

COMMONWEALTH OF PENNSYLVANIA
House of Representatives
Children & Youth Committee

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Adoption Law Reform

Testimony of
Frank P. Cervone, Esq., Executive Director
Support Center for Child Advocates

Chairwoman Watson and Members and staff of the Children and Youth Committee, thank you for the opportunity to present today.

The Support Center for Child Advocates (*Child Advocates*) is Philadelphia's lawyer pro bono program for abused and neglected children. At *Child Advocates*, we work to change the story for children. For 39 years, we have offered the skills and dedication of lawyer-social worker teams, and we represent more than 1,000 children each year. While our direct service work is Philadelphia-focused, we work with partners across the Commonwealth of Pennsylvania and the nation on the development of effective policy and practice for vulnerable children. We attempt to offer a balanced, candid and constructive assessment of what our children need and how we are all doing for our kids.

We call your attention to the 2001 Report of the Advisory Committee to the Joint State Government Commission's Task Force on Adoption ("Report" and "Adoption Advisory Committee"; http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=62). The Task Force was chaired by Senator Stewart Greenleaf. I served as a Member of the Advisory Committee, along with 34 others including judges, advocates, adoption social workers, court administrators, adoptees and adoptive parents.

The Advisory Committee was organized into four subcommittees: Placement and Costs; Search and Information; Special Needs; and Terminations. The group worked hard for 3 years. In addition to reviewing the Adoption Act, the advisory committee considered the Federal Adoption and Safe Families Act of 1997, the Model State Adoption Act which was developed under the authority of the Federal Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, the Uniform Adoption Act, case law, regulations, adoption literature and the statutes of other states. The Report offered at least 68 recommendations for large-scale reform of Pennsylvania adoption law, and considered many of the issues that remain current today. See Appendix A.

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We consider the several bills now under consideration in the current Session:

HB 1524

HB 1524 repeals Section 2505 (counseling) of Title 23 (Domestic Relations Code) and replaces it with new Section 2505.1 entitled adoption-related counseling services. The bill provides access to adoption-related counseling services to birth parents who are considering relinquishing their parental rights and placing their child for adoption, or who have relinquished parental rights and have consented to placing their child for adoption.

Purpose Of and Right to Counseling: HB 1524 stipulates that the purpose of the counseling is to provide birth parents with assistance in understanding the adoption process, the birth parents' rights and obligations, the consequences of a decision to relinquish parental rights, and alternatives to relinquishment and adoption.

Importantly, the bill also articulates the right of a birth parent, presumptive father, putative father, or an agency or attorney acting on behalf of them, to apply for counseling services if they are considering relinquishing parental rights or placing a child for adoption, or if they have relinquished parental rights and have consented to placing their child for adoption.

Referral for Counseling: If a birth parent, presumptive father or putative father decides to receive counseling, that individual must contact the court for a referral authorizing counseling. The court shall provide the individual with a referral within three days of receiving the request. The court shall advise the individual of the procedures to obtain counseling services.

Compilation/Distribution of List of Counseling Services: Unfortunately the good idea of a group of adoption-wise therapists remains largely unrealized. HB 1524 requires that the court compile a list of qualified counselors and counseling service providers available with the county and surrounding area, and that this list be distributed to each adoption agency within the county, each health care provider of obstetrical or maternity care within the county, and any person upon request. In addition, a new provision is created that requires the PA Department of Human Services (DHS) to provide notice of the availability of this list to any person filing either an acknowledgment of paternity or a claim of paternity.

Counseling Fund: HB 1524 requires counties to establish a counseling fund to pay for counseling services provided to individuals who are unable to pay for those services, to be funded by a \$75 filing fee. Accountability and transparency in the maintenance and use of these funds remains opaque and thus problematic; we urge you to consider requiring some form of annual report on the balance and use of the Counseling Fund.

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HB 1525

Hearing (voluntary relinquishment): HB 1525 requires the court to set a hearing date no more than 20 days after the birth parent(s) file with the court a petition voluntarily relinquishing their parental rights. Current law [Section 2503(a)] requires the court to set a hearing date no less than 10 days after the relinquishment petition is filed, but does not stipulate a deadline for scheduling such a hearing.

