

Written Testimony of Lawyers for Children America

Members of the Committee, thank you for this opportunity to provide written testimony in opposition to Proposed SB 636. Lawyers for Children America has represented children in the Connecticut child protection system for 15 years and we wish to bring this perspective to your consideration of this bill.

While beneficial to parents in some ways, ~~we~~ Senate Bill 636 ~~believe~~ will keep families from receiving help at a time where they need a push from the court system to get help for themselves and their children. It will also increase the risk that children who need help from the child protection system will not be able to get that help. Children are vulnerable, and that is why as a society we have decided that government has the right to act on their behalf when they are put at risk. Although child protection matters affect a significant interest for families, these matters are not a criminal matter and should not be treated as such. Child protection law is less adversarial than many other areas of the law because usually the parties want what is best for the child, even if they disagree on what is best. To treat these matters like criminal matters will heighten the adversarial nature of the proceedings, which does not benefit children. Children are in the best position in these cases where the parties are all working together to improve the situation.

Currently, the standard of proof in abuse and neglect matters is the fair preponderance of the evidence standard used in the adjudication of the neglect allegation. Adjudication goes to the condition of the child, which is not predicated on finding either parent at fault. In fact, there are cases when it is impossible to prove a parent's guilt, but a child is found to be abused. The classic example is an abused infant where the medical evidence indicates the child's injury is consistent with a non accidental injury but the parents both deny that they know anything about how the injury occurred. Neither parent has to be proven guilty of causing the injury. The child is deemed abused by the court because of the child's condition. Even if there is an abuse adjudication, there is second step to the process of deciding whether a child should be removed from the parents. The judge must make a finding as to what disposition in the matter is in the best interest of the child. The current standard of proof and the requirement of a best interest finding in neglect and abuse matters is a better method for protecting a parent's right of family integrity. Further, most of the cases that are handled by the court involve either the most severe matters, or matters where DCF has attempted to work with the family but DCF has found the family to be not as cooperative as they believe necessary to help the situation. Many times the filing of an abuse or neglect petition pushes a parent who is in denial as to how their child is being affected to work on the issues because of the court involvement. This is a powerful tool for behavior modification that this bill will stymie.

Currently, the termination of parental rights standard of proof is clear and convincing evidence, the minimum standard that the U.S. Supreme Court set out for termination of parental rights cases in Santosky v. Kramer, 455 U.S. 745 (1982). The Supreme Court felt that considering the constitutional rights being affected in termination of parental rights cases, this minimum standard best distributed the risk of error between the litigants. With termination of parental rights cases, the court has to make an additional finding that termination of parental rights is in the child's best interest after finding that one of the grounds for termination was proven. To raise the standard for abuse and neglect petitions to a higher standard than the current termination of parental rights standard would lead to an absurd result. In both neglect and termination petitions the burden of proof lies with the State to prove that a statutory ground is met. By putting the burden of proof on the State, the child is presumed not have been neglected or abused unless the State can meet its burden.

Further, the statute's requirement that a municipal or state employee who violates the constitutional rights of a parent or guardian and that the employee shall not receive immunity will cause some very unfair results. The social workers who are assigned these cases are often recent college graduates with little or no legal training. Often, much of their <sup>training</sup> takes place while they are on the job. Many times I've had to counsel a new social worker regarding how the legal process works, or fill gaps in their knowledge about how to do their job. Putting an added burden on social workers who make an honest mistake that inadvertently violates a parent's rights, resulting in dismissal and possible litigation will have a chilling effect on DCF social worker recruitment.

We agree that the many social services agencies in this state, particularly the Department of Children and Families, needs to address the manner in which social workers and other staff and management treat parents and families who interact with the agency. No one denies that DCF has long been an agency in crisis, and some measure of accountability and serious consequence for the improper and sometimes illegal actions of staff and management is absolutely necessary. We would ask, however, any legislation designed to address the failings of DCF and hold individuals accountable for their actions be drafted carefully and narrowly to avoid trapping well-meaning and honest employees in untenable circumstances. Perhaps the legislature may consider making distinctions between punishments for intentional and unintentional behavior, akin to the distinctions found in the penal code.

Thank you for allowing us to voice our concern over this bill.