

CONNECTICUT GENERAL ASSEMBLY

January Session, 2011

Raised Bill No. 6312:

**An Act Concerning the Rights of a Parent or Guardian in an Investigation by The
Department Of Children And Families**

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 as its most important legislative priority of the past ten years: to preserve family integrity by ensuring that persons involved with DCF are advised of their rights before it is too late. This bill, in my opinion, is the Magna Charta of parents' rights in Connecticut.

The substance of the bill, as Raised Bill No. 5143, passed the State House of Representatives in the February, 2010 session by a vote of 145-0, which is evidence of the broad support of the bill. It failed to become law, but we are hoping to enact it this session, for the good of the families of Connecticut.

The bill requires DCF to plainly, clearly, and openly advise family members and guardians of a child that they have the right to counsel before speaking to DCF in an investigation concerning a child.

In my nearly 20 years as a DCF defense lawyer, which included state-paid representation of children in the past, I have seen hundreds of parents, other relatives, and guardians pressured into making damaging statements that came back to haunt them for years, and which in no way protected the children.

DCF has a habit of knocking on doors, unannounced, and implying that if people do not let them in or talk to them, they will seize the child.

Sometimes DCF convinces a police officer that the parent is dangerous, and asks the police officer to stand beside them at the door. This further intimidates the parent into thinking that he or she must talk to DCF and let them in the house.

Parents in these situations are naturally anxious, confused, and defensive. Invariably they make damaging statements, or make statements that are used in unintended ways. It must be remembered that the social worker does not tape the conversation, but makes her notes and may rewrite them at the office. In a dispute over what was actually said, the Court invariably believes the worker. That is why a lawyer must be present: to protect the parent's rights.

An unrepresented client is bad enough; but one who is nervous and frightened is a disaster. It is strange how many people know that the police, even the FBI, need a warrant, absent exigent circumstances; but believe that they must talk to DCF and let them in the house upon demand.

DCF also frequently coerces parents into signing service agreements, safety plans, and releases. While there is nothing wrong with these documents in general, the parent seldom fully understands what he or she is signing, and virtually never understands the legal implications. A lawyer, of course, not only reads and explains the document, but may offer corrections if there is a problem. The end result is better cooperation; not less.

DCF, at present, does not have to advise parents of their rights, since DCF is not a police force. Lost in this is the reality that DCF investigations are generally more serious than police investigations. Nearly all of my clients would rather face a year in jail than face permanent loss of their children, or DCF involvement in their lives for 3-5 years or more.

DCF invariably maintains that it gives parents a booklet explaining their rights, called the "Parents Right to Know" brochure, at the start of every investigation.

That may be what the DCF policy manual says, but it does not generally happen. Usually parents get the booklet after the interview. Sometimes they may get it not at all; the worker may have forgotten, or the office may have run out of its supply.

I have never, even once, heard of a case in which the social worker gave the parent the booklet at the start of an interview, and invited the parent to read it thoroughly and call a lawyer if he or she had any questions, before speaking to DCF or letting them in the door. Regardless of what the DCF policy manual may say, that simply does not happen in practice.

Furthermore, the booklet is actually a DCF pamphlet, hardly independent legal advice. It is lengthy and complicated. DCF knows that most parents will not read it; and that if they do read it, they will not understand it. DCF usually offers to explain it to the parent, but that is unsatisfactory. However well-meaning a particular social worker may be, social workers are not lawyers, are certainly not the parent's lawyer, and are under pressures that create a rather obvious conflict of interest if giving legal advice to the very person that they are investigating.

This Bill sets a very reasonable standard. It requires that a plain and simple statement be given to the person before the interview. Furthermore, the person may sign it and get a copy back before speaking.

I had hoped that the Bill would contain a provision prohibiting DCF from introducing any statement into evidence that was obtained in violation of the Bill. As you note, that is not the case; hopefully, it will be added in a later amendment.

The Bill, in other words, would give parents the same rights that criminals have. Just as *Miranda* did not decimate the police, this Bill would not decimate DCF.

