

**PA12-137**

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**JOINT  
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PART 2  
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**2012**

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make sure that they are disclosing to the consumer. And in Pennsylvania the consumer is required, or the consumer's family is required to provide workers' compensation, required to pay unemployment compensation, required to pay Medicare and Social Security taxes. That's, you know, what we'll affectionately call the Zoe Baird law. That's the law and that's what we inform all of our families they are required to follow.

REP. STEINBERG: Thank you. It does not like we should take a good look at the Pennsylvania requirements.

JOHN SHULANSKY: I would add that the Department of Labor has a 50-state -- the Office of Management and Budget provides online a 50-state survey of the state of caregiving and minimum wage and requirements and treatments of individuals as household employees and direct care workers. I would refer you to that as another resource.

REP. STEINBERG: Thank you.

REP. SERRA: Any other questions from the committee?

Thank you.

JOHN SHULANSKY: Thank you.

REP. SERRA: Next up is Raphie Podolsky.

RAPHAEL PODOLSKY: Thank you very much  
Mr. Chairman, members of the committee.

REP. SERRA: Good morning.

RAPHAEL PODOLSKY: My name is Raphael Podolsky.  
I'm a lawyer with the Legal Assistance

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Resource Center of Connecticut, which is located in Hartford. We're part of the legal aid programs. And I'm here to speak about House Bill number 5440, which is the recommendations of the grandparent visitation task force.

Legal services programs represent a variety of low-income people in the family area so that they represent both grandparents and others who are seeking visitation. They represent custodial parents who in some cases may not want to have visitation by third parties.

And so the result is we have a lot of diverse views, and our -- within our -- within the legal services program those views don't match up based on whether people are more likely to be representing the visitor versus representing the custodial parent. But we are very aware of the competing interests that are at stake.

On the one hand there's the interest of protecting the rights of parents to be able to control who their children see and on the other hand is, in a sense, the best interests of the child and who the child has an opportunity to see.

The concerns are difficult and sometimes competing. And I guess what I would say to the committee is the first thing to recognize is that no one is always right. There are parents who unreasonably deny visitation to others and there are times when people who want to visit create problems through the way in which they visit or the way in which they potentially interfere with how a child is raised.

There is the constitutional right that is

involved and that is generated. Most of the problems around this issue is really a constitutional right that is the right of the parent. And that has sometimes been called the right of family integrity, and that right is recognized as a constitutional right and the court cases all are very much influenced by that.

The ability to visit which really comes off of the concept of the best interests of the child is if anything more a right of the child than it is a right of the visitor where the parent has one kind of right; the visitation draws from other kinds of sources and ultimately focuses on the best interests of the child.

The real complication over the years, as the committee knows, has been a series of supreme court cases that have set some constitutionally-based rules starting with a federal case called Troxel and then followed by three major Connecticut Supreme Court cases, one called Castagno, one called Roth and one called Giovanni -- DiGiovanni. And in my written testimony I cite the last two of those cases in particular.

And those last two case have established two, I will call them somewhere between constitutional and quasi-constitutional requirements for third-party intervention in visitation where the parents or the custodial parents have not voluntarily agreed. And one is that the person seeking the visitation must have what they call a parent-like relationship with the child.

And the second is a requirement that if the visitation is denied it will cause actual harm to the child. Those are kind of the

two-anchor -- I'll try and move quickly through the rest -- those are the two-anchor tests in Roth and DiGiovanni.

What the task force has done is essentially with some modifications codified those two decisions and within the framework of that codification, I mean, that's actually a major choice whether to codify or not, was a choice that the task force -- a direction the task force chose to go is to codify. That within that framework I think the task force has moved things in a reasonable direction.

My written testimony works off the assumption, that being the direction that the task force wanted to go, we've asked that you make two changes in the bill itself. This is in my written testimony. One is there are some differences between Roth and DiGiovanni. The task force takes the DiGiovanni approach. We suggest you take the Roth approach.

I can answer questions about that if you like. And the second is you make sure that the custodial parent has actual notice. In my written testimony I've also suggested some smaller changes, more in the nature of technical or drafting changes to the raised bill.

And finally I would say that we're very much available to the committee for any further consultation if you would like. And I would be very happy to answer questions in more detail if you wish.

REP. SERRA: Any questions?

Senator Kelly.

SENATOR KELLY: Thank you very much, Mr. Chairman.

And thank you for coming today and testifying. Could you explain a little bit more about the Roth case and it's -- or distinguish it from DiGiovanni and why we should go in that direction?

RAPHAEL PODOLSKY: What the Roth case does or at least seems to do I think the way it was generally interpreted by practicing attorneys, was it says that in order to meet -- in order to intervene in a family you must meet a certain threshold. If you cannot meet that threshold, a third party is not allowed to intervene.

So it's very much like a jurisdictional test. If you can't meet that threshold then there is a basis for a case basically. And that threshold was the two steps that I described, the parent-like relationship and the actual harm to the child.

If that threshold is met, then the court goes about applying the best interests to decide whether there should be visitation and what the nature of the visitation should be. What DiGiovanni said was that the question of whether there should be visitation is subsumed into the first half of the test. In other words, once the court has decided that those two standards have been met, then the court does not apply a best interests test to whether there should be visitation. It assumes there should be visitation and applies the best interest test to what kind of visitation there should be.

It's a distinction of some subtlety because in effect DiGiovanni assumes that if those two, I'm going to call them, jurisdictional tests have been met, that implicitly the court has

decided that it's in the best interests of the child to have visitation.

I think the situation that worries us most is where you have a relatively older child who may be headstrong, who may have the child's own opinions as to whether they want to see this other person and may do various things either to refuse to cooperate, which puts them in violation of a court order, or to sat -- or to behave in a way that becomes counterproductive to the child. So that even though one might argue it's -- it will be good if the child had this visitation, the court can look at the child and say, the reaction of this child is going to be so negative it will actually be counterproductive.

So that in some sense what the difference between the two cases is as to how you handle the question of whether there should be visitation at all once you've met the threshold. And our recommendation is that the better practice is that the court, having found a threshold, should still go ahead and determine whether visitation is in the best interest.

And I think the reason for the difference is the DiGiovanni case, it's a very -- you're an attorney and you know this -- people sometimes say bad facts make bad law. And the DiGiovanni case -- and I invite you to read it -- is one in which the court decided not to give visitation because the custodial parent would sabotage the arrangement and therefore hurt the child and therefore it made a separate determination. And the supreme court didn't like that result and I don't like that result, but I think they could have analyzed it in a different way within the older Roth framework.

But that's -- that, as I say, it's a subtle distinction and actually, the task force, as Representative Serra knows, initially went one way and then sort of near the end just kind of changed and switched to the other approach. So it was something that the task force itself kind of wavered a little bit on before coming down to its final conclusion.

SENATOR KELLY: Thank you very much. That was a nice explanation.

REP. SERRA: Any other questions from the committee?

Thank you, Raph.

RAPHAEL PODOLSKY: Thank you very much.

REP. SERRA: Next up is Laurie Julian.

Good morning.

LAURIE JULIAN: Good morning. Good morning, Representative Serra, Senator Kelly and members of the committee. My name is Laurie Julian. I'm with the Alzheimer's Association, Connecticut Chapter, public policy director. And I'm here to speak on Senate Bill 374, AN ACT INCREASING FUNDING AND SUPPORT FOR HOME AND COMMUNITY-BASED CARE FOR THE ELDERLY AND ALZHEIMER'S PATIENTS.

We thank the committee for its strong leadership in recognizing the Alzheimer's crisis. In Connecticut there are over 70,000 citizens with Alzheimer's or other related dementia over 65. This is projected to escalate rapidly in coming years as the baby-boomer generation ages.

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MAGGIE DRAG: No. It's up to them to take the assignment and the client pays them directly.

REP. VILLANO: I get it. Okay.

MAGGIE DRAG: Yes. So we will offer to independent caregiver that we have a particular client and the client was willing to pay \$50 a day. And she had the right either to take the assignment or to decline the assignment. And then we look for another caregiver.

REP. VILLANO: But you do have a fee schedule?

MAGGIE DRAG: That's correct.

REP. VILLANO: Okay. Thank you.

