

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

AGING AND OLDER
ADULT SERVICES COMMITTEE

STATE CAPITOL
HARRISBURG, PA
523 IRVIS OFFICE BUILDING

TUESDAY, OCTOBER 26, 2021
9:34 A.M.

BEFORE:

HONORABLE GARY W. DAY, MAJORITY CHAIRMAN
HONORABLE STEVE SAMUELSON, MINORITY CHAIRMAN
HONORABLE ERIC DAVANZO
HONORABLE MARK M. GILLEN
HONORABLE TIM HENNESSEY
HONORABLE MIKE JONES
HONORABLE CARRIE LEWIS DELROSSO
HONORABLE ABBY MAJOR
HONORABLE STEVEN C. MENTZER
HONORABLE BRETT R. MILLER
HONORABLE FRANCIS X. RYAN
HONORABLE WENDI THOMAS
HONORABLE CRAIG WILLIAMS
HONORABLE JESSICA BENHAM
HONORABLE ISABELLA FITZGERALD
HONORABLE NAPOLEON NELSON
HONORABLE DARISHA PARKER
HONORABLE MELISSA SHUSTERMAN

*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

TESTIFIERS

* * *

THE HONORABLE LOIS MURPHY
Montgomery County Orphans' Court.....11

THE HONORABLE EMIL GIORDANO (Retired)
Litigation Department,
Norris McLaughlin.....21

STEVEN M. MONTRESOR, ESQ.
Senior Attorney,
Latsha Davis & Marshall.....25

PAMELA WALZ, ESQ.
Supervising Attorney,
Community Legal Services.....31

SUBMITTED WRITTEN TESTIMONY

* * *

(See submitted written testimony and handouts online.)

P R O C E E D I N G S

* * *

1
2
3 MAJORITY CHAIRMAN DAY: So I'd like to
4 thank everyone for being here today. I'd like to
5 call this public hearing of the Aging and Older
6 Adult Services Committee to order. I'd like to
7 welcome everyone this morning to our discussion
8 on the guardianship system here in Pennsylvania.

9 And before we begin our agenda, please
10 join me in reciting the Pledge of Allegiance.

11 (Whereupon, the Pledge of Allegiance was
12 recited.)

13 MAJORITY CHAIRMAN DAY: I'd like to
14 remind everyone that this meeting is being
15 recorded. So members and guests should please
16 silence all cell phones and electronic devices.
17 I'd like to invite the members present in the
18 room to introduce themselves, starting with --
19 Representative.

20 REPRESENTATIVE WILLIAMS: Thank you,
21 Mr. Chairman.

22 Craig Williams, Pennsylvania's 160th
23 District, Delaware County and Chester County.

24 REPRESENTATIVE SHUSTERMAN: Melissa
25 Shusterman, Chester and Montgomery Counties, the

1 157th.

2 REPRESENTATIVE DAVANZO: Eric Davanzo,
3 58th District, Westmoreland County.

4 MAJORITY CHAIRMAN DAY: I'm Chairman Gary
5 Day, Lehigh and Berks County.

6 REPRESENTATIVE HENNESSEY: Tim Hennessey
7 from Chester County in southeast Pennsylvania.

8 REPRESENTATIVE NELSON: Napoleon Nelson,
9 the 154th in Montgomery.

10 REPRESENTATIVE RYAN: Frank Ryan, 101st
11 District, Lebanon County.

12 REPRESENTATIVE GILLEN: Mark Gillen,
13 128th Legislative District, Berks and Lancaster
14 Counties.

15 MINORITY CHAIRMAN SAMUELSON: Steve
16 Samuelson from the Lehigh Valley, the Democratic
17 Chair of the Committee.

18 MAJORITY CHAIRMAN DAY: We're also joined
19 by members virtually. I know right now we have
20 Representative Fitzgerald virtually. Thank you
21 for joining us today.

22 You know, I just wanted to make brief
23 opening remarks, just as a way to set the stage
24 for what we're doing. Guardianship issues --

25 Some reverb there.

1 Guardianship issues have really held my
2 interest since I became Chairman of the Committee
3 nearly two years ago. The more conversations
4 that I've had with Committee members and
5 interested stakeholders, the more I need -- the
6 more I found the need in maybe reforming, or at
7 least examining aspects of the guardianship
8 system here in Pennsylvania. The purpose of our
9 hearing today is to discuss that system and how
10 several current pieces of legislation before our
11 Committee could change that and make it better.

12 Before we move on to our panelists, I
13 wanted to give a brief summary of the bills that
14 we are reviewing here today. I am sponsoring two
15 of the bills on our agenda today, HB 1356 and
16 HB 1928. I want to, you know, underline or
17 underscore that I am open to any Committee
18 members, any House members, even Senate --
19 Senators' ideas on guardianship. It just so
20 happens that these are the ones I was interested
21 in and wanted to examine here today, as well.

22 We -- HB 1356 amends the Human Services
23 Code to increase the reimbursement rate under
24 medical assistance program for guardians of older
25 the adults. It increases it to \$300 per month,

1 and it's subject to Federal approval in the DHS
2 state plan. HB 1928 amends Title 20 to require
3 appointment of counsel for any individual alleged
4 to be incapacitated. Currently, orphans' court
5 rules require that courts advise every person
6 adjudicated to be incapacitated that they have a
7 right to counsel, appointed for them free of
8 charge. This bill ensures that those individuals
9 who may lose their right in a court proceeding
10 make sure that they are legally represented.

11 Representative Gillen, would you like to
12 make brief comments to summarize your bill?

13 REPRESENTATIVE GILLEN: Yes, very
14 briefly. Thank you, Mr. Chairman.

15 Thank you Shannon Walker, as well as our
16 testifiers here today. If I could just give a
17 little bit of background. This whole thing is
18 only going to take two minutes.

19 There was a series of articles in The
20 Philadelphia Inquirer. Many of you that are
21 attending this hearing today are familiar with
22 those articles. There's a name that came up,
23 Gloria Byars, which again, unless you're
24 following this closely, you may not be familiar
25 with her.

1 She had a stint in jail, a halfway house,
2 and was also confined to her home. So despite
3 the fact that she was incarcerated and she was
4 convicted of financial fraud and forgery, a court
5 appointed her to guardianship situations.
6 Eventually, it encompassed over 100 individuals.

7 And so I'm asking myself, how does this
8 happen? And I realize, not only do we have a
9 local problem with an individual, we had a
10 statewide problem. Indeed, we have a national
11 problem with tens of billions of assets being
12 entrusted. And we may have upwards of a million
13 guardians or a million in guardianship
14 situations.

15 So I decided, you know, if we could just
16 build a skeletal system to begin with. I don't
17 think my bill, or any individual bill, answers
18 all these concerns, but why not simply have a
19 background check in place. And that vetting
20 process could have eliminated a lot of the
21 problems, not only that we're reading about in
22 this situation, but across the board.

23 And so my bill proposes -- and it's very
24 simple; it's on page two of the bill, a
25 Federal/State background check to establish the

1 fact that the individual is legally able to -- to
2 work in the United States. So I would ask for
3 your consideration. I would ask for your input.
4 And I would say to members, I solicit amendments
5 to this bill because this is a starting point.

6 Thank you, Mr. Chairman.

7 MAJORITY CHAIRMAN DAY: Thank you,
8 Representative Gillen. I appreciate, you know,
9 your interest in these matters and willingness to
10 work within the Committee and the House to try to
11 affect proper changes.

12 You know, I just want to make sure that I
13 do set the table on how I view what we're talking
14 about. Guardianship issues are issues that --
15 where the courts make a determination that a
16 person cannot, you know, exercise their own
17 rights and need protection, and need someone
18 else, a guardian, to step in. Representative
19 Gillen is talking about addressing, as he said,
20 you can't address everything with one bill, but
21 one of the important things is the high standard
22 of ethics for our guardians, and that we as a
23 government try to make sure that we have
24 guardians and a system in place to weed out
25 possible bad actors in this space. It's part of

1 our responsibility.

2 So I appreciate Representative Gillen for
3 bringing this forward.

4 I also do want to acknowledge the role of
5 the court. The courts have committees and work
6 within their organization to make sure that a lot
7 of issues that they deal with are addressed and
8 addressed legislatively, if they have to be, or
9 they address it themselves through their own
10 operations, procedures, and manuals.

11 So I appreciate, you know, the courts'
12 efforts to do that and work together with the
13 legislature and the judiciary and also with the
14 administration.

15 With that, I'd like to recognize
16 Chairman Samuelson, if you have any comments or
17 would like to address the Committee or testifiers
18 before we begin.

19 MINORITY CHAIRMAN SAMUELSON: Thank you,
20 Representative Day. Thank you for convening this
21 hearing so we can consider changes and
22 improvements to the State law regarding
23 guardianships.

24 I look forward to the testimony from this
25 all-star panel, including retired Judge, Emil

1 Giordano from the Lehigh valley.

2 MAJORITY CHAIRMAN DAY: Thank you,
3 Chairman. I appreciate that.

4 In the interest of time, I'm going to ask
5 each presenter in the opening panel to limit your
6 opening remarks to about five minutes. Of
7 course, if you need more time, you're welcome to
8 take as much time as you need, but it's just a
9 general guidance to try to keep the hearing
10 organized and that allows us to also have ample
11 time for discussion afterwards. The interaction
12 from members is what helps the legislative
13 process to get legislation passed, as everyone
14 here knows, but I just like to say that and
15 repeat that every time.

16 This morning we are joined by our
17 testifiers, Judge Lois Murphy of Montgomery
18 County Orphans' Court. She's here in person
19 today. Judge Emil Giordano, co-chair Litigation
20 Department at Norris McLaughlin. Steven
21 Montresor, senior attorney with Latsha Davis and
22 Marshall, in person as well. And Pamela Walz,
23 supervising attorney with Community Legal
24 Services, and she's joining us virtually.

