KidsCounsel®

a newsletter for attorneys representing children in Connecticut

Spring 2006
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Raise the Age

Bill 5782 Gains Momentum at Capitol

Connecticut is one of only three states that treat 16 and 17 year olds as adults

On February 21, 2006, the Connecticut Juvenile Justice Alliance (CTJJA) sponsored "Educate the Legislature Day" at the Legislative Office building. The purpose of the day was twofold:

1) have parents, service providers and others who support increasing the jurisdictional age of Superior Court Juvenile Matters to include sixteen and seventeen year olds for delinquency matters meet with their legislators to explain the issue and secure legislative support for the change;

2) have national experts explain why research in several disciplines leads to the conclusion that making this change is in the interest of the state.

Currently, Connecticut is one of only three states that require all sixteen and seventeen year olds to be treated as adults when they commit a crime, even if it is only breach of peace or fighting with a peer in school. To address this issue, the CTJJA solicited interested groups and individuals to join them in an effort to change the jurisdictional age for delinquency matters. The resulting Raise the Age Coalition (RAC) is comprised of parent groups, mental health organizations, and agencies dedicated to improving outcomes for children in the juvenile justice system. CCA has been intimately involved in the coalition's work, providing legal support and advice throughout the process.

Raised Bill 5782, An Act Concerning the Age of a Child for Purposes of Jurisdiction in Delinquency Matters and Proceedings, was drafted by Ann-Marie DeGraffenreidt, Director of TeamChild, Center for Children's Advocacy; and Christine Rapillo, Public Defender Service.

RAC determined that an educational video and an economic analysis were necessary to convince the legislature and the public that this was the correct action to take. CTJJA created a short video focusing on the facts and research related to the issue, which included a parent's description of her son's experience in the adult system and the negative impact that this experience had on him. CTJJA also secured the services of Jeff Butts, Research Fellow at the Chapin Hall Center for Children of the University of Chicago, and John Roman, Senior Research Associate at the Urban Institute, to assist in the development of an economic analysis of returning sixteen and seventeen year olds to the juvenile justice system.

Immediately prior to the start of the legislative session, the video and a packet of written information were sent to every legislator. Several "breakfasts" were held around the state. At each breakfast, the video was shown and an opportunity provided for the audience to ask questions. Every elected official in the geographic area surrounding the breakfast meeting location was invited, and local sponsors were enlisted in an effort to ensure a large turnout. These meetings were successful in raising awareness of the issue.

Throughout this process, RAC has had two legislative champions, Representative Michael Lawlor and Representative Toni Walker. Both have contributed significantly to this issue. Rep. Lawlor appears in the video and, as co-Chair of the Judiciary Committee, facilitated the scheduling of the educational hearing. Rep. Walker introduced the bill and has been its staunch and vocal champion in the legislature. Together, they ensured the Judiciary Committee's sponsorship of the educational forum on February 21,2006.

Four national experts presented testimony on the issue of increasing the age of jurisdiction in Connecticut's Superior Court Juvenile Matters.Dr. Donna Bishop from Northeastern University discussed the benefit to Connecticut from a community safety perspective. Dr. Jeffrey Butts, Research Fellow at the Chapin Hall

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Raise the Age

Center for Children of the University of Chicago, discussed the economic impact of raising the age, as did John Roman, Senior Research Associate at the Urban Institute. Dr. Butts and Mr. Roman collaborated on a paper entitled "The Economics of Juvenile Jurisdiction."[1] Rounding out the national experts was Dr. Abigail Baird, Professor of Psychology and Cognitive Neuroscience, and Director of the Laboratory for Adolescent Science at Dartmouth College[2]. Dr. Baird was able to lighten a potentially dense subject with skills she acquired as a stand up comic, resulting in legislators remaining engaged throughout her presentation.

The public hearing on Raised bill 5782 was held on March 13, 2006 before the Judiciary Committee. Testimony in support of the Bill was presented by the Office of the Public Defender Service, CCA, CTJJA and the mother of David Burgos, a juvenile who committed suicide while imprisoned in the adult criminal system. Significantly, the Judicial Branch did not oppose the bill. Judge Lavery, the Chief Court Administator, testified that the decision to increase the age of jurisdiction for delinquency matters was within the sole discretion of the legislature. However, he also testified that there is an ongoing need for services for this population and that the necessary services should be in place before the age of jurisdiction is changed.

While Judge Lavery's statement concerning the lack of services is accurate, it does not support an additional delay in increasing the age of jurisdiction for delinquency matters. The insufficient level of services for sixteen and seventeen year olds has existed for years and is exacerbated when their transgressions are addressed in Connecticut's adult criminal court. Having sixteen and seventeen year olds in the adult system triggers the Juvenile Justice Delinquency Prevention Act, a federal law[3] that prohibits the mingling of individuals adjudicated as adults with those adjudicated as juveniles, ***regardless of age***, since this mingling prevents juveniles from accessing youth services available in the juvenile justice system.

Several members of the legislature and state agencies involved with Connecticut's juvenile justice system attended the hearing to listen to the presentations of the experts. The video is available on the CT-N website (http://ctnv1.ctn.state.ct.us/J/jud_2-21-06.wmv), via streaming, or for purchase.

– Ann Marie DeGraffenreidt, JD, Director, TeamChild, Center for Children's Advocacy

(Footnotes)

[1] This paper can be obtained from the Urban Institute's website at *www.urban.org/UploadedPDF/411208_Juvenile_Jurisdiction.pdf*

[2] If you are interested in more information about adolescent brain science the website for this laboratory is *www.theteenbrain.com*

[3] The Juvenile Justice Deliquency Prevention Act can be found at *www4.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_72.html*

Correction: *In the Winter 2005 KidsCounsel newsletter, the case summary of In re Nicholas R, 92 Conn. App. 316, erroneously indicated that Nicholas' mother brought the appeal of a trial court order denying a motion to dismiss an order of temporary custody. The child's father brought the appeal to the Appellate Court. The Center regrets this error.*

Inclusion or Illusion?

Legal Advocacy Makes a Difference

Marianne R. (*pseudonym*) is 8 years old and attends a public school in Hartford, CT. Marianne has Down Syndrome and is one of the children abruptly transitioned from a self-contained special education classroom to "full inclusion" in a second grade classroom.

Marianne arrives each morning, transported by a special school bus. As she carefully negotiates her exit from the bus, she must be watched carefully, since she often runs away – unresponsive to directions from adults and unaware of the hazards of the public street. She usually arrives later than the other students, who have had breakfast and gone ahead to their classrooms. Her one-to-one paraprofessional meets her at the door. Together, they walk down the stairs to the cafeteria – carefully, because Marianne has some difficulties with balance and is visually impaired. Marianne is guided through the empty cafeteria to pick up a package of cereal and juice. With her aide, she finds a seat in the roomful of tables and begins the laborious process of taking off her heavy jacket. Once seated, she struggles to open juice and cereal cartons. Her aide prompts her, "Say, I – want – help." Marianne dutifully repeats, "I – want – help." Marianne responds to the aide's voice and smiles when spoken to, imitates words and sentences, but has no spontaneous expressive language. After a lonely breakfast, Marianne walks with her aide to the classroom, going up the stairs carefully a step at a time.

