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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: House Bill 998

\* \* \* \* \*

Stenographic report of hearing held  
in Room 140, Majority Caucus Room,  
Main Capitol Building, Harrisburg, PA

Monday,  
August 10, 1992  
1:00 p.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin	Hon. David W. Heckler
Hon. Kevin Blaum	Hon. Gerard A. Kosinski
Hon. James Gerlach	Hon. Karen A. Ritter

Also Present:

David Krantz, Executive Director  
Ken Suter, Republican Counsel

Reported by:  
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY  
3606 Horsham Drive  
Mechanicsburg, PA 17055  
717-732-5316

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Elana Bluestine, Juvenile Law Center,  
Philadelphia, PA

Ronald Heinlen, Senior Human Services  
Specialist, Pennsylvania State County  
Commissioners Association

James Anderson, Executive Director,  
Pennsylvania Juvenile Court Judges  
Commission

APPENDIX

1                   CHAIRMAN CALTAGIRONE: This is the House  
2 Judiciary Committee hearing on House Bill 998. I'm  
3 Chairman Tom Caltagirone, and I'd like the other  
4 members and staff if they would identify themselves.  
5 There will probably be some others that will be joining  
6 us as this goes on, but if you care to identify  
7 yourself for the record.

8                   REPRESENTATIVE BIRMELIN: Representative  
9 Birmelin, Wayne County.

10                  MR. SUTER: Kenneth Suter, Republican  
11 Counsel to the committee.

12                  MR. KRANTZ: Dave Krantz, Executive  
13 Director of the committee.

14                  CHAIRMAN CALTAGIRONE: If you would like  
15 to start.

16                  MS. BLUESTINE: Thank you.

17                  Chairman Caltagirone and members of the  
18 committee, good afternoon. My name is Elana Bluestine,  
19 and I'm here today on behalf of Samuel Magdovitz,  
20 Esquire, Associate Director of the Juvenile Law Center.  
21 Mr. Magdovitz unfortunately is unable to be here today,  
22 but he did want to make sure that his testimony was  
23 heard on this very important legislation.  
24 For the next few minutes I'd like to present Mr.  
25 Magdovitz's testimony concerning House Bill 998:

1 Chairman Caltagirone and members of the  
2 committee, I am pleased to have the opportunity to  
3 discuss with you how we can improve adoption  
4 opportunities for abused and neglected children in our  
5 Commonwealth, and specifically how House Bill 998 will  
6 help in that regard. I state at the outset that I  
7 enthusiastically endorse House Bill 998.

8 As many of you know, the Juvenile Law  
9 Center is a private, nonprofit public interest law firm  
10 which during the 17 years of its existence has sought  
11 to further two primary goals: First, JLC aims to limit  
12 State involvement in the lives of children to that  
13 which is necessary and permitted by law; and second,  
14 when children are entitled to intervention and  
15 services, JLC seeks to ensure that systems work for  
16 them.

17 I have represented hundreds of abused and  
18 neglected children in the Philadelphia dependency  
19 system, have represented statewide and Philadelphia  
20 based cases of abused, neglected and delinquent  
21 children in litigation, have conducted statewide  
22 training on dependency court issues for judges, lawyers  
23 and social workers, and have written a desk book for  
24 Pennsylvania judges addressing abused and neglected  
25 children which has been cited by Pennsylvania appellate

1 judges in their decisions. In addition, I will be  
2 managing the Legal Services component of the new  
3 statewide adoption network.

4 As I mentioned, I believe House Bill 998  
5 will further the needs for permanency of abused and  
6 neglected children. Permanency planning provides a  
7 framework which I believe can drive a coherent system  
8 of protecting children's rights and promoting their  
9 needs. Both State and Federal laws have clear  
10 permanency planning requirements. Those requirements  
11 are contained in Pennsylvania's Juvenile Act and its  
12 Adoption Act, as well as in the Federal Adoption  
13 Assistance and Child Welfare Act of 1980, or Public Law  
14 96-272. The central requirements are very  
15 straightforward: First, making reasonable efforts to  
16 prevent unnecessary placement at the, quote, "front  
17 end," unquote, of the process; second, when placement  
18 is necessary, making reasonable efforts to stabilize  
19 the family and reunify it; and finally, if those  
20 reasonable efforts to reunify have been made and have  
21 failed, a ground for termination of parental rights  
22 exists and adoption would best meet the child's needs,  
23 moving swiftly toward freeing the child for adoption.  
24 Those themes, when taken together, are often called,  
25 quote, "permanency planning," unquote.

