

PA 11-128

HB6438

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**JOINT
STANDING
COMMITTEE
HEARINGS**

**SELECT
COMMITTEE
ON CHILDREN
PART 3
622 - 943**

2011



STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

PAUL J. KNIERIM, JUDGE
Probate Court Administrator

THOMAS E. GAFFEY
Chief Counsel

HELEN B. BENNET
Attorney

DEBRA COHEN
Attorney

186 NEWINGTON ROAD
WEST HARTFORD, CT 06110

TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Theresa Gerratana
House Co-Chair Diana S. Urban
Senate Ranking Member Joseph Markley
House Ranking Member Terrie Wood
Honorable Members of the Children's Committee

From: Paul J. Knierim
Probate Court Administrator

Re: RB 1043, AAC Access to Records of the Department of Children
and Families

Date: March 1, 2011

HB 1043B

The Office of the Probate Court Administrator supports adoption of this bill with the changes described in this testimony.

The bill would specify the circumstances under which DCF may disclose confidential information to courts and other agencies. It authorizes DCF to disclose case information to probate courts, which is essential in light of DCF's statutory role in several types of children's cases over which probate courts have jurisdiction. We believe that the language of the bill should be broader.

We offer the following substitute language to subsection 14 of C.G.S. § 17a-28(g):

(14) A judge or employee of a probate court who in the performance of such judge's or employee's duties require access to such records;

The proposed change is critically important for two reasons. First, the proposed revision would permit DCF to disclose all relevant information to probate courts. As drafted, the proposed bill is unduly restrictive because it permits DCF to disclose only those records that are necessary in the preparation of an

investigation report. This could prohibit DCF from providing probate courts with additional information that is discovered after the report is filed. It could also preclude DCF from disclosing any information in cases that do not require an investigation report, such as voluntary service matters under C.G.S. § 17a-11.

Second, the proposed change would authorize disclosure to staff as well as judges. Court employees are the representatives of the court for communications with DCF and are responsible for preparing the file for the judge. In the five regional children's probate courts, specially trained Probate Court Officers conduct case conferences with family members and DCF staff. Their responsibilities also include participation in probate court hearings and follow-up on cases. Permissible disclosure to court staff is a practical necessity so that they are able to perform their duties.

We are also concerned that the proposed language of C.G.S. § 17a-28(d) restricts the ability of a court to disclose information received from DCF to others without a court order. To obviate a disclosure order in each case, we suggest that subdivision (d) also permit disclosure as permitted under the statute that governs the disclosure of confidential information by probate courts. Sections 9 and 10 of probate administration's agency bill, HB 6438, AAC Probate Court Operations, contain an update to those provisions.

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HOUSE**

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Any objection? Without objection, so ordered.

Representative Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker. Mr. Speaker, I move that we suspend the rules to allow for the immediate transmittal -- I move that we immediate transmit the previous bill that we passed which was House Bill 6651, to the Senate.

DEPUTY DONOVAN:

The motion is to immediately transmit Emergency Certified Bill 6651 to the Senate. Any objection? Hearing none, the bill is transmitted for the purpose.

Will the Clerk please call Calendar 362.

THE CLERK:

On page 45, Calendar 362, substitute for House Bill 6438, AN ACT CONCERNING PROBATE COURT OPERATIONS, favorable report by the Committee on Finance.

SPEAKER DONOVAN:

Deputy Speaker, Representative Bob Godfrey to the floor, sir.

REP. GODFREY (110th):

Good afternoon, Mr. Speaker.

SPEAKER DONOVAN:

Good evening, sir.

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REP. GODFREY (110th):

Mr. Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

Question is on acceptance of the joint committee's favorable report and passage of the bill. Will you remark?

REP. GODFREY (110th):

Thank you, Mr. Speaker. This is the probate administrator's agency bill for the year. It does a number of things in the first section it updates the description of the New Haven Regional Children's Court. As you know, last year we did a lot of consolidations and some of the consolidations actually affected the make up of the region that the court covers and this will correct that.

It will authorize the probate judges come under our probate court workers, worker's compensation policies. Up until last year as you all recall, judges were paid basically out of the fees that their particular court collected. We ended that; we made them in essence salaried employees of the state and the best of my knowledge I believe the probate judges are the only state employees that are currently not

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covered by worker's compensation.

Considering the sometimes dangers that judges can get into, I think this is not a bad idea. Another section deals with updating some technology that hand held scanner devices are now being used by a number of attorney's and other firms that are involved with the probate court and the probate court systems. For every other agency there is a flat fee of \$20 per day to scan that kind of documents. We're extending this to the probate courts. It's the same kind of think that all your town clerks do.

We're updating statutory cross references; we're codifying a practice that probate courts can share information concerning certain children's matters with state agencies, parties in the matter and other courts which was a recommendation of the child futility review study. And, it does authorize the probate court administrator to make nonconfidential case data to professionals subscribers looking for regular updates.

What this is, is currently you or I can go in and get information from a probate court under FOI the same as anywhere else, for a particular information. We may be looking about by a case or a relative's

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case, that kind of thing, but one of the other things we did last year is we consolidated the data and electronified it, if that's a word, in a central place. And, there are businesses who are quite willing to pay substantial amounts of money to the probate court administrator and to the system and eventually to the state to be able to use that information otherwise publicly available and this would allow that to happen.