REP. SERRA: Any other questions?

Thank you.

MAGGIE DRAG: You're welcome. Thank you.

REP. SERRA: Novlette Williams followed by Dave Evans.

Good morning.

NOVLETTE WILLIAMS: Good morning.

Committee members, Chairman, my name is Novlette Williams. I am 58 years old. I'm a 58-year-old student at the University of Connecticut School of Social Work pursuing a master's program in social work. When I saw this proposed bill it made me aware that there are other grandparents who are experiencing this issue that I am experiencing.

Many grandparents are missing out of sharing

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the love and joy they have and want to extend to their grandchildren. I'm a grandmother of 12 children and I'm giving this testimony in support of visitation rights for grandparents.

As a mother and grandmother I have seen and experienced the hurt of not being able to be a part of my two granddaughters growing up. I have two granddaughters who I love dearly and I have not seen or heard from them almost three years now. This is all due to the parents and other grandparents on the maternal side who are fighting amongst each other.

I have bought gifts for birthdays, Christmas and other occasions and they have accumulated dust because I have been denied phone calls and visitations. My grandsons have not seen their sisters and whenever they tried to call on the phone no one picks up.

We utilize the visitation through the courts based on the issues my son and the mother is having, but at times we cannot -- or he cannot afford to fee for the mediator because they would meet at my home. I believe being a part of the kids' life will be a plus to them as well as myself. And keeping them away from their loved ones, brothers, cousins and others is unfair because other adults cannot get along.

I don't want to be a mother to my grandchildren. I've already raised my children. I want to be a part of their lives, history to be handed down and watch them grow. All I want is to love them and let them know that we are family and no matter what indifferences their parents have, we still love and care about their well being.

I pray for them every day, but I miss them and

now I don't know what they look like, as they have been out of my sight and sound so long and it is very painful. I may even pass them on the road and don't even know these are my grandchildren.

Please support this bill. I thank you for listening to my story. Thank you.

REP. SERRA: Thank you.

Any questions from the committee? Thank you.

As you well know, this bill is trying to address that issue, very sensitive issue under the context that you heard earlier, the supreme court rulings, not only in Washington, but here in Connecticut. So I just want you to know that this committee and the Legislature is very concerned about this issue.

NOVLETTE WILLIAMS: Thank you very much, sir.

REP. SERRA: Okay. And thank you for testifying.

NOVELETTE WILLIAMS: Thanks.

DAVID EVANS: Good morning, Chairman Serra and members of the committee. My name is David Evans. I'm a consultant with Companions & Homemakers. Companions & Homemakers is a 20-year-old homemaker companion service provider registered with the Department of Consumer Protection. Companion Homemakers is here to support 5439, AN ACT CONCERNING THE EMPLOYMENT STATUS OF PERSONS, et cetera.

With ten offices throughout Connecticut Companion Homemakers cares for over 2700 elderly consumers in their homes or places of residence and employs approximately 2300

of Social Security and the others. But if it is an independent contractor then there is no -- nothing paid at that point. There's a 1099 that would be issued to the caregiver and the caregiver would then be paying Social Security at the higher independent contractor rate than the regular rate.

REP. COOK: Great. Thank you. Thank you very much. I look forward to the continued discussion.

TOM FALIK: Thank you.

REP. SERRA: Any other questions of the committee?

Thank you, sir.

Next up is John Green followed by Cathy Howard.

JOHN GREEN: Good morning, ladies and gentlemen.

REP. SERRA: Good morning, sir.

JOHN GREEN: I'm here because of grandparents have no rights. I'm a 67-year-old gentleman from Gales Ferry, Connecticut. I lived there for the past 18 years. I have a grandson which was born 2006. That's -- I've only been able to see him once because of my son's girlfriend.

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My wife and I -- which my wife couldn't make it today because she had to work -- we cry constantly every day and pray everyday to see this little boy. It's terrible. I'm a volunteer fireman in Gales Ferry. I've been there for 16 years. I deal with kids because I play Santa Claus on top of a firetruck. I do Christmas parties for kids. And every time I see these kids I throw candy to or give them

something -- I cry because I'm thinking of my grandson.

Mr. Reynolds and -- I can't remember her name.

A VOICE: Senator Prague (inaudible).

JOHN GREEN: Right. She -- he's the one that invited me to this session so I could tell you people. And I have some pictures I would love to have you people look at. Maybe you could cry and feel -- and how you would feel if somebody did this to you and not allow you to see your grandchildren.

You know, I just want to see him before I die. I pray everyday. We cry every day. I don't know how -- what I can do to make this happen. And I just hope you can -- will have a big heart to pass this law so I can get to see him before I die.

Because it's very -- it just breaks me up are. It breaks my wife apart, you know, and she's a cancer survivor and she just wants to see him and hug him and kiss him. And we just want to tell him how much we love him and be with him, not hurt him.

I mean, you know, we send him stuff. We send him money. I don't know if he's getting it. I don't know if he's, you know, receiving the gifts that we send him, but he's in our heart, you know, every single day. And if I could just see him for five minutes, I mean, that would be my life.

You know, they want us to pay 70, 65 dollars an hour to sit in a chair and look at him. I can't afford that. You know, they want somebody, you know, to watch me and my wife sit there and look at our grandson. I don't

have that kind of money to pay that kind of money because I'm retired. And I don't work and I'm on disability and that's all I have to say.

REP. SERRA: Mr. Green, Senator Prague has a question for you.

SENATOR PRAGUE: You know, Mr. Green my heart goes out to you.

JOHN GREEN: I understand that.

SENATOR PRAGUE: I'm a grandmother and --

JOHN GREEN: You and Tom have done, you know, Tom and yourself have, you know, gave me so much strength to come here and talk to you people. And I'm not going to beg you people -- so I beg anybody for nothing, but just to have some feeling, you know, for grandparents that want to see the kid.

You have parents that have children and they kill them, you know they destroy them. They don't want them. I just want to hold him, kiss him and tell him no how much I love him. You know, I don't know we can do to pass this law, but I wish you people had something in your heart that would help do it.

SENATOR PRAGUE: What's the \$65 an hour deal that you're talking about?

JOHN GREEN: Well, the thing is it's through the State.

SENATOR PRAGUE: DCF?

JOHN GREEN: Yes. Right. And they want, you know, so you don't do any bodily harm to them, you know.

What bodily harm are you going to do to him? You know, I held him the day he was born. I have pictures here showing my wife, you know, that we -- either we had him. We had him for almost eight months then his so-called mother won't allow it no more. I'm mean, my son pays child support. He can't even see him. I just don't understand. It's terrible.

SENATOR PRAGUE: Well, Mr. Green, we will do the very best we can. That's for sure.

JOHN GREEN: I appreciate it, you know, because, I mean, it's -- I know you people must have grandchildren. I really do. You must love them, hug them, you know, and want to be with him. You know, take them to Disney World or take them some -- we'd love to do that, but we're not able to.

SENATOR PRAGUE: Thank you for coming in today, as painful as it is.

JOHN GREEN: Thank you for having me. Thank you for listening to me. It's, like I say, we cry every day. My wife cries every day. She works hard every day.

You know, she's getting ready to retire and we want to spend time with him for our retirement and as long as we're alive on this earth, but who knows how long we're going to be alive. But if you'd like.

I'd like, you know, you people to look at these pictures, if you'd so like to. If not, you know, that's your choice.

SENATOR PRAGUE: Again, Mr. Green, thank you for coming in.

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JOHN GREEN: And thank you for your help and -- you and Mr. Reynolds.

REP. SERRA: Any other questions?

Representative Cook.

REP. COOK: Mr. Green, I can't imagine. I do not have grandchildren yet, but I cannot imagine the agony of which you feel inside because you can feel the pain that you're expressing just in your words and your emotions.

I would think that I could speak for the rest of us sitting around here, that we understand and that you're preaching to the choir, that that's part of the reason why we have gone forward with grandparents' rights legislation because we do feel that there's hundreds of grandparents like you in one way, shape or form.

I hear it from my parents who are 1500 miles away that they're exercising their rights, because I live in another place, not because they don't see them. It's just not enough for them. And if there's anything that we can do, I think that we are committed to doing that.

