

JUDICIARY COMMITTEE: 2/25/08: PUBLIC HEARING

Testimony of Carolyn Signorelli  
Chief Child Protection Attorney

Bill No. 37    HB No. 5529  
SB No. 325    HB No. 5530  
                    HB No. 5532



Commission on Child Protection  
*State of Connecticut*

*Office of the Chief Child Protection Attorney*

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Senator McDonald, Representative Lawlor and esteemed Committee Members, my name is Carolyn Signorelli, Chief Child Protection Attorney, and I head the Commission on Child Protection. As many of you are aware the Commission on Child Protection and my office is responsible for the system of legal representation for children and parents in cases of abuse, neglect and termination of parental rights brought by the Department of Children and Families in Juvenile Court. My office is also responsible for qualifying and paying for Attorney for Minor Children and Guardians ad litem (AMC's/GAL's) appointed for indigent children in divorce, custody and support cases. Additionally, we administer the contracts with the attorneys who represent indigent contemnors and putative fathers in these cases.

I respectfully submit the following testimony in support of Raised Bill 325 concerning the Commission on Child Protection and in opposition to Bill No. 37 concerning computer crimes against children. In addition, I support HB No.'s 5529, 5530, 5532:

**S.B. No. 325 (RAISED) AN ACT CONCERNING THE COMMISSION ON CHILD PROTECTION.**

This act was submitted by the Commission on Child Protection to address several areas that will assist our agency in meeting our statutory obligations and improving the quality of legal representation children and parents receive in the cases for which we provide representation.

There are two changes to our statute that we are seeking: The first is for authorization to "appoint a director of family matters to oversee the responsibility over the divorce, custody and support matters in which we provide representation (p.2, l. 37) and the second is simply a technical amendment to clarify throughout our statute that we are permitted to contract with "law firms" (p. 3, l. 70).

The Commission is also proposing amendments to 46b-129a regarding the representation of children in child protection proceedings to clarify that the Chief Child Protection Attorney's office is now responsible for appointing attorneys (p. 4, l. 102), that children 7 years of age or older receive traditional client directed representation from an attorney (p. 4, l. 106), and that children are only appointed a separate GAL if it is established that they are incapable of acting in their own interests consistent with Rule of Professional Conduct 1.14 (p. 5, l. 113).

We have also submitted an amendment to C.G.S. § 4-165 to include child protection representation by the Commission's juvenile contract attorneys under the definition of scope of employment covered by statutory immunity (p. 6, l. 166).

This act also contains an amendment to C.G.S. § 17a-28 proposed by DCF. I filed an amendment to their amendment in order to ensure that my office continued to have access to DCF records in order to perform its monitoring and bill review functions (p. 17, l. 523).

C.G.S. § 46b-123c & d.

The portion of our program involving divorce, custody and support matters costs the state approximately \$1.3 million dollars per year, the bulk of which is for representation of obligors in support proceedings who are facing incarceration due to contempt. There are approximately 40 attorneys who contract to do this work. In addition, whenever the court determines that a child who is the subject of a divorce, custody or support proceeding requires representation by an attorney or a guardian ad litem, if that child's parents cannot pay, our office pays for that representation. Currently our statute requires that we assure that all representation provided through our office is of a "high quality" and that we establish caseload and training standards for the attorneys, as well as practice standards. We are also charged with "qualifying" the attorneys who provide representation to children in these matters.

Administering the system of representation in child protection matters, in which we appoint attorneys to approximately 14,500 clients per year and review and process the bill submissions of approximately 200 attorneys, as well as working to improve the quality of representation, is an extremely challenging and daunting task. This is especially true for eight people, which is my current staffing level. Moreover, my staff is primarily administrative dealing with the appointment and billing processes. Having another attorney that can assist me in my responsibilities over legal and policy issues and who can focus their expertise and attention on the family matters side of our program, would greatly enhance our agency's capacity to meet its statutory obligations.

