

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Senate Bill 1051

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House Judiciary Task Force Committee
on Guardianship and Estates

West Lampeter Township Building
852 Village Road
Lampeter, Pennsylvania

Tuesday, July 7, 1998 - 10:10 a.m.

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BEFORE:

Honorable Jere Schuler, Majority Chairperson

IN ATTENDANCE:

Honorable Thomas Caltagirone
Honorable Timothy Hennessey
Honorable Katie True
Honorable Stewart J. Greenleaf

KEY REPORTERS

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1998-106

ALSO PRESENT:

Brian Preski, Esquire
Majority Chief Counsel

David L. Krantz
Minority Executive Director

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(Written testimony submitted by: Family Support Legal Clinic Karen Engro, Esquire Heather R. Ercolani James King)	

1 CHAIRPERSON SCHULER: We're going to
2 start the meeting of the Task Force of the
3 Judiciary Committee dealing with Bill 1051. We
4 do have other members coming. They drift in
5 and out, as you know, people in Harrisburg, so
6 they will be here.

7 To my left is Representative Katie
8 True from Lancaster County, who is very much
9 involved in young people, and so forth. She
10 has an interest in this subject. However, she
11 is not a member of the Judiciary Committee, but
12 all members of the House were invited to attend
13 if they had an interest. Katie has done quite
14 a bit in this area with young people, so she is
15 in attendance today.

16 To my right is Brian Preski who is
17 the Executive Director of the House Judiciary
18 Committee. He also will be asking some
19 questions too, probably, as we go along. Some
20 of the other members are on their way. Senator
21 Greenleaf is on the turnpike and will be here
22 posthaste, I hope.

23 A little bit about this area. This
24 is Lampeter. Actually, it was a town
25 originated by the Welsh, and eventually most of

1 it is inhabited by German ancestry at the
2 present time. It was once called Hell's Corner
3 because the teamsters came through here and the
4 hotel up here at the corner they would have a
5 little go around and fighting and feuding and
6 what have you.

7 Also, Lampeter is noted for its
8 grandfather clocks. Back in the colonial
9 period many grandfather clocks were made right
10 here in Lampeter. That's not today, they don't
11 make them. Some of them are located in the
12 Richmond, Virginia museum or Ford Museum out in
13 Detroit. I'm sure some people have some of
14 those clocks in their living room.

15 The building you're in is probably
16 one of the oldest vocational high schools in
17 Pennsylvania. It's owned by the Lampeter/
18 Strasburg School District. It was the old
19 Lampeter Vocational High School. When
20 Lampeter/Strasburg was formed into a union
21 district back in the '50's, this was turned
22 into an elementary building, and then it was
23 eventually turned over to the township and now
24 is my district office, district justice,
25 township police. The municipal offices are

1 located in this building.

2 We'll proceed with Senate Bill 1051
3 dealing with guardianship of minors by
4 terminally-ill individuals. We have first
5 Cathryn Miller. Is she here at the present
6 time?

7 (No response)

8 CHAIRPERSON SCHULER: We'll move on
9 then to Larry Frankel, Executive Director, and
10 Jonna Revitz, Legislative Assistant, American
11 Civil Liberties Union of Pennsylvania.
12 Welcome, Larry.

13 MR. FRANKEL: Good morning,
14 Representative Schuler and Representative True.
15 I thank you for calling us. I'm glad we got
16 here a little bit early to provide you with
17 some witnesses since the others seem to be
18 delayed. I'm going to let Ms. Revitz handle
19 the bulk of our testimony. She is the
20 Legislative Assistant at the ACLU.

21 To provide a little more information
22 since we now are the first witnesses, this is a
23 piece of legislation that I've had the
24 privilege of at least working on a number of
25 years. It's been through a number of drafts.

1 It's really intended to fill in a gap
2 that exists in Pennsylvania law that other
3 states have filled in; to help a parent who has
4 a long-term or possibly terminal illness who
5 doesn't necessarily want to or need to give up
6 full custody care of their child or children,
7 but maybe temporarily while they're receiving
8 some kind of treatment or recovering from a
9 particularly debilitating experience they can
10 transfer their care and custody to another
11 individual, or share that care and custody.
12 And then once they've recovered, can have the
13 child come back to them without long convoluted
14 court proceedings, without having to give up
15 full custody and care.

16 It allows for some planning for
17 parents who still are, by and large, capable of
18 caring for their children, but because of their
19 medical condition may need to have someone else
20 care for them in the interim.

21 I know from my previous work as an
22 attorney how cumbersome that could be for a
23 parent who wanted to temporarily place their
24 child with someone who they trusted or a
25 friend; to go through a court proceeding, and

1 really the forms and the judge's understanding
2 and even the law really wasn't adequate. This
3 is intended to fill in that gap and create some
4 more flexible.

5 With that I'm going to turn the
6 microphone over to Jonna Revitz who is also
7 with the American Civil Liberties Union.

8 MS. REVITZ: Good morning,
9 Representative Schuler, and other members of
10 the Task Force on Guardianship and Estates. My
11 name is Jonna Revitz. I am the Legislative
12 Assistant at the American Civil Liberties Union
13 of Pennsylvania. I want to thank you for
14 providing the ACLU with this opportunity to
15 express our support for Senate Bill 1051.

16 The ACLU joins the many other
17 advocates and organizations who understand the
18 need for legislation that establishes standby
19 guardianships here in Pennsylvania. Such
20 legislation is crucial to a parent who is
21 suffering from HIV and AIDS, cancer, diabetes
22 or any other chronic or fatal illness.

23 Prior to my employment with the ACLU,
24 I worked as a counselor on the Pennsylvania
25 Department of Health AIDS Factline. This hot

1 line serves as an outlet for people with
2 concerns about HIV, as a resource for those
3 with questions about treatment and care, and as
4 a channel by which consumers who have
5 encountered difficulties due to their HIV
6 status can voice their frustrations.

7 My experience counseling those that
8 have HIV, or even those that are concerned that
9 they may be at risk for HIV, documents that
10 barriers to health care and day-to-day living
11 arise continuously. Among the many emotional,
12 financial and logistical issues that occur for
13 someone with HIV, relevant to Senate Bill 1051,
14 are concerns that someone with HIV has
15 regarding her or his family. Repeatedly,
16 callers of this hotline voiced fear and
17 apprehension about the effects that a
18 compromised immune system would have on their
19 families, specifically their children.

20 Decision making for a parent with a
21 disease such as HIV can become complicated and
22 crucial. From a counseling perspective,
23 standby guardianship laws could make the often
24 unpredictability of having an illness like HIV
25 and AIDS easier to bear when a parent can plan

1 for the future of her or his children.

2 In order to provide a better
3 understanding of the legal status of this form
4 of guardianship, I would like to review
5 existing standby guardianship laws in this
6 country. Currently, nine states have enacted
7 standby guardianship legislation. Florida
8 enacted the first standby guardianship law in
9 1981. Since then New York, Maryland,
10 Connecticut, Illinois, Massachusetts, North
11 Carolina, New Jersey and most recently
12 Wisconsin have also enacted laws.

13 Each of these states has responded to
14 the problems encountered by a single parent who
15 has a chronic or fatal illness, who wants to
16 arrange for the best care and custody of her or
17 his child during those times when the illness
18 makes it difficult to provide adequate care,
19 but who does not wish to relinquish his or her
20 parental rights. Traditional guardianship laws
21 have been found to be inadequate to address the
22 desires of such parents or the needs of
23 children of such parents.

24 Congress has recognized the benefits
25 of this kind of legislation. Last year,

1 Congress passed the Federal Adoption and Safe
2 Families Act of 1997. Section 403 of that act
3 states: It is the sense of Congress that the
4 states have in effect laws and procedures that
5 permit any parent who is chronically ill or
6 near death without surrendering parental
7 rights, to designate a standby guardian for the
8 parent's minor children, whose authority would
9 take effect upon, 1, the death of the parent;
10 2, the mental incapacity of the parent; or 3,
11 the physical debilitation and consent of the
12 parent.

13 While Congress may not have mandated
14 that states enact standby guardianship
15 legislation, it did acknowledge that such
16 legislation is an important component of a
17 comprehensive policy to provide for the varied
18 needs of the children whose parents are
19 incapable of providing adequate care.

20 Similar legislation was even
21 considered in the Pennsylvania House of
22 Representatives in 1994. In the fall of that
23 year the House overwhelmingly approved House
24 Bill 2500. Unfortunately, it was not acted
25 upon in the Senate before the end of that

1 session. House Bill 2500 could be considered
2 an early version of that which is before you
3 today. Senate Bill 1051 reflects many positive
4 changes that have been made over the course of
5 further consideration and drafting of a standby
6 guardianship law for Pennsylvania.

7 The ACLU believes that Senate Bill
8 1051 will fill a gap in existing Pennsylvania
9 law. We think that Senate Bill 1051 does that
10 in a way that preserves parental rights,
11 encourages responsible planning by parents with
12 chronic or fatal illnesses, and meets the needs
13 of children without further burdening foster
14 care agencies.

15 We have had the privilege of being
16 asked to assist with reviewing and refining the
17 legislation that is before you today, and we
18 think it is a good piece of legislation. We
19 hope that you will move Senate Bill 1051
20 forward so that it may be enacted in 1998.

21 CHAIRPERSON SCHULER: Anything?

22 MR. FRANKEL: We'll be happy to
23 answer any questions you might have or defer
24 to -- There aren't any other witnesses yet.
25 So, I guess if you have any questions.

1 CHAIRPERSON SCHULER: I do have a
2 couple questions, Larry. It's mentioned in the
3 testimony here that nine other states have
4 guardianship legislation. How does 1051
5 compare to the legislation of those? Do you
6 have anything?

7 MR. FRANKEL: My recollection is
8 that, in working with those who really are much
9 closer to the drafting of this, that they have
10 looked at the other states; took what was good
11 from other states; really learned and saw what
12 some of the problems that those states
13 encountered. It would be my humble opinion
14 that 1051 is a product of the best of the
15 legislation in those states, keeping in mind
16 certain aspects of Pennsylvania.

17 But, the notions that there will be a
18 temporary type of appointment. That one be
19 able to file the petition with the court either
20 at the time the temporary appointment papers
21 are signed or only when the triggering
22 occurrence for the need for the change. That
23 tracks what's happening in other states and
24 learn from other states.

25 There is some court involvement at

1 some point; that this isn't all -- somebody can
2 go designate somebody and the court is just
3 totally left out of the loop. There is some
4 point where the court has to give approval. A
5 temporary guardian could act for a certain
6 period of time, but that would end unless
7 somebody filed papers with the court. All of
8 that is derived from looking at other states.

9 CHAIRPERSON SCHULER: Has there been
10 any recorded incidents of abuse of this
11 proposal?

12 MR. FRANKEL: None that has come to
13 my attention. None that I know that's been
14 recorded.

15 CHAIRPERSON SCHULER: My other
16 question is, are you aware of any opposition?
17 Who would oppose it? When I read a bill I
18 always try to find out who would oppose this.
19 I can't find any reason why to oppose this
20 other than -- that I'm not aware of.