I would encourage you, though, as we go forward in this process to put down some of those feelings and thoughts on paper and send them our way so we could share them with our colleagues.

JOHN GREEN: I sure will.

REP. COOK: Because when we go to have -- assuming this go through the process, you know, the chain and ends up for votes in the House and in the Senate, those words speak volumes when somebody has to vote up on a piece of

legislation and I do encourage you to do that.

JOHN GREEN: When do you think that's going to happen.

REP. COOK: We can have you notified as to the process of the bill and where it goes, but we'll make sure that you have that information. But it's -- when you can do that, that would be very helpful because then we have some things that we can help fight the case for.

Thank you.

JOHN GREEN: I have something else. I have just one more. I have him with me. He's here, right here on my arm, my life. He's my angel which you can see and he's going to be my angel until the day I die.

REP. SERRA: Mr. Green, you know, I was the chair of the tax -- task force on grandparents' visitation rights. This is a major issue. Obviously this Legislature, if it didn't think so wouldn't have appointed a task force.

It was very difficult to, as you heard earlier, to structure this kind of a law based on the fact that in this country, you know, the parents have rights, but so don't the grandparents, indifferently. I think that this piece of legislation is -- has got a strong support amongst the Legislature. It had to be crafted, the legislation, very carefully based on U.S. Supreme Court rulings that you heard earlier and the State of Connecticut Supreme Court rulings.

But I think that the task force at least provided a guide to judges in court and leveled the playing field for grandparents and

parents in terms of the monetary requirements necessary to be in court. So I just want to give you some hope that this can happen.

And as Representative Cook said, you know, any kind of written testimony you want to submit to whoever, to the Speaker of the House, the President Pro Tem, the Governor. It all helps. So --

And I thank you for being here today and testifying.

JOHN GREEN: Well, I appreciate you listening to me again. I don't want to take up any more of your time up, but you -- as well as you know, you're probably a grandfather, you know, and you love your grandchildren, I know. I can tell you do. And anybody else that has grandkids, you probably love them to death too, but I just want to be part of that family, as you are. That's all I'm asking for.

Thank you. Thanks for your time.

REP. SERRA: Cathy Howard followed by Gaye Lynne.

CATHY HOWARD: Good afternoon. My name is Cathy Howard and I'm the owner of the Fairfield County office of Griswold Home Care. I have been in business for 21 years. I have three offices in Fairfield County. And between myself and my counterpart, Lesley Mills, we cover the entire state of Connecticut. We have serviced thousands of seniors and have referred thousands of caregivers and are very proud of the work we put do each and every day.

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Griswold Special Care is a registry, however we have been paying into workers' comp since

receive 12 and the agency would receive the rest and that's how it's divided.

So it's based on a per-hour or a live-in or a shift basis, but nothing for the initial assessment, Senator Prague.

SENATOR PRAGUE: Okay. Thank you.

CATHY HOWARD: You're welcome.

REP. SERRA: Any other questions?

Thank you.

CATHY HOWARD: Thank you.

REP. SERRA: Gaye Lynne.

GAYE LYNNE ESCHERT: Committee members and Senator Prague, good afternoon.

REP. SERRA: Good afternoon.

GAYE LYNNE ESCHERT: Could I just ask not -- I'm not going to testify just yet. Could I just say something quickly?

I had a broken ankle and up until today I have not driven since October of last year. I was all involved with the task force the 17th and the 30th of October. On October 28th my ankle was broken and I have had no communication and been very sad about that.

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When I found out that we were having this today I called my doctor yesterday, asked him, could he do something so that I could get a brace to drive here today to put on my other brace so I can testify? So I'm trying to tell you it's very important, this bill.

Having said that, I've been coming here since 2006 to address different grandparent issues. I've only one grandchild and I didn't realize, but today is his 14th birthday and I have not seen them since 2005.

I want to ditto everything that Mrs. Williams and Mr. Green said. And as in my case, I still have a Christmas tree up, a train and gifts since 2005 that my grandson has outgrown, but I still want him to know that I cared and never gave up.

The thing that I'm most concerned about if this bill continues -- I had to do everything quickly, but it seems like it continues to be -- that's going to cost us money to get to court. I have spent \$23,000 to have visitation with my grandson and have never gotten my day in court.

You go to court and you have a judge and then the judge stops it and he says, your daughter has to get an attorney. And it takes months for her to get an attorney. And then I go back to court. It's a different judge and this judge says I have to pay for guardian ad litem and it takes months to get that.

Then I get to court and they say we have to have a psychological evaluation. In Fairfield County where I am from psychological evaluations are \$10,000. I found an evaluator who would do it for \$5,000. I only had \$3,000 left; borrowed 2,000 for my father and had a psychological evaluation which really turned out to be disastrous, because when it came time for him to talk to me and evaluate me he said he learned everything he needed to know from my daughter and would not talk to me.

In 2007 I was granted a supervised visitation,

very insulting to me because I raised my grandson from five months almost to eight years. Believe me, that's inoculations, cleaning up throw up, potty training, et cetera et cetera. And I didn't need it for all that eight years, but I needed it to be able to see him. And the visitation never happened because my daughter didn't do it and she just got slapped on the hand -- bad, bad girl.

Again, what I'm most concerned about is since coming here there have been other grandparents which have stopped coming. We're worn out. We're tired. We keep getting a bill that gives us the right to ask for visitation, but it doesn't guarantee us visitation.

And we can't afford these kind of prices. Every time I got an attorney -- and I had three good attorneys so far. Every time they were the best attorney. Back in 2007 you're seeing \$6,000 retainer. I don't know. So we said it over and over again. You are grandparents. Just close your eyes and imagine never being able to see your grandchildren. It is horrible.

And with the bill saying a parent-child relationship exists, Senator Prague, I haven't seen him for seven years so does my parent-child relationship under law exist? If it's said, existed, it would help me a lot because I raised him for eight years. So we did have a parent-child relationship. It existed.

But -- and one time I got to see my grandson and he turned to me and he -- he, out of the corner of his mouth -- I think this was an 2007 -- said to me, please don't come near him. Don't talk to him. Don't even look at

him. He'll be in so much trouble if I was near him. So for seven years this kid has been threatened if I'm around him. I'm telling you, it's got to be awful for these kids.

REP. SERRA: You know, I know you missed the task force, some of whom -- but I'm well, aware, you know, your issue. The task force is well aware of the grandparents issue.

I think with the legislation you may hear a little more with the next speaker. We've really leveled the playing field. We spread out the cost. It was always placed on the grandparents. I think we spread out the cost.

And as I said earlier, this Legislature is well aware of what's going on here in Connecticut with grandparents and visitation rights. And that's the big reason why we have the task force and that's the reason this legislation is here before the Aging Committee. I'm sure it's going to move out of here and it's going to go to Judiciary Committee.

We say here, it has legs, which means that some of our leadership on both sides of the aisle are very interested in this. I know this for fact because they we made me well aware that they're interested in this. And that goes for the Speaker of the House, the President Pro Tem, both minority leaders in both the house and the Senate.

So that's all I can tell you. I think there's a ray of sunshine for grandparents, but at the same time, I just -- I think you're aware that in no way are we diminishing the authority of the parents. This is a very difficult issue. It's gone to the U.S. Supreme Court. It's

gone to the Connecticut Supreme Court on three occasions.

So under that framework we've tried to craft -- which I think we, after all those meetings, did a pretty good job of moving this legislation. We had experts. We had judges. We had everybody on that committee. I think you're well aware of it. So with that, that's all the hope I can give you at this point.

GAYE LYNNE ESCHERT: And I, you know, I want to say I know you people have all worked very hard on this. And believe me, I've been disappointed many times because we give testimony and the House is on our side and the Senate is all on our side. And it looks good and then goes to Judiciary and we get back to same bill, which again, like I said, gives us the right to ask for something, but in no way protects our right to have visitation. So I don't know.

I just hope, you know, that we can get something and something, too, that defines better what is harmful to a child. Because that's some of the things that are brought up.

What is -- I'm sorry. Because I came so unprepared.

We didn't -- like, it doesn't really say what is the child's best interests. Something that does constitute, you know, define it better, a parent child relationship, and something that is, you know, defines better significant harm. Like you know, it's kind of just a statement, but doesn't have anything to say, you know, what it is.