She enters a busy classroom where a long-term substitute teacher sits behind the desk, periodically announcing to the class at large, "It's getting too noisy in here!" The teacher greets Marianne in a loud voice, "Hi there, sweetie!" Marianne smiles and approaches her for a hug. The rest of the children are noisily engaged in writing in their morning journals. Marianne immediately drops her coat on the floor. Children look up, but no one greets Marianne.

Marianne's academic work begins with a piece of lined paper and a crayon. She is seated facing away from the other students, since she is highly distractible and has a very short attention span. Quickly the aide writes Marianne's name and the date on the paper. Then, slowly, with the aide guiding her hand-over-hand, her thick glasses slipping down her nose, eyes barely an inch from the paper, Marianne traces the letters on the paper. There is no indication that she recognizes either the letters or her own name. And so it goes. During the morning, one little girl notices Marianne, puts an arm around her shoulder and says "Hi, Marianne!" Marianne turns, looks and says "Hi!"

Marianne is one of 1,300 special education students abruptly transitioned from self-contained classrooms and segregated settings to neighborhood schools. Often, this has meant a change from small classrooms of 8-12 students with a certified special education teacher, and adult:child ratios of 1:2 or 1:3, to classrooms staffed by teachers with no training or experience in working with children with special needs. Marianne, like others, has a one-to-one paraprofessional who is a kind, committed and nurturing person. She carries out the majority of instructional activities with little or no guidance from the teacher, designing tasks based on her understanding of Marianne's needs. Marianne is able to carry out some self-care routines, like zipping and unzipping her coat, with assistance. She is not toilet-trained. Later in the morning she has an accident and must be taken to the bathroom to be changed. The aide has received no training in helping Marianne to "access the general education curriculum" as required by the mandates of the Individuals with Disabilities Act (IDEA) and the No Child Left Behind Act (NCLB).

Marianne's placement in a general elementary school classroom is justified by the school district on the basis of the principle of "least restrictive alternative". This principle has its modern legal roots in the 1971 case *Pennsylvania Association for Retarded Children (PARC) vs. The Commonwealth of Pennsylvania.* The resulting consent decree emphasized the placement of children in settings *most appropriate for their needs*, but with a clear value on integration of mentally retarded children into regular education classrooms. More recently, in Connecticut, *P.J. vs. the State of Connecticut* (2001) sought and won support and monitoring of local school districts by the state to ensure compliance with IDEA requirements for the placement of children with disabilities in least restrictive environments.

This requirement is often inaccurately perceived as a mandate for *inclusion* of all children in regular education classrooms. The intent of the least restrictive alternative principle is clearly to make decisions for placement based on a careful consideration of the needs of the child, the context and the process of transition to successively less restrictive living and learning alternatives. Instead of being seen as a mandate for placement in regular education classrooms for all children with disabilities, the principle should be evaluated in light of the basic IDEA provision of free and *appropriate* education

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Inclusion or Illusion?

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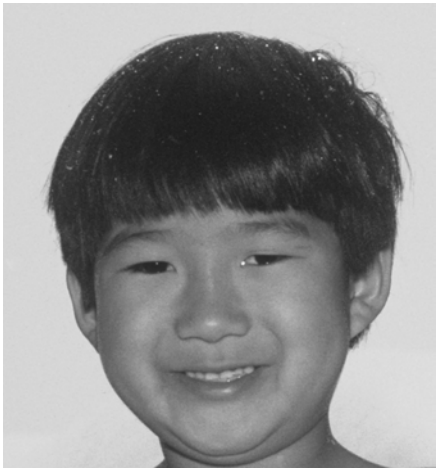
for each individual. It is arguable whether inclusion *for its own sake* meets this standard for every child. In order for inclusive classrooms to provide successful learning experiences for children with a wide range of social and academic skills, a developmental perspective, professional preparation, and ongoing collaborative communication are essential.

A developmental perspective looks at each child as a child, with a unique profile of strengths, interests, preferences and special needs. Every child, whether identified as having a disability or not, deserves such consideration. For outcomes to continually improve, children must be placed in classrooms where each individual's strengths and struggles frame the process of planning and implementing engaging, effective instruction. This, in fact, is the most important message of NCLB.



A developmental perspective is also important in the implementation of inclusion. Abrupt relocation of any child from one educational setting to another is likely to disrupt academic learning and place additional emotional stress on children whose relationships with peers and adults are suddenly fractured. *To implement a major systemic change without consideration of its impact on the hearts, as well as the minds, of children already challenged by special physical, cognitive, social and emotional needs does not provide the scaffolding necessary to support optimal growth in academic and social skills. Children's voices and choices must be sought and heard in the process.*

Adequate professional preparation is a prerequisite for successful inclusion. If students are truly to have meaningful access to the general education curriculum, there must be a change in the role and responsibilities of the general education teacher. In the past, teachers have been encouraged to see the education of children with special needs as the purview of the special education teacher and a phalanx of related service professionals. The mystique of special education has led many teachers to feel insecure in their own knowledge and creativity once a student has been identified as a "special needs" child. Yet skillful, experienced general education teachers have a broad repertoire of skills that are as relevant for a youngster with disabilities as for the wide developmental variation of learners that exists in any elementary or secondary classroom. In order to achieve true inclusion, the perception that only a specialist can successfully teach a child with special needs must change. While special educators and related service professionals provide many different kinds of essential supports, general education teachers must come to play a leading role, collaborating with their specialist colleagues to assure successful learning outcomes for each child.

However, although IDEA has emphasized the importance of the regular education teacher in the formulation of the Individual Education Plan (IEP), participation is often interrupted or prevented because of the classroom demands. In any case, general education teachers need knowledge, skills, adequate resources and supportive supervision in order to design, deliver and adapt instructional activities and ensure outcomes that will benefit each child in the regular education classroom – including those with special needs.

Assigning an untrained paraprofessional, however well intentioned, is not sufficient. These valuable support personnel have the potential to significantly enhance the daily experiences and achievements of children with appropriate training and supervision, and must be seen as full participants in the inclusion process. Because of their opportunities for close observation, their insights and ideas can support the learning of new academic and self-care skills, as well as facilitate social interaction and development of peer relationships. Without preparation that includes the goals and strategies of inclusion, this potential resource is severely limited. Comprehensive change cannot occur without optimal deployment of all school resources. Equally as important, it cannot take place without engagement of classroom teachers in the planning process at school and district levels, as well as in the classroom.

Ongoing collaborative communication is the third, but equally important component in any recipe for successful inclusion. Parents must be seen as playing a key role in the inclusion implementation process. From the earliest point at which transition to a less restrictive setting is contemplated, parents must be accorded their full rights under IDEA. Parent perceptions about each child's needs and collaboration in the process of developing Individual Education Plans must be given more than a passing nod, in any case. However, *a parent's understanding of her child's response to change, when incorporated into the planning process in a serious way*, can help to create a transition to less restrictive settings that enhances, rather than impedes the child's social and academic adjustment.

