

PROPOSED REVISION OF ADOPTION LAW  
AND CODIFICATION INTO  
PENNSYLVANIA CONSOLIDATED STATUTES  
TITLE 23, PART III

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INCORPORATING POLICY CHANGES CONTAINED  
IN 1979 HOUSE BILL 213, PRINTER'S No. 1741

Staff Report of the  
JOINT STATE GOVERNMENT COMMISSION  
108 Finance Building  
Harrisburg, Pennsylvania

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The Joint State Government Commission was created by act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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CONTENTS

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INTRODUCTION . . . . . 1

PROPOSED REVISION AND CODIFICATION . . . . . 5

CROSS-INDEX OF 1970 ADOPTION ACT  
AND PROPOSED CODIFICATION . . . . . 33



## INTRODUCTION

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This report has been prepared at the request of Representative Warren H. Spencer, chairman of the Judiciary Committee of the House of Representatives, who called upon the Commission staff to assist the committee by compiling the "various views of the policy issues contained in H.B. 213, including the advice of the staff of the Health and Welfare Committee of the House of Representatives which previously studied the legislation, the members of the Joint State Government Commission Advisory Committee on Decedents' Estates Laws and others who have indicated an interest in the subject."

Amending the Adoption Act of 1970, July 24 (P.L. 620, No. 208), House Bill 213, Printer's No. 1741, reflects intensive legislative effort. As noted in a memorandum of July 9, 1979, to Representative J. Michael Schweder, prime sponsor, from Jane Mendlow of the House minority research staff, the bill "is an outgrowth of recommendations made over the past three years by judges, attorneys, adoption workers, child care agencies and foster and adoptive parents." Initiating this effort was 1976 House Bill 2463, sponsored by (then) Representative Patricia A. Crawford and Representative David C. DiCarlo. Following detailed study, the 1976 legislation was revised and introduced by (then) Representative William J. McLane and others in the 1977 Session as House Bill 1186. This bill underwent several public hearings and numerous revisions. Further revisions were incorporated in 1979 House Bill 213, which was considered and amended in the House Health and Welfare Committee, reported in June 1979 and recommitted to the Judiciary Committee in December.

Following Representative Spencer's request, the bill was circulated to the Subcommittee on Adoptions, chaired by William McC. Houston, Esquire, of the Commission's Advisory Committee on Decedents' Estates Laws, under the aegis of which the Adoption Act of 1970 had been formulated. Meetings were held to review the bill and the suggestions received from subcommittee members and others who have participated in its formulation.

Among the various suggestions considered was the codifying of the adoption statute into Title 23 of the Pennsylvania Consolidated Statutes. This was offered in recognition of the continuing effort to officially consolidate Pennsylvania statutes as well as to rectify the present confusion created by the location of the adoption statute in the supplementary pamphlet to Title 1 of Purdon's Pennsylvania Statutes Annotated, although Title 1 of the Pennsylvania Consolidated Statutes contains general provisions.

In response to this recommendation, the Commission staff redrafted the Adoption Act of 1970 for inclusion in the consolidated law, incorporating many of the policy changes in House Bill 213. This draft, prepared for introduction as an amendment to House Bill 213, is presented in the following chapter along with source notes and comments on the current proposal and selected edited comments to the 1970 act.<sup>1</sup>

A review of the cross-index of the existing law to the proposed consolidation (p. 33) shows that substantive amendments as proposed by House Bill 213, Printer's No. 1741, are made to half of the 39 sections of existing law, several sections are added and two are omitted. Following is a brief summary of the substantive amendments.

1. The court is required to appoint counsel for the child in an involuntary termination proceeding and authorized to appoint a guardian ad litem and counsel for a child in other proceedings. (New Section 2313)
2. Comprehensive notice requirements, which assure that constitutional due process is afforded to all parties involved, are substituted for certain previously mandated consents to relinquishments, terminations and adoptions.

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1. Pa. Joint State Government Commission, Proposed Adoption Act (1970).

3. Parents petitioning the court to voluntarily relinquish their rights are required to confirm that intention in court. (Section 2503)
4. The grounds for involuntary termination are expanded to expedite the proceeding in the case of a foundling (Section 2511(a)(4)) and to facilitate the adoption of children removed by court order or voluntary agreement with an agency when the conditions leading to the removal are not remedied after six months (Section 2511(a)(5)). Further, the court is required to primarily consider the needs and welfare of the child in termination and adoption proceedings.
5. The agency is no longer required to have placed the child with prospective adopting parents prior to resolving the involuntary termination of the natural parents' rights. (Section 2512)
6. For the first time in Pennsylvania the father of a child of an unmarried woman may file an acknowledgment of paternity with the Department of Health, thereby protecting his legal rights with respect to the child. (Sections 8302 and 8303)





PROPOSED REVISION AND CODIFICATION  
PENNSYLVANIA CONSOLIDATED STATUTES, TITLE 23, PART III

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WITH SOURCE NOTES AND COMMENTS\*

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, adding provisions relating to the termination of parent-child relationships and adoptions; revising certain provisions of the law relating thereto; and making repeals.

TABLE OF CONTENTS

TITLE 23  
DOMESTIC RELATIONS

PART III. ADOPTION

Chapter 21. Preliminary Provisions

- § 2101. Short title of part.
- § 2102. Definitions.

Chapter 23. Jurisdiction and Parties

Subchapter A. Jurisdiction

- § 2301. Court.
- § 2302. Venue.

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\*Selected comments to the 1970 act prepared by the Subcommittee on Adoptions of the Joint State Government Commission Advisory Committee on Decedents' Estates Laws.

Subchapter B. Parties

- § 2311. Who may be adopted.
- § 2312. Who may adopt.
- § 2313. Representation for child.

Chapter 25. Proceedings Prior to Petition to Adopt

Subchapter A. Voluntary Relinquishment

- § 2501. Relinquishment to agency.
- § 2502. Relinquishment to adult intending to adopt child.
- § 2503. Hearing.

