

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 450

Session of
1979

INTRODUCED BY E. Z. TAYLOR, E. R. LYNCH, VROON, NOYE, PICCOLA,
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MARCH 5, 1979

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 5, 1979

AN ACT

1 Amending the act of July 24, 1970 (P.L.620, No.208), entitled
2 "An act providing for the adoption of minors and adults and
3 for the termination of certain parent-child relationships;
4 providing for jurisdiction of courts; providing for recording
5 of foreign decrees of adoption; and containing provisions for
6 procedures, decrees and records in all matters relating
7 thereto," incorporating additional provisions relating to due
8 process, notice and best interest of the adoptee further
9 providing for relinquishment of parental rights and providing
10 for certain options.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Section 102, act of July 24, 1970 (P.L.620,
14 No.208), known as the "Adoption Act," is amended to read:

15 Section 102. Definitions.--As used in this act:

16 "Abandoned child" means the child is found under such
17 circumstances that the identity and whereabouts of the parent or
18 parents is unknown and cannot be ascertained by diligent
19 searching and the parent or parents do not claim the child
20 within three months after the child is found.

21 "Abused child" is a child who exhibits evidence of serious

1 physical or mental injury not explained by the available medical
2 history as being accidental, sexual abuse, or serious physical
3 neglect, if the injury, abuse or neglect has been caused by the
4 acts or omissions of the child's parents or by a person
5 responsible for the child's welfare provided, however, no child
6 shall be deemed to be physically or mentally abused for the sole
7 reason he or she is in good faith being furnished treatment by
8 spiritual means through prayer alone in accordance with tenets
9 and practices of a recognized church or religious denomination
10 by a duly accredited practitioner thereof or solely on the
11 grounds of environmental factors which are beyond the control of
12 the person responsible for the child's welfare such as
13 inadequate housing, furnishings, income, clothing and medical
14 care.

15 [(1)] "Adoptee" means an individual proposed to be adopted.

16 [(2)] "Agency" means any incorporated or unincorporated
17 organization, society, institution, or other entity, public or
18 voluntary, which may receive or provide for the care of
19 children, supervised by the Pennsylvania Department of Public
20 Welfare and providing adoption services in accordance with
21 standards established by the department.

22 "Child" means a son or daughter whether by birth or adoption
23 who is under the age of eighteen.

24 [(3)] "Clerk" means the clerk of the division of the court
25 of common pleas having jurisdiction over voluntary
26 relinquishment, involuntary termination and adoption
27 proceedings.

28 [(4)] "Court" means the court of common pleas.

29 "Custody" means the legal status conferred by court order.

30 "Guardian" means an individual appointed by the court for the

1 purposes of the care and management of a person with the duty
2 and authority to make decisions permanently affecting his or her
3 health and development.

4 "Guardian ad litem" means an attorney appointed in accordance
5 with State law by a court having jurisdiction, to represent the
6 child, or his minor or incompetent parent in a judicial
7 proceeding.

8 [(5)] "Intermediary" means any person or persons or agency
9 acting between the parent or parents and the proposed adoptive
10 parent or parents in arranging an adoption placement.

11 "Local authorities" means county institution district or its
12 successor.

13 "Minor" means an unmarried child under the age of eighteen.

14 [(6)] "Parent" [includes adoptive parent] means the natural,
15 presumptive, or adoptive mother or father of a child.

16 Section 2. The act is amended by adding sections to read:

17 Section 104. Purpose.--The purpose of this act is threefold:

18 (1) To provide judicial means for voluntary or involuntary
19 termination of parental rights and responsibilities in instances
20 where children can no longer receive proper care from their
21 parents;

22 (2) To vest court ordered custody of such children in an
23 agency or with an individual pending adoption; and

24 (3) To establish the procedure to be followed in processing
25 an adoption.

26 It is the intent of the act in realizing these purposes to
27 safeguard the rights and interests of all parties concerned and
28 to promote their welfare.

