

PENNSYLVANIA CATHOLIC CONFERENCE

Testimony In Support Of

HOUSE BILL 79

AMENDMENTS TO PENNSYLVANIA'S ADOPTION LAW

Presented To

HOUSE JUDICIARY COMMITTEE

February 7, 1991

MR. CHAIRMAN and members of the House Judiciary Committee. My name is Michael Fastiggi and I am an associate director of the Pennsylvania Catholic Conference. Please also be introduced to Mr. Philip Murren, Esq., a partner in the law firm of Ball, Skelly, Murren and Connell, legal consultants to the Conference; Lynne Champain, Professional Services Director, Catholic Social Services of the Diocese of Allentown; Marge Powers of the Archdiocese of Philadelphia; and Kay Eisenhour, Adoption Service Coordinator, Diocese of Harrisburg. We are grateful for this opportunity to testify today in support of House Bill 79.

Our Conference is the civil affairs agency of the Catholic Church of Pennsylvania and it represents 10 Catholic dioceses throughout the Commonwealth. Whereas the Conference addresses a broad range of issues of concern to the Church's various institutions (e.g. hospitals, nursing homes, schools, social service agencies, residential facilities for dependent youth, and others), in this particular legislation, House Bill 79, the Conference represents the interests of Catholic social service agencies and attorneys who are associated with those agencies. There are eight diocesan Catholic social service

agencies providing services in all 67 counties of the Commonwealth. They provide various professional services to clients; however, ADOPTION SERVICE is a significant component of service in those agencies. Catholic social service agencies have provided adoption services in Pennsylvania for many years, and they are guided by the highest of ethical and professional standards.

In 1983, the Catholic Conference began gathering annual statewide service statistics from Catholic agencies. In the seven year span between 1983 and 1989, those agencies provided adoption services to more than 8,500 individuals. During the same period, agency adoption personnel placed 2,632 children with adoptive parents. It is quite possible that Catholic agencies have made more adoption placements than any other service entity in Pennsylvania over those years. Consequently, Catholic social service personnel have a great deal of experience and knowledge about adoption matters, and about problems in the adoption system which this legislation is designed to correct.

Quoting from a 1983 statement by Mr. Nicholas Lippincott, Esq., who was formerly associated with this Judiciary Committee, "Adoptions in Pennsylvania are of two types--agency directed and private. Agency adoptions receive specific statutory recognition and are regulated by the Pennsylvania Department of Public Welfare (DPW). Private adoptions, on the other hand, are not currently regulated by the DPW and are usually arranged

through the efforts of unlicensed adoption intermediaries --usually either attorneys or physicians." For the sake of this testimony, I will refer to "private adoptions" as non-agency adoptions.

House Bill 79 proposes to establish standards for those who act as intermediaries in arranging non-agency adoptions--standards akin to those which exist for social service agencies and are implemented through certification and regulation. Just as agencies must follow certain practices in the adoption process, so should those intermediaries for non-agency adoptions be required to meet prescribed adoption practices. Over several years of adoption service, the personnel of our agencies have either learned about or directly experienced problems from abuses in the system by intermediaries in non- agency adoptions. These problems differ in terms of type and level of seriousness. There are unfortunate situations involving adoptees placed with adoptive parents as infants by intermediaries who years later are nowhere to be found. There are no linkages whatsoever to the persons who arranged their adoptions. On many occasions these adoptees have called at our agencies requesting assistance in obtaining information about their adoptions. In most instances those adoptees ended up disappointed and discouraged because there is no information about the intermediaries who might have assisted them with their adoption searches.

Another problem is that the parties in non-agency placements have not received appropriate counseling and education in the issues involved with adoption, as well as in coming to grips with the relinquishment decision. And perhaps, unwisely, the present system allows placements to be made by intermediaries before an investigation of the adoptive parents and the adoptive home is completed. These are just a couple of examples of the concerns from agency experiences which had given rise to the interest in pursuing legislative remedies.

