



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

Testimony of
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COMMITTEE ON CHILDREN
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Proposed House Bill 5658
AN ACT CONCERNING EDUCATIONAL SURROGATES, THE JUVENILE JUSTICE
SYSTEM AND CHILDREN REQUIRING SPECIAL EDUCATION

Proposed Senate Bill 842
AN ACT CONCERNING FOSTER CHILDREN AND THE DESIGNATION OF SURROGATE
PARENTS

The Office of Chief Public Defender is opposed to these bills as currently drafted. **Proposed House Bill 5658, An Act Concerning Educational Surrogates, the Juvenile Justice System and Children Requiring Special Education** would require that an educational, surrogate be provided to every child in the juvenile justice system who has special education needs. **Proposed Senate Bill 842, An Act Concerning Foster Children and the Designation of Surrogate Parents** would provide an educational surrogate to children in facilities run by the Department of Children and Families and the Judicial Branch, Court Support Services Division, including children at the Connecticut Juvenile Training School, the girls Pueblo Unit at Solnit and the juvenile detention facilities. While it would be good policy to provide more educational advocacy and support to children involved in the juvenile justice system, the Office of Chief Public Defender believes that both proposals are overly broad and unnecessarily interfere with a parent's right to make decisions on behalf of their child.

PSB 842 and PHB 5658, while well intentioned, interfere with a fit parent's constitutional right to parent their children and their federally recognized right to make educational decisions for their children. The United States Supreme Court in Santosky v. Kramer, 455 U.S. 745 (1982) and the Connecticut Supreme Court in Roth v. Weston, 259 Conn. 202(2002) found that parents have a constitutionally based liberty interest in family integrity and the right to parent their children as they see fit. Parents in juvenile delinquency cases are not and should not be presumed to be unable to act in the best interest of their children. Parents of children in the juvenile justice system should not be presumed to be unable to make educational decisions for their children.

The federal Family Educational Rights and Privacy Act (FERPA) *20 U.S.C. Sec. 1232g* grants educational rights and decision making to the parent or guardian of a person under the age of 18. The parent is responsible for making educational decisions for their child. Current law requires the State Department of Education to assign an educational surrogate to children with special education needs who become wards of the Department of Children and Families because of abandonment or an allegation of abuse or neglect. The surrogate assumes the rights of the parent because the parent is presumed, by the action of the juvenile court in a child protection case, to not be capable of acting in the best interest of their child. Educational surrogates are appropriate for children who are committed to DCF after the parent has been found to have abused or neglected the child. It is not appropriate to require educational surrogates for children who enter the juvenile justice system, where the parent is presumed to be fit.

PHB 5658 requires that an educational surrogate be appointed for every child involved in the juvenile justice system. This would include children who have not been convicted as and may not end up under juvenile court supervision. Even for children who end upon probation or committed to DCF, there should not be an automatic relinquishment of educational decision making when the child enters the door of the juvenile court. PSB 842 amends Connecticut General Statute Section 10-94g, the current educational surrogate statute. That proposal would mandate the assignment of a surrogate parent unless the parent actively objected. Because the parent's right to make decisions regarding a child is constitutionally protected, due process must be provided before the right can be infringed. Giving the parent the right to object after the fact, which is what this proposal does, is not sufficient.

Many families do need help navigating the process for obtaining appropriate special education determinations or services for their children. Assistance can be provided without usurping their right to make decisions on behalf of their children. Parents need to know their rights and learn how to talk to school administrators about what their child needs to succeed. The educational surrogate program is an excellent resource for children who are in the care of DCF. The surrogates are highly trained and are often retired school administrators or special education specialists. Their expertise would be valuable to children who are on probation but it would make better policy sense to provide educational support to children and families that would empower parents to be able to advocate for their children after the juvenile court supervision ended. Educational surrogates should be available to children committed to DCF as delinquent but only after a parent has given informed consent. For children involved in the juvenile justice system who remain in their communities, parents should be provided with instruction and assistance on how to negotiate the special education process but this should not involve the relinquishment of educational decision making.

The Office of Chief Public Defender would be happy to work with the proponents of these bills to discuss language that would provide assistance to families without infringing on a parent's decision making rights.