Such communication is more than the often-used two-way notebook. Parents need to be engaged in frequent, collaborative sharing of observations, questions, concerns and possible solutions to the inevitable glitches in the best-laid plans. But a strong, supportive relationship with the classroom teacher is only one of several necessary collaborative

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connections. The classroom teacher must also serve as the nexus of communication among the various professional service providers who work directly with the child or provide consultation within the classroom. Instead of being overwhelmed by the numbers of specialists, highly specialized vocabulary and interventions, parents must be able to relate to one individual who can translate varied services, in plain language, into a coherent, integrated strategy for success in the classroom.

There is no question that this is a tall order, particularly in the multi-ethnic, multilingual context of most urban classrooms. Continuous, consistent communication between teacher and parent can be augmented when schools facilitate parent-to-parent education, advocacy and support groups. Such communicative vehicles have little in common with the traditional Parent Teacher Association. Training and ongoing support must be available to build collaborative relationships between parents and teachers as they wrestle with the very real problems inherent in inclusive education. Teachers can help parents to develop support strategies for their children at home. Parents can help teachers understand the cultural context of their home and family and ways in which it interfaces with school expectations.

Needless to say, each of these requirements cannot be met without a careful reconsideration of time, space and resources needed within each classroom as well as school and district-wide. A district truly committed to principles of least restrictive environments and inclusion will have demanded and devoted the necessary resources to plan a developmentally sensitive and timely transition for each child as less restrictive settings become appropriate. It will have prioritized professional development and re-examined and redefined roles and responsibilities for classroom teachers in sensible ways to insure that time and energy is available to manage the change process without denying any child the educational programs and services that will help him to succeed. Finally, a district truly committed to a successful inclusive continuum will establish the networks of communication that will sustain and support children, their families and their teachers as they work together to insure real access to general education.

What Marianne and children like her experience everyday is not inclusion, but an illusion. It need not be so.

– Andrea M. Spencer, PhD, Educational Consultant, Center for Children's Advocacy

CCA Welcomes Sarah Healy Eagan

Sarah Healy Eagan has joined the Center for Children's Advocacy as Staff Attorney on the Child Abuse Project. Sarah is providing individual legal representation to children in the areas of abuse and neglect, special education, and mental health. She is also working to promote legislation which would establish a mediation program for Termination of Parental Rights proceedings, expedite appeals in termination cases, provide judicial training in areas unique to juvenile and child welfare law and improve the quality of legal representation for children. *(see article on page 10)*

Before joining CCA, Sarah was a litigation associate at Shipman & Goodwin LLP. She is a graduate of Trinity College, and an honors graduate of University of Connecticut School of Law. Please join us in welcoming Sarah to our staff.

Truancy Court Prevention Project

Ceremony Recognizes Improved Attendance of Participants at Hartford Public High School

Please see article on page 9.

Left to right: HPHS student Jovani Echeuarria with Case Manager Daymalee Granado of the Village for Families and Children, and Jovani's mother, Wanda Rivera

Left to right: Catholic Charities Case Manager Keila Martinez, with HPHS student Iliana Almenas

Emergency Contraception vs. the Abortion Pill: Legal Ramifications are Different

In the world of adolescent medicine, there is confusion between emergency contraception (also known as emergency birth control, Plan B, and/or the "morning after" pill) and the abortion pill (also known as RU-486). As an attorney and/or provider, it is important to understand the differences between the two medications since each carries a different set of legal standards.

Emergency Contraception (Plan B, Morning After Pill)

In 1998, the Federal Food and Drug Administration (FDA) approved emergency contraception as an effective medication to prevent pregnancy in women who have had unprotected sex. Emergency contraception may work in one of five ways. First, the universally accepted method, is that emergency contraception can delay or inhibit ovulation and thus, prevent an egg from being fertilized by sperm. Four other methods discussed among providers include inhibiting tubal transport of the egg or sperm, creating chemical changes that essentially make sperm incapable of fertilizing an egg, inhibiting implantation of a fertilized egg, and/or stimulating an auto-immune response.[1] Emergency contraception is most effective if taken within 12 to 24 hours after unprotected sex, but must be taken within 5 days and comes in the form of two pills, which should be taken 12 hours apart.

Medical science defines pregnancy as the moment a fertilized egg implants itself in the uterus.[2] Knowing this, emergency contraception is not officially considered abortive in nature, and thus does not carry with it any of the legal ramifications associated with abortion. A woman, even a minor, should lawfully be able to get a prescription from her treating doctor for emergency contraception at any time. In Connecticut, a minor does not need parental consent for the disbursement of emergency contraception.[3] Please note that some pharmacies and/or hospitals may refuse to dispense emergency contraception, but in such cases they should provide alternative means of access to the patient.

Abortion Pill (RU-486)

In September 2000, the FDA approved the abortion pill as a non-invasive means to abort an unwanted pregnancy. The abortion pill, which is actually two different pills taken a few days apart, works by causing the uterus to dispel a fertilized egg. The FDA approved the abortion pill to terminate pregnancy for up to 49 days after the beginning of the woman's last menstrual cycle.[4] It is unlawful to dispense the abortion pill after the 49th day of gestation. The abortion pill is not available via pharmacies and although physician assistants can prescribe the abortion pill, its distribution must be supervised by a medical doctor.[5]

Due to its abortive nature, the provision of the abortion pill to minors creates confusion. Many states carry their own set of statutes/regulations with respect to persons under age having abortions. In Connecticut, minors can have an abortion without parental consent. The abortion pill is no different. Before an abortion is performed on a minor, however, Connecticut statute does mandate that the physician and/or counselor explain the minor's available choices and discuss the possibility of parental involvement. The same holds true with the use of the abortion pill. Please note: for the purposes of an abortion in Connecticut, a minor is a person under sixteen (16) years of age.[6]

Differences between emergency contraception (preventing pregnancy) and the abortion pill (aborting pregnancy) guide practitioners in lawfully dispensing these drugs to their patients.

The Connecticut legislature is presently considering a bill to require all licensed health care facilities to provide emergency contraception (the morning after pill) to victims of sexual assault upon request. The bill, Raised Bill No. 445, *An Act Concerning Emergency Health Care for Sexual Assault Victims,* may be found on the Connecticut General Assembly website at *www.cga.ct.gov/2006/TOB/S/2006SB-00445-R00-SB.htm.*

– *Gladys I. Nieves, JD, Senior Staff Attorney, Medical-Legal Partnership Project, Center for Children's Advocacy*

(Footnotes)

[1] *www.emergencybirthcontrol.org*

[2] The United States Food and Drug Administration, National Institute of Health and the American College of Obstetricians and Gynecologists use such a definition. *www.emergencybirthcontrol.org* http://ec.princton.edu/questions

[3] Adolescent Health Care: The Legal Rights of Teens, page 10, Center for Children's Advocacy, 2002. *www.kidscounsel.org/PublicationOrderForm.pdf*

[4] MSNBC.com "FDA Warns of Infection Risk with Abortion Pill," July 20, 2005

[5] *www.yaledailynews.com* "Blumenthal: Physician Assistants May Distribute Abortion Pill," February 16, 2001

[6] Adolescent Health Care: The Legal Rights of Teens, page 11, Center for Children's Advocacy, 2002

For questions or more information, please contact Gladys Nieves at the Center for Children's Advocacy Medical-Legal Partnership Project: 860-545-8581, or gnieves@ccmckids.org.

