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**TESTIMONY OF SARAH STARK OLDHAM
IN OPPOSITION TO COMMITTEE BILL NO. 5505
“AN ACT CONCERNING FAMILY COURT PROCEEDINGS”
March 11, 2015**

Senator Coleman
Representative Tong
Senator Kissel
Representative Rebimbas and Members of the Committee:

I am here today to testify against Committee Bill 5505. I address you personally as an individual matrimonial attorney practicing in Connecticut for the last 27 years. I am the Immediate Past President of the Connecticut Chapter of the American Academy of Matrimonial Lawyers and a former Chair of the Connecticut Bar Association Family Law Section (2003-2004). I am active in the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers, which means I travel extensively talking to matrimonial lawyers here and abroad. I am a Fellow of the American Bar Foundation.

I also speak on behalf of numerous other family lawyers who have emailed and called me regarding grave concerns about what passage of this bill would do to the families and children they represent. Many Fellows of the Academy share these concerns in opposition to the bill but are unable to attend this hearing today because they are attending a long-scheduled meeting out of state.

In general, Connecticut is to be commended for its excellent statutory scheme when it comes to matrimonial matters. Despite the statewide budgetary problems and the fact that all of our courts are inundated with self-represented parties, there is no hard and fast evidence that our family law courts are in need of the changes set forth in this bill, or that if implemented, these changes would be to the benefit of the family court system. The Connecticut Judicial Branch recently conducted a satisfaction study for which the results became available in January 2015. Nearly three-quarters (73.6%) of respondents to the study indicated that they considered themselves very (43.9%) or somewhat (29.7%) satisfied with their court experience. The positive experience of the vast majority of family court litigants should not be endangered for the complaints of an unrepresentative few and their personal agendas.

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The proposed bill appears to be founded on a profound distrust of the judges and the people who work within the family court system. It seems to stress parents' rights and not the needs of children. Connecticut has a long and honorable history of focusing on the best interests of the children. Parents/litigants have chosen to be involved in the courts. The children have not.

The Connecticut family court system needs to retain the flexibility to allow judges the discretion to deal with the varied needs of the families who come before them. In my experience, those judges are caring, intelligent, and hardworking. They do not enter the types of orders addressed in the proposed bill lightly. It is well known around the state and in the family bar that a small but very vocal group of people working with paid lobbyists are dissatisfied with the court system. Each of those individuals may tell a sad story, but, in my experience, it is never the whole story. For each parent who feels the system has failed them, there is usually another parent who feels it has done a good job. It is questionable how any of these stories, even if fully accepted at face value, represent the system as a whole. I am reminded of the story of the blind men feeling the elephant: one feels the trunk and thinks it is a snake, another feels the leg and thinks it is a tree. Please listen to the lawyers, judges, mental health practitioners and family relations officers who come before you. Those within the system see all the cases, and see both sides of these cases.

I have included below a section-by-section review of the many problems which the proposed bill would create if enacted.

Section 1 of the Proposed Bill: Supervised Visitation

The family courts need the tools and flexibility to be able to deal with the wide variety of parenting scenarios they confront. In my experience, judges do not make orders for supervised visitation often or lightly. Courts should not be straightjacketed into a limited set of circumstances for using supervised visitation. Instead they should continue to be guided by the best interests of the child, as required by Connecticut General Statutes section 46b-56.

- 1) This section would limit the courts' ability to enter supervised visitation orders. This bill, if implemented, would conflict with the current statutory remedies available to address immediate threats to the welfare of the child or parent. The courts are currently able to address such concerns by applying Connecticut General Statutes section 46b-15 (applications for relief from physical abuse) and Connecticut General Statutes section 46b-56f (emergency orders of custody). The proposed bill takes away discretion from the family court and places the authority either in the hands of the Department of Children and Families or the criminal courts. To obtain a finding of substantiated neglect or proven criminal conduct applies a different standard than the best interest of the child standard. Moreover, to obtain those findings may take weeks, if not months. Sometimes a child's welfare cannot wait that long. What if a parent is struggling with addiction? There is no criminal finding, no DCF involved, no severe

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mental disability. But, supervision may be the safest alternative to protect the child. Do you want to be the one to get a call from a distraught parent saying the court did not enter a supervised visitation order because of this new law and the child is gone? Dead? We cannot take that chance.

- 2) Consider also section (1), subsection (2) of the proposed bill which requires a finding that a parent “has no established relationship with the child with whom visitation is sought.” It does not matter how minimal or negative a relationship, the bill demands no relationship whatsoever as a basis for supervised visitation. Such absolutism does not fit the needs of the family courts.
- 3) In a similar vein, the need for a finding of a “severe mental disability” could lead to a dangerous delay. A specific diagnosis is often not available or will take weeks or months to obtain. The family judges are dealing with highly charged emotional cases. They need the discretion to tailor orders to each unique situation.