29 Section 105. Philosophy.--Implicit in this act is the
30 philosophy that:

1 (1) The State, through the local authorities, should make a
2 timely offer of service wherever possible in order to strengthen
3 and preserve family life;

4 (2) The best interest of the child shall prevail when
5 children's and parent's interests conflict; and

6 (3) A termination of parental rights and responsibilities is
7 so important and drastic that it requires judicial
8 determination. Attempts at severance by contractual
9 arrangements, expressed or implied, for the surrender or
10 relinquishment of children shall not be valid.

11 Section 3. Section 202 of the act, amended June 11, 1976
12 (P.L.161, No.80), is amended to read:

13 Section 202. Venue.--Proceedings for voluntary
14 relinquishment, involuntary termination and adoption may be
15 brought in the court of the county where the petitioner, parent
16 or parents or the adoptee, or the person or persons who have
17 filed a report of intention to adopt required by section 331
18 reside, or in the county in which is located an office of an
19 agency having custody of the child. Proceedings may also be
20 brought with leave of court in the county in which the adoptee
21 formerly resided. At the request of any party to a proceeding,
22 the court may upon good cause shown transfer the case to the
23 court in the county of residence of the person requesting the
24 transfer.

25 Section 4. Section 301 of the act is amended to read:

26 Section 301. Relinquishment to Agency.--When any child
27 [under the age of eighteen years] has been in the constructive
28 or physical care of an agency for a minimum period of [five]
29 three days, the parent or parents of the child may petition the
30 court for permission to relinquish forever all parental rights

1 and duties with respect to their child. [The written consent of
2 a parent or guardian of a petitioner shall be required if he has
3 not reached eighteen years of age.] The agency having the
4 constructive or physical care of the child shall join in the
5 petition which shall contain the agency's consent to accept
6 custody of the child until such time as the child is adopted.
7 For purposes of determining when such a petition may be filed,
8 an agency shall have constructive care of a child as soon as it
9 receives any written notice of present intent to transfer
10 custody executed by the parent, regardless of whether or not the
11 agency has the physical care of the child.

12 Section 5. Section 303 of the act is repealed.

13 Section 6. Section 311 of the act is amended to read:

14 Section 311. Grounds for Involuntary Termination.--(a) The
15 rights of a parent in regard to a child may be terminated after
16 a petition filed pursuant to section 312, and a hearing held
17 pursuant to [section 313] sections 341 and 342, on the ground
18 that:

19 [(1) The parent by conduct continuing for a period of at
20 least six months either has evidenced a settled purpose of
21 relinquishing parental claim to a child, or has refused or
22 failed to perform parental duties; or

23 (2) The repeated and continued incapacity, abuse, neglect,
24 or refusal of the parent has caused the child to be without
25 essential parental care, control, or subsistence necessary for
26 his physical or mental well-being and the conditions and causes
27 of the incapacity, abuse, neglect, or refusal cannot or will not
28 be remedied by the parent; or

29 (3) The parent is the presumptive but not the natural father
30 of the child.]

1 (1) The child has been abandoned as defined in section 102;
2 or

3 (2) The child has been abused as defined in section 102 and
4 the conditions and causes of the abuse cannot or will not be
5 remedied by the parent; or

6 (3) The child has been removed from the physical care of the
7 parent by the court or by a voluntary agreement with an agency
8 or individual for a period of twelve months and the court finds
9 that:

10 (i) the conditions which led to the removal of the child
11 continue to exist; and

12 (ii) there is clear and convincing evidence that those
13 conditions will not be remedied in a reasonable period of time
14 so that the child can be returned to the parent; or

15 (4) The parent failed to appear at the scheduled hearing for
16 which the parent has been given notice pursuant to section 341,
17 to express interest in accepting custody, unless the court
18 determines that such absence is for good cause; or

19 (5) The parent, by conduct continuing for a period of at
20 least one year, has demonstrated an intent to relinquish
21 parental claim to the child by:

22 (i) failing to support or maintain said child; or

23 (ii) failing to visit or inquire about the welfare of the
24 child.