I have to talk in only my grandchild's interests. His mother is bipolar. It brings

a lot of issues -- and has a drinking problem. I have no idea of what he's gone through for seven years, and yet I've never gotten my day in court.

REP. SERRA: You said earlier -- in my judgment, it leveled the playing field, that it will be easier for you to get your day in court. As to whether the outcome is, that I don't know. We've given judges a little more -- in fact, a lot more discretion and a criteria for them to use in making a judgment. And that's all I can tell you.

The next speaker that's coming up who is our advisor on the task force may shed some more light and give you a comfort level.

GAYE LYNNE ESCHERT: Okay.

REP. SERRA: So thank you for appearing.

GAYE LYNNE ESCHERT: I'd be happy about that and thank you for listening.

REP. SERRA: Deb Migneault, please.

Before Deb speaks, I want to let the Aging Committee know that she was the driving force behind the task force, kept us all on the subject. And other than the experts we had -- and we had all experts with the exception of me. I'm not sure if Senator Prague wants to say she was an expert, but I wasn't.

But we had all the lawyers who were in this area and the judges who handled this issue here in Connecticut. In fact, we had the chief judge for the family court who is on the committee along with two other judges.

And so with that.

DEBORAH MIGNEAULT: Thank you. That's a lot of pressure you put on me, though, to answer all your questions.

Just for the record, my name is Deb Migneault. I'm the community liaison for the Connecticut Commission on Aging. And I'm happy to be here before you today to testify on a couple of bills.

I want to -- I'll also start with the grandparents visitation rights bill, H.B. 5440. And as Representative Serra said, I did serve as the administrative staff for the task force. And I just want to thank this committee for their commitment to this very complex and of course, a very emotional -- emotionally charged issue.

The task force met between August, 2011, and January 2012. Many, many hours, as Representative Serra, Senator Prague and several others in this room can attest to on the complexity of this very issue. There's several supreme court decisions that constrain in a way what can be done under law to help grandparents with visitation.

SB 374

The Commission on Aging, as an administrative staff for the task force, heard from many constituents. We have received lots of phone calls into our office from both sides of the issue. Both parents and grandparents. It was really quite difficult to listen to. You know, you heard both sides and we really tried -- I tried to remain very objective in that process and hearing both sides of the issue and communicating that to the task force as they did their work.

Additionally we received written testimony

through our office which we posted on the Commission on Aging website and was delivered to the task force. As with any matters of heart related to families, it's fair to say that it's -- this brings out strong emotions.

So after much deliberation, debates, negotiation, the bill before you seeks to implement the recommendations of the grandparents visitation rights task force. The Commission on Aging supports this bill and we believe it is -- it will indeed help grandparents seeking visitation while protecting the constitutional rights of parents and the best interests of children.

The bill lists factors courts could take into account when considering whether the applicant has sufficiently alleged or proven that he or she has a parent-like relationship. That was the subject of many, many, many talks in our task force about how to give judges a little bit more information to be able to make that determination. And also the type of visitation that is -- that will be in the child's best interests, and also looks at allocating fees between parties a little bit differently.

So those were the three major changes in the bill. And I think that it's important to say that it really -- the issue of harm is of great concern for grandparents, and understandably. But that various supreme court decisions make that very difficult to address in statute.

So what was discussed at the task force on that very issue of harm was that there is in statute at -- DCF statutes, a description of harm around emotional harm and there are very specific factors that are softer. It's not a

matter of, you know, just, you know, one or the other, but softer ways of looking at what constitutes harm. And that was really the best the task force could do because of the constraints of the supreme court decisions. And I'm happy to take questions on that. I'll do my very best I can.

As Representative Serra said, there were judges on the task force, lawyers on the task force that know the intricacies of this law much better than I do. But I can certainly do my best and then also provide you any information I can or I'll go back and try to get the information for you.

And then I just want to speak very briefly about S.B. 374, AN ACT INCREASING FUNDING AND SUPPORT FOR HOME AND COMMUNITY-BASED CARE FOR THE ELDERLY AND ALZHEIMER'S PATIENTS. The bill mandates a study to determine funding available to elderly persons and persons with Alzheimer's disease for care at home or in the community.

The Commission on Aging is fully supportive of increased funding for home and community-based supports, which you've probably heard me say many times before. We spent a vast majority of our time at the Commission on Aging trying to rebalance the long-term care services supports system and provide more care in the community, compared to institutional care. We really want a full range of options available on a full continuum.

And really the Commission on Aging hopes to design a system based on need versus age or specific diagnosis. It's a guiding principle of the long-term care plan and it's also part of other state and national plans and it's widely held in great regard.

programs.

And just real quickly, as far as conducting the actual study, we noticed the Commission on Aging is in the bill to do so. And we would just like to say that we do think that there's lots of information out there under the long-term care plan and other various reports in the State that do address this. We are happy to try to compile that all together, but it fits very closely with our RBA mandate, but -- and we are, again happy to do that for you.

In fact, you know, I would like to say that this is the type of project that we are -- fits really well with our mandate. And in some cases, actually fits better than us staffing a task force which I now we have a couple of task forces that we are also in bills that are before you to staff.

And so just -- we are a very small agency here. We have three staff members. So I just want you to kindly consider that as you move forward in your deliberating.

And with that, I will take any questions. And thank you again for your commitment.

REP. SERRA: Senator Prague.

SENATOR PRAGUE: First of all, thank you for coming today to testify.

HB 5440

You know, as I stated in the task force on grandparents visitation rights, it always bothered me that one of the stipulations was that there had to be a parent-child like relationship.

Grandparents have a very different

relationship than parents. And I know that's a court decision so I can't do anything about that, but that sort of language always bothered me. This is a tough problem because grandparents are agonizing over the fact that they can't see their grandchildren as you clearly heard today. And I'm hoping that this bill will help in that situation.

DEBORAH MIGNEAULT: We do, too. And I know I -- we certainly heard you say that many times and it is a concern. And I think that what was discussed in the task force was to give judges a little bit more clarification around that parent-like relationship and that is in the bill before you.

SENATOR PRAGUE: Anyhow, thanks again.

REP. SERRA: Representative Steinberg.

REP. STEINBERG: Thank you, Mr. Chair.

And thank you for your testimony as always.

In reference to S.B. 374, I have two questions.

DEBORAH MIGNEAULT: Uh-huh.

REP. STEINBERG: One you had me very much tantalized with the concept of \$200 million hanging out there. But who really has discretion as to how that's going to be spent?

DEBORAH MIGNEAULT: Well, the way that budgeting -- the way that it's budgeted in this state is that that money is actually put forward through -- at outset. That's the way that OPM will describe it. And then the money comes back into the State through F-MAT and it goes into the general fund.

# Legal Assistance Resource Center

## ❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106  
 (860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ fax (860) 278-2957 ❖ RPodolsky@LARCC.org

T3

### H.B. 5440 -- Third-party visitation

Committee on Aging public hearing -- March 13, 2012

Testimony of Raphael L. Podolsky

The issue of third-party visitation is a difficult one that is complicated by a series of Connecticut Supreme Court constitutional decisions that significantly limit the General Assembly's statutory options. It also pits two competing important interests against each other -- the constitutional right of fit parents to make decisions about the raising their children and the desire of closely bonded non-parent third parties (often grandparents) who want to retain that bond, even over the objection of the child's parent or parents. The decision-making authority of parents is an established constitutional right of the parents (sometimes referred to as the right to family integrity). The involvement of the grandparents or other third party is a question of their rights than it is a form of the protection of the best interest of the child. As a starting point, it is the parents, rather than the grandparents or other third parties, who are constitutionally authorized to speak for children.

