Division of Public Defender Services
State of Connecticut

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Testimony of
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OFFICE OF CHIEF PUBLIC DEFENDER

COMMITTEE ON FINANCE REVENUE AND BONDING
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Raised Bill 1049

AN ACT CONCERNING REGISTRATION FEES FOR COUNSEL AND GUARDIANS AD LITEM FOR MINOR CHILDREN AND OTHER REQUIREMENTS FOR CERTAIN FAMILY RELATIONS MATTERS.

The Office of Chief Public Defender has serious concerns regarding Proposed ***Bill 1049, An Act Concerning Registration Fees for Counsel and Guardians Ad Litem for Minor Children and Other Requirements for Certain Family Relations Matters.*** **Section 1** would require a registration fee for individuals wishing to serve as an attorney for a minor child or guardian ad litem in family relations matters. This agency takes no position on that portion of the proposed bill. However, the rest of the bill contains proposals that will negatively impact the delivery of services to indigent children and families in the family courts. The Office of Chief Public Defender also believes that this bill will impede the efforts this agency has made to expand and diversify the pool of individuals contracted to serve as guardians ad litem or attorneys for minor children in family custody matters.

Section 2 of this proposal would allow any party "aggrieved by the action of counsel or a guardian ad litem for a minor child" to file a civil action for damages. This eliminates the quasi judicial immunity currently given to court appointed guardians ad litem and attorneys for minor children. It is hard to imagine that individuals would be willing to serve as court appointed GAL or AMC if they are constantly at risk of being sued. The potential expense of defending law suits would certainly deter people from taking contracts for cases at the state rate of $500 per case or accepting the sliding scale compensation provided for in existing law.

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Current legislation allows litigants to either agree on the GAL or AMC or pick from a list of 15. OCPD has been unable to provide 15 state rate choices in every jurisdiction and has been working hard to recruit a larger and more diverse pool of qualified GALs and AMCs. We believe that this proposal would lead to a shortage of people willing to serve in this important function.

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

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

Court appointed guardians ad litem and attorneys for minor children should be allowed the protection of immunity because to expose them to the possibility of personal liability will deter them from acting as advocates for minor children. There has been

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

much debate over the role of the GAL in family court but the court needs these advocates to make good recommendations regarding children. Cases where a guardian ad litem or attorney for a minor child is appointed are the most difficult cases in family court. The judge relies on the guardian ad litem or the attorney for the minor child to inform their decisions regarding the children when the parents are unable to resolve their differences. A parent who does not get their desired access to their children will almost always feel aggrieved. This does not mean that they should have a cause of action against the guardian or the lawyer whose role is to opine on the best interest of the child or relate the express interest of the child. The potential cost to this agency could be staggering. In cases where the AMC or GAL is an OCPD contactor, this agency indemnifies the contractor. OCPD and the state would be required to provide representation to defend any lawsuit filed by an aggrieved parents.

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

Section 4 has a number of provisions that would impact this agency's ability to provide services in family court. Under this part of the proposal, guardians ad litem would not be allowed to bill for time spent in court if they are not being heard. GALs are often required to be in court to hear argument or testimony of other witnesses. This allows them to make the best assessment of what is in the child's best interest, as it helps to put their independent observations into context. It also allows them to hear sworn testimony from all witnesses for both litigants. The individuals who act as GAL in state rate cases are allowed to bill for trial time under our current contract and this agency has not found the billing to be inappropriate or exorbitant.

Section 4 would also prohibit the GAL from being heard on anything related to a child's medical condition or diagnosis and would require that a health care professional be heard. We are concerned that this would adversely impact clients in state rate cases, who could not afford to pay the cost of producing a health care provider to testify. Finally, Section 4 would prohibit a GAL from filing any motions with the court. The GAL's ability to petition the court is already restricted to Motions for a Case Status Conference, which is used to bring issues to the court's attention or to seek guidance.

Eliminating this ability would leave the GAL with no means to notify the court of an emergency or clarify their role.

The remainder of the bill includes a number of provisions related to shared custody and how the court handles agreements related to custody or minor children. These are policy determinations to be made by this Legislature that would not directly impact the operations of the Office of Chief Public Defender. As always, this agency is available to work with the Committee and the proponents of this bill.