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Testimony Regarding: Senate Bill No. 1269, An Act Concerning the Quality of Legal Representation of Children and Youth in Juvenile Matters

Testimony of William Bowen, Joshua Hudner, Blair Warner,¹ Mary Glassman, & Shelley Geballe
To the Judiciary Committee

April 4, 2007

Senator McDonald, Representative Lawlor, and distinguished Members of the Judiciary Committee:

We testify on behalf of Advocates for Connecticut's Children and Youth (ACCY), a statewide, independent, research-based organization dedicated to speaking up for children and youth in the policy making process. ACCY is the sister lobbying organization of Connecticut Voices for Children, on whose behalf we also testify.

We testify today in strong support of Senate Bill No. 1269 concerning the quality of legal representation of children and youth in juvenile matters. The Commission on Child Protection (CCP) oversees Connecticut's system of providing court-appointed counsel to children and parents in abuse and neglect cases, helping to ensure that the rights and interests of vulnerable children are protected and their voices heard. Our testimony is informed by the participation of Connecticut Voices' President, Attorney Shelley Geballe, who is one of 11 appointed members of the Commission on Child Protection, although we testify on behalf of Connecticut Voices for Children and ACCY only. Our testimony also is informed by our detailed study of the various models of representation in child protective service proceedings, discussed in our report, "Giving Families a Chance: Necessary Reforms for the Adequate Representation of Connecticut's Children and Families in Abuse and Neglect Cases," appended to this testimony.

We urge you to pass Senate Bill 1269 because it would enable children to get the legal representation they deserve when courts are making vital decisions about their lives, including whether to remove them from their homes and who will be their long-term caretakers. The bill accomplishes this by: a) mandating that a pilot program be established to start the transition from Connecticut's current system for appointed counsel – which relies on independent contract attorneys – to a new, more effective system that relies primarily on representation by legal services organizations and specialty law firms; b) providing the Chief Child Protection Attorney with sufficient staff to provide effective oversight of attorney representation; c) improving the recruitment of high quality attorneys regardless of student debt; and d) providing funds for much needed training for children's legal representatives.

We would also ask the Judiciary Committee to consider favorably a similar bill to improve legal representation for children in juvenile matters, Substitute Bill 1203, An Act To Improve the Quality of Legal Representation for Children in Juvenile Matters. This bill, which was unanimously passed by the Select Committee on Children, is now before the Judiciary Committee with a Joint Favorable Change of Reference. Both bills provide for much needed

¹ Mr. Bowen, Mr. Hudner, and Ms. Warner are Yale Law students participating in the Yale Legislative Services program and have prepared this testimony under the supervision of Attorney Shelley Geballe (President, CT Voices for Children), Attorney Mary Glassman (Director of Legislative Affairs, CT Voices for Children) and Professor J. L. Pottenger, Jr. (Legislative Advocacy Clinic, Yale Law School).

funding, oversight, and proposals for change to improve the representation of Connecticut's children and families in abuse and neglect cases.

Children And Families Deserve Effective Representation In The Life-Changing Decisions Made In Abuse And Neglect Proceedings.

The failure to assure competent legal counsel in abuse and neglect proceedings is particularly egregious because the issues involved in child protection cases involve the fundamental constitutional right to family integrity. These are not cases interpreting a business contract, but decisions affecting a child's life. The decisions involve when, and if, a child will have contact with siblings, whether a child will maintain any relationship with birth parents, and how long a child will remain outside a permanent home in foster care. Judges rely on the high quality legal representation of all parties to have complete information about child safety, family needs, and interventions required for the best interests of the child.

Inadequate representation can irreparably harm children and destroy families. Family bonds that are unjustifiably broken by unchecked state intervention may take years to heal at the cost of the child's healthy psychological development – or may never heal if they are legally destroyed. Children left languishing in foster care may be forever deprived of an adult friend and mentor who is permanent and stable. Children may be shuffled from one placement to another, repeatedly disrupting schooling and community ties and putting them years behind in their intellectual development. Where the state is too timid, children may be hurt or even die by being left in an unsafe home. Children and families need someone to speak for their interests and their wishes in cases where the state cannot or does not act.

Childhood is not the only period at stake. Faulty decisions that deprive Connecticut children of their childhoods also leave a void that they will carry throughout their adult lives and may hinder a successful transition to adulthood.