New DCF Policies in Effect

Protection for Undocumented Children and their Families

DCF Policy 31-8-13 was created to ensure that undocumented children receive protection and services from the Department. The policy, effective December 15, 2005, provides that all "services available to other Department clients shall also be available to undocumented persons." The policy emphasizes that such services include family preservation efforts to avoid family members being separated through incarceration due to immigration or deportation procedures. Significantly, the new policy provides that if DCF determines that adults or children who are DCF clients are undocumented, DCF will **not** report this information to the Department of Homeland Security Citizenship and Immigration Services. Moreover, DCF will work with the Department's Legal Division to help ensure that children obtain proper documentation and the DCF Social Worker will apply for a green card for the committed child. DCF will also, where appropriate, help adult clients obtain proper documentation as well.

Mandatory Birth to Three Assessment

DCF adopted a new policy, 34-14-1, effective September, 2005, mandating that every investigation of child abuse or neglect include a collateral contact with the child's health care provider to determine whether the child is in need of a developmental evaluation by the State Birth-to-Three program. The new policy emphasizes that it is DCF's responsibility to ensure that the child is medically assessed for the purposes of treatment planning.

Increased Subsidy Rates for Foster and Adoptive Families

Effective July 1, 2005, DCF increased rates for foster care, subsidized adoption and children with complex medical needs. Information about the new rates can be found on DCF's website at *www.state.ct.us/dcf/Policy/Bull2005-09.htm.*

– Sarah Healy Eagan, JD
Staff Attorney, Child Abuse Project,
Center for Children's Advocacy

New Connecticut State Plans and Reports Released on Juvenile Justice and Child Poverty

Juvenile Justice

"Plan for a Continuum of Community Based Services for Adolescent Females Involved in the Juvenile Court System," DCF Girls Services Steering Committee, Dec. 30, 2004 developed pursuant to Special Act 04-5.
www.ctjja.org/media/resources/resource_79.pdf

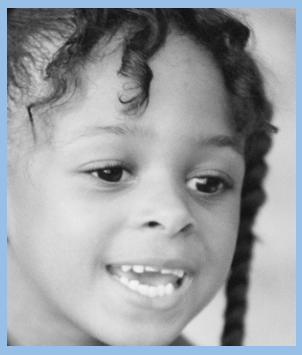
"Reform of DCF Juvenile Services: Helping Children and Families Close to Home," August 1, 2005 (DCF Plan submitted to Governor Rell regarding future of CJTS).
www.state.ct.us/dcf/CJTS ReformDCFJuvSrvcs_080105.pdf

"Not Just Child's Play: The Role of Behavioral Health Screenings and Assessments in Connecticut's Juvenile Justice System," released by Connecticut Center for Effective Practice, Fall, 2005.
www.chdi.org/files/summary_childs_play.pdf

"A System of Services for Girls in Connecticut," submitted by Marty Beyer, Ph.D. to Ct. Department of Children and Families, December 15, 2005.
www.kidscounsel.org/Beyer%20Report%20Final%202005%2012%2015.pdf

Child Poverty

"State of Connecticut Child Poverty Council 2006 Progress Report,"developed pursuant to spring 2004 enactment of PA 04-238, amended by PA 05-244, is the Council's first annual update.
www.opm.state.ct.us/pdpd1/cpc/CPCProgress2006.pdf



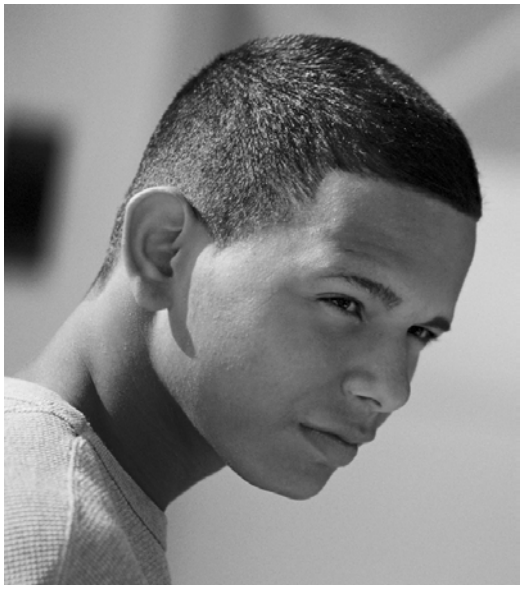
CCA Training Seminar Addresses Trauma of Emergency Placements

Psychological Impact, Trauma and Legal Issues relating to Emergency Placements

Center for Children's Advocacy's February 8, 2006 training seminar focused on psychological impact, trauma and legal issues relating to teens in emergency placements. Dr. Janet Williams, Connecticut Center for Effective Practice, educated participants on designing "trauma informed" treatment and systems to best address the needs of teens entering emergency placement. Peter Mendelson, PhD, Director Behavioral Health, Department of Children and Families (DCF) concurred with Dr. William's recommendations and announced DCF's plans to abolish emergency shelters and replace them with small home-like centers geared toward lessening the psychological trauma of out of home placement. Martha Stone, Executive Director, Center for Children's Advocacy, concluded the discussion by educating participants about the rights of teens in emergency placement.

Who Are the Children Entering Emergency Placement?

Dr. Mendelson reported that of teens entering shelter placement, approximately 67% come from their own home or a foster home, 6% from detention centers, 5% from psychiatric hospitals, and a small number from residential treatment centers. These teens are removed from their caregivers due to abuse or neglect, or are runaways. Twenty five percent have diagnosed psychiatric disorders, 50% have general emotional and behavioral problems, and nearly 100% have experienced trauma.



Current Shelter System Exacerbates Trauma

The current shelter system (87 available beds) evolved due to a lack of available emergency placements for teens. Dr. Mendelson acknowledged a need for those working in the system to understand that placing teens in the large institutions that are our current emergency shelters can exacerbate trauma and disconnect a teen from his/her local community.

Trauma-Informed Treatment

Dr. Williams discussed the severe trauma experienced by a majority of teens prior to entering emergency shelter placement. This trauma can affect development, cognitive processes, mood, affect regulation, psychiatric symptoms and interpersonal relationships. Dr. Williams stressed the importance of training staff and designing treatment plans that recognize the link between past traumatic experience and present mental health problems. Dr. Williams emphasized that, upon entering care, all teens must be screened for trauma, developmental progress, and the presence of mental illness. She noted that it is equally important to assess teens when they leave care so that appropriate follow-up treatment can be provided.

Stable, Safe and Trusting Environment

Dr. Williams noted that any placement for traumatized teens must be designed to allow them to feel a sense of stability, trust, and safety. She stated that it is essential for teens to receive appropriate treatment that helps them achieve emotional regularity and find meaning in past experiences, and provides assistance in forming a social network.

DCF Announces New Type of Shelter Placement

Dr. Mendelson stressed the need for a new way of thinking about emergency placements for teens. He announced that DCF will be eliminating all current shelters within the next six to eight months, and plans to develop small "home-like" centers connected to area DCF offices. The new placements will be as close to home and as small as possible. The length of stay in shelter care will vary from case to case, but before a child leaves care, an adequate assessment of needs must be completed to assure the most appropriate placement.

