

No. 1992-34

AN ACT

HB 79

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, adding a definition of "newborn child"; further providing for procedures and other matters relating to adoptions; and providing for certain investigations and reports.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2102 of Title 23 of the Pennsylvania Consolidated Statutes is amended by adding a definition to read:

§ 2102. Definitions.

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

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"Newborn child." A child who is six months of age or younger at the time of the filing of any petition pursuant to Chapter 25 (relating to proceedings prior to petition to adopt).

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Section 2. Sections 2313, 2503 and 2504 of Title 23 are amended to read:
§ 2313. Representation [for child].

(a) **[General rule] Child.**—The court shall appoint counsel to represent the child in an involuntary termination proceeding when the proceeding is being contested by one or both of the parents. The court may appoint counsel or a guardian ad litem to represent any child who has not reached the age of 18 years and is subject to any other proceeding under this part whenever it is in the best interests of the child. No attorney or law firm shall represent both the child and the adopting parent or parents.

(a.1) Parent.—The court shall appoint counsel for a parent whose rights are subject to termination in an involuntary termination proceeding if, upon petition of the parent, the court determines that the parent is unable to pay for counsel or if payment would result in substantial financial hardship.

(b) **Payment of costs.**—The court, in its discretion, may order all or part of the costs attendant to a proceeding under this part to be paid by the county wherein the case is heard, the adopting parents or apportioned to both, provided that if the adopting parents shall be ordered to bear all or a portion of the costs of this part that:

(1) the court may direct that the payment of the fees or a portion thereof may be paid by a court ordered schedule of payments extending beyond the date of the involuntary termination hearing; and

(2) the fee shall not exceed \$150.

§ 2503. Hearing.

(a) General rule.—Upon presentation of a petition prepared pursuant to section 2501 (relating to relinquishment to agency) or section 2502 (relating to relinquishment to adult intending to adopt child), the court shall fix a time for hearing which shall not be less than ten days after filing of the petition. The petitioner must appear at the hearing.

(b) Notice.—[Notice to the petitioner shall be in the form provided in section 2513(b) (relating to hearing). Notice]

(1) *At least ten days' notice of the hearing shall be given to the petitioner, and a copy of the notice shall be given to the other parent, to the putative father whose parental rights could be terminated pursuant to subsection (d) and to the parents or guardian of a petitioner who has not reached 18 years of age.*

(2) *The notice to the petitioner shall state the following:*

“To: (insert petitioner’s name)

A petition has been filed asking the court to put an end to all rights you have to your child (insert name of child). The court has set a hearing to consider ending your rights to your child. That hearing will be held in (insert place, giving reference to exact room and building number or designation) on (insert date) at (insert time). Your presence is required at the hearing. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

(Name)

(Address).....

.....

(Telephone number).....”

(3) *The copy of the notice which is given to the putative father shall state that his rights may also be subject to termination pursuant to subsection (d) if he fails to file either an acknowledgment of paternity or claim of paternity pursuant to section 5103 (relating to acknowledgment and claim of paternity) and fails to either appear at the hearing for the purpose of objecting to the termination of his rights or file a written objection to such termination with the court prior to the hearing.*

(c) Decree.—After hearing, which shall be private, the court may enter a decree of termination of parental rights in the case of their relinquishment to an adult or a decree of termination of parental rights and duties, including the obligation of support, in the case of their relinquishment to an agency.

(d) Putative father.—If a putative father will not file a petition to voluntarily relinquish his parental rights pursuant to section 2501 (relating to relinquishment to agency) or 2502 (relating to relinquishment to adult intending to adopt child), *has been given notice of the hearing being held pursuant to this section and fails to either appear at that hearing for the purpose of objecting to termination of his parental rights or file a written objection to such termination with the court prior to the hearing* and has not filed an acknowledgment of paternity or claim of paternity pursuant to [section 8302

(relating to acknowledgment of paternity) or 8303 (relating to claim of paternity)] *section 5103*, the court may enter a decree terminating the parental rights of the putative father pursuant to subsection (c).

