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Testimony Supporting H.B. No. 5699, An Act Improving Outcomes for Children under the Custody, Care, or Supervision of the Commissioner of Children and Families, Alexandra Dufresne, J.D., Shelley Geballe, JD, MPH, Rafael Mejia
Judicial Committee Public Hearing
March 3, 2008

Senator McDonald, Representative Lawlor, and distinguished Members of the Judiciary Committee:

We testify on behalf of Connecticut Voices for Children, a research-based public education and advocacy organization that works statewide to promote the well-being of Connecticut's children, youth, and families.

I. Permanency for Children in the Child Welfare System

We strongly support H.B. No. 5699, An Act Improving Outcomes for Children under the Custody, Care, or Supervision of the Commissioner of Children and Families

The Goal: Permanency and Well-Being for All Children in Connecticut's Care

The three goals of Connecticut's child welfare system are safety, permanency, and well-being.¹ Although Connecticut does reasonably well with respect to ensuring children's safety and has made notable improvements under the *Juan F.* consent decree, it still does not do a particularly good job of ensuring well-being and permanency.² "Well-being" refers all aspects of a child's development: personal, emotional, social, psychological, intellectual, physical. "Permanency" is the idea that all children need and deserve lasting, long-term relationships with adults who care for them – relationships unconditioned on the child's status, behavior, or good fortune. In other words, when the state takes the dramatic step of removing a child from his or her parents' home – regardless of how necessary this removal is -- it is not enough for the state simply to provide a bed for the child in a place free from physical danger. The goals of well-being and permanency are grounded in research and experience that shows that uncertainty, instability, the severing of relationships, and lack of a voice in the decision-making process can be as devastating to the development of a child as physical abuse or neglect.

The Problem: Significant Number of Children in Connecticut's Child Welfare System Lack Permanency and Well-Being

A sample of problems currently facing children in care include the following:

¹ Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), p.9.

² See *id.*, pp121-122 (describing most recent *Juan F.* court monitoring data and finding that "DCF remains challenged in meeting placement, permanency, and treatment needs for a number of children."), pp. 118 (describing decrease in number of foster homes, "system gridlock" in the array of treatment and placement services, and performance "considerably below benchmarks for quality indicators related to treatment planning and meeting children's needs").

- Lack of permanency. Appropriate permanency options are reunification, adoption, and subsidized guardianship. Yet approximately 1300 children in custody have permanency goals of APPLA (“Another Planned Permanent Living Arrangement.”) – in other words, “none of the above.”³ An APPLA designation means that DCF has identified a *goal* of a placement *other than a permanent family-setting* for these children. As a result, these children do not have legally-recognized, permanent relationships with loving families, and are less likely to have their additional needs met.⁴ According to the federal court monitor, “far too many children currently have this permanency goal.”⁵⁶
- Frequent placement changes and disruptions;⁷
- Inappropriate placements, including overstays in “temporary” placements, poor fits between children and foster families, and an over-reliance on residential, group-home and other congregate (as opposed to family-based) care;⁸
- Inappropriate treatment plans, and failure to meet children’s needs⁹
- Frequent school transfers and instability;¹⁰
- Separation from siblings;¹¹

³ See *Juan F. v. Rell Exit Plan Quarterly Report*, July 1, 2007-September 30, 2007, Civil Action No. H-89-859, December 19, 2007, p. 4.

⁴ *Id.*

⁵ *Id.* at 33.

⁶ There are seven federally-recognized case plan goals for children in foster care: family reunification, living with other relatives, adoption, long-term foster care, emancipation, guardianship, and “goal not established.” As of September 2005, the latest day for which federal Adoption and Foster Care Analysis and Reporting System (AFCARS) data is available, 30.5 percent of children in Connecticut had the least desirable goals of “long-term foster care, emancipation, and goal not established.” In contrast, Kansas, which on the same date had a similar number of children in foster care, had only 9.2 percent of children under the three least desirable case plan goals. In Pennsylvania, which has a very large number of children in care (21,691), only 15.4 percent of youths have a designation of long-term foster care, emancipation or goal not established – approximately half of the rate of Connecticut.

⁷ See *Juan F. v. Rell Exit Plan Quarterly Report*, July 1, 2007-September 30, 2007, Civil Action No. H-89-859, December 19, 2007, p. 29 (“Between 25 percent and 47 percent of youth placed in foster care experienced a disruption between their first placement and May 1, 2007.”)

⁸ Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), p.118 (finding that the number of foster homes is decreasing; that discharge delays, waitlists, lack of foster and adoption services exist, and that performance is still considerably below *Juan F.* standards for quality indicators related to treatment planning and meeting children’s needs.); *Juan F. v. Rell Exit Plan Quarterly Report*, July 1, 2007-September 30, 2007, Civil Action No. H-89-859, December 19, 2007, pp 31, 48, 50 (discussing data regarding overstays in temporary placements and the number of children under 12 in non-family settings).