Subchapter B. Involuntary Termination

- § 2511. Grounds for involuntary termination.
- § 2512. Petition for involuntary termination.
- § 2513. Hearing.

Subchapter C. Decree of Termination

- § 2521. Effect of decree of termination.

Subchapter D. Reports and Investigation

- § 2531. Report of intention to adopt.
- § 2532. Filing of report.
- § 2533. Report of intermediary.
- § 2534. Exhibits.
- § 2535. Investigation.

Chapter 27. Petition for Adoption

Subchapter A. Petition

- § 2701. Contents of petition for adoption.
- § 2702. Exhibits.

Subchapter B. Consents.

- § 2711. Consents necessary to adoption.
- § 2712. Consents not naming adopting parents.
- § 2713. When other consents not required.
- § 2714. When consent of parent not required.

Subchapter C. Hearing

- § 2721. Notice of hearing.
- § 2722. Place of hearing.
- § 2723. Attendance at hearing.
- § 2724. Testimony and investigation.
- § 2725. Religious belief.

Chapter 29. Decrees and Records

- § 2901. Time of entry of decree of adoption.
- § 2902. Requirements and form of decree of adoption.
- § 2903. Retention of parental status.
- § 2904. Name of adoptee.
- § 2905. Impounding of proceedings.
- § 2906. Docket entries.
- § 2907. Certificate of adoption.
- § 2908. Foreign decree of adoption.

PART IX. MISCELLANEOUS PROVISIONS

Chapter 83. Legitimacy of Children

- § 8302. Acknowledgement of paternity.
- § 8303. Claim of paternity.

Section 1. Title 23, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding parts to read:

TITLE 23  
DOMESTIC RELATIONS

Part

- III. Adoption
- IX. Miscellaneous Provisions

PART III  
ADOPTION

Chapter.

- 21. Preliminary Provisions
- 23. Jurisdiction and Parties
- 25. Proceedings Prior to Petition to Adopt
- 27. Petition for Adoption
- 29. Decrees and Records

CHAPTER 21  
PRELIMINARY PROVISIONS

Sec.

2101. Short title of part.

2102. Definitions.

§ 2101. Short title of part.

This part shall be known and may be cited as the "Adoption Act."

§ 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:

"Adoptee." An individual proposed to be adopted.

"Agency." Any incorporated or unincorporated organization, society, institution or other entity, public or voluntary, which may receive or provide for the care of children, supervised by the Department of Public Welfare and providing adoption services in accordance with standards established by the department.

"Clerk." The clerk of the division of the court of common pleas having jurisdiction over voluntary relinquishment, involuntary termination and adoption proceedings.

"Court." The court of common pleas.

1970 COMMENT: Prior to the revision of the Pennsylvania Constitution in 1968, jurisdiction over adoption matters was placed by Section 1(a) of the 1925 Act in the Philadelphia Municipal Court and elsewhere in the orphans' courts; the revised Judiciary Article abolished orphans' courts and the municipal court, placing adoption jurisdiction in the orphans' court division of the several courts of common pleas (Pa. Const., Art. V, Sch. § 4) with two exceptions: in the First Judicial District (Philadelphia) the Constitution placed adoption jurisdiction in the family court division (Art. V, Sch. § 16(q)(iii)) and in the Fifth Judicial District (Allegheny County) the court by local rule, adopted under the authority of Article V, Schedule Section 17(b), retained adoption jurisdiction in the orphans' court division.

"Intermediary." Any person or persons or agency acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoption placement.

"Parent." Includes adoptive parent.

SOURCE: Section 102 of the Adoption Act of 1970 with editorial changes.

CHAPTER 23  
JURISDICTION AND PARTIES

- Subchapter  
A. Jurisdiction  
B. Parties

SUBCHAPTER A  
JURISDICTION

- Sec.  
2301. Court.  
2302. Venue.

§ 2301. Court.

The court of common pleas of each county shall exercise through the appropriate division original jurisdiction over voluntary relinquishment, involuntary termination and adoption proceedings.

1970 COMMENT: For the appropriate division of the court of common pleas, see [1970] Comment to ["Court," Section 2102] preceding; see also [Probate, Estates and Fiduciaries Code, 20 Pa.C.S. Sections 711(7), 713].

SOURCE: Section 201 of the Adoption Act of 1970.

§ 2302. Venue.

Proceedings for voluntary relinquishment, involuntary termination and adoption may be brought in the court of the county:

- (1) Where the parent or parents or the adoptee or the person or persons who have filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt) reside.
- (2) In which is located an office of an agency having custody of the adoptee or in the county where the agency having placed the adoptee is located.
- (3) With leave of court, in which the adoptee formerly resided.

1970 COMMENT: This section modifies the venue provisions of Section 1(d) of the 1925 Act by (1) not requiring leave of court to bring the proceeding in the county where the adoptee resides or where the agency's office is located, and (2) by authorizing with leave of court venue in the county where an adoptee formerly resided. The latter change was considered advisable since "pre-adoption" termination proceedings may result in the petitioner and adoptee being nonresidents by the time of the adoption proceeding. The court prior to granting "leave" will assure itself of the appropriateness of proceeding.

SOURCE AND COMMENT: Section 202 of the Adoption Act of 1970 with editorial changes. Clause (2) is amended to broaden and clarify the venue possibilities. In particular, this amendment deals with the situation in which an agency in one county has custody of the child but an agency in another county does the actual placing of the child. This amendment specifically allows proceedings for voluntary relinquishment, involuntary termination and adoption to be brought in the county where the agency having placed the child is located.

SUBCHAPTER B  
PARTIES

Sec.

- 2311. Who may be adopted.
- 2312. Who may adopt.
- 2313. Representation for child.

§ 2311. Who may be adopted.