25 (b) Whenever parental rights and duties are being terminated
26 pursuant to subsection (a)(2) or (3), the court shall consider,
27 but is not limited to, the following:

28 (1) What services have been provided or offered to the
29 parent to facilitate a reunion;

30 (2) Whether the parent is satisfied with the services

1 offered;

2 (3) What effort the parent has made to adjust his
3 circumstances, conduct, or conditions to make it in the child's
4 best interest to return him to his home in a reasonable period
5 of time, including:

6 (i) the extent to which the parent has maintained regular
7 visitation or other contact with the child as part of a plan to
8 reunite the child with the parent; and

9 (ii) the maintenance of regular contact or communication
10 with the custodian of the child.

11 (4) Whether additional services would effect a lasting
12 parental adjustment enabling a return of the child to the parent
13 within a reasonable period of time.

14 Section 7. The act is amended by adding sections to read:

15 Section 311.1. Forfeiture of Parental Rights.--No person
16 shall have any parental rights involving children who were
17 conceived as a result of a rape for which he was convicted.

18 Section 311.2. Optional Proceedings.--Any rape victim who
19 bore a child as a result of said rape shall not be required to
20 appear at any hearing after she has signed a voluntary consent
21 pursuant to section 301, provided that she signs a waiver before
22 a judge of a court of common pleas in private regarding the
23 voluntary relinquishment.

24 Section 8. Section 312 of the act is amended to read:

25 Section 312. Petition for Involuntary Termination.--A
26 petition to terminate parental rights with respect to a child
27 [under the age of eighteen years] may be filed by (i) either
28 parent when termination is sought with respect to the other
29 parent, (ii) an agency, or (iii) the individual having custody
30 or standing in loco parentis to the child and who has filed a

1 report of intention to adopt required by section 331. [When the
2 petition is filed by a parent who is under the age of eighteen
3 it shall be joined in by at least one of the parents of such
4 petitioning parent, unless the court is satisfied that such
5 joinder would not be in the best interest of the petitioning
6 parent and would serve no useful purpose.] A petition filed
7 under this section shall contain an averment that the petitioner
8 will assume custody of the child until such time as the child is
9 adopted.

10 Section 9. Section 313 of the act is repealed.

11 Section 10. Section 331 of the act is amended to read:

12 Section 331. Report of Intention to Adopt.--Every person now
13 having or hereafter receiving or retaining [possession,] custody
14 or [control] physical care of any child, for the purpose or with
15 the intention of adopting a child [under the age of eighteen
16 years] shall report to the court in which the petition for
17 adoption will be filed. The report shall set forth the
18 circumstances surrounding the persons receiving or retaining
19 [possession,] custody or [control] physical care of the child;
20 the name, sex, racial background, age, date and place of birth,
21 and religious affiliation of the child; the name and address of
22 the intermediary; the fee or expenses paid or to be paid to the
23 intermediary and the name and address of the person or persons
24 making the report. When a person receives or retains
25 [possession,] custody or [control] physical care of a child from
26 an agency the report shall set forth only the name and address
27 of the agency, and the circumstances surrounding such person's
28 receiving or retaining [possession,] custody or [control]
29 physical care of the child. No report shall be required when the
30 child is the child, grandchild, stepchild, brother or sister of

1 the whole or half blood, or niece or nephew by blood or marriage
2 of the person receiving or retaining [possession,] custody or
3 [control] physical care.

4 Section 11. Section 332 of the act is amended to read:

5 Section 332. Filing of Report.--The report required by
6 section 331 shall be filed within thirty days after the date of
7 receipt of the [possession,] custody or [control] physical care
8 of the child.

9 Section 12. The introductory paragraph and clauses (4), (7),
10 (8) and (10) of section 333 of the act are amended to read:

11 Section 333. Report of Intermediary.--[The] Within six
12 months after filing the report of intention to adopt, the
13 intermediary who or which arranged the adoption placement of any
14 child [under the age of eighteen years] shall make a written
15 report under oath to the court in which the petition for
16 adoption will be filed, and shall thereupon forthwith notify in
17 writing the adopting parent or parents of the fact that such
18 report has been filed and the date thereof. The report shall set
19 forth to the extent known:

20 * * *

21 (4) The name, racial background, age, marital status as of
22 the time of birth of the child and during one year prior
23 thereto, and religious affiliation of the parents of the child
24 [(or of the mother only in the case of an illegitimate child)];

25 * * *

26 (7) A statement that all consents required by section 411
27 [(3), (4) and (5),] are attached as exhibits [or the basis upon
28 which such consents are not required];

29 (8) [The fee or expenses] An itemized accounting of moneys
30 paid or to be paid to or received by the intermediary or to or

1 by any other person or persons to the knowledge of the
2 intermediary by reason of the adoption placement;

3 * * *

4 (10) A statement that no provision of any act regulating the
5 [importation of dependent, delinquent or defective] interstate
6 placement of children has been violated with respect to the
7 placement of the child.