And, then lastly, it clears up some confusion that arose during a probate appeal to the superior court clarifying what the deadlines for an appeal are. All of these have been vetted by both the Judiciary and the Finance Committee to their unanimous satisfaction. We need to do a little bit of updating, so Mr. Speaker, the Clerk is in possession of LCO 6971, if the Clerk could please call it and I be given permission to summarize.

SPEAKER DONOVAN:

Clerk please call LCO 6971 which will be designated House Amendment Schedule A.

CLERK:

LCO 6971, House A, offered by Representatives
Godfrey, Fox, Senator Coleman, Kissel, Representative

Hetherington, Doyle, et al.

SPEAKER DONOVAN:

Representative seeks leave of the chamber to summarize, is there objection to summarization? Hearing none, Representative Godfrey, you may proceed with summarization.

REP. GODFREY (110th):

Thank you, Mr. Speaker. Last year we changed statutes regarding probate fees that they would not be assessed on out of state property. However, we did not take into account one of our statutory allowances that does allow a nondomicilliary of Connecticut to open a full estate out of a Connecticut probate court at that estate's option. I move adoption.

SPEAKER DONOVAN:

Question is on adoption? Remark further?

REP. GODFREY (110th):

Basically, what I said, this does give the flexibility of the executor, the people who are brining the estate, to choose in essence the venue whether they bring it in a probate court in Connecticut or another state and I urge my colleagues to vote for this.

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Would you care to remark further on the Amendment? Would you care to remark further on the Amendment? If not, let me try your minds. All those in favor of the Amendment, please signify by saying aye.

HOUSE:

Aye.

SPEAKER DONOVAN:

Opposed nay. The ayes have it. The Amendment is adopted. Remark further on the bill as amended? Remark further on the bill as amended? Representative Godfrey.

REP. GODFREY (110th):

Mr. Speaker, the Clerk is in possession of LCO 7599. Would he please call it and I be allowed to summarize?

SPEAKER DONOVAN:

Would Clerk please call LCO 7599 which will be designated House Amendment Schedule B.

CLERK:

LCO 7599 House B offered by Representative Olson and Senator Doyle.

SPEAKER DONOVAN:

Representative seeks leave of the chamber to

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summarize. Any objection? Representative Godfrey,
you may proceed.

REP. GODFREY (110ht):

Thank you, Mr. Speaker. This was brought to our attention by Representative Olson and Senator Doyle. Currently it is difficult for say a widow who is trying to make application for her deceased spouse for say worker's compensation claim and the probate court is the only place where there is -- where the information is readily available. Under current law it is not quite clear whether the surviving spouse can get access to that in order to pursue the worker's compensation case. For example, in advance of the probate case being settled, this would permit that. I move adoption.

SPEAKER DONOVAN:

Question is on adoption. Remark further? Will you remark further? Representative O'Neill.

REP. O'NEILL (69th):

Yes, thank you, Mr. Speaker. Just a quick question -- is this language something that was the subject of a public hearing, was there a bill like this that was in the Judiciary Committee or elsewhere, through you, Mr. Speaker?

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SPEAKER DONOVAN:

Representative Godfrey.

REP. GODFREY (110th):

Thank you, Mr. Speaker. I understand that this was the subject matter of a public hearing in the last session, not in this one.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. Was there any kind of proposed bill to this effect during this session that didn't get a public hearing?

SPEAKER DONOVAN:

Representative Godfrey.

REP. GODFREY (110th):

Mr. Speaker, not to my knowledge.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Okay. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Would you care to remark further on the Amendment? Care to remark further on the Amendment? If not, let me try your

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minds. All those in favor of the Amendment please signify by saying aye.

HOUSE:

Aye.

SPEAKER DONOVAN:

Opposed nay. The ayes have it. The Amendment is adopted. Will you care to remark further on the bill as amended? Care to remark further on the bill as amended? Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. If I may, just one brief question.

SPEAKER DONOVAN:

Please proceed, sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I did notice in this bill in the sections dealing with disclosure of information to third parties, there are some changes to the adoption record disclosures and I was just wondering if the good Representative could explain what we're changing in that section, through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Godfrey.

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REP. GODFREY (110th):

Mr. Speaker, there's no changes to the adoption process or procedure in this bill.

SPEAKER DONOVAN:

Representative Candelora.

REP. CANDELORA (86th):

Mr. Speaker, just to be clear, I was looking at lines 303 through 307 and I just noticed that -- I think what we've done here as I can read it, we are -- the changes in that line in 303 to 304 is maintaining current law and taking that outside the realm of disclosure of documents that we are creating and then the above sections of let's see, lines 271 and down, so that we are allowing disclosure of records in sections 271 and then in the latter section we're just excluding adoption records and maintaining current law, through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Godfrey.

REP. GODFREY (110th):

Through you, Mr. Speaker. Basically that is correct. We're not changing the adoption laws. Some of those changes are LCO technical changes especially in that 303 following because we're as you see, we're

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taking out a couple of sections of the current statute and basically renumbering the sections and that's mostly what it's about.