In addition, I volunteer to work with DCF, free of charge, in the design of any plain-language form to satisfy this Bill. I will gladly give of my time to help the parents of Connecticut. In anticipation of a possible problem, I have taken the liberty of including a draft of an English-language DCF Advisement of Rights for Adults Form. The form should be printed as a carbon-set, to ensure that both the recipients and DCF retain copies.

The State has translators available for approximately two dozen languages. These translators, who already regularly appear in courts, may be engaged to prepare Advisement of Rights forms in those languages.

DCF has traditionally maintained two standard objections to this Bill.

First, DCF claims that no other state requires it. That may or may not be true, but it is beside the point. Every single right started somewhere, and was once considered radical and outrageous. Rights taken for granted today – women may attend school, blacks may be taught how to read, Catholics may work in banks, Jews may work in insurance companies, criminal defendants are entitled to exculpatory evidence in the possession of the police, and countless others – all were “not done” at one time. Connecticut proudly claims a long tradition of protecting individual rights, even more than the Federal constitution requires; this is a good opportunity to show that.

Second, and more importantly, DCF claims that it needs extraordinary powers in order to protect innocent and defenseless children. It implies that children will be abused or killed if it has to comply with this procedure.

The problem with this claim is that it is not true.

If DCF sees an immediate problem, it can easily get a 96-hour hold to seize the child. This requires nothing more than the verbal authorization of a DCF program supervisor, and no supporting affidavit.

Before returning the child, DCF can, and usually does, obtain an OTC (order of temporary custody) signed by a Judge. The OTC requires a sworn affidavit, but that is

not difficult if the proper conditions are present. In other words, a child can and will be taken immediately if the child is truly in imminent danger.

There was a case, years ago, in which a social worker saw a distraught woman holding her baby over the Suffield Bridge, which links Enfield and Suffield over the Connecticut River on Rt. 190. The social worker seized the child herself, and no one objected.

In short, children in imminent danger can always be taken, and no advisement of rights will prevent this.

Actual experience shows that if the parent calls a DCF defense lawyer, better cooperation is likely to result. Better and more accurate information flows, and there is normally better compliance with meaningful services provided. Stating that compliance with this Bill will harm children is, plainly and simply, a scare tactic reminiscent of McCarthyism.

I began by saying that this bill is the Magna Charta of parents' rights in Connecticut. Let me amplify by saying that DCF is a fine organization that does a difficult and thankless job, and one which is often dangerous. Most social workers are good to very good, and several are positively outstanding. I have been privileged to write commendation letters to the Commissioner on many workers. However, as in all large organizations, sometimes individual quirks and the desire to please a manager get in the way of the larger mission. This Bill is not radical. It is not anti-DCF. It does absolutely nothing more than to give parents the same rights that, as citizens, they should already have.

And it will harm no child. If it did, I would be totally opposed to it.

This Bill does not stop DCF from removing a child on a 96-hour-hold, if the child is in immediate danger. But it will protect the rights of Connecticut parents against unreasonable actions.

Respectfully Submitted,

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(DRAFT)

DCF ADVISEMENT OF RIGHTS FOR ADULTS

1. DCF is conducting an investigation of suspected child abuse or neglect according to law. This is an investigation only, and no one is presumed to be guilty or responsible at the start of the investigation.

2. You are not required to allow DCF into your home, unless a valid warrant is presented.

3. You are not required to speak to DCF.

4. You are not required to sign any document submitted to you by DCF.

5. You are entitled to contact an attorney for legal advice, and the attorney may be present at all times when you are communicating with DCF or considering signing a document submitted by DCF.

6. Any statement made by you may be used in a DCF report, or in an administrative or court proceeding.

7. DCF is not your attorney, and cannot give you legal advice.

8. Failure to cooperate with DCF may have serious consequences, including the filing of a Juvenile Court petition, and possibly the removal of a child by DCF. It is in your best interest to speak with DCF or to immediately secure the advice of a qualified attorney.

9. A copy of this carbon-set document must be signed by DCF and given to you prior to DCF's speaking to you. You are encouraged to sign and date the DCF copy of this document. Signing the document is not an admission, but simply indicates that you have received a copy of the document.

PRINTED NAME	SIGNATURE	STATUS (DCF, Parent, Guardian, etc.)	DATE

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