1 I believe the proposed amendments to our  
2 Juvenile Act contained in House Bill 998 in permitting  
3 the same judge presiding over the dependency proceeding  
4 to hear the termination of parental rights matter will  
5 significantly reduce the hesitancy of our Children and  
6 Youth agencies to file termination of parental rights  
7 petitions. This current hesitancy to file petitions  
8 often results in children remaining in temporary  
9 placement for many years. These delays have two  
10 significant consequences: First, the child's right to  
11 a permanent home as guaranteed by our child welfare  
12 laws is often irreparably foreclosed; and second, the  
13 State is spending millions of unnecessary dollars  
14 because children are languishing for years in expensive  
15 Children and Youth placements.

16 In addition, I would like to point out  
17 that by implementing the proposed language, the  
18 legislature will simply be codifying recent  
19 Pennsylvania case law, as it has been stated by our  
20 Superior Court. Our Superior Court has already  
21 approved the procedural change in court practice that  
22 House Bill 998 permits. The consolidation of the  
23 Juvenile Act dependency proceeding and the termination  
24 of parental rights matter before the same judge. I  
25 believe that codification is extremely necessary,

1 however, because despite the Superior Court decision  
2 approving the practice of designating the same judge  
3 hearing the dependency matter to hear the termination  
4 of parental rights case, it is occurring very rarely  
5 and in very few counties in our Commonwealth. The  
6 Superior Court could not have been more clear in  
7 stating that not only is the practice of assigning the  
8 same judge to hear both the dependency and termination  
9 of parental rights portions of the child's case  
10 acceptable but it should be the preferred practice.  
11 The court emphasized that such a practice would further  
12 the permanency planning needs of abused and neglected  
13 children in our dependency court system.

14 I will briefly summarize for you that  
15 Superior Court case, In Re Quick, the citation of which  
16 is 559 A.2d, 42 (1989). In that case, the mother  
17 appealed an order of the Allegheny County Orphans'  
18 Court terminating her parental rights. In Quick, the  
19 mother's three children, ages 13, 11 and 10 years old,  
20 had been adjudicated dependent because of physical and  
21 sexual abuse by her husband and other adults while in  
22 the care of both parents, resulting in the children's  
23 placement in foster care.

24 The mother's primary argument was that  
25 she was denied her constitutional right to a fair

1 hearing because the judge who presided over the  
2 dependency hearings was assigned to the Orphan's court  
3 decision to decide the termination matter, precisely  
4 what House Bill 998 seeks to permit. The mother  
5 further contended that the Pennsylvania legislature had  
6 mandated that juvenile and termination proceedings be  
7 conducted separately.

8 The Superior Court, in a strongly worded  
9 opinion by Judge Tamilia, stated that these arguments  
10 were without merit. In fact, in affirming the order  
11 for termination of parental rights and approving the  
12 lower court's procedure permitting the judge who  
13 presided over the dependency proceedings to sit in the  
14 termination proceeding, the Superior Court stated that  
15 this was, quote, "an effective and expeditious way to  
16 process these matters," unquote.

17 The Quick court emphasized the sound  
18 policy reasons for such a practice, stating, and I  
19 quote, "adoption and termination procedures are  
20 logically and traditionally construed to be family  
21 matters," unquote, and that, quote, "[f]amily problems  
22 are complex but intricately intertwined so that the  
23 best treatment so far as the parties are concerned,  
24 particularly in regard to children, as well as the most  
25 consistent and efficient approach from the judicial



1 point of view, is for the same judge to remain involved  
2 with the family along the continuum of the particular  
3 case," unquote. The Superior Court concluded that,  
4 quote, "it would be self-defeating for the judge  
5 assigned to the termination case to be a different  
6 judge than the one who heard the dependency case,"  
7 unquote.

8 It is my view that the addition of this  
9 language in House Bill 998 to our Juvenile Act, coupled  
10 with the Governor's and your recent commitment to the  
11 new statewide adoption network, will do much to help  
12 create a system where children will be freed for  
13 adoption in a timely manner and permit them the  
14 possibility of permanency our child welfare laws  
15 promise them.

16 I would be happy to discuss this  
17 important legislation with you further at your  
18 convenience.

19 Thank you.

20 CHAIRMAN CALTAGTRONE: Thank you.

21 We've had a couple additional members  
22 join the panel. If you would just identify yourselves  
23 for the record.

24 REPRESENTATIVE GERLACH: Jim Gerlach from  
25 Chester County.

1                   REPRESENTATIVE BLAUM: Kevin Blaum, city  
2 of Wilkes-Barre.

3                   CHAIRMAN CALTAGIRONE: Are there  
4 questions?

5                   (No response.)

6                   CHAIRMAN CALTAGIRONE: Thank you, Elana.

7                   MS. BLUESTINE: Thank you very much.

8                   CHAIRMAN CALTAGIRONE: We'll next hear  
9 from Ronald Heinlen, a Senior Human Services  
10 Specialist, Pennsylvania State County Commissioners  
11 Association; and James Anderson, the Executive Director  
12 of the Pennsylvania Juvenile Court Judges Commission.

