

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2463 Session of
1976

INTRODUCED BY CRAWFORD, A. P. KELLY, DiCARLO, HILL, McCLATCHY,
FAWCETT, TOLL, McLANE, RHODES, BARBER, SIRIANNI AND LYNCH,
JUNE 3, 1976

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JUNE 3, 1976

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," further providing for venue and termination of
8 parental rights; adding provisions relating to performance of
9 parental duties, preliminary approval of proposed adopting
10 parents and the best interest and welfare of the child;
11 changing and adding provisions relating to illegitimate
12 children; and changing age and residence requirements
13 relating to consent.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Sections 202, 301 and 311, act of July 24, 1970
17 (P.L.620, No.208), known as the "Adoption Act," are amended to
18 read:

19 Section 202. Venue.--Proceedings for voluntary
20 relinquishment, involuntary termination and adoption may be
21 brought in the court of the county where the petitioner or
22 either parent, or the adoptee or the person who has filed a
23 report of intention to adopt required by section 331 resides, or

1 in the county in which is located an office of an agency having
2 physical custody of the child. Proceedings may also be brought
3 with leave of court in the county in which the adoptee formerly
4 resided.

5 Section 301. Relinquishment to Agency.--When any child under
6 the age of eighteen years has been in the custody or physical
7 care of an agency for a minimum period of [five] three days, the
8 parent or parents of the child may petition the court for
9 permission to relinquish forever all parental rights and duties
10 with respect to their child. The written consent of a parent or
11 guardian of a petitioner shall be required if he has not reached
12 eighteen years of age. The agency having the custody or physical
13 care of the child shall join in the petition which shall contain
14 the agency's consent to accept custody of the child until such
15 time as the child is adopted. For purposes of determining when
16 such a petition may be filed, an agency shall be deemed to have
17 custody of a child as soon as it receives any written notice of
18 present intent to transfer custody executed by the mother,
19 regardless of whether or not the agency has the physical care of
20 the child.

21 Section 311. Grounds for Involuntary Termination.--(a) The
22 rights of a parent in regard to a child may be terminated after
23 a petition filed pursuant to section 312, and a hearing held
24 pursuant to section 313, on the ground that:

25 (1) The parent by conduct continuing for a period of at
26 least six months either has evidenced a settled purpose of
27 relinquishing parental claim to a child, or has refused or
28 failed to perform parental duties; or

29 (2) The repeated and continued incapacity, abuse, neglect,
30 or refusal of the parent has caused the child to be without

1 essential parental care, control, or subsistence necessary for
2 his physical or mental well-being and the conditions and causes
3 of the incapacity, abuse, neglect, or refusal cannot or will not
4 be remedied by the parent; or

5 (3) The parent is the presumptive but not the natural father
6 of the child.

7 (b) Whenever a child is in the care of an agency, the rights
8 of a parent in regard to a child may be terminated after a
9 petition is filed pursuant to section 312 and a hearing is held
10 pursuant to section 313 on any ground stated in subsection (a),
11 which shall be applicable without regard to the length of time a
12 child has been in the care of an agency, or on the ground that
13 the child has been in the custody or care of an agency for at
14 least one year and the parent failed to perform parental duties
15 during two periods of at least forty-five consecutive days each.
16 Prima facie evidence of failure to perform parental duties shall
17 be held to have been established whenever a child has been in
18 the custody or care of an agency for at least one year and
19 during at least two periods of at least forty-five consecutive
20 days (which periods may be consecutive):

21 (1) The parent has failed to make any personal, direct
22 contact with the child by visiting with the child or by sending
23 to the agency for delivery to the child a letter, card, gift or
24 remembrance; or

25 (2) The parent, if gainfully employed, has failed to pay any
26 sum to the agency toward the support of his or her child,
27 whether or not a demand for support has been made by the agency;
28 or

29 (3) The parent, if gainfully employed, has failed to provide
30 reasonable support for his or her child, whether or not a demand

1 for support has been made by the agency. Whether or not the
2 support furnished was reasonable shall be determined by
3 considering the income, assets and potential earning ability of
4 the parent and necessary expenditures of the parent for the
5 maintenance and support of the parent and his or her spouse and
6 children to the extent such information is made available by the
7 parent or petitioner and any other factors that are deemed
8 relevant to such determination. A parent shall not be found to
9 have failed to provide reasonable support if his or her spouse
10 or the other parent of the child has provided such support.

