TESTIMONY OF SAMUEL C. TOTARO, JR., ESQ.
BEFORE THE PENNSYLVANIA HOUSE CHILDREN AND YOUTH COMMITTEE
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Good afternoon, Chairwoman Watson, and members of the House Children and Youth Committee. It is a distinct pleasure and honor to be able to address you this afternoon on the various amendments proposed to change the existing adoption laws in this Commonwealth. I have read all three bills under consideration today, and although not perfect in every sense, they do go in the right direction.

My name is Samuel Totaro, and I am a practicing attorney in this Commonwealth for over 40 years. I am a partner in the Doylestown law firm of Curtin & Heefer. During this period of 40 years, I have handled over 4000 adoption placements, and have represented clients in numerous contested adoption cases. I have worked with thousands of birth parents and adoptive parents, and can easily tell you what works and what doesn't work with the present adoption code.

I am a former President of the American Academy of Adoption Attorneys, an organization with very rigid entry qualifications, that is composed of attorneys, law professors and judges throughout the United States and Canada that practice adoption law. I have been a member of this Academy since its inception in 1990. My experience with this organization has given me insight into how other states' adoption laws differ from Pennsylvania's law, and what are our good parts, and what parts need improvement.

In 1986, President Ronald Reagan appointed me to a Special White House Task Force on Adoption, and this appointment helped me meet a number of adoption professionals throughout the country that have helped me understand what changes our law needs in order for it to be a place where children's best interest are paramount.

Also, in the early 1990's, the National Conference of Commissioners on Uniform State Laws created a committee to determine whether it would be in the best interest of children nationwide to have a uniform law with regard to adoption. I was appointed as an Advisor to the committee. Meeting around the country in various cities over a four year period, the Committee, composed of Supreme Court justices, trial judges from various states, law professors and other attorneys, we drafted a very comprehensive adoption code taking into consideration the viewpoints of everyone in the adoption triad, i.e. adoptive parents, birth parents, and adoptees, as well as looking at the existing adoption statutes in all the states.

At the annual conference of NCCUSL in August, 1994, the Uniform Adoption Act was approved and it was sent to the various states for consideration. Unfortunately, amendments to adoption acts nationwide generate huge emotional reactions from members of the triad, and therefore, to date, on Vermont has enacted the Uniform Act in total. However, many states have taken pieces of the Act and have enacted those provisions.

One such provision pertains to the time period in which a birth parent can sign a consent and the time he or she has thereafter to revoke such consent. Under the Uniform Act, a birth parent can

sign a consent to the adoption at any time after birth (although the general good practice is to wait at least 72 hours), he or she would have 192 hours (8 days) to revoke the consent. If the child were more than 8 days old when the parent executed the consent, the consent would be irrevocable upon signing. There are also similar provisions in the Act with regard to extending time for a parent to revoke the consent based upon duress or fraud.

There are approximately 20 states that have provisions in their statute that make a consent irrevocable upon signing. Most of the states require a 72 hours period after birth before a parent can sign the consent. I therefore whole heartedly support the provision in HB 1526 that shortens the time period for revocation of a consent from 30 days to 120 hours. Sometime this afternoon you will hear from one of my clients, Joel Fox, who will tell you how devastating it was to him and his wife and family when their birthmother revoked her consent on the 29th day. It was so devastating that they gave up their hope to have a family through adoption here in the United States, and pursued a foreign adoption.

There will be those who feel that reducing the time period lower than 30 days is not something that you should consider. First of all, Pennsylvania has one of the longest revocation periods in the United States. Only New York has a longer period of time. However, in New York if a birth parent revokes his or her consent, he or she must attend a best interest hearing to determine where the child so reside. It is not like here in Pennsylvania where a revocation of consent can trigger an automatic return of the child to the birth parent.

Second, although the consent will be irrevocable after 120 hours under the proposed legislation, there is no requirement that a birth parent sign a consent at any given time. He or she can take as long as he or she desires to make his or her decision. New legislation will make counseling available earlier and easier to obtain. However, once a consent is signed, and if that child is now in the home of innocent third parties, the birth parent should be able to make this decision quickly and adhere to it. My experience with birth parents is that the longer they have to make a decision, the longer they put off that decision until the last moment. It is like picking at an old wound. It will never heal.

120 hours may be a bit short for a revocation period. However, I think it is in the best interest of adoptees for that time period. I do know that 30 days is too long, serves no purpose at all, and only gives birth parents more time to agonize over a decision that they need to make.

HB 1529 with regard to the allowance of certain living expenses to be paid for or on behalf of birth mothers is a good bill and deserves your absolute consideration. My wife, Andrea Totaro, Director of ANA Adoptions in Bucks County will tell you in a few minutes many stories of birth mothers who desperately need help during their pregnancy. I'm not going to steal her thunder. However, in over forty years, working with birth mothers in states where living expenses have been allowed, I have never seen a birth mother persuaded to go forward with an adoption plan just because she received a few months help with her rent.

There is one change that I would make with respect to the present legislation. That is in Section 2776(5), that the term "rent" should also include where appropriate, mortgage payments. It doesn't happen often, but it does happen.

Finally, with regard to HB 1524, this is legislation that is needed the most. The present law does not accomplish what it was intended to do. The present law only allows access to the fund *after* the birth parent has signed a consent to adoption, i.e. after the child is born and in most cases with the adoptive parents. It also only allows the court to grant access if the birth parent "is unable to pay for the same", which many judges require the birth parent to come in for an interview with regard to their finances, and almost be indigent in order to obtain funding. What birthparent who is working a minimum wage job is going to take time off of work to go for an interview to get free counseling? And to make matters worse, the statute only allows the court to postpone the hearing for two weeks to obtain the counseling. I doubt you could even get an appointment in two weeks.

HB 1524 improves this situation a thousand fold. I do have some comments on the proposed legislation. First, most parties accessing the counseling fund will do so before the birth of the child. There is no case pending in the court at that time. The proposed legislation does not indicate which county court will provide its funds for counseling. Additionally, Section 2505.1 (b) (2) provides that counseling is available to anyone who has relinquished parental rights or placed a child for adoption. There is no time frame here. Can someone who placed years ago utilize this fund? Finally, the regulations with respect to this counseling fund must make it clear that time is of the essence. We can't have a birth parent waiting for weeks to receive his or her first appointment. This issues are time sensitive. The longer a parent who desires counseling goes without it, the less effective it becomes.

I will be happy to answer any questions you may have. I am thrilled that the committee has taken up these bills for consideration, because they are long overdue.