A more glaring example of a serious abuse in the system for adoptions occurred in New York City, in 1987, when an attorney, acting as an intermediary in an adoption, assumed responsibility for finding an adoptive family with whom to place a female child. The attorney actually kept the child and raised her as his own for a few years, while subjecting her to abuse and ultimately beating her to death. While such extreme cases of abuses of the system are rare, nevertheless they do happen. The fact that an intermediary could keep the child as his own for so long without effecting a formal adoption, raises the question of whether appropriate safeguards were in place and, if so, how they could easily be circumvented? Perhaps we can prevent such abuses with tragic circumstances from occurring in Pennsylvania by enacting appropriate adoption standards for all to meet.

Initially, in developing this legislative proposal, five items were considered essential for improving the quality of

adoption practice. These were: (1) Counseling; (2) Pre-placement Screening; (3) Post-placement Evaluation; (4) Accurate Record Keeping; and (5) Confidential Handling of Birth and Adoption Information. A study was made of the laws of several states where standards for non-agency adoptions were in place to determine how each of these items were handled. Ensuring the opportunity for counseling of the birthparents was a necessary ingredient to make it possible for birthparents to consider the options open to them. It is important that the birthparents be apprised of their rights to receive counseling. The court should be responsible for enforcing the counseling requirement prior to terminating parental rights. A preplacement investigation and a report of that investigation to the court was also considered essential because frequently, in non-agency adoptions, there was not much known about the adoptive parents until after the petition to adopt had been filed and the baby was already in their custody. Once a baby has been placed in a home the court is not usually inclined to remove the baby from the home. The situation needed to be changed to assure that there is a study of the prospective adoptive couple prior to placement. The object is to make certain that the adoptive home would provide a good environment for the child.

Post-placement evaluations were also considered important for intermediaries in non-agency adoptions. There needed to be an evaluation of the interactions between the adoptive parents

and the child, and to ascertain how things were going in the adoptive home. Record Keeping and the confidential handling of case information in non-agency adoptions were also viewed as important elements. Intermediaries should be required to include in their report pertinent social information that is often lacking in private cases. The intermediary should be held to the same record keeping requirements as adoption agencies, and intermediaries should complete and file with the court pertinent documentation revealing that the rights of all the parties involved were considered. In the matter of confidentiality, the intermediary should be required to handle in the strictest confidence all information pertaining to birth and adoption. The information should become part of the court record and be made available only as deemed necessary by the court. The confidential handling of birth and adoption information is important for adoption agencies and should be the same for intermediaries in non-agency adoptions.

Later, in drafting the legislative proposal, our concerns shifted to relinquishment hearings and to troublesome delays in the adoption process because of uninvolved and uninterested putative fathers who often could not be located. Pennsylvania law requires that the rights of the putative father be considered in the legal process for relinquishment. Notification of the child's birth and the plan for the child's adoption must be given to the natural father. The natural father has the right

to contest the plan for adoption. Our deliberations centered around ways to provide restrictions on the number of instances in which notices of hearings must be given to uninvolved or uninterested putative fathers. And finally, consideration was also given to the existing grounds for involuntary termination and how that section of the existing law should be changed to make it more effective.

Our testimony today in support of House Bill 79 includes information which our legal representative, Mr. Murren, provided to this Committee last year when its legislative predecessor, House Bill 2133, was considered. Appended to my written testimony is a brief memorandum, also prepared by Mr. Murren, which contains background information on some important points of Pennsylvania's Adoption Law. The legislative proposal which you are considering today is the product of extensive study by the Conference's adoption committee and consultations with legislators and their aides, as well as with the Pennsylvania Council of Children's Services and practicing attorneys. In its formative stages, the legislation was reviewed for technical conformity to the present Adoption Law by attorneys of the Joint State Government Commission.

The following is a summary of each of the amendments proposed in House Bill 79. The explanation follows the numbering of the section of the Adoption Act being added or modified.

On page 1, Section 2102, definition of "newborn child" is added as an adjunct to a new ground for involuntary

termination of parental rights under section 2511 (a) (6). Newborn child would be defined as any child who is six months or less of age at the time of the filing of any petition which would lead to termination of parental rights.