(e) *Right to file personal information.*—*At the time the decree of termination is transmitted to the parent whose rights are terminated, the court shall advise that parent, in writing, of his or her right to place personal information on file with the court and with the Department of Health pursuant to section 2905(d) (relating to impounding of proceedings and access to records).*

§ 2504. Alternative procedure for relinquishment.

(a) *Petition to confirm consent to adoption.*—If the parent or parents of the child have executed consents to an adoption as required by section 2711 (relating to consents necessary to adoption) but have failed for a period of 40 days after executing the consent to file or proceed with the petition for voluntary relinquishment of parental rights provided for in this subchapter, the intermediary may petition the court to hold a hearing for the purpose of confirming the intention of the parent or parents to voluntarily relinquish their rights and duties as evidenced by the consent or consents to the adoption, the original of which shall be attached to the petition. In the case where there is no intermediary, the adoptive parent or parents may file the petition.

(b) *Hearing.*—Upon presentation of a petition filed pursuant to this section, the court shall fix a time for a hearing which shall not be less than ten days after filing of the petition. Notice of the hearing shall be by personal service or by registered mail or by such other means as the court may require upon the consenter and shall be in the form provided in section 2513(b) (relating to hearing). Notice of the hearing shall be given to the other parent or parents, to the putative father whose parental rights could be terminated pursuant to subsection (c) and to the parents or guardian of a consenting parent who has not reached 18 years of age. *The notice shall state that the consenting parent's or putative father's rights may be terminated as a result of the hearing.* After hearing, which shall be private, the court may enter a decree of termination of parental rights in the case of a relinquishment to an adult or a decree of termination of parental rights and duties, including the obligation of support, in the case of a relinquishment to an agency.

(c) *Putative father.*—If a putative father will not execute a consent to an adoption as required by section 2711, *has been given notice of the hearing being held pursuant to this section and fails to either appear at that hearing for the purpose of objecting to termination of his parental rights or file a written objection to such termination with the court prior to the hearing and has not filed an acknowledgment of paternity or claim of paternity pursuant to [section 8302 (relating to acknowledgment of paternity) or 8303 (relating to claim of paternity)] section 5103 (relating to acknowledgment and claim of paternity)*, the court may enter a decree terminating the parental rights of the putative father pursuant to subsection (b).

(d) *Right to file personal information.*—*At the time the decree of termination is transmitted to the parent, the court shall also advise, in writing, the parent whose rights have been terminated of his or her right to place personal*

information on file with the court and with the Department of Health pursuant to section 2905(d) (relating to impounding of proceedings and access to records).

Section 3. Title 23 is amended by adding a section to read:

§ 2504.1. Confidentiality.

The court shall 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 proceeding under this subchapter or Subchapter B (relating to involuntary termination). The Supreme Court may prescribe uniform rules under this section relating to such confidentiality.

Section 4. Sections 2505, 2511 and 2513(b) of Title 23 are amended to read:

§ 2505. Counseling.

(a) List of counselors.—Any hospital or other facility providing maternity care shall provide a list of available counselors and counseling services compiled pursuant to subsection (b) to its maternity patients who are known to be considering relinquishment or termination of parental rights pursuant to this part. *The patient shall sign an acknowledgment of receipt of such list prior to discharge, a copy of which receipt shall be provided to the patient.*

(b) Compilation of list.—The court shall compile a list of qualified counselors and counseling services (including *all* adoption agencies) which are available to counsel natural parents *within the county* who are contemplating relinquishment or termination of parental rights pursuant to this part. Such list shall be [made available upon request to any agency, intermediary] *distributed to every agency, hospital or other facility providing maternity care[.] within the county and shall be made available upon request to any intermediary or licensed health care professional.*