8 Section 13. Clauses (2) and (3) of section 334 of the act,
9 amended October 14, 1977 (P.L.211, No.61), are amended to read:

10 Section 334. Exhibits.--The report of the intermediary shall
11 have attached to it the following exhibits:

12 * * *

13 (2) All consents to adoption required by section 411 [(3),
14 (4) and (5)];

15 (3) A certified copy of any decree of termination [made by a
16 court other than the court in which the petition for adoption
17 will be filed] of parental rights or parental rights and duties.

18 Section 14. Section 335 of the act is amended to read:

19 Section 335. Investigation.--When a report required by
20 section 331 has been filed, the court shall cause an
21 investigation to be made by one of the following: a local public
22 child care agency [with its consent], a voluntary child care
23 agency with its consent, or an appropriate person designated by
24 the court. In lieu of such investigation, the court may accept
25 an investigation made by the agency which placed the child, and
26 the report of investigation in such cases may be incorporated
27 into the report of the intermediary required by section 333. The
28 investigation shall cover all pertinent information regarding
29 the suitability of the placement, including the age, sex,
30 health, antecedents and eligibility for adoption of the child,

1 and the age, health, social and economic status of the adopting
2 parents. [The court may establish procedure for the payment of
3 investigation costs.]

4 Section 15. The act is amended by adding a section to read:

5 Section 336. Notice to the Intermediary.--If the report of
6 the intermediary has not been filed pursuant to section 333
7 within the six month limit, the court shall issue a rule to show
8 cause on the intermediary why the statutory time limit has not
9 been observed.

10 Section 16. Article III of the act is amended by adding a
11 subdivision to read:

12 ARTICLE III

13 PROCEEDINGS PRIOR TO PETITION TO ADOPT

14 * * *

15 E. Hearings

16 Section 341. Notice.--(a) Notice of the hearing on the
17 petition to relinquish or terminate parental rights and duties
18 shall be given to the following persons:

- 19 (1) the parents regardless of marital status;
20 (2) the child if ten years or older;
21 (3) the petitioner;
22 (4) the guardian of the child, if any there be;
23 (5) the person having custody of the child; and
24 (6) the parents or guardian of a minor parent.

25 (b) Within thirty days after the filing of a petition for
26 the termination of parental rights, the court shall set a time
27 and place for a hearing.

28 (c) The notice of hearing and a copy of the petition,
29 certified by the petitioner, his agent, or attorney, shall be
30 personally served or served by certified mail, return receipt

1 requested, on the persons named in subsection (a). The notice
2 shall state that each party is entitled to counsel and that if
3 the party is indigent, court shall appoint counsel upon request.
4 The notice shall specify on what ground the court shall consider
5 terminating parental rights for each individual parent.

6 (d) The notice of hearing shall include a statement that
7 failure to appear shall constitute a denial of interest in
8 custody of the child which denial may result in court's
9 termination of parental rights of such parent pursuant to
10 section 311(a)(4).

11 (e) When a petition terminating parental rights is filed
12 without identifying the father of the child, the court shall
13 make inquiry to the Bureau of Vital Statistics, Department of
14 Health, to determine if any claim of paternity has been recorded
15 for the child, pursuant to section 344.

16 (f) If for any reason notice cannot be served on any person
17 in accordance with subsection (c), the Pennsylvania Rules of
18 Civil Procedure and the Orphans' Court Rules shall govern any
19 further action relating to notice.

20 Section 342. Conduct of Hearing.--The hearing shall be
21 private and shall be attended only by persons who have received
22 notice, witnesses and attorneys. No person shall disclose any
23 information obtained at the hearing which would identify an
24 individual child or parent. If the court finds that it is in the
25 child's best interest, the child's presence may be temporarily
26 excluded from the hearing.