SPEAKER DONOVAN:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I appreciate the answers.

SPEAKER DONOVAN:

Representative Hetherington.

REP. HETHERINGTON (124th):

Mr. Speaker, I rise briefly to support the bill. The bill was considered fully in Judiciary, although the Amendment is new to it, the Amendment seems to preserve the rights of an estate to pursue the benefits that the decedent might have and therefore I would urge adoption. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Would you care to remark further as amended? Would you care to remark further? If not, staff and guests please come to the Well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber please.

SPEAKER DONOVAN:

Have all members voted? Have all members voted? Please check the roll call board and make sure your votes were properly cast. If all members have voted the machine will be locked and the Clerk will please take a tally.

Representative Nardello.

REP. NARDELLO (89th):

Mr. Speaker?

SPEAKER DONOVAN:

Yes, Representative?

REP. NARDELLO (89th):

I'd like to vote in the affirmative, Mr. Speaker, thank you.

SPEAKER DONOVAN:

Representative Nardello in the affirmative.

Representative Roy.

REP. ROY (119th):

Thank you, Mr. Speaker, in the affirmative, please.

SPEAKER DONOVAN:

Representative Roy in the affirmative.

Clerk please announce the tally.

THE CLERK:

House Bill 6438 as amended by House A and B

Total number voting 143

Necessary for adoption 72

Those voting Yea 143

Those voting Nay 0

Those absent and not voting 8

SPEAKER DONOVAN:

Bill as amended is passed.

Any announcements or introductions?

Representative Kirkley-Bey.

REP. KIRKLEY-BEY (5th)

Thank you, Mr. Speaker. I hope they're still with us, but the Parent Leadership Training Institute of Hartford was upstairs in the gallery and they came to see us with Ron Thomas from CCM and if they're still there I'd like to introduce them and have them give you a wave but when we were in the middle of the last bill they said they had to leave in 20 minutes so I think they're gone, but I just wanted to recognize that they were here. So, thank you, Mr. Speaker.

SPEAKER DONOVAN:

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to it because they administer the Medicaid program.

But, I think, what we have here is an issue of property law. And this is where our -- our joint system of state and federal programs come into effect. And the federal government, in statutes, would look to the state law jurisdiction to handle those property issues.

So if the -- the state law says that it's not actually available -- like, in Florida, you have a Homestead Act, so real property is not -- not counted -- same thing here. The probate court would construe the trust to be supplemental support, not actually available under state law, and, therefore, not actually available in considering Title 19 Medicaid eligibility.

REP. HETHERINGTON: Okay, thank you. And I certainly hope that's -- hopefully, you're right.

SENATOR KELLY: Thank you.

REP. FOX: Are there any other questions from members of the Committee?

Seeing none, thank you, Senator Kelly.

SENATOR KELLY: Thank you.

REP. FOX: Next is Judge Paul Knierim.

Good morning, Judge Knierim.

THE HONORABLE PAUL J. KNIERIM: Good morning Representative Fox, members of the Committee. I'm Paul Knierim. And I'm Probate Court Administrator, and I appreciate the opportunity to speak with you this morning.

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So with that, I'd just -- I'd like to offer credit to, I think, people who deserve it for the success of all of this. And I mentioned at the outset but I -- I can reiterate it enough that the staff of the courts and the judges have been called upon to burn the midnight oil right through this process, and they came forward, and I think did an extraordinary job.

The towns, likewise, our partnership with them, is very valuable to us because they provide us with facilities, enable us to work in the communities, and they came forward. And the state library also has assisted us greatly in dealing with the centuries of probate court records that we have and needed to deal with as we go through the consolidation process. So I think we're off to a very good start.

With that, I've submitted testimony, written testimony, on a number of bills. There's really only one that I'd like to spend a moment commenting on this morning, which is Bill 6438, AN ACT CONCERNING PROBATE COURT OPERATIONS. That is our sole agency bill for this legislative session. And it is a joint submission of probate court administration with the Connecticut probate assembly.

Unlike the last couple of year's worth of discussions, I would say there are really no major issues contained in this. Instead, it's a list of issues that we'd like to either clarify existing law or clean up some obsolete provisions of statutes. I would point out just a couple of provisions to you this morning.

Section 2 of the bill would extend workers' compensation coverage to probate judges. Present interpretation of the law is that probate judges, as public officials not listed in the statute, aren't eligible for that coverage.

We think it's entirely appropriate that they be covered, particularly considering that probate judges run courtrooms without any dedicated security staff. And in light of -- in light of that risk, we think that the coverage would be very appropriate. Each of our courts already has workers' compensation insurance in place. It's mandatory for court staff, so the fiscal impact on that, we expect, would be very, very modest.

I would point out Section 3. It's -- it needs, I think, a little bit of explanation, a little backdrop on this. This is a statute that's been on the books for many years that addresses applications for medical procedures concerning tubal ligation or vasectomies for individuals who are under conservatorship or guardianship.

The gist of the changes that we're proposing this year is to try to achieve a reasonable balance in the probate court procedures to hear those matters, between having medical and social work professionals testify, who, on the one hand, are independent and objective, and on the other hand, have familiarity from a past working relationship with the individuals who are involved in the proceeding.