Any individual may be adopted, regardless of his age or residence.

SOURCE: Section 211 of the Adoption Act of 1970.

§ 2312. Who may adopt.

Any individual may become an adopting parent.

1970 COMMENT: This section modifies the provision of Section 1(d) of the 1925 Act which limited adopting parents to "adults" and a minor spouse adopting his stepchild, the latter being added by the amendment of March 18, 1970, Act No. 70. The increased flexibility is considered appropriate in view of the court's ultimate power to refuse an adoption petition if the circumstances, such as the age of the petitioner, so warrant.

SOURCE: Section 212 of the Adoption Act of 1970.

§ 2313. Representation for child.

The court shall appoint counsel to represent the child in an involuntary termination proceeding and at anytime may appoint counsel or a guardian ad litem for a child who has not reached the age of 18 years.

COMMENT: This new provision requires the court to appoint counsel for a child when parental rights are being involuntarily terminated and, when necessary, to appoint a guardian ad litem for a child who has not reached the age of 18 years. The guardian ad litem concept is broad enough to allow the appointment of a person other than a lawyer. For example, a social worker could be appointed guardian ad litem within this provision; in an appropriate case a nonlawyer guardian ad litem could request appointment of counsel.

CHAPTER 25  
PROCEEDINGS PRIOR TO PETITION TO ADOPT

Subchapter

- A. Voluntary Relinquishment
- B. Involuntary Termination
- C. Decree of Termination
- D. Reports and Investigation

SUBCHAPTER A  
VOLUNTARY RELINQUISHMENT

Sec.

- 2501. Relinquishment to agency.
- 2502. Relinquishment to adult intending to adopt child.
- 2503. Hearing.

§ 2501. Relinquishment to agency.

(a) Petition.--When any child under the age of 18 years has been in the care of an agency for a minimum period of three days or, whether or not the agency has the physical care of the child, the agency has received a written notice of the present intent to transfer to it custody of the child, executed by the parent, the parent or parents of the child may petition the court for permission to relinquish forever all parental rights and duties with respect to their child.

(b) Consents.--The written consent of a parent or guardian of a petitioner who has not reached 18 years of age shall not be required. The consent of the agency to accept custody of the child until such time as the child is adopted shall be required.

1970 COMMENT: This section, derived from the first paragraph of Section 1.1 of the 1925 Act, was expanded to provide for the relinquishment of parental duties as well as parental rights in the case of agency placements.

SOURCE AND COMMENT: Section 301 of the Adoption Act of 1970. In addition to editorial changes, subsection (a) adds an alternate condition that if met allows the parent or parents of the child to petition the court for permission to relinquish all parental rights and duties. This new provision permits the court to entertain a petition of the parent or parents of the child if the agency has received a written notice executed by the parent of the present intent to transfer custody. The agency is not required to have physical care of the child.

Subsection (a) also reduces the minimum period of time from five days to three days that a child under the age of 18 years has to be in the care of an agency before the parent or parents may file a petition under the first alternative.

Subsection (b) is amended to eliminate the requirement of a written consent of a parent or guardian of a petitioner who has not reached the age of 18 years. Furthermore, the agency having the care of the child is no longer required to join in the petition, but must still consent to accept custody of the child. Since notice of the hearing must be given to the parents of a minor parent pursuant to Section 2503(b), the grandparents' objection if presented to the court may be taken into consideration.

§ 2502. Relinquishment to adult intending to adopt child.

(a) Petition.--When any child under the age of 18 years has been for a minimum period of 30 days in the exclusive care of an adult or adults who have filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt), the parent or parents of the child may petition the court for permission to relinquish forever all parental rights to their child.

(b) Consents.--The written consent of a parent or guardian of a petitioner who has not reached 18 years of age shall not be required. The adult or adults having care of the child shall file a separate consent to accept custody of the child.

1970 COMMENT: This section, which has no counterpart in the 1925 Act, should reduce the uncertainties in private placements during the six-month waiting period required by Section [2901], infra.

SOURCE AND COMMENT: Section 302 of the Adoption Act of 1970. Subsection (b) is amended to eliminate the requirement of a written consent of a parent or guardian of a petitioner who has not reached the age of 18 years. See comment to Section 2501(b).



§ 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 of the hearing shall be given to the other parent and to the parents or guardian of a petitioner who has not reached 18 years of age.

(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.

SOURCE AND COMMENT: Section 303 of the Adoption Act of 1970. Subsection (a) is amended to make the petitioner's appearance at the hearing mandatory. The petitioner's in-court ratification of consent assures due process requirements in view of the finality of the termination decree as to the parent.

New subsection (b) requires notice of the hearing to be given to the petitioner, other parent and the parents or guardian of a petitioner who has not reached the age of 18 years. See comments to Sections 2501(b) and 2502(b).

Subsection (c) is amended to reverse Commonwealth v. Wolf, \_\_\_ Pa. Superior Ct. \_\_\_ (March 21, 1980) which held that the support obligation was not a duty terminated by a decree of voluntary relinquishment to an agency. This decision, contrary to the plain meaning of the existing statutory language, frustrates the policy to make certain children more available for agency placement for adoption. See 1970 comment to Section 2501, supra.

SUBCHAPTER B  
INVOLUNTARY TERMINATION

- Sec.  
2511. Grounds for involuntary termination.  
2512. Petition for involuntary termination.  
2513. Hearing.

§ 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 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.

(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.

1970 COMMENT: This section is derived from Section 1.2 of the 1925 Act which required a finding of abandonment for at least six months as codified in clause (1). However, the grounds for abandonment have been broadened; relinquishment of parental claim or failure or refusal to perform parental duties is now sufficient.

Clause (2), suggested by Section 19(c) of the Revised Uniform Juvenile Court Act (1969), differs from "abandonment" in that it centers judicial inquiry upon the welfare of the child rather than the fault of the parent.

