Agency Legislative Proposal - 2019 Session

Document Name: Issuance of Fair Hearing Decisions

(If submitting electronically, please label with date, agency, and title of proposal – 092611_SDE_TechRevisions)

State Agency: Department of Social Services
Liaison: Alvin Wilson **Phone:** 860-424-5105 **E-mail:** Alvin Wilson@ct.gov
Lead agency division requesting this proposal: OLCRAH
Agency Analyst/Drafter of Proposal:

Title of Proposal: An Act Concerning Deadlines Applicable to the Department of Social Services' Hearing Decisions
Statutory Reference: 17b-61
Proposal Summary: Connecticut General Statutes § 17b-61 provides that, when a person aggrieved by a decision of the Commissioner of Social Services requests a fair hearing pursuant to section 17b-60 of the General Statutes, the commissioner shall take "final definitive administrative action" on the case within ninety days. "Final definitive administrative action" means the issuance of a hearing decision. Cf Shakhnes v. Berlin, 689 F.3d 244, 257 (2d Cir. 2012) (examining similar language in the federal Medicaid regulation upon which section 17b-61 was based and noting that "'final administrative action' refers to the holding of fair hearings and to the issuance of fair hearing decisions, rather than to the implementation of relief ordered in those decisions"). In Handel v. Commissioner of Social Services, 183 Conn. App. 392 (2018), the Appellate Court, relying on the Supreme Court's earlier decision in Persico v. Maher, 191 Conn. 384 (1983), held that when the Department of Social Services (DSS) fails to issue a decision on a request for a fair hearing within 90 days of receipt of the request, the Appellant is entitled to the relief he or she requests. In reaching this conclusion, the Appellate Court acknowledged that section 17b-61 appeared to track a federal Medicaid regulation, 42 C.F.R. § 431.244, that requires state Medicaid agencies to take final administrative action within 90 days of a request for a hearing, and that this federal regulation had been amended since the time Persico was decided. Handel, 183 Conn. App. at 398-400. Among other things, this amendment clarified that the state agency must "ordinarily" take final administrative action within 90 days. Id. at 400. DSS argued that, even if the Supreme Court's earlier decision in Persico was on point, the intervening amendment to the underlying federal regulation had the effect of superseding the holding in Persico because "the inclusion of the word 'ordinarily' 'evinces an intent to require substantial

rather than strict compliance with [the] ninety day deadline.'" Id. While the Appellate Court acknowledged that this was "one way to interpret the word 'ordinarily,'" id., it nevertheless concluded that because section 17b-61 of the General Statutes had not been amended in a manner similar to 42 C.F.R. § 431.244, the holding in Persico was still valid and the 90-day deadline required strict compliance. The proposal seeks to ameliorate the exposure created by the Handel decision in two ways. First, it more closely tracks the language of the current version of 42 C.F.R. § 431.244 by explicitly stating that the 90-day deadline shall be followed "ordinarily," and by explicitly stating that delays caused by the aggrieved person extend the time for rendering the hearing decision. Second, it explicitly provides that, when DSS fails to issue a decision prior to the expiration of the 90-day deadline, the aggrieved person's remedy is to seek a writ of mandamus from the Superior Court to compel DSS to issue the decision. Given the absence of an explicit remedy in the current language of section 17b-61, this was the presumed remedy for an aggrieved party prior to the issuance of Handel. See, e.g., Turley v. Wilson-Coker, Superior Court, judicial district of New Britain, Docket No. CV 03 0520265 (June 7, 2005, Owens, J.T.R.) (39 Conn. L. Rptr. 484; 2005 WL 1524952 at *12) (holding that "§§ 17b-60 and 17b-61 . . . contain no penalty or other consequences for failure to meet the deadlines," meaning that these statutory provisions are merely directory, and citing many other Superior Court decisions that "held that these statutory deadlines do not impose an enforceable mandatory obligation on" DSS).

PROPOSAL BACKGROUND

◊ **Reason for Proposal**

The holding in Handel presents significant financial exposure for DSS and the State of Connecticut. While DSS hearing officers endeavor to always issue a decision within 90 days of a hearing request, this is not always possible due to increasingly limited resources and the complexity of particular cases. While it is impossible to quantify the amount of potential financial exposure that stems from the Handel decision, a few things should be noted. First, Handel itself dealt with the denial of long-term care Medicaid services based on DSS' determination that the Appellant owned assets in excess of the program limit. While only three months of long-term care coverage were in question in Handel, many long-term care Medicaid cases—which are among the most complex cases addressed by DSS and its hearing officers—involve the denial of coverage for long-term care services that may have been provided by a nursing home for far longer at rates in excess of $10,000 per month. Indeed, it is often the cases that have stretched on the longest that involve the most complex circumstances and are therefore most likely to take a hearing officer longer than 90 days to resolve.

