

**TESTIMONY OF ATTORNEY PAMELA R. HERSHINSON
BEFORE THE JUDICIARY COMMITTEE
MARCH 23, 2007**

**IN SUPPORT OF RAISED BILL H.B. 7394
AN ACT CONCERNING THE CLAIMS AGAINST THE STATE OF KENNARA
POTEAT, KENNYA POTEAT, LATOYA POTEAT AND LATANYA POTEAT**

Senator McDonald, Representative Lawlor, and members of the Judiciary Committee, my name is Pamela. Hershinson, and I am an attorney in West Hartford. I represent Kennara Poteat, Kenya Poteat, Latoya Poteat, and Latanya Poteat, who are siblings. Thank you for the opportunity to address Raised Bill 7394. On behalf of my clients, I will testify in support of this bill.

I. Introduction.

Raised Bill 7394 would authorize my clients to present their claims against the State to the Claims Commissioner, notwithstanding their failure to file the claim within the time limitations set out in Conn.Gen.Stat. §4-148. We ask that the General Assembly deem this authorization to be just and equitable and supported by compelling equitable circumstances, and that it would serve a public purpose.

II. Facts.

My clients were all physically and sexually abused while in the custody of the Department of Children and Families. The effects of the abuse on my clients have been devastating. In 1993 the four of them had been residing with their maternal aunt when Kennara was six, Kenya was four, and Latanya and Latoya were three. Their maternal aunt had a live-in boyfriend who sexually abused Kennara and Latoya. He was subsequently arrested and incarcerated for sexual abuse of

many children. Medical records from St. Francis Hospital document evidence of penetration of one of the three-year olds. Employees of DCF were quite aware in 1993 that my clients had been sexually abused while in the care of their aunt.

Thereafter, my clients were committed to DCF, and inexplicably in 1994, DCF employees placed them with this same aunt, a licensed foster parent. She also had in her care her own niece and nephew, who were cousins of my clients. It is incomprehensible to me that DCF employees placed my clients with a foster mother who had failed to protect them from a sexual predator. Throughout the next five years my four clients were sexually abused by their cousins and physically abused by this foster mother.

The details of the abuse are overwhelming. Kennara was repeatedly propositioned for sex by her male cousin, was held down by both cousins, and was physically assaulted by her foster mother. She still has scars on her body from the abuse. She informed the foster mother of the sexual contact by her cousins, but was repeatedly rebuffed.

The foster mother physically abused Kennya in very painful and violent ways – stomping on his stomach, punching him in the face, scratching him. His cousins also physically assaulted and attempted sexual contact numerous times. The foster mother ignored Kennya's pleas to her.

Latoya was physically assaulted and humiliated by the foster mother and was sexually abused by her male cousin and restrained by her female cousin.

Latanya was physically abused by the foster mother, traumatized by the abuse in the foster home and observed inappropriate sexual contact at a very young age.

Their foster mother threatened to kill them if they told anyone about the abuse, and they all knew that she had a gun. Their mother often notified DCF of the abuse, as early as 1993 and 1994. In 1996 after their mother again alerted DCF to the abuse, a social worker at St. Francis Hospital

recommended to DCF that the children be removed from the foster home and separated into different foster homes in order to obtain uncontaminated information about what had occurred in the children's lives. But this advice was disregarded by DCF and the abuse was considered unsubstantiated. My clients were left unprotected by DCF.

Finally, in 1999 after my clients' mother again reported abuse, DCF removed my clients from the foster home due to the deplorable living conditions. After all these years they were referred to St. Francis Hospital for therapeutic evaluations and physical examinations. After years of suffering, DCF substantiated physical abuse and neglect. Throughout these years my clients had social workers who were charged with protecting them.

*But instead DCF failed to protect them and failed to diligently investigate the allegations.

*DCF failed to protect them when they placed the children with the foster mother in 1994, as it was aware that this foster mother had already failed to protect them from a sexual predator.

*DCF ignored the sage advice of the St. Francis Hospital social worker in 1996 who believed that DCF should remove my clients from this foster home and obtain uncontaminated information.

*DCF failed to refer my clients to a therapist trained in issues of abuse, as recommended by St. Francis Hospital Children's Center. They have never received the treatment that they deserve.

III. Law.

Conn.Gen.Stat. §4-147 provides that a claim against the State shall be presented within one year after it accrues. Claims for injury shall be deemed to accrue on the date when the injury is sustained or discovered. The claims in this case were not presented within one year of the date that the injury was sustained. At that time my clients were all minors committed to the State of

Connecticut; the State was their guardian for several years after that. They were abused and disadvantaged children who could hardly take the initiative to file a claim during that short period of time. The law does provide that the General Assembly may, by this special act, authorize a claim to be presented to the Claims Commissioner after the time limitations have expired if it is just and equitable, supported by compelling equitable circumstances, and serves a public purpose. Clearly, the facts have established that compelling equitable circumstances exist and it would be just and equitable for the General Assembly to extend the time period to file.

The Connecticut Supreme Court has defined what constitutes a public purpose. It held that a special act will be deemed to serve a valid public purpose, even though it confers a direct benefit upon a particular individual, "... if it remedies an injustice done to that individual for which the state itself bears responsibility...In such circumstances, the benefit conferred upon a private party by the legislature may be viewed as incidental to the overarching public interest that is served in remedying an injustice caused by the state." ¹

My clients suffered egregious acts because of the failure of the State to protect them, and the State most definitely bears responsibility. There is a public interest in remedying this injustice. We can examine the mission statement of DCF in order to analyze whether a public purpose is served by passage of this special act. The mission and principles of DCF are to protect children, to improve child and family well-being, to support and preserve families. Its principles provide that it is committed to the care of all children, including those in need of protection who require mental health service, and that all children have a basic right to grow up in safe and nurturing environments and to live free from abuse and neglect. DCF disregarded its own mission and its own principles and there is a compelling public purpose to remedy the injustice.

¹ *Lagasse v. State*, 268 Conn. 723, 733 (2004)

I urge you to enact this special act as a public purpose would be served by allowing my clients to seek redress for the injuries they have suffered due to the actions of the State of Connecticut.

Respectfully submitted,

Pamela R. Hershinson