Clause (3) is included to allow the court to prevent injustice where a legal father unreasonably withholds consent to an adoption.

SOURCE AND COMMENT: Section 311 of the Adoption Act of 1970. Clauses (a)(4) and (a)(5) are two new grounds for involuntary termination.

Clause (4) provides an agency with another ground to terminate parental rights where the child has been abandoned and is in its custody. The agency must show that after a diligent search the identity or whereabouts of the parent cannot be ascertained and that the parent did not claim the child within three months after the child was found.

Clause (5) provides an additional ground in foster care and similar situations. The court must consider the services offered by or available from the agency and the efforts made by the parents to effect a lasting adjustment of the conditions which led to the child's removal from the home. This reverses In re I.R.A., \_\_\_ Pa. \_\_\_, 410 A.2d 755 (1980).

Subsection (b) directs the court to give primary consideration to the child's needs and welfare. See Adoption of R.I., 468 Pa. 287, 361 A.2d 294 (1976). Furthermore, the court is directed not to terminate parental rights solely on the basis of environmental factors.

§ 2512. Petition for involuntary termination.

(a) Who may file.--A petition to terminate parental rights with respect to a child under the age of 18 years may be filed by any of the following:

(1) Either parent when termination is sought with respect to the other parent.

(2) An agency.

(3) The individual having custody or standing in loco parentis to the child and who has filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt).

(b) Contents.--The petition shall set forth specifically those grounds and facts alleged as the basis for terminating parental rights. The petition filed under this section shall also contain an averment that the petitioner will assume custody of the child until such time as the child is adopted. If the petitioner is an agency it shall not be required to aver that an adoption is presently contemplated nor that a person with a present intention to adopt exists.

(c) Father not identified.--If the petition does not identify the father of the child, it shall state whether a claim of paternity has been filed under section 8303 (relating to claim of paternity).

SOURCE AND COMMENT: Section 312 of the Adoption Act of 1970, amended to eliminate the requirement that a parent of a petitioner who is under the age of 18 years must join in the petition. See Section 2513 for requirement that such grandparents be notified of the hearing; also see comment to Section 2501(b), supra.

Subsection (b) provides that the petition shall set forth specifically those grounds and facts alleged as the basis for terminating parental rights; further, an agency-petitioner is not required to plead and prove that an adoption is presently contemplated or that a person with a present intention to adopt exists. This reverses In re Burns, 474 Pa. 615, at 627, 379 A.2d 535 (1977).

Subsection (c) adds that if the father of the child is not identified in the petition, then the petition must state whether a claim of paternity has been filed under Section 8303, infra.

§ 2513. Hearing.

(a) Time.--The court shall fix a time for hearing on a petition filed under section 2512 (relating to petition for involuntary termination) which shall be not less than ten days after filing of the petition.

(b) Notice.--At least ten days' notice shall be given to the parent or parents, putative parent, or parent of a minor parent whose rights are to be terminated, by registered mail to his or their last known address or by such other means as the court may require. A putative parent shall include one who has filed a claim of paternity as provided in section 8303 (relating to 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). If you do not appear at this hearing, the court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the court's decision on whether to end your rights to your child. 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)....."

(c) Mother competent witness on paternity issue.--The natural mother shall be a competent witness as to whether the presumptive or putative father is the natural father of the child.

(d) Decree.--After hearing, which may be private, the court shall make a finding relative to the pertinent provisions of section 2511 (relating to grounds for involuntary termination) and upon such finding may enter a decree of termination of parental rights.

SOURCE AND COMMENT: Section 313 of the Adoption Act of 1970. Subsection (b) is amended to expand the classes of persons who are to receive notice of the hearing to include a putative parent and parent of a minor parent. Subsection (b) specifically includes within the term "putative parent" one who has filed a claim of paternity as provided in Section 8303 prior to the institution of the proceedings. The reference to certified mail is deleted since 1 Pa.C.S. §1991 defines "registered mail" as including certified mail.

Subsection (c) continues the existing law making the mother a competent witness as to the paternity of the child.

SUBCHAPTER C  
DECREE OF TERMINATION

Sec.  
2521. Effect of decree of termination.

§ 2521. Effect of decree of termination.

(a) Adoption proceeding rights extinguished.--A decree terminating all rights of a parent or a decree terminating all rights and duties of a parent entered by a court of competent jurisdiction shall extinguish the power or the right of the parent to object to or receive notice of adoption proceedings.

(b) Award of custody.--The decree shall award custody of the child to the agency or the person consenting to accept custody under section 2501 (relating to relinquishment to agency) or section 2502 (relating to relinquishment to adult intending to adopt child) or the petitioner in the case of a proceeding under section 2512 (relating to petition for involuntary termination).

(c) Authority of agency or person receiving custody.--An agency or person receiving custody of a child shall stand in loco parentis to the child and in such capacity shall have the authority, inter alia, to consent to marriage, to enlistment in the armed forces and to major medical, psychiatric and surgical treatment and to exercise such other authority concerning the child as a natural parent could exercise.

1970 COMMENT: This section is derived from the second paragraphs of Sections 1.1 and 1.2 of the 1925 Act. In addition, it clarifies the relationship established between the child and the person or institution to whom custody is awarded. The phrase "decree of termination" is used throughout the act to refer to the decree of the court granting a petition to terminate the parent-child relationship whether voluntary [Chapter 25A] or involuntary [Chapter 25B], supra.

SOURCE: Section 321 of the Adoption Act of 1970 with editorial changes.

SUBCHAPTER D  
REPORTS AND INVESTIGATION

Sec.

- 2531. Report of intention to adopt.
- 2532. Filing of report.
- 2533. Report of intermediary.
- 2534. Exhibits.
- 2535. Investigation.

§ 2531. Report of intention to adopt.