Termination of putative father's parental rights: HB1525 amends Section 2503(b) and (d), changing the latter subsection's title from "putative father" to "termination of putative father's parental rights." In amending both subsections (b)(Notice) and (d), the legislation provides procedures by which a putative father is notified of a scheduled adoption hearing and is informed that his parental rights can be terminated if he does not appear at the hearing or file a written objection to the termination of his parental rights prior to the hearing, whether or not he has filed a claim of paternity under Section 5103(b).

Notice if identity/whereabouts unknown: HB1525 creates a new section (2514) entitled "Notice if Identity or whereabouts of parent or putative father unknown," which is applicable to voluntary relinquishments, alternative procedure for relinquishments and involuntary terminations. This new section requires that a petitioner must establish that a diligent search has been made to identify or locate a parent or putative father for the purpose of providing notice in an adoption proceeding.

If the petitioner can establish that a diligent search has been conducted but has been unsuccessful in identifying or locating a parent or putative father, notice of the proceeding may be given to the parent or putative father by publication one time in both a newspaper of general circulation and in the county legal journal at least 10 days before the date of the hearing. Proof of publication of the notice must be provided to the court.

The court may waive the requirement for a diligent search and the publication of notice if the putative father knows or has reason to know of the child's birth, and the putative father has failed to make reasonable efforts to maintain substantial and continuing contact with the child and provide substantial financial support for the child. Notice to a putative father shall be considered given if the court waives the requirement for a diligent search and the publication of notice and makes a specific determination that additional efforts to locate or identify the putative father and provide notice do not serve the best interests of the child.

The C&Y agency, or the adoptive parent in a private adoption, is responsible to make efforts to identify the father of the adoptive child; this is known as "diligent search". For the child who is found abandoned, or for whom the birth mother fails to identify a putative father, identification of a father can be difficult. The due process steps sets forth in HB1525 will be most helpful, by creating a timeline for moving forward.

What if the father is not in the picture, what if we don't know who he is? Identification of and outreach to men who are or may be the biological father of a child are foundational elements of child welfare practice; this works happens literally every day and is part of the "reasonable efforts" protocol required by federal and state law. Typically the birth father's rights are terminated when birth mother's rights are terminated; termination petitions and decrees should include all "putative and unknown fathers". All rights are extinguished at that moment. Rarely, a father comes forward claiming fraud, such as not being told of the pregnancy or the adoption; we note that this is the exceptional case.

The unknown and “putative” (i.e., supposed or alleged) father cases happen much more frequently in C & Y because of such an elongated service period. For example, it is possible that the mother named one man as father, but then he is ruled out by blood testing, and the worker goes back to mother, and another possible father is identified. Meanwhile, a year or more into the dependency case, the child is living in a foster home, and the foster family is now interested in adoption. We note that this is the ideal situation in child welfare, to have a foster parent who is at once supportive of reunification and adoption. However, when a “new” father comes on scene, service in support of his parenting must commence.

Presumptive father/Denial of paternity: HB1525 amends Section 2711(c) (validity of consent) to allow for:

- A presumptive father (typically a husband whose paternity of the child in question is at issue) to execute a consent to adoption at any time after receiving notice of the expected or actual birth of the child.
- A presumptive father or putative father to execute a denial of paternity at any time after receiving notice of the expected or actual birth of the child.

The legislation creates a new provision (Section 2711(c)(2)) stipulating that if a putative father executes a consent to adoption prior to the birth of the child, the child shall be named “Baby (Mother’s Last Name)” for the purpose of the consent. This provision also stipulates that further notice to the putative father as required by Section 2721 (notice of hearing) is not necessary if consent is executed prior to the birth of the child. Nor is further notice to the birth mother or her husband required if the consent is valid.

Waiver of notice requirements: HB 1525 adds a new subsection (e) to Section 2711 (Consents Necessary to Adopt) permitting a birth mother, father, or putative father who has consented to an adoption to **execute a waiver of notice requirements** related to all legal proceedings concerning the child. This provision retains the existing requirement that the birth mother, father or putative father still shall be provided with the advisement of their continuing right to file personal and medical history pursuant to Subchapter B of Chapter 29 (relating to records and access to information).

