

My name is Freda Roberts. I am a lawyer who has worked exclusively in the family law arena since being admitted to the Connecticut Bar in 2006. I submit this testimony in opposition to the Judiciary Committee Proposed Bill No. 5505.

This proposed bill is rigid, impractical and would paralyze the practice of family law for judges, practitioners and Guardians ad Litem and Attorneys for Minor Children. It is severely flawed substantively, technically and procedurally. The bill is not focused keeping the best interests of children at the forefront of any custody contest.

I will go through each section of the bill and submit the specific reasons why this bill will just not work. I have highlighted the portion of the proposed bill with my comments underneath.

SECTION 1 of the Bill-

Section 1. (NEW) (Effective October 1, 2015) Notwithstanding any provision of chapter 815, 815a, 815e, 815j, 815p, 815t or 815y of the general statutes, a court shall not order that a parent have supervised visitation with his or her child, unless such court finds, based upon the evidence presented to the court, that such parent: (1) Has engaged in an act of neglect or abuse that has been substantiated by the Department of Children and Families;

This entire section ties the hands of a judge who may be presented with strong evidence that would indicate supervised visitation of children is required. The first prong is problematic in that it may encourage parties' going through a divorce or a child custody action to seek out the DCF when perhaps it would not be warranted—whether or not intentional—but just as a means to possibly fall within the requirement that would warrant supervised visitation.

(2) has no established relationship with the child with whom visitation is sought;

What is an 'established relationship'? How is that phrase defined? And how is a determination like that made by the court?

(3) has engaged in criminal conduct that presents a potential risk to the health, safety or well-being of a child;

How is 'criminal conduct' defined? Does the parent have to have been arrested? Convicted? What if a party witnesses the criminal conduct but there has been no arrest? Is that enough evidence to fall within the purview of 'criminal conduct' ?

or (4) suffers from a severe mental disability that presents a potential risk to the health, safety or well-being of a child.

What is a 'severe mental disability'? Who defines that term? This prong flies in the face of serious HIPPA issues. How are medical records supposed to be released in order for a party to

make this claim successfully if there is no evaluation ordered by the court? It is very unclear as to how this prong can be utilized and/or enforced.

Sec. 2. (NEW) (Effective October 1, 2015) A person aggrieved by the action of counsel or a guardian ad litem for a minor child or children, appointed under section 46b-54 of the general statutes, as amended by this act, may bring a civil action seeking appropriate relief, including equitable relief, damages, or both, in the superior court for the judicial district in which such counsel or guardian ad litem for a minor child was appointed. If such civil action results in a judgment for the plaintiff, the court shall award the plaintiff all costs of the action, including such attorney's fees as the court may allow to the plaintiff. The court shall not enter any order under this section that would require a plaintiff to pay the costs, expenses or attorney's fees of counsel or a guardian ad litem for a minor child named as a defendant in such civil action. It shall not be a defense to such civil action that the defendant is entitled to absolute, quasi-judicial immunity.

The proposed language in this section may very well deter excellent GAL /AMC candidates from accepting offers and/or appointments to take on the role. And for those GALs that do accept the role, this proposed rule may cripple that person's ability to be completely impartial. The Supreme Court addressed the issue of immunity for Guardians ad Litem and Attorneys for Minor Children in a long-standing decision in the matter of Carruba v. Moskowitz, 274 Conn. 274 (2005). In that case, the Court ruled that guardians ad litem and attorneys for minor children are entitled to absolute immunity when acting in their scope of representation. In support of the decision the Court reasoned that "a substantial likelihood exists that subjecting attorneys to personal liability will expose them to sufficient harassment or intimidation to interfere with their duties...the threat of litigation from a disgruntled parent...would 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". Id. At 543.

These purposes have not changed. These purposes are still as important today as they were all those years ago.

Sec. 3. (NEW) (Effective October 1, 2015) (a) In a family relations matter, as defined in section 46b-1 of the general statutes, if a court orders that a parent undergo treatment or an evaluation from a licensed health care provider, as defined in section 52-184e of the general statutes, the court shall allow the parent to select the licensed health care provider who is to provide such treatment or evaluation.