For all the reasons set forth above and more, the family courts need to maintain their discretion over supervised visitation.

Section 2 of the Proposed Bill: Civil Actions Against Attorneys for Minor Children and Guardians ad Litem

This section is a clear attempt to remove the quasi-judicial immunity which AMC’s and GAL’s now have pursuant to the decision of the Connecticut Supreme Court in *Carrubba v. Moskowitz*, 274 Conn. 533 (2005). The reasoning behind that decision is the same reason why this section should not be passed. To quote the Supreme Court in *Carrubba*:

“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 to 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.”

274 Conn. at 543. This is already a problem. Fewer and fewer attorneys are willing to serve as AMC’s. Unlike attorneys representing one party, AMC’s and GAL’s are appointed by the court and represent interests of the children. When the parents are particularly contentious, the AMC or

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GAL will almost always alienate or offend one parent. That parent is then likely to be the one who sues. This is untenable. Moreover, the role of the guardian ad litem has very recently been subjected to oversight and new legislation. Under those new laws, a party is not without recourse: for example, under Connecticut General Statutes section 46b-12c, a party now has standing to seek the removal of an AMC or GAL.

AMC's and GAL's perform valuable public service by helping families and the courts. They help to resolve many disputes large and small. Without them, the courts would be swamped and court costs would soar.

Section 3 of the Proposed Bill: Treatment and Evaluations in Family Matters

Subsection (a) of this section requires that a party be allowed to select his or her licensed health care provider if a treatment or evaluation is required. This provision conflates treatment and evaluation. It is essential that an evaluation be conducted by an independent third party. Treatment can and should be selected by the parent, if at all possible. However, in some highly contentious cases when the parents cannot agree, the court must be able to step in to protect a child in need of treatment.

Subsection (b) of this section addresses evaluation or treatment of minor children. In the ultimate selection of a provider, this section requires "due consideration to the health insurance coverage and financial resources available to such parents," but it does not even mention the best interest of the children. That best interest should govern this selection, and other considerations should be clearly subjugated to it.

Finally, subsection (c) of this section requires the evaluation of a parent or child to be submitted to the court no later than 30 days "after the date of completion of the evaluation." Why on earth should every evaluation be submitted to the court? The Practice Book requires that if the evaluation is submitted to court, it must be under seal. Many times, cases will settle after the evaluation, and submission of the evaluation to the Court can be avoided. One consideration that often prompts settlement is the preference to keep the custody evaluation private, and to help avoid its eventual availability to the children themselves. The parties should retain the right to allow an evaluation to remain as private information between the parties, if at all possible. Once again, the children's interest in privacy should be protected.

Section 4 of the Proposed Bill: Matters on Which an AMC or GAL May Be Heard

Section 4 of the proposed bill is another modification of a law which was just implemented in 2014 (Public Act No. 14-3). This section would change the law from allowing a child's representative to be heard on health issues relating to children to preventing them from being heard. Under the bill, a child's representative would not be able to be heard on any matter pertaining to a medical diagnosis or conclusion of a health care provider regarding a minor child if

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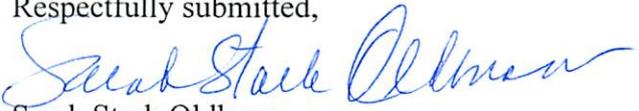
that AMC or GAL has a medical record or report of the provider, or if one or more parties has refused to cooperate with that provider. Not only is this a complete turnaround from the brand new law, which specifically allowed an AMC or GAL to be heard on those issues, but it works against the best interest of the children, encourages misbehavior of parties, and would cause more expense and problems for all involved.

This section encourages the court to hear from the health care professional directly, "if the court deems it to be in the best interest of the child," but that will usually mean a charge to one or more of the parties to call that person as a witness. That may mean that the court never hears from the provider because it is cost-prohibitive for a party to call the provider as a witness. It also means taking that health care professional out of his or her usual practice to come to court. Our court system has often expressed a preference in favor of finding ways to allow health care professionals not to come to court, nor in my experience are such professionals eager to do so. This statute would provide a further disincentive to any health care provider even treating anyone involved in a divorce. Again, this is not grounded in consideration of the best interests of the children, and will most likely work against those best interests if codified as law.

Overall, I am strongly opposed to this proposed bill. It would create more problems than the ones it purportedly aims to solve. It will add to litigation and thereby, increase costs to the judicial system. Finally, by shifting the focus away from the best interest of the child to parents' rights, this bill would empower the disgruntled or unreasonable or uncooperative parent and allow them to upend a system that has been working.

Thank you for your time and attention to this matter.

Respectfully submitted,


Sarah Stark Oldham