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TESTIMONY OF PARENTS RIGHTS ORGANIZATION  
ON H.B. 79 BEFORE THE HOUSE OF REPRESENTATIVES,  
HOUSE JUDICIARY COMMITTEE, FEBRUARY 7, 1991

PRESENTED BY:

Josephine Parks, Chair  
Parents Rights Organization  
Co-Chair, Family Law Task Force  
Pennsylvania Legal Services

COUNSEL:

Anne Vaughan, Esquire  
Delaware County Legal Assistance Association  
410 Welsh Street  
Chester, Penna. 19013  
(215)874-8421

Edward Danelski, Esquire,  
Chair, Juvenile Subcommittee Family Law Task Force  
Pennsylvania Legal Services  
Montgomery County Legal Aid  
317 Swede Street  
Norristown, Penna. 19401  
(215)275-5400

We thank the committee for this opportunity to present testimony on the very important area of children's rights to natural parents and parental rights under juvenile and adoption laws. First, we ask that testimony submitted on this subject at hearings before the House Health and Welfare Committee in October, 1990, be incorporated herein. H.B. 79 also seriously affects children and parents. We want to address further some of the areas in the legislation we have specific concerns about with proposals for improved legislation.

The following particular problems in the proposed legislation should be thought through with great care, to avoid summary termination of parental rights.

Preliminarily, we credit the sponsors for correcting certain glaring problems by adding revocation language to the consent

form, and provision of counsel for indigent parents. However, this bill would continue to foist on families and the public at large very serious provisions. Questions needing to be answered include:

(1) May terminations be done in each newborn case, or is this only to apply where a preadoptive family petitions the court? Is the result possibly children are without any parent? Will this lead to warehousing of children in foster care or institutions?

(2) Will a state agency be mandated by this legislation to petition to terminate parental rights in these newborn cases? Do state agencies have the resources to process these terminations?

(3) Has the cost and process for appointment guardians ad litem for minor parents been considered and should it be?

(4) Has the legislature considered that the facts in the Hamilton case (549 A.2d 1291) (Pa. Super. 1988) appear to involve a dispute between parents following a divorce? Does the legislature intend that a custody issue in divorce be resolved by such drastic means rather than by conciliation or mediation?

(5) Will the unintended effect on any addicted parent be to discourage recovery rather than encourage recovery so he or she can parent and be a productive member of society?

(6) Is there any evidence that single parents, with support and services, will not parent and be productive members of society?

(7) Will the DPW minimum visitation which is the CYS maximum (often once per two weeks for one hour in agency offices) lead to the conclusion that there is substantial and continuing failure to contact the child? (See 55 Pa. Code 3130.68.)

(8) If there are delays by CCYSSA workers developing family service plans with a visitation schedule, will this be an exception to the substantial and continuing failure to contact?

(9) Was there any evidence available to the legislature that any addicted parent can be cured within four months or is a longer treatment period needed?

(10) Can paternity be determined within four months and can potential fathers protect their rights under this bill?

(11) Should preadoptive parents be permitted "interim" approval based on the word of the intermediary given the fact of child abuse and neglect even in DPW regulated foster homes?

(12) Finally, has the legislature considered developing less restrictive alternatives to this measure that protects children's rights to natural mothers and natural fathers and still reduces costs of foster care?

(13) Does the termination of a child born as the result of rape place a tremendous burden on a woman who has just given birth? Must she press charges or testify as to that?

(14) How does this legislation assure the petition and the notice in each case is served promptly on filing on all respondents?

Again, this legislation would create a system of lesser rights for newborns than for older children. In testimony before the House of Representatives Health and Welfare Committee on the Rights of the Natural Parent, Termination Proceedings and Access to Services (Philadelphia, Mt. Carmel Baptist Church, October 11, 1990), a teenage parent (Dawn Hill) spoke of the (CCYSSA) urging her to give up her child for adoption, although there was no dependency. We already may be confronted with a practice of CCYSSA workers to urge upon clients, often young and inexperienced, family disunity, rather than the mandated duty of CCYSSAs to establish and sustain family unity with services, 42 Pa. C.S. 6301 et seq., 55 Pa. Code chapters 3130, 3140. This proposed law will further encourage CCYSSA toward severing family ties, not fostering bonding of newborns with their parents.

In that same testimony, Chisita Cruz testified she had two children as a teenager, had seen neither for two years, had been allowed by CYS to have one child only with her for one month only. This was she believed much too short a time to develop parenting skills. CYS was unwilling to provide more supportive counseling and education to her.

JoAnna DeHart testified her 6 children were in placement for over 1 year due to housing, clearly poverty related, and CYS wanted to adopt out her children.

