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December 7, 1999

Thomas P. Gannon, Chair
House Judiciary Committee
49 Capitol Building, East Wing
Harrisburg, PA 17120

Re: **House Bill No. 1838**
House Bill No. 1533
(Adoption Legislation)

Dear Representative Gannon:

I understand you are having a hearing regarding the above legislation this coming Monday, December 13, 1999. As there was no room available on the schedule, I am submitting herewith some written comments of mine regarding these two bills.

I have been providing legal representation in regard to adoptions for over 15 years. I represent a private adoption agency, and also handle probably between 10 and 20 private adoptions per year, including numerous interstate and international adoptions. More recently, I have had the pleasure of chairing the Terminations Subcommittee of the Permanent Joint State Government Commission, Committee on Adoptions.

The thrust of my comments is that this is an area in need of legislative attention, but it is necessary that the attention be done in a more comprehensive fashion. It is as though adjustments are being made on the trees, without adequate consideration to the impact on the forest.

I would hope that you and your Committee will remain interested in this important area and agreeable to considering the work of our Committee, when completed.

Sincerely yours,

JAMES R. ADAMS

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Enclosures

cc: Nancy Marcus Newman, Esquire (with enclosures)
David L. Hostetter, Esquire, Joint State Government Commission (with enclosures)

HOUSE BILL NO. 1838

PAGE NO.	SECTION NO.	COMMENTS
2	2102	<p>Definition of "putative father".</p> <ol style="list-style-type: none"> 1. "Alleged" by whom? The father? Mother? Her girlfriend? Relatives? DPW? 2. Cannot have a "putative father" in the case of a married woman? <ol style="list-style-type: none"> a. Suppose she has been separated 6 years and living with her boyfriend for 3 years? And that she claims the boyfriend is the father? Is he "putative"? b. If the boyfriend is not a "putative father", does that mean his rights do not need to be terminated? He does not get notice of any adoption process? 3. What are the consequences of this definition? Where does the term appear in the Act? <ol style="list-style-type: none"> a. Will practitioners know who needs to get notice? How?
2	2501 2502 2504	<p>Voluntary Relinquishment to Agency</p> <ol style="list-style-type: none"> 1. What is the Court to do with the information identifying the counseling agency at 2501(a)(3)?

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2. Why must the counseling be reported only if it is provided by an agency? What about a psychologist? Pastor? Physician? Guidance counselor? School nurse? Social worker who does counseling? Planned Parenthood?
3. Is the Court to approve or disapprove the agency? What happens if the Court disapproves?
4. If the Court is not to approve the agency, then what is the point in providing the information?

3

2502(a)

Voluntary Relinquishment—Private Adoption

1. Who is to offer counseling to the birth parent? When? How?
2. How is the adoptive parent to know about availability of “adoption-related counseling services”?
3. If the Petition cannot state that “adoption-related counseling services have been offered to the [birth] parent”, does that mean the Petition for Voluntary Relinquishment cannot be granted? What about a step-parent adoption?

4

2503(d)

Involuntary Termination of Putative Father

1. This amendment would authorize termination of the parental rights of the putative father “if he fails to do any of the following”, filing objection, appearing at the hearing, providing money, making ongoing provisions.

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- a. So if this man is a terrific, full-time parent, but does not file a piece of paper with the Court, he can have his rights terminated?
 - b. Suppose the putative father is a great dad, full-time primary custodial parent, but does not show up at the hearing?
2. What is "ongoing provision for the child's care"?
- a. "Ongoing" means going forward or continuing into the future, so does this mean the putative father can have his rights terminated unless he has a substantial bank account and civil service status?

5

2504(a)

Confirmation of Consent

- 1. At Line 6 on Page 5, who is "the parent"? The immediately-preceding sentence says "the adoptive parent or parents may file the Petition"; then we are talking about "the parent" doing various things.
 - a. Section 2102 of the Act says, " 'Parent.' Includes adoptive parent."
 - b. If "the parent" at Line 6 is the adoptive parent, then Lines 8 and 9 seem to make no sense, inasmuch as House Bill 1838 defines "adoption-related counseling services" to be those which are provided to the birth parent.

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c. If "the parent" refers to a birth parent, then Line 6 seems to make no sense. We are speaking of a Petition to Confirm Consent. Very often, the birth parent signed the Consent 72 hours after the delivery (or even before the delivery in the case of a putative father), and they are out of the picture, uncommunicative. If we cannot get the consenting putative father to sign this acknowledgment, that would seem to force us into the involuntary termination, which has its own problems as recited above regarding 2503(d).

2. This section seems to say that if counseling by an agency has not been offered, the adoption cannot go forward. In a private adoption setting, or a step-parent adoption, who is to offer the counseling? How?

a. What good does it do to offer counseling once the child has already been placed? Or perhaps the child has been living with the step-parent for several years?

5-6

2504(c)

Confirmation of Consent—Putative Father

1. This appears to have the same problems mentioned previously regarding 2503(d).

2. Here, and also at 2503(d), the draft omits the prior references to filing acknowledgment or claims of paternity pursuant to Section 5103, which drops one of the safeguards that had been available to birth fathers. Under the prior language, the appearance and

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filing objections were disjunctive, with a conjunctive relationship with filing the acknowledgment or claim of paternity. This meant the putative father could avoid having rights terminated by doing any one of the 3 things listed. The proposed language would allow his rights to be terminated if he fails to do any one of the 4 things listed. Was that intentional? If so, it seems harsh.

6

2505

Counseling

1. The most fundamental problem with the current law is timing. Counseling is not available until a Report of Intent is filed. Counseling is not needed then. It is needed before the child is placed for adoption.
 - a. 2505(c) (Page 7—Lines 7-10) mandates that the Court provide a list of counselors to a parent who has not received counseling from an agency. First, this is inadequate as the list would be provided probably a month or two subsequent to the placement of the child for adoption—as it occurs after the Petition to Terminate rights has been filed. Second, it requires that list to be provided even though the parent has received adequate counseling, but not from an agency.

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b. 2505(d) says that in order to request counseling, one must be "a parent". In other words, the child must have been born already and, most likely have been placed for adoption, before the request for counseling can be made. Commonly, children are placed with adoptive parents 1 to 3 days after delivery. Counseling is needed when the mother is 2, 3 or 4 months pregnant, continuing until 1 or 2 months after the placement has occurred.

2. If this were rearranged, so that counseling would be provided in a timely way, would there be a continuing problem of wasted resources, in that agencies which now provide counseling and absorb the cost, would draw down payment for that counseling from the Counseling Fund?

a. How far would the \$75 per adoption fee go?

3. At Page 8, Line 20, "Department of Public Welfare" has been dropped and replaced with "Department"—here and a few other places in the Bill. "Department" is not defined in the Act or in the Bill.

8-9

2505(e)(3)

Reporting Statistics

1. What is the point of reporting? Why create paperwork to be sent to an agency that does not want it, and will do nothing with it?

HOUSE BILL NO. 1533

Making the Consent of the birth parent irrevocable after 30 days without other changes in the Act could be confusing.

1. Why wait 40 days to file the Petition to Confirm Consent, if the Consent became irrevocable 10 days earlier? (2504(a)).
2. Why wait an additional 10 days after the Petition has been filed in order to have a hearing? (2504(b))