21 MR. FRANKEL: Two comments: The
22 first I will preface by saying tongue in cheek.
23 I think if you get to the point where you even
24 have the ACLU coming and testifying in support
25 of a bill may indicate the lack of opposition.

1 There may be. It's a rare occurrence, and as I
2 told Jonna on the way this morning, that we're
3 actually at a hearing testifying in support of
4 a piece of legislation. I know Brian knows
5 that, and I know you know that and
6 Representative True. Frequently we're before
7 the Judiciary Committee creating trouble by
8 raising questions. I think that's one
9 indication.

10 Two, there is no opposition because,
11 really, those who have been most closely
12 involved in drafting the bill have had, you
13 know -- those who have an interest in these
14 issues take a look at it, ask the questions,
15 make some changes. The lawyers who deal with
16 probate in the state law have taken a look at
17 it. Lawyers who deal with family law have
18 taken a look at it. Agencies that deal with
19 placing children have taken a look at it.

20 In one sense, and I don't think we
21 put it in the testimony, and since
22 Representative True is here today and I know
23 you had your hearings about the problems with
24 the foster care system, this really helps with
25 all those problems. This means that this child

1 doesn't have to go through the foster care
2 system and burden that system more.

3 So, there's no opposition because
4 it's a win-win proposition. It helps the
5 parents; it helps the children, and helps the
6 governmental agencies that have more cases to
7 deal with than they can possibly deal with.
8 Parents get what they want; children get taken
9 care of. So, that's why there is no opposition
10 on the surface, and realize the difficulties
11 over the -- Difficulties is too strong a word;
12 is getting the wording down right, making the
13 concepts a little clearer, in terms of refining
14 it.

15 I mean, one of the things I did when
16 I looked at it, I said, this doesn't make sense
17 to me. If it doesn't make sense to me, lawyers
18 and judges that have to deal with it later need
19 to -- A lot of work has gone into it. I think
20 that's why you see no opposition at this point.

21 Anybody who did oppose it I would
22 have to wonder. I mean, the only person I can
23 imagine coming in is, again, some lawyer who
24 thinks he's going to lose some money and some
25 fees in some case because he's not going to be

1 able to drag something through the system a
2 long time.

3 CHAIRPERSON SCHULER: Any questions?

4 REPRESENTATIVE TRUE: I just wondered
5 if, because of your expertise as a counselor
6 prior to you going with the ACLU, would you
7 mind just giving me a best case scenario of why
8 this is necessary? This is my lack of
9 understanding of the law. If I'm very ill, can
10 I just ask somebody to look after my child?
11 What's the scenario of why this is necessary?

12 MS. REVITZ: From a counseling
13 perspective, not a legal perspective, talking
14 to people on the hotline brought up more the
15 emotional and psychological issues rather than
16 the actual legal implications.

17 Speaking to people, conceiving
18 credible anxiety and fear and the unknown that
19 people fear, and the unpredictability as I said
20 in the testimony; and just the fact that,
21 specifically with HIV, that somebody has the
22 ability to make something set and more concrete
23 can make having a disease like HIV a little bit
24 easier to bear.

25 For people with children or even

1 people that I spoke to that were concerned
2 about their partners, the effects that HIV has
3 carries over to everybody in the family. It
4 can make not only for them, but also for the
5 children just knowing -- the fact that they
6 know where they are going to be and that it's
7 more set makes the whole process --

8 REPRESENTATIVE TRUE: What you are
9 saying is that, it's giving these folks comfort
10 knowing the legalities will be carefully looked
11 after on these children as far their --

12 MR. FRANKEL: If I may add, there are
13 some legal practicalities that I believe are
14 there. If you don't have some official piece
15 of paper that says you are the guardian of that
16 child, it can be difficult to get the child
17 into a school. It can get difficult to get
18 health care for that child if you want to put
19 the child on some kind of insurance. All of
20 those are very difficult.

21 I recall specifically I had a client
22 who came to see me when I was practicing law.
23 His niece had asked him to take care of her
24 son. She lived in New York. He lived here.
25 We were able to go to court and we had to have

1 full custody transferred to him before he was
2 able to put the child in school here in
3 Pennsylvania, even though the mother had asked
4 for it.

5 With this type of arrangement,
6 somebody -- let's say they have HIV and their
7 sister lives in the next school district over;
8 wants their sister to be able to take care as
9 long as they're going through a bout of
10 pneumonia. That sister will be able take of
11 all those very aspects of the child's care;
12 school, health care without having to go into
13 court with a full-blown custody proceeding, and
14 then have to go back to court for another
15 proceeding to have the child return to the
16 mother. Those legal practicalities are
17 implicated.

18 REPRESENTATIVE TRUE: So, obviously,
19 then they know that they still retain -- their
20 custody is intact for any reason. Somebody
21 doesn't have full custody of your child.

22 MR. FRANKEL: To explain that
23 further, as long as the parent is alive it's
24 seen as a co-guardianship, and it's a
25 co-guardianship rather than a complete

1 transfer.

2 REPRESENTATIVE TRUE: Thank you.

3 MR. PRESKI: One question, Larry, and
4 to just follow-up on what you said,
5 Representative True. One of the other aspects,
6 the other side to that coin is that, oftentimes
7 there will have to be a termination of parental
8 rights to have that kind of guardianship
9 established over a child. So, if you're a
10 loving parent who might be incapacitated for
11 some time, you don't want to have your parental
12 rights terminated just so someone else can look
13 over the child. That's the other side of the
14 coin.

15 MR. FRANKEL: Another instance which
16 we didn't mention specifically in the testimony
17 but I know there's been a lot of interest in
18 substance abuse treatment, it will be easier
19 for a parent to go into a treatment program if
20 they don't think they have to give up permanent
21 custody.

22 REPRESENTATIVE TRUE: This bill would
23 cover something like that?

24 MR. FRANKEL: Would conceivably
25 cover -- The way I read it, it is covered that

1 if you as a parent want to designate somebody
2 for that period of time while you go into the
3 program, you will be able to do so under this
4 bill. As I am sure you are aware one of the
5 biggest impediment to a parent going into these
6 programs is the fear of what's going to happen
7 to my child. I think that's another aspect
8 where this is going to be a good situation.

9 At the same time, the legal issues of
10 getting into school, getting the health care
11 will be taken care of.

12 MR. PRESKI: My question is, I saw
13 that the bill was amended extensively after the
14 public hearing that was held by Senator
15 Piccola. Are there any changes that you see
16 now that needs to be made as we deal with this?

17 MR. FRANKEL: I don't see any other
18 changes. Maybe somebody else that will testify
19 will bring something up. Some of those changes
20 were already planned before the hearing and
21 other issues were raised. I think the bill
22 from my opinion and from my experience is in as
23 good a shape as any bill that passes the
24 legislature.

25 MR. PRESKI: Thank you.

1 REPRESENTATIVE TRUE: Thank you.

2 CHAIRPERSON SCHULER: Thank you very
3 much for coming up. We appreciate it.

4 MR. FRANKEL: Glad to be here.

5 MS. REVITZ: Thank you.

6 CHAIRPERSON SCHULER: I'd like to
7 introduce Representative Caltagirone from the
8 Reading area. Tom is Chairman of the
9 Democratic side of the Judiciary Committee.
10 Glad to have you here, Tom. Thank you for
11 coming up.

12 REPRESENTATIVE CALTAGIRONE: Thanks.

13 CHAIRPERSON SCHULER: Our next person
14 to testify is Jane Phillips. Jane is Director
15 of Advocacy for Family Services of Lancaster.

16 MS. PHILLIPS: Good morning. My
17 testimony begins good afternoon.

18 CHAIRPERSON SCHULER: That's all
19 right. We're running a little ahead of
20 schedule. That's a little unique for
21 legislators to be ahead of schedule.

22 MS. PHILLIPS: This is great. Thank
23 you for inviting me to testify in support of
24 Senate Bill 1051, the Standby Guardianship Act.
25 My name is Jane Phillips, and I'm the Director

1 of Advocacy with Family Service. I welcome the
2 opportunity to speak on behalf of families and
3 children who could be helped by this
4 legislation.

5 Family Service is a private,
6 not-for-profit social service agency working
7 with families in Lancaster County for over 90
8 years. Because the agency offers a wide
9 variety of services, including adoption,
10 substance abuse treatment, domestic violence
11 and other services, we are aware of the
12 broadest spectrum of issues affecting families.
13 My function as Director of Advocacy is to
14 identify issues that are negatively affecting
15 our clients and to improve the situation.

16 In 1992, two very frightened mothers
17 asked us for a service that did not then exist;
18 not in Lancaster anyway. They were requesting
19 periodic placements for their children when
20 they were too ill to parent. Their biggest
21 fear was that by utilizing any placement
22 services they might lose custody of their
23 children. Their fear accurately reflects the
24 perceptions of many parents with terminal
25 diseases, and especially those who are

1 stigmatized by their infection with HIV.

2 In addition to this fear, these
3 mothers were experiencing a nearly universal
4 reaction of parents with terminal diseases.
5 Then I've just footnoted what that reaction is
6 at the bottom of the page. It is a denial of
7 how serious and, perhaps, how close their death
8 may be.

9 This fear is particularly strong in
10 relation to legal and government social
11 services. As a result, parents hide their HIV
12 status fearing that it will be used as a lever
13 to prematurely or wrongfully remove their
14 children. They elude assistance until,
15 tragically, it's too late for good planning for
16 their children's futures. One example of this
17 was a 36-year old parent who recently died of
18 renal failure. Fearful of formal systems, she
19 lapsed into unconsciousness before her child
20 was securely placed.

21 Currently, Family Service provides
22 counseling, respite/foster care and legal
23 services to AIDS affected children and their
24 families. We began this service in 1994 as an
25 answer to the mothers and after a broad study

1 of the needs of these families. In addition to
2 our program, we confer closely with other
3 service providers in Lancaster County and
4 across the state. Our experience with these
5 families is replicated with these providers.

6 AIDS-affected families come from
7 diverse racial and ethnic background,
8 educational and social levels. In spite of
9 this diversity, however, they nearly all share
10 the range of fears described above and at
11 present, for many, the current legal options
12 are unworkable.

13 If they are already engaged with an
14 agency, they often break off connection at the
15 point they fear that the legal system may take
16 control of their children. If they aren't
17 engaged with an agency, they often opt for an
18 informal arrangement that doesn't guarantee
19 that their child has all the protections that
20 they need, or that the child will actually stay
21 in the home that they chose. This wariness of
22 becoming involved with the legal system
23 persists even though we are able to offer pro
24 bono services from local attorneys.

25 The standby guardianship procedure is

1 a viable alternative for these parents.
2 Although placement of one's children will never
3 be easy to face, we anticipate that the
4 necessary planning, and commitment to act, will
5 be greatly facilitated by the availability of
6 this process. Thank you.