27 Section 343. Guardian Ad Litem.--At any hearing where
28 parental rights may be involuntarily terminated, the court shall
29 appoint a guardian ad litem to represent the child, which
30 guardian ad litem shall be an attorney. The child's right to

1 separate and independent counsel is absolute and cannot be
2 waived. If the parents have adequate financial means, the court
3 shall award costs to include attorney fees against the parents.
4 If the parents are without adequate financial means, the child
5 shall be entitled to free legal aid.

6 Section 344. Registration of a Claim of Paternity.--At any
7 time prior to or within ten days after the birth of a child born
8 to an unmarried woman, the father of such child may file a claim
9 of paternity with respect to the child. Such claim shall be made
10 on a form prescribed jointly by the Departments of Public
11 Welfare and Health and shall be filed with the local registrar
12 appointed by the Secretary of the Department of Health. Upon
13 receipt of such form registering a claim of paternity, the local
14 registrar shall send the form to the Bureau of Vital Statistics.
15 Such form shall be kept on file in the Bureau of Vital
16 Statistics and shall be released only upon order of court.

17 Section 17. Clause (7) of section 401 of the act is amended
18 to read:

19 Section 401. Contents of Petition.--A petition for adoption
20 shall set forth:

21 * * *

22 (7) That all consents required by section 411 [(1) and (2)]
23 are attached as exhibits, or the basis upon which such consents
24 are not required;

25 * * *

26 Section 18. Section 402 of the act, amended October 14, 1977
27 (P.L.211, No.61), is amended to read:

28 Section 402. Exhibits.--The petition shall have attached to
29 it the following exhibits:

30 (1) The consent or consents required by section 411 [(1) and

(2)] or the basis upon which such consents are not required;

(2) If not already filed with a report of an intermediary, the exhibits enumerated in section 334. If no birth certificate or certification of registration of birth can be obtained, the reason therefor shall be so stated, and efforts made to obtain said certificate shall be alleged therein with a request that the court establish a date and place of birth. The court may establish a date and place of birth at the adoption hearing on the basis of the evidence presented;

(3) The termination decrees of parental rights or parental rights and duties, for both parents.

Section 19. Section 411 of the act is amended to read:

Section 411. Consents Necessary to Adoption.--Except as otherwise provided in this act, consent to an adoption shall be required of the following:

(1) The adoptee, if over [twelve] ten years of age;

(2) The adopting parent's spouse, unless they join in the adoption petition;

[(3) The parents or surviving parent of an adoptee who shall not have reached the age of eighteen years. If any such parent or surviving parent shall be a minor, but shall have reached the age of eighteen years, his consent shall be sufficient without the consent of his parent or guardian, and such consent shall have the same force and validity as though he were an adult. In the case of an illegitimate child, the consent of the mother only shall be necessary. The consent of the natural father of a child who was illegitimate at birth shall be required only if the relationship between mother and child was terminated by a decree entered after the marriage of the mother and the natural father. The consent of the husband of the mother shall not be

1 necessary if, after notice to the husband, it is proved to the
2 satisfaction of the court by evidence, including testimony of
3 the natural mother, that the husband of the natural mother is
4 not the natural father of the child. Absent such proof, the
5 consent of a former husband of the natural mother shall be
6 required if he was the husband of the natural mother at any time
7 within one year prior to the birth of the adoptee;

8 (4) The agency to which custody of the child has been
9 awarded under Article III;

10 (5) The guardian of the person of an adoptee under the age
11 of eighteen years, if any there be, or of the person or persons
12 having the custody of such adoptee, if any such person can be
13 found, whenever the adoptee has no parent whose consent is
14 required.]

15 (3) The guardian of a mentally incapacitated adoptee,
16 without regard to age;

17 (4) The guardian of an adoptee under the age of ten years,
18 if any there be.

