

Testimony of

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before the

***House Judiciary Committee's
Task Force on Guardianship
and Estates***

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Good morning. I am Joan Smith, Chair of the Pennsylvania Bar Association's Children's Rights Committee. Unfortunately, Leslie Anne Miller, President of the association, was unable to join us today; therefore, I am very pleased to have the opportunity to present testimony on behalf of the Pennsylvania Bar Association supporting the proposed Standby Guardianship Act.

The House Judiciary Committee through this task force has a very significant opportunity to ensure our Commonwealth's children are granted the health, safety, and well-being they deserve. Mr. Chairman, you and Representative Tom Gannon are to be commended for bringing us all here to openly evaluate Senate Bill 1051, the Standby Guardianship Act. And before I begin my testimony, I would like to publicly thank Senator Greenleaf for sponsoring this very important piece of legislation. As many of you already know, Judge David Heckler, when he was one of your legislative colleagues, worked on and studied this legislation. Before taking the bench, he asked Senator Greenleaf to consider sponsoring this legislation, which he then agreed to do. Without Senator Greenleaf's cooperation and understanding and without your support for his efforts, we would not have this legislation before us today.

The concept of the standby guardianship first came to the attention of the Pennsylvania Bar Association through a Resolution submitted by the Children's Rights Committee last year and supported by our Family Law Section.

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

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

What is to happen to this child? Who will be there for her when her father is in the hospital, when his recuperation takes longer and longer, and when he dies? Who can help her make the many transitions she will be facing -- for instance, a new neighborhood, a new school, and a new way of life?

Today there is only one person who can do these things under Pennsylvania law, and that is her father. It is quite a different story for the child who is fortunate enough to have another parent who can step in when the primary caregiver becomes ill. But only the parent or legal guardian can enroll her in

school or church, arrange for her medical or dental treatment, or obtain insurance coverage for her. Even grandparents find the doors to many of these necessary services closed to them without a court order. But, such an order confers permanent authority when what is needed here is temporary authority.

Similarly, designating a guardian to exercise a power of attorney to care for a child gives the guardian only limited authority. But this expires on the parent's death. It also presumes a permanence which is unnecessary for the child whose mother or father will soon be well enough to resume all the roles of parenting.

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

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

But you or I could easily find ourselves in the position of having to make plans for our children -- without the support of their other parent. How do we provide a stable, permanent new family and still hold on to our family life and traditions? Should we be required to give up all power and control before it is necessary for us to do so? Only the Standby Guardianship Act provides a way for any of us to give our children security and to maintain our role as parents.

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

Most beneficially, this legislation adopts the concept of a coguardian who can step-in, provide the legal and emotional care for the child when the parent is disabled, and then step-out when the parent is healthy. The child receives continuity of care and establishes a trust bond that will sustain her through the loss of her parent.

This legislation also provides a simple method by which a coguardian may become the child's legal guardian upon the death of the parent. Utilizing a simple legal form, it eases the burden on the parent, the caregiver, the child, and the court

system. It permits the petition for approval of the designation of the standby guardian to be filed at any time, even after the occurrence of the triggering event. As long as the petition is filed within 60 days of the triggering event, the standby guardian can legally act on the child's behalf and will have continuous, uninterrupted authority for that time period. This legislation recognizes that the emotional stress of these types of situations only is compounded by the failure of the legal process to respond adequately. It is therefore designed to be flexible while insuring that the child is not in legal limbo during this time -- with no one who has the legal authority to act on her behalf. Finally, it conserves judicial resources by allowing for approval of a designation of a guardian without a hearing under certain circumstances and eliminates the need for costly and time-consuming emergency custody hearings.

However, this legislation will not eliminate every custody dispute. The primary caregiver cannot use the standby guardian to pre-empt the parental rights of the non-custodial parent. The notice requirements are clear and the necessity of a hearing in this instance is manifest. What the Standby Guardianship Act can do is eliminate contentious custody battles among surviving family members. The legislation gives clear authority to the standby guardian before death, thus preempting any claims which would occur upon the parent's death.

The Pennsylvania Bar Association has long worked to promote

the administration of justice and to secure appropriate legislation for both the privileged and the underprivileged. The Standby Guardianship Act is both just and appropriate for our children. It serves to improve their legal and social environment by assuring that while they struggle with the loss of a parent, they will be cared for in every way by someone they know and trust.

Again, thank you for the opportunity to appear before you today. Mr. Chairman, we look forward to working with you and your committee on this legislation. Our legislative staff can provide any assistance that you may need during consideration of this legislation.

I would be happy to answer any questions at this time.