7 CHAIRPERSON SCHULER: Thank you. Any
8 questions?

9 REPRESENTATIVE CALTAGIRONE: No.

10 REPRESENTATIVE TRUE: No.

11 CHAIRPERSON SCHULER: Jane, do you
12 see any need for any amendments or changes to
13 this bill as you read them?

14 MS. PHILLIPS: No. I was present at
15 the hearing in the Senate committee when the
16 amendments were made. I think they have
17 strengthened an already very good piece of
18 legislation.

19 CHAIRPERSON SCHULER: In your
20 experience working with Family Services, it
21 would seem to me it's very difficult for the
22 person who has a terminal disease or a
23 temporary situation where they can't take care
24 of their children, to sign off on something
25 like that. Have you found that to be true?

1 MS. PHILLIPS: That has been our
2 concern. As I've said, we have --

3 CHAIRPERSON SCHULER: I know your
4 footnote here sort of makes reference to that.

5 MS. PHILLIPS: We have six or seven
6 attorneys locally in Lancaster County that are
7 available to provide pro bono work. Coming
8 through us as a private agency is certainly
9 less frightening, I think, than going to a
10 public agency; and yet, still, the whole notion
11 of a court hearing, signing all of those papers
12 has been pretty daunting.

13 When we've talk to our parents about
14 what they would think about this kind of a
15 procedure, they have welcomed it. They feel
16 much more comfortable with how this could be
17 administered.

18 CHAIRPERSON SCHULER: Okay. Any
19 other questions?

20 (No response)

21 MS. PHILLIPS: Thank you very much.

22 CHAIRPERSON SCHULER: Thank you very
23 much. Senator Greenleaf has arrived. The
24 Senator is the prime sponsor of this bill.
25 Senator, the floor is yours. You may proceed.

1 SENATOR GREENLEAF: Thank you, Mr.
2 Chairman, and committee members for giving us
3 an opportunity to hear testimony in regard to
4 Senate Bill 1051. I thank you for the
5 opportunity to speak in favor of a positive and
6 beneficial piece of legislation which passed
7 the Senate unanimously. It will create a
8 procedure for terminally-ill parents to
9 designate a standby guardian for their minor
10 children in the event of incapacitation or
11 death.

12 Under current law, a parent must give
13 up custody rights immediately if he or she
14 seeks a court-appointed guardian for a minor
15 children. If a parent chooses to designate a
16 guardian in a Will, the parent will die without
17 knowing if the guardian received court approval
18 or if the child were placed in good hands.

19 Also, when court decisions on
20 guardianships are made after the death of a
21 parent, delay is possible and the child could
22 face uncertainty about such issues as where to
23 enroll for school or who can provide consent
24 for medical care until a guardian is approved.
25 This bill provides for parental peace of mind

1 and some continuity for children as the parent
2 faces incapacitation or death from a terminal
3 illness and the child faces loss of a mother or
4 father.

5 Standby guardianship does not
6 supplant a noncustodial parent's rights. If
7 there is another parent whose rights have not
8 been terminated and who can be located and who
9 is willing to make day-to-day decisions for the
10 child, then that parent could step in to care
11 for the child. Or, if the noncustodial parent
12 is not willing or able to step in, then that
13 parent could still take part in a standby
14 guardianship decision unless an exception is
15 made and the reason stated.

16 The standby guardianship could be
17 facilitated by filing a simple form. If the
18 parent is healthy enough, the petition for
19 standby guardianship would be filed with the
20 Court of Common Pleas, and the standby
21 guardianship could take effect with the
22 designated triggering effect if the court gives
23 approval.

24 However, if a sudden illness or
25 debilitation occurs prior to court approval,

1 the standby guardian would have temporary legal
2 authority to act as a co-guardian or guardian
3 for 60 days. During the 60-day period, the
4 standby guardian would file for approval with
5 the court.

6 In many of the cases that have
7 emerged involving illness of a custodial
8 parent, the custodial parent had been alone in
9 caring for the child. If this parent becomes
10 seriously ill, this circumstance raises a great
11 concern for the future of the child and
12 presents a tremendous worry for the parent. An
13 agreement for a standby guardian to become a
14 co-guardian goes into effect when a triggering
15 event, such as a parent becoming comatose,
16 occurs. If the parent achieves a recovery, the
17 co-guardianship would terminate.

18 To have the guardianship status in
19 law that will allow a seriously ill or
20 periodically incapacitated parent to make
21 provisions for a dependent child's best
22 interests without terminating parental rights
23 is extremely important. Recoveries do occur,
24 whether they are temporary or permanent, and a
25 parent certified by a physician to be in

1 remission or recovery would have the ability to
2 reassume parental responsibility under this
3 proposal. A parent will also have the power to
4 revoke a standby guardianship agreement.

5 If death occurs, the parent would die
6 knowing that their designated standby guardian
7 or alternate standby guardian is prepared to
8 take responsibility. The child or children
9 involved would also have peace of mind in
10 knowing that their future is in the hands of
11 someone trusted by the parent. In many cases
12 this guardian will also have had the experience
13 of co-guardianship during the illness of the
14 parent.

15 I think that this bill is such a good
16 concept that I wish I could take full credit
17 for it, but I can't. The fact is that, the
18 measure was passed on to me by retiring Senator
19 David Heckler of Bucks County, who is now
20 serving as a Common Pleas Court Judge in Bucks
21 County. He had originally been approached with
22 the concept by the AIDS Law Project of
23 Pennsylvania.

24 Since the introduction of this bill a
25 great deal of support has emerged. In addition

1 to the AIDS Law Project, supporters of Senate
2 1051 included the Pennsylvania Bar Association,
3 the Philadelphia Citizens for Children and
4 Youth, Philadelphia Task Force on Kinship Care,
5 and the American Civil Liberties Union. Eight
6 other states have laws providing for this
7 procedure. These include New Jersey, New York,
8 Massachusetts, Illinois, Maryland, California,
9 Florida and North Carolina.

10 I appreciate the task force's
11 interest in this legislation, which, if
12 enacted, will benefit many children and parents
13 in the Commonwealth in their time of greatest
14 need.

15 I might say that this provision does
16 fill a gap that's now occurring, as I have
17 indicated in my statement. When a parent, who
18 many times is alone, raising a child alone
19 becomes terminally ill or incapacitated,
20 there's a tremendous worry about what's going
21 to happen to my child. If they have to wait
22 until after the death of the parent, then they
23 have no idea of what's going to happen; who's
24 going to be appointed guardian; how long it's
25 going to happen; how long that child is going

1 to be in basically a twilight zone until it
2 does occur.

3 But, the proposal is very flexible in
4 a lot of ways. There's a lot of informality to
5 it, in that, we have someone standing by
6 basically prepared to step in as guardian and
7 will step in while the person is incapacitated
8 but will step out. If it won't step out
9 voluntarily, the parent can make them step out
10 voluntarily with a very informal procedure to
11 terminate the guardianship.

12 So, it provides for a very flexible,
13 almost informal procedure, in which a parent
14 can provide for the care and treatment of their
15 children while they are, hopefully, just
16 partially incapacitated. But, if permanently
17 incapacitated, will know with the security of
18 mind and also the child will have a security
19 that they'll know who is going to be able --
20 and will be taking care of them in the future.

21 As I say, it passed the Senate
22 unanimously, and I would hope that the task
23 force would look upon the legislation in a
24 favorable way. I'll be happy to answer any
25 questions that you have. If not, I thank you

1 for your consideration.

2 CHAIRPERSON SCHULER: Any questions?

3 REPRESENTATIVE CALTAGIRONE: No.

4 REPRESENTATIVE TRUE: No.

5 CHAIRPERSON SCHULER: I do have one
6 question, Senator. In the other states that
7 have incorporated this concept, has there been
8 any cases in which, if the person who is
9 delegating this authority where another parent
10 has contested it, does that end up in the
11 courts from your understanding?

12 Suppose Joe is dying of diabetes or
13 something and gives the authority to Bill or
14 Mary, and Bill knows Mary and says they are
15 relatives and they get to squabbling over this
16 whole thing, how do we handle that?

17 SENATOR GREENLEAF: If there's a
18 surviving parent who is not the custodial
19 parent but their rights have not been
20 terminated, then they cannot be overlooked. My
21 understanding is that, that surviving
22 noncustodial parent can step in and perform the
23 function of the guardianship. In order to do
24 that, you would have to terminate the parental
25 rights of the noncustodial parent.

1 CHAIRPERSON SCHULER: That's what I
2 wanted to clarify.

3 SENATOR GREENLEAF: We're not
4 interfering with that. If you just happen to
5 be a noncustodial parent, and that happens in
6 separated families, they can step right in.
7 They are the parent. They are the natural
8 parent. They have the right to be the
9 guardian. You cannot supplant them just
10 through this process.

11 CHAIRPERSON SCHULER: Okay. Even
12 though the person might try to do that?

13 SENATOR GREENLEAF: They might try to
14 do that, but I think that certainly would not
15 hold up under this proposal and under the law
16 generally. The parent --

17 CHAIRPERSON SCHULER: That could be
18 contested and it would go through the courts?

19 SENATOR GREENLEAF: It would. I
20 would be very surprised any natural parent
21 would be excluded unless they previously had
22 their rights terminated.

23 CHAIRPERSON SCHULER: I understand
24 that.

25 SENATOR GREENLEAF: There is a

1 procedure. If they have not done that, I can't
2 imagine that happening.

3 CHAIRPERSON SCHULER: If there would
4 be no sole surviving person for this child,
5 nobody left and the person said, I'm going to
6 designate Joe over here. Then some other
7 friend of the person who is in trouble with the
8 disease contests that, is that a possibility?
9 I'm looking at some of these problems that
10 people will get into.

11 SENATOR GREENLEAF: That's certainly
12 possible, but I would think the courts would
13 give the preference to the parents, and their
14 preferences unless they could show some
15 terrible factor that would disqualify the
16 individual, the guardian appointed by the
17 court.

18 CHAIRPERSON SCHULER: It would go
19 back through the court system if that would be
20 contested?

21 SENATOR GREENLEAF: Anything that we
22 do is subject to litigation in court, no
23 question about that. I would think that the
24 standby guardian would have the upper hand in a
25 situation like that.

1 CHAIRPERSON SCHULER: Representative
2 True has a question.

3 REPRESENTATIVE TRUE: Thank you, Mr.
4 Chairman. That brings up a question then in my
5 mind that if -- Do you feel there's enough
6 checks and balances in this legislation?

7 Suppose a surviving parent or
8 estranged, separated parent has been accused of
9 abuse in the past; that there is some history
10 there, are there enough checks and balances
11 that the courts can make a determination based
12 on what the ill parent really wants? I mean,
13 they step in all the time now. It's very hard
14 to terminate parental rights.

15 SENATOR GREENLEAF: I believe that if
16 there's a situation like that, where there's
17 allegations of abuse from the non -- about the
18 noncustodial parent, that that can be clearly
19 litigated in court with regard to this. If
20 there's a reason why the custodial parent has
21 appointed somebody else other than the
22 noncustodial parent, and that is, for example,
23 abuse, some type of physical or sexual abuse,
24 then I think -- Obviously, that has to be
25 proved. That's going to have to be proved in a

1 court of law. If they can prove that, then I
2 don't think any judge would put that child back
3 in that situation, clearly. That's all a
4 matter of proof.

