



The Children's LAW Center of Connecticut

30 Arbor Street, 4th Floor, Hartford, Connecticut 06106
Telephone 860.232.9993 ■ Fax 860.232.9996
www.clct.org

RE: Raised Bill No. 5505: An Act Concerning Family Court Proceedings

POSITION: Opposed

SUBMITTED BY: ATTORNEY BARBARA AARON, Children's Law Center Board President

Dear Senator Coleman, Representative Tong, and Members of the Judiciary Committee,

I am writing as an attorney who has practiced family law in the state of Connecticut for the past 25 years and as the President of the Children's Law Center of Connecticut, a non-profit organization whose mission is to protect and represent the interests of indigent children in the family courts of this state. I write to express my alarm over the potential danger of Bill #5505 to the most at-risk children in Connecticut.

Section 1: Eliminating the court's discretion to order supervised visitation unless there is first finding by DCF of abuse or neglect.

This provision is harmful and potentially dangerous for children. Typically courts seek to impose the least restrictive but safe means possible to ensure continued parent/child contact during the time an investigation is undertaken. DCF often takes weeks or months to investigate and the agency is already far too overburdened with juvenile court proceedings. Family courts must continue to have autonomy. Sub-section 3 speaks to "criminal conduct". How is this defined? Does it mean a conviction? Sub-section 4 refers to "severe mental disability". Who determines this or the "potential risk"? What about other undiagnosed mental health issues, serious personality disorders or persons with uncontrolled anger and/or addiction issues? There are other reasons besides "abuse or neglect" why supervision may be necessary in a particular situation: alcohol or drug use, threats of or actual violence, risk of parental abduction, cognitive limitations and more.

Moreover, the possibility of delaying or denying visitation because the Court can't order it to be supervised might have the unintended and potentially harmful consequence that the Court will not order visitation at all.

Section 2: Giving "aggrieved parties" the right to bring a civil action against attorneys and GAL's:

The definition of aggrieved is broad: feeling resentment at having been unfairly treated. This provision of the Bill says that anyone who is "aggrieved" by something an attorney or Guardian Ad Litem did in a case can sue that individual in civil court. Custody cases, by their very nature are the most contentious, difficult matters and there is rarely a parent (or both) who does not feel "aggrieved" during and after a contested custody case. Attorneys and GALs are the easy target of a parent's frustration. It should also be noted that this is NOT a case for malpractice and, in all likelihood, GALs would not be covered by professional liability insurance. If this provision passes, no competent attorney would or





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should be willing to serve in this capacity. The decision in Carruba v Moskowitz, 274 Conn. 533, 542-548 (2005) sets forth compelling public policy reasons for granting attorneys for children and GALs absolute immunity:

First, a substantial likelihood exists that subjecting such attorneys to personal liability will expose them to sufficient harassment or intimidation to interfere with the performance of their duties. In fact, the threat of litigation from a disgruntled parent, unhappy with the position advocated by the attorney for the minor child in a custody action, would be likely not only to interfere with the independent decision making required by this position, but may very well deter qualified individuals from accepting the appointment in the first instance. Second, there exist sufficient procedural safeguards in the system to protect against improper conduct by an attorney for the minor child. Because the attorney is appointed by the court, she is subject the court's discretion and may be removed by the court at any time. Additionally, the attorney for the minor child, just as any other attorney, is subject to discipline for violations of the Code of Professional Conduct. *Carruba* at 543.

The Court went on to acknowledge that courts in other jurisdictions have almost unanimously accorded guardians ad litem absolute immunity for their actions that are integral to the judicial process. *Carruba* at 547. This proposed legislation opens the door to exactly the kind of lawsuits that our Supreme Court feared and will leave the children of Connecticut without any representation or voice in family court. Moreover, if the legislature sees fit to remove immunity for attorneys and GALs, it should also permit the same "aggrieved" parties to bring a civil action against judges and other judicial and quasi-judicial officers. Why should they be entitled to any greater protection?

Section 3: Therapy and Evaluation: Allowing parents to select the Expert(s)

The essence of a court ordered evaluation is that one person sees everyone in the family, does appropriate testing in the same context, and observes interactions between family members. The critical component is the trustworthiness and impartiality of the evaluator appointed by the court. Giving the litigants have the right to select the evaluator defeats the purpose and makes the evaluation a chess game and a battle of the experts. As it is, if the parties mutually agree to a particular expert, the court usually appoints that expert. If there is not an agreement, the court must retain the discretion to appoint a qualified and trustworthy expert. Evaluators have special training and experience; not every mental health professional can be an evaluator.





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Section 4: Substitution language to limit testimony and overall role of a GAL

This bill is preventing GALs from testifying regarding medical diagnosis or treatment of a child and, instead, requiring the medical profession to come to court to testify. When affordable, it is usually preferable and customary to have the treating medical professional testify. However, the cost of such testimony can be prohibitive, and is prohibitive for low income families. Thus, this proposed legislation would result in the court not having access to vital information or limited and incomplete information on which to base decisions. This outcome unfairly affects the poor much more so than moderate and high income level families. Courts generally appoint GALs to investigate the facts, speak to collateral sources that the court would otherwise not hear from and report the results of that investigation to the court.

This proposed legislation is an attempt to remove the vital function that GALs serve in the family courts. It is ill conceived and harmful to children, who are the most vulnerable real parties in high conflict custody cases. If enacted, children will no longer have representation or a voice in family court and their interests will no longer be protected. While there are many positive reforms that could and should be made to the family court system, this proposed bill is not among them and is very dangerous.

In the interest of children I respectfully request that you oppose Bill #5505. Thank you.