25 Thank you all for being here. We have

1 also received testimony from PALA, and that is in
2 your packets that were provided to members today.
3 So that's more information regarding this that
4 they wanted to submit.

5 So again, thank you for being here. And
6 would you -- okay.

7 would all the testifiers please stand and
8 raise your right hand to be sworn in.

9 (Whereupon, testifiers were sworn en
10 masse.)

11 MAJORITY CHAIRMAN DAY: Thank you.

12 Judge Murphy has graciously offered not
13 only to provide testimony on these bills, but to
14 frame the hearing by providing a quick overview
15 of the guardianship process and proceedings.

16 Judge Murphy, would you like to start us
17 off?

18 JUDGE MURPHY: Thank you, Chairman.
19 Thank you, Chairman Day, Democratic Chair
20 Samuelson, and members of the House Committee on
21 Aging and Older Adult Services for inviting me to
22 be with you this morning and to speak with you
23 about the important reforms you are proposing for
24 guardianships in Pennsylvania.

25 I'm speaking today in my individual

1 capacity as a trial judge who's handled
2 hundreds of guardianship petitions and
3 proceedings over the past 12 years. My comments
4 do not reflect a position of the Supreme Court or
5 the AOPC or any other court. Nevertheless, I
6 hope that my answers to you, on a practical level
7 to your questions, and my remarks may be helpful
8 as you consider these issues.

9 And I know from your remarks, at least
10 from Representative Day and Representative
11 Gillen, that you're already knowledgeable in this
12 area. So I hope I don't waste your time, but I
13 do want to give you some background so we can all
14 start on the same page.

15 Guardianship, as you know, is also known
16 in some other states as conservatorship, where it
17 applies to funds, and it has been much in the
18 news the past few years, as Representative Gillen
19 has pointed out. Guardianship is a legal
20 proceeding in which the court is asked to
21 determine whether a person lacks the ability to
22 make their own decisions, and if so, whether to
23 appoint another person to make all decisions for
24 that person.

25 Essentially, when a person is not able to

1 make decisions, a guardian may be needed to help
2 that person consent to medical treatment, decide
3 where to live, pay bills, and apply for benefits.
4 The majority of cases in Pennsylvania each year,
5 approximately 65 percent of the cases brought,
6 involve adults over the age of 60. So the
7 jurisdiction of this Committee is highly
8 appropriate.

9 Another 40 percent, though, also seek
10 appointment of a guardian for people under age
11 60. And many of the cases, approximately 40
12 percent of all cases in both categories, are
13 filed by family members. Another 40 percent are
14 filed by agencies, such as the Area Agency on
15 Aging, or in some cases, hospitals and nursing
16 homes and other institutions.

17 A guardianship petition may be brought to
18 protect the well-being of a person with an
19 intellectual ability, autism spectrum disorder,
20 stroke, traumatic brain injury, dementia, or
21 other reason for a cognitive impairment. The
22 most common cases that we see do involve adults
23 over the age of 60 with cognitive impairments.

24 Determining that a person is
25 incapacitated and appointing a guardian are among

1 the most significant deprivations of personal
2 liberty that a court can impose. A person for
3 whom a guardian is appointed loses the basic
4 right to make all of their own decisions and no
5 longer has control of their liberty or their
6 property. When considering whether to deprive a
7 person of liberty to this extent, on par with
8 incarceration for a crime, courts must ensure
9 that the due process rights of the alleged
10 incapacitated person are given the highest level
11 of protection as required by Pennsylvania and the
12 United States Constitutions.

13 We do not appoint guardians lightly. In
14 fact, in many cases, the needs of a person with a
15 disability may be met without appointing a
16 guardian. So I hope this background as to what
17 we're doing in these cases is helpful. And
18 of course, I'll answer your questions about any
19 specific procedures, but I wanted to take a
20 moment to talk about the opportunities for
21 reform, that I know you're focused on.

22 First, I'm aware that Representative Day
23 has introduced -- I should say Chairman Day --
24 has introduced legislation to require the
25 appointment of counsel for every person alleged

1 to be incapacitated. As I said, a person over
2 whom guardianship is sought has a right to due
3 process. And a right to be represented by
4 counsel is essential to asserting their rights to
5 due process, to cross-examine any expert witness
6 on the nature of the incapacity, to cross-examine
7 any proposed guardian.

8 Frequently, counsel for the alleged
9 incapacitated person is able to identify an
10 alternative to guardianship that will meet the
11 needs of the person without the severe
12 deprivation of rights and autonomy that would
13 occur were the court to appoint a guardian. Our
14 current statute contemplates that a person has
15 the right to counsel, but qualifies it by saying
16 that counsel shall be appointed in, quote,
17 appropriate cases.

18 Across the Commonwealth, the practice of
19 courts varies. I believe that due process
20 requires that capable counsel represent every
21 person who may or may not need a guardian. Our
22 current statute and rules does contemplate that
23 counsel will be appointed if the person requests
24 it, and particularly emphasizes that right after
25 the initial hearing in a person seeking to file

1 an appeal. That's emphasized in our current
2 orphans' court rules, that a person needs to be
3 notified they have a right to counsel to
4 represent them in an appeal or to seek to modify
5 the guardianship, but I would urge you to make
6 clear -- clearer than the statute currently makes
7 -- that guardianship -- that counsel should be
8 appointed from the beginning of the initial
9 petition and hearing.

10 I would point out that we recognize the
11 need for counsel in all criminal cases that may
12 result in a deprivation of liberty, in all mental
13 health commitment cases, which may also result in
14 a temporary deprivation of liberty. The total
15 deprivation of liberty and autonomy in a
16 guardianship is surely so significant that a
17 person who is a subject of a guardianship
18 proceeding must also be entitled to
19 representation of capable counsel. And I think
20 we've been moving in that direction, but we're
21 looking for you to help lead us the way to
22 greater clarity on that issue.

23 Competent counsel can assist the person
24 in inserting his or her rights not to have a
25 guardian and can assert that they are not

1 incapacitated or that there are less restrictive
2 alternatives to guardianship that will be
3 effective to meet their needs for help in
4 decisionmaking.

5 without capable counsel, the court may be
6 deprived of relevant facts. It's difficult,
7 maybe impossible, for the court to reach as good
8 a decision as it should in such an important case
9 without having all of the facts for the entire
10 context presented to the court.

11 Second, I understand that Representative
12 Gillen has introduced legislation, as he
13 described, to require a criminal background check
14 before a person may be appointed as a guardian.
15 Please remember that when a court appoints a
16 guardian of the estate for a person, that
17 guardian is granted essentially unfettered
18 authority over the person's assets and income.
19 We have had cases across the country and here in
20 Pennsylvania -- as Representative Gillen noted --
21 of guardians abusing that trust and
22 misappropriating funds of the person whom they
23 were appointed to serve.

24 And we have had cases in which we learned
25 years later that a court-appointed guardian had a

1 prior criminal record. The case that
2 Representative Gillen referred to, Gloria Byars
3 had a criminal record in the State of Virginia,
4 which she did not disclose when she initially
5 asked to be appointed as a guardian. So it
6 wasn't something that the courts had access to
7 know about her background under the statutes as
8 -- the statute as it currently exists.

9 We do have a rule now that requires a
10 Pennsylvania State criminal record check under
11 the Pennsylvania Orphans' Court rules, but does
12 not require a Federal criminal record check. So
13 that is an important distinction. If we can have
14 that national check, we would have a lot more
15 information about the people we're seeking --
16 who are seeking to be appointed as guardians.

17 Some have expressed concerns about
18 requiring a criminal background check from family
19 members as possibly imposing a burden on
20 well-meaning family members, and we need to take
21 this concern seriously. And yet, I would suggest
22 that a criminal record is relevant to a court's
23 decision whether to appoint someone with broad
24 authority of guardian in either case. While most
25 family members are honorable and

1 well-intentioned, the sad truth is that some
2 family members are the very people that are
3 exploiting their relatives and who take their
4 assets.

5 And the third piece of legislation that
6 Chairman Day mentioned, and has proposed, is
7 legislation to increase the monthly fee payable
8 to a professional acting as a guardian of the
9 estate, where the person for whom they are the
10 guardian receives a medical assistance long-term
11 care grant. This may seem an esoteric issue, but
12 it is an important one.

13 Courts are asked, in some cases, to
14 appoint a professional guardian because there are
15 no family members involved or available or able
16 to serve. Because we are cautious about the
17 dangers of guardianship cases, we are
18 increasingly demanding and expecting that those
19 people we appoint as court-appointed guardians
20 have training and education. In my county, we
21 require a professional guardian to have a
22 certification, and we expect the guardian to make
23 monthly visits to see the incapacitated person
24 and to be familiar with their medical and
25 financial issues.

1 we have high expectations, and we should,
2 of the people serving as court-appointed
3 guardians, that they will be people who are
4 attentive, responsible, and of the highest
5 ethics, integrity, and honesty. Representative
6 Day's legislation is important to assure that
7 professional guardians can be found, who have the
8 skills, integrity, and ability to serve honorably
9 in this important role.

10 For more than 20 years, as I understand
11 it, the compensation set for guardians of a
12 person of little or no means, who's in a
13 long-term care setting, has been limited to
14 \$100.00 per month. I'm hearing from judges
15 across the Commonwealth that in many counties,
16 they cannot find professional guardians willing
17 to take an appointment in such cases where the
18 fee will be limited to \$100.00 per month.

19 Some non-profit entities in this area
20 that often serve as professional guardians have
21 attempted to quantify the expense of -- and time
22 required to perform as a guardian of a person and
23 estate, and there's no question that excellent
24 services from a guardian require significantly
25 more time than can be covered by a \$100.00 a

1 month fee for the guardian.

