



STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

JUDGE JAMES J. LAWLOR
ADMINISTRATOR
ATTORNEY THOMAS E. GAFFEY
CHIEF COUNSEL
HELEN B. BENNETT
ATTORNEY
DEBRA COHEN
ATTORNEY

186 NEWINGTON ROAD
WEST HARTFORD, CT 06110

TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Jonathan Harris
House Co-Chair Peter Villano
Senate Ranking Member John Kissel
House Ranking Member Lile Gibbons
Honorable Members of the Human Services Committee

From: Judge James J. Lawlor
Probate Court Administrator

Re: RB 5908 AAC Proceedings and Operations of the Department of Children
and Families

Date: May 11, 2008

I appreciate the opportunity to testify in support of RB 5908 AAC the Proceedings and Operations of the Department of Children and Families as it pertains to the Probate Courts. My testimony concerns only sections 7 and 8. I make no comment as to the remaining provisions of the bill.

This bill creates a rebuttable presumption that grandparents and other blood relatives are the preferred people with whom to place a child in the context of a proceeding for removal of parent as guardian. Our courts have long recognized that whenever possible, a child should be placed with those who are closest to the child, as opposed to placement in a foster home with strangers. Children face the trauma of losing their parents and, if the setting is appropriate, family members and other close relations can ease this transition.

Currently the Probate Courts employ a de facto presumption similar to that proposed in the bill. Proceedings of this type in the Probate Courts are typically commenced by family members. This is in contrast to similar proceedings in the Superior Court for Juvenile Matters, which are generally instituted by the Department of Children and Families. Thus family members are involved throughout the proceedings. In those cases in which the child is required to be placed with someone other than the parents, our courts always look first to the family. The Probate Courts have no system of foster care for placement of the child. As a last resort, if no other suitable custodian or guardian can

be found, the courts may award custody to DCF, which would, in turn, place the child in foster care. Such incidents are rare in the Probate Courts.

We generally support the concept presented in sections 7 and 8 of the bill, reflecting as it does the current practice in the Probate Courts. We would, however, recommend some changes in the language used. Our suggestions are attached hereto.

Section 7 proposes to amend §45a-607, concerning temporary custody. This section deals with the custody of the child during the period that an application for removal is pending in the court. As written, section 7 would create a presumption that the best interests of the child require placement with a relative that has been granted intervenor status. Clear and convincing evidence would be required to overcome that presumption. However, it must be recalled that temporary custody is acted upon early in the proceedings, prior to any removal of the parents. We do not believe that it is appropriate, before evidence is taken and before findings are made relative the fitness of the parents, to establish such a strong presumption that the child should be placed elsewhere. Accordingly, we believe that the presumption should be removed from section 7.

Section 45a-614 permits an application for removal of parent as guardian to be filed by "any adult relative of the minor, including those by blood or marriage." The experience in our courts has been that individuals related by marriage are often closely involved in the life of the child and function as much as family members as those related by blood. We would urge that sections 7 and 8 be amended to correspond to existing §45a-614, and include relatives by blood or marriage.

With these changes, we support sections 7 and 8 of the bill.

arrested is found in contempt of court, the court may order such person confined until the person complies with the order, but for not more than six months, or may fine such person not more than five hundred dollars, or both.

(o) A foster parent, prospective adoptive parent or relative caregiver shall receive notice and have the right to be heard for the purposes of this section in Superior Court in any proceeding concerning a foster child living with such foster parent, prospective adoptive parent or relative caregiver. A foster parent, prospective adoptive parent or relative caregiver who has cared for a child or youth shall have the right to be heard and comment on the best interests of such child or youth in any proceeding under this section which is brought not more than one year after the last day the foster parent, prospective adoptive parent or relative caregiver provided such care.

(p) Upon motion of any sibling of any child committed to the Department of Children and Families pursuant to this section, such sibling shall have the right to be heard concerning visitation with, and placement of, any such child. In awarding any visitation or modifying any placement, the court shall be guided by the best interests of all siblings affected by such determination.

(q) The provisions of section 17a-152, regarding placement of a child from another state, and section 17a-175, regarding the Interstate Compact on the Placement of Children, shall apply to placements pursuant to this section.