Another two sections that I think warrant a brief emphasis are Section 9 and 10. They would update our statutes concerning the confidentiality of records in children's matters. And I think the most significant piece I'd point out to you on that is it would contain, for the first time, a specific list of parties to whom disclosure of those records is authorized.

To take an example, parties in those proceedings and their attorneys would be authorized recipients of disclosed confidential records. We've always operated as though that's needed for

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due process purposes, but this is a statute that would make it clear.

It would also adopt a recommendation of a recent fatality review concerning best practices that would enable us to share that information with other courts. That means both other probate courts and the superior court, so that, in a subsequent proceeding concerning the same family, full case history information would be available to any other court that's hearing a matter on that family.

Two more quick references. Sections 12 to 15 would clarify some questions that have arisen in our appeals statute, as to the applicability of various time periods in which appeals can be taken. That would address some, in particular, a Superior Court case, where a court struggled with whether the 45-day appeals period or the 30-day appeals period applied.

And lastly, Section 17 deals with powers of attorney. It would add to a statute that is already on the books that permits probate courts to compel an attorney-in-fact to file an accounting. It would add to that the ability of a probate court to remove an attorney-in-fact who is found to have breached his or her duties and to appoint a successor.

I think that -- that covers the -- the most key points on that piece of legislation. And as I say, I've submitted testimony on several other bills. I'd be happy to answer questions on any of those of course.

Thank you.

REP. FOX: Thank you, Judge Knierim.

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Are there any questions from members of the
Committee?

Representative Gonzalez.

REP. GONZALEZ: Good morning.

THE HONORABLE PAUL J. KNIERIM: Good morning,
Representative.

REP. GONZALEZ: Here you said in the bill that
establish a fee of \$20 per day. Can -- can you
explain that?

THE HONORABLE PAUL J. KNIERIM: Yes, thank you. That
section of the bill would enable the probate
courts to charge a \$20 a day fee for the use of a
hand-held scanner to copy records. It's -- it's
something that is permitted under the Freedom of
Information Act. And what it's intending to do
is -- normally, probate courts, under the
statute, are able to charge a fee for providing
copies of documents to an individual. The
hand-held scanner provision enables a person,
rather than asking court staff to supply copies,
to go in with a device and scan, on their own,
court records. And under the Freedom of
Information Act, agencies are permitted to charge
a daily fee rather than a per page copying fee.

REP. GONZALEZ: So, me, as an individual, I can go and
I can scan it -- the copies.

THE HONORABLE PAUL J. KNIERIM: That's right.

REP. GONZALEZ: And then -- and -- right now, how much
you charge for -- for a copy?

THE HONORABLE PAUL J. KNIERIM: I was afraid you'd ask
that question. I think the fee, going on
recollection, is \$5 per document up to three

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pages, and then, I believe it's a \$1 per page thereafter.

REP. GONZALEZ: \$5 up to three pages?

THE HONORABLE PAUL J. KNIERIM: I believe so but don't hold me to it. I'm going on memory. That statute hasn't changed in many years.

REP. GONZALEZ: Yeah, I think you're making a lot of money. Because if I go to a -- any other department, I pay like fifty cents or maybe a dollar for a copy. And you're paying here what \$5 up to three. You don't think that \$20 -- you know for -- for people that -- that sometimes they really need a copy but they don't have the money, you don't think that \$20, you know, from \$5 to \$20, you don't think that it's a lot?

THE HONORABLE PAUL J. KNIERIM: Well, I think the notion of using the hand-held scanner is typically people whose profession it is to research probate records.

REP. GONZALEZ: Okay.

THE HONORABLE PAUL J. KNIERIM: So they would normally be making multiple copies, and -- and I think it works out to be a better financial arrangement for them since they can make as many copies as they can accomplish during the course of the day.

REP. GONZALEZ: Okay. Any way to waive that--

THE HONORABLE PAUL J. KNIERIM: Yes. (Inaudible.)

REP. GONZALEZ: -- if a person isn't (inaudible) they can't afford to pay anyway to waive that fee?

THE HONORABLE PAUL J. KNIERIM: That's right. Our statute specifically authorizes judges to waive

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any of our fees in an instance where an individual would be otherwise denied access to the court or to its records.

REP. GONZALEZ: Okay. Thank you.

THE HONORABLE PAUL J. KNIERIM: Thank you.

REP. FOX: Any other questions from members of the Committee?

Representative Baram.

REP. BARAM: Thank you, Mr. Chair.

Welcome.

THE HONORABLE PAUL J. KNIERIM: Good morning.

REP. BARAM: With regard to the proposal on power of attorney, if the party who is subject to the power of attorney was still competent, would their views be taken into account if the probate court felt there had been some breach of fiduciary responsibility with the attorney-in-fact? Was this intended to give sole authority to the court or would the court consider other points of view?

THE HONORABLE PAUL J. KNIERIM: Thank you for the question. By all means, yes. The -- the principal who executed the power of attorney would have standing in the proceeding, in fact, could be the petitioner under the statute, as it exists, to initiate the proceeding and whether -- whether fully competent or not, would certainly have the opportunity to voice his or her views in the proceeding. I think the court would even contemplate whether the individual ought to have representation, in the form of an attorney or a guardian ad litem, if the capacity of the individual was in question.