11 (c) Performance of parental duties requires the performance
12 of the composite of tasks consisting of maintaining frequent,
13 direct, personal communication with his or her child and of
14 providing the care, guidance, protection and support necessary
15 for the physical and mental well-being of his or her child. A
16 parent who performs some, but not all, of such duties may be
17 found to have failed to perform parental duties. Infrequent,
18 sporadic or nominal contacts shall not be found to be sufficient
19 performance of parental duties to prevent termination of
20 parental rights. A parent shall not be found to have performed
21 parental duties because an agency performed them in the parent's
22 stead. The fact that an agency provides essential parental care,
23 control and subsistence shall not preclude termination of
24 parental rights under subsection (a)(2).

25 (d) Parental rights shall be terminated in the event of any
26 failure under subsection (b)(1), (2) or (3) unless the parent
27 sustains his or her burden of convincing the court that
28 termination of parental rights would not be in the best interest
29 of the child. No court may excuse any failure described in
30 subsection (b)(1), (2) or (3) unless the court finds that the

best interest and welfare of the child will not be furthered by being given an opportunity to be adopted.

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

Section 311.1. Involuntary Termination of the Rights of a Father of an Illegitimate Child.--(a) Whenever the mother of an illegitimate child is unwilling or unable to disclose the name and address of the father, with the result that no notice can be given to the father, the rights of the father in regard to a child may be terminated after a petition filed pursuant to section 312 and after a hearing held pursuant to section 313, except that the father cannot be notified because his name and address are unknown, when all of the following conditions are met:

(1) The rights of the mother have been or are concurrently being terminated by a decree of voluntary or involuntary termination;

(2) The name and address of the father are unknown to the petitioner; the mother is unwilling or unable to disclose them; they are not included in the information furnished by the hospital in which the child was born; and they are not disclosed by an acknowledgment of paternity filed pursuant to section 415; and

(3) The father has failed to furnish any support for the child or make any payment toward any expense in connection with the child's birth or maintain the child in the father's home for any consecutive period of at least five days.

Parental rights may be terminated without proof that the father has knowledge of the birth of the child.

(b) If the mother is dead or if her address is unknown or if she refuses to attend a hearing, the rights of a father in

1 regard to the child of such mother may be terminated without
2 proof that the mother is unwilling or unable to name the father
3 and without proof of the facts set forth in subsection (a)(3).
4 In such a case proof of the other facts set forth in subsection
5 (a)(1) and (2) shall be sufficient.

6 (c) Parental rights of the father of an illegitimate child
7 may be terminated as set forth or may be terminated upon any
8 ground set forth in section 311(a) or (b); provided, however,
9 that termination shall not be necessary if the conditions set
10 forth in section 411(3) concerning such a father are met.

11 Section 311.2. Best Interest of the Child.--(a) Whenever a
12 child has been in the custody or care of an agency for at least
13 one year, a court, in determining whether to terminate parental
14 rights, shall give the best interest and welfare of the child.
15 The best interest and welfare of the child means that the child
16 has a right to at least one parent who personally and
17 continuously provides the love, care, nurture, guidance,
18 protection and support necessary for the child's physical and
19 mental well-being and who maintains communication with the
20 child. Whenever a child's parents fail for any substantial
21 period of time to fulfill said basic and fundamental needs
22 personally and continuously, the child has a right to be given
23 the opportunity of being adopted by persons who are ready,
24 willing and able to fulfill those needs personally and
25 continuously.