5 They're going to have to -- We can't
6 stop a noncustodial parent from litigating that
7 or from anyone doing that because the
8 allegation may be true or it may not be true,
9 or may not be provable. At that point then,
10 the court can only rule on what they have --
11 the facts in front of them. If they prove
12 there's been abuse, then I can't see any judge
13 reversing this decision of the custodial
14 parent.

15 REPRESENTATIVE TRUE: How would the
16 timing work? Obviously, if someone is very ill
17 and needs to do something for this child and
18 you get tied up, that's why I was asking about
19 the checks and balances in the legislation
20 because some of these things drag on forever.

21 SENATOR GREENLEAF: They do. I would
22 envision this -- For example, it provides that
23 the standby guardian can perform that service
24 for at least 60 days until it gets into court.

25 Let's say they signed the standby

1 guardianship papers but they never get it --
2 actually get to file it before the parent dies,
3 for example. That standby guardian, in my
4 understanding, at least the intent of the
5 legislation is that, that standby guardian can
6 function as a standby guardian for at least 60
7 days pending the court ruling. Certainly any
8 court will decide that issue within 60 days.

9 Now, if in the interim, then there's
10 a challenge to that filed by the noncustodial
11 parent, then the court is going to have to
12 obviously decide that issue whether there's any
13 merit to those allegations that there's abuse
14 and there's a reason for them not being
15 appointed. Then you get into a proof issue.

16 There is provision in here that under
17 emergency circumstances that the standby
18 guardian, whoever that would be, could function
19 for at least 60 days pending a court decision.

20 REPRESENTATIVE TRUE: Thank you.

21 CHAIRPERSON SCHULER: Brian.

22 MR. PRESKI: Senator, two questions.

23 The bill was amended by Senator Piccola's
24 committee. As prime sponsor were you happy
25 with those amendments? Do you see anything

1 that we need to do now if we consider this
2 further?

3 SENATOR GREENLEAF: No, but I leave
4 that to your discretion. That's why you are
5 having the hearings, and that's the beauty I
6 think of a bicameral legislature that there is
7 input like this. I welcome your review of this
8 legislation.

9 I think it's fine the way it is, but
10 you may see something that you feel is
11 important to add to it. I think hopefully this
12 hearing will produce some ideas that might --
13 there may be some need for changes. I would
14 welcome that.

15 MR. PRESKI: Second one is this,
16 Senator. We were unable to identify as we put
17 this hearing together any groups that were
18 basically opposed to this. Indeed, the ACLU
19 came before us earlier and spoke in favor of
20 it, something that doesn't happen often in the
21 Judiciary Committee.

22 SENATOR GREENLEAF: That's true.

23 MR. PRESKI: As the prime sponsor, I
24 would assume, have you heard from any groups,
25 from anyone who was against it?

1 SENATOR GREENLEAF: Well, I was going
2 to say, I wouldn't tell you -- Yes, I would
3 tell you if I knew. I don't know of any. I'm
4 not saying there isn't. I have my file here,
5 what my staff gave me, some of the background
6 material on it. I didn't see anyone in here
7 that was in opposition to it. You know what, I
8 found in the legislature there's always
9 somebody against some piece of legislation.

10 I've come up with what I think is
11 obviously good pieces of legislation. That's
12 my, obviously, prejudice view of it or I
13 wouldn't be introducing it. I think nobody
14 would oppose something like this. It might
15 turn out that there's always somebody that -- a
16 lobbyist up in Harrisburg. They have an
17 association.

18 One was--I'm going to divert a little
19 bit here--on pit bull fighting. It was some
20 years ago. It would prohibit the fighting of
21 putting pit bulls in a ring and have them fight
22 to their death. Nobody would be opposed to
23 outlawing that, right? Well, wrong. There was
24 a whole group that were opposed to it; wanted
25 that; wanted that activity, and were opposed to

1 this task force has a very significant
2 opportunity to ensure our Commonwealth's
3 children are granted the health, safety, and
4 well-being they deserve. Mr. Chairman, you and
5 Representative Tom Gannon are to be commended
6 for bringing us all here to openly evaluate
7 Senate Bill 1051, the Standby Guardianship Act.

8 And before I begin my testimony, I
9 would like to publicly thank Senator Greenleaf
10 for sponsoring this very important piece of
11 legislation. As he mentioned to you in his
12 testimony, Judge David Heckler, when he was one
13 of your legislative colleagues, worked on and
14 studied this legislation. Before taking the
15 bench, he asked Senator Greenleaf to consider
16 sponsoring this legislation, which he then
17 agreed to do. Without Senator Greenleaf's
18 cooperation and understanding, and without your
19 support for his efforts, we would not have this
20 legislation before us today.

21 The concept of the standby
22 guardianship first came to the attention of the
23 Pennsylvania Bar Association through a
24 resolution submitted by the Children's Rights
25 Committee. This we did last year, and that

1 resolution was supported by our Family Law
2 Section.

3 The Children's Rights Committee,
4 composed of child advocate attorneys, is
5 charged with studying questions and problems
6 which affect children. In that regard, they
7 brought to the forefront several concerns about
8 the current state of our law as it relates to
9 providing nurture, guidance, support and care
10 to children whose parents are critically ill
11 and who by virtue of their illness periodically
12 are unable to act as caretakers.

13 The scenario is uncomplicated. A
14 father whose wife died in child birth has
15 raised his daughter alone for the past seven
16 years. A young, healthy physician, he was
17 stunned to discover that a nagging pain in his
18 right shoulder was not bursitis, but rather an
19 incurable metastasized cancer. He could gain
20 precious time with his child by submitting to
21 aggressive therapies, but the procedures would
22 leave him disabled for several days following
23 each treatment.

24 What is to happen to this child? Who
25 will be there for her when her father is in the

1 hospital, when his recuperation takes longer
2 and longer, and when he dies? Who can help her
3 make the many transitions she will be facing;
4 for instance, a new neighborhood, a new school,
5 and a new way of life?

6 Today there is only one person who
7 can do these things under Pennsylvania law, and
8 that is her father. It is quite a different
9 story for the child who is fortunate enough to
10 have another parent who can step in when the
11 primary caregiver becomes ill. But only the
12 parent or legal guardian can enroll the child
13 in school or church, arrange for her medical or
14 dental treatment, or obtain insurance coverage
15 for her. Even grandparents find the doors to
16 many of these necessary services closed to them
17 without a court order. But such an order
18 confers permanent authority when what is needed
19 here is temporary authority.

20 Similarly, designating a guardian to
21 exercise a power of attorney to care for a
22 child gives the guardian only limited
23 authority, but this expires on the parent's
24 death. It also presumes a permanence which is
25 unnecessary for the child whose mother or

1 father will soon be well enough to resume all
2 the roles of parenting.

3 An additional problem under current
4 law is that invoking the authority of the court
5 takes time. Naming a guardian in one's Will or
6 petitioning the court upon the parent's death
7 may well delay implementation of critical and
8 valuable services for the child.

9 Each day the media carries a new
10 statistic which indicates the plight of our
11 children. In a recent year as many as 40,000
12 Pennsylvania marriages ended in divorce.
13 Nearly one-third of new babies were born to
14 unmarried women. While the average household
15 is 2.57 people, only half of family households
16 are headed by a married couple. Obviously,
17 many children in Pennsylvania live day to day,
18 with only one adult to do all of those things
19 necessary to raising happy and healthy
20 children.

21 But, you or I could easily find
22 ourselves in a position of having to make plans
23 for our children, without the support of the
24 other parent. How do we provide a stable,
25 permanent new family and still hold on to our

1 family life and traditions? Should we be
2 required to give up all power and control
3 before it is necessary for us to do so? Only
4 the Standby Guardianship Act provides a way for
5 any of us to give our children security and to
6 maintain our role as parents.

7 The legislation before you is a
8 carefully drafted document which acknowledges
9 that there are times when a competent parent
10 may suffer lapses in caretaking as a result of
11 the periodic debilitation of a catastrophic
12 illness. During those times, a familiar and
13 trusted guardian must be available to the
14 child. Yet, this person also must step aside
15 when the parent is capable of resuming parental
16 duties.

17 Most beneficially, this legislation
18 adopts the concept of a co-guardian who can
19 step in, provide the legal and emotional care
20 for the child when the parent is disabled, and
21 then step out when the parent is healthy. The
22 child receives continuity of care and
23 establishes a trust bond that will sustain her
24 through the loss of her parent.

25 This legislation also provides a

1 simple method by which a co-guardian may become
2 the child's legal guardian upon the death of
3 the parent. Utilizing a simple legal form, it
4 eases the burden on the parent, the caregiver,
5 the child, and the court system. It permits
6 the petition for approval of the designation of
7 the standby guardian to be filed at anytime,
8 even after the occurrence of the triggering
9 event. As long as the petition is filed within
10 60 days of the triggering event, the standby
11 guardian can legally act on the child's behalf
12 and will have continuous, uninterrupted
13 authority for that time period.

14 This legislation recognizes that the
15 emotional stress of these types of situations
16 only is compounded by the failure of the legal
17 process to respond adequately. It is therefore
18 designed to be flexible while insuring that the
19 child is not in legal limbo during this time
20 with no one who has the legal authority to act
21 on her behalf.

22 Finally, it conserves judicial
23 resources by allowing for approval of a
24 designation of a guardian without a hearing
25 under certain circumstances and eliminates the

1 need for costly and time-consuming emergency
2 custody hearings.

3 However, this legislation will not
4 eliminate every custody dispute. The primary
5 caregiver cannot use the standby guardian to
6 preempt the parental rights of the noncustodial
7 parent. The notice requirements are clear and
8 the necessity of a hearing in this instance is
9 manifest. What the Standby Guardianship Act
10 can do is eliminate contentious custody battles
11 among surviving family members. This
12 legislation gives clear authority to the
13 standby guardian before death; thus, preempting
14 any claims which would occur upon the parent's
15 death.

16 The Pennsylvania Bar Association has
17 long worked to promote the administration of
18 justice and to secure appropriate legislation
19 for both the privileged and the under-
20 privileged. The Standby Guardianship Act is
21 both just and appropriate for our children. It
22 serves to improve their legal and social
23 environment by assuring that while they
24 struggle with the loss of a parent, they will
25 be cared for in every way by someone they know

1 and trust.

2 Again, I want to thank you for the
3 opportunity to appear before you today. Mr.
4 Chairman, the Bar Association looks forward to
5 working with you and your committee on this
6 legislation. Our legislative staff can provide
7 any assistance that you may need during
8 consideration of this legislation.