(a) General rule.--Every person now having or hereafter receiving or retaining custody or physical care of any child for the purpose or with the intention of adopting a child under the age of 18 years shall report to the court in which the petition for adoption will be filed.

(b) Contents.--The report shall set forth:

(1) The circumstances surrounding the persons receiving or retaining custody or physical care of the child.

(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) The name and address of the person or persons making the 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.

(c) When report not required.--No report shall be required when the child is the child, grandchild, stepchild, brother or sister of the whole or half blood, or niece or nephew by blood, marriage or adoption of the person receiving or retaining custody or physical care.

SOURCE AND COMMENT: Section 331 of the Adoption Act of 1970. Subsections (a), (b) and (c) have been amended to delete the terms "possession" and "control." The term "physical care" has been inserted for the term "control." These changes were made to comport with the spirit of the amendments that the child should now be treated as a party to the action.

Subsection (b)(4) includes within the report of intention to adopt "an itemized accounting of moneys and consideration."

Subsection (c) clarifies when no report is required by adding "or adoption." The relationship which triggers this subsection could be created by adoption.

§ 2532. Filing of report.

The report required by section 2531 (relating to report of intention to adopt) shall be filed within 30 days after the date of receipt of the custody or physical care of the child.

SOURCE AND COMMENT: Section 332 of the Adoption Act of 1970. See source and comment to preceding section concerning substitution of certain terms.

§ 2533. Report of intermediary.

(a) General rule.--Within six months after filing the report of intention to adopt, the intermediary who or which arranged the adoption placement of any child under the age of 18 years shall make a written report under oath to the court in which the petition for adoption will be filed and shall thereupon forthwith notify in writing the adopting parent or parents of the fact that the report has been filed and the date thereof.

(b) Contents.--The report shall set forth:

(1) The name and address of the intermediary.

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

(3) The date of the placement of the child with the adopting parent or parents.

(4) The name, racial background, age, marital status as of the time of birth of the child and during one year prior thereto, and religious affiliation of the parents of the child.

(5) Identification of proceedings in which any decree of termination of parental rights, or parental rights and duties, with respect to the child was entered.

(6) The residence of the parents or parent of the child, if there has been no such decree of termination.

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

(8) An itemized accounting of moneys and consideration paid or to be paid to or received by the intermediary or to or by any other person or persons to the knowledge of the intermediary by reason of the adoption placement.

(9) A full description and statement of the value of all property owned or possessed by the child.

(10) A statement that no provision of any statute regulating the interstate placement of children has been violated with respect to the placement of the child.

(11) If no birth certificate or certification of registration of birth can be obtained, a statement of the reason therefor.

1970 COMMENT: This section is suggested in part by the last paragraph of Section 1(c) of the 1925 Act. The report, now required of all intermediaries, will provide the court with much of the information which previously was required to be included in the adoption petition. Including the information in the report rather than in the petition helps to preserve anonymity between natural and adopting parents.

SOURCE AND COMMENT: Section 333 of the Adoption Act of 1970. Subsection (a) is amended to provide a time frame in which the intermediary must make its written report. The report must be made "within six months after filing the report of intention to adopt." This provision attempts to eliminate any possible delays in the adoption process.

Subsection (b)(4) is amended to comport with present constitutional law. See Adoption of Walker, 468 Pa. 165, 360 A.2d 603 (1976).

Subsection (b)(8) is amended to substitute the phrase "an itemized accounting of moneys and considerations" for the deleted phrase "the fee or expenses."

Subsection (b)(10) is amended to clarify the clause.



Subsection (b)(11) is partially derived from Section 334(1) of the Adoption Act of 1970 as amended by the act of October 14, 1977 (P.L. 211, No. 61). It provides that the reasons for being unable to obtain a birth certificate or certification of registration are to be set forth within the report.

§ 2534. Exhibits.

The report of the intermediary shall have attached to it the following exhibits:

- (1) A birth certificate or certification of registration of birth of the child if it can be obtained.
- (2) All consents to adoption required by section 2711 (relating to consents necessary to adoption).
- (3) A certified copy of any decree of termination of parental rights or parental rights and duties made by a court other than the court in which the petition for adoption will be filed.

SOURCE AND COMMENT: Section 334 of the Adoption Act of 1970 as amended by the act of October 14, 1977 (P.L. 211, No. 61). Clause (2) is amended to require all consents required by Section 2711 (relating to consents necessary to adoption) be attached to the intermediary's report. Clause (2) eliminates the second and third sentences of Section 334(1) of the Adoption Act, as amended, since the reasons required by the eliminated language should be in the report.

The phrase "of parental rights or parental rights and duties" is added to clarify clause (3).

§ 2535. Investigation.

(a) General rule.--When a report required by section 2531 (relating to report of intention to adopt) has been filed, the court shall cause an investigation to be made and a report filed by a local public child care agency, a voluntary child care agency with its consent or an appropriate person designated by the court. In lieu of the investigation, the court may accept an investigation made by the agency which placed the child and the report of investigation in such cases may be incorporated into the report of the intermediary required by section 2533 (relating to report of intermediary).

(b) Matters covered.--The investigation shall cover all pertinent information regarding the child's eligibility for adoption and the suitability of the placement, including the physical, mental and emotional needs and welfare of the child, and the child's and the adopting parents' age, sex, health and racial, ethnic and religious background.

(c) Payment of costs.--The court may establish the procedure for the payment of investigation costs.

SOURCE AND COMMENT: Section 335 of the Adoption Act of 1970. Clause (1) is amended to eliminate the requirement that a local public child care agency consent to making an investigation, while clause (2) is amended by requiring the consent of a voluntary child care agency. Public policy is better satisfied by allowing a voluntary agency the option to decline to make an investigation.

Subsection (b) adds that among the matters covered by the investigation shall be the "physical, mental and emotional needs and welfare of the child." Furthermore, the racial, ethnic and religious background of the child and the adopting parents must be covered in the investigation. This makes the investigative report more complete.