Reasonable people can differ on how these rights should be balanced. There are a diversity of opinions within the legal aid community as to what is the best legislative solution or even whether it is a good idea, as H.B. 5440 proposes, to codify the Connecticut Supreme Court decisions. After much internal discussion, we in the legal services programs recommend that, if the Committee on Aging chooses to move forward with this bill, two principal changes should be made:

(1) The bill should clearly distinguish between the two steps of the process of challenging the decision of the custodial parent or parents: (a) the threshold question as to whether there is a legally and constitutionally sufficient basis to bring the matter into court in the first place and (b) the separate question as whether third-party visitation is in the best interest of the child and, if so, what the nature of that visitation should be. To address this distinction properly, lines 24-29 of the bill should be changed to read:

*~~[Subject to subsection (e) of this section, the court shall grant the right of visitation with any minor child to any person if]~~ If the court finds after hearing and by clear and convincing evidence that a parent-like relationship exists between the applicant [person] and the minor child and ~~that~~ denial of visitation would cause real and significant harm to the child, the court shall, subject to subsection (e) of this section, determine whether visitation is in the best interest of the child and, if so, determine the nature of such visitation, subject to such conditions and limitations as it deems in the best interest of the child.*

In legal terms, this is the difference between codifying the Supreme Court case of Roth v. Weston, 259 Conn. 202 (2002), rather than the Supreme Court case of DiGiovanni v. St. George, 300 Conn. 59 (2011). The proposed language more clearly separates the legal jurisdictional requirement laid out by the courts (parent-like relationship and harm to the

child) from the substantive decision (whether and what kind of visitation is in the best interest of the child).

(2) The bill should make clear that a third-party visitation order can be issued only if actual notice of the proceeding has been received by the custodial parent. So-called "substitute" service should not be permitted where a non-parent is claiming the right to see a child. The following sentence should be inserted into line 24:

*Such petition shall be served by actual and not substitute service upon the person or persons having custody or guardianship of the child.*

Several other drafting changes should also be made to make the bill better conform to the recommendations of the Grandparent Visitation Task Force:

(1) Lines 17-19 should be changed to read:

*(2) "Real and significant harm" means ~~[that the minor child is]~~ real and significant harm to the minor child that is analogous to the degree of harm contemplated by the terms "neglected" or "uncared for," as defined in section 46b-120 [or uncared for, as defined in said section].*

(2) "Any person," "person," or "the person seeking visitation..." should be changed to "the applicant" in lines 23, 31, 33, 36, 38, 40, and 46.

(3) The phrase "to the child" should be inserted after "minor child" in lines 23 and 29

T6

March 13, 2012 Testimony of Novlette Williams on behalf of:

Raised Bill No. 5440 – Aging: An Act Concerning Visitation Rights, for grandparents and other persons.

My name is Novlette Williams I am a 58 year old student at the University Of Connecticut School Of Social Work pursuing the Masters program in social work. When I saw this proposed bill it made me aware that there are other grandparents who are experiencing this issue that I am experiencing. Many grandparents are missing out of sharing the love and joy they have and want to extend on their grandchildren.

I am a grandmother of 12 children and I am giving this testimony in support of visitation rights for grandparents. As a mother and grandmother I have seen and experience the hurt of not being able to be a part of my two granddaughters growing up I have two granddaughters who I love dearly and I have not seen or heard from them almost three years now. This is all due to the parents and other grandparents fighting amongst each other. I have bought gifts for birthdays, Christmas and other occasions and they have accumulated dust because I have been denied phone calls and visits. My grandsons have not seen their sisters and whenever they try to call on the phone no one picks up. We utilized the visitation through the courts but at times we cannot afford the fee for the mediator. I believe being a part of the kids life will be a plus to them as well and keeping them away from their loved ones (brothers, aunts, uncles and some) is unfair, because other adults cannot get along.

All I want is to love them and let them know that we are family and no matter what in differences their parents have we still love and care about their well being. I pray for them every day but I miss them and now I don't know what they look like as they have been out of my sight and sound so long and it is very painful. Please support this bill. Thank you for listening to my story.

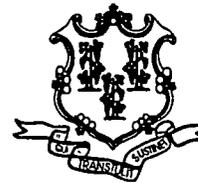


STATE OF CONNECTICUT  
DEPARTMENT OF CHILDREN AND FAMILIES

Public Hearing Testimony

Aging Committee

March 13, 2012



**H.B. No. 5440 AN ACT CONCERNING VISITATION RIGHTS FOR GRANDPARENTS AND OTHER PERSONS**

The Department of Children and Families supports H.B. No. 5440 - An Act Concerning Visitation Rights for Grandparents and Other Persons. This bill codifies the recommendations of the Task Force to Study Grandparents' Visitation Rights, which addresses visitation rights for grandparents under the jurisdiction of Family Court, consistent with the principals established under case law.

DCF participated on the task force and supports the effort to balance the constitutional right of parents to make decisions in the best interests of their children, with the desire of grandparents to be an important part of their grandchildren's lives. This bill accomplishes that goal by amending section 46b-59 of the general statutes to be consistent with the Connecticut Supreme Court's ruling in *Roth v. Weston*, 259 Conn. 202 (2002), and including criteria that will aid the Family Court in making its decision. While this statute does not specifically apply to visitation in DCF cases, the report does make mention of DCF operational definitions of "neglected" "dependent," and "uncared for," to provide indicators of emotional neglect in determining harm to a child, as envisioned in the Roth decision.

March 12, 2012

STATEMENT OF TESTIMONY  
GRANDPARENT'S VISITATION RIGHTS

I, Joseph E. Healy of 94 Fairhaven Road, Niantic, Ct., have been denied visitation rights to my two grandsons for over the past six years.

My two grandsons are now at the ages of thirteen and ten. Sean Healy is the older, at 13 and Samuel is the youngest at 10. They are the sons of Ryan Healy and Heather Healy Ryan being my son and Heather being my daughter-in-law.

Sean and I had a very close relationship for his first seven years. Samuel was only 3 when contact was denied. I had a very limited relationship with Samuel due to his age

For the past six plus years, I as a grandparent have had very little to no contact with either grandson. I have been denied seeing either of the boys by my son and daughter-in-law. On the other hand my two grandsons have grandparents on my daughter-in-law's side who have unlimited access and visitation rights to the two boys.

I am a person of good character and reputation and do not understand the position of my daughter-in-law and son in regards to this matter.

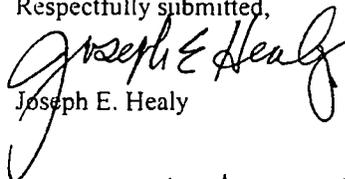
Back in April of 2006, I consulted Attorney Thomas Amato of Manchester, Ct, on the visitation rights issue. His findings are attached.

Since then I met with my daughter-in-law at her request and asked her if I could see my grandsons. She flatly stated "that's not going to happen".

In turn, I contacted my daughter-in-law's father, Joseph Bunkley to find a way to resolve the matter. This resulted in a futile effort on my part. I received letters of nastiness from both my son and daughter-in-law. They stood their ground knowing that I did not have any rights

I support the bill on grandparents which I feel is overdue for Connecticut.

Respectfully submitted,

  
Joseph E. Healy

Subscribed and sworn to before me on 3/12/12, Niantic, Ct  
County of New Haven



**ROSEMARY M. RATHBUN**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MAY 31, 2012

**Linskey, Amy**

---

**From:** DAngona, Aurora  
**Sent:** Tuesday, March 13, 2012 8:42 AM  
**To:** Linskey, Amy  
**Subject:** FW: PRO Bill 5440 Grandparents rights  
Good Morning Amy,

I have forwarded the constituents testimony for HB 5440 we spoke about yesterday. Thank you so much for your help, and if you need any additional information please let me know.

~Aurora

Aurora D'Angona  
Office of House Speaker Christopher Donovan  
Legislative Office Building  
300 Capitol Avenue  
Hartford, CT 06106  
Phone (860) 240-8500, Toll Free 800-842-8267  
Fax. (860) 240-8406  
aurora dangona@cga ct gov

---

**From:** Maria Gonzalez [mailto:mjgon67@yahoo.com]  
**Sent:** Tuesday, March 13, 2012 6:30 AM  
**To:** DAngona, Aurora  
**Subject:** Bill 5440 Grandparents rights

March 13, 2012  
Maria J Cordero  
PO Box 351  
Meride, CT 06450  
203-537-3445  
[mjgon67@yho.com](mailto:mjgon67@yho.com)

To Whom It May Concern:

I am hoping and praying that all is considered upon reveiwing your findings there are worst situations then mine but all these is one GOAL in mind is to be apart of our grandchildrens lives.