2 That concludes my opening remarks, but I
3 hope you will have questions. And I'm certainly
4 prepared to discuss this issue further with all
5 of you. And thanks again for inviting me to join
6 you.

7 MAJORITY CHAIRMAN DAY: Thank you so
8 much.

9 I do want to make a brief comment about
10 the structure of the hearing, that we are aware
11 that there are competing meetings today. So a
12 lot of our members will be in and out. Some here
13 now will be gone, and some will be attending
14 them.

15 And I wanted to note that we've been
16 joined by Representative Parker, who's joined us,
17 and also Representative Major. So with that
18 housekeeping accomplished, next, we'd like to go
19 to our next panelist, Judge Giordano.

20 JUDGE GIORDANO: (Microphone not
21 functioning.)

22 MAJORITY CHAIRMAN DAY: Judge, excuse me
23 for a moment. Would you pull the microphone
24 closer?

25 we have people virtually, and we're also

1 recording this for people to watch later. So we
2 want to --

3 JUDGE GIORDANO: All right.

4 MAJORITY CHAIRMAN DAY: Pull that in real
5 nice and tight and --

6 JUDGE GIORDANO: All right.

7 MAJORITY CHAIRMAN DAY: I appreciate
8 that. Thank you so much.

9 I'm -- I apologize for interrupting you.

10 JUDGE GIORDANO: No, that's okay.

11 MAJORITY CHAIRMAN DAY: And I should have
12 prefaced introducing you that we had a panelist
13 group and one couldn't make it, pretty much -- I
14 don't want to put them out too much by saying
15 last minute, but in our world, it was kind of
16 last minute -- and I called the Judge and asked
17 him if he would step in today. So I really
18 appreciate that you did that so that we could
19 have a full great panel here today. And I should
20 have prefaced my introduction with that.

21 JUDGE GIORDANO: I appreciated 24 hours'
22 notice.

23 well, I am -- I was appointed by the
24 Pennsylvania Supreme Court to the Orphans'
25 Senate, Statewide Orphans' Court Rules Committee.

1 And I presently am serving as the acting Chair,
2 and I'm a member of the Board of Trustees for the
3 Center for Guardianship Certification. And I
4 presented on guardianships for the Register of
5 Wills organization and for the State Pennsylvania
6 Conference of Trial Judges.

7 And I say that because today I speak, not
8 as a member of the Orphans' Court Rules Committee
9 or the Center for Guardianship Certification,
10 rather as a retired judge and as a practitioner
11 who is deeply concerned about the plight and the
12 seriousness and the problems with the present
13 guardianship system in this great Commonwealth.

14 Last week I had the opportunity to review
15 all three bills before the Committee, and I am
16 fully in favor of all of them. And without
17 repeating all of Judge Murphy's comments, I do
18 want to state that I am fully in favor of Bill 13
19 -- 1536, which increases the reimbursement rate
20 to \$300.00.

21 HB 1890, introduced by Representative
22 Gillen, is a -- is a great bill. I do not
23 believe that family members should be exempted
24 because of Judge Murphy's comments. And I myself
25 have encountered this many times where the family

1 members are often in the best position to commit
2 malfeasance.

3 And even professional guardians often
4 come into contact with cash and very -- valuables
5 within a home. In Northampton County, we took it
6 a step further. Not only did we require a
7 criminal background check, but we did a credit
8 history check on people to determine whether or
9 not we believe that they would be well-suited to
10 serve as guardians.

11 HB 1928, I'm highly in favor of this.
12 And also, Judge Murphy's comments are well taken
13 that the bill should be amended to reflect that
14 it's mandatory from the onset. I was shocked to
15 learn several years ago at the Pennsylvania State
16 Trial Judges Conference that probably less than
17 half the counties in this Commonwealth do this in
18 regular practice. And what they most often cite
19 is lack of funding.

20 I know Northampton County does it on a
21 regular basis, as does Lehigh County. I'm not
22 sure what happens in Montgomery County, but we
23 have lawyers that agree to do these services at a
24 reduced rate. They're presently paid \$175.00 an
25 hour. And it was tough as a judge there to find

1 lawyers that wanted to do it at that rate, but
2 young lawyers oftentimes kind of take that work
3 on.

4 of course, that ends my comments. I will
5 be available for any questions.

6 MAJORITY CHAIRMAN DAY: Thank you, Judge.

7 I appreciate your comments and, you know,
8 support of these efforts. And you know, you're
9 going to be a great person also to take questions
10 from the members that -- I don't even anticipate
11 what their questions will be, but you guys will
12 be able to handle that.

13 with that, I'd like to move to Steven
14 Montresor, our next testifier.

15 Steven.

16 MR. MONTRESOR: Thank you, Chairman.

17 Chairman Day, Chairman Samuelson, members
18 of the House Aging and Older Adult Services
19 Committee, as a representative for LeadingAge PA,
20 thank you for the opportunity to speak today on
21 the guardianship system in Pennsylvania.

22 LeadingAge PA represents more than 380
23 nonprofit providers of senior health care,
24 housing, and community services across the
25 Commonwealth. My name is Steven Montresor. I've

1 been a practicing attorney in the Commonwealth of
2 Pennsylvania since 1995. I've been with the law
3 firm of Latsha Davis and Marshall since 1997.

4 Our firm serves as general counsel to
5 LeadingAge PA and provides legal services to many
6 of its members throughout the Commonwealth.

7 These organizations provide services to some of
8 the most frail, elderly, and vulnerable citizens
9 of Pennsylvania.

10 Our clients may wish to initiate
11 guardianship proceedings for one of their
12 residents because the resident has become
13 incapacitated and may not have anybody to manage
14 their healthcare decisions or their finances or
15 apply for medical assistance benefits on their
16 behalf, which can be a complicated process.

17 Unfortunately, more frequently, the
18 reason that our clients are pursuing guardianship
19 is that the alleged incapacitated person is
20 suffering from financial abuse, often at the
21 hands of his or her agent, who is often -- well,
22 thought to have been a trusted family member. As
23 a practitioner, the lack of consistency and
24 uniformity of the guardianship practice and
25 procedure across the Commonwealth can make

1 multi-county practice a challenge, but I believe
2 HB 1928 will standardize the approach to
3 court-appointed counsel.

4 Given that an individual's rights will be
5 severely impacted by the determination of
6 incapacity and appointment of guardian, I, like
7 the judge to my left and right, believe that
8 HB 1928 will help safeguard the rights of
9 citizens of the Commonwealth of Pennsylvania. My
10 comments about the bill are more fully detailed
11 in my written testimony, however, there is one
12 point I would like to address now.

13 The language of the bill requires counsel
14 to advocate for the client's expressed wishes,
15 consistent with the client's instructions to the
16 extent the client is able to express those wishes
17 and instructions. This requirement can present a
18 challenge in the long-term care setting. A
19 majority of those cases arising in the long-term
20 care setting involve residents who are suffering
21 from dementia, and who often have other overlying
22 health issues.

23 As a result, it is difficult for such
24 individuals to articulate their wishes with a
25 full understanding of the implications of those

1 wishes. And most frequently, their wish, as is
2 the wish of many individuals who are in nursing
3 homes, is to just simply go home.

4 In one case I was involved,
5 court-appointed counsel attempted to return a
6 client to her home, despite a dementia diagnosis
7 and a history of falls, simply because the
8 resident expressed a desire to return home. In
9 another matter, court-appointed counsel advocated
10 for the resident's wish to be discharged to the
11 care of her son, who was her agent, despite the
12 fact that the son had been nonresponsive to the
13 facility for several months on healthcare issues
14 and financial issues.

15 These cases, I need to point out, are
16 outliers. But I am concerned that directing
17 court-appointed attorneys to honor their client's
18 witnesses -- or wishes without qualification can
19 lead to more outcomes like these, where if
20 counsel doesn't appreciate the unique issues
21 involved with a client in a long-term care
22 setting, they may wind up putting that person in
23 a greater risk of harm.

24 And to be clear, I'm not suggesting that
25 every person in a nursing facility or personal

1 care home can never be discharged under any
2 circumstances. What I'm saying is that the
3 discharges should only be undertaken with the
4 ultimate safety and well-being of the resident in
5 mind, and that perhaps, such efforts are arguably
6 outside the scope of representation of the
7 court-appointed counsel in a guardianship matter.

8 Likewise, LeadingAge supports the passage
9 of HB 1890, subject to the concerns that I raised
10 in my written testimony. There are a couple of
11 issues that I'd like to highlight. First, the
12 guardianship statute indicates that the Court can
13 appoint individuals, corporate fiduciaries,
14 non-profit corporations, guardianship support
15 agencies, or county agencies in no particular
16 order of preference. However, PA Orphans' Court
17 Rule 14.6 requires the court to consider the
18 eligibility of individuals to serve as a guardian
19 in a very specific order, mainly favoring family
20 and close friends over a professional guardian or
21 agency.

22 As I already mentioned, in many cases
23 where we pursue a guardianship, it involves a
24 family member who is committing the abuse, so
25 creating a hierarchy where you are potentially

1 examining the process of putting someone back
2 into a family situation can present a potential
3 conflict to a family member if they have to, say,
4 utilize the legal process in order to pursue
5 their family member or make a referral to, you
6 know, like if a sibling is committing financial
7 abuse, they may have to refer their sibling to
8 law enforcement. And that presents, I think, an
9 inherent conflict for a family member. That
10 conflict does not exist when it comes to
11 appointing a professional guardian.

12 Also, I'm concerned narrowly about the
13 application of the criminal background
14 requirements as it pertains to emergency
15 guardianship situations. While a guardianship
16 agency or professional guardian would presumably
17 always have a current background check available,
18 it is unlikely that individuals will.

19 So in cases where an individual who is
20 incapacitated has an emergent medical need,
21 requiring the prospective guardian who is a
22 family member to obtain a federal criminal
23 background check can result in delay of
24 appointment and delay of getting the urgent care
25 that they so desperately need.

