

Testimony on House Bills 1524, 1526, and 1529

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**pennsylvania**  
DEPARTMENT OF HUMAN SERVICES

Good morning, Chairwoman Watson, Chairman Conklin, committee members and staff. I am Cathy Utz and I serve as the Deputy Secretary for the Office of Children, Youth and Families (OCYF) in the Department of Human Services (DHS). On behalf of Secretary Ted Dallas, I would like to thank you for the opportunity to testify today regarding the very important matter of adoption, the alternative procedure for termination available to birth parents and putative fathers, expenses eligible to be reimbursed by prospective adoptive parents, and adoption-related counseling under the Adoption Act, Title 23 (Domestic Relations), Chapter 21-29 of the Pennsylvania Consolidated Statutes.

In each of the regular legislative sessions held since 2007-2008, legislation has been introduced in the House of Representatives to reform Pennsylvania's adoption laws and improve the adoption process. This hearing today and my testimony will focus on three of these bills, House Bill 1524, House Bill 1526 and House Bill 1529.

#### House Bill 1524

House Bill 1524, sponsored by Chairwoman Watson, builds upon the existing process that counties have in place to provide adoption-related counseling services to birth parents considering relinquishment of their parental rights voluntarily or through use of the alternative procedure to adoption, commonly referred to as consent to adoption. DHS supports quality adoption-related counseling as an essential service that should be available to all birth parents considering relinquishment of a child and those who have relinquished a child. Quality pre-placement adoption counseling helps to ensure that birth parents who make the decision to relinquish a child for adoption have done so with a clear understanding of the adoption process, their rights and obligations, the consequences of the decision to relinquish parental rights, and

the alternatives to relinquishment and adoption. By extending adoption-related counseling services to birth parents who have already relinquished a child for adoption, these parents can continue to be supported as they face and reconcile their emotions after relinquishment. Not all birth parents will choose to access adoption-related counseling services, but in order to access these services, birth parents must know they are available. By requiring counties to ensure individuals filing a claim or acknowledgement of paternity are notified of the availability of these services, and ensuring that any individual who asks about adoption-related counseling services is provided with the information, House Bill 1524 would help to ensure birth parents are aware that these services are available.

#### House Bill 1526

House Bill 1526, sponsored by Representative Petri, proposes to significantly shorten the period during which a birth parent or putative father may revoke his or her legal consent to adoption from 30 days to 120 hours (five days). In addition, this legislation would eliminate the ability of a birth parent or putative father to challenge the validity of their consent to adoption by alleging fraud or duress, once their parental rights are terminated. Furthermore, birth parents and putative fathers who execute a consent to adoption, and whose parental rights have been terminated, would not receive notice of the adoption finalization hearing.

The legal process of adoption in Pennsylvania requires the court to sever the legal relationship between birth parent(s), putative father(s) and the child to subsequently establish a new, legal relationship between the child and their adoptive parent(s). Under current law, termination of parental rights can be achieved involuntarily, voluntarily, or through use of the alternative procedure to adoption, commonly referred to as consent to adoption.

Additionally, a consent to adoption permits birth parents and putative fathers to sign a form, or consent, that indicates their intent to permanently give up all rights to the child and express their voluntary and unconditional consent to the adoption of the child. Consents to adoption may not be executed by a birth parent until at least 72 hours after the birth of the child. A putative father may execute a consent to adoption any time after he receives notice of the expected or actual birth of the child.

A birth mother may revoke her consent to adoption, for any reason, up to 30 days after she executes the consent. A birth father or putative father may revoke his consent to adoption, for any reason, up to 30 days after the birth of the child or execution of the consent, whichever is later. A birth parent or putative father may not waive the applicable revocation period.

While a birth parent or putative father cannot revoke their consent to adoption after the applicable 30 day revocation period has expired, current law allows a birth parent or putative father to challenge the validity of their consent to adoption due to fraud or duress by filing a petition with the court. This petition must be filed within the earlier of two time frames: 60 days from the date of the birth of the child or the execution of their consent to adoption, whichever occurs later, or, 30 days after entry of the adoption decree. When the consenting birth parent or putative father is younger than 21 years of age, the court may invalidate a consent to adoption if the alleged fraud or duress is proven by a preponderance of the evidence. In all other cases, the consenting birth parent or putative father must prove their claim by clear and convincing evidence.