With all that being said I say we are not here to take any rights of the parents ,all we are seeking is " VISITATION RIGHTS" which is so fundamental in a child lives!

There one case in Meriden pending and it is horrible the fact that its going on 2yrs Sara Porter was not granted SUPERVISE VISITTION until all can be settled so

all the couseling and cooperation with the court wil not help this friend of mine if she dies because of this situation has taken a toll EMOTIONALLY,MENTALY and PHYSICALLY and all she wants as well as those in support of the bill 5440 is visit with our GRANDCHILDRENS!!!!

3/13/2012

**Linskey, Amy**

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**From:** DAngona, Aurora  
**Sent:** Tuesday, March 13, 2012 8.49 AM  
**To:** Linskey, Amy  
**Subject:** Testimony: PRO HB 5440

Hello again, one more constituent testimony...Thank you

Sara Porter  
Meriden Citizen  
PRO HB 5440

My name is Sara Porter, I am the 64 yr old grandmother of Megan and Emma Harris aged 11 and 8. I have not seen the girls since Halloween of 2011. Their mother had all visitation stopped in Dec 2011. He and I were not notified legally about the hearing at which this decision was made. Their father, my son has been incarcerated several times and is in arrears on these support payments- Jennifer Aubin, their mother has been very upset about that. I have been fighting to see the girls since then- My lawyer and I have been to court several times and spoken with mediators. We have not been before a judge yet except to agree to an adlitem(sp) to be appointed for them. We also agreed to counseling which has been done. So far we have made no progress. I have been accused of giving them treats and letting them stay up late among other things. I have had the girls most weekends for three years prior to this, Have taken them to Disney for a week in 2009, taken them for a week at time to a vacation home in Maine, taken them to my home for the week following their mother's cancer surgery and taken them to church every Sunday for three years. I have been a vital force in their lives.

I work at the public Library in Meriden, CT. If you have any other questions you may call me at work-203 238-2344 or home 203 235-6161. Good luck with the grandparents' bill , sincerely

Sara Porter 210 Paddock Ave Meriden, CT 06450

**H – 1127**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2012**

**VOL.55  
PART 5  
1395 – 1745**

rgd/gdm/gbr  
HOUSE OF REPRESENTATIVES

86  
April 17, 2012

Those voting Yea	146
Those voting Nay	0
Those absent and not voting	5

DEPUTY SPEAKER KIRKLEY-BEY:

The bill passes.

Will the Clerk please call Calendar Number 305.

THE CLERK:

On page 28, Calendar 305, House Bill Number 5440,  
AN ACT CONCERNING VISITATION RIGHTS FOR GRANDPARENTS  
AND OTHER PERSONS, favorable report by the Committee  
on the Judiciary.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Serra, you have the floor, sir.

REP. SERRA (33rd):

Thank you, Madam Speaker.

Madam Speaker, I move for the acceptance of the  
Joint Committee's favorable report and passage of the  
bill.

DEPUTY SPEAKER KIRKLEY-BEY:

The motion before us is acceptance of the Joint  
Committee's favorable report and passage of the bill.

Will you remark further, sir?

REP. SERRA (33rd):

Thank you, Madam Speaker.

Madam Speaker, this is a bill, the end result of a very intense work done by a task force comprised of six attorneys, three judges and various members of the House and the Senate. This bill was crafted under the guise of rulings of the U.S. Supreme Court and the Connecticut Supreme Court.

And what this does, Madam Speaker, is puts Connecticut into the forefront of grandparents visitation rights, which this task force has recommended and is enumerated in this bill to provide a judge with at least a criteria on making a decision.

And with that, Madam Speaker, I move adoption.

DEPUTY SPEAKER KIRKLEY-BEY:

The question before us is adoption of this bill. Will you remark? Will you remark further?

Representative Frey, you have the floor, sir.

REP. FREY (111th):

Thank you, Madam Speaker.

I would concur with the chairman of the Aging Committee. This bill went under great scrutiny. Our task force to study grandparents visitation rights met six or seven times last year. And, as was previously mentioned, the committee was made up of attorneys and judges.

Nobody spoke against this bill. When it was before the Aging Committee, it passed unanimously, as well as the Judiciary Committee, and it makes a lot of sense. We heard a lot of very heart-wrenching testimony regarding grandparents who have been denied visitation rights. And I urge adoption of the bill. Thank you. Urge passage.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Noujaim, will you remark further, sir?

REP. NOUJAIM (74th):

Thank you, Madam Speaker. Good afternoon to you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Good afternoon, sir.

REP. NOUJAIM (74th):

Madam Speaker, I rise in strong support of this piece of legislation.

You see, Madam Speaker, I know a person who lives in my district, and he is a grandparent. I think for the past seven or eight years he has been calling me constantly because, unfortunately for him, he was not allowed to see his grandchildren.

And we tried to help him through legislation, through trying through the process to support him to talk to the parents, to the ex-parents, allowing them to -- or asking them to allow him the opportunity to see his grandchildren, and of course it was to no avail.

Unfortunately for him, this gentleman passed away, and then I was really sorry to see when he passed away and he was unable to see his grandchildren. And you know, Madam Speaker, it really did not hit home until now I have a grandchild. So when I don't see that little thing every other day, it's just like, you know, a piece of you just, like, goes away. It just drives you crazy.

So in honor of this gentleman and honor of grandparents, I rise in strong support, and I urge all of my colleagues to support this bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Will you remark further?

Representative Ayala.

REP. AYALA (128th):

Thank you, Madam Speaker.

I rise today in full support of this bill. Just recently I had the opportunity to meet with constituents in my district, and they spoke directly about this particular bill and the importance of it.

Unfortunately, we seem to be at a time right now where the rights of folks to visit with their grandchildren is not being taken seriously. And a great many of my constituents have reached out to me to tell me that they want to be involved in the lives of their grandchildren. They want to be there to provide proper upbringing. They want to be able to speak with them. They want to be able to share the love with them. And in some cases, unfortunately, it's not happening.

And it's quite a sad testament to say that parents who, through whatever circumstance, whether there's been a separation, whether there's been a divorce, whether there's been some kind of instance in their life that has caused a split, would rob a child of a relationship with a grandparent. And if this bill helps to create that type of a relationship where grandparents will continue to be able to see and be with their grandchildren, I'm in full support.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Wood, you have the floor.

REP. WOOD (141st):

Thank you, Madam Speaker.

I also served on this task force and stand in strong support of this bill. It guarantees the rights of grandparents to continue to visit with their children, even given a difficult situation with their own children. I think this is all something we need to support.

And thank you, Madam Chair.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Representative Kupchick, you have the floor,  
ma'am.

REP. KUPCHICK (132nd):

Thank you, Madam Speaker.

I too rise in strong support of this bill. I was contacted by several constituents, grandmothers actually, one which took care of her granddaughter while her child was incapable. And then the parent came back and took the child back and then did not let the grandmother see the child.

And this poor grandmother was just heartbroken, as she had spent time raising the child. And because of an issue between her and her daughter, she wasn't allowed to see the child, and there was nothing on the books that allowed her to have access to her own grandchild.

So I think this is an awesome bill, and I hope everyone will support it, because I think grandparents' rights are just as important as parents rights.

Thank you so much.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, madam.

Will you remark? Will you remark further on the bill that is before us? Will you remark further? If not, staff and guests please come to the well. Take your 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.

DEPUTY SPEAKER KIRKLEY-BEY:

Have all members voted? Have all members voted? Please check the board to see that your vote has been

properly cast. The machine will be locked, and the Clerk will prepare the tally. Will the Clerk please announce the tally.

THE CLERK:

House Bill 5440.

Total number voting	146
Necessary for adoption	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	5

DEPUTY SPEAKER KIRKLEY-BEY:

The bill passes.

Will the Clerk please call Calendar Number 253.

THE CLERK:

On page 20, Calendar 253, Substitute for House Bill Number 5346, AN ACT CONCERNING MINOR AND TECHNICAL REVISIONS TO THE STATUTES AFFECTING CHILDREN AND YOUTH, favorable report by the Committee on Human Services.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Urban, you have the floor, ma'am.