CCYSSAs are not serving families. They have become, already, adoption brokers and warehouseers of children in foster care, contrary to all our laws, public policy purposes, and contrary to our constitution which protects the family. We urge you to review with close attention the testimony presented at those hearings: children denied the right to be raised by families and to the love and care of their families was the clearest conclusion of present CCYSSA practice. This bill, like its predecessor H.B. 2133, would create law from this CCYSSA practice.

Present agency practice needs legislative attention: Now, Juvenile Courts, empowered to make only temporary custody orders, end dependencies and order children placed with non parents. Now, courts terminate parental rights without any measuring of minimum reunification services and without real review<sup>of</sup> the amount of services in time, dollars, frequency or duration. Meaningful agency services are more than referrals, they must be actually provided or arranged for by the CCYSSAs. We urge this body not to look at this problem piecemeal, taking the easiest out, that this legislation provides. In a time of crisis, where families are troubled by drug abuse and homelessness added to garden variety dependency factors of poverty, illness, and unemployment, shouldn't we look at solving the problem, not terminating families?

It has been said before, and we will say it again: the purpose of the Juvenile Act is to provide rehabilitation services

to sustain and unite families. A parent must be able to seek the assistance of a child welfare service with the expectation that the agency will exert its best efforts in working with the parent and the child to improve the parent's skills and understanding. The premature filing of termination petitions by an agency thwarts the trust necessary for the advancement of the purpose of this relationship between agency and parent. Matter of MLW, 452 A.2d 1021, 1025 (1982).

A. NEWBORN CHILDREN MAY LOSE FAMILIES AFTER 4 MONTHS.

Newborn children are as deserving of an opportunity to be with their parents as other children. The standard should be at least the same as for other children which is 6 months, for review but 18 months or beyond for permanency planning. Four months time is significantly contrary to present law and unjust when CCYSSA services are just not available.

Grounds for termination (Section 2511(a)(6)) should not become law. It is vague and we believe unconstitutional as to a parent who "knows or has reason to know" of the child's birth. It discriminates on the basis of marital status, against unmarried parents, and in particular is hurtful policy to apply to poor families, who may not have the means to provide "substantial" financial support or maintain "substantial and continuing" contact with the child. What rational basis is there for making that marital status distinction? What justifiable state purpose is served? There is an equal protection problem caused by the four months standard for newborns, the 6 month standard for others. Some of us have experience with judges asking for more of a track record than 6 months or 12 months in any addiction dependency

case. This section does not comport with the Social Security Act's legislative history, funding states for services to reunite with reviews each 6 months and speaking of 18 months before a permanency planning decision is needed.

There should at least be itemized good cause exceptions to include at a minimum the following clarifications:

- Parents' economic, and health circumstances including employment efforts or participation in an employment training programs, application or participation in (or wait listed) for programs of medical or rehabilitative care. No termination should occur if medical or rehabilitative services are not actually available to the parent.

- Parent is a party to custody or dependency proceeding.

- Parent has no actual knowledge of the birth of child.

- Parent has not been served with the petition and notice by any means under Pennsylvania Rules of Civil Procedure.

- For financial support, parent is disabled, a recipient of public assistance (or would be a recipient but for transitionally needy status under Act 75) <sup>1/</sup> or paternity proceedings are pending.

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<sup>1/</sup> General Assistance at about 65% of need for 3 months out of 12.

As alternatives, we propose:

1. "Preferred Caretaker" Alternative.

The law permits but does not encourage alternatives of community and relative Caretaker status including foster care levels of payment to relatives where children cannot be with parents. We suggest alternatively payments at a lesser rate than foster care, from Title IV-A supplemented by IV-B funds to keep a child with extended family, to provide financial support and to encourage the family member to care for the child, to save higher court costs of dependency determinations and foster care. For example, a child is placed with an aunt who has 2 children and receives an AFDC benefit of \$403 (55 Pa. Code 175.23(a) schedule 2). The placed child would receive \$205, rather than \$94 (\$497-\$403). This is we believe lower than foster care. The aunt has an incentive to care for the child, while the case plan services focus on reunification.

2. Establish a program of Title IV-B child welfare reunification services with clear standards developed through clear regulation of amount (time/cost factors). These are now elements completely lacking from DPW regulatory and compliance review and hidden as well from court assessment in "reasonable efforts" determinations. A worker may never see a family, or may refer one time to a social service agency.

B. INFORMATION AND REFERRAL SERVICES. (Section 2505)

The proposed informational component needs to be expanded. Acknowledgement by signature at the hospital is inappropriate. The social work component should give thorough information and referral assistance in all cases to any new parent with mandated

distribution by all facilities to parents of applications and brochures describing all available services, telephone numbers, addresses, purpose and how to apply and appeal rights if services applications or requests are denied or delayed. At a minimum, service information should include the following:

1. County Children and Youth Social Services Agencies operated by the County Institutions Districts and Department of Public Welfare (CCYSSAs): The purpose of this referral is to apply for acceptance for services and development of a family service plan (FSP), with services provided or arranged by a local CYS with 6 month reviews. (This case planning service is a Social Security Act requirement, P.L. 96-272.) Service planning includes assistance with family unification and CCYSSA's must be required to inform of mandated or required services in the Title IV-B (Child Welfare Services) State Plan (55 Pa. Code 3130.35) of counseling, day care, homemaker/caretakers and parenting skills education. All other services provided by each CCYSSA pursuant to county developed plan should also be itemized.

