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Testimony in support of HB 5605
An Act Concerning the Termination of Parental Rights
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Senator Coleman, Rep. Tong, and members of the Judiciary Committee:

HB 5605 corrects a gross injustice in our current law, whereby a woman who becomes pregnant as a result of rape is tethered to her rapist for perhaps the next 18 years or more, simply for choosing to continue her pregnancy, whether she chooses to raise the child, or even if she wishes to give the child up for adoption. In contrast to current law which requires a rape conviction, proven beyond a reasonable doubt, before a petition to terminate a rapist's parental rights, HB 5605 sets a reasonable standard of "clear and convincing evidence," which is the exact same standard used on all other cases where parental rights can be terminated by a court.

I strongly believe that clear and convincing evidence is the correct standard in this case, striking a proper balance between justice for victims of sexual assault on one hand and due process on the other. Some women's groups have advocated a lower "preponderance of the evidence" standard, claiming that clear and convincing evidence poses too much of a burden on victims to prove. While I understand this concern given the horror of sexual assault, I must respectfully disagree with lowering the standard of proof as inconsistent with due process, and inconsistent with the Supreme Court's holding in *Santosky v. Kramer*, in which the Court required clear and convincing evidence for terminating parental rights. Due process is a cornerstone of our nation's jurisprudence and something we should not compromise merely because it may not always yield the outcome we prefer.

I would contrast the correct clear and convincing evidence standard used in HB 5605 to another bill which recently passed the Higher Education Committee, HB 5376, "An Act Concerning Affirmative Consent." That bill requires colleges to use a preponderance of the evidence standard to adjudicate sexual assault claims in which the punishment can include expulsion as well as being branded a sexual offender for life. Many of us also believe that the affirmative consent standard impermissibly shifts the burden of proof on to the accused. Last summer, Judge Carol McCoy ruled in *Corey Mock v. University of Tennessee at Chattanooga* (<http://chronicle.com/items/biz/pdf/memorandum-mock.pdf>) that this affirmative consent / preponderance standard "improperly shifted the burden of proof and imposed an untenable standard upon [the accused] to disprove the accusation."

Termination of parental rights and expulsion from college are both significant deprivations that necessitate a higher standard of proof than mere preponderance of the evidence (and all the more so in non-judicial campus tribunals with fewer procedural protections). HB 5605 sets a correct and balanced clear and convincing evidence standard for terminating the parental rights of (accused) rapists and should be approved as is. Legislators should follow the same standard in similar cases and not be tempted to trample on due process out of an understandable concern for victims of sexual assault.