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But I would say the overarching objective here is that this is a proceeding that could review whether a power of attorney is working properly and whether attorney, in fact, is behaving appropriately, without necessarily having a whole conservatorship proceeding initiated.

REP. BARAM: I -- I commend you on that. I think it's -- it's a great piece of legislation. One last question, on the workers' comp, out of curiosity, do you know whether superior court judges are covered by workers' comp now?

THE HONORABLE PAUL J. KNIERIM: My understanding is that they are not. There was a decision of the Supreme Court, approximately 20 years ago, that reviewed the statute and the context of -- of the estate of a deceased superior court judge seeking workers' compensation coverage. And I believe the interpretation was no. And that's the decision we've relied upon for our interpretation that probate judges are not currently covered.

REP. BARAM: So in your proposal, it seems like you're making a distinction that there's no security available for probate court judges, whereas in Superior Court, you do have the marshals and -- and security attendant to the courtroom. Is -- is that your concern?

THE HONORABLE PAUL J. KNIERIM: It is, thank you. That's -- that's right on the point. We, of course, handle matters involving emotional topics and very personal familial topics, mental health issues as well. Our courts generally try to have appropriate relationships with the local police departments. And when a judge knows that a -- a volatile party may be involved in a proceeding, may call upon the local police department to stand by, nearby or even outside the courtroom

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but, unlike Superior Court proceedings, there's no -- no regular security in force.

The other issue I didn't mention earlier, and I appreciate the question, is that probate judges operate under a very different disability benefits package than do superior court judges, that is not as comprehensive a coverage. So that -- there may be -- there may be a benefit available for a superior court judge who is disabled, as a consequence of work activity, that wouldn't be available for a probate judge. Certainly not a full answer, but another distinction between the two.

REP. BARAM: Thank you.

REP. FOX: Representative.

REP. CARPINO: I wanted to ask you a question about the online data section. I see that you're looking to set up a fee schedule. If you could please explain the thought process behind a fee schedule. I'm assuming something like the federal PACER system, as opposed to the general superior court system where everything is available free to the general public.

THE HONORABLE PAUL J. KNIERIM: Thank you. I'm not familiar with the federal system, so I -- I can't speak to that. The -- the proposal contained in this bill, though, would give the probate system parallel authority to what the superior court presently have -- has, I should say. The proposal is aimed at commercial enterprises that are seeking regular downloads of system-wide information. And the notion behind the proposal is simply that we'd be able to cover our programming and development costs to make that data available online to them. And that is, my understanding, the same system under which the judicial branch operates for the superior court.

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Thank you.

REP. FOX: Thank you. I have a question on the -- the appeal period, the -- the 45 day versus the 30 day.

THE HONORABLE PAUL J. KNIERIM: Yes.

REP. FOX: And would it be easier just to have one appeal period?

THE HONORABLE PAUL J. KNIERIM: It might be easier.

REP. FOX: Or would it -- is there a reason that does not make sense, I guess?

THE HONORABLE PAUL J. KNIERIM: Well, certainly the -- the probate system traditionally operated under a 30-day appeals period, applicable to most matters with certain exceptions for various circumstances. The 45-day period was added to our statute, in 2007, when we revamped the conservatorship statute. And it was part and parcel of that comprehensive look at the conservatorship statute, with the thought that, for both conservatorships and for guardianships of adults with intellectual disabilities, that a slightly longer appeals period would be appropriate to afford a respondent a little bit longer chance to pull together what's necessary to initiate the appeal.

So that was carved out as an exception for that specific type of situation.

REP. FOX: And you're -- you're comfortable, though, with this language? That it's -- it's sufficiently clear then, to the courts, as to which types of actions?

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THE HONORABLE PAUL J. KNIERIM: I -- I think so. And, in fact, I think, you know, in the probate system, the judges and staff come together, at a minimum, on a quarterly basis for continuing ed programs. And I don't think, within our system, there's been any question about which appeals period applies in different cases.

I don't have the citation with me, but there was a published Superior Court decision in which a judge noticed that Sections 45-a-186 and 187 had an apparent conflict, then, sort of, puzzled through the legislative history and came to the conclusion, correctly I think, that the 45-day appeal period applied in that situation. And the intent here was just to not put judges through that on a regular basis.

So our solution to it is 186 is the provision that establishes the two different time periods for the types of cases to which they apply. 187, which deals with some other circumstances, presently, also has reference to the old, 30-day appeals period that use to apply to everything. Our solution would be, take any time references out of 187 and just have it cross-reference back to 186 so that there be only one source in the statutes for the number of days that apply.

REP. FOX: Okay. Thank you.

THE HONORABLE PAUL J. KNIERIM: Thank you very much.

REP. FOX: Any other questions?

Seeing none, thank you Judge Knierim.

THE HONORABLE PAUL J. KNIERIM: Thank you. I appreciate the opportunity to be here.

REP. FOX: Next is the Honorable Judge Christine Keller.

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ch/gbr JUDICIARY COMMITTEE

February 28, 2011
10:00 A.M.