Under current law, assuming the birth parents or putative father execute their consent to adoption 72 hours (3 days) after the birth of the child, these parties have 33 days after the birth of the child to revoke their consent to adoption. The court could terminate parental rights and finalize the

adoption 34 days after the birth of the child, leaving these parties with 26 days to petition the court and challenge the validity of their consent on the basis of fraud or duress. Maintaining the same assumptions, if House Bill 1526 became law, these parties would have eight days after the birth of the child to revoke their consent to adoption. Under this legislation, courts could terminate parental rights and finalize the adoption 14 days after the birth of the child, and birth parents and putative fathers would be prevented from being able to challenge the validity of their consent to adoption on the basis of fraud or duress. Birth parents and putative fathers who make the choice to execute a consent, which serves to expedite the adoption of their child, do so for a variety of reasons, but it's difficult to imagine that most don't do so believing their decision is in the best interest of the child.

According to the Child Welfare Information Gateway, the manner in which a consent to adoption can be executed varies considerably in states. Some states require the parent to be provided with adoption-related counseling or legal counsel prior to consenting to adoption. Other states mirror Pennsylvania and allow a consent to adoption to be executed by a written statement witnessed and/or notarized by a notary public, while other states require an appearance before a judge or the filing of a petition to execute a consent to adoption.

In most states, the law provides that a consent to adoption may be revoked prior to the entry of the final adoption decree, under specific circumstances, or within specified time limits. Ten states appear most similar to Pennsylvania in that they permit a birth parent to withdraw their consent to adoption within a specified period of time, after which, consent is irrevocable unless there is evidence of fraud or duress. These states, their respective revocation time frame, and any clarifying details that differentiate them from Pennsylvania's process include the following:

- In California, if the birth parent relinquishes the child directly to the adoptive parents, the birth parent then has 30 days to revoke their consent. This is identical to Pennsylvania's requirement.
- In Oklahoma, a birth parent must execute their consent before a judge having probate or adoption jurisdiction. A birth parent has 30 days to revoke their consent.
- In Vermont, a birth parent must execute their consent before a judge or person appointed by a judge. A birth parent has 21 days to revoke their consent.
- In Minnesota, a birth parent must execute their consent before two competent witnesses. A birth parent may revoke their consent within 10 days.
- In Tennessee, a birth parent must execute their consent before a judge. A birth parent then has 10 days to revoke their consent, which must also be done before a judge.
- In Texas, if the consent fails to state that the consent is irrevocable, a birth parent has 10 days to revoke their consent.
- In North Carolina, a birth parent must execute their consent under oath before an individual authorized to administer oaths, and they may revoke their consent within 7 days.
- In Virginia, if a birth parent relinquishes the child directly to the adoptive parents, the birth parent must execute their consent before the juvenile or domestic relations district court in person and in the presence of the prospective adoptive parents. A birth parent has 7 days to revoke their consent. If a birth parent relinquishes the child to an agency, the consent must be notarized and can only be revoked before the court finalizes the agreement by proving fraud or duress, or, if the child has been placed in an adoptive home, by written mutual consent of the birth parents and prospective adoptive parents.
- In Iowa, a birth parent must execute their consent in the presence of the court or before a notary public. A birth parent may revoke their consent within 96 hours after signing the consent.
- In Maine, a birth parent must execute their consent in the presence of a judge, and they may revoke their consent within 3 days.

Currently, in Pennsylvania, to be valid, a consent to adoption need only be signed in the presence of two witnesses. There is no requirement that the consent be signed in front of a judge, hearing officer, or executed under oath. Adoption-related counseling services are available to birth parents and putative fathers, but not required prior to executing a consent to adoption. According to the 2014 Caseload Statistics of the Unified Judicial System of Pennsylvania, between January 1, 2014 and December 31, 2014, there were 73 adoptions in which disputed issues of fact were heard in an evidentiary proceeding before a judge; in all but nine of these adoptions, the court granted the final decree of adoption. While this number pales in comparison to the 3,687 adoptions which were uncontested, DHS is concerned that the time frames proposed by House Bill 1526 may decrease the revocation and challenge periods of birth parents too dramatically and too quickly. If parents are not afforded reasonable, but adequate, time to thoughtfully consider their decision to consent to an adoption, this could have unintended consequences. Consenting birth parents and putative fathers might initiate more challenges to the validity of consents to adoption if this is the only avenue available to them. Parents considering adoption might wait longer before executing a consent, and some parents might eliminate adoption as an option entirely. Therefore, we recommend changing the effective date of the legislation to one year to allow time to educate adoption agencies, intermediaries and the courts so that birth and adoptive parents are well-informed.