◊ **Origin of Proposal** ☒ **New Proposal** ☐ **Resubmission**

If this is a resubmission, please share:

1. *What was the reason this proposal did not pass, or if applicable, was not included in the Administration's package?*
2. *Have there been negotiations/discussions during or after the previous legislative session to improve this proposal?*
3. *Who were the major stakeholders/advocates/legislators involved in the previous work on this legislation?*
4. *What was the last action taken during the past legislative session?*

Click here to enter text.

PROPOSAL IMPACT

◊ **AGENCIES AFFECTED** (*please list for each affected agency*)

Agency Name: Judicial Branch
Agency Contact (*name, title, phone*): Click here to enter text.
Date Contacted: Click here to enter text.

Approve of Proposal ☐ **YES** ☐ **NO** ☒ **Talks Ongoing**

Summary of Affected Agency's Comments
Click here to enter text.

Will there need to be further negotiation? ☒ **YES** ☐**NO**

◊ **FISCAL IMPACT** (*please include the proposal section that causes the fiscal impact and the anticipated impact*)

Municipal *(please include any municipal mandate that can be found within legislation)*
N/a

State

There are two areas in which this would impact state finances. 1) DSS would need to hire additional staff and 2) DSS would be liable to pay the full cost for ineligible recipients without the ability for a federal match when providing services to them.

We would need 3 processing techs, 2 hearing officers, 2 clerical support staff in order to have the appropriate staff to address the Handel Decisions. Which equates to a rough salary estimate cost of $365,651.00 annually and would only increase as employees advance through their payment steps in these job classes.

The costs for ineligible recipients could be high depending on which cases we see this occur in. A LTSS case with someone in a nursing home at $10,000/month or any other Medicaid coverage with expensive costs.
Federal Click here to enter text.
Additional notes on fiscal impact Click here to enter text.

◊ **POLICY and PROGRAMMATIC IMPACTS** *(Please specify the proposal section associated with the impact)*

Click here to enter text.

Insert fully drafted bill here

Section 1. Section 17b-61 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) **[**Not**]** The commissioner or the commissioner's designated hearing officer shall ordinarily render a final decision not later than **[**sixty**]** ninety days after **[**such hearing, or**]** the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, and shall render a final decision not later than three business days after the hearing if the hearing concerns a denial of or failure to provide emergency housing, **[**the commissioner or his designated hearing officer shall render a final**]** provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to a delay or fails to take a required action, or when there is an administrative or other emergency beyond the commissioner's control. Such decision shall be based upon all the evidence introduced before **[**him and applying**]** the commissioner or the commissioner's designated hearing officer and all pertinent provisions of law, regulations and departmental policy, and **[**such final decision**]** shall supersede the decision made without a hearing. **[**, provided final definitive administrative action shall be taken by the commissioner or his designee within ninety days after the request of such hearing pursuant to section 17b-60.**]** Notice of such final decision shall be given to the aggrieved person by mailing [him] the commissioner a

copy thereof within one business day of its rendition. Such decision after hearing shall be final except as provided in subsections **[**(b) and**]** (c) and (d) of this section.

(b) If the commissioner or the commissioner's designated hearing officer fails to render a final decision within the time limits set forth in subsection (a) of this section, the aggrieved person's remedy shall be to bring an action against the commissioner in superior court for the judicial district of New Britain for a writ of mandamus to compel the commissioner to render such decision and for such other relief as may be appropriate.

[(b)] (c) The applicant for such hearing, if aggrieved, may appeal therefrom in accordance with section 4-183. Appeals from decisions of said commissioner shall be privileged cases to be heard by the court as soon after the return day as shall be practicable.

[(c)**]** (d) The commissioner may, for good cause shown by an aggrieved person, extend the time for filing an appeal to Superior Court beyond the time limitations of section 4-183, as set forth below:

(1) Any aggrieved person who is authorized to appeal a decision of the commissioner, pursuant to subsection **[**(b)**]** (c) of this section, but who fails to serve or file a timely appeal to the Superior Court pursuant to section 4-183, may, as provided in this subsection, petition that the commissioner, for good cause shown, extend the time for filing any such appeal. Such a petition must be filed with the commissioner in writing and contain a complete and detailed explanation of the reasons that precluded the petitioner from serving or filing an appeal within the statutory time period. Such petition must also be accompanied by all available documentary evidence that supports or corroborates the reasons advanced for the extension request. In no event shall a petition for extension be considered or approved if filed later than ninety days after the rendition of the final decision. The decision as to whether to grant an extension shall be made consistent with the provisions of subdivision (2) of this subsection and shall be final and not subject to judicial review.

(2) In determining whether to grant a good cause extension, as provided for in this subsection, the commissioner, or his authorized designee, shall, without the necessity

of further hearing, review and, as necessary, verify the reasons advanced by the petition in justification of the extension request. A determination that good cause prevented the filing of a timely appeal shall be issued in writing and shall enable the petitioner to serve and file an appeal within the time provisions of section 4-183, from the date of the decision granting an extension. The circumstances that precluded the petitioner from filing a timely appeal, and which may be deemed good cause for purposes of granting an extension petition, include, but are not limited to: (A) Serious illness or incapacity of the petitioner which has been documented as materially affecting the conduct of personal affairs; (B) a death or serious illness in the petitioner's immediate family that has been documented as precluding the petitioner from perfecting a timely appeal; (C) incorrect or misleading information given to the petitioner by the agency, relating to the appeal time period, and shown to have been materially relied on by the petitioner as the basis for failure to file a timely appeal; (D) evidence that the petitioner did not receive notice of the agency decision; and (E) other unforeseen and unavoidable circumstances of an exceptional nature which prevented the filing of a timely appeal.