THE HONORABLE CHRISTINE E. KELLER: Good morning, Representative Fox, Representative Hetherington, Senator Kissel. On behalf of the Judicial Branch and also as a member of the Connecticut Bar Association's Children in the Law Committee, I'm here to testify in support of House Bill 6442, AN ACT CONCERNING THE APPOINTMENT OF COUNSEL AND GUARDIANS AD LITEM IN CHILD PROTECTION MATTERS, AND THE APPOINTMENT OF PERMANENT LEGAL GUARDIANS.

Section 1 of the bill would clarify the role of the court, the chief child protection attorney, counsel for the child, and guardians ad litem in child protection cases. It clarifies what circumstance warrant when a guardian ad litem be appointed for a child, in addition to an attorney, and would avoid potential violations of the code of professional responsibility by attorneys appointed to represent children and the unnecessary diminution of a child's right to be heard in such proceedings.

The bill also addresses a problem we've encountered when issues in a family custody case give rise to the level where the Department of Children and Families has received a referral and concurrently files a neglect petition.

In many such cases, children have already been appointed to -- I mean, attorneys have already been appointed to represent the children in the family case and, at times, even a guardian ad litem is already representing the children in the family case.

This bill would allow the appointment of those same attorneys, in the child protection case, even if they did not have a contract with the chief child protection attorney to regularly appear in juvenile cases. This would make sense because those attorneys are usually very familiar

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LINE 13

STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATORPAUL J. KNIERIM, JUDGE
Probate Court AdministratorTHOMAS E. GAFFEY
Chief CounselHELEN B. BENNETT
AttorneyDEBRA COHEN
Attorney186 NEWINGTON ROAD
WEST HARTFORD, CT 06110TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Eric D. Coleman
House Co-Chair Gerald M. Fox, III
Senate Ranking Member John A. Kissel
House Ranking Member John W. Hetherington
Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: HB 6438 An Act Concerning Probate Court Operations

Date: February 28, 2011

An Act Concerning Probate Court Operations is the probate court system's sole agency bill for the 2011 session. It covers several different topics related to the administration of the probate courts. The Office of the Probate Court Administrator offers this proposal jointly with the Connecticut Probate Assembly.

Section 1 New Haven Regional Children's Probate Court

The New Haven Regional Children's Probate Court was originally established as a pilot program in a statute that specified which towns would be served by the regional court. With the success of the first court, the General Assembly authorized additional courts in 2005 and allowed the probate system to determine the geographic makeup of each region on a flexible basis. This proposal would extend that same flexibility to the New Haven children's court. It will enable the system to offer the specialized services of the children's court to additional communities.

Section 2 Workers' Compensation

Under current law, probate judges are not eligible for workers' compensation coverage. It is our position that probate judges should have this basic protection

in light of the significant risk that judges face in handling highly sensitive cases without security personnel in their courtrooms.

Each probate court already maintains a workers' compensation insurance policy to cover court employees. It is expected that the cost to add judges to the existing policies will be minimal. The expense would be borne by the Probate Court Administration Fund.

Section 3 Authorization for a Tubal Ligation or Vasectomy for Individuals under Guardianship

C.G.S. §§ 45a-690 to 45a-700 assign to probate courts the responsibility for reviewing petitions for authorization to perform tubal ligation or vasectomy procedures for individuals under conservatorship or guardianship. The statute requires a probate court to appoint a 3-person team of professionals to examine the respondent and make a report for each such proceeding. The appointments must be made from a pre-approved list of professionals.

Section 3 would give judges greater flexibility in appointing professionals. It would also encourage the appointment of professionals who have worked with the respondent in the past.

Section 4 Hand-held Scanners

Probate courts currently charge a statutory fee for copies of probate records. Under the Freedom of Information Act, agencies are permitted to impose a fee for the use of hand-held scanners in lieu of charges for agency supplied copies. In accordance with C.G.S. § 1-212(g), § 4 would establish a \$20 daily charge for use of a hand-held scanner to copy probate records. While we do not anticipate significant revenue from this fee, it would partially offset the loss of revenue that results when individuals use hand-held scanners to make their own copies.

Sections 5-8 Updates to Statutory Cross-references

These four sections correct obsolete cross-references related to the priority of claims in decedents' estates.

Sections 9-10 Confidentiality of Records in Children's Matters

Sections 9 and 10 would update statutes governing the confidentiality of probate records in children's matters. The proposal would also implement the recommendation of a recent case review conducted jointly by this office, DCF and the Office of the Child Advocate to improve information sharing in child protection matters. Specifically, § 9 authorizes probate courts to disclose case

information to other courts and to DCF, thereby ensuring that the entire case history is available in any subsequent proceedings involving the same family.

Section 11 Online Data

Section 11 would authorize Probate Court Administration to make non-confidential case data available online to subscribers and to establish a fee schedule for the service. For the first time, the probate system now has a computer network that connects all courts. The network, which was implemented in connection with court restructuring, will enable us to provide timely and accurate data about all courts.

Sections 12-15 Appeals

The bill would address confusion that has arisen since the probate appeals statutes were modified in 2007. Specifically, it would amend C.G.S. §§ 45a-186 through 45a-188 to clarify which types of proceedings are subject to the 45 day appeals period (i.e., guardianships for adults with developmental disabilities and conservatorships). The appeals period for most all other probate matters is 30 days.

