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Representative Daniel F. Clark
Chairman, House Judiciary Subcommittee on Courts
House of Representatives
Commonwealth of Pennsylvania

Personal Background:

I have practiced Family Law for over twenty years, both in Pennsylvania and until 1985, in Chicago Illinois. Presently, I am a partner in the Plymouth Meeting law firm of Ladov and Bernbaum. From 1985 until 1993, I was a member of the Family Law section of Astor, Weiss and Newman, serving as the managing partner of the Bala Cynwyd office from 1989 until 1993. For the past three years, I have been co-chair of the Family Law Committee of the Montgomery Bar Association and a member of the Council of the Family Law Section of the Pennsylvania Bar Association. In 1996, I founded the Southeastern Pennsylvania Family Law Council which is comprised of the chairs of the Family Law Committees or Sections of the Bar Associations of Philadelphia, Bucks, Delaware, Chester and Montgomery Counties. I am a frequent author and lecturer on family law matters.

Testimony:

The Nurturing Parent Doctrine was first recognized by the Superior Court in **Commonwealth ex rel. Wasiolek v. Wasiolek,** 251 Pa. Super, 108, 380 A.2d 400 (1977). The Superior Court enumerated various criteria for the trial court to review in order to determine the earning capacity of a parent who chooses to stay at home to care for a minor child. The same criteria set forth in **Wasiolek** is incorporated in House Bill 22.

Since 1997 the Nurturing Parent Doctrine has been reviewed by the Superior Court on numerous occasions, most recently in the 1996 decision of **Frankenfield v. Feeser**, 449 Pa. Super. 47, 672 A.2d 1347 (1996). The Court provides a very interesting and extensive review of the Nurturing Parent Doctrine from its first application in 1997 to the present. The Superior Court concluded, in the majority decision written by Justice Salor, that is there is no authority for an inflexible requirement to apply the Nurturing Parent Doctrine. Rather the Court makes a point to state that "a trial court is free to consider making an exception to this rule (i.e. establishing an earning capacity) whenever a parent chooses to stay at home with a minor child" (explanation added).

House Bill 22 is interpreted to be a response to **Frankenfield**. The legislature is attempting to overturn the prevailing case law, which evolved from **Wasiolek**, decided in 1977. I believe this would be a mistake.

The proposed legislation attempts to provide a remedy where one is not needed. Other than limiting the Doctrine to children of the parties to the action (as stated in section (c) Limitation), House Bill 22 merely recites the current status of the applicable case law. I believe that the Trial and Appellate Courts are in a better position to review, apply and modify the Doctrine as necessary.

Section (c), which limits the Doctrine to minor children of the parties to the litigation, is contrary to the stated purpose of the legislation as set forth in the Preamble. To state that the General Assembly finds this legislation necessary "...(I)n order to protect children, to support families and to prevent parents from being penalized for having remained in the home to nurture children..." is commendable but to limit the application of the Nurturing Parent Doctrine in this fashion creates class of children with inferior rights to support. This is clearly contrary to the legislative intent as stated in the Preamble and raises equal protection issues. Again, the Trial and Appellate Courts are in a better position to determine the applicability of the Doctrine to parents of minor children not only of the litigating parties but also from prior or subsequent relationships. It also seems probable that the restrictions required by House Bill 22 could require parents with inadequate means of support to apply for public assistance.

Finally, House Bill 22 fails to take unearned income into consideration as one of the enumerated factors for the court to consider. For example, as written, the legislation would not allow the court to consider whether the parent raising the Doctrine has assets producing unearned income such as a trust fund, mutual funds, securities or other investments including rental properties, etc. Unearned income is clearly incorporated in a determination of child support and should be considered in determining the applicability of the Nurturing Parent Doctrine. The proposed legislation states that if the Doctrine is applicable then the nurturing parent has no earning capacity nor a duty of support. This could be the result in spite of the fact that the parent in question has a million dollar trust fund or some other income producing asset. I don't believe the legislature intended this type of inequity.

Respectfully Submitted,

Joel B. Bernbaum