CHAPTER 27  
PETITION FOR ADOPTION

Subchapter

- A. Petition
- B. Consents
- C. Hearings

SUBCHAPTER A  
PETITION

Sec.

- 2701. Contents of petition for adoption.
- 2702. Exhibits.

§ 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 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.

1970 COMMENT: This section is derived from Section 1(d) of the 1925 Act. The requirement of a statement "whether the person proposed to be adopted is heir to property or assets of any sort through his or her natural parent or parents"--which always has been answered "no" with hesitancy--is deleted.

This section and Section [2533] require all essential information. Omitting the information concerning the adoptee and his natural parents from the petition when possible, preserves anonymity.

SOURCE AND COMMENT: Section 401 of the Adoption Act of 1970. Clause (7) is amended to require that all consents required by Section 2711 be attached to the petition as exhibits.

Clause (9) is derived from Section 402(2) of the Adoption Act of 1970 as amended by the act of October 14, 1977 (P.L. 211, No. 61); this is included in the petition since a request is being made of the court.

#### § 2702. Exhibits.

The petition shall have attached to it the following exhibits:

(1) The consent or consents required by section 2711 (relating to consents necessary to adoption).

(2) If not already filed with a report of an intermediary, the exhibits enumerated in section 2534 (relating to exhibits).

SOURCE AND COMMENT: Section 402 of the Adoption Act of 1970 as amended by the act of October 14, 1977 (P.L. 211, No. 61). Clause (1) is amended to mandate that all consents required by Section 2711 be attached to the petition.

SUBCHAPTER B  
CONSENTS

Sec.

- 2711. Consents necessary to adoption.
- 2712. Consents not naming adopting parents.
- 2713. When other consents not required.
- 2714. When consent of parent not required.

§ 2711. Consents necessary to adoption.

(a) General rule.--Except as otherwise provided in this part, consent to an adoption shall be required of the following:

- (1) The adoptee, if over ten years of age.\*
- (2) The spouse of the adopting parent, unless they join in the adoption petition.
- (3) The parents or surviving parent of an adoptee who has not reached the age of 18 years.
- (4) The guardian of an incompetent adoptee.
- (5) The guardian of the person of an adoptee under the age of 18 years, if any there be, or of the person or persons having the custody of the adoptee, if any such person can be found, whenever the adoptee has no parent whose consent is required.

(b) Husband of natural mother.--The consent of the husband of the mother shall not be necessary if, after notice to the husband, it is proved to the satisfaction of the court by evidence, including testimony of the natural mother, that the husband of the natural mother is not the natural father of the child. Absent such proof, the consent of a former husband of the natural mother shall be required if he was the husband of the natural mother at any time within one year prior to the birth of the adoptee.

SOURCE AND COMMENT: Section 411 of the Adoption Act of 1970. Clause (1) is amended to lower the age that the consent of the adoptee is required from twelve to ten years of age.\*

Language is deleted from clause (3) to reflect that a person is now an adult at 18 years of age and to conform with the decision in Adoption of Walker, 468 Pa. 165, 360 A.2d 603 (1976), which held that the provision that required only the consent of the mother of an illegitimate child was unconstitutional.

Clause (4) is new.

The requirement of consent of a husband of the mother formerly in clause (3) is codified as subsection (b).

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\*Amended in the House Judiciary Committee on May 21, 1980 to reinstate the age of twelve years.

§ 2712. Consents not naming adopting parents.

A consent to a proposed adoption meeting all the requirements of this part but which does not name or otherwise identify the adopting parent or parents shall be valid if it contains a statement that it is voluntarily executed without disclosure of the name or other identification of the adopting parent or parents.

SOURCE: Section 412 of the Adoption Act of 1970 with an editorial change.

§ 2713. When other consents not required.

The court, in its discretion, may dispense with consents other than that of the adoptee to a petition for adoption when:

- (1) the adoptee is over 18 years of age; or
- (2) the adoptee is under 18 years of age and has no parent living whose consent is required.

SOURCE: Section 413 of the Adoption Act of 1970 as amended December 28, 1972 (P.L. 1647, No. 347) with editorial changes.

§ 2714. When consent of parent not required.

Consent of a parent to adoption shall not be required if a decree of termination with regard to such parent has been entered. When parental rights have not previously been terminated, the court may find that consent of a parent of the adoptee is not required if, after notice and hearing as prescribed in section 2513 (relating to hearing), the court finds that grounds exist for involuntary termination under section 2511 (relating to grounds for involuntary termination).

SOURCE: Section 414 of the Adoption Act of 1970 with editorial changes and amended to conform with Section 2513.

#### SUBCHAPTER C HEARINGS

##### Sec.

- 2721. Notice of hearing.
- 2722. Place of hearing.
- 2723. Attendance at hearing.
- 2724. Testimony and investigation.
- 2725. Religious belief.

§ 2721. Notice of hearing.

The court shall fix a time and place for hearing. Notice of the hearing shall be given to all persons whose consents are

required and to such other persons as the court shall direct. Notice to the parent or parents of the adoptee, if required, may be given by the intermediary or someone acting on his behalf. Notice shall be by personal service or by registered mail to the last known address of the person to be notified or in such other manner as the court shall direct.

1970 COMMENT: This section is derived from Section 3 of the 1925 Act. To preserve anonymity the intermediary or someone in his behalf is authorized to give notice to the parents of the adoptee.

SOURCE AND COMMENT: Section 421 of the Adoption Act of 1970 with editorial changes. The section is amended to broaden the notice requirement to include all persons whose consents for adoption are required rather than only those whose required consents had not been obtained. For the omission of "certified mail," see comment to Section 2513(b), supra.

§ 2722. Place of hearing.

The hearing shall be private or in open court as the court deems appropriate.

SOURCE: Section 422 of the Adoption Act of 1970.