9 I would be happy to answer any
10 questions that you might have. Thank you.

11 CHAIRPERSON SCHULER: Any questions?

12 MR. PRESKI: No.

13 REPRESENTATIVE CALTAGIRONE: No.

14 REPRESENTATIVE TRUE: No.

15 CHAIRPERSON SCHULER: No questions.

16 Thank you for coming. We appreciate it.

17 MS. SMITH: Thank you.

18 CHAIRPERSON SCHULER: We had
19 scheduled at 12:30 Professor Karen Engro of the
20 University of Pittsburgh Law School. She has
21 called to say she cannot attend, but she will
22 send testimony which we'll put into the record.

23 Our next person to testify is Cathryn
24 Miller, Director, Parents with HIV/AIDS
25 Project. Cathy.

1 MS. MILLER: Thank you. I apologize
2 for being late. Thank you for providing the
3 opportunity to speak in support of this very
4 important piece of legislation. I echo Miss
5 Smith's thank yous to Senator Greenleaf and, of
6 course, to Judge Heckler for all of the hard
7 work in getting the legislation to the point
8 where it is today.

9 My name is Cathryn Miller, and I'm
10 the Director of the Parents with HIV and AIDS
11 Project at the AIDS Law Project of
12 Pennsylvania. The AIDS Law Project is a
13 nonprofit, public interest law firm providing
14 free legal services to more than 1,500 people
15 with HIV and AIDS and others affected by the
16 AIDS epidemic statewide each year. The Parents
17 with HIV and AIDS Project is a special program
18 which was created in order to be responsive to
19 the needs of family members infected and/or
20 affected by the AIDS epidemic.

21 Before I begin the substance of my
22 testimony, I want to draw your attention to
23 three attachments that I have enclosed with
24 this. Two of them are written statements in
25 support of the bill from organizations who are

1 unable to attend today's hearing.

2 These organizations, the Cancer
3 Patient Legal Advocacy Network and the
4 Philadelphia Bar Association, support Senate
5 Bill 1051 because it's a solid, well-written
6 law which is desperately needed. As their
7 testimony points out, the bill supports
8 children and caregivers, as well as parents, at
9 a time when these vulnerable family members
10 most need the help.

11 One explanatory note about the
12 Philadelphia Bar Association testimony, I am,
13 as you can see, also a member of the
14 Philadelphia Bar Association. I chair a
15 committee called the Dependency Committee which
16 is a subcommittee of the Family Law Section.
17 That testimony was created by the Philadelphia
18 Bar Association for Chancellor Mark Aronchick.
19 Since he was unable to attend because he's out
20 of town on vacation, they put my name in
21 instead.

22 The last attachment I hope will
23 answer your earlier questions, Representative
24 True. It's a summary of the bill and a
25 flowchart demonstrating a standby guardianship

1 process. It shows, I think, fairly clearly the
2 time line for the process.

3 Returning to why I am here today, I
4 and the attorneys and paralegal with whom I
5 work directly represent parents in two
6 capacities; to help parents fight HIV/
7 AIDS-based discrimination in order to keep
8 their children or get them back from a third
9 party; and two, help parents plan for the
10 future care of their children.

11 When I first arrived at the AIDS Law
12 Project in 1994, this latter part of my job
13 puzzled me. I assumed, as many others do, that
14 custody planning meant executing a Last Will
15 and Testament, which is a seemingly simple
16 matter. As both my time and experience
17 increased, however, so did the numbers of
18 callers whose needs could not be met by a Will.
19 Furthermore, as my knowledge increased, so did
20 my growing awareness that the current mechanism
21 for custody planning was not useful as a tool
22 for dealing with the future legal needs of
23 children.

24 In doing research on the issue, I
25 discovered that the rules and regulations in

1 this state which have to do with Wills, while
2 containing one tiny provision about
3 guardianship of a person of a minor, are really
4 about distribution of property after death.
5 Neither the laws nor the courts that
6 traditionally deal with those laws are equipped
7 to deal with children's needs.

8 Questions such as, who will consent
9 to my HIV positive child's medical treatment
10 during the two to six-month period between my
11 death and my nominated guardian's court
12 approval, remained unanswered. Solutions to
13 the problem of, what happens to my children if
14 my nomination is not approved by the Orphan's
15 Court, seemed only to lead to the uncertainties
16 of the foster care system.

17 And finally, pleas for help with the
18 children when my clients periodically had to be
19 admitted to a hospital for a five or ten-day
20 period had to be answered by prayers that
21 nothing bad would happen to the children during
22 this period because there simply is no
23 mechanism to transfer temporary legal authority
24 to another person quickly unless there is some
25 allegation that custody needs to be transferred

1 immediately because a child is being abused or
2 severely neglected.

3 Since 1994 I've come across hundreds
4 of people who look to us for assistance with
5 their custody planning needs. While I could
6 speak for hours about the legal mechanisms
7 which standby guardianship has to offer, I
8 would like to share with you the story of one
9 of those people and the hardship, turmoil and
10 confusion that she, her children and her family
11 had to face before her death precisely because
12 standby guardianship did not exist when she
13 needed it.

14 Rosemary has three daughters; ages
15 12, 8 and 4. The children's father is a man
16 named Charlie. Rosemary and Charlie were
17 married 15 years ago. Four years ago --

18 (Interruption of fire whistle)

19 CHAIRPERSON SCHULER: Before we
20 continue, Representative Hennessey from Chester
21 County has joined us.

22 REPRESENTATIVE HENNESSEY: Thank you.

23 CHAIRPERSON SCHULER: You may now
24 proceed.

25 MS. MILLER: Back to Rosemary and

1 Charlie. Rosemary and Charlie were married 15
2 years ago. Four years ago, just a few days
3 after the youngest was born, Rosemary and the
4 children escaped their house and went to a
5 battered women's shelter. Rosemary had been
6 severely beaten during most of her marriage and
7 was finally able, with the help of hospital
8 social workers and a family friend, to
9 extricate herself from her situation.

10 After spending several months in the
11 shelter, she was able to find a new home with a
12 confidential address in another section of the
13 city. She heard rumors that Charlie had been
14 looking for her, but she kept a low profile and
15 never ran into him. She and her daughters
16 started receiving counseling and repairing
17 their lives.

18 Two and a half years ago Rosemary
19 tested positive for the HIV virus. For a long
20 time Rosemary seemed to be coping well with the
21 disease. She exercised and changed her diet,
22 educated herself about the disease and made
23 informal arrangements with her sister Allison
24 to take care of her children after she was
25 gone. Then about a year ago Rosemary started

1 getting very ill. She was in and out of the
2 hospital, sometimes spending as much as six
3 days there before being discharged home. Her
4 sister started looking after the children and
5 at first did so without difficulty.

6 However, one day in the early fall
7 Allison was startled by a loud pounding at her
8 door. Charlie stood outside on the stoop
9 screaming that he found his children and knew
10 about their mother and he threatened to remove
11 the children the second their mother died.
12 Allison immediately called me and I agreed to
13 meet her at the hospital in Rosemary's room.

14 When I got there Rosemary was
15 laboring for breath and crying quietly. We
16 talked about the abuse which she had suffered
17 during the marriage as much as we could, given
18 that Rosemary was hooked up to a oxygen tank
19 and had to pause between every third word in
20 order to breathe through her oxygen mask.

21 Her story was difficult to piece
22 together, but her terror was not. We spent all
23 afternoon in the hospital, exhausting Rosemary
24 and gathering what evidence we could. Allison
25 and I then agreed to meet in Family Court at

1 8:30 the following morning.

2 The next day we waited for several
3 hours before being permitted to see the
4 emergency judge that was on duty. After brief
5 testimony, Allison was awarded temporary
6 custody, ordered to serve the father and return
7 to court in 10 days. While waiting for the
8 elevator to leave the courthouse, Allison's
9 beeper went off. I held the elevator while
10 Allison went to return the page. When she
11 returned, Allison was sobbing uncontrollably;
12 her sister Rosemary had passed away.

13 Allison's anguish was as much about
14 not being able to be with her sister in her
15 last moments, as it was about losing her
16 sister. Of course, the entire anxiety-ridden
17 morning waiting in court did not contribute
18 anything positive to her emotional state.

19 Tragically, the grief and exhaustion
20 that Allison felt at that moment was only the
21 beginning. Allison still had to face making
22 the funeral arrangements, comforting the
23 children and another grueling day in court ten
24 days away.

25 The children, meanwhile, who remained

1 the only living witnesses to the abuse and who
2 were terrified of their father, had to be
3 prepared to testify in the event that the judge
4 was unconvinced about the father's inability to
5 care for the children. Allison hardly slept
6 the entire ten days thinking of what forcing
7 the children to face their father, so soon
8 after their mother's death, might do to them.

9 Fortunately, Allison was eventually
10 awarded permanent custody of the children
11 without the children's testimony.
12 Nevertheless, even preparing the children for
13 the possibility of having to testify was
14 upsetting for them.

15 Had Senate Bill 1051 been law at the
16 time that this occurred, all of this anguish
17 could have been avoided. Rosemary could
18 complete a designation form right in the
19 hospital. Upon Rosemary's death, Allison would
20 have 60 days to petition the court, during
21 which period she would have temporary custody
22 of the children. She and the children could
23 spend the time focusing on the loss of their
24 loved one rather than on an arduous and
25 emotionally draining court battle.

1 Upon petitioning, Allison would
2 still, under the Standby Guardianship Act, have
3 to prove that Rosemary's allegations were true;
4 nevertheless, the greater amount of time would
5 allow her to prepare the children more
6 adequately after they had been able to spend
7 some humane amount of time grieving for the
8 loss of their mother.

9 Rosemary and her children's story
10 depicts merely one set of facts and
11 circumstances. There are other stories of
12 other families whose terminal illness raises
13 other permanency planning concerns, but they
14 all have one thing in common--current law will
15 not and cannot answer those concerns. The
16 proposed Standby Guardianship Law, however,
17 does so.

18 I have chosen to share Rosemary's
19 story with you because I believe Rosemary's
20 struggle, which occurred in a world without
21 standby guardianship, illustrates in clear and
22 bold terms one family's desperate need for this
23 law. But before we leave here today, I would
24 like to be absolutely clear, there are many,
25 many other families with many other needs who

1 would also benefit from the passage of this
2 bill.

3 Standby guardianship helps terminally
4 ill, but high-functioning, sole surviving
5 parents ensure that a legal plan for the future
6 of their children exists without forcing them
7 to relinquish any parental rights. It helps
8 terminally-ill parents with medically needy
9 children ensure that their children's medical
10 care will not be disrupted after they are gone.
11 And it saves foster care dollars by supporting
12 family-decision making and ensuring that
13 nominated caregivers can obtain the legal
14 authority that they need to care for the
15 orphaned children.

16 I hope that you now see, as I have,
17 that the need for standby guardianship is quite
18 clear, as are the advantages. Standby
19 guardianship is an efficient, flexible and
20 balanced approach to permanency planning. We
21 have an opportunity to make this alternative
22 available to the people of Pennsylvania. I
23 encourage you to seize this opportunity and act
24 swiftly in considering this extremely important
25 bill. Thank you.