(c) Court referral.—*Prior to entering a decree of termination of parental rights pursuant to section 2503 (relating to hearing) or 2504 (relating to alternative procedure for relinquishment), if the parent whose rights are to be terminated is present in court, the court shall inquire whether he or she has received counseling concerning the termination and the alternatives thereto from an agency or from a qualified counselor listed by a court pursuant to subsection (b). If the parent has not received such counseling, the court may, with the parent's consent, refer the parent to an agency or qualified counselor listed by a court pursuant to subsection (b) for the purpose of receiving such counseling. In no event shall the court delay the completion of any hearing pursuant to section 2503 or 2504 for more than 15 days in order to provide for such counseling.*

(d) Application for counseling.—*Any parent who has filed a petition to relinquish his or her parental rights, or has executed a consent to adoption, and is in need of counseling concerning the relinquishment or consent, and the alternatives thereto, may apply to the court for referral to an agency or qualified counselor listed by a court pursuant to subsection (b) for the purpose of receiving such counseling. The court, in its discretion, may make such a referral where it is satisfied that this counseling would be of benefit to the parent.*

(e) Counseling fund.—Except as hereinafter provided, each report of intention to adopt filed pursuant to section 2531 (relating to report of intention to adopt) shall be accompanied by a filing fee in the amount of \$75 which shall be paid into a segregated fund established by the county. The county may also make supplemental appropriations to the fund. All costs of counseling provided pursuant to subsection (c) or (d) to individuals who are unable to pay for such counseling shall be paid from the fund. No filing fee may be exacted under this subsection with respect to the adoption of a special needs child who would be eligible for adoption assistance pursuant to regulations promulgated by the Department of Public Welfare. In addition, the court may reduce or waive the fee in cases of demonstrated financial hardship.

§ 2511. Grounds for involuntary termination.

(a) General rule.—The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months *immediately preceding the filing of the petition* either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

(3) The parent is the presumptive but not the natural father of the child.

(4) The child is in the custody of an agency, having been found under such circumstances that the identity or whereabouts of the parent is unknown and cannot be ascertained by diligent search and the parent does not claim the child within three months after the child is found.

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

(6) *In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child.*

(7) The parent is the father of a child who was conceived as a result of a rape.

(b) Other considerations.—The court in terminating the rights of a parent shall give primary consideration to the needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. *With respect to any petition filed pursuant to subsection (a)(1) or (6), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.*

(c) Right to file personal information.—At the time the decree of termination is transmitted to the parent whose rights have been terminated, the court shall advise the parent, in writing, of his or her right to place personal information on file with the court and with the Department of Health pursuant to section 2905(d) (relating to impounding of proceedings and access to records).

§ 2513. Hearing.

* * *

(b) Notice.—At least ten days' notice shall be given to the parent or parents, putative **[parent] father**, or parent of a minor parent whose rights are to be terminated, by personal service or by registered mail to his or their last known address or by such other means as the court may require. *A copy of the notice shall be given in the same manner to the other parent, putative father or parent or guardian of a minor parent whose rights are to be terminated.* A putative **[parent] father** shall include one who has filed a claim of paternity as provided in section **[8303] 5103** (relating to *acknowledgment and claim of paternity*) prior to the institution of proceedings. The notice shall state the following:

“A petition has been filed asking the court to put an end to all rights you have to your child (insert name of child). The court has set a hearing to consider ending your rights to your child. That hearing will be held in (insert place, giving reference to exact room and building number or designation) on (insert date) at (insert time). You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

(Name)
(Address).....
.....
(Telephone number).....”

* * *

Section 5. Title 23 is amended by adding a section to read:

§ 2530. Home study and preplacement report.

(a) *General rule.*—No intermediary shall place a child in the physical care or custody of a prospective adoptive parent or parents unless a home study containing a favorable recommendation for placement of a child with the prospective parent or parents has been completed within three years prior thereto and which has been supplemented within one year prior thereto. The home study shall be conducted by a local public child-care agency, an adoption agency or a licensed social worker designated by the court to perform such study.

(b) *Preplacement report.*—A preplacement report shall be prepared by the agency or person conducting the home study.