New settings will be built upon a clinical foundation based on assessing children's needs, and are designed to be gender specific, trauma-informed treatment centers. A key goal of the new centers will be to put appropriate supports in place before a child leaves shelter care to return home to family or a foster home. Dr. Mendelson noted that this new system can only work with corresponding resources available in the community.

Family Support Teams

In conjunction with DCF's new shelter system, Family Support Teams (FST), similar to community treatment teams in the adult system, will work with families in the home and community to provide support services. FSTs will be significantly more intensive than current in-home services offered, supporting teens' return home and lessening the chance that placement will disrupt.

(continued on following page)

Seminar Addresses Trauma of Emergency Placements

Legal Rights of Teens in Emergency Placement

Martha Stone reviewed three key legal rights of teens in emergency placement. Many teens, caretakers and attorneys do not know what legal rights children in shelter placement are entitled to:

Children in Shelter have the Right to Stay in their Home School

The Education for Homeless Children and Youths program, a provision of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §§11431-11435, Subtitle VII-B), addresses the rights of homeless children in shelters and temporary foster care, and assures these children the right to continue their studies at their most recent school. The school district is required to provide transportation. Staying in the same school can be critically important for teens with no other stability in their lives. These children may *choose* to transfer to a school close to the new placement, but are not required to do so. The State Department of Education maintains a list of phone numbers for every school's homeless coordinator; this list can be found at *www.state.ct.us/sde/deps/homeless/index.htm*.

Center for Children's Advocacy worked with DCF and the Department of Education to clarify the definition of homeless children and youth. The resulting Memorandum of Agreement defines homeless children to include children in shelters and temporary foster care placements. CCA offers assistance in any case where a school district resists complying with the provisions of McKinney-Vento.

Children in Shelter have the Right to a Reasonable Environment

Pursuant to CGS§17a-16, children in DCF facilities have the right to humane and dignified treatment. CCA recently published *I Will Speak Up For Myself*, a booklet on children's rights in foster care (copies available through CCA's website at *www.kidscounsel.org/PublicationOrderForm.pdf*). The Center is currently working on a new legal rights booklet for children in shelters and residential treatment centers.

Children in Shelter Placement Have the Right to be Involved in Discharge Planning

The DCF policy manual mandates weekly visits between the child and caseworker until placement is stabilized. Children have the right to attend Administrative Case Review meetings; children over age twelve must be invited. All children over age sixteen must be provided with an independent living plan. Preference must be given to placement with relatives and extended family, and a child placed in foster care must be in close proximity to home. Children have the right to a hearing before any transfer to a facility out of state.

– *Laoise King, JD*
for Center for Children's Advocacy

Truancy Prevention Project Recognizes Improved Attendance

On March 2, CCA's Truancy Court Prevention Project (TCPP) held a ceremony to recognize the improved attendance of its participants at Hartford Public High School. Parents, school staff, and members of the Project's Advisory Committee joined together to applaud the accomplishments of the TCPP participants – students who demonstrated a history of truancy while at Quirk Middle School but, in their first 3 months of high school averaged only 3 unexcused absences, compared to 11 for the first 3 months of their eighth grade year. These students managed to make the difficult transition to high school while decreasing their unexcused absences by 74%.

Many organizations partnered to make the students' improvement in attendance possible. For the second consecutive year, the TCPP has been fortunate to have Justice Richard Palmer volunteer his time to preside over weekly sessions that review each student's attendance and academic progress. Judge Douglas Levine also volunteers and participates in court sessions.

Equipped with individualized educational evaluations for each student, an attorney with the Center for Children's Advocacy has advocated for the students' educational rights. Educational evaluations are compiled by an educational consultant funded by the Tow Foundation through a grant written by the Capitol Region Education Council (CREC). As the Project discovered with last year's cohort, many of the Project's current students have avoided school in the past because of academic deficiencies.

Through legal advocacy, CCA has been able to address other factors, such as family poverty and guardianship, which impinge upon a student's attendance at school. Legal advocacy extends to systemic issues as well, such as implementation of tutoring services under the No Child Left Behind Act, that will improve the educational experience for all students.

Each participant receives intensive case management services provided by case managers from Catholic Charities, the Village for Children and Families or Hartford Public Schools. Case managers check in with students on a regular basis, serve as liaisons between the students, their families and the school, and provide support for the students if they experience difficulty during the school day. The case managers have referred students to mental health services when necessary, and linked participants with community resources, such as the 21st Century After School Program, Our Piece of the Pie, and Career Beginnings. A third of the TCPP students have participated in a weekly mentoring program with Trinity college students, a new position also funded by the Tow Foundation.

– *Emily Breon, JD, MSW*
Equal Justice Works Fellow,
Center for Children's Advocacy

CCA Introduces Important Legislation to Protect Children's Rights

RB30: An Act Concerning Mediation and Appeals in TPR Proceedings

Termination of Parental Rights (TPR) trials are financially and emotionally costly. Given the protracted and adversarial litigation process, many children who cannot be reunified with their parents spend lengthy periods of time—generally years—awaiting permanency. After a termination petition is filed in the juvenile court, a child can wait up to a year or more for a decision. If the termination decision is appealed, that same child waits an average of 1½ years for a final determination. This child has likely been out of his/her parents' home for several months, if not longer, before the initial termination petition is even filed. Children in foster care and other temporary settings simply cannot wait this long for a permanent home. For these children, each week that passes increases their sense of isolation and instability, wreaking havoc on their ability to develop and thrive.

Raised Bill 30 establishes a mediation program for all termination of parental rights cases. Participation in mediation would be voluntary, although only the parent or child would have the right to object to mediation. Decisions reached during mediation would still be subject to judicial review, and mediation would be facilitated by skilled individuals, trained in mediation procedures and child welfare law.

The National Council of Juvenile and Family Court Judges, after exhaustive study, specifically recommended the use of mediation in child protection cases on the grounds that mediation encourages accountability of parents and agencies, resolves conflict creatively, provides information to the parties, and preserves the dignity of family members.[1] Approximately fourteen states have programs in place similar to that proposed by RB30.

The Bill would create an expedited schedule for termination appeals and oblige the Appellate Court to give termination appeals priority over all other cases. Currently, approximately half of the states have statutes or court rules that prioritize termination appeals, expedite processing of transcripts and records and accelerate decision-making to provide finality for all parties.[2]

This legislation improves the TPR process by creating a system that efficiently grants children permanency and security without protracted, painful delay.

RB 5010: An Act Concerning Compensation for Attorneys and Training for Judges in Child Protection Proceedings

Judges in the juvenile system handle cases involving profound issues such as physical abuse, sexual abuse, neglect, removal from homes of origin, and difficult experiences in foster care. Training in relevant substantive and procedural areas of juvenile law will enable judges to adjudicate these cases in a knowledgeable, sensitive and efficient manner. There is currently no requirement that judges assigned to juvenile court have experience or special training in this area of the law. Yet, from the moment they take the bench, we expect them to make the extraordinarily difficult and unique decisions that require them to sort through complex issues to determine what is in the children's best interests.

Raised Bill 5010 establishes a program for training judges regarding a variety of issues related to family violence, child development, behavioral health, educational disabilities and cultural competency.[3] This training will help judges facilitate appropriate outcomes for children, and in finding placements that provide proper nurturing, correct therapeutic treatment and a positive learning environment.

