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Testimony of Jeanne Milstein, Child Advocate

Judiciary Committee  
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Good morning Senator McDonald, Representative Lawlor, and members of the Committee. Thank you for the opportunity to testify today:

- in opposition to House Bill No. 6702, An Act Concerning Public Access To Proceedings In Certain Juvenile Matters; and
- in support of House Bill No. 1157, An Act Concerning Funding For Legal Services And Judicial Branch Technology.

I am strongly opposed to opening House Bill No. 6702, which would create pilot projects in three juvenile courts to allow broad public access to such proceedings.

There is no question that our system for caring for abused and neglected children is in need of significant improvement. It is critical that we improve accountability of all of the participants in juvenile court proceedings – the Department of Children and Families (DCF), attorneys appointed to represent children and indigent parents, attorneys representing DCF, and judges. It is also critical that we ensure that attorneys practicing in juvenile court have good training and provide good quality legal representation in what is an extremely complex legal environment. Finally, we must raise public awareness about abused and neglected children in our state.

There is simply no evidence, however, that opening juvenile court proceedings to the public will accomplish these goals and good reason to believe that opening such proceedings has the potential to harm children. Studies in Minnesota and Arizona are often cited as studies that show that opening juvenile court proceedings do not harm children. In fact, the methodology of those studies has been challenged and the findings regarding lack of harm to children have been called into question. Professor William Wesley Patton, a professor at Whittier Law School and an expert on the legal and pediatric psychiatric effects of opening child dependency proceedings, provided the Committee with an extensive analysis of both studies and I would urge you to read the information he provided. In addition, the Minnesota study noted significant evidence that opening the proceedings had no impact on public awareness, the quality of child protection hearings, or on accountability.

Having presumptively open juvenile proceedings has the potential to harm children. First, once proceedings are presumed open, there is little ability to protect the privacy of those children who may be harmed by publicity. While the bill proposes giving the court authority to exclude members of the public, it is not likely that this would occur. The Minnesota study found that once courts were presumptively open, decisions to close the court were rare. In those instances where courts would issue orders to exclude the public from a particular case, such exclusion would likely

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lead to motions for temporary injunctions and appeals as media attempts to gain access. Second, while the bill proposes granting the court the authority to prohibit the dissemination of any personally identifiable information disclosed during open proceedings, such orders would be difficult, if not impossible, to enforce.<sup>1</sup> Third, the evidence suggests that it is the fear of publicity that has the most significant impact on the child. I would refer you again to the information submitted by Professor Patton, which includes a discussion of a longitudinal study conducted in Canada.

I urge you to also consider the potential for potential ramifications of this bill. What kind of hearing would be required to determine on a case-by-case basis who should be excluded from the courtroom? What rights to appeal would persons excluded to the courtroom have? Could persons excluded from the courtroom delay proceedings pending appeal? What kind of hearing would be required to determine on a case-by-case basis whether there is a compelling reason to prohibit a member of the public who is lawfully present at the hearing from using or disseminating the name, address, photograph or other personally identifiable information about a child? What rights to appeal would exist if the court issued such orders? How would the court enforce such orders? Is there really any meaningful remedy for a child who is taunted after the personal details of the abuse or neglect he or she has suffered are made public by a neighbor or by the press?

Given the potential for harm to children, and the lack of evidence that public access will result in greater accountability or outcomes for children, I urge you not to move forward this bill.

Instead, ask yourself what else can be done to improve accountability without potential harm to children? One of the most important things this legislature can do to improve accountability and outcomes for children is to ensure that all attorneys appointed to represent children and parents provide the highest quality of legal representation. Lawyers that provide good representation meet with their clients and hold DCF and judges accountable by investigating the facts, researching the law, filing motions, making good records, and filing appeals if necessary. They challenge other attorneys to do the same. The creation of the Commission on Child Protection several years ago, with established caseload and practice standards was a good first step to improving legal representation. We must remain vigilant to ensure that children and indigent parents have high quality legal representation. We must ensure that the appointment system attracts and retains highly skilled attorneys, provides them with the resources they need to provide the best legal representation, and incorporates quality assurance so that attorneys who aren't zealously representing their clients no longer receive contracts.

Another step the legislature can take would be to create an oversight body, comprised of volunteer attorneys, pediatricians, child and adolescent psychologists and psychiatrists, social workers, parents, members of the community, and members of the press. It could be structured to ensure that all members would be trained to understand the proceedings they observe and to require all members to agree to operate under strict guidelines to ensure confidentiality of personally identifiable information. This oversight body could be required report regularly to the legislature regarding the activity of the juvenile court and to provide recommendations for improvement. Such an oversight body would provide the public with information on the functioning of the juvenile courts, including the quality of legal proceedings, social work by the Department of

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<sup>1</sup> The United States Supreme Court has made clear that publication of lawfully obtained information is protected speech under the First Amendment. See *Bartnicki v. Vopper*, 532 U.S. 514 (2001); *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979).

Children and Families, and legal representation, while simultaneously protecting children from the public release of personally identifiable information.

I urge you to consider these alternatives rather than opening juvenile courts

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I support House Bill No. 1157, An Act Concerning Funding For Legal Services And Judicial Branch Technology. This bill would raise approximately \$6 million in funds for legal aid by increasing Superior Court fees and increasing the attorney occupational tax. Such funding would reduce the cuts in legal aid services during the economic downturn, until a revived economy results in recovered IOLTA (Interest of Lawyers' Trust Accounts) funds.

Legal aid programs provide legal assistance to our most vulnerable citizens, including our children. The Office of the Child Advocate has been privileged to work with some of the finest attorneys in Connecticut on protecting the rights of our children and I can tell you that they play a vital role in improving the systems that serve children. Legal aid attorneys ensure that children with mental illness are cared for appropriately in their own communities and do not languish unnecessarily in institutional and residential settings. Legal aid attorneys have worked to ensure that children in foster care are not bounced around from home to home and school to school. Legal aid attorneys worked to protect children from losing medical coverage and prescription drug coverage and access. Legal attorneys have worked to reduce the numbers of children who are ending up in adult prisons.

Legal aid programs have lost about \$9 million because of the 80% drop in IOLTA funding due to the poor housing market and near-zero interest rates. Legal aid program attorneys and staff have been forced to take significant pay cuts from already low salaries and without help, many will lose their jobs.

In difficult economic times, children and their families are at greater risk of domestic violence, homelessness, behavioral health issues, and substance abuse. Children need legal help to make their way through entitlements, enforce their legal rights, and secure necessary housing, education and medical care. We need legal aid programs now more than ever.

Please support House Bill No. 1157 to ensure that legal services programs can continue to provide their much needed services to children and their families.

Thank you for the opportunity to testify. I would be happy to answer any questions you may have.