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TESTIMONY BEFORE THE JUDICIARY COMMITTEE
OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
ON HOUSE BILLS 418, 463, AND 1639

BY

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representing

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I am Dr. Steven Cohen and, on behalf of the Pennsylvania Psychological Association. I first want to thank Representative Manderino and the other members of the House Judiciary Committee for allowing me to present testimony on these bills dealing with child custody. The Pennsylvania Psychological Association has an active child custody committee that cooperates with family law attorneys, judges, and other interested parties in trying to find effective alternatives to custody litigation, and ways to optimize the benefits to children when litigation cannot be avoided.

We will focus on two issues in the testimony today dealing with a presumption of joint legal custody, and court ordered counseling, although we may be following up with more detailed written comments on other issues later.

Presumption of Custody

House Bill 463 (§5303) states that “an order for joint custody shall be awarded by the court unless the court finds that joint custody is not in the best interests of the child. There shall be a rebuttable presumption that an award of joint custody is in the best interest of the child.” In contrast, House Bill 1639 contains no such presumption.

The position of the Pennsylvania Psychological Association is that there should be no presumption of any particular custody arrangement. Because of the unique characteristics of each family, a parenting arrangement needs to be made that matches of

the abilities of the parents with the developmental needs of the children to ensure the healthy growth and adjustment of the children.

It is true that data from several studies show that many children do well in shared custody arrangements, and often do better than children living in sole legal custody arrangements. However, these results should not be interpreted to mean that shared custody arrangements necessarily create better conditions for all children. Instead, research has shown that shared custody is most effective when parents communicate respectfully with each other for the welfare of their children, and when they do not expose the children to ongoing hostility, conflict or violence. Most likely it is this ability to communicate respectfully and the willingness to shield their children from conflict that gives judges the confidence to order shared custody with a particular family. We should not assume that shared custody necessarily helps make parents better parents, or that it automatically leads to better adjustment in the children. In fact, children exposed to ongoing parental conflict show poorer adjustment in many areas of their lives.

Court-Ordered Counseling

House Bill 1639 (§ 5333 (a)) states that “the courts may require the parents to attend counseling sessions.” However, House Bill 463 (§ 5305(a)) states that “the court “shall require the parents to attend counseling sessions except where the parents have agreed to a custody award, in which case counseling is at the court’s discretion and shall, where the court has ordered counseling, consider the recommendations of the counselors prior to awarding sole or joint custody.”

Children benefit when judges have a wide range of options to rely upon when making custody decisions. Depending on local resources or the needs of the family, judges may order mediation, parenting education courses, coparent counseling, parenting coordination, or other services designed to help parents develop and implement effective parenting plans. Certainly counseling for one or both of the parents (or children) may be indicated in some cases if the goal is to help the parents or the child resolve emotional turmoil, improve relationships, or reach some other treatment goal with the assistance of a mental health professional. However, we do not believe that counseling always helps where the parties do not agree on custody. In many cases, those parties are so intransigent that ordering counseling would not be productive. Additionally, the wording of the bill implies that parents who disagree on custody are acting irrationally. Yet, such disagreements may be a very rational response in certain situations, such as an abusive situation. Therefore we would not want counseling to be mandatory in all cases where parents cannot agree on custody.

Furthermore, we do not believe that judges should require or expect counselors to testify regarding specific custody recommendations. Gathering data or making custody recommendations for the court is a complex skill that requires considerable training and expertise. Not all persons who are competent to provide counseling are necessarily competent to do the comprehensive assessment needed to make a custody recommendation.

In addition, the roles of custody evaluators and counselors are often incompatible. The role of a counselor is to help parties in a trusting and confidential environment.

However, custody evaluations, by their very nature, are not entirely confidential and their goal is primarily to provide information to the court; not to promote the well-being of the individuals participating in the evaluation. Asking a counselor to provide custody recommendations would compromise the quality of the counseling and risk giving the courts incomplete or inaccurate information upon which to base a custody decision.

Thank you for the opportunity to present our views on these important issues. I know that we have had to cover these complex issues succinctly. However, I am available to answer any questions that you might have.