



**STATE OF CONNECTICUT
JUDICIAL BRANCH**

EXTERNAL AFFAIRS DIVISION

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**Written Testimony of the Honorable Christine Keller
Chief Administrative Judge, Juvenile Matters**

**Human Services Committee Public Hearing
February 10, 2009**

**Proposed Bill 5425, An Act Prohibiting Reliance on a Theory of
Predictive Neglect or Predictive Abuse in the Adjudication of Child Neglect
and Abuse Cases**

Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch on Proposed Bill No. 5425, *An Act Prohibiting Reliance on a Theory of Predictive Neglect or Predictive Abuse in the Adjudication of Child Neglect and Abuse Cases*. The Judicial Branch has serious concerns with this proposal and would urge the Committee not to pursue it.

The use of predictive neglect has long been recognized to be an integral part of the public policies expressed in our child welfare process, not only in this state but nationally. It is an essential tool for the state to have available in order to protect its most vulnerable citizens.

Connecticut statutory and case law recognizes that children should be protected from potential harm, and that the state does not have to wait for actual harm to befall a child before intervening. Our statutes clearly permit an adjudication of neglect based on a potential for harm or abuse to occur in the future. C.G.S. section 17a-101(a) provides: "*The public policy of this state is: To protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse, investigation of such reports by a social agency, and provision of services, where needed, to such child and family.*" (Emphasis added.)

In order to carry out this mandate, C.G.S. section 46b-129(b) permits the removal of a child from the home by the Department of Children and Families, subject to court review within

96 hours, when “there is reasonable cause to believe that (1) the child . . . is in immediate physical danger from his surroundings, and (2) that as a result of said conditions, the child’s safety is endangered and immediate removal from such surrounding is necessary to ensure the child’s safety” The ability to remove the child provides the protection that children need; the review by the court ensures that DCF acts only when removal is necessary to protect the child(ren).

Courts have approved the removal of children from their home, as well as the assertion of neglect allegations on their behalf, because our statutes provide for the protection of children from potential harm. In the case of *In re Michael D.*, 58 Conn. App. 119 (2000), predictive neglect was found appropriate on behalf of two youngsters whose brother had been sexually molested secretly for a decade by their stepfather, under circumstances suggesting that their mother knew of this behavior and not only failed to take steps to protect her children, but thwarted authorities investigating the abused child’s claim by lying about the fact that the stepfather, a convicted child molester, was living with her. Another Appellate Court case, *In re Jermaine S.*, 86 Conn. App. 819, noted, “Jermaine was born addicted, [his] mother had a lengthy history of the use of illegal substances, including PCP, [his] mother had a lengthy history of mental health issues, [his] mother denied her substance abuse, [his] mother was noncompliant with her mental health treatment . . . and . . . on the date of the order of temporary custody, the date of the child’s birth, and the date the neglect petition was filed, [his] father was in jail and a noncustodial resource.”

Significantly, both cases involved serious and longstanding criminal activity, family histories of neglect or abuse of older children, and parental inability to respond meaningfully to address the parental deficiencies which had been identified at an earlier time. In each case, the appellate court found that neglect could be predicted on the basis of the facts, which were asserted in accordance with statutory law.

A review of state appellate court decisions shows that the courts have been properly carrying out the mandates of the statutes, as there is no appellate case finding that the trial court misapplied the doctrine of predictive neglect. The Appellate Court, in the case of *In Re Francisco R.*, 111 Conn. App. 529, upheld the application of predictive neglect where the father had been accused of sexually abusing several of his daughters on more than one occasion. The mother did not believe the sexual abuse accusations, would not follow DCF recommendations, and would not agree to reside apart from the father.

In the case of *In Re T.K.*, 105 Conn. App. 502 (2008), the Appellate Court noted that mother had persistent obsessive thoughts of self-harm for over 20 years and that the stress of having a child resulted in her having thoughts of harming the child. The father was suicidal. The court stated:

“On appeal, the respondents argue that this is not a case to which the doctrine of predictive neglect applies. The respondents claim that the elements of predictive neglect are (1) a serious prior history of neglectful or abusive parenting of one or more children or (2) a serious inability or unwillingness of the parents to accept, cooperate with or benefit from services necessary to help them care for their child. We disagree. Although many of the cases on which the respondents rely for that argument concerned families in which older children had been harmed or permitted to be harmed by a parent, neither the legislature nor the courts of this state have set forth such requirements. If the first of the respondents' arguments were accepted, no firstborn child could ever be adjudicated neglected under the doctrine of predictive neglect because the parents could have no history of prior abuse. Our child protection laws are designed to prevent injury to the welfare of a child, not to wait until it occurs.” (Emphasis added)

Superior Court decisions invoking the doctrine of predictive neglect are numerous. Some general themes that emerge from them is that when a parent cohabits with a sexual predator and exposes her children to him, the likelihood is high that a neglect allegation will be sustained. Parents who have demonstrated neglectful or abusive behavior toward older children will likely raise sufficient alarm to warrant concern about the well-being of a newborn. Lastly, an obvious inability to meet minimal expectations of parenting skills will sustain a finding that prospective harm to the child of such a parent is predictable.

Connecticut's child welfare system should continue to be particularly protective of newborns. Many cases where predictive neglect is applied involve newborns suffering from prenatal exposure to illegal drugs as a result of the mother's substance abuse during pregnancy. Last June, a team of Connecticut child welfare practitioners, headed by Janice Gruendel, attended a Harvard symposium on the early development of children at Harvard's Center on the Developing Child. The team heard from a number of scientists who showed us that the parent's inability to lovingly nurture a child in a safe, healthy and responsive environment exposes the child to stressors that affect them physically by impeding the appropriate formation of normal connections in the brain. Exposing a young child to the care of parents who cannot care for that child may, in only a matter of months, condemn that child to a lifetime of irreparable mental

impairments and maladaptive behavioral patterns. The damage to the child's developing brain is the result of psychosocial stress, (such as not being fed on time or having cries go unheeded), witnessing conflict and violence, as well as physical abuse and emotional rejection. The injury to the baby's brain as a result of such stress is an alteration to normal neurodevelopment processes caused by a toxic developmental environment.

The doctrine of predictive neglect is grounded in the state's responsibility to avoid harm to the well-being of a child, not to repair it after a tragedy has occurred. In many instances, the harm is irreparable. Please do not approve such an unwarranted revision to our carefully crafted child welfare policies, which rightfully put the safety and well-being of children first.