REP. URBAN (43rd):

Thank you, Madam Speaker.

Madam Speaker, this bill restricts the Department

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 14  
4346- 4668**

**2012**

In that housing authority would be provided with more information than they could possibly attain on their own. Here -- here they're getting the best possible information from a well-qualified autonomous state agency in the board pardons and paroles or from -- from a sentencing court, which of course has, you know, the -- the full disposal of -- of information in front of them.

So certainly the intention of the bill and the intention of the Sentencing Commission is that this would assist in preventing those -- the types of -- the very types of issues that your constituents are concerned about.

SENATOR KISSEL: Thanks. My last question is there's a third party here, but we haven't heard from her. I don't know if (inaudible).

SARAH RUSSELL: Hi. I'm Sarah Russell. I'm their supervising professor here, but they're doing so well I don't think I have to say anything.

SENATOR KISSEL: Okay. Thank you.

SENATOR COLEMAN: Any other questions? If not, Ms. Russell, thank you also for the -- the information that I asked for at the last hearing. I appreciate that and thank you gentlemen.

DAVID NORMAN: Thank you.

DAN SCHOFIELD: Thank you very much.

SARAH RUSSELL: Thank you.

SENATOR COLEMAN: Rapheal Podolsky.

RAPHEAL PODOLSKY: Thank you very much, Senator Coleman, Representative Fox and members of the

SB 444  
HB 5440

committee. My name is Rapheal Podolsky. I'm a lawyer with Legal Services Programs. The bill number is -- is incorrect on the sheet you have. I'm here to testify briefly on Senate Bill 444 -- that's 444, it deals with third-party visitation.

And I just want to make a couple of -- of comments. We -- we don't really have a clear position on the issue of third party visitation rights, but I wanted to put some issues on the table for you because you have a second bill that has come to this committee from the Committee on Aging, which is House Bill Number 5440 that is a product of the grandparent visitation task force.

The -- the reason this has been such a difficult issue over -- over the years is because there are constitutional issues -- constitutional issues directly involved. The kind of the landmark case is a federal case called Troxel versus Granville that was decided in 2000, in which the statute almost the same as 46b-59 of the Connecticut statute was declared unconstitutional because it was too general.

This Connecticut Supreme Court in two cases in the last decade have spelled out what the rules are in Connecticut as a kind of a combined direct and quasi-direct interpretation of the Constitution. The first is called Roth versus Weston, which is in 2002 and the second DiGiovanni versus St. George in 2011. And both of these are cited in my written testimony.

Those cases which are not -- which are State Supreme Court cases set a two part threshold for third party visitation, and that is there must be a parent like relationship and there

must be in the denial of that visitation must -- would have to cause harm to the child that's analogous to -- to neglect. And those -- it's a little unclear to what extent those requirements are literally constitutional mandates versus to what extent they are the Supreme Courts efforts to redraft the statute so, as to make constitutional so that it wouldn't have to declare the statute unconstitutional. And so -- so there's a constitutional influence in those standards, some of which I think is actually mandatory and some of which is their way of sort of figuring out something they felt would be satisfactory.

And that's significant to the Legislature because it -- it sets parameters around the extent to which you can change the -- change their rulings via the statute. Once those two conditions are met, they're like jurisdictional conditions for intervening in - in the family, then the best interest of the child applies. So -- so the Legislation -- seems to me they're Legislative issues involve -- first of all the question of whether to codify those decisions or not codify those decisions.

And that has to do both with your policy concerns about how much -- how liberal you want visitation to be and also, it turns out people don't necessarily agree on whether it's more liberal to sort of take those decisions, write them into statute and then maybe do some modifications as you do it, versus, leave it alone and let people litigate the constitutional issues.

I'll -- I'll sum up quickly. So people -- different people think different ways about -- about that issue. And finally, so there's

uncertainty as to what changes are allowable. Finally, if the -- if this committee does decide to move forward on a bill and if you do its likely not to be Senate Bill 444, but House Bill 5440 on which you're not going to have a separate hearing.

I would just ask you to note that in the Committee on Aging, the Legal Services Program requested that if that bill moves forward there be two changes. Neither of which were -  
- are in the bill that came to you.

One is, if you're going to codify one of those decisions, codify Roth, rather than DiGiovanni. And second, make sure that there's a requirement that the custodial parent get actual notice of the petition. I can explain those more if you want to know. There's a little more about that in my written testimony or that's up to you if you want to pursue it further.

Thank you very much for the opportunity to speak.

SENATOR COLEMAN: Thank you. Are there questions?  
Seeing none. Thanks for your testimony.

RAPHEAL PODOLSKY: Okay. Thank you.

SENATOR COLEMAN: Steven Wineberger. Michael Walsh.

MICHAEL WALSH: Good evening, Senator Coleman, Representative Fox, members of the committee. My name is Mike Walsh and I'm a trial attorney here in Hartford. I currently serve as President Elect of the Connecticut Trial Lawyers Association, and I'm here to speak on their behalf in support of Raised Bill 5545.

# Legal Assistance Resource Center

## ❖ of Connecticut, Inc. ❖

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### S.B. 444 -- Third-party visitation

Judiciary Committee public hearing -- March 23, 2012

Testimony of Raphael L. Podolsky

**Recommended Committee action: NO ACTION ON S.B. 444**

The proposal contained in this bill should be reviewed in conjunction with H.B. 5440, AAC Visitation Rights for Grandparents and Other Persons, which has been sent to the Judiciary Committee from the Committee on Aging. The attorneys in the legal services programs have mixed views on what the statutes should say on third-party visitation, and it is not entirely clear whether the adoption of either bill would or would not make it easier for third parties to obtain visitation. The only actual position we have taken is that, if H.B. 5440 is to move forward, certain changes should be made in the bill. They are itemized in my testimony on that bill to the Committee on Aging, which did not make those changes.

- The fundamental constitutional right: The issue of third-party visitation, which is a difficult one to start with, is complicated by Connecticut Supreme Court constitutional decisions that limit the General Assembly's statutory options. It also pits two competing important interests against each other -- the constitutional right of fit parents to make decisions about the raising their children without interference from others and the desire of closely bonded non-parent third parties to retain their bond with those children, even over the objection of the child's parent or parents. The decision-making authority of parents is an established constitutional right of the parents (sometimes referred to as the right to family integrity). The landmark federal case is Troxel v. Granville, 530 US 57 (2000), which struck down as unconstitutional a State of Washington statute that is very similar to C.G.S. 46b-59. The involvement of grandparents or other third parties is less a question of their "rights" than it is an aspect of the child's best interest. As a starting point, therefore, it is the parents, not the grandparents or other third parties, who are constitutionally authorized to make decisions about visitation with children.
- The state Supreme Court interpretation: Troxel was applied by the Connecticut Supreme Court in two important but confusing cases that reinterpreted C.G.S. 46b-59, the Connecticut third-party visitation statute, which if read literally would be plainly unconstitutional under Troxel, so as to make it constitutional. Some aspects of those decisions are explicitly constitutional, i.e., they hold that the Constitution requires certain standards. Other parts are what I would call "Constitution-influenced," i.e., they are not required by the Constitution but, in the Court's opinion, are desirable ways to make the statute constitutional. It is sometimes difficult to tell with certainty which are which. The leading case is Roth v. Weston, 259 Conn. 202 (2002), which was modified in 2011 by DiGiovanni v. St. George, 300 Conn. 59

(continued on reverse side)

(2011). These cases explicitly hold that, as a threshold matter to litigation, third parties cannot seek visitation unless they can show both that (1) they have a parent-like relationship with the child and (2) denial of visitation to the third party would cause harm to the child analogous to neglect under the Juvenile Court statutes.

