



Senate

General Assembly

File No. 535

February Session, 2008

Substitute Senate Bill No. 325

Senate, April 9, 2008

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE COMMISSION ON CHILD PROTECTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-123d of the 2008 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2008*):

4 (a) The Chief Child Protection Attorney appointed under section
5 46b-123c of the 2008 supplement to the general statutes shall:

6 (1) Establish a system to provide (A) legal services and guardians ad
7 litem to children, youths and indigent respondents in family relations
8 matters in which the state has been ordered to pay the cost of such
9 legal services and guardians ad litem, provided legal services shall be
10 provided to indigent respondents pursuant to this subparagraph only
11 in paternity proceedings and contempt proceedings, and (B) legal
12 services and guardians ad litem to children, youths and indigent legal
13 parties in proceedings before the superior court for juvenile matters,
14 other than legal services for children in delinquency matters. To carry

15 out the requirements of this section, the Chief Child Protection
16 Attorney may contract with (i) appropriate not-for-profit legal services
17 agencies, and (ii) law firms and individual lawyers for the delivery of
18 legal services to represent children and indigent legal parties in such
19 proceedings;

20 (2) Establish a system to ensure that attorneys providing legal
21 services pursuant to this section are assigned to cases in a manner that
22 will avoid conflicts of interest, as defined by the Rules of Professional
23 Conduct; and

24 (3) Establish training, practice and caseload standards for the
25 representation of children, youths, indigent respondents and indigent
26 legal parties pursuant to subdivision (1) of this subsection. Such
27 standards shall apply to each attorney who represents children,
28 youths, indigent respondents or indigent legal parties pursuant to this
29 section and shall be designed to ensure a high quality of legal
30 representation. The training standards for attorneys required by this
31 subdivision shall be designed to ensure proficiency in the procedural
32 and substantive law related to such matters and to establish a
33 minimum level of proficiency in relevant subject areas, including, but
34 not limited to, family violence, child development, behavioral health,
35 educational disabilities and cultural competence.

36 (b) Any contract entered into pursuant to subdivision (1) of
37 subsection (a) of this section may include terms encouraging or
38 requiring the use of a multidisciplinary agency model of legal
39 representation.

40 Sec. 2. Section 46b-129a of the general statutes is repealed and the
41 following is substituted in lieu thereof (*Effective October 1, 2008*):

42 In proceedings in the Superior Court under section 46b-129 of the
43 2008 supplement to the general statutes: (1) The court may order the
44 child, the parents, the guardian, or other persons accused by a
45 competent witness with abusing the child, to be examined by one or
46 more competent physicians, psychiatrists or psychologists appointed

47 by the court; (2) a child shall be represented by counsel knowledgeable
48 about representing such children who shall be appointed [by the court]
49 to represent the child by the Chief Child Protection Attorney, or by the
50 court if there is an immediate need for the appointment of counsel
51 during a court proceeding. Counsel for a child under the age of seven
52 shall act as attorney and [to act as] guardian ad litem for the child.
53 Counsel for a child age seven years or older shall act solely as attorney
54 for the child. The primary role of any counsel for the child, including
55 the counsel who also serves as guardian ad litem, shall be to advocate
56 for the child in accordance with the Rules of Professional Conduct.
57 [When a conflict arises between the child's wishes or position and that
58 which counsel for the child believes is in the best interest of the child,
59 the court shall appoint another person as guardian ad litem for the
60 child.] If the court or counsel for the child determines that the child
61 cannot adequately act in his or her own interest and the court
62 determines that it requires a different person to assess and advocate
63 for the child's best interests in order to reach an appropriate decision
64 based on all relevant facts, the court shall notify the Chief Child
65 Protection Attorney who shall appoint a separate guardian ad litem for
66 the child. The guardian ad litem shall speak on behalf of the best
67 [interest] interests of the child and is not required to be an attorney-at-
68 law but shall be knowledgeable about the needs and protection of
69 children. In the event that a separate guardian ad litem is appointed,
70 the person previously serving as counsel or as both counsel and
71 guardian ad litem for the child shall continue to serve as counsel for
72 the child and a different person shall be appointed as guardian ad
73 litem, unless the court for good cause also appoints a different person
74 as counsel for the child. No person who has served as both counsel and
75 guardian ad litem for a child shall thereafter serve solely as the child's
76 guardian ad litem. The counsel and guardian ad litem's fees, if any,
77 shall be paid by the parents or guardian, or the estate of the child, or, if
78 such persons are unable to pay, by the [court] Chief Child Protection
79 Attorney; (3) the privilege against the disclosure of communications
80 between husband and wife shall be inapplicable and either may testify
81 as to any relevant matter; and (4) evidence that the child has been

82 abused or has sustained a nonaccidental injury shall constitute prima
83 facie evidence that shall be sufficient to support an adjudication that
84 such child is uncared for or neglected.

85 Sec. 3. Section 4-165 of the general statutes is repealed and the
86 following is substituted in lieu thereof (*Effective October 1, 2008*):

87 (a) No state officer or employee shall be personally liable for
88 damage or injury, not wanton, reckless or malicious, caused in the
89 discharge of his or her duties or within the scope of his or her
90 employment. Any person having a complaint for such damage or
91 injury shall present it as a claim against the state under the provisions
92 of this chapter.