Section 2712 (consents not naming adopting parents) stipulates that a consent to adoption that meets all legal requirements, but which does not name the adoptive parents, shall still be valid as long as it contains a statement that the consent has been executed voluntarily without disclosure of the names of the adopting parents.

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HB 1526

HB 1526 conforms the timelines in the Consent to Adoption, to new shorter revocation-of-consent time periods as set forth in HB1525. The bill also eliminates the requirement for notice of Hearing to Confirm Consent to birth parent who has previously consented and whose rights have been terminated.

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HB 1527

House Bill 1527 eliminates the requirement for a report of an Intermediary. We should confirm that there are no substantive changes to homestudy here, and only changing language to remove references to Intermediary.

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HB 1528

House Bill 1528 would allow adoptive families to appeal the amount of an adoption subsidy. This is an important pro-consumer pathway that is long-needed.

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HB 1529

House Bill 1529 adds “reasonable expenses incurred by a birth mother of a child being placed for adoption” to the list of expenses that currently are permitted to be reimbursed in an adoption process and paid by the adoptive parents. This is an important, positive reform, consistent with the state of the art across the country. Note that the section requires use of an intermediary – which may not be the intention of the drafter.

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HB 1530

House Bill 1530 would allow correctional staff to serve as a witness to the consent to adopt executed by an incarcerated parent.

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HB 1531:

HB 1531 eliminates the requirement of holding a hearing to confirm a consent to an adoption when the birth parent or parents of the child being placed for adoption have executed valid consents to the adoption.

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HB 1532

House Bill 1532 proposes to amend the definition of “Intermediary” to include a licensed attorney or a licensed social worker acting in that capacity. An Intermediary is any person or persons or agency acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoption placement.

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The post-adoption period remains an area of concern, getting little attention by policy makers, insurers and even many families. Disruption of adoptions, difficulties with adjustment by all members of the new family, and exploration of one’s identity as an adoptee are all recurrent themes.

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An issue of interest in recent years in the adoption field is the status of the older youth who is a “legal orphan” – parental and family rights terminated, but no new adoptive family found. Some states are

exploring the reinstatement of parental rights, for parents whose rights were terminated as part of a child welfare intervention but whose children were not adopted after many years had passed. My former colleague, Professor Meredith Schalick of Rutgers Law School, is the nation's preeminent authority on this emerging model. Key elements include:

- Period of time statutorily proscribed has passed (i.e., two years or more)
- Child is of the minimum age required (i.e., 12+)
- No adoptive resource available
- Child consents
- Parent consents
- Court finds that parent has rehabilitated him/herself
- Court finds that reinstatement/restoration is in the Best Interest of the Child

For more information, see Meredith Schalick, *Bio Family 2.0: Can The American Child Welfare System Finally Find Permanency for "Legal Orphans" With A Statute To Reinstate Parental Rights?*, University of Michigan Journal of Law Reform, Vol. 47:2.

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We note some interest in the intersection of private adoption and public foster care. Advocates (I am not yet among them, though curious at least!) note that a birth parent should be allowed to work with a private adoption agency during the time that a dependency case is also happening. The parent would essentially be taking the child out of the foster care stream and instead placing the child directly in the adoption stream. More study is needed on the efficacy and soundness of this approach. The many thousands of children waiting to be adopted in the child welfare system suggest that all options and creative solutions should be considered by policy makers and advocates.

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For more information:
 Frank P. Cervone, Executive Director
 Support Center for Child Advocates
 1900 Cherry Street, Philadelphia, PA 19103
 t: 267-546-9202 f: 267-546-9201
 e: fcervone@advokid.org www.advokid.org

Appendix A:

**SUMMARY OF RECOMMENDATIONS OF THE REPORT OF THE ADVISORY
COMMITTEE ON ADOPTION LAW, Joint State Government Commission, 2001**

The Advisory Committee offered a broadscale revision of the Pennsylvania Adoption Act, with the following recommendations:

1. *Repeal the present Adoption Act (23 Pa.C.S. Part III) in its entirety and propose a revised Adoption Act*
2. *Extend the availability of counseling to any parent, presumptive father or putative father and provide a more detailed framework for counseling (§ 2108)*
3. *Provide a more detailed framework for representation of children and parents, including the mandatory appointment of guardians ad litem for children and the discretionary appointment of attorneys to represent children in contested involuntary termination proceedings or appeals of a final decree of termination of parental rights (§ 2109)*
4. *Direct counties to pay the costs of the appointment of guardians ad litem for children and attorneys to represent children (§ 2109)*
5. *Provide a statutory framework for agreements for continuing contact between children and their birth relatives (§ 2112)*
6. *Mandate the Department of Public Welfare to establish a statewide data collection and reporting system for nonidentifying statistical information regarding adoptions (§ 2113)*
7. *Establish an expedited procedure for the adoption of individuals who are 18 years of age or older (§ 2114)*
8. *Provide an improved mechanism to determine whether a man has filed a registration in which he claims to be the birth father of a child and provide notice to him of a hearing regarding the termination of parental rights with respect to the child (§ 2202)*
9. *Establish a hearing procedure for putative fathers in certain circumstances (§ 2203)*
10. *Provide a statutory notice of rights and duties of birth parents and adoptive parents (§ 2204)*
11. *Encourage and facilitate the exchange of medical and social history information (§ 2204, § 2215, Subchapter E of Chapter 23 and Subchapters C and D of Chapter 26)*
12. *Provide a comprehensive procedure for the voluntary relinquishment of parental rights (Subchapter B of Chapter 22)*
13. *Permit parents to designate an individual to adopt their child and provide an implementing procedure (§ 2213)*

14. *Provide a comprehensive voluntary relinquishment form (§ 2216)*

15. *Provide that voluntary relinquishments by birth mothers are irrevocable 20 days after the execution of a voluntary relinquishment form (§ 2218), which is valid only if executed at least 72 hours after the birth of the child (§ 2214)*

16. *Provide that voluntary relinquishments by birth fathers, presumptive fathers and putative fathers are irrevocable 20 days after the birth of the child or the execution of the voluntary relinquishment form, whichever occurs later (§ 2218)*

17. *Establish a procedure for the revocation of a voluntary relinquishment (§ 2218)*

18. *Clarify the effect of a voluntary relinquishment form executed outside this Commonwealth (§ 2219)*

19. *Ensure that minor individuals are afforded the opportunity to make an informed decision regarding the voluntary relinquishment of their parental rights, by either providing notice to their parent or legal guardian (§ 2221) or requiring a hearing (§ 2222)*

20. *Establish a procedure for hearings on voluntary relinquishment (§ 2223)*

21. *Establish a procedure for hearings to confirm the identity of an individual who executes a voluntary relinquishment form and does not have it notarized (§ 2224)*

22. *Provide an expedited method of voluntarily relinquishing parental rights by allowing a voluntary relinquishment form to be notarized (§§ 2224 and 2216(c))*

23. *Clarify the procedure for the involuntary termination of parental rights (Subchapter C of Chapter 22)*

24. *Expand the class of who may file a petition for involuntary termination to include certain foster parents and individuals who no longer have physical custody of the child or stand in loco parentis to the child (§ 2231)*

25. *Expand the grounds for involuntary termination of parental rights (§ 2233)*

26. *Provide that a decree of termination of parental rights terminates parental rights and duties, including the obligation of support, but does not extinguish the duty to pay arrearages for child support (§ 2241)*

27. *Provide for the effect of a decree of termination of parental rights on vested rights and benefits (§ 2242) and rights and duties of a child (§ 2243)*

28. *Provide a more detailed and uniform home study and post-placement evaluation process (Subchapters A, C and D of Chapter 23)*

29. *Require FBI, criminal and child abuse checks on a prospective adoptive parent who is the stepparent of the child (§ 2306)*