There is no definition of health care provider in the statute section that is referred to above. Instead, the statute refers to several other chapters of the Connecticut General Statutes that cover licensure requirements for chiropractic, naturopathy and physical therapy care. This provision mocks the importance of the issue of evaluations.

(b) In a family relations matter, as defined in section 46b-1 of the general statutes, if a court orders that a child undergo treatment or an evaluation from a licensed health care provider,

as defined in section 52-184e of the general statutes, the court shall permit the parent or legal guardian of such child to select the licensed health care provider who is to provide such treatment or evaluation. If two parents do not agree on the selection of a licensed health care provider to provide such treatment or evaluation to a child, the court shall continue the matter for two weeks to allow the parents an opportunity to jointly select the licensed health care provider. If after the two-week period, the parents have not reached an agreement on the selection of a licensed health care provider, the court shall select such provider after giving due consideration to the health insurance coverage and financial resources available to such parents. In the case of two parents who cannot agree on the selection of a licensed health care provider to provide such treatment or evaluation to the child, if a parent incurs expenses as a result of permitting the child to be treated or evaluated by such provider, without the express written consent of the other parent, the parent who permitted such treatment or evaluation to occur shall be solely responsible for the costs incurred for such treatment or evaluation.

Same comment as above. There is no definition of health care provider in the statute section that is referred to above. Instead the statute refers to several other chapters of the Connecticut General Statutes that cover licensure requirements for chiropractic, naturopathy and physical therapy care. I do not see how that is relevant in this proposed section.

(c) In a family relations matter, as defined in section 46b-1 of the general statutes, if a court orders that a parent or child undergo an evaluation from a licensed health care provider, as defined in section 52-184e of the general statutes, the results of such evaluation shall be submitted to the court by such provider not later than thirty days after the date of completion of the evaluation.

This proposed section is completely impractical. It is unrealistic to mandate a “health care provider” to issue a report 30 days after an evaluation is completed. If the parties come to an agreement during the process, this requirement can completely hinder the settlement. Further, who determines when an evaluation is complete? Perhaps an issue arises when the evaluation is supposedly complete?

Sec. 4. Subsection (e) of section 46b-54 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(e) [Counsel] Except as provided in this subsection, counsel or a guardian ad litem for the minor child or children shall be heard on all matters pertaining to the interests of any child, including the custody, care, support, education and visitation of the child, so long as the court deems such representation to be in the best interests of the child. To the extent practicable, when hearing from such counsel or guardian ad litem, the court shall permit such counsel or guardian ad litem to participate at the beginning of the matter, at the conclusion of the matter or at such other time the court deems appropriate so as to minimize legal fees incurred by the parties due to the participation of such counsel or guardian ad litem in the matter. Such counsel or guardian ad litem [may] shall not be heard on a matter pertaining to

a medical diagnosis or conclusion concerning a minor child made by a health care professional treating such child. [when (1) such counsel or guardian ad litem is in possession of a medical record or report of the treating health care professional that indicates or supports such medical diagnosis or conclusion; or (2) one or more parties have refused to cooperate in paying for or obtaining a medical record or report that contains the treating health care professional's medical diagnosis or conclusion. If] Instead, if the court deems it to be in the best interests of the minor child, such health care professional shall be heard on matters pertaining to the interests of any such child, including the custody, care, support, education and visitation of such child

The proposed section could have the potential of destroying the doctor/patient relationship. How could anyone, let alone a minor child, speak openly and honestly with his or her mental health care professional if she or he knows that the information – that should be confidential-- could be divulged during a public court hearing? Further, this proposed section could severely limit the courts ability to have all permissible and relevant evidence before it which would hinder its ability to issue a fully informed decision. The proposed changes would allow one party an upper hand if he/she does not agree with a medical report or has an issue with the medical provider.

In conclusion, it does not seem to that the input from actual Guardians ad Litem , Attorneys for Minor Children, mental health care experts, or family law lawyers were considered in writing this proposed bill.

For the above reasons, I am opposed to the passage of the above referenced bill.