A Director of Family Matters would not only be responsible for supervising the current administration of the family matters program, which includes processing and reviewing applications for contracts and for becoming a qualified AMC/GAL and assisting with ensuring proper billing, but would participate in and utilize the Family Matters Advisory Board and the Magistrate Support Advisory Board that the Commission has created to help identify issues facing these areas of representation and implement solutions to those issues. Currently, the Family Matters bar is discussing potential reforms to clarify the role and duties of AMC's and GAL's, including adopting standards, and I feel it is important that the Commission be involved with and have a voice in any movement in one direction or another in this practice. The Director would be responsible to act as the Commission's liaison with the Connecticut Bar Association's Family Matters Committee, as well as Court Operations, Family Matters Division, Family Magistrate Support Court, the Attorney General's Office, Support Enforcement, the attorneys who provide representation and the clients they serve.

Administering these programs not only requires setting systems and procedures in place, but there are daily court and case specific issues that arise that require someone's attention. Currently, as the only attorney on staff, I am responsible for all of the above tasks. It is extremely difficult to focus on my responsibility as head of the agency to determine and implement policy and system changes as well as provide quality assurance, when I am also responsible for attending to and resolving the smaller issues that arise concerning representation on a daily basis in juvenile, family, and support courts. Having another attorney to deal with these issues on the family side of the program would be extremely helpful.

The Director would also be expected to spend time in the field initially for assessment purposes in conjunction with receiving advice and input from the Advisory Boards, but would have continuing duties administering the program and ensuring the quality of the attorneys involved. This would include maintaining an ongoing presence in the field, implementing training programs specific to contempt and AMC/GAL representation, reviewing the contract applications for the contempt and paternity attorneys and approving the applications for AMC/GAL qualification.

C.G.S. § 46b-129a

The field of legal representation in child protection matters has been moving in the direction of improving the advocacy for children in neglect and abuse proceedings by providing trained attorneys committed to zealously advocating for children's interests in court. See, **ABA/NACC Revised Standards of Practice for Lawyers Who Represent Children** <http://www.naccchildlaw.org/documents/abastandardsnaccrevised.doc> **Children in Abuse and Neglect Cases** and Connecticut Standards of Practice for

## Attorneys and Guardians Ad Litem Representing Children in Child Protection Matters.

Connecticut's current model of child representation mandated by C.G.S. § 46b-129a requires that representatives for children in neglect and abuse proceedings act as both an attorney and a guardian ad litem (GAL). This creates an inherent conflict in the representation since an attorney owes a duty of loyalty and confidentiality to the wishes of his or her client, but a GAL has no such duty and is obligated to advocate for what he or she determines to be in the child client's best interest. The provision in CGS 46b-129a whereby attorneys can subjectively substitute their judgment for that of the child and seek a separate GAL, severely limits a child's rights as a party to be legally represented and to be heard in court proceedings.

This proposal seeks to eliminate that problem for children 7 years of age or older by simply appointing them an attorney and require that attorneys provide client directed representation unless the more stringent requirements of Rule 1.14 are met.<sup>1</sup> Rule 1.14 requires that the client be under an impairment that renders them incapable of reaching an informed decision in relation to the subject matter of the representation. It further requires that that impairment and lack of judgment in relation to the client's own interests is likely to have serious adverse consequences if the attorney does not take protective action. This approach is consistent with children's recognized rights to be a party to the proceedings and to be heard by the court.

Connecticut is moving in the direction of providing children with a true voice in proceedings that so profoundly affect their lives. This is evidenced by the adoption of Standards of Practice modeled after the ABA/NACC Revised Standards, the Judicial Branch and the Commission on Child Protection working collaboratively to train Judges and Attorneys about the importance of hearing the child's position in child protection proceedings, the Judicial Branch's decision to pilot a project where more children will attend court, and the Branch's new Standing Order to implement federal legislation requiring that a child's position on permanency be ascertained by attorneys and communicated to the court. This proposed amendment will be an important step towards protecting the right of children to be heard.