Cultural competency training is particularly relevant considering the overrepresentation of minorities in the juvenile justice system in Connecticut. Minority youth constitute 77% of the detention population and are "clearly over-represented at each decision point" in the juvenile justice system.[4] Understanding cultural nuances will help judges understand the unique issues that affect minority children.

Ten states have passed laws mandating or providing incentives for judicial training in juvenile law. Raised Bill 5010 would ensure that children's rights and interests be understood and protected by well-trained, experienced judges.

This Bill also ensures that the newly created Commission on Child Protection, through the office of the Chief Child Protection Attorney, has adequate funds to fulfill its statutory obligations to address the fee structure and compensation of attorneys providing legal representation in juvenile court. Specifically, the Bill would mandate that court-appointed attorneys on child protection cases receive enhanced compensation ($50/hour).

(Footnotes)

[1] See *The Center for Children, Families and the Law at Hofstra University School of Law Newsletter,* Vol. II, Issue I (Winter 2006); See also *Mediation in Child Protection Case: An Evaluation Of The Washington, D.C. Family Court Child Protection Mediation Program*, Sophia Gatowski, PhD., et al. (April, 2005), found on the web at: *www.ncjfcj.org/images/stories/dept/ppcd/pdf/dc%20mediation%20evaluation*%20final.pdf

[2] See *Perspectives on Adoption*, Perspectives on Youth, Winter 2003 article, by Justice Evelyn Lundberg Stratton, Justice of the Supreme Court of Ohio.

[3] The Center supports this Bill with the provision that all training be provided by the Judicial Branch with any necessary assistance provided by the Child Protection Commission.

[4] Office of Policy and Management, (Spectrum Associates, "An Assessment of Minority Overrepresentation in Connecticut Juvenile Justice System" May 1, 1995.) Study was repeated in 2001 with similar findings

[5] 10 Okl. St. § 1211(A) (2005)

[6] Rev. Code Wash. (ARCW) § 2.56.030(17) (2005)

CCA Introduces Legislation to Protect Children's Rights

Abused and neglected children deserve lawyers who have the time, energy and initiative to give voice to their needs**.** Although every child in juvenile court has a lawyer, many of these children do not receive adequate or even minimal representation. Many do not even meet or talk to their lawyers—a reality that renders their right to legal representation meaningless.

Currently, juvenile court attorneys receive $350 per case, which compensates the attorney for only the first 30 hours of work ($11.66 per hour.) The fee structure encourages attorneys to minimize the time spent on any one case. As a result, many attorneys never contact or meet with their child clients. It is difficult to comprehend how frightened and alienated a child feels when he or she cannot return home and cannot rely on a lawyer to speak up for them.

This legislation would allow for recruitment of competent and qualified lawyers, the removal of those who fail to provide adequate representation, and would enable attorneys to keep caseloads at reasonable levels. We must ensure that the vulnerable children in DCF care can depend on competent and reliable counsel when they most need it.

– *Sarah Healy Eagan, JD, Staff Attorney, Child Abuse Project, Center for Children's Advocacy*

RB 370: An Act Reducing the Length of Stay in Emergency Placements for Children and Youth Under the Supervision of DCF

CCA introduced legislation that focuses on preventing overstays in emergency placements. Raised Bill 370 would establish enforceable limitations on the length of stay in emergency placements for youth who are under the care of the Department of Children and Families (DCF).

Currently, a large percentage of youth who are placed in emergency shelters are forced to remain there for a lengthy period of time, often greater than 45 days. These lengthy stays prolong impermanence for youth and delay their right to an appropriate, permanent place to live. Citing similar problems, states such as Maine, Maryland, and Wisconsin have already passed legislation to limit the amount of time that youth remain in emergency shelters.

If a youth remains in an emergency placement for more than thirty days, the new legislation requires a judicial hearing within fifteen days and a judicial hearing every fifteen days thereafter until the youth is appropriately placed. This legislation will also establish a committee to examine 1)reasons for emergency placement overstays, and, 2) therapeutic placement alternatives for adolescents. The committee will include the Commissioner of DCF, the Child Advocate, and representatives from non-profit child advocacy organizations, as well as other child care agencies. This committee will report its findings to the legislature by January, 2007.

The Select Committee on Children's public hearing of Raised Bill 370 resulted in joint favorable passage; the bill was referred by the Committee to Human Services, which also voted in favor; the Judiciary Committee will consider Raised Bill 370 later this month.

– *Emily Breon, JD, MSW*
Equal Justice Works Fellow,
Center for Children's Advocacy

RB 5700: An Act Concerning Justice for All Children

Connecticut has one of the most severe problems of disproportionate minority representation in the nation. While children and youth of color represent only 23% of persons under age 18 in the overall population, they represent almost 75% of the population in detention. State studies show that African-American youth and Latino youth are overrepresented at each stage of the juvenile justice process. They are more likely to be detained prior to a hearing, and more likely to be placed in a State correctional institution. Connecticut should establish race-neutral criteria to monitor and track decisions to reduce juvenile disproportionate minority representation.

Raised Bill 5700 would require the development and implementation of race-neutral criteria for decisions made at each stage in the juvenile justice system, based solely on the risk the child poses to the community. Criteria would be developed to evaluate detention admissions to assure race neutrality in decision making.

RB 5782: An Act Concerning the Age of a Child for Purposes of Jurisdiction in Delinquency Matters and Proceedings *(please see Raise the Age, p.1)*

For additional information

Additional information on proposed state legislation is available on the Connecticut Legislature website *www.cga.ct.gov* or on Center for Children's Advocacy's website at *www.kidscounsel.org/legislative_state_SigPending.htm*

DMR to take over Voluntary Services for Children with Diagnosis of Mental Retardation

Interagency Agreement Shifts Provision of Voluntary Services

The State Departments of Children and Families (DCF) and Mental Retardation (DMR) have agreed to shift the provision of "Voluntary Services" for children identified as "mentally retarded" (MR) under an agreement executed by the two departments in June 2005. Under the "Interagency Agreement" (copy available on homepage of CCA's website at *www.kidscounsel.org*) the two agencies agreed to "facilitate the coordination of services" between the two departments for children with a diagnosis of MR who apply for Voluntary Services through DCF, or who are in need of Protective Services. The gist of the agreement was to shift the responsibility for the provision of Voluntary Services and Protective Services from DCF to DMR as of July 1, 2005. The reality, however, was that neither DCF nor DMR began implementing this Interagency Agreement until as recently as the start of 2006.

What is Voluntary Services?

Voluntary Services is a voluntary program offered through DCF that provides casework, community referrals, and treatment services for children/youth who are not committed to the DCF and do not require protective service intervention, but may require any of the services offered, administered by, under contract with, or otherwise available to DCF due to emotional or behavioral difficulties. *See* DCF Policy Manual § 37-2. In order to be eligible, a child must possess, among other things, a behavioral or psychiatric disorder that is diagnosable under the most recent publication of the Diagnosis Statistical Manual of Mental Disorders (DSM IV). In addition, the child must have an emotional, behavioral or mental health disturbance resulting in the functional impairment of the child or youth which substantially interferes with, or limits, his/her functioning in family, school, or community activities. Access Voluntary Services through the DCF Hotline (800-842-2288) which then refers the case to a regional DCF office.