(1) *The preplacement report shall set forth all pertinent information relating to the fitness of the adopting parents as parents.*

(2) *The preplacement report shall be based upon a study which shall include an investigation of the home environment, family life, parenting skills, age, physical and mental health, social, cultural and religious background, facilities and resources of the adoptive parents and their ability to manage their resources. The preplacement report shall also include the information required by section 6344(b) (relating to information relating to prospective child-care personnel).*

(3) *The preplacement report shall include a determination regarding the fitness of the adopting parents as parents.*

(4) *The preplacement report shall be dated and verified.*

(c) *Interim placement.*—Where a home study required under this section is in process, but not yet completed, an intermediary may place a child in the physical care or custody of a prospective adoptive parent or parents if all of the following conditions are met:

(1) *The intermediary has no reason to believe that the prospective adoptive parent or parents would not receive a favorable recommendation for placement as a result of the home study.*

(2) *The individual or agency conducting the home study assents to the interim placement.*

(3) *The intermediary immediately notifies the court of the interim placement and the identity of the individual or agency conducting the home study. If at any time prior to the completion of the home study the court is notified by the individual or agency conducting the home study that it withdraws its assent to the interim placement, the court may order the placement of the child in temporary foster care with an agency until a favorable recommendation for placement is received.*

Section 6. Sections 2531(b), 2701, 2711(c) and (d), 2725 and 2905(a) and (d) of Title 23 are amended to read:

§ 2531. Report of intention to adopt.

* * *

(b) *Contents.*—The report shall set forth:

(1) *The circumstances surrounding the persons receiving or retaining custody or physical care of the child, including the date upon which a preplacement investigation was concluded.*

(2) The name, sex, racial background, age, date and place of birth and religious affiliation of the child.

(3) The name and address of the intermediary.

(4) An itemized accounting of moneys and consideration paid or to be paid to the intermediary.

(5) *Whether the parent or parents whose parental rights are to be terminated have received counseling with respect to the termination and the alternatives thereto. If so, the report shall state the dates on which the counseling was provided and the name and address of the counselor or agency which provided the counseling.*

(6) The name, address and signature of the person or persons making the report. Immediately above the signature of the person or persons intending to adopt the child shall appear the following statement:

I acknowledge that I have been advised or know and understand that the natural parent may revoke the consent to the adoption of this child until a court has entered a decree terminating the parental rights and, unless a decree terminating parental rights has been entered, the natural parent may revoke the consent until a court enters the final adoption decree.

(7) *A copy of the preplacement report prepared pursuant to section 2530 (relating to home study and preplacement report).*

When a person receives or retains custody or physical care of a child from an agency, the report shall set forth only the name and address of the agency **[and]**, the circumstances surrounding such person receiving or retaining custody or physical care of the child *and a copy of the preplacement report prepared pursuant to section 2530.*

* * *

§ 2701. Contents of petition for adoption.

A petition for adoption shall set forth:

(1) The full name, residence, marital status, age, occupation, religious affiliation and racial background of the adopting parent or parents and their relationship, if any, to the adoptee.

(2) That the reports under sections *2530 (relating to home study and preplacement report)*, 2531 (relating to report of intention to adopt) and 2533 (relating to report of intermediary) have been filed, if required.

(3) The name and address of the intermediary, if any.

(4) The full name of the adoptee and the fact and length of time of the residence of the adoptee with the adopting parent or parents.

(5) If there is no intermediary or if no report of the intermediary has been filed or if the adoptee is over the age of 18 years, all vital statistics and other information enumerated and required to be stated of record by section 2533, so far as applicable.

(6) If a change in name of the adoptee is desired, the new name.

(7) That all consents required by section 2711 (relating to consents necessary to adoption) are attached as exhibits or the basis upon which such consents are not required.

(8) That it is the desire of the petitioner or the petitioners that the relationship of parent and child be established between the petitioner or petitioners and the adoptee.

(9) If no birth certificate or certification of registration of birth can be obtained, a statement of the reason therefor and an allegation of the efforts made to obtain the certificate with a request that the court establish a date and place of birth at the adoption hearing on the basis of the evidence presented.

§ 2711. Consents necessary to adoption.