93 (b) For the purposes of this section, (1) "scope of employment"
94 includes but is not limited to, (A) representation by an attorney
95 appointed by the Public Defender Services Commission as a public
96 defender, assistant public defender or deputy assistant public defender
97 or an attorney appointed by the court as a special assistant public
98 defender of an indigent accused or of a child on a petition of
99 delinquency, (B) representation by such other attorneys, referred to in
100 section 4-141, of state officers and employees in actions brought
101 against such officers and employees in their official and individual
102 capacities, (C) the discharge of duties as a trustee of the state
103 employees retirement system, (D) the discharge of duties of a
104 commissioner of the Superior Court hearing small claims matters or
105 acting as a fact-finder, arbitrator or magistrate or acting in any other
106 quasi-judicial position, (E) the discharge of duties of a person
107 appointed to a committee established by law for the purpose of
108 rendering services to the Judicial Department, including, but not
109 limited to, the Legal Specialization Screening Committee, the State-
110 Wide Grievance Committee, the Client Security Fund Committee, the
111 advisory committee appointed pursuant to section 51-81d and the
112 State Bar Examining Committee, [and] (F) military duty performed by
113 the armed forces of the state while under state active duty, and (G)
114 representation by an attorney appointed by the Commission on Child

115 Protection, or by the court, as an attorney for an indigent respondent
 116 subject to a neglect petition, or as an attorney or guardian ad litem for
 117 a child subject to a petition related to neglect, delinquency or being a
 118 child from a family with service needs; provided the actions described
 119 in subparagraphs (A) to [(F)] (G), inclusive, of this subdivision arise
 120 out of the discharge of the duties or within the scope of employment of
 121 such officers or employees, and (2) "state employee" includes a
 122 member or employee of the soil and water district boards established
 123 pursuant to section 22a-315.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2008	46b-123d
Sec. 2	October 1, 2008	46b-129a
Sec. 3	October 1, 2008	4-165

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes several unrelated changes to the laws governing the provision of legal and guardian ad litem services to indigent children and parents in abuse, neglect, and certain other family matters. These changes have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 325****AN ACT CONCERNING THE COMMISSION ON CHILD PROTECTION.****SUMMARY:**

This bill makes several unrelated changes to the laws governing the Commission on Child Protection, the chief child protection attorney (CCPA), and people who provide legal and guardian ad litem (GAL) services to children and parents in abuse and neglect and certain other family matters pursuant to contracts with the CCPA. It:

1. limits the circumstances under which an attorney appointed to represent a child's legal interests must simultaneously act as the child's GAL (a person who advocates for a child's best interests),
2. extends the civil immunity statute to attorneys and GALs providing services under contracts with the CCPA,
3. limits the circumstances under which a judge, rather than the CCPA, can appoint an attorney for a child involved in an abuse or neglect proceeding, and
4. allows the CCPA to contract with law firms (currently, she can only contract with nonprofit legal service agencies and individual attorneys).

EFFECTIVE DATE: July 1, 2008

§ 2 — LIMITS ON GUARDIAN AD LITEM APPOINTMENTS

Currently, attorneys appointed to represent a child's legal interests in an abuse or neglect proceeding must simultaneously serve as the child's GAL unless the court determines that the two interests conflict, in which case a separate GAL appointment is made. Under the bill,

attorneys appointed to represent children age seven or older cannot serve as the child's GAL at the same time. The court may appoint a separate GAL for children in this age range if the judge or child's attorney determines that the child cannot adequately act in his or her own interests and the court finds that an appointment is required in order to reach an appropriate decision based on all relevant facts.

In this situation, the court notifies the CCPA and she appoints the GAL.

§ 2 — TRANSFERRING FUNCTIONS FROM THE COURT TO THE CHIEF CHILD PROTECTION ATTORNEY

The bill also limits the court's authority to appoint counsel for children in abuse and neglect cases to situations in which there is an immediate need for an appointment to be made during a court proceeding. In all other situations, the bill requires the CCPA to make the appointment. This is consistent with current practice and a memorandum of understanding between the CCPA and Judicial Branch.

It directs the CCPA, rather than the court, to pay a child's counsel and GAL fees when the child's parents are indigent. This is consistent with current practice.

§ 3 — QUALIFIED IMMUNITY

The bill extends the civil immunity statute's protections to:

1. attorneys the CCPA or a court appoints to represent indigent respondents (usually parents) in child neglect proceedings and
2. attorneys and GALs the CCPA or a court appoints for a child in neglect, delinquency, or family with service needs (status offender) proceedings.

The immunity statute generally protects state officers and employees from personal liability for damages or injuries caused by the negligent performance of their job duties. People claiming these damages must file a complaint with the Claims Commission rather

than seek a money judgment in civil court.

BACKGROUND

Commission on Child Protection

The law directs the Commission on Child Protection to ensure that children and indigent parents who require legal services and GALs in child protection, child custody, and child support cases receive high quality, competent, and zealous representation from attorneys and guardians ad litem who are knowledgeable and trained in the substantive and procedural law applicable to these cases.

Chief Child Protection Attorney

The CCPA, who serves at the commission's pleasure, is responsible for establishing the system of legal representation and ensuring the quality of that representation. She manages and oversees:

1. attorney and GAL representation for all children in child protection proceedings;
2. attorney or GAL representation for children subject to Family with Service Needs (status offender) petitions;
3. GAL representation for children subject to delinquency petitions;
4. attorney representation for children in delinquency proceedings who do not qualify for public defender services, but whose parents have not provided legal representation;
5. attorney representation for all indigent parents in child protection proceedings;
6. attorney and GAL representation for children in divorce and custody proceedings whose parents are indigent;
7. GAL representation for children in Family Support Magistrate Division (FSMD – child support) proceedings;

8. attorney representation for indigent parents charged with contempt of court in family matters and FSMD proceedings; and
9. attorneys for indigent putative fathers in FSMD and Bureau of Child Support Enforcement paternity proceedings.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 43 Nay 0 (03/24/2008)