The Current System Provides Inadequate Resources To Ensure, Or Even Allow, For Adequate Representation.

Currently, attorneys under contract with the Commission on Child Protection to provide legal representation to children, youth, and parents in child abuse and neglect cases are paid a flat fee of \$500 for the first 30 hours of work, and then \$40 per hour for each hour thereafter. The pay is inequitable and oversight is weak. The flat fee system also discourages attorneys from spending sufficient hours on each case since the hourly rate is higher when fewer hours are spent (for example, the rate is \$100/hour if only 5 hours are worked, but \$17/hour if the full 30 hours are worked).

Low pay for attorneys makes it difficult to recruit attorneys who can work full-time on these complex cases. Inadequate recruitment forces the state to assign extraordinarily high caseloads to attorneys, making it difficult for each child to receive the attention she deserves. Attorneys working part-time on these cases may give priority to higher paying private work and neglect their child clients. Firing attorneys who provide inadequate representation under these conditions does not fix the problem of poor representation; reducing the number of attorneys to take cases forces the current attorneys to handle even more cases.

It is not surprising that Connecticut's system of inadequate pay creates a system where legal counsel carry excessive caseloads. More than half of Connecticut's juvenile-matter attorneys (73 out of 144) have more than the 100 cases recommended by the ABA for attorneys who work exclusively on these cases. Fifty-three have more than 150 cases. Caseloads in fact are even higher than this since many of these attorneys do abuse and neglect work only part-time.

The result is clearly inadequate representation: A recent focus group of twelve foster youth from the Jim Casey Youth Opportunity Initiative (which Connecticut Voices for Children manages) found that *10 out of 12 foster care youth* had never even met their court-appointed attorneys (though all had been in foster care at least five years). One youth had met her attorney at the time she was removed from her parents' home at age 13, but had not seen the attorney since. Only one of the twelve had *any interaction* with his attorney.

The Governor's Proposed Budget Proposal For The Legal Representation Of Children And Families In Child Protection Cases In FY 2008 And 2009 Is Grossly Inadequate To Ensure A Minimal Level Of Quality Of Services. The Governor's budget recommends only an inflationary increase in the budget of the Chief Child Protection Attorney to pay for legal representation. Though Connecticut's current compensation is lower than any other state with comparable costs of living, the Governor's proposal does nothing to reduce the excessive caseloads and improve the quality of representation of children and families dealing with abuse and neglect allegations.

This Bill Takes Important Steps Toward Improving The Representation Of Children And Families. The additional funding proposed will assist hundreds of children and youth to receive adequate representation and will allow the state to reap the benefits of a well-functioning system. To assure an improvement in the quality representation, we support the allocation of:

- Funds to begin to phase-in a transition from the current independent contractor model of representation to a model that relies primarily on non-profit legal services organizations or specialized law firms. These will be used to create two "pilot" demonstration sites and fund an independent evaluation to learn from the sites before the transformation is taken statewide.
- Additional funds to move from a flat case fee to an hourly fee of \$60 to improve accountability and quality of representation.
- Additional funds for pre-service and in-service training and certification of appointed counsel.

Evidence From Other States Indicates That Providing Attorneys Through A Public Agency Or Nonprofit Legal Services Provider Leads To Higher Quality Representation Of Children And Parents.

1. **Training.** A legal services or public defender-like organization can more easily provide centralized training and oversight, as well as the day to day advantages of mentoring, specialization, and institutional memory offered by working in the same office with attorneys working in the same area of the law.

2. **Multidisciplinary Approach.** A centralized office is able to employ social workers, medical experts, and paralegals and support staff that individual attorneys usually cannot afford on their own. These staff can both provide additional expertise on cases and also ensure that the attorneys' more costly time is spent most cost-effectively.

3. **Success in Other States.** Data from New Jersey, New York, Massachusetts, Washington, and Michigan indicate substantial benefits in an organizational model. The positive outcomes for children include decreased length of time in foster care and increased reunification rates with their families.