Agency Legislative Proposal - 2019 Session

Document Name: Contracting With Other States

State Agency: Department of Social Services
Liaison: Alvin Wilson **Phone:** 860-424-5105 **E-mail**: Alvin.Wilson @ct.gov
Lead agency division requesting this proposal: OLCRAH
Agency Analyst/Drafter of Proposal:

Title of Proposal: AA Authorizing the Department of Social Services to Contract with Other States
Statutory Reference: 17b-3
Proposal Summary: This proposal would provide the necessary legislative authority to allow the Department of Social Services (DSS) to contact with another state. As with all DSS contracts, these contracts would comply with the state's standard contract language and review process.

PROPOSAL BACKGROUND

- **Reason for Proposal**

To allow DSS the legislative authority to contract with other states.

Pursuant to the 1981 formal opinion of Honorable Henry E. Parker, State Treasurer, Attorney General, State of Connecticut (1981 WL 157392), state agencies are required to have explicit legislative authority to contract with other states.

- **Origin of Proposal** __x_ **New Proposal** ___ **Resubmission**

PROPOSAL IMPACT

- **Agencies Affected** (please list for each affected agency)

Agency Name: n/a Agency Contact (name, title, phone): Date Contacted: Approve of Proposal ___ YES ___NO __Talks Ongoing
Summary of Affected Agency's Comments
Will there need to be further negotiation? ___ YES ___NO

- **Fiscal Impact** (please include the proposal section that causes the fiscal impact and the anticipated impact)

Municipal (please include any municipal mandate that can be found within legislation)
State n/a
Federal
Additional notes on fiscal impact

- **Policy and Programmatic Impacts** (Please specify the proposal section associated with the impact)

Section 1. Section 17b-3 of the general statutes, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Commissioner of Social Services shall administer all law under the jurisdiction of the Department of Social Services. The commissioner shall have the power and duty to do the following: (1) Administer, coordinate and direct the operation of the department; (2) adopt and enforce such regulations, in accordance with chapter 54, as are necessary to implement the purposes of the department as established by statute; (3) establish rules for the internal operation and administration of the department; (4) establish and develop programs and administer services to achieve the purposes of the department as established by statute; (5) [contract] enter into a contract, including, but not limited to, a contract with another state, for facilities, services and programs to implement the purposes of the department as established by statute; (6) process applications and requests for services promptly; (7) with the approval of the Comptroller and in accordance with such procedures as may be specified by the Comptroller, make payments to providers of services for individuals who are eligible for benefits from the department as appropriate; (8) make no duplicate awards for items of assistance once granted, except for replacement of lost or stolen checks on which payment has been stopped; (9) promote economic self-sufficiency where appropriate in the department's programs, policies, practices and staff interactions with recipients; (10) act as advocate for the need of more comprehensive and coordinated programs for persons served by the department; (11) plan services and programs for persons served by the department; (12) coordinate outreach activities by public and private agencies assisting persons served by the department; (13) consult and cooperate with area and private planning agencies; (14) advise and inform municipal officials and officials of social service agencies about social service programs and collect and disseminate information pertaining thereto, including information about federal, state, municipal and private assistance programs and services; (15) encourage and facilitate effective communication and coordination among federal, state, municipal and private agencies; (16) inquire into the utilization of state and federal government resources which offer solutions to problems of the delivery of social services; (17) conduct, encourage and maintain research and studies relating to social services development; (18) prepare, review and encourage model comprehensive social service programs; (19) maintain an inventory of data and information and act as a clearing house and referral agency for information on state and federal programs and services; and (20) conduct, encourage and maintain research and studies and advise municipal officials and officials of social service agencies about forms of intergovernmental cooperation and coordination between public and private agencies designed to advance social service programs. The commissioner may require notice of the submission of all applications by

municipalities, any agency thereof, and social service agencies, for federal and state financial assistance to carry out social services. The commissioner shall establish state-wide and regional advisory councils.

Agency Legislative Proposal - 2019 Session

Document Name: Repeal of obsolete statutes related to SNAP employment and training

(If submitting electronically, please label with date, agency, and title of proposal – 092611_SDE_TechRevisions)

State Agency: Department of Social Services
Liaison: Alvin Wilson **Phone:** 860-424-5105 **E-mail:** Alvin.Wilson@ct.gov
Lead agency division requesting this proposal: Division of Eligibility Policy & Program Support - SNAP
Agency Analyst/Drafter of Proposal: Click here to enter text.