The reason for the cutoff at age 7 is somewhat arbitrary, but I considered the following factors that would hopefully promote some consensus around this initiative: Seven is the age at which the majority of states either expressly by statute or rule and others by tradition or practice, recognize that a child has achieved sufficient reasoning ability to be held accountable for delinquent acts. In Connecticut, children as young as 8 years old have been arrested for delinquent

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<sup>1</sup> The Commission has obtained an opinion from the Children's Bureau of the Federal Dept. of Human Services that this proposal will not violate CAPTA and therefore not jeopardize federal reimbursement.

behavior. Whether you agree or disagree with the above treatment of 7 year olds, at 7 children have typically reached a point in their language development where they can understand what is being told to them, if in an age appropriate manner, and can effectively communicate their wishes to adults who understand children's development and language. They typically have had at least 2 to 3 years in a school setting where they've had an opportunity to interact with and be cared for by other adults and therefore have some frame of reference for appreciating problems they might be experiencing under their parents' care and for being less dependent upon their parents than younger children. This is important to their ability to interact with an attorney; be counseled by their attorney; and to more objectively think about, decide and communicate what they wish to happen in their case.

C.G.S. § 4-165

The Commission seeks to amend C.G.S. § 4-165 to include attorneys appointed by the Chief Child Protection Attorney to represent indigent respondents and children in juvenile court. Juvenile Contract attorneys providing representation in child protection matters are equivalent to special public defenders in that they are independent attorneys contracting with the state to provide representation to indigents who are constitutionally and in the case of children, by federal and state statute, entitled to representation.<sup>2</sup> Although they are not direct employees of the state, both special public defenders and juvenile contract attorneys are under contract with the state to provide required legal representation.

This representation is essential to the state's ability to perform certain functions. Specifically, juvenile contract attorneys assist the judicial system in fulfilling the court's role as arbiter of matters between the State Department of Children and Families as the petitioner, the parents as the respondents brought before the court by the State, and the children who are the subject of the State's petitions. These attorneys, just as special public defenders serve to protect the constitutional rights of criminal defendants, serve to protect the constitutional right of the parents and children to family integrity. Therefore, statutory immunity pursuant to § 4-165, should be extended to the attorneys who contract with the state to provide legal representation in child protection matters.

***Bill No. 37: AN ACT CONCERNING COMPUTER CRIMES AGAINST CHILDREN.***

I do not support this bill because I believe that the age for individuals considered children under criminal laws punishing this type of behavior should be 18 years of age. As Connecticut moves in the criminal justice arena to bring 16

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<sup>2</sup> Pursuant to P.A. 76-371 Sec. 2, the legislature added public defenders, including special public defenders, to the definition of state employees for purposes of entitlement to qualified immunity under C.G.S. § 4-165.

and 17 year olds back into the juvenile fold due in part to increased scientific awareness of the differences in brain development between adolescents and adults and the effect upon their ability to make reasoned decisions, this awareness should inform our laws protecting young people in the context of being enticed into sexual acts and exploitation. Do we really want to give these predators a free pass with our 16 and 17 year olds? I would suggest amending the laws on the books that already criminalize this behavior to cover 16 and 17 year olds.

In relation to the time period and number of photo limits under Sec. 2, I'm sure there must be some rationale for permitting individuals to look at up to 50 images of child pornography "knowingly" in a 48 hour period, but I am unable to grasp it. It seems to me if just one image of child pornography is "knowingly" viewed it should be a crime. Perhaps the more images in a shorter period of time viewed, the easier it is to prove that the activity was performed knowingly. However, law enforcement should not be limited in its ability to prosecute someone who views fewer photos if there is some other means to establish knowledge. It seems to me that there must be other ways to prove knowingly participating in the use and dissemination of child pornography without creating a crime for *viewing* that is probably impossible to prove.

I support the following bills:

HB No. 5529 concerning youth who run away.

HB No. 5530 concerning mandated reporters of abuse or neglect.

HB No. 5532 concerning private hearings in family relations matters.

Thank you for this opportunity to be heard. If there are any questions, I welcome them at this time.

Respectfully Submitted



Carolyn Signorelli