26 (b) The best interest and welfare of a child require that
27 the child be given an opportunity of being adopted unless the
28 child has at least one parent who personally performs all of his
29 or her parental duties.

30 Section 314. Child Advocate.--Upon request of an agency

filing a petition averring a ground for termination of parental rights under section 311(b), the court shall appoint an individual to serve as an advocate for the child in advising the court concerning the best interest and welfare of the child. The court may set such individual's compensation, which shall be paid by the county. If such a request has not been made prior to a hearing and such a petition is contested, the court shall appoint such an individual for such purpose and shall continue the hearing for the purpose of permitting such individual to report to the court.

Section 315. Counselling.--An agency shall attempt to make counselling available to a parent in an effort to make it possible for the parent to assume care of the child, but whether or not counselling was provided or offered shall not be an issue in an involuntary termination proceeding. A parent has an affirmative duty to take the initiative to maintain communication with his or her child.

Section 322. Decree Concerning Illegitimate Child.--A decree terminating all rights, or all rights and duties of the mother of an illegitimate child shall contain a statement of the name and address of the father as stated by the mother or a statement that she was unwilling or unable to state them or a statement of any information concerning the father which the court deems relevant to further adoption proceedings.

Section 3. Sections 333 and 335 of the act are amended to read:

Section 333. Report of Intermediary.--The intermediary who or which arranged the adoption placement of any child under the age of eighteen years shall make a written report under oath to the court in which the petition for adoption will be filed, and

1 shall thereupon forthwith notify in writing the adopting parent
2 or parents of the fact that such report has been filed and the
3 date thereof. The report shall set forth:

4 (1) The name and address of the intermediary;

5 (2) The name, sex, racial background, age, date and place of
6 birth, and religious affiliation of the child;

7 (3) The date of the placement of the child with the adopting
8 parent or parents;

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

13 (5) Identification of proceedings in which any decree of
14 termination of parental rights, or parental rights and duties,
15 with respect to the child was entered;

16 (6) The residence of the parents or parent of the child, if
17 there has been no such decree of termination;

18 (7) A statement that all consents required by section 411
19 (3), (4) and (5), are attached as exhibits or the basis upon
20 which such consents are not required;

21 (8) The fee or expenses paid or to be paid to or received by
22 the intermediary or to or by any other person or persons to the
23 knowledge of the intermediary by reason of the adoption
24 placement;

25 (9) A full description and statement of the value of all
26 property owned or possessed by the child; [and]

27 (10) A statement that no provision of any act regulating the
28 importation of dependent, delinquent or defective children has
29 been violated with respect to the placement of the child; and

30 (11) If the child is illegitimate, no consent of the father

1 has been obtained and the parental rights of the father have not
2 previously been terminated, a statement that to the best of the
3 knowledge, information and belief of the intermediary the father
4 neither regularly furnished reasonable support for the child nor
5 maintained the child in his home over an extended period of
6 time, and a statement that the name and address of the father
7 are unknown to the intermediary, are not shown on the child's
8 birth certificate, and are not listed in an acknowledgment of
9 paternity filed pursuant to section 415.

10 Section 335. Preliminary Approval and Investigation.--(a)
11 Except where the relationship between the child and the proposed
12 adopting parent or parents is such that no report need be filed
13 pursuant to section 331, no child shall be placed in an adoptive
14 home by any intermediary other than an agency until such
15 intermediary has received preliminary approval of the proposed
16 adopting parents and their home from either an agency, an
17 appropriate person designated by the court, or, if the proposed
18 adopting parents reside outside of the Commonwealth of
19 Pennsylvania, any incorporated or unincorporated organization,
20 society, institution or other entity, public or voluntary, which
21 regularly provides for the care of children in foster homes or
22 institutions and which as a function incidental to providing
23 such care provides adoption services.

