

HOUSE OF REPRESENTATIVES OF PENNSYLVANIA  
JUDICIARY COMMITTEE  
July 7, 1998

SENATE BILL 1051, THE STANDBY GUARDIANSHIP ACT

Testimony of Stefanie Fleischer Seldin, Esq., Chair of the Philadelphia Task Force on Kinship Care and Staff Attorney at the Support Center for Child Advocates

Hennessey  
said  
"per CURIAM"  
in his  
previous  
question

Thank you for inviting me to present testimony to you today on the Standby Guardianship Act. I come here wearing two hats: I am the Chair of the Philadelphia Task Force on Kinship Care and a staff attorney at the Support Center for Child Advocates. The Support Center for Child Advocates is Philadelphia's lawyer pro bono program for abused and neglected children. Our lawyer-social worker teams represent more than 500 children each year. One of the programs we staff at the Support Center is the Philadelphia Task Force on Kinship Care.

Kinship care is the full-time care, nurturing and protection of children by relatives or family friends. The Philadelphia Task Force on Kinship Care is a coalition of advocates, agencies and officials addressing the needs of children in kinship care. Our membership includes representatives from the aging community, mental health services, Philadelphia City Council, child welfare agencies, the court system, the Department of Human Services, the Department of Public Welfare, the Philadelphia School District, and, of course, caregivers themselves.

Kinship care is a well-established phenomenon in Philadelphia and across Pennsylvania. According to the 1990 U.S. Census, an estimated one in six children in Philadelphia (approximately 62,500) live with relative caregivers. There are over 20 support groups in Philadelphia founded to assist these caregivers. But this is not just an urban issue. The 1990 Census counted over 230,000 children living in households with relatives or family friends in Pennsylvania. In Delaware County in 1990, approximately one-half of the children in the Head Start program lived in a kinship care arrangement.

The Department of Public Welfare's Office of Children, Youth and Families (OCYF) has recognized the growth of these families. With a grant from the New York-based Brookdale Foundation, OCYF is in the process of awarding seed grants to eight organizations across the state who wish to establish support groups for kinship caregivers. The locations of these organizations include Altoona in Blair County, South Greensburg in Westmoreland County, Hazleton in Luzerne County, and right here in Lancaster County.

Who are kinship caregivers? Kinship care cuts across all economic, racial, and geographic lines. According to a 1994 US Census update, 68% of kinship caregivers in the United States report themselves as Caucasian, 29% as Black, and 3% as Hispanic. The

median age of grandparent caregivers is 57. Twenty percent are single, the remaining 80% are married. *U.S. News and World Report* stated in 1995 that 40% of kinship care families live at or below poverty level.

Why are children in kinship care? Substance abuse, mental or physical illness, death, incarceration, abuse and neglect, joblessness, teen pregnancy are all reasons for the need for kinship care.

Too many caregivers become parents to relatives' children due to physical illness or death. These people -- people with whom children have an existing relationship -- are often the best choice to care for children after a parent dies or becomes incapacitated by illness. The Standby Guardianship Act allows a transfer of custody from parent to caregiver in a planned, thoughtful way.

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

Under present law in Pennsylvania, there is no easy way for families facing terminal illness to plan for the future custody of their children. The three main options available to families -- wills, court-appointed guardianships, and powers of attorney -- are not sufficient.

Wills, currently one of the most commonly-used ways to designate a future guardian, have several disadvantages. A will is not binding until a judge approves it well after the parent dies, meaning that upon the parent's death, no one -- not the caregiver, the relatives, or the child -- has the assurance that the parent's wishes for the child's future care will be executed correctly and expeditiously by the court. Wills also do not address the possibility of a parent becoming incapacitated before death, leaving children without anyone to care for them. Standby guardianship allows parents to get their choice of a guardian "pre-approved" by a judge and allows the guardian to step in to care for the child during periods of a parent's incapacitation.

Some families try to avoid the problems posed by a will by asking the court to appoint a guardian while the parent is still alive. But another problem arises: the parent must give up all custody rights immediately. As soon as the court approves the guardianship, custody transfers to the guardian -- even if the parent is currently healthy and there is no need to do so.

A third option is to execute a power of attorney to designate someone to take care of a child. However, the person designated only has limited authority, and this expires upon the parent's death. Standby guardianship gives the appointed guardian full authority while the parent is incapacitated and remains in full effect after the parent's death.

I want to conclude by noting the Act's other advantages. First, it will keep children out of foster care, providing them with placements that ensure stability and permanency and retain family ties and traditions, while saving the state's resources. Second, by creating a simple procedure by which a parent may plan for a child's future care, the Act eases the burden on the court system. Finally, the Act provides terminally-ill parents with flexibility and control over their children's care, and thus gives all parties involved -- children, parents and caregivers -- peace of mind that children will be cared for by someone they know and trust.

The Philadelphia Task Force on Kinship Care strongly urges passage of the Standby Guardianship Act. Thank you.

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