19 Section 20. Sections 412, 413 and 414 of the act are
20 repealed.

21 Section 21. Subdivision C of Article IV of the act is
22 reenacted and amended to read:

23 ARTICLE IV

24 PETITION FOR ADOPTION; CONSENTS

25 * * *

26 C. Adoption Hearings

27 Section 421. Notice.--The court shall fix a time and place
28 for hearing. Notice thereof shall be given to [all persons whose
29 required consent has not been obtained and to such other persons
30 as the court shall direct. Notice to the parent or parents of

1 the adoptee, if required, may be given by the intermediary or
2 someone acting on his behalf.] the following:

3 (1) The adopting parents.

4 (2) Those persons whose consents are required pursuant to
5 section 411.

6 (3) Any agency to which custody of the child has been
7 awarded.

8 (4) Any guardian of the person of an adoptee or of the
9 person or persons having custody of such adoptee, if any such
10 person there be.

11 Notice shall be by personal service or by registered or
12 certified mail, return receipt requested, to the last known
13 address of the person to be notified or in such other manner as
14 the court shall direct. If for any reason notice cannot be
15 effected in accordance with this section, the Pennsylvania Rules
16 of Civil Procedure and the Orphan's Court Rules shall govern any
17 further action relating to notice.

18 Section 422. Place of Hearing.--The hearing shall be private
19 or in open court as the court deems appropriate.

20 Section 423. Attendance at Hearing.--The adopting parent or
21 parents and the adoptee must appear at and, if required, testify
22 at the hearing under oath unless the court determines their
23 presence is unnecessary; in addition the court may require the
24 appearance and testimony of all persons [or agencies] whose
25 consent is required by this act or who have acted as an
26 intermediary if such appearance or testimony would be necessary
27 or helpful to it.

28 Section 424. Testimony; Investigation.--(a) The court shall
29 hear testimony in support of the petition and such additional
30 testimony as it deems necessary to inform it as to the

1 desirability of the proposed adoption. It shall require a
2 disclosure of all [costs and fees of any type] moneys paid or to
3 be paid to any person or institution in connection with the
4 adoption. [including the fees of any intermediary. It] The
5 judge shall assure, through personal conference with the adoptee
6 in chambers, that consent of the adoptee as provided in section
7 411 was informed and freely given. When age appropriate the
8 judge shall confer in chambers with an adoptee under the age of
9 ten years as to whether such adoptee has any objection to the
10 adoption. The judge shall make his findings a part of the
11 official case record.

12 (b) The court also shall make or cause to be made an
13 investigation by a person or public agency or, with its consent,
14 a voluntary agency, specifically designated by the court to
15 verify the statements of the petition and such other facts that
16 will give the court full knowledge of the desirability of the
17 proposed adoption. It may rely in whole or in part upon a report
18 earlier made under section 335 of this act. [The court may
19 establish a procedure for the payment of investigation costs by
20 the petitioners or by such other persons as the court may
21 direct.]

22 Section 425. Religious Belief.--Whenever possible, the
23 adopting parents shall be of the same religious faith as the
24 natural parents of the adoptee. No person shall be denied the
25 benefits of this act because of a religious belief in the use of
26 spiritual means or prayer for healing.

27 Section 22. Section 507 of the act is repealed.

28 Section 23. Section 509 of the act is amended to read:

29 Section 509. Foreign Decree.--When a decree of adoption of a
30 minor is made or entered in conformity with the laws of another

1 state or a foreign country whereby a child is adopted by a
2 resident of this Commonwealth, a copy of the final decree,
3 properly authenticated, may be filed with the clerk in the
4 county of residence of the adopting parents. The decree and such
5 other documents as may be filed therewith shall be kept in the
6 files of the court as a permanent record thereof, and shall be
7 withheld from inspection except on order of court granted upon
8 cause shown. Upon the filing of a foreign decree of adoption,
9 the clerk shall enter upon the docket an entry showing the
10 foreign court, identification of the proceedings therein and the
11 date of the decree, [After the decree has been filed, the clerk
12 shall make a report thereof to the Department of Public Welfare
13 on a form supplied by the department, which the department shall
14 keep in confidential files.] and shall issue a certificate of
15 adoption in conformity with the provisions of section 508.

16 Information identifying the natural parents shall not be
17 required.

18 Section 24. This act shall take effect in 60 days.