Title of Proposal: AAC Repeal of obsolete statutes related to SNAP employment and training
Statutory Reference: 17b-105f; 176-105g; 17b-105h; 17b-105i
Proposal Summary: 17b-105f; 176-105g; 17b-105h; 17b-105i

PROPOSAL BACKGROUND

◊ **Reason for Proposal**

Statutory clean-up. The Council ended and the Department would like to remove any ambiguity about the proper distribution of SNAP E&T funds.

◊ **Origin of Proposal** ☒ **New Proposal** ☐ **Resubmission**

Click here to enter text.

PROPOSAL IMPACT

◊ **AGENCIES AFFECTED** (*please list for each affected agency*)

Agency Name: Click here to enter text.
Agency Contact (*name, title, phone*): Click here to enter text.
Date Contacted: Click here to enter text.

Approve of Proposal ☐ **YES** ☐ **NO** ☐ **Talks Ongoing**

Summary of Affected Agency's Comments
Click here to enter text.

Will there need to be further negotiation? ☐ **YES** ☐**NO**

◊ **FISCAL IMPACT** (*please include the proposal section that causes the fiscal impact and the anticipated impact*)

Municipal *(please include any municipal mandate that can be found within legislation)*
N?A

State
None

Federal
None

Additional notes on fiscal impact
Click here to enter text.

◊ **POLICY and PROGRAMMATIC IMPACTS** *(Please specify the proposal section associated with the impact)*

Removes language that could cause confusion among the reader of the existing statutes. The cross-referenced Child Poverty and Prevention Council was sunsetted by the terms of it's creating statute (4-67x of the Connecticut General Statutes). The council's mandate is no longer applicable and the provisions related to SNAP employment and training were fully contingent on its work. The language identified to be repealed is no longer applicable to the distribution of SNAP employment and training funding.

Insert fully drafted bill here

Section 1. Section 17b-105f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Department of Social Services shall administer a supplemental nutrition assistance employment and training program, authorized under the federal Food and Nutrition Act of 2008, as amended from time to time, to provide employment and training activities, support services and other programs and services for recipients of the supplemental nutrition assistance program. The program shall provide for the receipt of federal matching funds to the state from the United States Department of Agriculture for funds expended on behalf of supplemental nutrition assistance recipients by state agencies, local governments, nonprofit entities, institutions of higher education and other eligible supplemental nutrition assistance employment and training providers for employment and training activities that qualify for such matching funds under federal law and regulations. The department shall seek to maximize the use of the federal matching funds provision under the program to the fullest extent permitted by federal law.

(b) Federal grants received under the program shall be used in accordance with federal law and regulations to fund supplemental nutrition assistance employment and training activities.

(c) The department shall select providers whose employment and training activities qualify for reimbursement under federal law and regulations to participate in the federal matching funds provision of the supplemental nutrition assistance employment and training program. Providers shall be selected in a form and manner prescribed by the Commissioner of Social Services. [In selecting providers, the department shall give priority to providers who are members of a supplemental nutrition assistance employment and training community collaborative and whose strategies are aligned with the recommendations of the Child Poverty and Prevention Council and its plan to reduce child poverty developed pursuant to section 4-67x.

(d) The department shall distribute to providers pursuant to subsection (c) of this section federal matching funds in accordance with section 17b-105h. Such funds shall be used for poverty reduction strategies.]

Section 2. Section 17b-105h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

[(a)] For the fiscal year ending June 30, 2009, the Department of Social Services may use such funds from the federal matching funds received by the state pursuant to section 17b-105f as are needed for operating expenses and to employ one staff position for purposes directly related to the administration of the matching funds provision for the supplemental nutrition assistance employment and training program, and for any fiscal year thereafter may use such funds as are necessary to operate and administer said program.

[(b) The remaining federal matching funds received by the state pursuant to section 17b-105f shall be used for poverty reduction strategies and distributed in the following manner: Seventy-five per cent of such remaining funds shall be provided to supplemental nutrition assistance employment and training providers whose expenditures generated the federal matching funds on a pro-rata basis, pursuant to section 17b-105f; and twenty-five per cent of such remaining funds shall be provided to supplemental nutrition assistance employment and training community collaboratives selected pursuant to section 17b-105g for implementation of poverty reduction strategies.

(c) The provisions of this section shall not apply to any regional community-technical college that participated in the food stamp employment and training program pursuant to a memorandum of agreement entered into between the college and the Department of Social Services prior to October 1, 2008, during the term of such agreement. Such colleges shall retain the amount of federal matching funds provided for in the memorandum of agreement for the term of such agreement. Following the expiration of such agreement, the terms of this section shall apply.]