Section 16 Refunds of Overpayments

This technical correction specifies that refunds are permitted from the Probate Court Administration Fund only for overpayments of statutory charges.

Section 17 Powers of Attorney

Section 17 would clarify the authority of probate courts in resolving disputes associated with powers of attorney. Under current law, C.G.S. § 45a-175 authorizes probate courts to compel an attorney-in-fact to file an accounting and to fashion appropriate remedies if the court finds a breach of duty. The proposed amendment would specify that the available remedies include the power to remove and replace an attorney-in-fact, using the same criteria that apply to other fiduciaries.

Thank you for your consideration.



Dannel P. Malloy
Governor

State of Connecticut
Department of Developmental Services

DDS

Peter H. O'Meara
Commissioner

Kathryn du Pree
Deputy Commissioner

TESTIMONY OF THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
TO THE
JUDICIARY COMMITTEE

February 28, 2011

Senator Coleman, Representative Fox and members of the Judiciary Committee. I am Peter O'Meara, Commissioner of Developmental Services. Thank you for the opportunity to submit testimony in support of H.B. No. 6440 - An Act Concerning Applications for Guardianship of an Adult with Intellectual Disabilities and Statutory Changes Related to Intellectual Disabilities. I would also like to testify to certain areas of concern our department has with H.B. No. 6438 - An Act Concerning Probate Court Operations and S.B. No. 1058 - An Act Concerning the Applicability of Probate Court Orders to State Agencies.

The department supports the change in the timing of the guardianship application process proposed in Section 1 of H.B. No. 6440. The bill would allow a parent or guardian of a person under the age of 18 to apply for guardianship of that child 180 days prior to that child turning 18. This change would address a problem that parents and guardians of individuals with intellectual disability have faced in continuing to be their child's guardian as they become adults. Currently a child with intellectual disability and his parents must wait until the child turns 18 and then his parents may apply to become guardian of their adult child. This has left a gap in guardianship for some vulnerable adults with intellectual disability.

I would also like to acknowledge the proponents of H.B. No. 6440 efforts to use both respectful language and person first language in reference to individuals with intellectual disability and autism spectrum disorder in their statutes. Our department would suggest that this bill be amended to conform with the terminology DDS has proposed in our agency bills H.B. No. 6278 AN Act Concerning The Department Of Developmental Services Division Of Autism Spectrum Disorder Services and H.B. No. 6279 An Act Concerning Revisions To Statutes Relating To The Department Of Developmental Services Including The Utilization Of Respectful Language When Referring To Persons With Intellectual Disability, which have been heard in the Public Health Committee. In these bills, we have amended the Department of Developmental Services' statutes that H.B. No. 6440 is also attempting to amend.

Phone 860 418-6000 • TDD 860 418-6079 • Fax. 860 418-6001
460 Capitol Avenue • Hartford, Connecticut 06106
www.ct.gov/dds • e-mail ddsct.co@ct.gov
An Affirmative Action/Equal Opportunity Employer

Our proposed changes H.B. No. 6278 and H.B. No. 6279 were based on the recently passed federal legislation "Rosa's Law" which changed the term "mental retardation" to "intellectual disability" in many instances. This change at the federal level, coupled with the proposed changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) by the American Psychiatric Association that are scheduled to take effect in May 2013, made changing the department's statutes to more appropriate and up-to-date terminology necessary.

Because Rosa's Law did not change all federal references of "mental retardation", there are some places in statute where we propose retaining the use of the term for now. For example, there are statutes that refer to "intermediate care facilities for the mentally retarded" (ICFsMR). This is still the federal term and so it must remain that way in state statute. That is why in our agency bill H.B. No. 6279, we retain the term "mental retardation" and add the term "intellectual disability" as an equivalent in the statutory definition in section 1-1g of the Connecticut General Statutes. The bill before the Judiciary Committee would eliminate the term "mental retardation" in the statutory definition and the department opposes this change.

Also in section 33, H.B. No. 6440 would change the term "mental retardation" and other iterations of this term to "intellectual disability" throughout the statutes. In drafting our bills we were careful only to change this terminology in our department's statutes because we could not predict the impact of a change on other agencies. We would suggest that any agency that uses the term "mental retardation" in their statutes assess the impact of a change in terminology before proposing any changes to their statutes. Our department's staff would be happy to work with both the proponents of the bill and the Legislative Commissioners' Office to make changes in the use of these terms in Connecticut statute in a way that does not unintentionally jeopardize the legally established rights of individuals with intellectual disability in our state.

Although we understand and support the general intent of section 3 of H.B. No. 6438, the department would like to express some concern with changing the composition of the probate court-appointed panel that assesses an individual's ability to give informed consent to sterilization and the specific aspects of informed consent that the individual lacks. We would like to have a discussion on the qualifications of the "professionals" who would address the 8-point best interest test in the statute. Also, the department worries that some of the "professionals" who are selected may have their own biases, either towards the agency where they work or towards a parent or guardian who is presenting the request to the court. We suggest that it could be helpful if the word "impartial" be left in so that the Court *could* evaluate whether a specific professional being considered for appointment might not be impartial. Although our department does not have many of this type of proceeding, we feel that it is in an individual's best interest to have this life-changing proceeding be conducted to the highest professional standards. DDS has been working with the Probate Courts to draft some changes and is happy to continue this work to come to some mutually agreed upon language that would allay our concerns.