Sec. 7. Section 45a-607 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) (1) When application has been made for the removal of one or both parents as guardians or of any other guardian of the person of a minor child, or when an application has been made for the termination of the parental rights of any parties who may have parental rights with regard to any minor child, or when, in any proceeding the court has reasonable grounds to believe that any minor child has no guardian of his or her person, the court of probate in which the proceeding is pending may issue an order awarding temporary custody of the minor child to a person other than the parent or guardian, with or without the parent's or guardian's consent, but such order may only be issued in accordance with the provisions of this section.

(2) In any proceeding under this section, any grandparent or other blood adult relative of the minor child by blood or marriage may make a motion to intervene and the court shall may grant such motion except for good cause shown. Upon the granting of such motion, such grandparent or other blood relative may appear by counsel or in person. In any proceeding in which a grandparent or

other blood relative intervenes for the care and custody of a minor child, there shall be a rebuttable presumption that placement with such grandparent or other blood relative is in the best interests of such child or youth. This presumption may be rebutted by clear and convincing evidence that such placement is not in the best interests of such child or youth.

(b) In the case of a minor child in the custody of the parent or other guardian, no application for custody of such minor child may be granted ex parte, except in accordance with subdivision (2) of this subsection. In the case of a minor child in the custody of a person other than the parent or guardian, no application for custody may be granted ex parte, except in accordance with subdivisions (1) to (3), inclusive, of this subsection.

(1) An application for immediate temporary custody shall be accompanied by an affidavit made by the custodian of such minor child under penalty of false statement, stating the circumstances under which such custody was obtained, the length of time the affiant has had custody and specific facts which would justify the conclusion that determination cannot await the hearing required by subsection (c) of this section. Upon such application, the court may grant immediate temporary custody to the affiant, a grandparent or other blood adult relative of the minor by blood or marriage, or some other suitable person if the court finds that: (A) The minor child was not taken or kept from the parent, parents or guardian, and (B) there is a substantial likelihood that the minor child will be removed from the jurisdiction prior to a hearing under subsection (c) of this section, or (C) to return the minor child to the parent, parents or guardian would place the minor child in circumstances which would result in serious physical illness or injury, or the threat thereof, or imminent physical danger prior to a hearing under subsection (c) of this section.

(2) In the case of a minor child who is hospitalized as a result of serious physical illness or serious physical injury, an application for immediate temporary custody shall contain a certificate signed by two physicians licensed to practice medicine in this state stating that (A) the minor child is in need of immediate medical or surgical treatment, the delay of which would be life threatening, (B) the parent, parents or guardian of the minor child refuses or is unable to consent to such treatment, and (C) determination of the need for temporary custody cannot await notice of hearing. Upon such application, the court may grant immediate temporary custody to a grandparent or other adult relative of the minor by blood or marriage ~~blood relative or some other~~ suitable person if it finds that (i) a minor child has suffered from serious physical illness or serious physical injury and is in need of immediate medical or surgical treatment, (ii) the parent, parents or guardian refuses to consent to such treatment, and (iii) to delay such treatment would be life threatening.

(3) If an order of temporary custody is issued ex parte, notice of the hearing required by subsection (c) of this section shall be given promptly, and the hearing shall be held within five business days of the date of such ex parte order of temporary custody, provided the respondent shall be entitled to continuance upon request. Upon the issuance of an order granting temporary custody of the minor child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the minor child with his or her parent, parents or guardian prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the minor child's best interests, including the minor child's health and safety. Upon issuance of an ex parte order of temporary custody, the court shall promptly notify the Commissioner of Children and Families, who shall cause an investigation to be made forthwith, in accordance with section 17a-101g, and shall present the commissioner's report to the court at the hearing on the application for temporary custody. The hearing on an ex parte order of temporary custody shall not be postponed, except with the consent of the respondent, or, if notice cannot be given as required by this section, a postponement may be ordered by the court for the purpose of a further order of notice.