Section 3. Sections 17b-105g and 17b-105i of the general statutes are repealed. (*Effective from passage*)

Agency Legislative Proposal - 2019 Session

Document Name: 020118_DSS_PaternityDeterminations

(If submitting an electronically, please label with date, agency, and title of proposal – 092611_SDE_TechRevisions)

State Agency: **Department of Social Services**

Liaison: Alvin Wilson
E-mail: Alvin.Wilson@ct.gov
Phone: 860-424-5105

Lead agency division requesting this proposal: Office of Child Support Services

Agency Analyst/Drafter of Proposal: Graham Shaffer, Legal Unit

Title of Proposal: An Act Concerning Paternity Determinations

Statutory Reference: Connecticut General Statutes §§ 46b-171, 46b-172, 46b-172a

Proposal Summary

This proposal clarifies how a court or family support magistrate should evaluate a motion to open and set aside a judgment or acknowledgement of paternity. The amendments made by the proposal codify the analysis already established by a number of Superior Court decisions. The proposal ensures that the best interest of the child is taken into consideration prior to granting such a motion.

Background

Chapter 815y of the General Statutes includes provisions for establishing the paternity of a child born out of wedlock. There are three sections of the statutes that govern the authority of the Superior Court, family support magistrate and Probate Court when reviewing a motion to overturn an acknowledgement of paternity.

Section 46b-160 to 46b-171, inclusive, set forth procedures to be used by the Superior Court or family support magistrate when the mother of the child seeks a judgment of paternity from the court.

Section 46b-172 authorizes the use of a written acknowledgment of paternity that may be used by the mother and putative father to establish the child's paternity, and provides that, when executed, the acknowledgement has the same force and effect as a judgment of the Superior Court.

Section 46b-172a sets forth procedures to be used by the Probate Court when the putative father (or, upon his death, any party deemed by the Probate Court to have a sufficient interest in the putative father's paternity) wishes to obtain a judgment of paternity in his favor.

Once paternity is established by one of these methods, these statutes provide little guidance on how a court or family support magistrate should handle a challenge to the previous acknowledgment or judgment of paternity. Where an acknowledgment executed pursuant to section 46b-172 is the basis for paternity, subsection (a)(2) of that statute allows for a sixty-day rescission period, and provides that, after this period expires, the acknowledgment of paternity may only be challenged "on the basis of

fraud, duress or material mistake of fact which may include evidence that [the man who executed the acknowledgment] is not the father, with the burden of proof upon the challenger."

Although the statute does not prescribe an analysis that also takes into consideration the best interests of the child, courts and family support magistrates reviewing challenges to acknowledgments of paternity brought outside the rescission period have nevertheless taken the child's interests into consideration, and have developed a number of factors to be weighed when assessing the child's interest. *See, e.g., Colonghi v. Arcarese*, Superior Court, judicial district of Middlesex at Middletown, Docket No. FA-13-4016846 (January 10, 2014, *Quinn, J.T.R.*) (2014 WL 341888).

Where a judgment establishing paternity was entered by a court or family support magistrate, sections 46b-160 to 46b-171, inclusive, and 46b-172a do not address how such court or magistrate should review a motion to open the judgment and set it aside, though the statutes do contemplate that such a judgment may be set aside. *See* Conn. Gen. Stat. § 46b-171(b) (requiring the Department of Social Services to refund any child support paid to the state by a man previously adjudged father when the judgment of paternity is opened and such man is determined not to be the child's father). In the absence of clarity on this point, courts have ruled that the provisions of General Statutes § 52-212a and Practice Book § 17-4 concerning the opening of civil judgments apply, meaning that a paternity judgment may be opened within four months of the entrance of the judgment, and only upon a showing of fraud, duress, or material mistake of fact after this four-month period. *See, e.g., State v. Dansby*, Superior Court, judicial district of Waterbury, Docket No. FA-89-92582 (June 24, 2005, *Wihbey, F.S.M.*) (29 Conn. L. Rptr. 768).

This legislative proposal codifies the rules already followed by many Connecticut courts and family support magistrates when a judgment or acknowledgment of paternity is challenged outside the window for doing so (e.g., four months on a motion to open or set aside a judgment of paternity, and sixty days on a challenge to an acknowledgment of paternity). It establishes a two-part test in all such cases. First, the court or family support magistrate must determine whether the judgment or acknowledgment was due to fraud, duress, or a material mistake of fact. If the court or magistrate finds fraud, duress or a material mistake of fact occurred, it next must determine that setting aside the previous judgment or acknowledgment would be in the best interest of the child, after considering a number of factors.

In addition, the legislative proposal codifies a jurisdictional rule established by the Appellate Court in *Cardona v. Negron*, 53 Conn. App. 152, 727 A.2d 1150 (1999), which held that, absent a showing of fraud, duress, or material mistake of fact, courts and family support magistrates have no authority to order genetic testing in a case where an acknowledgment or judgment of paternity has become final.

<u>History of proposal</u>

This proposal was submitted to OPM during the 2018 legislative session, but was not formally presented to the General Assembly because the family support magistrates did not support it at that time. The family support magistrates' lack of support was based on their belief that the proposal was unnecessary. Central to this belief was their assumption that the family support magistrates and judges of the Superior Court have inherent authority to open a judgment or acknowledgment of paternity if doing so is in the best interest of the child. At that time, a case presenting the question of whether this inherent authority exists was pending before the Appellate Court. The family support magistrates' indicated they believed the Department's proposal was premature because, if the Appellate Court upheld the lower court's ruling that such inherent authority does exist, the proposal would be unnecessary.