§ 2723. Attendance at hearing.

The adopting parent or parents and the adoptee must appear at and, if required, testify at the hearing under oath unless the court determines their presence is unnecessary. In addition, the court may require the appearance and testimony of all persons whose consents are required by this part and representatives of agencies or individuals who have acted as an intermediary if their appearance or testimony would be necessary or helpful to the court.

SOURCE AND COMMENT: Section 423 of the Adoption Act of 1970, amended to eliminate the reference to agency consents to conform with Section 2711. In addition, representatives of agencies and individuals who have acted as intermediaries are added to those required to appear if necessary.

§ 2724. Testimony and investigation.

(a) Testimony.--The court shall hear testimony in support of the petition and such additional testimony as it deems necessary to inform it as to the desirability of the proposed adoption. It shall require a disclosure of all moneys and consideration paid or to be paid to any person or institution in connection with the adoption.

(b) Investigation.--The court may request that an investigation be made by a person or public agency or, with its consent, a voluntary agency, specifically designated by the court to verify the statements of the petitioner and such other facts that will give the court full knowledge of the desirability of the proposed adoption, or the court may rely in whole or in part upon a report earlier made under section 2535 (relating to investigation). In any case, the age, sex, health, social and economic status or racial, ethnic or religious background of the child or adopting parents shall not preclude an adoption but the court shall decide its desirability on the basis of the physical, mental and emotional needs and welfare of the child.

(c) Payment of investigation costs.--The court may establish a procedure for the payment of investigation costs by the petitioners or by such other persons as the court may direct.

SOURCE AND COMMENT: Section 424 of the Adoption Act of 1970 with editorial changes; subsection (a) is clarified by substituting the phrase "moneys and consideration" for "costs and fees of any type." The phrase "including the fees of any intermediary" is deleted since these fees are included in earlier language.

Subsection (b) is amended to authorize the court to use its discretion in causing an investigation to be made. Subsection (b) is also amended to set forth certain factors that should not preclude an adoption; the court is directed to decide the desirability of the adoption on the basis of the child's best interest.

§ 2725. Religious belief.

Whenever possible, the adopting parents shall be of the same religious faith as the natural parents of the adoptee. 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.

SOURCE: Section 425 of the Adoption Act of 1970.

CHAPTER 29  
DECREES AND RECORDS

- Sec.
- 2901. Time of entry of decree of adoption.
  - 2902. Requirements and form of decree of adoption.
  - 2903. Retention of parental status.
  - 2904. Name of adoptee.
  - 2905. Impounding of proceedings.
  - 2906. Docket entries.
  - 2907. Certificate of adoption.
  - 2908. Foreign decree of adoption.

§ 2901. Time of entry of decree of adoption.

Unless the court for cause shown determines otherwise, no decree of adoption shall be entered unless the adoptee has resided with the petitioner for at least six months prior thereto or, in lieu of such residence, the adoptee is at least 18 years of age or is related by blood or marriage to the petitioner.

SOURCE: Section 501 of the Adoption Act of 1970 with editorial changes.

§ 2902. Requirements and form of decree of adoption.

(a) General rule.--If satisfied that the statements made in the petition are true, that the needs and welfare of the person proposed to be adopted will be promoted by the adoption and that all requirements of this part have been met, the court shall enter a decree so finding and directing that the person proposed to be adopted shall have all the rights of a child and heir of the adopting parent or parents and shall be subject to the duties of a child to him or them.

(b) Withdrawal or dismissal of petition.--In any case in which the petition is withdrawn or dismissed, the court shall enter an appropriate order in regard to the custody of the child.

1970 COMMENT: This section is derived from the second sentence of Section 4 of the 1925 Act. No reference is made to rights of inheritance which are set forth in the [Probate, Estates and Fiduciaries Code, 20 Pa.C.S. Section 2108] and are not within the scope of this act. [Subsection (b)] is added to assure that some agency or person is responsible for the child.

SOURCE: Section 502 of the Adoption Act of 1970 with editorial changes.

§ 2903. Retention of parental status.

Whenever a parent consents to the adoption of his child by his spouse, the parent-child relationship between him and his child shall remain whether or not he is one of the petitioners in the adoption proceeding.

1970 COMMENT: This section is declaratory of existing law: [citations omitted].

SOURCE: Section 503 of the Adoption Act of 1970.



§ 2904. Name of adoptee.

If requested by the petitioners, the decree may provide that the adoptee shall assume the name of the adopting parent or parents and any given first or middle names that may be chosen.

SOURCE: Section 504 of the Adoption Act of 1970.

§ 2905. Impounding of proceedings.

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. Any report required to be filed under sections 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.

SOURCE AND COMMENT: Section 505 of the Adoption Act of 1970 with editorial changes. The second sentence is added to require that any report filed under Sections 2531 or 2535 made available by the court have extirpated from it all identifying names and addresses.

§ 2906. Docket entries.

Upon the filing of any decree under this part, the clerk shall enter on the docket an entry showing the date of the decree. Information identifying the natural parents shall not be entered on the docket.

1970 COMMENT: This section is derived from the fifth sentence of Section 4 of the 1925 Act. The last sentence is added to preserve anonymity.

SOURCE: Section 506 of the Adoption Act of 1970.

§ 2907. Certificate of adoption.

The clerk shall issue to the adopting parent or parents a certificate reciting that the court has granted the adoption. The certificate shall not disclose the name of any natural parent or the original name of the person adopted. The certificate shall be accepted in any legal proceedings in this Commonwealth as evidence of the fact that the adoption has been granted.

1970 COMMENT: This section has no counterpart in the 1925 Act. This certificate should not be confused with an amended certificate of birth issued by the Department of Health, [Division] of Vital Statistics, under Section 603(a) of the Vital Statistics Law of 1953, June 29, P.L. 304, 35 P.S. 450.603.