30. *Establish a procedure for placement of a child if the home study process is not completed (§§ 2311 and 2312)*
31. *Establish a judicial review process for negative home study recommendations and adverse decisions in situations where a child was placed before the completion of the home study process (§ 2325)*
32. *Establish within the Department of Public Welfare a registry regarding home studies (§ 2326)*
33. *Require the disclosure of information regarding the child to the prospective adoptive parent prior to the adoption (Subchapter E of Chapter 23)*
34. *Provide a statutory policy governing prohibited and permissible payments and activities (Chapter 24)*
35. *Expand the specific expenses and costs which may be paid in connection with the placement and adoption process (§ 2402)*
36. *Provide that a petition for adoption initiates the adoption process, thereby eliminating the need for the report of intention to adopt and the report of the intermediary (Subchapter A of Chapter 25)*
37. *Establish a statutory list of who may file a petition for adoption (§ 2501)*
38. *Permit foster parents in certain circumstances to file a petition for adoption (§ 2501)*
39. *Permit any individual, for good cause shown, to file a petition for adoption if a parent whose parental rights have not been terminated consents to the adoption and the other parent's parental rights have been terminated (§ 2501)*
40. *Provide that an adoption decree may not be challenged, except for lack of jurisdiction, after 30 days have elapsed from the entry of the adoption decree (§ 2535)*
41. *Require that court and agency records be retained permanently (§ 2611)*
42. *Establish a registry for medical and social history information within the Department of Public Welfare (Subchapter C of Chapter 26)*
43. *Define the term "nonidentifying information" (§ 2103)*
44. *Permit certain individuals to file medical and social history information with the court (§ 2632)*
45. *Permit certain individuals to request medical and social history information from other individuals through the court (§ 2637)*
46. *Expand who may request identifying information from a court or agency to include birth parents and certain birth relatives (§ 2641)*

47. *Expand whose identifying information may be requested to include adoptees and certain birth relatives (§ 2641)*

48. *Provide a statutory framework regarding the disclosure of identifying information (§ 2642)*

49. *Provide that for adoptions finalized prior to the effective date of the act identifying information will be disclosed only if an authorization of disclosure is filed by the individual whose information is sought (§ 2642(a))*

50. *Provide that for adoptions finalized on or after the effective date of the act identifying information regarding a birth parent will be disclosed upon request unless the birth parent files a disclosure veto (§ 2642(b))*

51. *Provide that for adoptions finalized on or after the effective date of the act identifying information regarding adoptees and certain birth relatives will be disclosed only if an authorization of disclosure is filed by the individual whose information is sought and the birth parent has not filed a disclosure veto (§ 2642(a)(3))*

52. *Provide that for adoptions finalized before the effective date of the act identifying information regarding a birth parent will be disclosed under certain circumstances if a search for the birth parent is unsuccessful, even though the birth parent has not filed an authorization of disclosure (§ 2643)*

53. *Establish a statutory framework regarding searches for individuals (Subchapter F of Chapter 26)*

54. *For adoption decrees entered on or after the effective date of this act, require the Department of Health to disclose the information contained in an adoptee's original birth certificate upon the request of the adoptee, adoptive parent or legal guardian (§ 2663)*

55. *Require the Department of Public Welfare to provide and pay for pre- adoption services for children who are in the custody of a county agency and available for adoption (Subchapter B of Chapter 27)*

56. *Require the Department of Public Welfare to provide and pay for post- adoption services for children who were in the custody of a county agency when they were adopted (Subchapter C of Chapter 27)*

57. *Provide a statutory framework for adoption assistance (Chapter 28)*

58. *Require the Department of Public Welfare to reimburse county agencies 100 percent of the cost of adoption assistance if the county agencies comply with data collection and reporting requirements (§ 2803)*

59. *Establish a statutory framework for the applicability and provision of the four types of adoption assistance (Subchapter B of Chapter 28)*

60. *Provide that maintenance payments, payments for nonrecurring adoption expenses and medical assistance apply to children who meet certain eligibility requirements and either are in the*

custody of an agency and available for adoption or were in the custody of an agency when they were adopted (§§ 2812, 2813 and 2814)

61. Provide that postadoption grants apply to children who meet certain eligibility requirements, regardless of whether they were in the custody of an agency when they were adopted (§ 2815)

62. Establish adoption assistance eligibility criteria for children (§ 2821)

63. Provide that a child may not be denied adoption assistance because of the resources of the prospective adoptive parent or adoptive parent (§ 2821)

64. Require that an adoption assistance agreement must be executed before adoption assistance is provided (§ 2822)

65. Establish the requirements for an adoption assistance agreement (§ 2823)

66. Provide for the transfer of benefits to successor adoptive parents (§ 2824)

67. Specify when adoption assistance will be terminated (§ 2826)

68. Provide for administrative appeals regarding adoption assistance (§ 2827)