1 On behalf of myself and the leadership of
2 LeadingAge PA, thank you for the work that you do
3 to support and protect seniors and senior service
4 providers across Pennsylvania. LeadingAge PA
5 looks forward to working with you to help
6 long-term care providers across the continuum.
7 And I would be happy to answer any questions that
8 you have.

9 MAJORITY CHAIRMAN DAY: Thank you so much
10 for your testimony.

11 I'd like to just make another quick
12 announcement that we've been joined by
13 Representative Benham. She's joined virtually --
14 joined our hearing. Thank you for being here.

15 So thanks again, Steven, for your
16 comments. Appreciate that, as well.

17 With that, we'll move to our final
18 testifier, Pamela. She's with us virtually. You
19 can go ahead, Pamela.

20 MS. WALZ: Great.

21 Good morning, Chairman Day, Democratic
22 Chairman Samuelson, Representative Gillen, and
23 the members of the House Aging and Older Adult
24 Services Committee. Thank you for taking up the
25 critically important issues surrounding

1 guardianship and for the opportunity to testify
2 today.

3 Community Legal Services, where I work,
4 provides free civil legal assistance to
5 low-income Philadelphians, assisting clients with
6 the loss of their homes, incomes, health care,
7 and even their families. Our Health and
8 Independence Unit, where I work, focuses on legal
9 cases involving public benefits and services for
10 older adults and people with disabilities.

11 We regularly represent clients who are
12 experiencing legal issues connected to
13 guardianship. This includes representing people
14 who wish to contest a guardianship petition
15 that's been filed against them, or people who are
16 seeking representation to -- who've been
17 adjudicated incapacitated, but are seeking
18 restoration of their rights.

19 Others come to us because their guardian
20 is not attending to their needs, or perhaps even
21 returning their phone calls. For some, a less
22 restrictive alternative would meet their needs
23 and make a guardianship unnecessary. And
24 occasionally, we see cases where a guardian has
25 mismanaged or stolen funds.

1 I would like to express our strong
2 support for HB 1928 and thank Chairman Day for
3 introducing it. Over the years, I have
4 encountered -- I've often encountered clients
5 who've had a guardian appointed without having
6 legal representation in the petition proceedings.
7 The consequences of an adjudication of incapacity
8 and the appointment of a guardian are profound,
9 as the other testifiers have noted today.

10 The individual is stripped of their
11 rights to decide where to live, to make
12 healthcare decisions, and to handle their
13 finances. A guardian may decide to sell their
14 home and to place them in a nursing facility
15 against their will. Where such fundamental
16 liberty interests are at stake, it seems clear
17 that constitutional due process requires the
18 appointment of counsel.

19 I'd like to note that 20 states and the
20 District of Columbia have recognized the
21 necessity of legal representation in proceedings
22 to appoint a guardian by providing a categorical
23 right to counsel. An additional 24 states also
24 have the right to appointment of counsel,
25 although the individual may have to request it

1 and the role of counsel may vary in those states.

2 Pennsylvania is one of the six states in
3 the nation which do not provide for the
4 appointment of counsel in all cases, instead
5 leaving it to the court's discretion. In
6 practice, the result is that many, perhaps most
7 people, face guardianship proceedings without a
8 lawyer in Pennsylvania.

9 The likelihood of counsel being appointed
10 varies widely by county, with some counties
11 deeming it appropriate to appoint counsel in all
12 cases and others doing it so far less -- less
13 frequently. Without an attorney, the individual
14 is left to navigate court and evidentiary rules,
15 to determine what is relevant to argue, and to
16 obtain supportive medical evidence on their own,
17 without an understanding of the legal standards
18 for guardianship in Pennsylvania. Having an
19 attorney can make a real difference in the
20 outcome of a case.

21 In addition to contesting whether the
22 person is incapacitated, counsel can advocate for
23 a limited guardianship tailored to the
24 individual's specific needs, rather than a
25 plenary guardianship in which they lose all of

1 their rights. An attorney can also advocate for
2 a less restrictive alternative, such as the use
3 of a power of attorney, representative payee to
4 handle social security benefits.

5 For healthcare decisionmaking, in
6 addition to a health care power of attorney,
7 family members and others can act as a health
8 care representative. In addition, supportive
9 decisionmaking is a rapidly growing alternative
10 to guardianship, in which a circle of support
11 persons assist the individual making decisions.

12 An attorney can also advocate concerning
13 the choice of guardian and promote a care plan
14 that is consistent with the person's values and
15 wishes. And perhaps -- and also very
16 importantly, having an attorney makes it possible
17 for the -- to ensure that the voice of the
18 alleged incapacitated person and their wishes,
19 their values, and their concerns are heard in the
20 proceeding.

21 We do strongly support the bill's
22 definition of the role of counsel as an advocate
23 for the expressed wishes and consistent with the
24 client's instructions. The role of an attorney
25 is to be a zealous advocate for the expressed

1 wishes of their client. People facing
2 guardianship proceedings, where their most
3 fundamental rights are at stake, are also
4 entitled to have their attorney play this role on
5 their behalf. This is in accordance with Rule
6 1.14 of the Pennsylvania Rules of Professional
7 Conduct, which provide that a client's -- that
8 where a client's capacity is diminished, the
9 client shall, as far as reasonably possible,
10 maintain a normal client-lawyer relationship.

11 We also support HB 1356's increase in
12 reimbursement. One reason is to provide enough
13 compensation to improve the quality and amount of
14 attention guardians provide for their wards.
15 Currently, there are no formal standards for
16 what's expected or required of guardians, and the
17 adequacy of services provided varies widely.

18 One way to set standards and improve the
19 quality of services is to require professional
20 guardians to obtain certification. And so we
21 would encourage the pairing of the fee increase
22 with requirements, such as a certification
23 requirement, to better define and improve the
24 quality of services that guardians provide.

25 Thank you for the opportunity to comment

1 on HB 1890, as well. We support the use of
2 criminal background checks for professional
3 guardians to identify and avoid the appointment
4 of individuals who have a history of criminal
5 conduct that has a relationship to the duties of
6 a guardian. And the case of Gloria Byars, which
7 was discussed, demonstrates that need.

8 We've got concerns, however, about the
9 use of criminal background checks for family
10 members. People who are subject to a
11 guardianship petition generally have a preference
12 for their own families to serve as guardian. And
13 these are the people who will best know the
14 person's needs and have the greatest concern for
15 their well-being.

16 So we want to make sure that criminal
17 background checks do not unduly interfere with
18 the goal of appointing family members wherever
19 possible. And Past convictions may have no
20 bearing on whether a potential guardian bears a
21 risk to close family members whose well-being is
22 important to them.

23 We're especially concerned that requiring
24 criminal background checks could result in a
25 disparate impact against black and Hispanic

1 family members. Black and Hispanic people are
2 arrested and incarcerated at rates
3 disproportionate to their numbers in the general
4 population. This creates a concern that the use
5 of criminal background checks could make it more
6 difficult for them to serve as guardians for
7 loved ones. To avoid this, we encourage you to
8 consider including factors for courts to consider
9 as they utilize the criminal background check
10 information.

11 In the employment context, the EEOC has
12 issued guidance governing the use of criminal
13 background records in making employment
14 decisions. It contains three factors for
15 employers to consider. These factors are the
16 nature and gravity of the offense, the time that
17 has passed since the offense, and the nature of
18 the job for which the individual is being
19 considered.

20 We urge you to consider adding factors
21 such as this for courts to consider in
22 determining whether there's enough of a nexus
23 between an offense and the requirements of acting
24 as a guardian, as well as whether recidivism is
25 likely, given the time which has passed since the

1 offense.

2 The bill should also direct courts to
3 undertake an individualized assessment after
4 background check results are received, to allow a
5 potential guardian to present information bearing
6 on their fitness to serve. This may include
7 information about the accuracy of background
8 checks or facts showing that the person has
9 performed responsibly in a similar role.

10 This is especially important because the
11 results of criminal background checks can be
12 inaccurate. For example, the FBI Interstate
13 Identification Index often doesn't include the
14 final disposition of cases because of problems
15 with the flow of information between agencies and
16 that Index.

17 In addition, the FBI Index still contains
18 all of the cases that were sealed as a result of
19 the Clear Slate legislation because the State --
20 the Pennsylvania State Police have not yet sent
21 that information to the FBI Index. That means
22 that 46 million cases will still appear in the
23 FBI background check results, despite the fact
24 that Pennsylvania legislators determined that
25 these records are to be sealed.

1 Finally, we urge you not to apply to
2 family, and other non-professional guardians, the
3 requirement to provide proof of eligibility to
4 work in the United States. Where family members
5 and friends act as lay guardians, they're
6 providing a service generally without being paid.
7 Therefore, compliance with the US employment
8 authorization requirements is really not relevant
9 to them, and it could create a big barrier for
10 immigrant families to serve as guardians for
11 their loved ones.

12 Thank you again for the opportunity to
13 testify today. And I'd be happy to respond to
14 any questions.

15 MAJORITY CHAIRMAN DAY: Thank you so much
16 for your comments. I think you have offered
17 important information to address the concerns
18 that, you know, you see in your day-to-day
19 efforts in the guardianship space. I think
20 you've provided, you know, I -- you had -- you
21 had talked about an issue and then you provided
22 the solution, the remedy, you know, which is very
23 helpful. So I really appreciate that.

24 I'm sure a lot of what I'm talking about
25 now is associated with Representative Gillen's

1 bill, so I'm sure he'll take those comments into
2 account and try to work to make the bill the best
3 it can be.

4 So I just want to say thank you for that
5 and all of your comments, Pamela. I really
6 appreciate that.

7 with that, I'd like to just say, before
8 we move on to questions -- questions are next.
9 We have a list of people. If you're
10 participating virtually, just use the raised hand
11 function in the chat if you wish to be recognized
12 for a question, or even an answer if we don't see
13 you. If you're on there visually waiving,
14 sometimes we miss that. So use that chat
15 function to raise hand to be recognized
16 virtually.