⁹ Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), p.121-122 (“[*Juan F.*] court monitor’s exit plan report for the second quarter of 2007 shows just 30.3 percent of DCF child welfare cases had appropriate treatment plans, (versus the goal of at least 90 percent.) Services needs of children and families were met in accordance with treatment plans in just over half (51.3 percent) of cases (compared with a target of at least 80 percent”).

¹⁰ See, e.g., Testimony of Cheniece O’Neal and Vanessa Gonzalez before the Select Committee on Children, February 28, 2008.

¹¹ Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), p.121 (*Juan F.* sibling target not met)

- Difficulty keeping in touch with family members, including siblings,¹² particularly if placed out-of-state;¹³
- Insufficient supports to transition to adulthood;
- Overall lack of stability, consistency, predictability;
- Lack of a meaningful voice in the process¹⁴

The Challenge: How to Ensure that the Basic Rights of Children are Protected?

How can Connecticut ensure that the basic rights of children to permanency and well-being are protected?

A December 2007 study by the Legislative Program Review and Investigations Committee examines in detail a number of mechanisms designed to hold DCF accountable for meeting its statutory obligations, including: federal class actions and court monitoring, federal reporting requirements and auditing of federal grants, outside investigations, and a host of internal review and quality control mechanisms.¹⁵ Yet, as the study notes, DCF's performance with respect to key indicators of child well-being and permanency is still weak.¹⁶ In addition, there is a tremendous amount of work to be done to shore up DCF's internal monitoring systems.¹⁷

In the best of worlds, these internal checks and balances would be robust and reliable enough to entrust the agency with monitoring itself. However, until these internal systems are reliable, a safety net is needed to protect children's most basic rights. As in other areas of the law, this duty falls to the courts in the form of "judicial review" – the formal and well-defined process of decision-making -- based on evidence presented by all interested parties -- by an independent and well-informed decision-maker who is bound to uphold the law. In the case of child welfare law, courts are bound to make determinations based on the "best interest" of the child. In Connecticut's child welfare system, courts already play this integral role, and many important decisions – such as the decision to remove a child initially from his or her parents' home – cannot be made on a non-emergency basis without a court hearing.

Yet surprisingly, a large number of important decisions in a child's life are left to the sole discretion of DCF, without court oversight or representation for the child. For instance, once a child is committed to the care of DCF, DCF is free, with very few exceptions, to transfer that child among placements at will. Under current law, there is no mechanism to ensure school stability for most foster children, or any guarantee that the preferences or opinions of the foster child or youth will be taken into consideration in

¹² See, e.g., Testimony of Cheniece O'Neal before the Select Committee on Children, February 28, 2008.

¹³ *Juan F. v. Rell Exit Plan Quarterly Report*, July 1, 2007-September 30, 2007, Civil Action No. H-89-859, December 19, 2007, p.30 (noting that the out-of-state residential population is increasing").

¹⁴ See, e.g., Testimony of Cheniece O'Neal before the Select Committee on Children, February 28, 2008.

¹⁵ Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), Chapters II-V.

¹⁶ *Supra*, footnotes 23, 29-35.

¹⁷ *Id.*, Chapters II (examining DCF internal monitoring and evaluation activities), VII (detailing extensive recommendations).

determining placements. Foster children are often given inappropriate “treatment plans” or placed in inappropriate placements for reasons of administrative “necessity.”¹⁸ DCF is often described as a “crisis-driven” agency that is forced to react to emergencies rather than engage in preventive, thoughtful planning.

Solution: Affirmative Access to the Courts through More Frequent Hearings and Triggers for Judicial Review

H.B. 5699 addresses the challenges noted above by giving courts a more active role in protecting the rights of children. Courts would hear child welfare cases a minimum of every three months. (Under current law, hearings are required only once per year, with limited exceptions.) In addition, reviews would be “triggered” by events likely to impact substantially a child’s permanency or well-being, such as transfer from more than two non-emergency placements within a six-month period, or overstay of an emergency or temporary placement by more than 30 days. (However, the 3-month hearing clock would restart every time there was a hearing based on a “triggering event,” so as to avoid unnecessary hearings). Before each review, DCF would be required to give the court and the child’s representative a fairly detailed written progress report on a variety of indicators central to the child’s well-being and permanency.

