



***Division of Public Defender Services
State of Connecticut***

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COMMITTEE ON THE JUDICIARY
MARCH 4, 2013
RAISED BILL 6387, AN ACT CONCERNING COURT OPERATIONS

The Office of Chief Public Defender has concerns about how Section 4 of Raised Bill 6387, *An Act Concerning Court Operations* will impact the rights of parents in child custody cases and the budget of the Division of Public Defender Services. If it is determined, either by statute or through litigation, that parents in these ex parte cases are entitled to counsel, there would be potentially severe budget implications for our Agency. The Division of Public Defender Services is responsible for administering counsel for indigent children in family court and for all children and indigent parents in child welfare court. These cases would require additional appropriations in order for us to adequately ensure appropriate counsel. The Office of Chief Public Defender urges this committee not to adopt the proposal in Section 4 of Raised Bill 6387.

Section 4 creates an emergency ex parte order of custody in family court custody cases. The proposal would allow any person seeking custody of a child to seek and emergency ex parte order of custody if they believe that an immediate and present risk of physical danger or psychological harm to the child exists. The bill allows an emergency order and provides for a hearing within 14 days. This process is very similar to the Orders of Temporary Custody in child welfare cases authorized by C.G.S. Sec. 46b-129. That statute (C.G.S.46b-129) allows for ex parte orders of temporary custody to the Department of Children and Families if there is cause to believe that "the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the child's or youth's surroundings, and (2) that 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."



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The Office of Chief Public Defender is concerned that allowing a litigant in a family matters case to obtain such an order ex parte could be subject to abuse by litigants and could subject children to more trauma and upheaval than necessary. Family Matters are known to be highly charged and emotional. Parties in custody cases are often angry and the perception that a situation is harmful or dangerous could be influenced by their feelings towards to other party. Children absolutely need to be protected from harmful situations and the Department of Children and Families should continue to be the conduit through which emergency cases make their way to the court. It makes sense to give the Department of Children and Families (DCF) the authority to petition the court ex parte when a child is thought to be endangered. DCF is a government agency, often with no history or bias towards the parents and no emotional stake in the outcome.

The Office of Chief Public Defender is concerned that the ex parte process to remove children from a parent's custody violates the custodial parent's right to due process of law if there is no right to appointed counsel for the hearings in these cases. In the child welfare cases addressed by C.G.S. 46b-129, the child's parent is entitled to have a lawyer represent them and is appointed counsel paid for by the State of Connecticut if they are found to be indigent. This entitlement is both statutory in C.G.S. 46b-129 and is rooted in the principle that the right to parent a child as one sees fit is an inalienable right that cannot be infringed without due process of law. Although parents are not constitutionally entitled to counsel in all cases where parenting rights are infringed, Connecticut has given the statutory right to counsel to parents in the DCF temporary custody orders.