We Also Support The Commission's Request For Several Additional Staff To Monitor An Hourly Billing System, Provide Training, Respond To Client Complaints, And Assess Attorney Performance. The proposed expenditure of \$481,000 will allow the CCP to oversee an hourly billing system, which allows the CCP to monitor whether attorneys are using their time to provide effective representation. Currently, the CCP pays contract attorneys a flat \$500 for the first 30 hours of work. **Flat fee systems provide significant disincentives to putting adequate time into representation of children and families.** In such systems, each additional hour spent on a

case is done without additional compensation, effectively reducing the attorney's hourly rate. Thus, as other states have found, **a flat fee compensation model encourages attorneys to put as few hours as possible into each case, lessening the value the state receives for its dollars.**² Other states have seen significant improvement in the quality of representation after transitioning to hourly billing systems.³ Attorneys see their clients more often and spend additional time researching permanent placement options, advocating for educational assistance, and pushing for the best outcomes for children and families.

The CCP Has Requested Funds To Pay Attorneys At The Rate Of \$60 Per Hour, And We Fully Support This Request. Attorneys representing children in child protection proceedings should be compensated at an hourly rate comparable to the rate paid in states with comparable costs of living. Connecticut pays its children's attorneys well below the hourly rate of states with comparable costs of living. Under the assumption that children's attorneys in Connecticut spend adequate time per case – 25 to 30 hours – they earn only \$17 to \$20 per hour under the current flat fee system. **Other states with comparable costs of living, including New York, California, New Hampshire, New Jersey, Washington D.C., and Virginia, all pay the equivalent of juvenile contract attorneys \$60 or more per hour.**

The CCP can improve representation for Connecticut's children and families by switching to an hourly billing model and providing a minimum of \$60 per hour. This would encourage attorneys to spend sufficient time on their cases, attract qualified new attorneys, provide better records of the attorneys' daily activities for quality assurance, and avoid potential law suits against the state for inadequate compensation levels.⁴

Funding an Enhanced Training Program Will Improve Attorney Competence And Lead To Better Outcomes For The Children And Families Involved. Training programs are essential to building and maintaining the skills required to successfully represent a child client. They keep attorneys current on relevant case law, statutes, and procedures. Connecticut has only recently instituted training requirements for juvenile contract attorneys, including pre-service training and three seminars of in-service training each year. The Chief Child Protection Attorney is also coordinating an informal mentoring system to assist new contract attorneys in getting their footing in the demanding job of representing children and families.

Enhancement to training should include:

- 1) **Offering additional training in child development and psychology, and training in how to interview children.** The American Bar Association (ABA) and the Governor's Committee on the Quality of Representation of Children and Families recommend training in these areas that are not now required in pre-service training.⁵ These topics would allow attorneys to better understand child clients' situations and mental and emotional states, enabling them to better represent their desires and interests.
- 2) **Offering training sessions more than once per year.** Training for new attorneys currently is offered only one time during the year. The current contract attorneys are overbooked, with only 144 of them attempting to provide

² THERESA SPAHN, COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 4TH ANNUAL REPORT, FISCAL YEAR BUDGET REQUEST 2008, at 11-12 (2006).

³ *Id.*

⁴ See *Juvenile Matters Trial Lawyers Association v. Judicial Branch*, 363 F. Supp. 2d 239, 251 (D. Conn. 2005) (dismissed on procedural grounds).

⁵ AM. BAR ASS'N CTR. ON CHILDREN AND THE LAW, FINAL REPORT: MICHIGAN COURT IMPROVEMENT PROGRAM: ASSESSMENT OF PROBATE COURTS' HANDLING OF CHILD ABUSE AND NEGLECT CASES 61 (1997).

representation in over 3500 cases in the first quarter of FY 2007 alone.⁶ Allowing new attorneys to enter the system more easily by offering more frequent training sessions would increase the pool of available attorneys.

3) A formal, compensated mentor program, requiring new attorneys to assist their mentor in bringing cases before they bring them alone. Other states use such mentor programs to great effect, and the in-courtroom training requirement helps new attorneys avoid simple mistakes that cause delays and lead to poorer outcomes for children.⁷

4) Adopting a formal certification procedure for lawyers after three years of practice in the field including peer reviews, writing samples, and an exam. The National Association of Counsel for Children (NACC) already runs such programs in several states to ensure that attorneys have adequate skills and knowledge.⁸

Connecticut Can Save Money By Allocating Funds To Allow For More Effective Models Of Multidisciplinary Representation.