17 So I usually like to try to prime the
18 pump on questions with a question. I'm going to
19 ask -- first, I'm going to ask, Steven, you know,
20 your firm has -- you know, you're practicing
21 possibly across different counties, right. So
22 could you talk to us a little bit about HB 1928,
23 and if you believe that the standardization of
24 appointment of counsel is important and just kind
25 of underline that.

1 You went there. My question is meant to
2 allow you to go a little bit further and deeper
3 if you'd like to.

4 MR. MONTRESOR: Yeah. Thank you.

5 I'd love to. I think it's really
6 important. And you know, we've talked about the
7 impact on the rights of the alleged incapacitated
8 persons, and it is surprising to me that, you
9 know, in my experience in some counties, you can
10 write a letter advising that an individual has
11 not retained an attorney. And then, if you're
12 not specifically soliciting the appointment of an
13 attorney, that person still may not have an
14 attorney.

15 There was another county that I practiced
16 in -- this is many years ago, and I don't know if
17 the county still has this practice where, you
18 know, if you file a guardianship petition and,
19 you know, essentially no one shows up to contest
20 it, there wasn't even a hearing. No
21 representation, no hearing. It was almost like
22 getting a default judgment. And you know, while
23 that was great for me and great for my client,
24 another victory, it's not one of those things
25 that makes you feel good.

1 You know, there are significant rights
2 that are in play, and I think that the practice
3 does need to be standardized. I mean, you know,
4 from my perspective, it's just a little bit more
5 of an administrative hassle. You have to reach
6 out to the court and, you know, figure out what
7 their practice is if it's your first time in that
8 court.

9 But you know, for the people at issue in
10 these cases, it's a much more significant issue
11 and they should be entitled to counsel right out
12 of the gate. I would support that.

13 MAJORITY CHAIRMAN DAY: We have a process
14 here where we ask our Appropriations Committee to
15 create a fiscal note to determine the fiscal
16 impact on state line items, the state budget.
17 Maybe -- sometimes they even go a little further
18 and say impact on other people or, you know, if
19 LeadingAge or somebody else would say there's an
20 impact on us.

21 Can you just talk a little bit about the
22 cost increase for 1928 and who would be bearing
23 that cost?

24 MR. MONTRESOR: Well, it seems to me
25 that, you know, the court-appointed attorneys are

1 funded by the counties and the judges could also
2 probably talk about this a little bit more
3 competently than me.

4 MAJORITY CHAIRMAN DAY: Okay.

5 MR. MONTRESOR: Because our clients
6 certainly aren't paying for the court-appointed
7 attorneys. So from the nursing facility's
8 perspective, or a personal care home's
9 perspective, it's a -- it's a zero cost, but I
10 think a high benefit.

11 MAJORITY CHAIRMAN DAY: Great.

12 Judges, I don't really want to put you on
13 the spot. It's an out-of-the-blue question, but
14 if you'd like to address it --

15 JUDGE MURPHY: Yeah. I mean, my
16 understanding, Chairman, is that under the
17 current statute, the county of -- or the judicial
18 district initially pays for the court-appointed
19 counsel but is reimbursed by the Department of
20 Human Services, by the Commonwealth under the
21 statute. So it is a state expense, and there are
22 about 3,000 guardianship petitions filed per
23 year.

24 It's a -- I mean, it's an important issue
25 that has very profound effects for all of the

1 people involved and all of the institutions
2 involved and the families involved, but it's a
3 relatively modest part of what our courts do and
4 part of what lawyers do.

5 So I don't -- you know, I can't estimate
6 the expense because what we don't know is how
7 often is counsel appointed now. And I assume the
8 Department of Human Services would know what they
9 currently pay for this service, but you know, I
10 think it's a relatively modest expense to be
11 quite honest about it. And I think that Pam or
12 maybe someone else said, it's 50/50 in terms of
13 whether courts appoint counsel. We don't really
14 have that statistic either right now, but --

15 MAJORITY CHAIRMAN DAY: Thank you. Yeah.

16 JUDGE MURPHY: -- it's something in that
17 neighborhood.

18 MAJORITY CHAIRMAN DAY: Well, I
19 appreciate it.

20 It was just really from a, you know, you
21 guys are managing this at the county level, as
22 well. So I'm sure the counties are talking to
23 the judiciary all the time about, hey, that's
24 going to cost a lot. And I just wanted to see if
25 there was any information to make sure I bring

1 in.

2 I'm going to go on in one moment to our
3 Chairman Samuelson for a question and then to
4 members, as well. I just want to remind all of
5 our members here today that the issues we're
6 talking about, the judiciary doesn't take a
7 position on legislation. And you notice that the
8 judges specifically talked about they're here on
9 their own behalf, not representing any of the
10 courts. So they made that delineation who
11 they're testifying on behalf of with their own
12 self and experience.

13 With that, I want to just remind members
14 that we're treading on the line between
15 separation of powers, right, between the
16 judiciary and the legislature. So where we might
17 see we want to do this, the courts may find that
18 they want to handle it through policies and
19 procedures and guidance of the judiciary.

20 I just wanted to -- in my interaction
21 with the judiciary, I've learned that from them.
22 Just like we like to keep our authority and
23 power, they do, as well, because they feel that
24 they're close to it, as well. So each of these
25 bills are treading into that gray area, and I

1 think it's important for us to keep that in mind,
2 that sometimes -- to use 1928 as an example, if
3 we're going to standardize something across the
4 State, we're speaking to the judiciary, letting
5 them know the intention of the legislature as we
6 move forward.

7 with that, there's a lot of questions to
8 be asked. So let's go to minority Chair, Steve
9 Samuelson.

10 MINORITY CHAIRMAN SAMUELSON: Thank you.
11 And thanks for the testimony.

12 A couple of questions. One, on HB --
13 the one raising the fees, is that 1356?

14 The proposal is to raise the allowed fees
15 from \$100.00 a month to \$300.00, a significant
16 increase. I just wanted to ask, to put that in
17 perspective, how long has the limit been \$100.00
18 a month? And how does that compare to fees that
19 might be for other alternatives, like powers of
20 attorney or representative payees?

21 Should I will start with one of our
22 judges or --

23 JUDGE MURPHY: Sure. I don't think there
24 are any standardized fees for agents under a
25 power of attorney or representative payee. So

1 there's no legislation that standardizes either
2 of those. But in the guardians -- and I don't
3 know if Pam has more information on this than I
4 do -- I think that that rate of \$100.00 a month
5 was something that was approved in the Medical
6 Assistance State Compact more than -- more than
7 25 years ago.

8 MINORITY CHAIRMAN SAMUELSON: Okay.

9 JUDGE MURPHY: So you can imagine that
10 any other fees, and certainly professional fees
11 in the last 25 years have, you know, increased
12 dramatically, as well. And the cost of living
13 has increased dramatically, and the cost of doing
14 business has increased dramatically. So the --
15 my understanding from -- is that some of the
16 non-profits, for instance, I think the ARC
17 Alliance did a study, maybe internally, of what
18 it cost them. And it costs them far in excess of
19 \$300.00 a month to pay staff to staff a
20 guardianship matter.

21 JUDGE GIORDANO: Let me add, Mr.
22 Samuelson, it's very, very difficult, as a
23 sitting judge, to have an attorney who wants to
24 do this for \$100.00. In Lehigh County, this was
25 a severe problem. The raise is -- it has to be

1 raised.

2 MINORITY CHAIRMAN SAMUELSON: Okay.

3 Follow-up question. I know Pam had also
4 testified about the increase in the fees might
5 focus more attention on the quality and the
6 amount of attention guardians provide for the
7 folks they are working with.

8 If there's a case where a guardian is
9 appointed but not fulfilling the duties of a
10 guardian, what's the oversight? Does that go
11 back to the court if there's a complaint that the
12 person is not, you know, doing what they should
13 be as a guardian?

14 Is Pam first or -- Judge --

15 MS. WALZ: Yeah. I think the judges
16 might actually be better equipped to answer that.

17 MINORITY CHAIRMAN SAMUELSON: Okay.

18 MS. WALZ: But I will begin by saying
19 that a petition for a review hearing can be
20 requested. And I'll let the -- I'll let the
21 judges add to that.

22 MINORITY CHAIRMAN SAMUELSON: Okay.

23 JUDGE MURPHY: Yeah, absolutely. And
24 Judge, I'll let you jump in.

25 But absolutely, Chairman Samuelson, the

1 court can hold a review hearing. The court can
2 even remove the guardian. But in this area where
3 we're talking about guardians compensated \$100.00
4 a month, the challenge is to find another
5 guardian who's qualified, capable, willing to
6 take the case.

7 So we have the power to remove that
8 guardian if they're not doing what they should
9 be, but we need to be -- we need to have, you
10 know, a stable of people willing to take those
11 representations.

12 JUDGE GIORDANO: Let me add, the
13 guardianship statute as written is only a few
14 years old. And we don't have a lot of reported
15 decisions on it at the upper level, but it seems
16 to be working fairly well throughout the State.

17 I think the issues that were raised here
18 today about the lack of appointment of counsel --
19 and please, if you disagree with me, please let
20 me know -- is one of the few areas where we don't
21 have a unified practice across the Commonwealth.

22 MINORITY CHAIRMAN SAMUELSON: Okay.

23 JUDGE GIORDANO: This is the one little
24 glitch that I've seen.

25 MINORITY CHAIRMAN SAMUELSON: And my last

1 -- my last question, I think, would be for Pam
2 Walz.

3 You raised the issue of if we're going to
4 raise the monthly fee to \$300.00, we should also
5 add a certification requirement. Who would do
6 the certification of guardians? What agency or
7 organization would handle certification?