How does the Interagency Agreement change Voluntary Services for MR children/youth?

Under the Interagency Agreement, all applicants for Voluntary Services, whether providers or parents/guardians, should still access those services through the DCF Hotline. For children or youth who are identified as having MR, DCF will transmit the referral to DMR. DMR will review the application and make a decision within thirty days of receipt of the required information as to whether the child/youth is eligible for DMR services. Once a child with MR is determined eligible as a Voluntary Services recipient, DCF and DMR must convene a local team to jointly determine the appropriate services and supports necessary to maximize the well being of the child. DMR will then develop and implement a service plan for the child, assign a case manager to each child to assist in locating services for the child and the child's family.

What types of services are available under Voluntary Services for MR children?

Services available through Voluntary Services include, but are not limited to, behavioral specialists, increased family respite support, home-health services, recreation and out-of-home residential supports. If the child is in need of out-of-home placement, DMR will locate and effect the appropriate placement.

What will DCF's role be in the Voluntary Service process?

Under the Agreement, DCF will assist DMR in determining if a child needs behavioral health services, including access to Riverview Hospital, and will assist DMR in gaining access to behavioral health services.

What happens when a family is referred to DCF for protective services?

When a child is a DMR client, or eligible for DMR services, DCF will assume the responsibility for investigating and determining whether protective services are warranted. If the child is in need of protective services, DMR will assist the family in acquiring support, family training, respite, and other services determined necessary to maintain the child safely in the home. For children in need of placements, DCF and DMR will work jointly to develop emergency placements, respite care and Community Training Homes for children who are mutual clients.

For children with MR who are in DCF's care and custody, DMR will assist DCF in locating and providing appropriate services. When these children turn age sixteen, DCF will make referrals to DMR so that a two-year transition plan is developed.

What if DCF does not process a request for Voluntary Services for a child with MR?

Under no circumstances should families be informed that DCF will no longer be providing Voluntary Services without the proper transition instructions from their DCF worker. If families encounter difficulties in accessing Voluntary Services because the child has MR, parents, guardians, clinicians or advocates are urged to call the DCF-DMR liaison at DCF, Sarah Lourie, at (860) 560-5096 for assistance.

– *Jay Sicklick, JD*
Director, Medical-Legal Partnership Project,
Center for Children's Advocacy

Teen Privacy Rights and Drug Testing

Case Example: Can an ER Physician Share a Minor's Drug Tests with His Parent?

Johnny, a 15 year old boy, is complaining of severe stomach pains and enters into convulsions. His mother rushes him to the nearest emergency room. The emergency room doctor does a toxicology and a urinalysis, both which come back positive for cocaine. His mother insists on knowing why her son is so sick. Can the ER physician share Johnny's drug test results with his mom without Johnny's written consent?

This case exemplifies the real tension that exists between teen confidentiality rights and parental rights. The federal Public Health Services Act (PHSA) strongly encourages drug abusers, including teens, to seek treatment. Thus, the PHSA includes regulations that strictly protect drug and alcohol abuse treatment records. These federal regulations may run in conflict with many state statutes and/or regulations that actually allow parents and/or guardians access to a minor's drug records. Therefore, it is critical that a teen, and the health provider, understand the applicable state law versus the PHSA and recognize when each would apply to them.

In Connecticut, the law is silent with respect to a physician's duty to report to a parent the result of a drug test taken as part of a routine comprehensive examination.[1] Knowing this, physicians carry with them an ethical duty to promote the autonomy of minor patients and thus, should treat the confidentiality of a minor as they would any adult. However, according to the American Medical Association guidelines[2], confidentiality for immature minors may be ethically breached when necessary to enable the parent to make an informed decision about treatment and/or when such breach is necessary to avoid serious harm to the minor patient.

In the case of drug treatment (versus routine drug testing), however, Connecticut law falls in line with the PHSA, which specifically restricts access to drug treatment records without the patient's consent, even for a minor patient. At any rate, the PHSA allows for disclosure to a parent when there is a serious threat to the incompetent minor's life or physical well-being and it is determined that this threat can be diminished by disclosure to the parents. Please note the aforementioned does not compel disclosure, it simply exempts physicians from the federal requirement of obtaining written consent.

When must a physician abide by the PHSA versus state law? Federal law only applies to providers and/or facilities that are "federally assisted". In general, if a provider or facility is funded, in whole or in part, by the federal government, they are federally assisted and must abide by federal law. However, in the case of drug treatment records, PHSA also requires the provider and/or facility to hold itself out as providing drug abuse diagnosis, treatment, or referral.[3] If these requirements are met, the physician and/or facility must abide by both the PHSA, as well as state law. If not, only state law applies.

Overall, Connecticut is silent with respect to the disclosure of a minor's routine drug test results, however, drug tests obtained in the course of drug treatment are protected by both federal and state law and these results must be kept confidential, unless exceptions are otherwise allowed via applicable federal and/or state law.

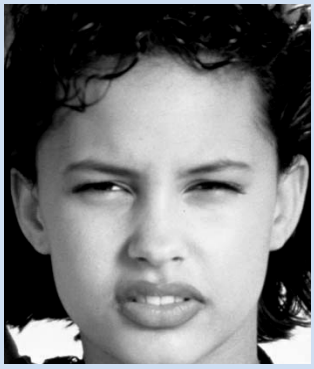
– *Gladys I. Nieves, JD, Senior Staff Attorney, Medical-Legal Partnership Project, Center for Children's Advocacy*

(Footnotes)

[1] Adolescent Health Care: The Legal Rights of Teens, Center for Children's Advocacy, Page 4, 2002

[2] American Medical Association, E-5.055 Confidential Care for Minors, 2005

[3] 42 CFR 2.11; 42 CFR 2.12 Youth Law News, Federal Privacy Protection for Substance Abuse Treatment Records: Protecting Adolescents, by Rebecca Gudeman, 2003



For questions or more information, please contact Gladys Nieves at the Center for Children's Advocacy Medical-Legal Partnership Project: 860-545-8581, or gnieves@ccmckids.org.

Recent Developments in Child Law: Important Case Summaries

Abuse and Neglect

Termination of Parental Rights

In re Claudia F.
93 Conn. App. 343 (2006)
Officially Released: January 24, 2006

The question of mootness once again confronted the Appellate Court in *Claudia F.* and the court answered in a resounding fashion by determining that a respondent mother's voluntary termination of her parental rights rendered an appeal of a neglect adjudication moot. The case, however, is interesting in that it features an interesting sidebar as to whether an underlying finding of neglect, followed by a voluntary termination of parental rights, results in damaging consequences to an individual who is thereby placed on the state's child abuse registry pursuant to Conn. Gen. Stat. § 17a-101k.

In October 2003, the Department of Children and Families (Department) filed neglect petitions on behalf of the respondent mother's three minor children. In February 2004, the trial court sustained an Order of Temporary Custody, and the respondent did not appeal that judgment. In May 2004, the court issued a decision adjudicating the children neglected and committed them to the Department. The respondent filed an appeal from that decision in July, but then consented to termination of her parental rights in November 2004.