On page 2, Section 2313, a provision is added which would require a court to appoint legal counsel for a parent whose rights may be involuntarily terminated and that parent cannot afford counsel.

On pages 3 and 4, Section 2503, Pertaining to Hearings. The amendment to subsection (b) would correct a defect in existing law which had failed to require that a person seeking to voluntarily relinquish parental rights be notified of the requirement that he or she be present at the termination hearing. It provides for ten day notice of hearings to the natural parents with specific language for the notice including the date, time and place of the hearing, information about obtaining legal assistance and the right to file personal information for later access by adoptees.

On page 4, Subsection (d) of Section 2503, modifies an existing provision relating to termination of the parental rights of a putative father which in its present form is believed to be unconstitutional. The present ground permits termination of rights for mere failure to relinquish rights or file certain forms. This ground for termination is amended so as to afford additional due process safeguards for the parent.

On page 5, new subsection (e) under Section 2503 would require a court to advise anyone voluntarily relinquishing his or her parental rights of his or her right to place personal information on file with the court or the Department of Health, which would assist the adoptee in either obtaining that information, or locating the natural parent at some time in the future. This particular amendment is designed to address the concerns of adoptee groups without eroding the protections afforded under Act 195 of 1984.

On pages 5 & 6, Section 2504, Alternative procedure for relinquishment. The amendment to subsection (c) of this section again modifies the current provision for termination of parental rights of the putative father which we do not believe satisfies constitutional requirements in its present form. Similar to the amendment to Section 2503, new language would be added to require a court to advise a parent, whose rights are being terminated through a petition to confirm consent, of his or her right to place personal information on file with the court or with the Department of Health.

Page 7, Section 2504.1, Confidentiality. A new section is added to the Adoption Act requiring a court to take such steps as are reasonably necessary to assure that the identity of the adoptive parent or parents is not disclosed without their consent in any voluntary or involuntary termination proceeding. This amendment was occasioned by a situation which arose in

Cumberland County in which a natural parent upset an adoption after learning the identity of the adoptive parents.

Pages 7-9, Section 2505, Counseling. Extensive amendments are made to the current counseling provision of the Adoption Act. Subsection (a) would be amended to require maternity patients who are known to be considering relinquishment or termination of parental rights to sign an acknowledgment of receipt of a list of counselors and counseling services prior to discharge from the maternity care facility.

Subsection (b) of this section would be amended to require the court to include all adoption agencies on its list of qualified counselors and counseling services, and to distribute that list to every adoption agency and maternity care facility within the county. The list would also be available on request to any adoption intermediary or licensed health care professional.

Now subsections (c), (d), and (e) would be added to require a court to ascertain whether a parent, whose rights are about to be terminated through voluntary relinquishment or confirmation of consent, has received counseling. If the court believes counseling has not been provided, it may, with the parent's consent, refer that parent to an agency or qualified counselor at county expense. In addition, whenever a parent has filed a petition to relinquish parental rights and believes himself or herself to be in need of counseling concerning that relinquishment, he or she may apply to the court for a referral

for counseling at county expense. Any counseling provided under these subsections would be paid for out of a fund created by levying an assessment of \$75.00 to accompany the filing of each report of intention to adopt. This fee would be waived in cases of financial hardship, and would not apply in cases involving adoptions by relatives, since no report of intention to adopt is required in such cases. Nor would the filing fee apply in the case of adoption of a special needs child.

Pages 9-11, Grounds for Involuntary Termination. There are presently five separate grounds for involuntary termination of parental rights. The first of these grounds is the six-month abandonment ground and the bill proposes an amendment to that ground, in response to the In Re: Adoption of Hamilton case, which would focus the court solely on the six months prior to the filing of the petition for involuntary termination. The amendment would thus exclude consideration of any efforts to cure the abandonment undertaken after the filing of that petition. In the Hamilton case, the Superior Court of Pennsylvania held that a termination petition could be defeated by the subsequent remedial steps initiated by a parent who awakens to the fact that his parental rights are in jeopardy. We see in that decision the seeds for disruption of a great number of adoption proceedings.