However, on May 15, 2018, the Appellate Court overturned the lower court's ruling in the case in question. *See Asia A.M. v. Geoffrey M., Jr.,* 182 Conn. App. 22, 188 A.3d 762, 764 (2018). In that case, which dealt with an attempt to open and set aside an acknowledgment of paternity executed pursuant to section 46b-172, the Appellate Court held that "[b]eyond the sixty day rescission period, and absent a finding of fraud, duress, or material mistake of fact, [a] magistrate [does] not have the authority to grant [a] motion to open the judgment" of paternity. *Id.* at 38.

Given the Appellate Court's ruling, the Department believes it is now even more important to codify the best-interest-of-the-child standard in the statutes governing the establishment of paternity for children born out of wedlock.

Please attach a copy of fully drafted bill (required for review)

PROPOSAL BACKGROUND

- **Reason for Proposal**

Please consider the following, if applicable:

1. *Have there been changes in federal/state/local laws and regulations that make this legislation necessary?*
2. *Has this proposal or something similar been implemented in other states? If yes, what is the outcome(s)?*
3. *Have certain constituencies called for this action?*
4. *What would happen if this was not enacted in law this session?*

- **Origin of Proposal** ___ **New Proposal** __X_ **Resubmission**

We tried to raise this proposal last session, but the family support magistrates refused to support it at that time and it therefore died at OPM. I added a section to the proposal discussing this history. The crux of it is that the magistrates presumed they had inherent authority to open these judgments when doing so is in the best interest of the child, and a Superior Court decision to this effect was then pending before the Appellate Court. The magistrates believed that the lower court decision would be upheld, and that the Department's proposal would therefore be unnecessary. However, in a 3-0 decision, the Appellate Court ruled in the opposite way, which we believe makes the proposal more important than ever.

PROPOSAL IMPACT

- **Agencies Affected** (please list for each affected agency)

Agency Name: Judicial Branch
Agency Contact (name, title, phone): Doreen DelBianco
Date Contacted: 1/24/18

Approve of Proposal ___ YES ___NO _X__Talks Ongoing

Agency Name: Probate Court
Agency Contact (name, title, phone): Vin Russo
Date Contacted: 1/24/18

Approve of Proposal ___ YES ___NO _X__Talks Ongoing

Summary of Affected Agency's Comments

Will there need to be further negotiation? ___ YES ___NO

- **Fiscal Impact** (please include the proposal section that causes the fiscal impact and the anticipated impact)

Municipal (please include any municipal mandate that can be found within legislation)

State

Federal

Additional notes on fiscal impact

- **Policy and Programmatic Impacts** (Please specify the proposal section associated with the impact)

We do not anticipate any serious impacts since this proposal merely codifies existing law created by the Connecticut Superior Court and family support magistrates.

Insert fully drafted bill here

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (b) of section 46b-171 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) Except as provided in subdivisions (2) and (3) of this subsection, a judgment of paternity entered by the Superior Court or family support magistrate pursuant to this chapter, as amended by this act, may not be opened or set aside unless a motion to open or set aside is filed not later than four months after the date on which it was rendered, and only upon a showing of reasonable cause, or that a good defense to the petition for a judgment of paternity existed in whole or in part at the time judgment was rendered, and that the person seeking to open or set aside said judgment was prevented by mistake, accident or other reasonable cause from making the defense. A court or family support magistrate may not order genetic testing to determine paternity unless and until such court or magistrate determines that the person seeking to open or set aside the judgment of paternity pursuant to this subdivision has made such a showing.

(2) Notwithstanding subdivision (1) of this subsection, the Superior Court or family support magistrate may consider a motion to open or set aside a judgment of paternity filed more than four months after such judgment was rendered if such court or magistrate determines that the judgment was rendered due to fraud, duress or material mistake of fact, with the burden of proof on the person seeking to open or set aside such judgment. A court or family support magistrate may not order genetic testing to determine paternity unless and until such court or magistrate determines that the person seeking to open or set aside the judgment of paternity under this subdivision has met such burden.

(3) If the court or family support magistrate, as the case may be, determines that the person seeking to open or set aside a judgment of paternity under subdivision (2) of this subsection has met his or her burden of demonstrating fraud, duress or material mistake of fact, such court or magistrate shall set aside said judgment only upon determining that doing so is in the best interest of the child, after considering the following factors:

(i) Any genetic information available to the court concerning paternity;

(ii) The past relationship between the child and (I) the man previously adjudged father of the child and (II) such man's family;

(iii) The child's future interests in knowing the identity of his or her biological father;

(iv) The child's potential emotional and financial support from his or her biological father;

(v) Any potential harm the child may suffer by disturbing the judgment of paternity, including loss of a parental relationship and loss of financial support;

(vi) Any additional information the court deems relevant to its determination of the best interest of the child.