Our department's concerns with S.B. No. 1058 center on provisions in section 1 that would enable the Probate Courts to require any state agency to follow a Probate Court's order or decree applicable to state agencies even though the Courts of Probate are courts of limited jurisdiction. We believe that this new provision could invite orders which exceed the Probate Courts' statutory authority. For instance, with an order from the court to fund an individual for services, or provide services to an individual, our agency's only recourse would be a Superior court appeal. An appeal to the Superior court should not be the only recourse for agencies in such situations.

The probate courts already have the authority to enforce orders by convening a contempt "show cause" hearing if it is alleged that an agency has not complied with an order. The agency would have the opportunity to address the possible exercise of authority beyond what is conferred by statute, and if the Court still maintained its order, hold the agency in contempt, which could then be appealed to Superior court. In *Bellonio v. Richardson*, 2 Conn. Rpter 789, 1990 WL 274581 (1990), the Superior court ruled that the alleged failure of a state agency (DMR) to comply with an order within the limited jurisdiction of the probate court should be left to the probate courts' contempt authority for enforcement.

Thank you for the opportunity to testify in support of H.B. No. 6440, and to our concerns with H.B. No. 6438 and S.B. No. 1058. Please contact Christine Pollio Cooney, Director of Legislative Affairs at (860) 418-6066, if you have any questions.

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2011**

**VOL. 54
PART 21
6546-6914**

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SENATE

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June 7, 2011

Thank you, Madam President.

Continuing calendar page 27, Calendar 602,

House Bill Number 6438.

Madam President, move to place this item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

An additional item: calendar page 27, Calendar
604, House Bill Number 6639.

Madam President, move to place this item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 28, Calendar 605, House
Bill Number 6526.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

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SENATE

520
June 7, 2011

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed...

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.

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Calendar page 10, Calendar 470, Substitute for House Bill 5340. Calendar 474, Substitute for House Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for House Bill 6638. Calendar 500, House Bill 6614. Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill 6356. Calendar 512, Substitute for House Bill 6422. Calendar 514, House Bill 6590. Calendar 515, House Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill 6350. Calendar 519, House Bill 5437. Calendar 522, House Bill 6303.

Calendar page 15, Calendar 523, Substitute for House Bill 6499. Calendar 524, House Bill 6490. Calendar 525, House Bill 5780. Calendar 526, House Bill 6513. Calendar 527, Substitute for House Bill 6532.

Calendar page 16, Calendar 528, House Bill 6561. Calendar 529, Substitute for House Bill 6312. Calendar 530, Substitute for House Bill 5032. Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for House Bill 6325. Calendar 534, House Bill 6352.

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Calendar 536, House Bill 5300. Calendar 537, House
Bill 5482.

calendar page 18, Calendar 543, House Bill 6508.

Calendar 544, House Bill 6412. Calendar 546,
Substitute for House Bill 6538. Calendar 547,
Substitute for House Bill 6440. Calendar 548,
Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for
House Bill 5802. Calendar 551, House Bill 6433.
Calendar 552, House Bill 6413. Calendar 553,
Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for
House Bill 5415. Calendar 557, Substitute for House
Bill 6318. Calendar 558, Substitute for House Bill
6565.

Calendar page 21, Calendar 559, Substitute for
House Bill 6636.

Calendar page 22, Calendar 563, Substitute for
House Bill 6600. Calendar 564, Substitute for House
Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for
House Bill 6103. Calendar 570, Substitute for House
Bill 6336. Calendar 573, Substitute for House Bill
6434.

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Calendar page 24, Calendar 577, Substitute for
House Bill 5795.

Calendar page 25, Calendar 581, House Bill
6354.

Calendar page 26, Calendar 596, Substitute for
House Bill 6282. Calendar 598, Substitute for House
Bill 6629.

Calendar page 27, Calendar 600, House Bill
6314. Calendar 601, Substitute for House Bill 6529.
Calendar 602, Substitute for House Bill 6438.
Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for
House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615,
Substitute for House Bill 6485. Calendar 616,
Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for
House Bill 6634. Calendar 627, Substitute for House
Bill 6596.

Calendar page 32, Calendar 629, House Bill
5634. Calendar 630, Substitute for House Bill 6631.
Calendar 631, Substitute for House Bill 6357.
Calendar 632, House Bill 6642.

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Calendar page 33, Calendar 634, Substitute for
House Bill 5431. Calendar 636, Substitute for
House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House
Bill 6525.

Calendar page 48, Calendar 399, Substitute for
Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for
House Bill 6233. Calendar 412, House Bill 5178.
Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for
House Bill 6113.

Madam President, that completes the item placed
on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the
machine will be open for Consent Calendar number 1.

THE CLERK:

The Senate is now voting by roll on the Consent
Calendar. Will all Senators please return to the
Chamber. The Senate is now voting by roll on the
Consent Calendar, will all Senators please return to
the Chamber.

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SENATE

525
June 7, 2011

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item..

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)