1 I'm happy to entertain any questions
2 that you might have at this time or anytime in
3 the future.

4 CHAIRPERSON SCHULER: Tim, any
5 questions?

6 REPRESENTATIVE HENNESSEY: No.

7 SENATOR GREENLEAF: How frequently
8 does this occur? How serious is this a problem
9 facing people who are parents, single parents
10 who are faced with --

11 MS. MILLER: Terminal illness and
12 making plans for the care of their children?

13 SENATOR GREENLEAF: Maybe you don't
14 have those kind of statistics. But in your
15 experience --

16 MS. MILLER: The statistics that I
17 have are based on my project which serves
18 primarily the Philadelphia area. Since 1994
19 when this project started, we have received
20 over 450 calls in the last four years. Of
21 those 450 calls, we've had to make about 65
22 hospital or home visits because of the
23 emergency situation, because parents don't have
24 a mechanism that adequately responds to all of
25 their needs. So that, even when they come to

1 me when they are relatively healthy, they're
2 not able to execute anything until their
3 deathbed, which puts the family in this kind of
4 turmoil and crisis.

5 SENATOR GREENLEAF: Those 400 some
6 calls that you referred to are dealing with the
7 need for providing care for their children?

8 MS. MILLER: Yes.

9 SENATOR GREENLEAF: They all dealt
10 with that issue?

11 MS. MILLER: Yes. There's more than
12 that for dealing with just discrimination.

13 SENATOR GREENLEAF: How do you deal
14 with that now? What do you do now?

15 MS. MILLER: We deal with it now
16 through a variety of ad hoc mechanisms. For
17 example, I have several parents who currently
18 live with their parents where one -- say the
19 father has already passed away, so the mother
20 lives with her mother. What we do in that
21 situation is execute health care power of
22 attorney for minor children in favor of the
23 grandmother so that in case of an emergency the
24 grandmother can step in. But, that is not a
25 perfect mechanism because it expires upon the

1 death of the parent.

2 In addition, it is not something --
3 The power of attorney statute does not
4 explicitly permit an adult to assign their
5 legal rights over a child. For example, CHOP,
6 which is the leading children's hospital in
7 Philadelphia, has said that they will not
8 accept those for surgery or extraordinary
9 medical care; only for routine kinds of things.

10 Another thing that we use is
11 something called shared custody or joint
12 custody. It's currently in the custody
13 statute. Again, when mother and grandma live
14 together we simply execute a joint custody
15 agreement, very similar to the way divorcing,
16 separating parents do. That is a mechanism
17 that works, but again, the court process takes
18 several months. If I get that deathbed call,
19 frequently we will not obtain joint custody
20 until several months after the adult parent --
21 the parent has passed away. Then the child is
22 in an unstable situation.

23 So that, if there's a school year
24 coming up, I have to have huge fights with the
25 superintendent to try to get the kid admitted.

1 If the child is medically needy, there are
2 serious disruptions in their medical care.

3 That's been a serious health risk for
4 HIV positive children. With protease and
5 inhibitors -- I'm not sure if you read all the
6 news. It's a complicated cocktail of
7 medications that they take. If their
8 medications are disrupted, they can develop a
9 resistance to not only those drugs, but future
10 medications, which can then eliminate their
11 chances for survival. So, it's really very
12 serious. We've had to get an emergency custody
13 order in situations where kids are on
14 medications that can't be disrupted, which
15 takes a lot of time and judicial resources, of
16 course.

17 CHAIRPERSON SCHULER: Katie?

18 REPRESENTATIVE TRUE: No. Thank you.

19 CHAIRPERSON SCHULER: I have one
20 question. I'm not a lawyer. I know there are
21 a lot of lawyers here. In your chart that you
22 have here where it says, number 2, parent
23 petitions court for approval, do you see any
24 possibility that we could get tied down in a
25 court proceeding there? In other words, in

1 this situation that you were talking about
2 Rosemary, and she petitions the court, how
3 quickly will the court react to that?

4 MS. MILLER: The advantage to this
5 law is, it gives a temporary authority
6 mechanism to deal --

7 CHAIRPERSON SCHULER: Only by
8 approval of the court?

9 MS. MILLER: No. There's a temporary
10 authority upon filing -- upon filing and the
11 triggering event, excuse me.

12 CHAIRPERSON SCHULER: You file the
13 petition and you automatically become --

14 MS. MILLER: Upon occurrence of the
15 triggering event.

16 CHAIRPERSON SCHULER: I understand.
17 Let's assume that occurred. You become then
18 the co-guardian?

19 MS. MILLER: Temporarily, that's
20 correct. Right.

21 CHAIRPERSON SCHULER: Then the court
22 will eventually hand down a --

23 MS. MILLER: A hearing date and a
24 decision.

25 CHAIRPERSON SCHULER: In the meantime

1 we're taking care of Rosemary's situation?

2 MS. MILLER: That's correct.

3 CHAIRPERSON SCHULER: That's what I
4 wanted to clarify. Any others?

5 MR. PRESKI: No.

6 REPRESENTATIVE HENNESSEY: I do have
7 one question. In the fact pattern that you
8 related by Rosemary, since the father had not
9 yet had his rights terminated, would that have
10 automatically kicked in under this proposal?

11 MS. MILLER: Yes. If you look in the
12 bill--I'm sorry, I don't have a copy of the
13 bill in front of me--you'll see there's a
14 sample form which doesn't have to be used but
15 it's a suggested form. In the form there's a
16 point for the petitioner to check off the
17 status of the noncustodial parent; whether
18 their rights have been terminated, or whether
19 you are alleging that the noncustodial parent
20 is unable --

21 REPRESENTATIVE HENNESSEY: Page 6.

22 MS. MILLER: Yes. Thank you. -- is
23 unable or unwilling to care for the child.
24 Here it is, page 6. See, it says, check all
25 that apply. In Rosemary's situation, had this

1 law existed, she would have checked off he is
2 unwilling and unable to make and carry out
3 day-to-day child care decisions concerning the
4 minor, and then would have further alleged the
5 circumstances of the abuse. Then it would have
6 been filed in that way.

7 Allison would have had temporary
8 authority, but the father would have been given
9 notice and there would be hearing on that
10 petition where they would have to prove that
11 the allegations of abuse were true. If they
12 didn't, it would automatically revert back to
13 the father.

14 REPRESENTATIVE HENNESSEY: As I read
15 it, I thought it had to be already -- the court
16 would have had to make that determination
17 before automatically kicking in for Allison to
18 be able to take over.

19 MS. MILLER: No. This is a petition
20 that becomes filed just with the Court Clerk's
21 Office. The judge hasn't looked at it until it
22 gets set for a hearing.

23 This tracks the custody statute which
24 provides the same kind of a mechanism so that,
25 if a third party has been standing what's

1 considered in loco parentis to the child, they
2 may petition the court alleging that a parent
3 is unfit in some way, say abusive, as in this
4 scenario. They can get a temporary emergency
5 order. They can go in and get a temporary
6 emergency order, and then there's a hearing on
7 that temporary order where they would then have
8 to prove that the allegations are true.

9 This does the same thing. The
10 difference is, it allows for the parent to
11 complete the designation form and everything in
12 the hospital and then to go in on that petition
13 so it avoids the two-step of the emergency
14 procedure, but it doesn't give anymore than the
15 current custody statute.

16 REPRESENTATIVE HENNESSEY: Okay.
17 I'll take a look at that.

18 MS. MILLER: Does that make sense?

19 REPRESENTATIVE HENNESSEY: I think
20 so. It seemed to me what it was doing was
21 allowing a parent to make an allegation that
22 the other parent was unfit. Until there was an
23 ultimate hearing, that would have the power and
24 the same authority that a temporary order that
25 the court had already issued. That seemed to

1 take away the power of the court and give it to
2 the parent to make an allegation and sign a
3 petition, sign the standby guardianship.

4 MS. MILLER: I doesn't because it
5 tracks -- You have that same power now under
6 the custody statute. If you file for an
7 emergency or say an emergency protection order
8 requesting custody, it's the same issue. You
9 do the allegation and get a temporary order.

10 REPRESENTATIVE HENNESSEY: But that's
11 done upon a court's signature after it receives
12 the emergency petition, right?

13 MS. MILLER: Yes. The temporary
14 judge reviews the petition, that's correct.

15 REPRESENTATIVE HENNESSEY: This way
16 you don't. This is done by virtue of the
17 parents who has custody and is sick making that
18 allegation. Their signature is enough to kick
19 this into effect.

20 MS. MILLER: That's correct.

21 REPRESENTATIVE HENNESSEY: That's how
22 I understood it. I wasn't sure how that would
23 play in terms of the court's view of its own
24 authority.

25 SENATOR GREENLEAF: The reason for

1 that is, there is a possibility that no one
2 might have custody of the children or
3 guardianship of the children so there's some
4 public policy reason to do that.

5 Secondly, if you are the custodial
6 parent in the custody issue matter, as you
7 know, you file those custody petitions making
8 all kinds of allegations against the other
9 parent. You still retain custody of those
10 children until that actual hearing occurs and
11 those issues are all resolved. Your point is
12 that, there is no pending legal order during
13 that period of time, while in this case there
14 is.

15 REPRESENTATIVE HENNESSEY: This bill
16 would seem to give that.

17 SENATOR GREENLEAF: You are actually
18 right there. There's a public policy for that
19 because the reason is, if we don't, then the
20 children will be without any really
21 guardianship and they could be placed in a --
22 or take possession by someone where those
23 allegations may turn out to be true and could
24 be irreparable injury to those children. If
25 they're not found to be true, the noncustodial

1 parent will get the children.

2 MS. MILLER: Right.

3 SENATOR GREENLEAF: It's a policy
4 issue. Yes, there is some negative
5 consequences for the noncustodial parent, but
6 only for a short period of time if those
7 allegations aren't provable.

8 MS. MILLER: When Judge Heckler was a
9 senator and we were working on this issue,
10 there was some decision about how long the
11 temporary period should be for temporary
12 authority, because many other bills have it for
13 120 days or even longer. We had agreed that it
14 should be 60 days because we're eliminating
15 that initial review so that it would be a much
16 shorter time period.

17 REPRESENTATIVE HENNESSEY: It would
18 seem to me that another procedure might be for
19 the person who is designated as the standby
20 guardian to take that and file it immediately
21 with the court and have at least some sort of
22 per curiam type of order cut by the court
23 giving authority. As zealously as the courts
24 protect their own authority, there may be a
25 hurdle there in terms of the court recognizing

1 that one parent can create legal custody
2 outside of the other parent by virtue of that
3 person's signature alone.

4 MS. MILLER: I think it would be easy
5 enough to mimic, for example, the protection
6 from abuse statute procedure where you file and
7 go to an emergency judge who reviews the
8 paperwork. It's not a hearing, but they review
9 paperwork and sign an order. That would be
10 easy enough to add.

