Division of Public Defender Services
State of Connecticut

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Testimony of
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OFFICE OF CHIEF PUBLIC DEFENDER

COMMITTEE ON THE JUDICIARY
MARCH 11, 2015

Proposed Bill 5505
AN ACT CONCERNING FAMILY COURT PROCEEDINGS.

The Office of Chief Public Defender has serious concerns regarding Proposed ***Bill 5505, An Act Concerning Family Court Proceedings*** . This Bill seems to be in response to calls for reform of the family court system and the use of guardians ad litem in family matters. The proposals go too far and make extreme changes that will negatively impact the delivery of services in the family courts. The Office of Chief Public Defender also believes that this Bill will impede the efforts this agency has made to expand and diversify the pool of individuals contracted to serve as guardians ad litem or attorneys for minor children in family custody matters.

Section 2 of this proposal would allow any party "aggrieved by the action of counsel or a guardian ad litem for a minor child" to file a civil action for damages. This eliminates the quasi judicial immunity currently given to court appointed guardians ad litem and attoreny for minor children. It is hard to imagine that individuals would be willing to serve as court appointed GAL or AMC in any case if they are constantly at risk of being sued. The potential expense of defending law suits, in which the state of Connecticut would typically be representing the court appointed GALs paid for by this office, would certainly deter people from taking contracts for cases at the state rate of $500 per case. In addition, the proposal is contrary to subsection (b)(1)(G) of C.G.S. §4-165, the immunity statute, which provides for immunity for court appointed GALs.

Guardians ad litem and attorneys for minor children have been given immunity from suit because they are appointed by the court and serve in a quasi judicial function. Connecticut courts have held that most court-appointed persons are "arms of the court"

and, therefore, cannot be subjected to suit. *Hartford National Bank & Trust Co. v. Tucker*, 195 Conn. 218, 225, 487 A.2d 528, cert. denied, 474 U.S. 845, 106 S.Ct. 135, 88 L.Ed.2d 111 (1985) (receiver appointed by court is an "arm of the court"); *Summerbrook West, L.C. v. Foston*, 56 Conn.App. 339, 344, 742 A.2d 831 (2000). This status was granted to attorneys for minor children in *Carruba v Moskowitz*, 274 Conn. 533 (2005). Courts in other jurisdictions have almost unanimously accorded guardians ad litem absolute immunity for their actions that are integral to the judicial process. [1]

A guardian ad litem operates only at the order of the court and functions as a representative of a minor child's best interests. *Schult v. Schult*, 241 Conn. 767, 779, 699 A.2d 134 (1997). They become involved in a family custody case when the parties are unable to resolve differences over the custody and care of their children and are appointed by the court to give guidance on what is best the children. Similarly, attorneys for minor children are appointed when the child is old enough to express an opinion as to the conditions of their custody.

Court appointed guardians ad litem and attorneys for minor children should be allowed the protection of immunity because to expose them to the possibility of personal liability will deter them from acting as advocates for minor children. There has been much debate over the role of the GAL in family court but the court needs these advocates to make good decisions regarding children. Cases where a guardian ad litem or attorney for a minor child is appointed are the most difficult cases in family court. The judge relies on the guardian ad litem or the attorney for the minor child to help them make decisions regarding the children when the parents are unable to resolve their differences. A parent who does not get their desired access to their children will almost always feel aggrieved. This does not mean that they should have a cause of action against the guardian or the lawyer, express their own opinion in a contested custody case.

[1] See, e.g., *Scheib v. Grant*, 22 F.3d 149 (7th Cir.1994); *Cok v. Cosentino*, 876 F.2d 1 (1st Cir.1989); *Myers v. Morris*, 810 F.2d 1437 (8th Cir.1987); *Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir.1984); *McKay v. Owens*, 130 Idaho 148, 937 P.2d 1222 (Idaho 1997); *Babbe v. Peterson*, 514 N.W.2d 726 (Iowa 1994); *Collins ex rel. v. Tabet*, 111 N.M. 391, 806 P.2d 40 (N.M.1991); *Tindell v. Rogosheske*, 428 N.W.2d 386 (Minn.1988); *Berndt ex rel. Peterson v. Molepske*, 211 Wis.2d 572, 565 N.W.2d 549 (Wis.Ct.App.1997); *Delcourt v. Silverman*, 919 S.W.2d 777 (Tex.Ct.App.1996)

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Under the reforms passed last year, litigants are able to pick the GAL or AMC from a list of 15. OCPD has been unable to provide 15 state rate choices in every jurisdiction and has been working hard to recruit a larger and more diverse pool of qualified GALs and AMCs. We believe that this proposal would lead to a shortage of people willing to serve in this important function.

Section 1 limits the court's authority to order supervised visitation in a child custody case. Supervised visitation could only be ordered if there was a substantiated finding of neglect or abuse by the Department of Children and Families, criminal conduct that resulted in the risk of harm to a child, severe mental illness that resulted in a risk of to a child's safety or well being or a lack of relationship between the child and the parents. The Office of Chief Public Defender is concerned that restricting the court's authority in this way will result in more parents being deprived of any visitation with their child. Court's will often order supervised visits when there are allegations of abuse or concerns about a parent's care giving. Supervised visits give the parent the chance to continue their relationship with the child while the allegations are investigated. Without this option, courts may simply end visits until the allegations are resolved. This would be very disruptive to the parent child relationship. We would be happy to work with members of this committee to develop language that protects a parents' right to the least restrictive form of visitation while safeguarding the well being of the children.

Section 3 deals with court ordered evaluations and therapy. The Office of Chief Public Defender does not provide funding or oversight for court ordered evaluations or therapy and leaves this part of the proposal to the discretion of the Committee.

This agency would be happy to assist members of this Committee in drafting substitute language that could address the concerns of all involved. Thank you for the opportunity to be heard on this important issue.