(4) During the pendency of any motion to open or set aside a judgment of paternity filed pursuant to this subsection, any responsibilities arising from such earlier judgment shall continue except for good cause shown.

(5) Whenever, pursuant to this subsection, the Superior Court or family support magistrate [reopens] opens a judgment of paternity [entered pursuant to this section] in which a person was found to be the father of a child who is or has been supported by the state and the court or family support magistrate finds that the person adjudicated the father is not the father of the child, the Department of Social Services shall refund to such person any money paid to the state by such person during the period such child was supported by the state."

Sec. 2. Subsection (a) of section 46b-172 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

"(a) (1) In lieu of or in conclusion of proceedings under section 46b-160, a written acknowledgment of paternity executed and sworn to by the putative father of the child when accompanied by (A) an attested waiver of the right to a blood test, the right to a trial and the right to an attorney, (B) a written affirmation of paternity executed and sworn to by the mother of the child, and (C) if the person subject to the

acknowledgment of paternity is an adult eighteen years of age or older, a notarized affidavit affirming consent to the voluntary acknowledgment of paternity, shall have the same force and effect as a judgment of the Superior Court. It shall be considered a legal finding of paternity without requiring or permitting judicial ratification, and shall be binding on the person executing the same whether such person is an adult or a minor, subject to subdivision (2) of this subsection. Such acknowledgment shall not be binding unless, prior to the signing of any affirmation or acknowledgment of paternity, the mother and the putative father are given oral and written notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing such affirmation or acknowledgment. The notice to the mother shall include, but shall not be limited to, notice that the affirmation of paternity may result in rights of custody and visitation, as well as a duty of support, in the person named as father. The notice to the putative father shall include, but not be limited to, notice that such father has the right to contest paternity, including the right to appointment of counsel, a genetic test to determine paternity and a trial by the Superior Court or a family support magistrate and that acknowledgment of paternity will make such father liable for the financial support of the child until the child's eighteenth birthday. In addition, the notice shall inform the mother and the father that DNA testing may be able to establish paternity with a high degree of accuracy and may, under certain circumstances, be available at state expense. The notices shall also explain the right to rescind the acknowledgment, as set forth in subdivision (2) of this subsection, including the address where such notice of rescission should be sent, and shall explain that the acknowledgment cannot be challenged after sixty days, except in court upon a showing of fraud, duress or material mistake of fact.

(2) The mother and the acknowledged father shall have the right to rescind such affirmation or acknowledgment in writing within the earlier of (A) sixty days, or (B) the date of an agreement to support such child approved in accordance with subsection (b) of this section or an order of support for such child entered in a proceeding under subsection (c) of this section.

(3) (A) An acknowledgment executed in accordance with subdivision (1) of this subsection may be challenged in court or before a family support magistrate after the rescission period only on the basis of fraud, duress or material mistake of fact which may include evidence that he is not the father, with the burden of proof upon the challenger. A court or family support magistrate may not order genetic testing to determine paternity unless and until the court or magistrate, as the case may be, determines that the challenger has met such burden.

(B) If the court or family support magistrate, as the case may be, determines that the challenger has met his or her burden under subparagraph (A) of this subdivision, the acknowledgment of paternity shall be set aside only if such court or magistrate

determines that doing so is in the best interest of the child, after considering the following factors:

(i) Any genetic information available to the court concerning paternity;

(ii) The past relationship between the child and (I) the man who executed an acknowledgment of paternity and (II) such man's family;

(iii) The child's future interests in knowing the identity of his or her biological father;

(iv) The child's potential emotional and financial support from his or her biological father;

(v) Any potential harm the child may suffer by disturbing the acknowledgment of paternity, including loss of a parental relationship and loss of financial support;

(vi) Any additional information the court deems relevant to its determination of the best interest of the child.

(C) During the pendency of any **[**such**]** challenge to a previous acknowledgment of paternity, any responsibilities arising from such acknowledgment shall continue except for good cause shown.

[(3)**]** (4) All written notices, waivers, affirmations and acknowledgments required under subdivision (1) of this subsection, and rescissions authorized under subdivision (2) of this subsection, shall be on forms prescribed by the Department of Public Health, provided such acknowledgment form includes the minimum requirements specified by the Secretary of the United States Department of Health and Human Services. All acknowledgments and rescissions executed in accordance with this subsection shall be filed in the paternity registry established and maintained by the Department of Public Health under section 19a-42a.

[(4)**]** (5) An acknowledgment of paternity signed in any other state according to its procedures shall be given full faith and credit by this state."

