Submitted

STATEMENT

TO: The Honorable Members of the Subcommittee on Courts of the House Judiciary Committee

Thank you for inviting me to appear to give testimony in this public hearing on the merits of House Bill 2267. I have been a practicing attorney for twenty-seven (27) years in Pennsylvania since my graduation from the University of Pittsburgh School of Law. My practice has been concentrated in the area of Family Law since 1980. I am a partner in the Pittsburgh law firm of Goldberg, Gruener, Gentile, Voelker & Horoho, P.C. I am a member of the Allegheny County Bar Association and the past Chair of that Bar Association's Family Law Section. I am a Fellow of the American Academy of Matrimonial Lawyers and I am a member of the Joint State Advisory Committee established to recommend amendments to the Divorce Code of 1980. I am currently the Immediate Past Chair of the Pennsylvania Bar Association Family Law Section. I write a regular column in the *Pittsburgh Legal Journal* on matters of Family Law and I have written and lectured extensively in and out of the Commonwealth on family law issues. My remarks represent only my views and not the view of any organization of which I am a member or officer.

In January, 1995 the Superior Court of Pennsylvania decided the case of Garney v. Estate of Leslie Hain, 653 A.2d 21 (1995). That case involved a divorced

It should be kept in mind that the process of imposing post- death child support is not foreign to the law of Pennsylvania. The Supreme Court of Pennsylvania in 1887 in Adelaide Stumpf's Appeal, 8 A. 866, held that where the decedent had entered into a written agreement during life to support his child, said agreement would be binding on the estate, even though the agreement did not, by its express terms, indicate an intent that it survive the obligor's death. The agreement not only did not specify a term of payment, but it also did not express an amount of support. The lack of detail did not deter the court. It affirmed the Auditor below who, based on evidence produced and his own experience, decided that $3,000 would be retained in the hands of the executor and from interest and principal would pay $200 per year as child support until the child reached 21 or died, whichever first occurred. The result was again affirmed in Huffman v. Huffman, 166 A. 570 (1933). This was, again, a case involving an inter vivos agreement enforced after death. The issue again arose in a 1956 case, Fessman Estate, 126 A.2d 447. where the Supreme Court again enforced promises to pay child support that were contained in a letter written by the decedent's lawyer prior to death.

The difference, of course, between these cases and Garney is that in Garney there was no order for support or contract for support. This is, in my judgment, a distinction without a difference in principle. If the legislature determines that a child's right to support continues beyond the death of a parent and determines that it

is sound public policy to extend the duty to pay child support beyond death, changes in statutory law can accomplish that purpose.

That said, there is one area of constitutional concern. Such a provision that is only in favor of children of separated or divorced parents may well violate the equal protection clause of the United States Constitution. I cite as support of that view the case of Curtis v. Klein where the Supreme Court of Pennsylvania struck down Act 68 dealing with college support. Therefore, this legislation should be grounded in estate law and not the Divorce Code and should apply equally to in-tact and divorced families. In doing so I realize that the legislature will be tampering with a notion that may be unpopular, i.e., the long honored traditional principle of law that permits a parent to disinherit his children. However, making an exception to this long honored principle for the support of minor children seems, in light of modern life, to be compelling.

In summary, I support the concept of this bill. I believe that the legislation should be clarified as to the details of how the purpose will be accomplished, the issue of modification should be dealt with and it should be part of estate law just as the spousal election has been part of that law for many years so that it operates without discrimination.

I want to thank the Subcommittee for inviting me and for considering my views on the subject.

Harry J. Gruener