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Honorable Members of the Judiciary Committee

FROM: Paul J. Knierim, Probate Court Administrator

RE: R.B. 427, An Act Concerning Children in the Juvenile Justice System and Guardianship Appointment

DATE: March 14, 2016

Thank you for the opportunity to offer testimony on Raised Bill 427, An Act Concerning Children in the Juvenile Justice System and Guardianship Appointment. The purpose of the proposal is to give non-citizen 18, 19 and 20 years olds residing in Connecticut an avenue to apply for a special status under federal law that permits them to remain in the United States. The bill would accomplish that objective by expanding Probate Court guardianship jurisdiction to the 18-20 year age group. While we sympathize with the intent of the bill, we are concerned that the proposal leaves several important issues unresolved and may have ramifications beyond its intended purpose.

Under federal law, state courts having jurisdiction over children's matters are permitted to make factual findings on whether it is not in the best interests of a non-citizen child to return to his or her home country. Those findings, in turn, can be used in connection with an application to the United States Citizenship and Immigration Service for special immigrant juvenile status. Two years ago, the General Assembly authorized the Probate Courts to make special immigrant juvenile status findings when hearing a case to remove a parent or guardian or to appoint a guardian for a child who has no guardian.

C.G.S. section 45a-604 (4) currently defines "minor," for purposes of guardianship, as a person under the age of 18. This means that a young adult gains legal authority to make his or her own decisions immediately upon turning 18. It also means that the authority of the young adult's parents or court appointed guardians terminates at age 18.

By corollary, a Probate Court may not remove a parent or appoint a guardian for a person who has turned 18.

This bill would extend guardianship to certain 18, 19 and 20 year olds by changing the definition of minor. Specifically, the term minor would include a person under age 21 who is unmarried and dependent upon a caregiver and who consents to the appointment of a guardian. The appointment of a guardian would be "solely in connection with a petition to the United States Citizenship and Immigration Service for designation of the person as having special immigrant juvenile status."

As proposed, the bill leaves several important questions unanswered:

- The role of a guardian appointed for an 18-20 year old is unclear. C.G.S. section 45a-604 (5) provides that guardianship includes both the obligation of care and control and the authority to make major decisions affecting the minor's welfare on matters such as education, medical treatment, consent to marriage and enlistment in the armed forces. If an appointment of guardian under this bill relates solely to a petition for special immigrant juvenile status, would a guardian have those statutory duties? Would the young adult lose the legal ability to make those decisions for himself or herself?

- There is no provision in the bill for how long such a guardianship would continue. The proposal provides that the young adult's consent is a condition to the appointment of a guardian, but it does not address whether he or she has the right to terminate the guardianship after the initial appointment. A related question is whether a guardianship that was established before age 18 would continue until 21 if the prerequisites of being single and dependent and consenting to the arrangement continue.

- When considering whether to appoint a guardian, the court would need to find that the person is "dependent on a competent caregiver." The bill provides no guidance as to what would constitute dependence in this context.

- The role of the Probate Court after the appointment of a guardian for a person who is 18 or older is also unclear. Under current law, guardians are subject to the continuing jurisdiction of the appointing court, must file an annual report and are subject to removal. The bill does not address whether any such ongoing oversight is contemplated.

We note that the additional caseload that would be expected to result from the bill will generate expenses for both the Probate Courts and the Department of Children and Families. In addition to the staff and judicial resources required to process and hear the cases, the Probate Courts will incur additional expense to appoint attorneys for indigent parents and children as provided under C.G.S. sections 45a-609 and 45a-620. Similarly, DCF will see a higher volume of court ordered investigations in connection with guardianship cases.

Finally, we note that the Probate Courts and the Superior Court have concurrent jurisdiction in the area of guardianship. As proposed, the bill would grant authority to appoint guardians for 18 to 20 year olds only to the Probate Courts, while the Superior Court's authority would end at age 18.

We appreciate your consideration and would be happy to work with the proponents to address these concerns.