(c) Except as provided in subsection (b) of this section, upon receipt of an application for temporary custody under this section, the court shall promptly set the time and place for a hearing to be held on such application. The court shall order notice of the hearing on temporary custody to be given, at least five days prior to the date of the hearing, to the Commissioner of Children and Families by first class mail and to both parents and to the minor child, if over twelve years of age, by personal service or service at the parent's usual place of abode or the minor's usual place of abode, as the case may be, in accordance with section 52-50, except that in lieu of personal service on, or service at the usual place of abode of, a parent or the father of a minor child born out of wedlock who is either an applicant or who signs under penalty of false statement a written waiver of such service on a form provided by the Probate Court Administrator, the court may order notice to be given by first class mail at least five days prior to the date of the hearing. If the whereabouts of the parents are unknown, or if such delivery cannot reasonably be effected, then notice shall be ordered to be given by publication. Such notice may be combined with the notice under section 45a-609 of the 2008 supplement to the general statutes or with the notice required under section 45a-716 of the 2008 supplement to the general statutes. If the parents are not residents of the state or are absent from the state, the court shall order notice to be given by first class mail at least five days prior to the date of the hearing. If the whereabouts of the parents are unknown, or if delivery cannot reasonably be effected, the court may order notice to be given by

publication. Any notice by publication under this subsection shall be in a newspaper which has a circulation at the last-known place of residence of the parents. In either case, such notice shall be given at least five days prior to the date of the hearing, except in the case of notice of a hearing on immediate temporary custody under subsection (b) of this section. If the applicant alleges that the whereabouts of a respondent are unknown, such allegation shall be made under penalty of false statement and shall also state the last-known address of the respondent and the efforts which have been made by the applicant to obtain a current address. The applicant shall have the burden of ascertaining the names and addresses of all parties in interest and of proving to the satisfaction of the court that the applicant used all proper diligence to discover such names and addresses. Except in the case of newspaper notice, such notice shall include: (1) The time and place of the hearing, (2) a copy of the application for removal or application for termination of parental rights, (3) a copy of the motion for temporary custody, (4) any affidavit or verified petition filed with the motion for temporary custody, (5) any other documents filed by the applicant, (6) any other orders or notices made by the court of probate, and (7) any request for investigation by the Department of Children and Families or any other person or agency. Such notice shall also inform the respondent of the right to have an attorney represent the respondent and, if the respondent is unable to obtain or pay for an attorney, the respondent may request the court of probate to appoint an attorney to represent the respondent. Newspaper notice shall include such facts as the court may direct.

(d) If, after hearing, the court finds by a fair preponderance of the evidence (1) that the parent or other guardian has performed acts of omission or commission as set forth in section 45a-610, and (2) that, because of such acts, the minor child is suffering from serious physical illness or serious physical injury, or the immediate threat thereof, or is in immediate physical danger, so as to require that temporary custody be granted, the court may order the custody of the minor child to be given to one of the following, taking into consideration the standards set forth in section 45a-617, as amended by this act, and subsection (a) of this section: (A) The grandparent or other blood adult relative of such minor child by blood or marriage; (B) the Commissioner of Children and Families; [(B)] (C) the board of managers of any child-caring institution or organization; [(C)] (D) any children's home or similar institution licensed or approved by the Commissioner of Children and Families; or [(D)] (E) any other person. The fact that an order of temporary custody may have been issued ex parte under subsection (b) of this section shall be of no weight in a hearing held under this subsection. The burden of proof shall remain upon the applicant to establish the applicant's case. [The court may issue the order without taking into consideration the standards set forth in this section and section 45a-610 if the parent or other guardian consents to the temporary removal of the minor child, or the court finds that the minor

child has no guardian of his or her person.] Upon the issuance of an order giving custody of the minor child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the minor child with his or her parent, parents or guardian prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the minor child's best interests, including the minor child's health and safety.

(e) Such order for temporary custody shall be effective until disposition of the application for removal of parents or guardians as guardian or for termination of parental rights or until a guardian is appointed for a minor child who has no guardian, unless modified or terminated by the court of probate. Any respondent, temporary custodian or attorney for the minor child may petition the court of probate issuing such order at any time for modification or revocation thereof, and such court shall set a hearing upon receipt of such petition in the same manner as subsection (c) of this section. If the court finds after such hearing that the conditions upon which it based its order for temporary custody no longer exist, and that the conditions set forth in subsection (b) of this section do not exist, then the order shall be revoked and the minor child shall be returned to the custody of the parent or guardian.

(f) A copy of any order issued under this section shall be mailed immediately to the last known address of the parent or other guardian from whose custody the minor child has been removed.

Sec. 8. Section 45a-617 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

When appointing a guardian or coguardians of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian or coguardians to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian or coguardians; and (4) the best interests of the child. There shall be a rebuttable presumption that appointment of a grandparent or other adult blood relative relative of such minor child by blood or marriage as a guardian is in the best interests of the minor child.

This act shall take effect as follows and shall amend the following		