8 MS. WALZ: There are -- I believe there
9 are a number of agencies that provide
10 certification. One of them is the -- I'm going
11 to get the name wrong -- Center for Guardianship
12 Certification. I believe that one of the
13 testifiers -- I believe Judge Giordano may have
14 mentioned it, the Center for Guardianship
15 Certification, which happens to be located here
16 in Harrisburg, but I believe there are a number
17 of additional agencies around the country.

18 And through these, guardians can go
19 through a process, a learning process and a
20 testing process, and achieve certification. I
21 don't -- Judge Giordano may be able to add --

22 JUDGE GIORDANO: I'm on the Board of
23 Trustees, I do want to suggest it's a very fine
24 organization and I would highly recommend it, but
25 I do want to make the disclaimer I am on the

1 Board.

2 Ms. WALZ: Right.

3 MAJORITY CHAIRMAN DAY: Judge, I know
4 that -- Judge Giordano, I know that you -- does
5 that mean that you can't talk about it?

6 JUDGE GIORDANO: I can talk about it.

7 MAJORITY CHAIRMAN DAY: Yeah. So you
8 were --

9 JUDGE GIORDANO: I just want everyone to
10 know that.

11 MAJORITY CHAIRMAN DAY: Yeah.

12 JUDGE GIORDANO: I'm not a paid member,
13 but I am a -- I believe in this organization, and
14 I've been fortunate to be named to --

15 MAJORITY CHAIRMAN DAY: We know that
16 you're -- you were the first judge in
17 Pennsylvania to institute a certification
18 requirement; is that right?

19 JUDGE GIORDANO: Yes, I was.

20 MAJORITY CHAIRMAN DAY: Do you want to,
21 you know, explain how that -- how you changed the
22 process or, you know, the back -- maybe even
23 though --

24 JUDGE GIORDANO: Judge Murphy will
25 probably disagree with me on this, but I -- I saw

1 a problem that had to be rectified in Northampton
2 County. We had suspicion that an attorney, which
3 turned out to be incorrect, had taken money.

4 It was just when I became head of -- we
5 had never had an Orphans' Court judge before.
6 When I took over, this came to light. I became
7 very concerned about here were people that were
8 being the court's -- to serve as guardian. I
9 looked at what we could do, and I found this
10 organization based here in Harrisburg that had
11 this certification process where guardians were
12 forced to undergo some training.

13 I actually underwent the training myself
14 to see what it encompassed. It was not difficult
15 to go through. Just, you had to make decisions
16 on behalf of other people without superimposing
17 your beliefs on those people. Number two, there
18 was a criminal records background check. And
19 number three, which I thought was just as
20 important, was a credit history. If someone is
21 in dire need themselves, or not managing their
22 own funds well, do we want to place them in
23 charge of someone else's money?

24 So basically, in a nutshell, that's what
25 the Center does. And it offers various training

1 programs throughout the year to help people act
2 as -- I hope I answered your question.

3 MAJORITY CHAIRMAN DAY: Yes, you did.

4 JUDGE GIORDANO: Okay.

5 MAJORITY CHAIRMAN DAY: Chairman, that
6 began with your question. Was that answer close?

7 MINORITY CHAIRMAN SAMUELSON: Very much.

8 MAJORITY CHAIRMAN DAY: And Chairman,
9 were you complete?

10 Can I go onto the next member?

11 Next, we have Representative Ryan.

12 REPRESENTATIVE RYAN: Your Honor, Judge
13 Giordano, how are you today?

14 JUDGE GIORDANO: Good.

15 REPRESENTATIVE RYAN: It's good to see
16 you.

17 JUDGE GIORDANO: Nice to see you too.

18 REPRESENTATIVE RYAN: We're friends on
19 Facebook and --

20 JUDGE GIORDANO: Yes, we are.

21 REPRESENTATIVE RYAN: It's good -- yeah,
22 we have to -- it's a matter of disclosure. And I
23 just --

24 JUDGE GIORDANO: Yes, we are.

25 REPRESENTATIVE RYAN: I just -- I just

1 want to tell you, at my age, I'm just thankful I
2 remember it.

3 You know, as a CPA, and someone who
4 specialized in bankruptcy, I get concerned about
5 the reality of the law and what we're proposing
6 versus the ability to make it happen. And I know
7 \$300.00 a day from \$100.00 a day might be a --

8 JUDGE GIORDANO: It's a month.

9 REPRESENTATIVE RYAN: A month, I'm sorry.
10 A month, that's actually where I was heading
11 about per day. Is that -- what we're trying to
12 control -- and I'm a co-sponsor of two of the
13 three bills, but what we're trying to do is a
14 fairly complicated aspect of law that not many
15 people would be willing to do. And the potential
16 fiduciary liability of the person who is
17 undertaking this, considering that some of the
18 people that they're custodian for may not
19 necessarily have full mental capabilities, so
20 family members are going to have a pecuniary
21 interest, as well.

22 How do we create something for which the
23 reality of the world deals with the complexities
24 of what we're asking people to do.

25 JUDGE GIORDANO: well, I think this is a

1 good first step. I think the revamping of the
2 guardian statute was a good first step. I think
3 this is an ever-evolving process. I think we're
4 on the right road moving forward.

5 And perhaps, the future will be
6 professional guardians only, but there is a right
7 of self-determination that we have to be very
8 conscious about. And I was on the Committee that
9 made primary family members in the rule because
10 that was the stated consensus of the various bar
11 associations around the State. And people want
12 people they know, for the most part, running
13 their lives. And those are the best people, in
14 my humble opinion, that should be making those
15 decisions.

16 I always felt uncomfortable as a judge,
17 when it comes between my opinion and that of a
18 family member who -- we're on the right step.
19 Three hundred dollars a month is not enough.
20 It's not even close to being enough, but it's a
21 right step in the right direction.

22 REPRESENTATIVE RYAN: And Mr. Chairman,
23 just one very quick follow-up.

24 what I'm concerned about, as well, is in
25 the accounting profession, we look at the

1 triangle of fraud, the opportunity, the
2 incentive, and the pressure and the
3 rationalization to commit fraud. And I get
4 concerned when someone is in a guardianship-type
5 situation. We're asking the courts to try to
6 referee something for which the complexity of
7 these cases can be profound at a minimum, and you
8 need almost a complete forensic audit to
9 understand what's really going on, and the
10 financial resources aren't there usually to deal
11 with it.

12 So how do we protect all the -- everyone
13 so that our judges have the best means available
14 at their disposal to protect someone from even a
15 care facility that might have a pecuniary
16 incentive to increase the level of care that
17 someone's getting because they're able to charge
18 more?

19 JUDGE GIORDANO: Well, we're not going to
20 be able to -- and I'm sorry for monopolizing the
21 answers.

22
23 JUDGE MURPHY: No, no. Go for it.

24 JUDGE GIORDANO: We're not going to be
25 able to do that, I don't believe. But we've

1 taken major steps with reporting, yearly
2 reporting of guardians. It's done online. It's
3 been done online for -- they have to list the
4 assets and the debts that are paid. So we're
5 going to pick up -- and the register of wills
6 offices around the State are doing their best to
7 have someone assigned to this.

8 That's a new assignment that was set upon
9 them without appropriate funding, but I think
10 we're reaching that in most places, where they
11 have someone reviewing these guardianship filings
12 every single year. So we're going to be able to
13 pick up some, and it's going to act as a
14 deterrent. There is a reporting requirement now.

15 I'm looking to you. Do you disagree with
16 me.

17
18 JUDGE MURPHY: No, absolutely.

19 Representative, if I may, you know, these
20 cases are complex. And they're very varied. And
21 I would say, as to the family members, I agree
22 with Judge Giordano. I actually do favor the
23 appointment of family in the first instance, if
24 possible. And I think family members are the
25 best people to serve as guardians, except when

1 they're not. Right?

2 I mean, that's our challenge, is that
3 you've got to find out in which case are they not
4 the best. Because sometimes they're the
5 exploiter. And we need to tease that out in the
6 courtroom. I think actually what's interesting,
7 as I think about this, is that these bills all
8 support each other. These are forms that all
9 help us get to the next level.

10 If we have counsel in the courtroom
11 advocating for the alleged incapacitated person,
12 we're going to get a better result. If we have
13 better funding to pay the guardians who are
14 appointed, we're going to get a better result,
15 and people who can pay more attention to all the
16 issues you're describing.

17 If we need to have a review hearing and
18 remove a family member, we need to be able to
19 have that ability to appoint someone in their
20 place and have someone willing to take that
21 position, who's going to be paid enough to make
22 it worth it that they'll do it for the court, at
23 the court's request.

24 So these -- and the criminal background
25 checks similarly, they give us, you know, a

1 higher level of comfort and competence and
2 understanding of who is the person seeking to be
3 appointed? Can we have confidence that they're
4 going to do the right thing going forward?

5 MR. MONTRESOR: I would just add that --
6 and Judge Murphy was talking about, you know,
7 pulling out the facts of each case and, you know,
8 the family is the appropriate guardian until
9 they're not the appropriate guardian. I would
10 suggest that another instance when they're not an
11 appropriate guardian is when they're simply not
12 responsive at all. And that can happen for a
13 number of reasons, you know.

14 I mean, some of them, things you would
15 expect, they're facing maybe a family tragedy or
16 a divorce or health issues, or things like that.
17 And as a result, they can't be there for their
18 loved one. You know, yes, it would be nice to
19 favor family first, but if someone isn't capable
20 for reasons other than fraud, they shouldn't
21 necessarily put in a position of then having to
22 be responsive to the nursing facility, and you
23 know, the facility is making many calls, trying
24 to get approval for certain care and certain
25 procedures and just can't get any feedback and

1 any authority to move forward.