More frequent court reviews, together with more complete and updated information on the child’s well-being and permanency from DCF, would achieve better outcomes for children for several reasons. First, a few months is not long in the life of an adult, but it can make all the difference in the life of a child. If reviews were more frequent, the court would be able to make informed and *timely* decisions with regard to significant events in a child’s life. In so doing, a court could *prevent* many crises and harmful outcomes, rather than just try to mitigate the damage. For example, if a foster child’s academic performance deteriorates, or a child starts to do poorly in a placement, a court with frequent reviews can recognize the problem sooner and construct interventions. More frequent and timely reviews would empower courts to use their substantial expertise, judgment and authority to construct creative solutions to thorny dilemmas and improve outcomes and decision-making for children, rather than just “approving” the lesser of two less-than-ideal options proposed by the agency. The costs of more frequent reviews would likely be offset by better placement decisions and reducing the amount of time children spend in state custody¹⁹ and in non-family settings.²⁰

Second, the pressure of frequent hearings would help force DCF to take a more proactive, forward-looking approach to case planning rather than a reactive one. It would also give the large number of talented and dedicated social workers the “cover” needed to advocate strongly within the bureaucracy for their children, and would pressure below-average social workers to improve their performance. Similarly, more frequent hearings would engage parents more in the decision-making process and pressure them to

¹⁸ Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), p.121-122 (“[Juan F.] court monitor’s exit plan report for the second quarter of 2007 shows just 30.3 percent of DCF child welfare cases had appropriate treatment plans, (versus the goal of at least 90 percent.) Services needs of children and families were met in accordance with treatment plans in just over half (51.3 percent) of cases (compared with a target of at least 80 percent”); *Juan F. v. Rell Exit Plan Quarterly Report*, July 1, 2007-September 30, 2007, Civil Action No. H-89-859, December 19, 2007, pp 3, 17-24 (detailing serious performance issues with respect to treatment planning and meeting children’s needs, and identifying “system gridlock. . . , discharge delays, waiting lists for community services, and the lack of sufficient foster and adoptive homes” as part of the problem).

¹⁹ See discussion of academic research and experience of other states, below.

²⁰ Cf. Legislative Program Review and Investigations Committee, *Department of Children and Families Monitoring and Evaluation* (December 2007), p. 118 (noting that SAFE Homes (emergency, temporary group placements) cost twice as much as foster care).

take the needed steps to remedy the situation which led to removal. Finally, more frequent court reviews would raise the standards of practice for lawyers representing children and parents, thereby improving the quality of the court's decisions.

Third, more frequent reviews based on better information would afford children, youth, and parents in the system more voice, thereby improving outcomes. By improving the quality of information, representation, and decision-making, more frequent reviews would also inspire more trust—by parents and children alike—in the system. Both children are more likely to accept a decision, even one different from the one they would have wanted, if they believe that their voices were heard and the decision-making process was basically fair and well-intentioned. Under the current system, most children do not attend the treatment planning discussions, family conferences, or administrative case reviews held by DCF in which most of the important decisions involving their lives are made.²¹ Moreover, only a little more than half of mothers attend, and *less than 15 percent of attorneys for the children involved* attend.²²

Academic research and the experience of other jurisdictions supports the view that more frequent reviews would lead to better outcomes. A controlled study conducted by Professor Mark E. Courtney for the juvenile court in Dane County, Wisconsin, sought to address the question of whether reducing the period between juvenile court reviews “might keep the various players in the process (i.e. parents, caseworkers, the various attorneys involved, and judges) more focused on the permanency planning process and whether this shorter time period would empower judges to hold the parties involved more accountable.”²³ The study found that reducing the time between court hearings from six months to three months significantly improved outcomes for children: “specifically, being assigned to the accelerated court review was associated with a doubling of the odds of being freed for adoption during the study period, with no reduction in the likelihood of family reunification.”²⁴ Based on this study, Professor Courtney has provided written testimony to this Committee in support of H.B. 5699. Other studies support the idea that more frequent court reviews improve outcomes.

In addition, Allegheny County, Pennsylvania (recognized as a county with one of the most effective child welfare systems in the country) has significantly improved children's well-being and permanency through several methods, including minimum 3-month court hearings in the community.²⁵ In 1996 in Allegheny County, the average length of stay in the child welfare system for children who eventually returned home was 30 months; by 2006, that figure had plummeted to 13 months.²⁶ Likewise, the numbers of children in non-family placements, including shelters, group homes, residential facilities and supervised independent living dropped dramatically, while the numbers of children in kinship care rose significantly.²⁷ Although all of these improvements cannot be attributed solely to more frequent court hearings, there are strong reasons to believe that frequent court hearings play an integral role.

For the reasons noted above, we strongly support H.B. No. 5699.

²¹ *Juan F. v. Rell Exit Plan Quarterly Report*, July 1, 2007-September 30, 2007, Civil Action No. H-89-859, December 19, 2007, p. 13.

²² *Id.*

²³ Testimony of Mark Courtney, Ph.D., in Support of Raised Bill No. 338 before the Select Committee on Children, Dated February 26, 2008 (submitted February 28, 2008).

²⁴ *Id.*

²⁵ Allegheny County, Department of Human Services, December 5, 2007 Connecticut Permanency Briefing, p. 11.

²⁶ *Id.*, p. 14.

²⁷ *Id.* p. 12.