Studies confirm high quality multidisciplinary legal representation leads to cost savings.

1. A Washington pilot program, for example, reduced the average time (and expense) of foster care by 20%, or 55 days per child. **The Washington program raised reunification rates significantly, and decreased termination of parental rights, reducing long-term foster care costs and leading program officials to conclude these savings alone would offset the cost of the pilot program within three years.**⁹
2. An innovative program in New York City with lower caseloads and in-house assistance from social workers resulted in even greater savings, reducing average time in foster care from 4.2 years to less than 4 *months*, with few repeat referrals to child welfare.¹⁰

It is clear that **savings from improved representation in abuse and neglect cases would be substantial.**

In Connecticut, each day in foster care costs between \$24.80 and \$27.40. **Connecticut would save between \$1,364 and \$1,507 for each child** who spent 55 fewer days in such care. By comparison, the cost of 25 hours of representation at \$60 per hour is \$1,500.¹¹ Much of this representation cost is already being spent in these cases without such savings in foster care. **Thus, a moderate increase in pay is more than offset by the savings in the foster care system.**

Faster permanent placements save money since they eliminate the need for periodic permanency plan hearings, DCF staffing, and foster care and/or residential care and board payments. **Connecticut would save \$9,052 to \$10,001 for each year of foster care avoided in board and care costs alone.**

Finally, adoption of a modified compensation scheme may help Connecticut avoid litigation over the adequacy of the compensation it provides to attorneys representing children in child protection proceedings. In 2004, the Juvenile Matters Trial Lawyers Association filed suit in federal district court against the

⁶ Data compiled by the Chief Child Protection Attorney's Office.

⁷ Connecticut Voices for Children's white paper, *Giving Families a Chance*. Section V.A details the systems in other states.

⁸ See NAT'L ASS'N OF COUNSEL FOR CHILDREN, STANDARDS FOR CHILD WELFARE ATTORNEY CERTIFICATION, available at http://www.naccchildlaw.org/training/documents/StandardsABAOriginal04_001.pdf.

⁹ JASON A. OETJEN, IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION 7-8 (2003).

¹⁰ See http://www.cfrny.org/2006_accomp.asp.

¹¹ See <http://www.dir.ct.gov/dcf/Policy/Trrmt36/36-55-25-2.htm>.

Connecticut Judicial Department, claiming that the compensation rates were substantially lower than those paid to public defenders. The District Court (Droney, J.) dismissed the case on procedural grounds. However, the court warned: “[T]he pay structure for appointed counsel representing indigent families and children in the Connecticut state courts may result in inadequate resources for effective representation [T]he decision here on the standing of the Association does not mean that other parties could not raise these issues in this Court or the Connecticut Superior Court. Finally, it may very well be that an administrative or legislative review of the issues raised in this suit may be an appropriate course.”¹²

Although this suit was dismissed on procedural grounds, lawsuits in other states have been more successful. In 2003, the New York County Lawyers Association obtained a permanent injunction against the City and State of New York requiring that the City of New York and the State of New York pay assigned counsel \$90 per hour for both in-court and out-of-court work until the legislature modified the laws setting compensation.¹³ Prior to the suit, New York lawyers received \$40 per hour for in-court work and \$25 per hour for out of court work.¹⁴ It would be in Connecticut’s best interests to take the federal district court’s advice in the recently dismissed Connecticut litigation, and provide adequate compensation to attorneys representing children and indigent families and thereby avoid the costs that would accompany additional litigation.

Conclusion:

The measures included in this bill to improve the quality of legal representation for children in child abuse and neglect cases are cost-effective. Better trained and supervised attorneys, carrying manageable caseloads, will reduce the number of court continuances, assure that judges have all the information needed to make wise decisions, and – as shown in other states – result in shorter-term foster placements and better outcomes for children and families. In short, this bill is not only good for children, it is fiscally wise.

¹² Juvenile Matters Trial Lawyers Ass’n v. Judicial Branch, 363 F.Supp. 2d 239, 251 (D. Conn. 2005) (emphasis added).

¹³ New York County Lawyers’ Ass’n v. State, Index No. 102987/00, at 37 (N.Y.Sup.Ct. 2003), *available at* <http://www.nycla.org/publications/decision.pdf>.

¹⁴ *Id.* at 3.