13                   MR. HEINLEN: Hi. My name is Ron  
14 Heinlen, and I am the Senior Human Services Specialist  
15 for the State Association of County Commissioners, and  
16 I'm also the Executive Director of the Pennsylvania  
17 Children and Youth Administrator's Association, so I  
18 think it's important that you understand I am not just  
19 here for the political authority of the county  
20 commissioners, I'm here on behalf of the people who  
21 carry out the functions of adoptions for dependent and  
22 delinquent children in this State.

23                   I didn't know about this hearing until  
24 this morning, but I scrambled around in order to get  
25 here because this is an important bill. And I'm happy

1 to hear that Sam Magdovitz also supports this bill  
2 because Sam is the leading advocate for kids in  
3 Pennsylvania. So I think it's important that you see  
4 an advocate supports this bill and also the people who  
5 have to carry out the functions support this bill.

6 Basically, and I'm just basically going  
7 to repeat some of the things you heard from Sam, in  
8 maybe more some layman's terms. Basically the way our  
9 system works now is when you have a child involved with  
10 the Children and Youth system because of dependency or  
11 neglect or abuse, or for that matter delinquency, that  
12 child comes before a juvenile court judge, and all the  
13 proceedings take place in juvenile court - things that  
14 pertain to custody, things pertaining to whether or not  
15 a child should be placed, taken away from a parent,  
16 placed out of home. Also periodically, every six  
17 months, those cases are reviewed before that juvenile  
18 judge, so that that judge starts to begin to get a  
19 history with the case, gets to know the family, gets to  
20 know the kids, gets to know the agency, gets to know  
21 the facts of the case.

22 So as these proceedings go along,  
23 generally there are only several conclusions you can  
24 have in some of these cases: The child either stays in  
25 care, goes home, or is adopted. I mean, those are your

1 basic choices in these cases. In all the situations  
2 except adoption, juvenile court judges is the last word  
3 and makes the disposition on the case. When, however,  
4 the case is decided that this is a child who the goal  
5 for that child should be adoption, once that's decided,  
6 the case is then kicked over into Orphan's court and  
7 you have a different judge sitting in the case.

8 We've felt all along that, especially on  
9 behalf of the children and the children's interest, it  
10 would be much better for everyone involved to have the  
11 same judge who has a history with the case involved in  
12 the most important decision made about the child, and  
13 that's the decision of adoption.

14 I called Jim Anderson this morning  
15 because I know he has a lot of background on this case  
16 too and I asked him to come along with me.

17 Jim?

18 MR. ANDERSON: Thank you, Ron.

19 Again, I apologize for not having written  
20 testimony. I was in Florida when my secretary tracked  
21 me down and indicated that Dave had called and  
22 explained there was going to be a hearing on House Bill  
23 998, but I did want to come to express the support of  
24 the Juvenile Court Judges Commission for this  
25 legislation. Although we have not taken a position on

1 this bill, we unanimously endorsed House Bill 1291 of  
2 last session, which was an identical bill. And the  
3 background of this legislation really goes back several  
4 years to work of the Permanency Planning Task Force  
5 that is chaired by Judge Fred Anthony, a member of the  
6 Juvenile Court Judges Commission, and that task force  
7 and our commission endorsed draft legislation several  
8 years ago which this is really based upon.

9           And we believe that the assignment of the  
10 judge who has been involved in dependency cases with a  
11 child to hear the involuntary termination of parental  
12 rights decision under the Adoption Act is appropriate  
13 and could reduce delay in freeing children for adoption  
14 in a number of counties. And I think it's important to  
15 point out that this really is only going to have an  
16 impact in those counties having separate Orphan's court  
17 divisions, and also it is not mandatory. It indicates  
18 that the judge may be assigned, which still the county,  
19 the individual county would be able to decide whether  
20 they want to do this, and in fact it would not have any  
21 impact in Philadelphia at all because the family court  
22 already has jurisdiction over both delinquency and  
23 dependency proceedings and termination proceedings  
24 under the Adoption Act. But in other counties, most of  
25 the large counties where involuntary termination

1 proceedings come within the jurisdiction of a separate  
2 Orphan's court division, this would allow the practice  
3 that was discussed in the prior testimony that was  
4 reviewed by the Superior Court in the Quick case to be  
5 implemented and could allow a judge who's familiar with  
6 the case to very expeditiously move forward, terminate  
7 parental rights and free a child for adoption, and we  
8 believe that would be in the interest of the children  
9 in this Commonwealth if this legislation were enacted.

10 So we are fully in support of the  
11 legislation.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 Questions?

14 MR. KRANTZ: I believe also that from  
15 what I'm told from the people in Pittsburgh and  
16 Allegheny that this practice is already done in  
17 Allegheny County courts.