House Bill 79 proposes a new sixth ground for involuntary termination in cases involving newborn children where the following conditions are met:

1. The parent has actual or constructive knowledge of the child's birth.

2. The parent does not reside with the child.

3. The parent has not married the child's other parent.

4. The parent has failed for a period of four months immediately preceding the filing of the petition to maintain substantial and continuing contact with the child.

5. The parent has failed during that same four-month period to provide substantial financial support for the child.

This new ground is intended to provide additional authority to terminate the rights of a putative father who takes no interest in the child until he becomes aware that the child may be given up for adoption. It is intended to expand the options for dealing with the putative father but within the limits of constitutional tolerance. Many of our agency professionals further believe that the period of excusable neglect should be lowered even further--from four months to three months.

The bill also proposes the addition of a new seventh ground for involuntary termination where the parent is the father of a child who was conceived as a result of rape. This provision does not include any requirement that the rape be reported, or that a conviction have been secured prior to the filing of this petition since, as with all other grounds for involuntary termination, the court must find, by clear and convincing evidence, that the child was conceived as a result of rape.

An amendment is also proposed to Section 2511 (b) prohibiting the court from considering any efforts undertaken by a parent to remedy any of the grounds for involuntary termination subsequent to the filing of the petition.

Also added is a provision which requires the court to advise the parent whose rights are involuntarily terminated of his or her right to place personal information on file with the Department of Health.

Pages 11-12. Section 2513, Hearing. Technical amendments are made to this section.

Pages 12-14. Section 2530, Preplacement Investigation and Report. A new section would be added to the Adoption Act forbidding the placement of any child in the physical care or custody of a prospective adoptive parent unless a preplacement investigation containing a favorable recommendation for placement has been completed within three years prior thereto. The preplacement investigation could only be conducted by a local public child care agency, an adoption agency, or a licensed social worker designated by the court. Contents of the report are also specified in this new provision. This provision is intended to forefend against some of the unfortunate situations which have arisen in the context of non-agency adoptions.

Pages 14-15. Section 2513, Report of Intention to Adopt. The report of intention to adopt would be required to include the date on which a preplacement investigation was concluded. Also required would be a statement as to whether or not the

parents whose parental rights are to be terminated have received counseling. A copy of the preplacement report would be required to accompany the report of intention to adopt.

Pages 15-16. Section 2701, Contents of Petition for Adoption. The petition for adoption would be required to set forth that a preplacement report had been completed.

Pages 16-17. Section 2711, Consent Necessary to Adoption. Subsection (c) is amended to allow a putative father to execute a valid consent to adoption at any time he learns of the expected or actual birth of the child. Subsection (d) is amended so as to notify a parent that a consent to adoption may be revoked if done so in writing.

Pages 17-18. Section 2725, Religious Belief. Presently the Adoption Act requires that, whenever possible, the adopting parent shall be of the same religious faith as the natural parents of the adoptee. This provision is modified such that the intermediary may honor the preference of the natural parents as to the religious faith in which the adoptive parents intend to rear the adopted child.

Page 18-19. Section 2905, Impounding of Proceedings and Access to Records. Preplacement reports would be confidential under this amendment, and natural parents whose parental rights are terminated either voluntarily or involuntarily would be authorized to place personal information on file with the Department of Health. Current law limits that right only to those who voluntarily relinquish their rights.

HOUSE BILL 79 AIMS TO BRING ABOUT CHANGES IN THE ADOPTION LAW TO PROMOTE A HIGHER LEVEL OF QUALITY IN ADOPTION SERVICE AND TO ASSURE THAT THE BEST INTERESTS OF THE CHILDREN WHO ARE ADOPTED ARE BEING SERVED. WE URGE THE HOUSE JUDICIARY COMMITTEE TO APPROVE THIS PROPOSAL. THANK YOU VERY MUCH FOR PERMITTING THIS OPPORTUNITY TO PRESENT OUR POSITION ON THIS BILL.