Sec. 3. Section 46b-172a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

"(a) Any person claiming to be the father of a child born out of wedlock may file a claim for paternity with the Probate Court for the district in which either the mother or the child resides, on forms provided by such court. The claim may be filed at any time during the life of the child, whether before, on or after the date the child reaches the age of eighteen, or after the death of the child, but not later than sixty days after the date of

notice under section 45a-716. The claim shall contain the claimant's name and address, the name and last-known address of the mother and the month and year of the birth or expected birth of the child. Not later than five days after the filing of a claim for paternity, the court shall cause a certified copy of such claim to be served upon the mother or prospective mother of such child by personal service or service at her usual place of abode, and to the Attorney General by first class mail. The Attorney General may file an appearance and shall be and remain a party to the action if the child is receiving or has received aid or care from the state, or if the child is receiving child support enforcement services, as defined in subdivision (2) of subsection (b) of section 46b-231. The claim for paternity shall be admissible in any action for paternity under section 46b-160, and shall estop the claimant from denying his paternity of such child and shall contain language that he acknowledges liability for contribution to the support and education of the child after the child's birth and for contribution to the pregnancy-related medical expenses of the mother.

(b) If a claim for paternity is filed by the father of any minor child born out of wedlock, the Probate Court shall schedule a hearing on such claim, send notice of the hearing to all parties involved and proceed accordingly.

(c) The child shall be made a party to the action and shall be represented by a guardian ad litem appointed by the court in accordance with section 45a-708. Payment shall be made in accordance with such section from funds appropriated to the Judicial Department, except that, if funds have not been included in the budget of the Judicial Department for such purposes, such payment shall be made from the Probate Court Administration Fund.

(d) In the event that the mother or the claimant father is a minor, the court shall appoint a guardian ad litem to represent him or her in accordance with the provisions of section 45a-708. Payment shall be made in accordance with said section from funds appropriated to the Judicial Department, except that, if funds have not been included in the budget of the Judicial Department for such purposes, such payment shall be made from the Probate Court Administration Fund.

(e) By filing a claim under this section, the putative father submits to the jurisdiction of the Probate Court.

(f) Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, as amended by this act, his rights and responsibilities shall be equivalent to those of the mother, including those rights defined under section 45a-606. Thereafter, disputes involving custody, visitation or support shall be transferred to the Superior Court under chapter 815j, except that the Probate Court may enter a temporary order for custody, visitation or support until an order is entered by the Superior Court.

(g) Failing perfection of parental rights as prescribed by this section, any person claiming to be the father of a child born out of wedlock (1) who has not been adjudicated the father of such child by a court of competent jurisdiction, or (2) who has not acknowledged in writing that he is the father of such child, or (3) who has not contributed regularly to the support of such child, or (4) whose name does not appear on the birth certificate, shall cease to be a legal party in interest in any proceeding concerning the custody or welfare of the child, including, but not limited to, guardianship and adoption, unless he has shown a reasonable degree of interest, concern or responsibility for the child's welfare.

(h) Notwithstanding the provisions of this section, after the death of the father of a child born out of wedlock, a party deemed by the court to have a sufficient interest may file a claim for paternity on behalf of such father with the Probate Court for the district in which either the putative father resided or the party filing the claim resides. If a claim for paternity is filed pursuant to this subsection, the Probate Court shall schedule a hearing on such claim, send notice of the hearing to all parties involved and proceed accordingly.

(i) (1) Except as provided in subdivisions (2) and (3) of this subsection, a judgment of paternity entered under this section may not be opened or set aside unless a motion to open or set aside is filed not later than four months after the date on which it was rendered, and only upon a showing of reasonable cause, or that a good defense to the claim for a judgment of paternity existed in whole or in part at the time judgment was rendered, and that the person seeking to open or set aside said judgment was prevented by mistake, accident or other reasonable cause from making the defense. The probate court may not order genetic testing to determine paternity unless and until the court determines that the person seeking to open or set aside the judgment of paternity pursuant to this subdivision has made such a showing.

(2) Notwithstanding subdivision (1) of this subsection, the probate court that entered a judgment of paternity may consider a motion to open or set aside such judgment filed more than four months after such judgment was rendered if such court determines that the judgment was rendered due to fraud, duress or material mistake of fact, with the burden of proof on the person seeking to open or set aside such judgment. Such court may not order genetic testing to determine paternity unless and until the court determines that the person seeking to open or set aside the judgment of paternity under this subdivision has met such burden.

(3) If such court determines that the person seeking to open or set aside a judgment of paternity under subdivision (2) of this subsection has met his or her burden of demonstrating fraud, duress or material mistake of fact, such court shall set aside said

judgment only upon determining that doing so is in the best interest of the child, after considering the following factors:

(i) Any genetic information available to the court concerning paternity;

(ii) The past relationship between the child and (I) the man previously adjudged father of the child and (II) such man's family;

(iii) The child's future interests in knowing the identity of his or her biological father;

(iv) The child's potential emotional and financial support from his or her biological father;

(v) Any potential harm the child may suffer by disturbing the judgment of paternity, including loss of a parental relationship and loss of financial support;

(vi) Any additional information such court deems relevant to its determination of the best interest of the child.

(3) A probate court may not order genetic testing to determine paternity unless and until the court opens the previous judgment of paternity under subdivision (1) or (2) of this subsection.

(4) During the pendency of any motion to open or set aside a judgment of paternity filed pursuant to this subsection, any responsibilities arising from such earlier judgment shall continue except for good cause shown."