

HUMAN SERVICES COMMITTEE  
PUBLIC HEARING  
March 9, 2010

Written Testimony of Carolyn Signorelli  
Chief Child Protection Attorney

**Raised Bill No. 5429**  
**§§ 1, 2, 4, 5, 6 & & Opposed**  
**§ 3 In Favor**



Commission on Child Protection  
*State of Connecticut*

*Office of the Chief Child Protection Attorney*

Senator Doyle and Representative Walker and distinguished Committee Members, thank you for the opportunity to be heard regarding Raised Bill 5429.

I am concerned regarding the consequences for children in need of protection if this bill becomes law. Specifically Sections 1, 2, 4, 5, 6 and 7 requiring proof beyond a reasonable doubt before DCF or a court can act to protect children from abuse or neglect or immediate physical danger or help families found in need of services, would render it virtually impossible in many cases to protect children who have unexplained serious physical injuries or who are in imminent risk of physical danger or to insist that parents take actions to address their children's needs. Beyond a reasonable doubt is an extremely high burden of proof, reserved for criminal cases where the issue before the court is deciphering whether or not the alleged perpetrator is guilty of a committed crime and should be deprived of his or her liberty. While the liberty interest implicated by child protection proceedings is in many respects as important as those addressed in criminal proceedings, the need to balance several interests including a child's right to be safe and appropriately cared for necessitates a lower burden of proof.

Proving abuse or neglect so that DCF and the court can protect children can be challenging because neglect and abuse occurs within the privacy of a family's home and because children often are not good reporters or witnesses against their parents. In removal cases due to "imminent physical danger" predicting future harm is speculative and creating reasonable doubt would be relatively easy to accomplish. While this would be beneficial for the parents to whom my office provides representation, this advantage must be weighed against the interest of our child clients who are often in need of protection.

Currently parents are not found guilty of neglect or abuse, rather the child is found to be neglected or abused and the state is obligated to make efforts to help rectify the circumstances that lead to the abuse or neglect. The child welfare system is intended to be ameliorative, not punitive. The purpose of this distinction is to focus on the needs of the child, the rehabilitation of the parent and the maintenance of the family, as opposed to guilt or innocence, punishment or acquittal.

The Supreme Court of Connecticut explored the various burdens of proof and their applicability to the different types of proceedings in Juvenile Court. The court explained, citing *Santosky v. Kramer*, 455 U.S. 745, 755 (1982), in which the United States Supreme Court ruled that the "clear and convincing" standard was sufficient to meet due process requirements when permanently depriving a parent of his rights: "[T]he minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed . . . ." *In re Juvenile Appeal (83-CD)*, 189 Conn. 276, 297 (1983). The court went on to hold that the fair preponderance of the evidence standard of proof was the most appropriate when addressing the temporary deprivation of a parent's right to custody:

[T]he child's safety pending further proceedings is the primary concern of a temporary custody hearing... The state, as *parens patriae*, represents the safety interest of the child in custody proceedings. This interest must be balanced against the combined family integrity interests of parent and child, which are represented by the parent. An elevated standard of proof cannot protect the child's interests, because some interest of the child is adversely affected whether the state or the parent prevails. The child's interests are best protected not by an elevated standard of proof, but by the "risk of harm" standards enunciated today.

Id. 298.

In other words, the risk of either an erroneous deprivation of the parents' rights or a fatal failure to protect a child at risk, should not be distributed to children at the expense of their physical well-being and lives.

The reference by the Connecticut Supreme Court to the "risk of harm" standard as the most appropriate way to balance a parent's interest in family integrity and a child's interest in safety is consistent with the policy clearly set forth by the Connecticut General Assembly in § 17a-101(a):

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.

The use of the term "may" in the above statute necessarily means that a child does not have to suffer actual injury or discernible consequences of neglect in order for the state to act to protect the child from harm. The language of the Order of Temporary Custody statute also allows for the state to prevent harm to a child before a child actually suffers an injury or death by authorizing removal if the child "is in immediate physical danger from the child's or youth's surroundings, and (2) as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety. C.G.S. § 46b-129(b). Our courts have interpreted this edict by the legislature and held: "Our statutes clearly and explicitly recognize the state's authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected. ." *In re Francisco R.*, 111 Conn. App. 529, 537 (2008).

Application of a "beyond a reasonable doubt standard" would in most cases eliminate the ability of the state to act in advance of actual harm to prevent abuse and maltreatment and leave too many children in dangerous situations.

While I recognize that there are cases where it appears that DCF and the court have unnecessarily removed children, adjudicated them neglected or committed them to the department, poor or unwelcome decisions on individual cases should not serve as the basis to eradicate sound policy necessary to protect those who cannot protect or, in many instances, speak up for themselves. This would amount to a reversal of decades of advocacy on behalf of abused and neglected children who were once seen as their parents' property and whose suffering was considered a family matter. Solutions to poor decision making lie in better training and increased accountability for Judges, attorneys, and social workers; consistent application of DCF's own Structured Decision Making risk assessment procedures, adoption of Differential Response to address moderate and low risk cases and zealous and skilled legal representation for children and parents when the facts do not support a finding of neglect or a decision to remove a child from his or her home. In addition, strengthening the rights of children by providing them with traditional client directed representation will ensure that courts have all information necessary to make proper decisions regarding child placement, including the child's perspective regarding his or her family situation. Currently, this is not occurring in many cases due to the current state of confusion that C.G.S. § 46b-129a's requirement that attorneys representing children serve in a dual capacity as attorney and GAL.

In contrast, the above analysis does not apply in termination of parental rights cases where the issue of keeping a child safe is not paramount. The child is already safe and in care, rather the issue is whether or not the child should have his or her ties to his or her parents legally severed. Therefore, Section 3, which requires that a decision to terminate parental rights be based upon proof beyond a reasonable doubt, is an appropriate amendment to the current "clear and convincing" standard. The applicability of the "clear and convincing" standard renders it too easy for DCF to terminate parental rights under circumstances where there is no clear evidence that severing the child's legal ties to his or her parent will be in his or her best interest. Currently, courts can terminate parental rights even where there is no adoptive home identified. Too many children become legal orphans before permanency is achieved, only to find themselves severed from their biological family and continuing to be shuffled from placement to placement. The damage done does not bode well for a successful adoptive placement even if one is eventually identified. DCF should be required to do more to maintain family ties even while children are necessarily in their custody due to a parent's inability to provide care until such time as an adoptive resource is confirmed and deemed a good fit or they can prove that a TPR is psychologically necessary to protect a child's well-being. Requiring DCF to prove beyond a reasonable doubt that granting a petition to terminate parental rights is in a child's best interest will help prevent children unnecessarily becoming legal orphans.

I respectfully request that the committee vote to oppose Sections 1, 2, 4, 5, 6, and 7. I support Section 3, which provides for the "beyond a reasonable doubt standard" to be applied to termination of parental rights petitions. This change should also be included in C.G.S. § 17a-112 regarding termination petitions filed by DCF in juvenile court.

Respectfully Submitted,

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