11 REPRESENTATIVE HENNESSEY: Thank you.
12 Thank you, Mr. Chairman.

13 CHAIRPERSON SCHULER: Representative
14 True.

15 REPRESENTATIVE TRUE: Thank you, Mr.
16 Chairman. What do the judges think about this?
17 Is there a consensus from our courts, because
18 with all the dealings we have had with child
19 abuse and who goes up in front of, depending on
20 what judge you go up in front of, there seems
21 to be discrepancies about who has one
22 understanding of what law, and so forth and so
23 on, and what happens to the children.

24 Is there a feel across the
25 Commonwealth from our judicial friends on how

1 they would view this?

2 MS. MILLER: I definitely cannot
3 speak across the Commonwealth. I have spoken
4 in Philadelphia to the Administrative Judge
5 Paul Panepinto of Family Court, as well as of
6 City Family Court Judge Ivy Fox. Both of them
7 strongly support the legislation and think that
8 it's a good idea.

9 The context in which I spoke of about
10 it to Judge Fox was, a CLE that I had taught
11 about permanency planning for HIV-infected
12 parents and I talked briefly about the law,
13 explaining that it was pending and what it was
14 about. It was supposed to be a bench bar
15 conference where the judiciary were invited and
16 I was looking forward to that as an opportunity
17 to speak to the judges. Unfortunately, Judge
18 Fox was the only family court judge who
19 attended, which is kind of a recurring problem
20 in Philadelphia.

21 REPRESENTATIVE TRUE: Other places
22 also. Anybody else? Any of the other
23 witnesses know how the judges are feeling about
24 this?

25 MR. FRANKEL: No.

1 MR. PRESKI: If I can,
2 Representative, we invited them to appear today
3 and basically their response was, there's no
4 need for us to be here on this one. That's
5 either a vote of support or a vote of no
6 confidence.

7 MS. MILLER: In answer to, I believe
8 it was your earlier question, or -- No, I think
9 it was Mr. Preski--I can't remember--about
10 supporters and opposers. We did try to
11 circulate this fairly widely in both the state
12 and local bar associations to not only the
13 family committee but the trust and estate
14 section. The property I believe at one point
15 was involved. We really did come back with a
16 ground swell of support which is encouraging.
17 People really do feel that there's a need.

18 I do a lot of public speaking in my
19 capacity as Director of Parents with HIV and
20 AIDS Project. I speak with doctors, nurses,
21 and social workers as well as to parents. It's
22 always astounding the response I receive.
23 These are professionals from all over the
24 state, in rural communities, urban communities.
25 They are on the wealthier side or on the less

1 wealthy side.

2 They all come up to me afterwards and
3 say, gee, God, I wish this existed for me. My
4 sister died of cancer last year, and it was
5 really such a nightmare going through the
6 process. They really end up with very personal
7 stories; not just about their clients. It
8 really shows you how widespread the need is and
9 how, surprisingly, it is really filling a gap
10 that exist in the current law.

11 CHAIRPERSON SCHULER: One other
12 question. Do you see any need for improvement
13 in the bill?

14 MS. MILLER: I don't. Beyond the
15 Representative from Chester's comment, I don't.
16 I think it would be easy enough to include that
17 amendment. If your committee is interested, I
18 would be happy to provide language. I can just
19 lift it from the protection from abuse statute.

20 MR. PRESKI: If you have any
21 recommendations, send it to me.

22 CHAIRPERSON SCHULER: Thank you very
23 much.

24 MS. MILLER: Thank you.

25 CHAIRPERSON SCHULER: Our last person

1 to testify is Stefanie Fleischer Seldin,
2 Esquire, Chair, Philadelphia Task Force on
3 Kinship Care.

4 MS. SELDIN: Good morning. Thank you
5 for inviting me to present testimony to you
6 today on the Standby Guardianship Act. My name
7 is Stefanie Fleischer Seldin, and I am here
8 today wearing two hats. I am the Chair of the
9 Philadelphia Task Force on Kinship Care and a
10 staff attorney at the Support Center for Child
11 Advocates.

12 The Support Center for Child
13 Advocates is Philadelphia's lawyer pro bono
14 program for abused and neglected children. Our
15 lawyer-social worker teams represent more than
16 500 children each year. One of the programs we
17 staff at the support center is the Philadelphia
18 Task Force on Kinship Care.

19 Kinship care is the full-time care,
20 nurturing and protection of children by
21 relatives or family friends. The Philadelphia
22 Task Force on Kinship Care is a coalition of
23 advocates, agencies and officials addressing
24 the needs of children in kinship care. Our
25 membership includes representatives from the

1 aging community, mental health services,
2 Philadelphia City Council, child welfare
3 agencies, the court system, the Department of
4 Human Services, the Department of Public
5 Welfare, the Philadelphia School District and,
6 of course, caregivers themselves. We do have a
7 little input from the court system here on our
8 task force.

9 Kinship care is a well-established
10 phenomenon in Philadelphia and across
11 Pennsylvania. According to the 1990 U.S.
12 Census, an estimated one in six children in
13 Philadelphia, approximately 62,500, live with
14 relative caregivers. There are over 20 support
15 groups in Philadelphia founded to assist these
16 caregivers, but this is not just an urban
17 issue.

18 The 1990 Census counted over 230,000
19 children living in households with relatives or
20 family friends across Pennsylvania. In
21 Delaware County in 1990, approximately one-half
22 of the children in the Head Start Program lived
23 in a kinship care arrangement.

24 The Department of Public Welfare's
25 Office of Children, Youth and Families has

1 recognized the growth of these families. With
2 a grant from the New York-based Brookdale
3 Foundation, the Office of Children, Youth and
4 Families is in the process of awarding seed
5 grants to eight organizations across the state
6 that wish to establish support groups for
7 kinship caregivers. The locations of these
8 organizations include Altoona in Blair County,
9 South Greensburg in Westmoreland County,
10 Hazelton in Luzerne County, and right here in
11 Lancaster County.

12 Who are kinship caregivers? Kinship
13 care cuts across all economic, racial and
14 geographic lines. According to a 1994 U.S.
15 Census update, 68 percent of kinship caregivers
16 in the United States report themselves as
17 Caucasian, 29 percent as Black, and three
18 percent as Hispanic. The median age of
19 grandparent caregivers is 57. Twenty percent
20 are single; the remaining 80 percent are
21 married. U.S. News and World Report stated in
22 1995 that 40 percent of kinship care families
23 live at or below poverty level.

24 Why are children in kinship care?
25 Substance abuse, mental or physical illness,

1 death, incarceration, abuse and neglect,
2 joblessness and teen pregnancy are all reasons
3 for the need for kinship care.

4 Too many caregivers become parents to
5 relative's children due to physical illness or
6 death. These people, people with whom children
7 have an existing relation, are often the best
8 choice to care for children after a parent dies
9 or becomes incapacitated by illness. The
10 Standby Guardianship Act allows a transfer of
11 custody from parent to caregiver in a planned,
12 thoughtful way.

13 The act fills a gap in Pennsylvania
14 law by allowing terminally-ill parents to
15 legally designate someone to care for their
16 children after they die or become
17 incapacitated. Currently, terminally-ill
18 parents are dying without any legal plan for
19 their children's custody, leaving children with
20 uncertain futures and burdening the state's
21 already overwhelmed child welfare system.

22 Under present law in Pennsylvania,
23 there is no easy way for families facing
24 terminal illness to plan for the future custody
25 of their children. The three main options

1 available to families, Wills, court-appointed
2 guardianships, and powers of attorney, are not
3 sufficient.

4 Wills, currently one of the most
5 commonly-used ways to designate a future
6 guardian, have several disadvantages. A Will
7 is not binding until a judge approves it well
8 after the parent dies; meaning that, upon the
9 parent's death, no one, not the caregiver, the
10 relatives, or the child has the assurance that
11 the parent's wishes for that child's future
12 care will be executed correctly and
13 expeditiously by the court.

14 Wills also do not address the
15 possibility of a parent becoming incapacitated
16 before death, leaving children without anyone
17 to care for them. Standby guardianship allows
18 parents to get their choice of a guardian
19 preapproved by a judge and allows the guardian
20 to step in to care for the child during periods
21 of a parent's incapacitation.

22 Some families try to avoid the
23 problems posed by a Will by asking the court to
24 appoint a guardian while the parent is still
25 alive. But another problem arises, the parent

1 must give up all custody rights immediately.

2 As soon as the court approves the guardianship,
3 custody transfers to the guardian, even if the
4 parent is currently healthy and there is no
5 need to do so.

6 A third option is to execute a power
7 of attorney to designate someone to take care
8 of a child. However, the person designated
9 only has limited authority, and as Ms. Miller
10 explained, this authority expires upon the
11 parent's death. Standby guardianship gives the
12 appointed guardian full authority while the
13 parent is incapacitated and remains in full
14 effect after the parent's death.

15 I want to conclude by noting the
16 act's other advantages. First, it will keep
17 children out of foster care, providing them
18 with placements that ensure stability and
19 permanency and retain family ties and
20 traditions, while saving the state's resources
21 as well.

22 Second, by creating a simple
23 procedure by which a parent may plan for a
24 child's future care, the act eases the burden
25 on the court system.

1 Finally, the act provides terminally-
2 ill parents with flexibility and control over
3 their children's care; and thus, gives all
4 parties involved, children, parents and
5 caregivers, peace of mind that children will be
6 cared for by someone they know and trust.

7 On behalf of the Philadelphia Task
8 Force on Kinship Care, I want to urge passage
9 of the Standby Guardianship Act. Thank you.

10 CHAIRPERSON SCHULER: Katie?

11 REPRESENTATIVE TRUE: No.

12 REPRESENTATIVE CALTAGIRONE: No.

13 CHAIRPERSON SCHULER: Any questions?

14 REPRESENTATIVE HENNESSEY: No

15 questions.

16 MR. PRESKI: Given that you deal with
17 this almost every day, how do you think it will
18 change your practice if this becomes law?

19 MS. SELDIN: It will make it easier.
20 It's always easier to tell people who call you
21 that you have a solution to their problem
22 instead of something piecemeal, and one of the
23 three options that we are currently using now
24 are certainly not adequate as I discussed in my
25 testimony. It will make my clients happier and

1 my job a little easier and probably more
2 efficient; allow me time to deal with other
3 things.

4 MR. PRESKI: Do you feel that the
5 time you spend in court on these other things,
6 these legal fictions that you kind of decide to
7 make work, will that become less with this
8 going in?

9 MS. SELDIN: Absolutely; the time
10 that's spent.

11 CHAIRPERSON SCHULER: The way I
12 understand it, you wouldn't need a lawyer, do
13 you?

14 MS. SELDIN: Well --

15 CHAIRPERSON SCHULER: You can
16 initiate this on your own without legal
17 authority?

18 MS. SELDIN: It will put us out of
19 business.

20 CHAIRPERSON SCHULER: The question
21 is, people are going to have to be informed
22 that this exists. That's the issue.

23 MS. SELDIN: Absolutely. Actually, I
24 think my task force will be very much involved
25 with distributing the forms and making sure

1 that they are available across the Philadelphia
2 area.