SOURCE: Section 508 of the Adoption Act of 1970.

§ 2908. Foreign decree of adoption.

When a decree of adoption of a minor is made or entered in conformity with the laws of another state or a foreign country whereby a child is adopted by a resident of this Commonwealth, a copy of the final decree, properly authenticated, may be filed with the clerk in the county of residence of the adopting parents. The decree and such other documents as may be filed therewith shall be kept in the files of the court as a permanent record thereof and shall be withheld from inspection except on order of court granted upon cause shown. Upon the filing of a foreign decree of adoption, the clerk shall enter upon the docket an entry showing the foreign court, identification of the proceedings therein and the date of the decree. Information identifying the natural parents shall not be required.

SOURCE AND COMMENT: Section 509 of the Adoption Act of 1970 with the penultimate sentence deleted since no use has been made of the reports filed with the Department of Welfare.

PART IX  
MISCELLANEOUS PROVISIONS

Chapter

83. Legitimacy of Children

CHAPTER 83  
LEGITIMACY OF CHILDREN

Sec.

8302. Acknowledgment of paternity.

8303. Claim of paternity.

§ 8302. Acknowledgment of paternity.

The father of a child born to an unmarried woman may file with the Department of Health on forms prescribed by it an acknowledgment of paternity of the child which shall include the consent under oath of the mother of the child. The department shall, upon receipt of the acknowledgment, proceed as provided in section 603(a) of the act of June 29, 1953 (P.L.304, No.66), known as the "Vital Statistics Law of 1953," and the father shall have all the rights and duties as to the child which he

would have had if he had been married to the mother at the time of the child's birth and the child shall have all the rights and duties as to the father which he would have had if the father had been married to the mother at the time of his birth. The acknowledgment may also provide for the assumption by the child of the father's surname or other name desired by the parents.

COMMENT: This new section permits the father of a child born to an unmarried woman to file with the Department of Health an acknowledgment of paternity. If the mother's consent under oath is not included, see Section 8303.

§ 8303. Claim of paternity.

If the mother of the child fails or refuses to join in the acknowledgment of paternity provided for in section 8302 (relating to acknowledgment of paternity), the Department of Health shall index it as a claim of paternity. The filing and indexing of a claim of paternity shall not confer upon the putative father any rights as to the child except that the putative father shall be entitled to notice of any proceeding brought to terminate any parental rights as to the child.

COMMENT: This new section addresses the situation where the mother of the child fails or refuses to join in the acknowledgment. The department is mandated to index this as a claim of paternity. This claim of paternity shall entitle the putative father to notice of any proceeding brought to terminate his, the mother's or any other person's parental rights as to the child.

Section 2. The following acts and parts of acts are repealed:

Act of July 9, 1935 (P.L.612, No.214), entitled "An act validating adoptions in courts of record of the Commonwealth."

Section 4, act of July 30, 1947 (P.L.1180, No.491), entitled "An act to further amend the act, approved the fourth day of April, one thousand nine hundred twenty-five (Pamphlet Laws 127), entitled 'An act relating to Adoption,' further providing for the jurisdiction of adoption proceedings, the contents of petitions, necessary consents, hearings and decrees; and validating certain adoptions."

Section 6, act of August 26, 1953 (P.L.1411, No.400), entitled "An act to further amend the act, approved the fourth day of April, one thousand nine hundred twenty-five (Pamphlet Laws 127), entitled 'An act relating to Adoption,' by defining certain terms; imposing powers and duties on the Department of Welfare; providing for appeals; requiring reports concerning receiving children for adoption and investigation thereof;

changing contents of petition for adoption; providing procedure for the voluntary relinquishment of and for the finding of abandonment of certain children; eliminating certain consents to adoption; and further providing for hearings and investigatory powers of the court."

Act of July 24, 1970 (P.L.620, No.208), known as the "Adoption Act."

Section 3. This act shall apply to all proceedings begun after the effective date of this act. Proceedings in progress and not completed before the effective date of this act may be amended with leave of court after January 1, 1981 to conform to this act; otherwise, the proceedings shall be carried to their conclusion under the act of July 24, 1970 (P.L.620, No.208), known as the "Adoption Act."

Section 4. This act shall take effect January 1, 1981.

CROSS-INDEX OF 1970 ADOPTION ACT  
AND PROPOSED CODIFICATION

Present	Proposed	Change
<u>Article I</u>	<u>Chapter 21</u>	
101	2101	No change
102	2102	Editorial
103	severability	Omitted
<u>Article II</u>	<u>Chapter 23</u>	
201	2301	No change
202	2302	Substantive
211	2311	No change
212	2312	No change
--	2313	New
<u>Article III</u>	<u>Chapter 25</u>	
301	2501	Substantive
302	2502	Substantive
303	2503	Substantive
311	2511(a)	Technical
311(1)	2511(a)(1)	No change
311(2)	2511(a)(2)	No change
311(3)	2511(a)(3)	No change
--	2511(a)(4)	New
--	2511(a)(5)	New
--	2511(b)	New
312	2512	Substantive
313	2513	Substantive
321	2521	Editorial
331	2531	Substantive
332	2532	Substantive
333	2533	Substantive
334	2534	Substantive
335	2535	Substantive
<u>Article IV</u>	<u>Chapter 27</u>	
401	2701	Substantive
402	2702	Technical
411	2711	Substantive
412	2712	No change
413	2713	Editorial
414	2714	Substantive
421	2721	Substantive
422	2722	No change
423	2723	Substantive
424	2724	Substantive
425	2725	No change
<u>Article V</u>	<u>Chapter 29</u>	
501	2901	Editorial
502	2902	Technical
503	2903	No change
504	2904	No change
505	2905	Substantive
506	2906	No change
507	--	Omitted
508	2907	No change
509	2908	Substantive
--	<u>Chapter 83</u>	
--	8302	New
--	8303	New

