



STATE OF CONNECTICUT
JUDICIAL BRANCH

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Testimony of Stephen N. Ment
Human Services Committee Public Hearing
March 9, 2010

House Bill 5432, An Act Concerning The Department
Of Children And Families

Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch in opposition to House Bill 5432, *An Act Concerning the Department of Children and Families*. The bill would allow the Department of Children and Families (DCF) to file a motion for modification of a child support order in certain instances and create a presumption that it is in the best interest of the child to be in the custody of a parent who is a victim of domestic violence in proceedings involving the child's custody.

As members of the Committee may be aware, in IV-D child support cases, the Judicial Branch's Support Enforcement Services (SES) unit is responsible for monitoring child support awards for compliance with financial, medical insurance, and child care orders, initiating court-based enforcement actions such as income withholdings and contempt applications if necessary, and reviewing and filing for child support modifications when appropriate.

In regards to the sections permitting DCF to file a motion for modification, the Judicial Branch believes this proposal to be unnecessary. Under current law, a child support obligee may request review and adjustment services from SES. SES then conducts a financial review to see if a motion for modification is appropriate, and, if so, SES prepares and serves it. Subsequently, the matter is heard in court by a family support magistrate.

The proposal before the Committee is confusing, apparently necessitates additional resources, creates a statutory deviation not found in the child support guidelines, and overlooks a potentially simpler solution. As drafted, the bill allows DCF, as a third party, to initiate a child support proceeding. It is not clear how this new, and unnecessary, ability affects SES's statutory role of facilitating the presentation of modification motions brought before the court, nor is it clear what would happen if either SES or the obligee objected to the filing.

Additionally, it is not clear how DCF would communicate to SES – the entity responsible for ensuring that the official child support record in the automated child support system is maintained and updated – that it is initiating court action.

And in instances where the Office of the Attorney General currently represents the state’s interests in modifications, would there now be an additional assistant attorney general in the courtroom representing DCF, thereby duplicating the State’s legal representation? If additional cases are brought because of this provision, there may also be resource implications for the courts as well.

Lines 27-30, 64-67, 246-249, and 286-289 of the bill creates a statutory deviation from child support not found in the Child Support Guidelines. As you may know, the guidelines lay out six categories of reasons that a judge or magistrate may deviate from the presumptive amount; “impeding the goal’s of the department service plan” for a child in a family with service needs is not one of the articulated reasons. We respectfully suggest that any contemplation of an additional deviation should be heard by the Commission on Child Support Guidelines, where the idea can be fully and carefully reviewed.

While we believe no action should be taken on this bill, the Judicial Branch respectfully suggests that another solution could be to amend the cooperative agreement between the Department of Social Services (DSS) and DCF – a document that outlines certain duties and responsibilities between the two agencies – to establish a protocol for flagging cases for modification rather than authorizing DCF to file an action as a third party.

In regards to those sections creating a presumption in custody matters, the proposed language is misplaced, vague, and changes the well-known “best interests” standard.

At the outset, it is not clear why the bill adds this presumption to juvenile court statutes; in regards to C.G.S. 45a-717 – the termination of parental rights statute – the court is not determining custody. The court is determining whether or not grounds exist to terminate parental rights and whether or not TPR is in the child’s best interests. The decision on the petition has nothing to do with a custody determination between DCF and the parent. Furthermore, amending C.G.S. 46b-129 does not make sense unless the court is not considering commitment, and has to choose between placing the child with one parent or another. This leads to a larger, undefined question – does a parent who is the victim of domestic violence, even if it’s unrelated to the alleged reasons DCF is seeking temporary custody or commitment, retain the presumption?

Similarly, the bill assumes that the perpetrator of the violence is the child's other parent, but does not say so. Does the presumption exist if the parent was victimized by someone other than the other parent?

Finally, the bill states that the presumption can be "rebutted by a preponderance of the evidence that it would be detrimental to the child..." This changes the standard on custody from what is in the best interests to what is detrimental, minimizing the importance of existing statutory language which already states that the court shall consider "the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child..."

While the intent of these sections is clear - a victim of domestic violence should not lose their children if it's the other person's fault - a study should first be conducted to determine if a presumption is the best means to this end. A split trend has developed among the states on this issue; if Connecticut is to enact a presumption, we believe it would be fruitful to know the outcomes of it in application to the other states. Furthermore, there may be other solutions, such as requiring DCF to help victims of domestic violence with children to develop an appropriate safety plan or to help the parent obtain a restraining or protective order.

Given that we believe the first portion of the bill is unnecessary and that the latter requires further study and deliberation, would we respectfully ask that the Committee take no action on this bill.

Thank you for the opportunity to submit written testimony in opposition to this bill.