The question for the appellate court was whether during the pendency of the appeal, her consent to termination of parental rights rendered her appeal moot. The respondent mother argued that despite the appearance that no controversy existed to appeal, the court should retain jurisdiction because of the collateral consequences that stem from the neglect adjudication. Her claim rested on the notion that as a result of the underlying finding of neglect, it was reasonably likely that she would be listed on the state's child abuse registry. She further contended that inclusion on the registry is stigmatizing, that her records could be obtained by a state agency, and that ultimately such information could enter the public domain. To this extent, the respondent relied heavily on the case of *Williams v. Ragalia*, 261 Conn. 219 (2002).

The court found this argument unpersuasive. First, the court opined that the judgment of neglect was not directed at the respondent as a parent, but at the condition of the children. Second, the respondent's concerns about dissemination of the Department's records would not be remedied by an appeal of the neglect finding, because the Department's records of the respondent's conduct (i.e. medical neglect, domestic violence, mental health issues) would still be in the records because the respondent did not appeal from the temporary custody order. In addition, the court distinguished this case from the recent Supreme Court case of *Allison G.*, 276 Conn. 146 (2005), which revolved around parents' admitting to a finding that a child had been "uncared for," but not that she had been subjected to sexual abuse because of their neglect.

The case may be found at the Judicial Branch website by going to *http://jud.ct.gov/external/supapp/Cases/AROap/AP93/93AP152.pdf* .

In re Shaiesha O.
93 Conn. App. 42 (2006)
January 3, 2006

Rare Reversal of TPR Historically speaking, Connecticut's appellate courts have demonstrated a strong predilection to affirm judgments terminating parental rights of parents in child protection proceedings. In a rare exception to form, the Appellate Court overturned a trial court's termination of parental rights in In re Shaiesha O. and directed a judgment in favor of a defendant father. Describing its task as "Herculean," the court found that because the Department of Children and Families (Department) had "failed, completely" in its responsibility to make reasonable efforts to reunify the defendant father with his daughter Shaiesha, it had no choice but to enter judgment in favor of the father.

The Department invoked a 96 hour hold and obtained an order of temporary custody from the Juvenile Court shortly after Shaeisha's birth in April 2002. In August 2002, the court adjudicated Shaiesha neglected and placed her in the custody of her mother in an inpatient substance abuse program. The Department sought and re-obtained custody in December 2002, and then, in a strange turn of events on December 10, 2002, Shaeisha's mother indicated that the man she originally identified as Shaeisha's father was not in fact her father, but that the respondent was her birth father. In March 2003, the Department notified the respondent, and paternity tests confirmed this assertion on June 10, 2003. Incredibly, on June 3, 2003, one week prior to learning the results of the paternity test, the Department filed a TPR petition against both the mother and the newly discovered father. The court terminated both parents' rights in September 2004 after a five day hearing.

The crux of the appeal focused on the nature and extent of the Department's reunification efforts. In an important finding, the court indicated that the trial court is required, in the adjudicatory phase of the TPR proceeding, to make its assessment regarding reunification on the basis of events "preceding the date on which the termination petition was filed." Citing Practice Book § 35a-7(a), the court found that the trial court did not make the requisite finding, and the record would not have supported such a finding if offered. Noting the Department's dilatory conduct after Shaeisha's mother revealed the respondent to be Shaeisha's actual father, the Court had little sympathy for the Department's position that the father had not fulfilled his obligations toward reunification.

In addition, the Department social worker testified that the first contact she had with the father regarding a possible placement plan for Shaiesha was after the filing of the TPR petition. The social worker indicated that the Department would not foster a relationship between the two until paternity was scientifically established. The appellate court, while somewhat sympathetic to this rationale, remained unconvinced because of the absence of effort to reunify the two parties. Ironically, the Department admitted that it facilitated visitation and reunification efforts on behalf of the individual first identified as Shaeisha's father prior to the paternity test that indicated he was not Shaeisha's father.

This case is notable in that, according to child protection experts, it is the first to expressly say that the question of whether DCF made reasonable efforts, in the context of a TPR case, must be determined as of the date the petition was filed. While that conclusion is implicit in earlier decisions, neither the state Supreme nor Appellate court has come out and said it until this case.

In re Patricia C.

93 Conn. App. 25 (2006)
January 3, 2006

One of the most difficult questions in the child protection realm is whether poverty - specifically the lack of quality, affordable housing (with appropriate furnishings), is a ground upon which the state can remove children and maintain commitment. In In re Patricia C., the Appellate Court indicated that the lack of appropriate housing conditions, coupled with an indication of a mother's inadequate attempt to seek reunification with her children, were sufficient grounds to maintain commitment and affirm a permanency plan that included long-term foster care. In addition, the court affirmed a trial court's denial of a motion to revoke commitment despite the questionable legal adequacy of the trial court's decision.

The state Department of Children and Families (Department) removed the respondent mother's two minor children via an order of temporary custody in March 2000. Subsequently, the juvenile court adjudicated the children to be neglected in August 2000 and committed the children to the custody of the Department. The commitment was extended on several occasions. In May 2004, the trial court held a hearing with respect to the Department's motion to maintain commitment - as well as the respondent's motion to revoke the commitment. At the time, the mother claimed she had met the criteria for reunification - specifically that she had obtained adequate housing and maintained weekly contact with the children by way of day-long Sunday visits. Per oral decision, the trial court determined that although the respondent had obtained an appropriate sized domicile (two bedroom apartment), the respondent failed to obtain sufficient furniture. Due to the lack of appropriate furniture, and because the respondent had not actively sought reunification with her children, the court concluded it would be in the children's best interest to remain with their foster family, and approved the permanency plan, thereby denying the mother's motion to revoke the commitment.

The appellate court reviewed the record and affirmed the trial court's position holding that the court did not abuse its discretion in finding that it was in the best interests of the children to remain in the custody of the foster parents. However, from a legal standpoint, the appellate court maintained that in order to revoke commitment, the respondent needed to first prove that no cause for commitment existed, and that the Department failed to meet its "best interest" burden. Here, the trial court failed to explain, either in its original oral decision or upon a motion for articulation, whether a cause for commitment continued to exist. Rather than remand the case back to the trial court for such an articulation, however, the appellate court moved directly to the second prong of the appellate review test, finding that, on the basis of the trial court's clear and unequivocal findings, it was in the best interest for the children to remain with their foster parents. In an interesting footnote, the court indicated that the trial court's duty is to "first identify the basis for its factual finding with respect to the issue of whether a cause for commitment exists." Then, the court indicates that **"[o]nly if it finds that the party seeking the revocation of the commitment has proven that no cause for commitment exists should the court then proceed …"** to the "best interest" prong. Yet, after implicitly chastising the trial court in this case for failing to include "all of the necessary factual findings …" - the appellate court ignores its own dicta and proceeds ahead to solely examine the "best interest" factor.

The court proceeds to affirm the trial court's decision based on two social studies introduced and social worker testimony adduced at the hearing. The critical evidence that carried the day appeared to be the instability surrounding the housing and house furnishings, combined with the mother's lack of employment and her unwillingness to seek counseling for depression.

– *Jay Sicklick, JD*
Director, Medical-Legal Partnership Project,
Center for Children's Advocacy

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