

CONNECTICUT GENERAL ASSEMBLY

February Session, 2010

**Raised Bill No. 5146**

**An Act Concerning Visitation of Children Committed to the**

**Department of Children and Families**

Committee on Human Services

REMARKS OF ATTY. MICHAEL H. AGRANOFF

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Thank you for the opportunity to testify. I have been a DCF defense lawyer since 1991. At present, ours is the only law firm in the State of Connecticut providing full-service DCF defense to private-paying adults on a full-time basis.

Our office drafted this bill, which was modified by the Committee on Human Services, both to clarify the authority of Juvenile Courts in visitation matters, and to ensure the legitimate rights of parents in child visitation while preserving child protection.

The bill specifies that Juvenile Courts have the authority to decide visitation matters for children committed to DCF. This might not seem necessary, and many judges already exercise that authority. However, because of an ambiguous statutory provision, C.G.S. Sec. 17a-10a, some judges feel that they do not have this authority. The bill will resolve the ambiguity.

The bill also specifies that DCF may not unilaterally cancel or suspend court-ordered visitation without providing parents with a prompt evidentiary hearing on the matter. The reason is that DCF has sometimes used visitation cancellation or suspension as a tool to punish parents who are deemed not properly deferential to DCF, even if the child was not thereby placed in danger.

Commitment of a child is a serious and stressful matter. Obviously parents cherish visitation time; and the reduction of visits with a parent is often a very traumatic and painful event for the child also. DCF often does properly reduce or suspend visitation for cause; but has also done this to punish the parent for a non-visitation-related transgression, such as not adequately complying with a treatment recommendation, or not answering social worker questions promptly enough. It is analogous to preventing a father from visiting his child because he is behind on child support payments.

In any event, the bill allows DCF to unilaterally cancel a visit or suspend visitation entirely for cause, such as if the parent is highly inappropriate at the visit. However, in that event, the parent must be entitled to a hearing, to ensure that DCF's actions are reasonable, appropriate, and not arbitrary. It is clear, and expected, that the court will not put a child in physical or emotional danger; and thus this bill will not endanger child welfare in any way.

In a case that I had several years ago, the father was visiting his son at an institution. The father had not hired me at the time, and was, to be fair, a difficult person to deal with. DCF

cancelled his visits on the ground that he frightened the child. However, subsequent investigation, by requesting records from the institution itself, showed that the child had always enjoyed visits with his father, and was not afraid of him. An evidentiary hearing would have allowed an independent Judge to decide the matter fairly and promptly.

C.G.S. Sec. 17a-10a requires that DCF provide for adequate visitation of a child who is committed or who is under an order of temporary custody (OTC). It further requires that visitation be included in the treatment plan. Some judges have interpreted this to mean that Juvenile Courts cannot entertain visitation motions unless the parents have gone through the administrative step of filing for a treatment plan review. Also, as a practical matter, entirely refusing to hear visitation motions helps to ease the crowded Juvenile Court dockets.

This rationale was demolished by Judge Wilson's decision in *In Re Christopher M.*, 44 Conn. L. Rptr. No. 22, 782 (March 24, 2008). That decision also referred to Judge Alander's decision in *In Re Leighton V.*, 23 Conn. L. Rptr. No. 4, 128 (December 14, 1998).

*Leighton V.* taught that the Juvenile Court has primary jurisdiction in visitation matters, due to the Court's authority to make and enforce all orders necessary for the welfare of a child within its ambit. DCF does not have exclusive jurisdiction in this area. In other words, the doctrine of "exhaustion of administrative remedies" does not apply to visitation matters. Further, *Leighton V.* also taught that the time needed to exhaust administrative remedies might be disruptive to a young child, and that the Juvenile Court could and should hear these matters.

*Christopher M.* taught that *Leighton V.* did indeed allow Juvenile Courts to entertain visitation motions, and rejected DCF's contention that it had exclusive jurisdiction in this area. That decision further cautioned DCF to not attempt to deny visitation without providing credible evidence, factual or expert, regarding its denial.

More to the point, whenever a child is placed under an OTC or commitment, the parents have the right to ask for visitation orders then and there in Court. It would be anomalous if a Court could issue visitation orders that DCF could countermand, and leave the parents with no meaningful opportunity to be timely heard by the Court on the matter.

In short, there is no logical reason whatsoever to exempt visitation decisions from all other decisions that the Juvenile Courts regularly issue regarding the welfare of children under its jurisdiction, whether the children are in Juvenile Court by OTC or by commitment.

Respectfully Submitted,

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