

Testimony on SB 1051
By Sen. Stewart J. Greenleaf
Before the Task Force on Guardianships and Estates, House
Judiciary Committee
Tuesday, July 7, 1998

Mr. Chairman and Members of the Task Force, I thank you for the opportunity to speak today in favor of a positive and beneficial piece of legislation, Senate Bill 1051, which passed the Senate unanimously, will create a procedure for terminally ill parents to designate a standby guardian for their minor children in the event of incapacitation or death.

Under current law, a parent must give up custody rights immediately if he or she seeks a court-appointed guardian for a minor child. And, if a parent chooses to designate a guardian in a will, the parent would die without knowing if the guardian received court approval or if the child were placed in good hands. Also, when court decisions on guardianship are made

after the death of a parent, delay is possible and a child could face uncertainty about such issues as where to enroll for school or who can provide consent for medical care until a guardian is approved.

This bill provides for parental peace of mind and some continuity for children as the parent faces incapacitation or death from a terminal illness and the child faces loss of a mother or father.

Standby guardianship does not supplant a non-custodial parent's rights. If there is another parent whose rights have not been terminated and who can be located and who is willing to make day-to-day decisions for the child, then that parent could step in to care for the child. Or, if the non-custodial parent is not willing or able to step in, then that parent could still take part in

the standby guardianship decision, unless an exception is made and a reason stated.

The standby guardianship could be facilitated by filing a simple form. If the parent is healthy enough, the petition for standby guardianship would be filed with the court of common pleas and the standby guardianship could take effect with the designated triggering event if the court gives approval.

However, if a sudden illness or debilitation occurs prior to court approval, the standby guardian would have temporary legal authority to act as a co-guardian or guardian for 60 days. During the 60-day period, the standby guardian would file for approval with the court.

In many of the cases that have emerged involving the illness of a custodial parent, the custodial parent has been alone in caring for the child. If this parent becomes seriously ill, this

circumstance raises a great concern for the future of the child and presents a tremendous worry for the parent. An agreement for a standby guardian to become a co-guardian goes into effect when a triggering event -such as the parent becoming comatose- occurs. If the parent achieves a recovery, the co-guardianship would terminate. To have a guardianship status in law that will allow a seriously ill or periodically incapacitated parent to make provisions for a dependant child's best interests without terminating parental rights is extremely important. Recoveries do occur, whether they are temporary or permanent. And a parent certified by a physician to be in remission or recovery would have the ability to re-assume parental responsibility under this proposal. A parent would also have the power to revoke a standby guardianship agreement.

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

I think that this bill is such a good concept that I wish I could take total credit for it. The fact is that the measure was passed on to me by retired Senator David Heckler of Bucks County, who had been approached with the concept by the AIDS Law Project of Pennsylvania.

Since I have introduced this bill, a great deal of support has emerged. In addition to the AIDS Law Project, supporters of Senate Bill 1051 include the Pennsylvania Bar Association, the

Philadelphia Citizens for Children and Youth, the Philadelphia Task Force on Kinship Care, and the American Civil Liberties Union. Eight other states have laws providing for this procedure. These include New Jersey, New York, Massachusetts, Illinois, Maryland, California, Florida and North Carolina.

I appreciate the task force's interest in this legislation, which, if enacted, will benefit many children and parents in the commonwealth in their time of greatest need.

Thank you.