* * *

(c) **Validity of consent.**—No consent shall be valid if it was executed prior to or within 72 hours after the birth of the child. *A putative father may execute a consent at any time after receiving notice of the expected or actual birth of the child.* Any consent given outside this Commonwealth shall be valid for purposes of this section if it was given in accordance with the laws of the jurisdiction where it was executed. A consent to an adoption may only be revoked prior to the earlier of either the entry of a decree of termination of parental rights or the entry of a decree of adoption. The revocation of a consent shall be in writing and shall be served upon the agency or adult to whom the child was relinquished.

(d) **Contents of consent.**—

(1) The consent of a parent of an adoptee under 18 years of age shall set forth the name, age and marital status of the parent, the relationship of the consenter to the child, the name of the other parent or parents of the child and the following:

I hereby voluntarily and unconditionally consent to the adoption of the above named child.

I understand that by signing this consent I indicate my intent to permanently give up all rights to this child.

I understand such child will be placed for adoption.

I understand I may revoke this consent to permanently give up all rights to this child by placing the revocation in writing and serving it upon the agency or adult to whom the child was relinquished.

I understand I may not revoke this consent after a court has entered a decree confirming this consent or otherwise terminating my parental rights to this child. Even if a decree has not been entered terminating my parental rights I may not revoke this consent after a decree of adoption of this child is entered.

I have read and understand the above and I am signing it as a free and voluntary act.

(2) The consent shall include the date and place of its execution and names and addresses and signatures of at least two persons who witnessed its execution and their relationship to the consenter.

§ 2725. Religious belief.

[Whenever possible, the adopting parents shall be of the same religious faith as the natural parents of the adoptee] *The intermediary may honor the preference of the natural parents as to the religious faith in which the adop-*

tive parents intend to rear the adopted child. No person shall be denied the benefits of this part because of a religious belief in the use of spiritual means or prayer for healing.

§ 2905. Impounding of proceedings and access to records.

(a) General rule.—All petitions, exhibits, reports, notes of testimony, decrees, and other papers pertaining to any proceeding under this part or former statutes relating to adoption shall be kept in the files of the court as a permanent record thereof and withheld from inspection except on an order of court granted upon cause shown or except as otherwise provided in this section. Any report required to be filed under sections 2530 (*relating to home study and preplacement report*), 2531 (relating to report of intention to adopt) and 2535 (relating to investigation) shall be made available to parties to an adoption proceeding only after all identifying names and addresses in the report have been extirpated by the court.

* * *

(d) Disclosure of information on original certificate of birth.—

(1) No disclosure of information shall be made by the court, an agency, the Department of Health or any other Commonwealth agency regarding the adopted person’s original certificate of birth or regarding the documents of proof on which the amended certificate of birth is based or relating in any way to the natural parents unless the disclosure is made pursuant to the provisions of this section.

(2) Notwithstanding any other provision in this section to the contrary, the natural parents may, at the time of the [relinquishment] *termination* of their parental rights pursuant to Chapter 25 (relating to proceedings prior to petition to adopt) or at any time thereafter, place on file, with the court and with the Department of Health, a consent form granting permission for the court or the department to disclose the information contained in the adoptee’s original certificate of birth, or any other identifying or nonidentifying information pertaining to the natural parents, at any time after the adoptee attains the age of 18 or, if less than 18, to his adoptive parent or legal guardian. If both parents give their consent, the information on the birth certificate may be disclosed. If only one parent gives consent, only the identity of the consenting parent shall be disclosed. The natural parents shall be entitled to update those records, as necessary, to reflect the natural parent’s current address or any other information pertaining to the natural parents. The information may only be disclosed upon the request of the adoptee or his adoptive parent or legal guardian, and the consent of the natural parents may be withdrawn at any time by filing a withdrawal of consent form with the court and the department. The department shall prescribe by regulation the procedure and forms to be utilized for the giving, updating and withdrawal of the consent.

Section 7. This act shall take effect in 60 days.

APPROVED—The 21st day of May, A. D. 1992.

ROBERT P. CASEY