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TESTIMONY ON HOUSE BILL 642

PRESENTED TO THE
HOUSE CHILDREN AND YOUTH COMMITTEE

BY

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I would like to thank Chairwoman Watson, Chairwoman Bishop and members of the House Children and Youth Committee for the opportunity to comment on House Bill 642.

My name is Andrew D. Taylor and I am a family law attorney and partner in the law firm of Weber Gallagher. My practice is limited exclusively to family law, including child custody matters. I have been in practice for 10 years and have had the opportunity to practice law all over the Commonwealth of Pennsylvania including the greater Philadelphia and Pittsburgh areas. I currently practice law in Montgomery County and all surrounding counties.

I am a member of the Pennsylvania Bar Association and serve as co-chair of the PBA Family Law Section's Legislative Committee. While House Bill 642 has been referred to my Committee for review, the Committee has not yet taken a position on the Bill. Therefore, my comments today reflect only my opinions as a family law practitioner, and not those of the Pennsylvania Bar Association, its Sections or Committees.

Let me first say that, conceptually, in certain cases, I agree with the idea of granting a sibling standing in Family Court to obtain some kind of ongoing contact with another sibling. In child custody cases the paramount concern is what is in the best interests of child. It is hard to deny that in certain cases the best interests of the child would be served by continuing a relationship with his or her siblings.

However, today I will highlight some potential concerns I see with the Bill, drawing on my experience as a family law attorney.

Initially, House Bill 642 provides standing for siblings to pursue an action for supervised physical custody or partial physical custody. The terminology here is important. In Pennsylvania, the definition of partial physical custody is "the right to assume physical custody of the child for less than a majority of the time." Simply stated, partial physical custody means that an individual has custody of the child up to 49% of overnights on a regular basis. So, under House Bill 642, a sibling is given the ability to sue for substantial periods of uninterrupted periods of custodial time, or just shy of shared equal physical custody.

By way of example, under House Bill 642, an individual could sue for a custody schedule of his or her brother or sister that would give him the following custody time: every other Thursday afternoon through Monday morning and every Tuesday afternoon through Wednesday morning. Incidentally, this schedule only gives the sibling only 40% of overnights – so the sibling would actually have standing under House Bill 642 for even more time.

Serious consideration must be given to any Legislation that grants a third-party standing to sue for such substantial periods of custodial time and limits parents' access to their children. Perhaps a limitation could be placed on the amount of time a sibling could seek. An example might be to state that a sibling is eligible for contact with their sibling not to exceed one day per

week, and not including overnight custody. Also, there could be regular contact between the siblings via telephone, email, text message or even Skype.

Partial physical custody, of course, is far different from supervised physical custody which is just what the title suggests: some third-party monitoring the interaction between the child and individual seeking custody. Supervised physical custody would certainly be appropriate where the siblings are both young or immature and need supervision. It could also be appropriate where there is any possibility of abuse or harm to the child.

Another issue with House Bill 642 is that it places siblings over grand-parents in Family Court by providing siblings with automatic standing by virtue of their relationship, whereas grandparents or great-grandparents must meet certain criteria to have standing.

Currently, grandparents or great-grandparents have standing to pursue custody of their grandchild or great-grandchild under four circumstances: (1) where the parent of the child is deceased; (2) where the parents of the child have been separated for a period of at least six months or one of the parents has filed for divorce; (3) where the child has resided with the grandparents or great-grandparents for a year; and (4) when all of the following apply: the grandparent's relationship with the child began with the consent of a parent, the grandparent is willing to assume responsibility of the child and the child has been determined to be dependent, the child is at risk due to parental abuse or the child has resided with the grandparent for a year.

House Bill 642 includes no such limitations on a sibling before conveying standing. Instead, a sibling has standing to file for custody by the mere fact that he or she is a sibling.

Presumably, the Legislature did not want to grant grandparents standing to have the ability to pursue a custody matter where the marriage was unbroken, as great deference is given to parents raising their children in an intact family. Why then should there be a difference for siblings? House Bill 642 would permit a sibling to sue parents or guardians for custody of their brother or sister regardless of whether the marriage of the parents was stable or broken.

For example, an 18-year-old emancipated young woman would be granted automatic standing to file an action against her parents seeking custody of one of her minor siblings, even if her parents were together, were never separated and were in a happy, loving, healthy and fully functional family. As explained above, House Bill 642 does not just permit limited visitation of the child. The young woman in this example would have the automatic right to pursue up to nearly half of the time with her sibling, not just limited visits.

A further complication of House Bill 642 is that it permits a parent, guardian or legal custodian of a minor sibling to sue for custody on behalf of that minor. This somewhat blurs the line of who is petitioning the court for custody. This is important because judges must closely

scrutinize the parties who are seeking custody. In a custody case between two parents, or a parent and grandparent, there is no question as to who is seeking custody.

However, if a 40-year-old aunt is the legal guardian of a two-year-old girl and is suing for custody of the two-year-old's brother, who is the petitioner: the child or the aunt? The judge should have the clear ability in such a case to closely scrutinize the aunt, as she will the be custodian of the two-year-old and her brother if a judge grants custody. Yet, House Bill 642 is not clear on this.

Furthermore, potential for abuse of House Bill 642 certainly exists. For example, if this 40-year-old aunt harbors ill feelings toward the biological parents, she could certainly use her standing as an opportunity to make life difficult for the biological parents by suing for custody of their other children. Some requirements should be included that a judge must examine the motives of any adult individual who is pursuing custody on behalf of a minor sibling. That adult should be treated as any other custody litigant in Family Court.

Custody actions are often emotionally charged and sometimes, sadly, more about the adults exacting revenge against one another instead of being focused on what is in the best interests of the child. This should be kept in mind, especially when granting third-parties the ability to seek custody of children.

In 2011, the laws governing child custody in Pennsylvania were substantially amended, and now family court judges are required to consider 16 separate factors in making any award of custody. However, House Bill 642 requires a judge to consider only five factors in ordering custody to a sibling, as follows: (1) the amount of contact between the child and the party prior to the filing of the action; (2) whether the award interferes with any parent-child relationship; (3) the age of the party when partial physical custody only is sought by the party; (4) whether a voluntary agreement for continuing contact exists for the child; and (5) whether the award is in the best interest of the child.

No reference is made to the 16 specific factors that a judge must consider in any other child custody case. It should be clear that a judge must consider any of these 16 factors that apply to a sibling case. For example, some of the 16 factors are:

-whether the party seeking custody is likely to encourage frequent and continuing contact between the child and the parent;

-any past abuse committed by the party seeking custody;

-the need for stability and continuity in a child's life;

-the well reasoned preference of the child based on the child's maturity and judgment;

-any history of drug or alcohol abuse of a party seeking custody or a member of that party's household; and

-the mental and physical condition of a party seeking custody or any number of that party's household.

In any other child custody case, a judge must consider these factors. The same should certainly be true where a sibling is petitioning for custody.

I again thank you for the opportunity to address you today on House Bill 642.