24 (b) When a report required by section 331 has been filed,
25 the court shall cause an investigation to be made by one of the
26 following: a local public child care agency, with its consent, a
27 voluntary child care agency, or an appropriate person designated
28 by the court. In lieu of such investigation, the court may
29 accept an investigation made by the agency which placed the
30 child, and the report of investigation in such cases may be

1 incorporated into the report of the intermediary required by
2 section 333. The investigation shall cover all pertinent
3 information regarding the suitability of the placement,
4 including the age, sex, health, antecedents and eligibility for
5 adoption of the child, and the age, health, social and economic
6 status of the adopting parents. The court may establish
7 procedure for the payment of investigation costs.

8 Section 4. Section 401 of the act is amended by adding a
9 clause to read:

10 Section 401. Contents of Petition.--A petition for adoption
11 shall set forth:

12 * * *

13 (9) If the child is illegitimate and there is no
14 intermediary, the information required by section 333(11).

15 Section 5. Sections 411 and 413 of the act, section 413
16 amended December 28, 1972 (P.L.1647, No.374), are amended to
17 read:

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

21 (1) The adoptee, if over twelve years of age;

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

24 (3) The parents or surviving parent of an adoptee who shall
25 not have reached the age of eighteen years. If any such parent
26 or surviving parent shall be a minor, but shall have reached the
27 age of eighteen years, his consent shall be sufficient without
28 the consent of his parent or guardian, and such consent shall
29 have the same force and validity as though he were an adult. In
30 the case of an illegitimate child, the consent of the [mother

1 only shall be necessary.] father shall be required only if the
2 name and address of the father are known to the petitioner
3 because they are shown on the child's birth certificate, were
4 disclosed by the child's mother to the intermediary or
5 petitioner, are disclosed by a decree terminating the mother's
6 parental rights, are listed in an acknowledgment of paternity
7 filed pursuant to section 415, or are otherwise known to the
8 petitioner and the father either regularly has furnished
9 reasonable support for the child or has maintained the child in
10 his home over an extended period of time. The consent of the
11 natural father of a child who was illegitimate at birth shall be
12 required [only] if the relationship between mother and child was
13 terminated by a decree entered after the marriage of the mother
14 and the natural father. The consent of the husband of the mother
15 shall not be necessary if, after notice to the husband, it is
16 proved to the satisfaction of the court by evidence, including
17 testimony of the natural mother, that the husband of the natural
18 mother is not the natural father of the child. Absent such
19 proof, the consent of a former husband of the natural mother
20 shall be required if he was the husband of the natural mother at
21 any time within one year prior to the birth of the adoptee;

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

24 (5) The guardian of the person of an adoptee under the age
25 of eighteen years, if any there be, or of the person or persons
26 having the custody of such adoptee, if any such person can be
27 found, whenever the adoptee has no parent whose consent is
28 required.

29 Section 413. When Consent Not Required; In General.--The
30 court, in its discretion, may dispense with consents other than

1 that of the adoptee to a petition for adoption when:

2 (1) The adoptee is [over] eighteen years of age or older;
3 [or]

4 (2) The adoptee is under eighteen years of age and has no
5 parent living whose consent is required; or

6 (3) The adoptee is twelve years of age or older and has
7 lived with one or both of the adopting parents for at least two
8 continuous years.

9 Section 6. The act is amended by adding a section to read:

10 Section 415. Acknowledgment of Paternity by Father.--The
11 father of an illegitimate child may acknowledge paternity of his
12 child by any writing giving the name and address of the father,
13 the name, date of birth and mother of the child and an
14 acknowledgment that he is the father of such child. Such a
15 writing may be delivered for filing without charge to the clerk
16 of the appropriate division of the court of common pleas of the
17 county in which the child was born. Such a writing shall be
18 impounded pursuant to section 505: Provided, however, That the
19 contents thereof shall be disclosed upon written application
20 made by an intermediary or by counsel for any petitioner who has
21 or is about to file any petition under this act.

22 Section 7. This act shall take effect in 60 days.