#### House Bill 1529

House Bill 1529, sponsored by Representative Toohil, proposes to add Section 2726 (relating to permissible reimbursement expenses) to the Adoption Act. This legislation permits adoptive parents to reimburse for reasonable living expenses incurred by the birth mother between three months prior to the child's birth and 60 days after the child's birth, in addition to the expenses

already enumerated in Section 2533(d) (relating to permissible reimbursement of expenses).

Reasonable living expenses under House Bill 1529 may include food, rent, utilities and maternity clothing. They may also include expenses and transportation costs associated with prenatal, maternity and post maternity care not to exceed \$300.

The Adoption Act currently does not allow adoptive parents to reimburse for living expenses incurred by a birth mother during or after her pregnancy. However, the act does allow for the reimbursement for:

- Medical and hospital expenses incurred by the birth mother related to prenatal care and birth of the child;
- Medical, hospital, and foster care expenses incurred on behalf of the child prior to the decree of adoption;
- Reasonable expenses incurred by the agency or a third party for adjustment counseling and training services provided to the adoptive parents, and for home studies or investigations; and
- Reasonable administrative expenses incurred by the agency, to include overhead costs and attorney fees.

House Bill 1529 does not repeal Section 2533(d); however, it creates Section 2726. Section 2533(d) should be repealed in order to avoid any duplication in the Adoption Act.

The expenses that adoptive parents can reimburse for in connection with an adoption vary from state to state. According to the Child Welfare Information Gateway, approximately 35 states have statutory provisions that explicitly allow adoptive parents to reimburse for birth mother living expenses. Among the states that border Pennsylvania:



- Delaware, Maryland, and West Virginia do not have statutory provisions that explicitly permit adoptive parents to reimburse for a birth mother’s living expenses;
- New Jersey permits adoptive parents to reimburse for the “reasonable” living expenses of a birth mother, including food, clothing and shelter that are incurred during the pregnancy through four weeks after termination of the pregnancy by birth or otherwise;
- New York permits adoptive parents to reimburse for the “reasonable and actual” living expenses of a birth mother, including housing, maternity clothing, transportation and clothing for the child. This encompasses the 60 days prior to the birth of the child through 30 days after birth of the child, unless the court determines exceptional circumstances exist; and
- Ohio permits adoptive parents to reimburse for the living expenses of the birth mother, not to exceed \$3,000, that are incurred during pregnancy through 60 days after the child’s birth.

Most states rely on language that speaks to both the type of birth mother living expenses that may be reimbursed, and the timeframe during which a birth mother is eligible for reimbursement of her living expenses.

DHS suggests “reasonable living expenses” be defined by a clear, maximum dollar amount. The proposed introduction of unlimited, additional costs for the “reasonable” living expenses of the birth mother into the adoption process could have the unintended consequence of excluding well-qualified prospective adoptive families who simply cannot afford to bear an unlimited reimbursement of “reasonable” living expenses to the birth mother. Prospective adoptive families with more financial resources could potentially increase the likelihood that they would be chosen

by birth mothers. Prospective adoptive families would also stand to lose more money if a birth mother changes her mind about the adoption plan.

Defining “reasonable living expenses” by a clear, maximum dollar amount would limit the possibility of birth mothers making a plan for adoption based on a need or desire for financial support, ensure the availability of the broadest pool of qualified, adoptive families for Pennsylvania children, assist adoptive families in planning for adoption expenses, and limit the potential for mistrust about Pennsylvania’s adoption program as a whole. Other states have established maximum dollar amounts related to birth parent living expenses, including Ohio (\$3,000), Connecticut (\$1,500), Indiana (\$1,000) and Wisconsin (\$5,000).

The proposed timeframe to limit payment of a birth mother’s living expenses to those incurred by the birth mother three months prior to the due date of the child through 60 days after the birth of the child is in line with other states.

In closing, on behalf of DHS, I would like to thank you for your dedication to the children and families of Pennsylvania and for allowing us this opportunity to share our thoughts today.