2 So yeah, that's one thing. And then, I
3 think that also emphasizes the role of -- and the
4 importance of court-appointed counsel in those
5 cases because they can get involved and they can
6 reach out and figure out exactly what's going on
7 with the family. Because from the nursing
8 facility's perspective, or the personal care
9 home's perspective, when people aren't being
10 responsive, you don't know what's going on.

11 And experience has taught them that, you
12 know, it's -- they suspect fraud first. It may
13 not be, but that's certainly the concern that
14 gets triggered. So when you get court-appointed
15 counsel involved and they do their investigation
16 and their communicating with family members, you
17 know, they may figure out the root cause and may
18 be able to figure out a different pathway, which
19 again, I think goes to, you know, HB 1928 and the
20 importance of getting counsel appointed right out
21 of gate and having them do -- having them be an
22 active part of, you know, the case management
23 and, you know, do an investigation and giving
24 feedback to the court.

25 MAJORITY CHAIRMAN DAY: Great.

1 I see that Pam has her hand raised on our
2 virtual application.

3 Go ahead, Pam.

4 MS. WALZ: I just wanted to add that in
5 cases where I've represented, people whose family
6 members were not responsive, I've been able to
7 reach out to family members and sort of get
8 through a little bit of the whatever the fears or
9 the issues are that were keeping them from being
10 involved and helped to involve them more in the
11 process. So I agree with those comments.

12 MAJORITY CHAIRMAN DAY: Thank you.

13 Next, I'd like to go to Representative
14 Shusterman.

15 Right before I turn it over to her for
16 questions, I just want to say that there are
17 three more people on the list for questions and
18 then I have a few more. So I just want to let
19 people know that I do have Shusterman, Jones,
20 Nelson, and Gillen.

21 And we also have been joined by
22 Representative Carrie Lewis DeRosso.

23 Representative Shusterman, your question.

24 REPRESENTATIVE SHUSTERMAN: Thank you
25 very much, Chairman.

1 I really appreciate today because I'm
2 only in my third year, but I've heard about this
3 issue and actually developed legislation last
4 session that looks a lot like the legislation we
5 will be voting on. So it shows you how pervasive
6 and immediate this concern is.

7 So that being said, I'm going to get
8 really practical. It's going from \$100.00 to
9 \$300.00. In a lot of people's minds, \$300.00
10 would not be enough money to pay for gas,
11 transportation, set aside time from work.
12 Secondly, we're talking about making sure that we
13 include family members. And then, I think of the
14 practicality of that, having two of my siblings
15 living on separate coasts and only coming home
16 twice a year.

17 So I was wondering if you could address
18 some of the practicality issues here with both
19 finances and location of family. And I also do
20 want to commend the idea of a certification,
21 having a, you know, understanding the
22 expectations and if that is something that can be
23 done virtually at times and from afar.

24 Thank you.

25 JUDGE GIORDANO: well, I can answer the

1 certification. That can all be done virtually.
2 A family member of mine just went through it to
3 see what it was like. It was very simple. It
4 was all done from our living room, fairly easy to
5 go through the process.

6 As far as the hands-on, the law requires
7 that they're visited once a month now at this
8 juncture. I would suggest to you that's probably
9 not enough. There is a -- there's a reporting
10 process back to the court. That's once -- once a
11 year.

12 I have an elderly mother that I'm lucky
13 lives a mile and a half from me, and I have a
14 sister that lives half a mile from her. So we're
15 very fortunate that we can go back and forth.
16 It's a case-by-case basis. And if she had to
17 rely on -- my other brother lives three hours
18 away. There'd be no one looking in on her.

19 So these -- this is -- I don't know if I
20 can answer your question any better than that.
21 I'm going to turn it over to my other panelists.

22 JUDGE MURPHY: Thank you, Representative
23 Shuster -- Shusterman. I'm sorry.

24 I think the -- I think the \$300.00 -- I
25 think you've sort of put your finger on it, and

1 Judge Giordano has. Three hundred dollars a
2 month may not really be enough to do everything
3 that we'd like for guardians to do, but it's
4 going to be a much -- big improvement over
5 \$100.00 a month, which is clearly inadequate. I
6 mean, it's just not even enough for an hour of
7 time for most professionals.

8 So think about, you know, you can't get
9 to the nursing home and visit someone who's in a
10 nursing home. You can't also pay their taxes or
11 file their annual reports or pay their bills, you
12 know. And then you're really not spending enough
13 time on the medical issues or making sure someone
14 is safe and well or getting any kind of
15 recreation or benefit, right. So you know, how
16 are you going to do that in one hour or less than
17 \$100.00?

18 It's just not enough to make a meaningful
19 difference in someone's life. I think there's
20 not a requirement in law for once a month, but
21 there are standards that suggest once a month and
22 the Center for Guardian Certification supports
23 that.

24 There is some training available
25 virtually, and I think we'd like to see more.

1 And I think for -- but for family members, the
2 office of Elder Justice in the Courts and the
3 Supreme Court's Advisory Council in Elder Justice
4 have been trying to make more and more training
5 available for lay guardians, for family member
6 guardians. So just as we've discussed es
7 earlier, they can understand their fiduciary
8 role, they can understand the financial issues,
9 and they can understand the personal
10 decisionmaking issues and some of the healthcare
11 issues that may come up.

12 So guardians actually need a lot of
13 support. I don't think they get enough or enough
14 recognition, especially the family members who
15 are in that position. And also, on the
16 interstate families, we do think about that.
17 There's no prohibition on appointing an
18 out-of-state guardian. And sometimes it is the
19 right person.

20 I have a sister living in New Jersey who
21 wants to be the guardian that may be the right
22 person, the best person with the time and ability
23 to do the job. And they may be able to get
24 local, you know. But we have to take it into
25 account, distance, and maybe we have co-guardian

1 with the sister who is in California, if they
2 really want to do it together and they want to
3 keep each other informed and sometimes the
4 California relative is coming east.

5 we may be able to work with that. So we
6 try to work with families where they are and meet
7 them where they are and give them as much support
8 as we can, but I would say the court is not an
9 agency that's really directly supporting people
10 except for giving them some training.

11 MR. MONTRESOR: I'll add that many courts
12 have on their website a -- have guides for lay
13 individuals and how to fulfill their duties and
14 obligations as guardians. And you know, as an
15 attorney, I read through those and sometimes I
16 feel a little overwhelmed. So it's not exactly
17 easy for the average person to grasp, just to
18 have a, you know, like a 20-page memo dropped on
19 your desk. And now you've got to go through and
20 you've got all these terms and terminology that
21 you may have never experienced before.

22 Hey, maybe if you're in the financial
23 services industry or something like that, you'll
24 understand what fiduciary means, but you know,
25 probably you know, half the people who pick that

1 up go, I have no idea. So you know, some
2 resources that would be available for family
3 members would be beneficial and help them meet
4 their obligations.

5 We're always a little concerned, you
6 know, with people being in different
7 jurisdictions and their lack of availability, and
8 arguably, their lack of accountability. They're
9 harder to reach because they're farther away, but
10 that doesn't mean that they can't serve. And I
11 think that's part of the process. Really, in my
12 opinion, in guardian matters, it shouldn't be a
13 one-size-fits-all, cookie-cutter approach.

14 You know, and I think all too often as
15 attorneys, we try to kind of put things in a
16 little box, like this is this case, this is how
17 this case should go. But in reality, you know,
18 what we need to do is we need to understand and
19 appreciate the facts of every case. And you
20 know, part of that is the people that are filing
21 the petitions, as well.

22 And yeah, I think that's about all that I
23 have. All right. Thank you.

24 MAJORITY CHAIRMAN DAY: Thank you,
25 Representative for that question, and your answer

1 answers.

2 For time keeping and organization
3 purposes -- this happened to me many times when I
4 was a freshman and a sophomore legislator and
5 you're at the bottom of the list asking questions
6 and the time is getting shorter and shorter. We
7 have a hard stop at 11:00 because we need to be
8 on session, and we try to close down the
9 Committee before that.

10 So that leaves us with two or three
11 minutes for the final three members. And we will
12 continue the questions by e-mail. So anybody, if
13 you feel shortchanged today, please stay in
14 contact with Shannon Walker -- and the Democrats,
15 as well, with your Chairman -- and let them know
16 what your questions are. And we'll work through
17 these.

18 There's a lot that's been said today that
19 I plan to address. And with that, I'd like to go
20 on to Representative Nelson.

21 REPRESENTATIVE NELSON: Thank you very
22 much.

23 My question was brought up in Pam's
24 comments, but my interests are those of immigrant
25 families and certainly also those who are

1 undocumented and whether some of the background
2 checks proposed in 1890 would prevent the
3 appropriate identified individuals from stepping
4 forward, right.

5 So how, right now, are immigrant
6 guardianship cases considered in your courtrooms?
7 And would Federal background checks perhaps
8 prevent appropriate, responsible family members
9 who might not want to advance through that
10 process from stepping forward?

11 JUDGE MURPHY: Representative, thank you
12 for the question.

13 I think that, actually, Pam outlined from
14 a different context some of the criteria we would
15 use. Even if we did require a criminal
16 background check for a family member who wished
17 to be a guardian for his or her child, his or her
18 mom, whoever it is, we would have to consider
19 whether any criminal record that turned up was
20 relevant to the role we're seeking to appoint the
21 person in -- and how old it was, what the nature
22 of it was, and whether it's relevant to the role.

23 So an old DUI is not going to prevent
24 someone from being appointed as a guardian for a
25 family member. Now, I would say, I think it's

1 probably prudent to think about incorporating
2 those standards into the legislation or at least
3 into the court rules, so judges have a consistent
4 guideline and we're not all making it up on our
5 own. And we appreciate having those guidelines
6 and that consistency in some circumstances like
7 this, but I think that judges generally are going
8 to look at this as a practical matter. And it's
9 a practical question, who's the best person in
10 this circumstance to serve as a guardian for this
11 individual?