18 MR. ANDERSON: That's correct. In fact,  
19 it was the assignment of Judge Wettick, who was a  
20 former member of our commission, in fact the chairman  
21 of the commission at the time, it was his assignment to  
22 the Orphan's court on a regular basis to hear cases in  
23 which he was involved. It was really some of the  
24 background that led to that case, and they have for  
25 some time been assigning the judge who's been involved

1 in dependency cases to the Orphan's court division.

2 MR. HETNLEN: If I could underline  
3 something that Jim said, in a lot of our small counties  
4 we only have one sitting judge. So in essence, that  
5 same judge is performing both functions. This really  
6 is only going to impact those medium size counties and  
7 will allow them to do this.

8 CHAIRMAN CALTAGIRONE: If I could ask, is  
9 there any downside issue or issues that have been  
10 brought out by this change in the law that you can  
11 think of? Was there any negatives or any controversy  
12 about this particular piece of legislation or the  
13 notion about setting this up?

14 MR. ANDERSON: Although we don't hold the  
15 position, I'm sure there are those who would say that  
16 it is appropriate that a different judge hear the  
17 termination of parental rights proceeding because it is  
18 such an important decision that is to be made.  
19 Everyone benefits if you have another individual look  
20 at it. But as I said, that is not the position that we  
21 take. We believe with the requirements of the Juvenile  
22 Act for dispositional review proceedings, which we have  
23 one of strongest disposition review components of  
24 juvenile legislation in the country that requires  
25 courts to review the case every six months and

1 administrative reviews in the interim, the judges are  
2 very familiar, and when the Children and Youth agencies  
3 bring in a case for termination or when that goal gets  
4 identified, it's really appropriate to have the judge  
5 that's familiar to deal with it. But I'm certain you  
6 would get some individuals who would indicate that it  
7 should be a separated judge who hears the matter.

8 CHAIRMAN CALTAGIRONE: How many, in  
9 numbers, are we talking about each year statewide in  
10 matters like this where children would be taken away  
11 from their parents? Do you have any idea at all what  
12 we're dealing with right now?

13 MR. ANDERSON: I do not. I don't know if  
14 Ron--

15 MR. HEINLEN: I'll take a stab at a guess  
16 that it's somewhere between 500 and 750.

17 CHAIRMAN CALTAGIRONE: Each year?

18 MR. HEINLEN: Now, you've got to  
19 remember, this is coming just from the Children and  
20 Youth system.

21 CHAIRMAN CALTAGIRONE: Um-hum. Um-hum.  
22 Thank you. We really appreciate your  
23 testimony.

24 MR. HEINLEN: Thank you.

25 MR. ANDERSON: Thank you for your time.



1                   CHAIRMAN CALTAGIRONE: I also want to,  
2 for the record, want to enter the testimony of this  
3 letter that we've received also from the Court of  
4 Common Pleas Family Court, the Adoption Branch. That's  
5 from Philadelphia.

6                   (See Appendix for submitted testimony.)

7                   CHAIRMAN CALTAGIRONE: Are there any  
8 other questions?

9                   (No response.)

10                  CHAIRMAN CALTAGIRONE: For the record,  
11 Representative Karen Ritter from Lehigh County has  
12 joined us.

13                  Karen, did you have any questions on the  
14 adoption?

15                  REPRESENTATIVE RITTER: I'm sorry, I  
16 didn't hear enough to ask any questions at the moment.  
17 I'm just going to go over the text.

18                  CHAIRMAN CALTAGIRONE: Okay.

19                  Were there any other comments that you'd  
20 like to make on the legislation?

21                  MR. ANDERSON: That's fine.

22                  CHAIRMAN CALTAGIRONE: You do feel a need  
23 for the legislation and you're representing the  
24 position from the juvenile courts?

25                  MR. ANDERSON: Yes. Yes, I do. In fact,



1 that, the Superior Court?

2 MR. ANDERSON: Superior Court. Um-hum.

3 CHAIRMAN CALTAGIRONE: Thank you.

4 No other questions. We will adjourn the  
5 hearing. Thank you very much.

6 (Whereupon, the proceedings were  
7 concluded at 1:25 p.m.)

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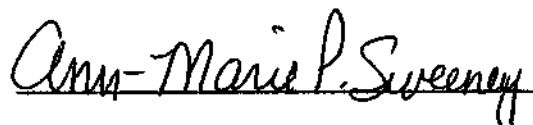
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1 I hereby certify that the proceedings  
2 and evidence are contained fully and accurately in the  
3 notes taken by me during the hearing of the within  
4 cause, and that this is a true and correct transcript  
5 of the same.

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8 ANN-MARIE P. SWEENEY  
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17 Ann-Marie P. Sweeney  
18 3606 Horsham Drive  
19 Mechanicsburg, PA 17055  
20 717-732-5316  
21  
22  
23  
24  
25