3 CHAIRPERSON SCHULER: Any other
4 questions?

5 REPRESENTATIVE HENNESSEY: Yes.
6 Thank you, Mr. Chairman. Stefanie, if we were
7 to change it by having it filed with the court,
8 would that complicate matters from your point
9 of view, and could we attack that problem by
10 saying, where the other parent's rights have
11 already been terminated, that wouldn't have to
12 take place?

13 What I see is, when the other parent
14 still has rights and has not been terminated,
15 then you have a public policy by the state that
16 says the child belongs with its parent. Then
17 you have on the say-so of a person who is
18 assigned this standby guardianship petition,
19 you would have something as it's written now
20 that would countervail against that existing
21 state policy.

22 If we took it into court and had at
23 least a preliminary review, then the court has
24 the power to sign it. Then I think we can say
25 that that standing state policy has been

1 superseded by the court's review, at least the
2 initial review prior to a hearing.

3 MS. SELDIN: To answer your question,
4 I don't think it would make my life anymore
5 difficult. It might make the court's life
6 somewhat more difficult because they would have
7 to hear the facts of the petition twice; first,
8 if they had the preliminary hearing and then
9 when they actually had a fuller, more complete
10 hearing. I can't really speak for the court.

11 I don't necessarily think that this
12 countervails the idea that children should be
13 with their parents. I just think temporarily
14 for the 60 days just pushes things back and
15 makes someone wait 60 days who is not even the
16 custodial parent at the time.

17 REPRESENTATIVE HENNESSEY: Okay. I
18 guess what I'm wondering is, would it help if
19 we were to say as long as the other parent had
20 his parental rights terminated, then it would
21 be automatic? If the parent still had the
22 ability to assert those rights, then they
23 should at least get a preliminary court order?
24 Would that complicate things too much in your
25 view?

1 MS. SELDIN: Not too much. I think
2 we could work with the idea that Ms. Miller
3 presented that it could just be reviewed,
4 possibly even by a law clerk for a judge.

5 SENATOR GREENLEAF: I don't think
6 that's what happens, though. You interject
7 that procedure, I don't -- think we should look
8 at that concept, but let's think about a
9 person. This is just off the top of your head.

10 MS. SELDIN: Right, absolutely.

11 SENATOR GREENLEAF: If you interject
12 that procedure and there's going to be an
13 actual litigation, that could go on for weeks.
14 You may not be able to get it done. Let's say,
15 what you do on the first day? Let's say you
16 have to file the petition. What will the judge
17 do? He's going to set up a hearing. Is he
18 going to set it up the next day or the
19 following day? No. He usually sets it up a
20 week or two or three weeks later.

21 By that time we're well into halfway
22 into 60 days anyway. Then we are going to have
23 a full-blown hearing, which the judge is going
24 to take testimony. Then he may not decide it
25 on that day. Then he may take another 30 days

1 to decide it.

2 What's happening to these children
3 during that 30 days, 60 days, or 90 days that
4 he is now litigated to decide on what's going
5 to happen to these children? Are we back then
6 to the same scenario?

7 If I'm wrong, tell me. I'm just
8 throwing out ideas that are coming up in my
9 mind. How do you handle that? How do you get
10 a court hearing from a judge without having a
11 hearing?

12 MS. SELDIN: Right.

13 SENATOR GREENLEAF: How do you get an
14 order from a judge without having a hearing,
15 without having all parties there and having it
16 fully litigated? I guess that's what I'm
17 struggling with. How can you set up a legal
18 procedure to do that without having the full
19 litigation and having a full hearing in front
20 of the judge? We need some help here.

21 MS. MILLER: The analogy that I was
22 drawing from the previous -- when I was
23 testifying was about the temporary ex parte
24 order in the Protection from Abuse Act. So
25 that, a judge could review the paperwork and

1 issue a temporary ex parte order and then
2 schedule a hearing on the 60th day so that
3 there would not be -- Because I think you're
4 are right. You really don't want a hearing two
5 weeks after the paperwork is reviewed and then
6 again 60 days later. That would really then
7 defeat the purpose of the law. It would drag
8 everything out and everything becomes more
9 traumatic.

10 If the judge had the power to review
11 the papers upon filing and issue a temporary ex
12 parte order on the paperwork, that would last
13 until the scheduled hearing date which would be
14 60 days later, then the temporary custody would
15 be in effect and there wouldn't be extra steps
16 to go through. The petitioner would go to
17 court, file the papers, wait while the judge
18 reviewed the paperwork and then issue the
19 temporary -- and then receive and walk away
20 with temporary ex parte order.

21 CHAIRPERSON SCHULER: That's my
22 concern when I asked you about this; that we
23 don't get bogged down in some kind of judicial
24 procedures and badger back and forth while the
25 child is not being attended to. I hope the

1 bill provides enough to prevent that from
2 happening. It appears there may be some
3 issues.

4 REPRESENTATIVE HENNESSEY: The
5 suggestion I would have, Mr. Chairman, if we do
6 get a temporary order, even if it's -- and I
7 would expect it be done on an ex parte basis;
8 meaning, one side goes in and files it, and on
9 the basis of the allegations that were made in
10 the petition, subject to false swearing
11 requirements already, that the court would cut
12 that temporary order.

13 The difficulty I think you have
14 otherwise is, what happens if I have the paper,
15 or somebody has the paper and says they have
16 custody of my children and I walk in and take
17 them away? I'm not in violation of any court
18 order. I can't be held in contempt of the
19 court order because it's not a court order yet.
20 It doesn't have that authority.

21 Without those teeth, then I think the
22 people would have the -- at least be tempted to
23 just ignore it and do what they wanted anyway.

24 MS. MILLER: Yeah, I think it was
25 really an oversight on my part in the drafting.

1 I think it's a very good point. It would be an
2 easy -- Again, as long as it's that analog of
3 that temporary ex parte procedure, it wouldn't
4 require more than a few hours of the petitioner
5 just waiting in court, filing the papers and
6 getting an order.

7 SENATOR GREENLEAF: That would only
8 apply to cases in which -- where the parent is
9 not around. Let's say the other parent is
10 deceased already, for example, or rights have
11 been terminated. It's only when you have a
12 competent, noncustodial parent that you are
13 suggesting that happen.

14 MS. MILLER: It would apply when the
15 petitioner -- when the triggering event has
16 occurred already so that need is immediate.
17 Because, remember, if you look at your
18 flowcharts, there's two choices. If the need
19 isn't immediate, because, say the custodial
20 parent is perfectly fine and they're taking
21 care of their children but they want a plan in
22 advance, you can file the papers and there's no
23 need for an emergency ex parte order. You
24 simply file the papers and you wait for your
25 court date and have the hearing. If the

1 hearing is approved, then your order is in
2 place and you are already to go.

3 It would only be where there's that
4 immediate need because the triggering event has
5 occurred and nothing has been filed yet. Now
6 the triggering event has occurred, so you want
7 the petitioner to go to court and get that ex
8 parte order right away so they have the
9 temporary authority, and then you come back to
10 the hearing.

11 SENATOR GREENLEAF: I understand
12 that. Is there a need to make a distinction
13 here between cases which there is a competent
14 noncustodial parent and where there isn't?

15 MS. MILLER: I don't think so because
16 I think it's the same issue. If the judge is
17 reviewing the initial ex parte papers, then
18 they know either -- the noncustodial parent,
19 either there's some kind of issue, an
20 allegation of abuse or neglect or their rights
21 have been terminated or, of course, if they
22 passed away. The judge would review that in
23 the initial paperwork and know that there's
24 that noncustodial parent out there and instruct
25 the petitioner. They have to notify the

1 noncustodial parent. The noncustodial parent
2 has a right to defend him or herself against
3 any allegations.

4 MS. SELDIN: It certainly wouldn't be
5 necessary when the parental rights have been
6 terminated or relinquished, as the language in
7 the statute says, or when there's consent by
8 the noncustodial parent. I think you can draft
9 it to make exceptions for that.

10 MS. MILLER: I think what's necessary
11 is that initial -- Again, let's say there's
12 consent, but the custodial parent is now
13 incapacitated and the child is medically needy.
14 You still need an order quickly. I think that
15 was your point. You don't have an order signed
16 by a judge so they're not going to be able to
17 take that to the doctor. Even where there's
18 consent you still would want to go and get the
19 quick ex parte order so you could take that to
20 the doctor and then come back for the hearing.

21 SENATOR GREENLEAF: It does interject
22 another question we have to ask, and that is,
23 there are other family members too that get
24 involved with this too. There are siblings,
25 adults. We're dealing with this in the

1 legislature all the time. Now you have
2 grandparents, greatgrandparents, uncles,
3 cousins, siblings, they all want to have some
4 rights to these children. That's an evolving
5 area of the law, both in the courts and in the
6 legislature. How far do we go with that? We
7 could have that situation interjected into it.

8 What about the situation where -- I'm
9 not saying I'm opposed to this, but I'm just
10 trying to explore all the issues here. Now you
11 interject a situation where you do need an
12 attorney. No non-attorney is going to be able
13 to do this. They're going to have to have an
14 attorney. In an AIDS Project maybe they have
15 your groups, but in a cancer situation or some
16 other, they may not have counsel or they may
17 not be able to afford counsel.

18 MS. SELDIN: I don't necessarily
19 think that you need to have counsel even in
20 that kind of situation. In Philadelphia Family
21 Court, something like 80 percent of litigants
22 are pro se. They are without representation
23 and they manage to have their litigation
24 effected.

25 MS. MILLER: I also do think, if I

1 can add, your concern is a legitimate one but
2 it's also one of the reasons why this law is so
3 important, is to avoid all that kind of family
4 fighting. Under current law, the people who
5 have a right to notice are the biological
6 parents whose rights haven't been terminated.
7 That's who receives notice and, of course, the
8 person who is petitioning. That's who receives
9 notice and that's who goes into court. If it
10 does escalate into some kind of complicated
11 scenario, legal services lawyers hopefully will
12 be able to provide representation for
13 low-income folks.

14 In most cases, and again this is
15 based on my experience even in permanency
16 planning scenarios that I see currently, they
17 don't devolve into that once the parent is
18 empowered to make a plan that's suitable for
19 their child because most of the family members
20 respect that. The kinds of complicated
21 disputes that we see where a lawyer is needed
22 is where there isn't empowerment to make a
23 decision so everybody jumps into that void.

24 But when a decision is made with
25 competent adults and they're consulted and

1 they're talking to the relatives and the
2 relatives are people who have cared for the
3 children so they are people who would stand in
4 loco parentis for the child anyway, then the
5 decision goes much smoother.

6 Really, very few of my cases now are
7 contested. I think even less would be
8 contested once this bill would be passed.

9 CHAIRPERSON SCHULER: Thank you,
10 Stefanie. The committee is now adjourned. We
11 have completed testimony for today. I thank
12 everyone for coming. I thank all the members
13 of the Judiciary, both the House and Senate for
14 attending. Thank you. Have a good day.

15 (AT or about 12:30 p.m. the hearing
16 concluded)

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C E R T I F I C A T E

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Karen J. Meister - Reporter
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