12 If the mom is the best person, the mom is
13 the person who cares, who's on the spot, who's
14 been talking to the doctors and making the
15 decisions, then the mom is going to get appointed
16 by most courts, as long as mom is, you know,
17 honorable, reliable, comes to court, willing to
18 testify about what she's willing to do, reachable
19 by the appropriate healthcare providers,
20 responsive. Then, you know, it doesn't matter to
21 me if she's an immigrant. It doesn't matter to
22 me the color of her skin. I'm going to appoint
23 the person who's in the best position to take
24 care of that individual.

25 REPRESENTATIVE NELSON: And I will

1 preface -- the reason I raise that is mom may not
2 want to step forward if there was then a required
3 interaction with the Federal Department, right.
4 So we see it with the Census. We see it with
5 many other concerns where there may be local
6 trust, but requiring an additional and a Federal
7 agency to now be a, you know, precursor to being
8 able to take care of a family member might --
9 might present a significant impediment.

10 MAJORITY CHAIRMAN DAY: Thank you for
11 elevating that.

12 I think Pam had made comments about that,
13 and I appreciate when a member elevates the
14 concerns of our testifiers and other interested
15 parties. So we do have things that we could
16 probably have some ideas to address that.

17 With that, we'll go to Representative
18 Jones.

19 REPRESENTATIVE JONES: Thank you,
20 Chairman.

21 I'm going to turn a couple questions into
22 comments, just to get them on the radar. And I
23 think that's consistent. You wanted feedback. I
24 want to strongly discourage any kind of formal
25 certification that involves state agencies. If

1 you want to screw something up, involve some
2 certification from state agencies. I do think
3 the judge would have at their disposal, though --
4 it's a great idea to have the background check,
5 the credit rating.

6 we could mandate that those things occur
7 and that you have the option to send them to
8 training, which may or may not include some kind
9 of modest certification at the judge's
10 discretion. I could see where that could deter
11 people from being a guardian if you said, you got
12 to go through this certification process.

13 Second of all, it's shocking that one
14 person can have this much power over someone
15 else. I think it would be good maybe at some
16 point that we look at saying, you spend a certain
17 amount of someone's net worth or some other
18 criteria, their attorney has to approve that so
19 that the guardian doesn't have so much power in
20 the first place. Part of the problem is there's
21 too much power in one person's hands, I think.

22 But I want to -- on the cost, \$300.00 a
23 month, I support that in principle. And I agree
24 that if I was just the guardian of one person,
25 that maybe should be \$400.00 or \$500.00. My

1 concern is, I looked up Gloria Byars. She had
2 100 clients. Now, I don't know if they were
3 simultaneous or not. But if you have 100
4 clients, that's \$360,000 a year at \$300.00 a
5 month.

6 So I think if we're going to go to
7 \$300.00 a month, we ought to cap the number of
8 clients at no more than 25 or 50, especially if
9 we want them spending two or three hours a week
10 with a person. That limits you to no more than
11 10 or 15 a week, times four a month. I think if
12 we do that, Mr. Chairman, we should consider
13 capping the total number of guardians -- or
14 clients, I'll call it.

15 I don't know how often that occurs.
16 Maybe she didn't have 100 simultaneously, but
17 that's actually a ton of -- it's a big difference
18 between having one or two clients and having 50
19 or 100.

20 And Judge Byars, for the sake -- I'll let
21 you -- I'm sorry, Judge Murphy, I apologize. If
22 you -- I don't know where I got that.

23 If you want to comment on that, you can,
24 but I want to dig into what Mr. Montresor raised,
25 which I think is a pretty big deal, even though

1 I'm not an attorney.

2 The charter -- if I'm in a criminal case,
3 the attorney is really tasked, I think, with
4 trying to get me off the hook, so to speak,
5 right? Even though it maybe in my best interest
6 if I'm, you know, a young man or something, to go
7 to jail a little while. In this case, I'm just
8 curious on your opinion. We want them to work in
9 the client's best interest, which could be that
10 they receive a guardianship, or is it good that
11 they be the contrarian, since this isn't a jury
12 that we're trying to convince, it's a judge, and
13 that they should, in fact, argue for the client's
14 best wishes with you, the judge, making the --
15 being aware of that and making the determination.

16 What do you think is the better approach
17 there?

18 JUDGE MURPHY: Yeah. Thank you so much
19 for that question.

20 We do have, or at least most of the time,
21 used to an adversary system of justice in the
22 courts. And we're used to having lawyers take
23 the position of their client. We don't have to
24 take it at face value. They have to make their
25 case, and they also have to require the other

1 side to make their case.

2 So in a guardianship, that is really how
3 it's set up. Although, sometimes it's referred
4 to as a less adversary process, but that is how
5 it's set up. I think that -- I would agree with
6 Pam that I'd like to see lawyers have all of the
7 responsibilities they already have under the
8 rules of professional responsibility to advocate
9 zealously for their client, and even with a
10 client with diminished capacity to advocate for
11 what they express as their interests, which is
12 their role as an attorney.

13 If a guardian ad litem is needed in some
14 cases -- and it would be a minority of cases --
15 they can ask the court to appoint a guardian ad
16 litem to say, the best interests of this person
17 actual differ from what the person wants. If the
18 person is saying, I want to go home -- and I've
19 had this case, you know, where they're not able
20 to go home, they don't have the physical ability
21 to take care of themselves, they're not going to
22 -- they don't want to bring any help into the
23 home and they can't get around, they can say that
24 and their voice should be heard and we may need
25 someone else to advocate the other point of view.

1 JUDGE GIORDANO: And I do think there are
2 some -- I can't find it. It's been a while,
3 three years since I had a hearing. Is there a
4 requirement that the court approve sale of
5 property?

6 JUDGE MURPHY: Yes.

7 JUDGE GIORDANO: There are some
8 limitations already build into the statute. I
9 think all of the other --

10 REPRESENTATIVE JONES: Thank you very
11 much.

12 MAJORITY CHAIRMAN DAY: Representative --

13 MR. MONTRESOR: And I just want to make
14 one --

15 MAJORITY CHAIRMAN DAY: Oh, yeah. Go
16 ahead.

17 MR. MONTRESOR: I'm sorry.

18 The different judges have different
19 approaches to how principal of an individual is
20 spent. And some orders are, you know, a complete
21 green light to do whatever you need to do with
22 the money to get all the bills paid, you know,
23 you have all the discretion. And others, you
24 know, if things get to a certain level, then you
25 need to seek court approval.

1 So you know, I mean, some of that can be
2 addressed through what, ultimately, the court is
3 comfortable with and what the court orders. And
4 the authority that's given to the guardian at the
5 time that the court, you know, enters an order
6 appointing the guardian, but that practice varies
7 from judge to judge, probably even within the
8 same county, I would imagine.

9 MAJORITY CHAIRMAN DAY: And we want to go
10 to Pam really quickly. Her hand is up.

11 Go ahead.

12 MS. WALZ: I just wanted to speak up
13 about the concern of certification from a state
14 agency by saying that the certification wouldn't
15 actually be a Pennsylvania State agency. These
16 are non-profit organizations, which -- which
17 provide this training. And the certification,
18 which as Judge Giordano pointed out is relatively
19 modest and important.

20 Thanks.

21 MAJORITY CHAIRMAN DAY: Thank you so
22 much.

23 And Representative Jones used a tactic to
24 help me in my role as Chairman to really limit
25 the time of interaction, and I appreciate that.

1 And because you did that, I want to just lift up
2 and repeat back the concerns that you said so you
3 know that the Chair heard, former -- formal
4 certification run by a state agency, you were
5 very specific. And I think that is not contrary
6 to what Pam just said. I believe that you turn
7 to national organizations for things like that.

8 The second thing is option to send to
9 training, that the judge is going to use the
10 things like a background check, credit check in
11 their decision, not as an eliminator, as an
12 absolute eliminator, but it gives them
13 information to make the decision. And then I
14 wrote an approval, so I have to talk to you more
15 about that, as well.

16 I have to go to Representative Gillen for
17 our last question here today.

18 Representative Gillen.

19 REPRESENTATIVE GILLEN: Thirty seconds.
20 Do you have the clock?

21 This is kind of a Dickens ending. Maybe
22 a Tale of Two Guardians. We all spoke glowingly
23 of the efficacy of having a family member
24 involved. And we all realize that family members
25 are frequently IDed as the number one

1 perpetrators of particularly financial abuse.

2 The point of the bill -- and I'd love to
3 collaborate with all of the stakeholders, not
4 that the background check is a dictator, it is a
5 tool. And clearly, the Federal background check
6 would have picked up the Byars of the world in
7 the Virginia case.

8 Thank you, Mr. Chairman.

9 MAJORITY CHAIRMAN DAY: Thank you,
10 Representative Gillen.

11 I'd like to thank everyone for their
12 participation today.

13 Members, these are important and heady
14 issues. We've even brought it up in our
15 questions and our answers that we're dancing on
16 the line of taking someone's liberty away.

17 Judges, I want to thank you both for the
18 work that you do and you have done in your career
19 to walk that fine line and do it in the best --
20 on the best behalf of the individual and also --
21 protecting the individual. That's what it's all
22 about.

23 And Steven, thank you.

24 Pam, your work, as well, is you know,
25 very important to what we do in the Commonwealth

1 to keep people protected.

2 And I want to thank you all for being
3 here today and testifying.

4 Members, outstanding questions.
5 Outstanding questions. Thank you so much for
6 your participation.

7 We will move forward with this input and
8 try to make these bills better and ready for
9 prime time. Thank you very much.

10 JUDGE MURPHY: Thank you, Mr. Chairman.
11 (Whereupon, the proceedings concluded at
12 10:58 a.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me from audio of the within proceedings and that this is a correct transcript of the same.

Tiffany L. Mast

Tiffany L. Mast

Court Reporter