- C.G.S. 46b-57 and C.G.S. 46b-59: S.B. 444 amends 46b-57, which allows a third party to intervene in a court action initiated by someone else (e.g., a divorce or a custody proceeding) that is already pending in the Superior Court. H.B. 5440 amends C.G.S. 46b-59, which allows a third party to initiate a visitation proceeding in Superior Court as the applicant or petitioner. It appears that the legal doctrine of Roth and DiGiovanni, which was expressed in cases under C.G.S. 46b-59, also applies to C.G.S. 46b-57.
- S.B. 444: S.B. 444 requires the court, on a motion to intervene under C.G.S. 46b-57, to "give due consideration" to three factors, only one of which is a Roth threshold factor. The third factor (significant financial support) is at best a lesser factor. As a result, the bill does not really address the Supreme Court decisions and it is unlikely to satisfy the Supreme Court. H.B. 5440 attempts to address those decisions by codifying DiGiovanni and proposing a longer list of considerations in determining "parent-like relationship" and "best interest of the child." "Best interest" is the established standard for a visitation order if the Roth threshold is met.
- H.B. 5440: It remains an open question as to whether codification is or is not the best approach. If, however, the legislature desires to codify the Supreme Court decisions, we believe it should codify Roth rather than DiGiovanni. The difference, although subtle, is significant. Under Roth, if the two-part threshold test is met ("parent-like relationship" and "harm to child"), the court then determines whether visitation is in the child's best interest and, if so, what sort of visitation to order. Under DiGiovanni, if the two-part threshold test is met, the Court assumes that visitation is in the child's best interest and determines only what sort of visitation to order. We believe that there are some circumstances in which the threshold test, which places the focus on relationship and harm and is jurisdictional in nature), may be met but it will nevertheless not be in the child's best interest to order visitation. H.B. 5440 should also assure that the custodial parent receives actual notice of the proceeding.

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**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2012**

**VOL. 55  
PART 14  
4223 - 4505**

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SENATE

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Will you remark?

Senator -- Mr. Clerk, do you -- or Senator Looney. He's coming. Nevermind.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, as -- the next two bills to mark as go, the first is calendar page 6, Calendar 375, House Bill 5440, to be followed by calendar page 12, Calendar 435, House Bill 5232.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 2, Calendar 375, House Bill Number 5440, AN ACT CONCERNING VISITATION RIGHTS FOR GRANDPARENTS AND OTHER PERSONS, favorable report of the Committees on Aging and Judiciary.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Madam President, I move the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

The motion is on passage and adoption.

Will you remark?

SENATOR PRAGUE:

Madam President.

THE CHAIR:

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Yes.

SENATOR PRAGUE:

The bill is the result of a task force that met for some time to deal with the problems of visitation by grandparents. It's not everything we hoped it would be, but it does make it simpler for grandparents to visit with their grandchildren.

And I'm hoping that it will pass this circle. If anybody is a grandparent, they know how important those visits are.

Thank you.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Madam President.

First, I want to thank Senator Prague for bringing the bill out. Let her know that my mother, whose the grandmother of my kids, thanks her for bringing the bill out. In all seriousness, though, this is a problem.

If I could, one question, through you, to Senator Prague.

THE CHAIR:

Please proceed, sir.

SENATOR MCKINNEY:

Senator Prague, as I read the bill, the -- the grandparents would have to make a showing that there is a parent-like relationship with the kids in order to get a showing for custody. Is that correct?

Through you.

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THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Madam President, to Senator McKinney, yes.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you.

So, in other words, this -- this isn't -- this is not necessarily for all grandparents, but for grandparents who, in many ways, have been acting as parents, and because of a divorce no longer get to see their grandkids. Is that correct?

Through you.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Madam President, Senator McKinney, it's not only divorces, but sometimes parents have disagreements between themselves and, as a result of a disagreement, they could deny the grandparent visitation rights.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, and I thank the good Senator.

I wanted to make sure that is an important part of this bill. I think we've seen, in a lot of litigation over divorce, lawyers use custody as a way to further divide the parties. And I'm fearful that lawyers may use

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grandparents to further divide parties here.

But this is not for every situation. This is for those grandparents who, in many ways, have been acting like the parents for various reasons and then get shut off. And in that respect, I think it's a very important step.

Thank you, Senator.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

SENATOR PRAGUE:

Madam President, if there's no objection, I would like to put this on consent.

THE CHAIR:

Seeing no objection, so ordered, ma'am.

Mr. Clerk.

THE CLERK:

On page 12, Calendar 435, Substitute for House Bill Number 5232, AN ACT CONCERNING HEARINGS BEFORE THE ADMINISTRATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE EMPLOYMENT COMPENSATION ACT. It's amended by House Amendment Schedule "A" and a favorable report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Madam, thank you, Madam President.

I move the joint committee's favorable report and passage of the bill and concurrent with the House.

THE CHAIR:

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(HB 5283)

On page 3, Calendar 240, House Bill 3283; page 3, Calendar 299, House Bill 5437; page 5, Calendar 349, Senate Bill 374; page 6, Calendar 375, House Bill 5440; page 6, 362, House Bill 5011.

On page 7, Calendar 376, House Bill 5279; on page 7, 387, House Bill 5290; on page 8, 394, House Bill 5032; on page 8, 396, House Bill 5230.

Also on page 8, Calendar 398, House Bill 5241; on page 8, Calendar 393, House Bill 5307; on page 9, Calendar 403, House Bill 5087; on page 9, Calendar 406, House Bill 5276; on page 9, 407, House Bill 5484; on page 11, Calendar 424, House Bill 5495; on page 12, Calendar 435, House Bill 5232; on page 13, Calendar 5 -- excuse me Calendar 450, House Bill 5447; on page 14, Calendar 455, House Bill 3 -- I'm sorry -- House Bill 5353.

On page 14, Calendar 453, House Bill 5543; on page 14, Calendar 459, House Bill 5271; on page 15, Calendar 464, House Bill 5344; on page 15, Calendar 465, House Bill 5034; on page 16, Calendar 469, House Bill 5038; on page 17, Calendar 475, House Bill 5550; on page 17, Calendar 474, House Bill 5233; on page 17, Calendar 477, House Bill 5421.

Page 18, 480, House Bill 5258; on page 18, Calendar 479, House Bill 5500; page 18, Calendar 482, House Bill 5106; on page 18, Calendar 483, House Bill 5355; on page 19, Calendar 489, House Bill 5248; on page 19, Calendar 488, House Bill 5321; on page 20, Calendar 496, House Bill 5412.

On page 21, Calendar 504, House Bill 5319; page 21, Calendar 505, House Bill 5328; on page 22, Calendar 508, House Bill 5365; on page 22, Calendar 510, House Bill 5170; on page 23, Calendar 514, House Bill 5540; on page 23, Calendar 517, House Bill 5521.

Page 24, Calendar 521, House Bill 5343; page 24, Calendar 518, House Bill 5298; page 24, Calendar 523, House Bill 5504; page 29, Calendar 355, Senate Bill 418; on page 13, Calendar 444, 5037; and Calendar 507, House Bill 5467.

THE CHAIR:

Senator -- Senator Suzio.

SENATOR SUZIO:



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Bills placed on the Consent Calendar on May 9, 2012

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Bills from Senate Agenda Number 3 from the May 9th Senate Session that were placed on the Consent Calendar

HB5304  
HB 5342

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Good evening, Madam President.

I just want to clarify. I thought I heard the Clerk call House Bill 5034? Is that on the consent calendar?

THE CHAIR:

Do you know what page that is, sir?

SENATOR SUZIO:

No I -- he was reading so fast, Madam, I couldn't get it.

THE CHAIR:

It's -- yes it's 53 -- I don't know.

SENATOR SUZIO:

5034.

THE CHAIR:

5034, yes sir.

SENATOR SUZIO:

I object to that being put on the consent calendar, Madam President.

THE CHAIR:

Okay, that will be removed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Yes, just seeing that -- ask to remove that item from the consent calendar.

THE CHAIR:

So ordered.

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At this time we'll call a roll call vote on the consent calendar.

Mr. Clerk.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Senator Coleman, we need your vote, sir.

Senator Kissel, Senator Kissel. Senator Kissel, will you vote on the consent calendar please?

All members have voted?

If all members have voted, the machine will be closed.

Mr. Clerk, will you call the amendment -- I meant the tally.

THE CLERK:

On today's consent calendar.

Total Number Voting	36
Necessary for Adoption	19
Those Voting Yea	36
Those Voting Nay	0
Those Absent and Not Voting	0

THE CHAIR:

The consent calendar has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, I believe the Clerk is in possession of Senate Agenda Number 6 for today's session.