



# The Children's LAW Center of Connecticut

30 Arbor Street, 4th Floor, Hartford, Connecticut 06106

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[www.clcct.org](http://www.clcct.org)

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

**POSITION:** Opposed

**SUBMITTED BY:** THE CHILDREN'S LAW CENTER OF CONNECTICUT, a non-profit organization that provides representation to children of indigent parents in contested divorce and custody cases.

**This bill is bad for kids.**

*When deciding how to act on this proposed legislation, please ask yourselves:*

- **What is the purpose of this proposed legislation?**
- **How will this affect poor parents and children?**
- **Does this legislation advance the best interests of children?**

## Section 1: Supervised Visitation

In an area of law where the Court's ultimate responsibility is the best interest of the child and where there is no black and white, curtailing judicial discretion is a liability. Requiring a court to make a specific finding of one of the four listed criteria before ordering supervised visitation puts both parents and children at risk. The most obvious reason is that there are an unlimited number of circumstances that may require a parent and child to have supervised visitation and there is no way to codify them all. The less obvious reason is that, many times, supervised visitation is ordered as an interim solution while *allegations are investigated*. Investigations can take weeks or months and, typically courts will order the least restrictive but safe means possible to ensure continued parent/child contact during that time. Without supervised visitation as an option, even the potential threat of risk to the child would result in *no parental contact* until the investigation is complete. *Why would you want to deny a parent and child the opportunity to maintain a relationship?*

## Section 2: AMC/GAL\* Civil Actions

**ag·grieved:** *adjective.* feeling resentment at having been unfairly treated.

There is rarely a day in Family Court when parents do not leave feeling aggrieved. In fact, most everyone involved in the system, including GALs, likely have this feeling at the end of the day. Family cases are different than traditional civil cases. They are emotionally charged, involving the very essence of people's lives. Making things worse, there are no "winners" or "losers." In

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most cases, both parents leave feeling that they have been treated unfairly because they perceive the other parent as having “won” in the context of their feeling of loss.

GAL's are the easy target of a parent's frustration. This proposed legislation now says that, if a GAL is involved, this “aggrieved” parent, or their “aggrieved” relative, or their “aggrieved” friend can file a civil action against that GAL. All of the claims would essentially be rooted in a person's dissatisfaction with the outcome of the case, and there is always someone who is dissatisfied with the outcome of a family court case.

GALs are currently protected by quasi-judicial immunity in order to allow these court-appointed professionals to carry out their duties, duties that have been characterized as integral to the judicial process, without interference or the fear of harassment or intimidation. *There is no best-case scenario for children if this proposed legislation is passed. If attorneys continue to accept appointments in the role of GAL, their effectiveness will be hindered no matter how experienced they are. Those who are hoping to avoid angering a parent will certainly not be able to advocate wholly for the best interests of the child if their position is not in line with that of the parent's. Those who continue to advocate wholly for the best interests of the child will be spending too many of their days in civil court defending against “aggrieved” persons.*

The proposed structure of the rewarding of fees speaks most clearly to the purpose of this proposed legislation. Any “aggrieved” person can bring suit against a GAL, no matter how frivolous the claim. The GAL will have to hire counsel and spend hours defending their livelihoods, no matter how frivolous the claim. If the action results in a judgment in favor of the GAL, the plaintiff can in no way be held responsible for paying the cost of defending the action, *no matter how frivolous the claim.* This philosophy, however, does not apply if the action results in a judgment in favor of the plaintiff, who would be able to be awarded compensation for their expenses. *What is the purpose of this proposed legislation other than to essentially put an end to the representation of children in family court? There are other procedural safeguards in place to prevent improper conduct by GALs. Not only can parents now file a motion to have a GAL removed but, like every other attorney, GALs are subject to grievances and can be sanctioned for violations of their professional code.*

The role of the GAL is vital to ensuring independent representation of children's best interests. The reality is that, if this proposed legislation is passed, it will not be feasible for attorneys to accept GAL appointments, *leaving Connecticut's most vulnerable children defenseless and caught in the middle of their parents' conflict.*

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## Section 3: Therapy & Evaluations

There is a difference between therapy and evaluations and to group them together is misleading.

Certainly, if parents are court ordered to attend therapy, they should have the opportunity to choose their own provider. However, people do not always pick a therapist that is helpful with identifying and reaching the goals necessary to make progress in the family court. In those cases, it is important that the Court be able to articulate this and direct parents to appropriate providers who will help bring the case to a resolution.

It would also be wonderful if parents could choose a therapist for their child together but, when parents are involved in family court, it is often difficult to reach consensus on anything. A two week delay in therapy for a child if the parents cannot agree on a provider may not have a detrimental impact on a child in most situations. However, penalizing a parent for immediately enrolling a child in counseling in the case of an emergency again puts the parents' needs ahead of the child's.

*Court ordered evaluations are a whole different issue.* Evaluators are not treatment providers. The whole purpose of an independent evaluator is impartiality and objectivity. One evaluator assesses every member of the family, identifying and administering appropriate testing and observing family interactions in order to inform their conclusions. Most importantly, family court evaluators have specialized training in the dynamics of high conflict cases in the context of family court. Allowing parents to select an evaluator eliminates the opportunity for interactional observation and comprehensive family assessment. Instead, it sets parents and courts up for added expense and a "battle of the experts." Further, allowing any and all mental health professionals to be identified as evaluators does a disservice not only to the current evaluators who have trained in this practice, but to the families and courts that are relying on the integrity of court evaluations to reach a resolution *that is in the best interest of the child.*

While it is important that evaluations be completed in a timely manner, 30 days does not seem reasonable for completion of a thorough report. There are many facets of an evaluation beyond the scheduled meetings with family members. In order to assure the continued high quality of evaluations, evaluators must have more than 30 days to complete a report.

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Finally, requiring that reports be submitted to the court is potentially devastating. Family court files are open to the public and placing these reports in a court file would put confidential information into public hands. This can be permanently damaging to parents but, most of all, to children.

## Section 4: GAL Testimony

The role of the guardian ad litem is to advance the best interests of the child by advocating a position to the court based on research, examination, and monitoring of the child's situation. Forcing a child's provider to testify in court compromises the child's confidentiality and therapeutic relationship. Furthermore, it is not feasible, particularly for low to middle income families, to pay professional providers to appear in court to vocalize information that can be reported by the GAL, who is holder of the privilege. It does not advance the best interest of the child to have a court make a decision based on limited information simply because one or both of their parents cannot afford to pay medical professionals to testify.

GALs contact a number of providers and gather a number of records in the examination of a child's situation. This proposed legislation, although limited to medical providers, opens the door to further limiting the topics on which a GAL may testify. Again, *what is the purpose of this proposed legislation* other than to essentially put an end to the comprehensive representation of children in family court?



- **What is the purpose of this proposed legislation?**
- **How will this affect poor parents and children?**
- **Does this legislation advance the best interests of children?**

The task of the family court, and those appointed to serve the court, is to advance the best interest of the child. Recent legislation and proposed legislation is focused purely on the best interests of parents. Distrust of the family courts and the individuals who dedicate their professions to helping children in the family court arena is unwarranted. Chipping away at the discretion of family court judges, the expertise of court evaluators, and the duties of the GALs who are appointed to help inform the court only puts already at-risk children in a more precarious situation.

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Protecting the legal interests of children