Information about the following services must be a component since P.L. 96-272 mandates coordination between public assistance and social services and local programs:

2. AFDC/GA (cash assistance)
3. Medical Assistance (including Healthy Beginnings Plus and EPSDT (Early Periodic Screening Diagnosis and Treatment)).
4. Food Stamps
5. WIC
6. Employment and Training Programs

### C. COURT APPOINTED COUNSELING FUND

This provision may violate the Social Security Act's funding scheme. Counseling for families accepted for service must be provided by each CCYSSA and each parent has a right to a fair hearing through the Department of Public Welfare if counseling is denied by the CCYSSA. See 45 CFR 1355.30(k), 205.10, 55 Pa. Code 3130.62. We question whether there is the discretion for the Orphans Court to approve or deny a referral for counseling. The CCYSSA is the agency under the County Institution District Law that provides the services to families including counseling to assist a parent in any choice of temporary foster care, with return to the parent, or caretaker relative placement, or adoption. No parent should be subject to any pressure to terminate promptly or to consent to relinquish by the court appointed counsel. It is unrealistic and too tempting to empower an agency primarily charged with reunification to take on the adoption agent's role.

This section should at least require referral to CCYSSA agency counselors in all cases, to assure each child and parent has the opportunity to receive placement prevention or reunification services. The discretion in the Orphans Court should be deleted.

### D. OPPORTUNITY FOR REESTABLISHMENT OF PARENT/CHILD RELATIONSHIP

Any provision that changes or eliminates the opportunity to cure a relationship once a petition to terminate has been filed must be abandoned: A child may benefit by the renewed contacts and be grateful for a parent's love. A child is helped even if

the petition to terminate is filed and the parent visits or supports. The court might consider other factors but a statutory rejection of the evidence of change should be deleted. This benefit to the child of any post abandonment effort would allow The Orphan's Court its power to hear evidence of events up to the time of the hearing on termination.

A termination must be based on clear and convincing evidence of the allegations in a petition. The proposed change would substitute for this evidentiary standard a time barrier that deprives the parent of the opportunity to prove and the court of the power to hear current evidence. The child through his or her attorney is also deprived of the opportunity to provide evidence of the importance of the continuing parental relationship to the child.

We urge that instead of a cut off of evidence at time of filing the petition to terminate the court consider any curative changed behavior after service of the petition and up to the time of the final decree (including efforts taken during the pendency of any appeal) under the clear and convincing standard.

E. PROVISIONS FOR OPEN ADOPTIONS AND VISITATION FOLLOWING VOLUNTARY AND INVOLUNTARY TERMINATIONS.

Testimony at the October 11, 1990 hearings clearly shows that parents do not forget their children because of a paper decree and that bonding continues. See e.g. testimony (10/11/90) of Ann Torregrossa, Alicia Geisa Patterson and Linda Pfaff. It is important that a court be permitted to hear evidence on continued visitation. It is important that the legislators assess whether

this continuity may even be an inducement, in certain cases, to voluntary relinquishment.

F. PREPLACEMENT INVESTIGATION BY CCYSSA IS DRAIN ON SERVICES

It is an unnecessary drain on CCYSSA services to require those agencies, at a time when we are trying to expand placement prevention services, to perform adoption preplacement investigations. Courts should appoint independently, outside the CCYSSAs. There is also a potentially very conflictual role for any CCYSSA worker.

G. INTERIM PLACEMENT PROVISIONS PLACE CHILDREN AT RISK IN UNAPPROVED HOMES AND WITHOUT PROCEDURAL SAFEGUARDS FOR PARENTS OR CHILDREN.

Interim placement: This section would establish a lesser standard for substitute care than exists elsewhere in the Juvenile Act, the Child Protective Services Law, and regulations implementing those statutes. Why should we allow children to be placed on the word of an unregulated, unlicensed intermediary or by an agency or individual prior to an investigation? This provision is just inconsistent with the duty to protect children by conducting the study beforehand and presenting the findings to the court.

The natural parents have the right to assure their child's safety prior to termination by final decree. For children in CCYSSA placements, no proceeding on placement change can occur without parental and child notification and an opportunity for a hearing. 42 USC 675(5)(c), 55 Pa. Code 3130.68(i). This section

should be eliminated or alternatively should be revised to protect the procedural rights of parents and children.

Conclusion: We urge this House Committee to very seriously review and revise this proposed H.B. 79 in light of our comments here. Thank you for this opportunity.