive parents

- Must complete pre-adoption education (local government, authorized organization).

“Before adoptive parents in the application process officially complete an adoption, they must receive counsel from a local and national authorized professional organization and as ordered by the Ministry of Health and Welfare, must complete prescribed education.” (Article 5-2).

(3) The duties of the State and local government to provide information, authorization ability (Article 3).

“Child rearing related information and counseling must be offered to adoptive parent applicants, and State and local government organizations must take and make any measures and support necessary for the child to be soundly raised in the home of his or her guardian or relative” (Article 3-2(2/3)).

4. Standardizing and increasing the strictness of adoption notification and required documents (Article 7)

- (1) For the protection of the birth family, check to make sure required information was offered and counseling was performed. In the case of intercountry adoption, a written note of confirmation must be made that indicates that the greatest possible efforts and support were made to first protect and raise the child domestically (Article 7-1)
- (2) Prospective adoptive parents must submit required documents that indicate that they meet the requirements as specified in Article 5-1/2 (including evidence of successfully completing pre-adoption education requirements) (Article 7-2)
- (3) In according with Article 6, a document that indicates and provides evidences that consent to adoption was valid (Consent is valid only if it can be proven that consent was given after 30 days of childbirth, the birth parents have received mandatory pre-adoption counseling, and it can be proven that no financial gains were made).

**Gong-Gam has standardized and increased the strictness of adoption processes for all types of adoptions (domestic “open adoption”, domestic “closed adoption” and intercountry adoptions) by unifying the conditions and standardizing required documentation. Article 16 states that domestic and intercountry adoption documentation conditions are the same, and Article 17-1 states that intercountry adoptions from abroad into Korea can have their procedures checked to ensure the conditions and standardized required documentation is in accordance with Article 7-1.*

5. Strengthen the duties of adoption agencies

- (1) Pre-adoption follow-up measures (Article 12): For the protection of birth families, in collaboration with government organizations, adoption agencies will offer child rearing education and counseling to birth families
- (2) Follow-up measures for missing children (Article 12-2): An addendum will be made to the existing Article 12-1. In the case of a missing child, if it has not been confirmed first with the missing child’s guardian, the child is not eligible to be adopted internationally. (currently, if a child has been “missing” for 6 months or more, he or she is eligible to be adopted internationally).

- (3) Has the ability to conduct domestic adoptions (Article 12-3)
- (4) Adoption agency duties (Article 12-4)
 - Drawing up the homestudy report of prospective adoptive parents
 - Provide adoption counseling to prospective adoptive parent applicants
 - Provide adoption education to adoptive parents in the adoption process
 - After adoption the adoption agency must report the result of the adoption and information to the “Central Adoption Information Center.”
- (5) Post-adoption service duties (Article 12-5)
 - Post-adoption service period does not differ between domestic or intercountry adopted individuals. After adoption, post-adoption services will be extended to 1 year
 - *Currently the post-adoption period is 6 months. In the case of intercountry adoption, post-adoption services are terminated when the adoptee takes on the nationality of the adopted country).*

SECTION FOUR:

Ensuring the rights of adoptees

1. Adjustment of the age at when a child is able to give consent to his or her own adoption
 - To respect the mind of the child to be adopted: lower the age of consent from 15 years of age (Civil Law, Article 869) to 10 years of age (Article 6-1)
2. Rights to access information should be expressed clearly (Article 8-2)
 - Ensure that it is clearly indicated that the adoptee has the right to access his or her adoption records at the age of 18 (CRC’s standard).
 - The accessible documents should be “all relevant documents”: including records of birth parents, family and adoption procedures.
 - In cases when birth parents do not consent to the disclosure of their records (at this point), other information, except for birth parents’ records, is disclosed.
3. The right to choose nationality (Article 8-4): A special provision in the Nationality Act

“In cases of intercountry adopted persons, Article 25, Section 2 of the Nationality Act’s stipulation that the adopted person will receive the nationality of the adoptive parents will be ignored and the adopted person will not lose his or her Korean nationality. According to the same law (Article 12), it states that once a person’s age reaches the stipulated age, he or she must choose a nationality.” *(The stipulated age is 22 years old-Korean age).*

SECTION FIVE:

Central Adoption Information Center’s position and power authority (Article 10)

**We are currently still working on the title of this organization. The organization will be referred to as the “Central Adoption Information Center” within this report, but please understand that it is a working title.*

“The Ministry of Health and Welfare will establish the Central Adoption Information Center for the protection of the child’s birth family, the child, and to accomplish the promotion of

public welfare” (Article 10-1)

DUTIES:

1. Management of adoptee and family information and birth family search related integrated database (Article 10-1:1).
2. Construct and connect an adoption database (Article 10-1:2)
3. Domestic and intercountry adoption civil appeals, arbitration and general counseling (Article 10-1:3)
4. To increase the activity of adoption, manage Korean public relations and education (Article 10-1:4)
5. Conduct research and investigate domestic and intercountry adoption policies and related services (Article 10-1:5)
6. Regulation and evaluation of adoption related programs (Article 10-1:6)
7. Adoption related international collaborative services (Article 10-1:7)

OTHER ITEMS:

1. The head of the Ministry of Health and Welfare will establish authorization and supervise the Central Adoption Information Center (Article 10-1/2/3, Article10-4).
2. The President of Korea will appoint the director of the Central Adoption Information Center (Article 10-4)
3. Government contribution (Article 10-5)
4. The Central Adoption Information Center’s authority (Article 10-2)
**Adoption agencies and adoption related administrative organizations are required to support the Central Adoption Information Center. The supportive duties of said organizations are explicated in Article 10-1/2.*

**In instances when adoption agencies or related organizations do not give information that was asked for by the Central Adoption Information Center please refer to Article 10-2:1-4. If there is no special reason why the agency or related organization is withholding the information, the director of the Central Adoption Information Center can report this to the Ministry of Health and Welfare and the Ministry of Health and Welfare will take appropriate matters to require the organization to abide by the law.*

**In the case where adoptee organizations or adoption related administrative organizations do not comply with the required duties, a report can be made to the Ministry of Health and Welfare and government measures will be taken (Article 10-3)*
5. The Central Adoption Information Center’s Duties (Article 10-3)

** Appropriate measures must be taken by the Central Adoption Information Center’s director and staff members to ensure the protection of private information. (10-3:1)*

** The workers within the Central Adoption Information Center must not reveal private information. (10-3:2)*

6. Supervision and guidance of the Central Adoption Information Center (additional information)

** The Ministry of Health and Welfare director can require that business, accounting and all related assets of the Central Adoption Information Center be reported (10-4:2)*

**In instances when the director of the Ministry of Health and Welfare inspects the assets of the Central Adoption Information Center (per 10-4:2), the Ministry of Health and Welfare can take appropriate measures to correct the problem(s) (if applicable) (10-4:3).*

SECTION SIX

Needed service addenda

* There are two sections that have not been drafted yet.

-Administrative sanction plan (Article 19, Article 27)

-Adoption service expenditures (Article 20)

☺ Thanks for reading to the end ☺