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**Testimony Regarding: Raised Bill No. 7077, An Act Concerning the State Budget
for the Biennium Ending June 30, 2009, and Making Appropriations Therefor.**

Testimony of Cameron Iacovelli¹, William Bowen, Blair Warner,² Mary Glassman, & Shelley Geballe
To the Appropriations Committee
February 20, 2007

Senator Harp, Representative Merrill, and the distinguished Members of the Appropriations Committee:

We testify on behalf of Advocates for Connecticut's Children and Youth (ACCY), a statewide, independent, research-based organization dedicated to speaking up for children and youth in the policy making process that has such a great impact on their lives. ACCY is the sister lobbying organization of Connecticut Voices for Children, on whose behalf we also testify.

We testify today in opposition to the Governor's proposed budget for the Commission on Child Protection (CCP) for the upcoming biennium. It is woefully inadequate to assure that children and youth receive the high quality legal representation to which they are entitled, and that can markedly improve child outcomes. The CCP oversees Connecticut's system of providing court-appointed counsel to children and parents in abuse and neglect cases, helping to ensure that the legal rights and best interests of these vulnerable children are protected and that their voices are heard in court. Our testimony is informed by the participation of CT Voices' President, Attorney Shelley Geballe, on the Commission on Child Protection as one of its 11 appointed members, although we testify on behalf of Connecticut Voices for Children and ACCY only.

One Youth's Story:

My name is Cameron Iacovelli, and I am 20 years old. I've been in DCF care since I was 12 years old but didn't know that I had a lawyer until I was 18 years old. That was when I found out that I *no longer* had a lawyer. From the age of 12 until I turned 18, I didn't know that I had a lawyer representing me. A lot of decisions were made for me, and this person went to court to affect those decisions without my knowledge or influence. I wonder how a lawyer represented me if he didn't know me. How can he represent me without knowing what I want? For all he knew, I could have been a girl. I believe that if they want to represent you, they have to know you and meet you.

The Governor's Proposed Budget for the Legal Representation of Children and Families in Child Protection Cases in FY 2008 and 2009 is Grossly Inadequate to Ensure a Minimal Level of Quality of Services. It includes only \$75,000 for training statewide in FY 08 and \$45,000 in FY 09. Further, it only recommends a 5 percent fee increase, requesting only an additional \$410,750 in FY 08 and \$431,288 in FY 09 to increase the compensation of all juvenile contract attorneys throughout the state whose current compensation averages about \$17/hour.

¹ Cameron Iacovelli is a participant in the Jim Casey Youth Opportunity Initiative, a program managed by Connecticut Voices for Children.

² Mr. Bowen and Ms. Warner are Yale Law students participating in the Yale Legislative Services program and have prepared this testimony under the supervision of Attorney Shelley Geballe (President, CT Voices for Children), Attorney Mary Glassman (Director, Advocates for Connecticut's Children and Youth) and Professor J. L. Pottenger, Jr. (Legislative Advocacy Clinic, Yale Law School).

Currently, attorneys under contract with the Commission on Child Protection to provide legal representation to children, youth, and parents in child abuse and neglect cases are paid a flat fee of \$500 for the first 30 hours of work, and then \$40 per hour for each hour thereafter. Because the pay is so low (\$17/hour if the full 30 hours is worked), oversight is weak, and the flat fee system discourages attorneys from spending many hours on each case (\$100/hour if only 5 hours are worked), it is no surprise that the quality of legal representation has, in far too many cases, been woefully inadequate.

A recent focus group of twelve foster youth from the Jim Casey Youth Opportunity Initiative (which Connecticut Voices for Children manages) found that *ten* had never even met their court-appointed attorney (though all had been in foster care at least five years). One had met her attorney at the time she was removed from her parents' home at age 13, but had not seen the attorney since. Only one of the twelve had *any* relationship with his attorney. That attorneys are not even meeting with clients is reflective of the high caseloads these attorneys maintain to offset the low payment; many have 100 or more cases, even though child protection is not the exclusive focus of their practice.

The failure to assure competent legal counsel is all the more egregious because the issues involved in child protection cases are of a constitutional stature, involving the right to family integrity. These are not mere "slip and fall" cases where the issue is the amount of compensation that changes hands, but cases that determine who raises these children and youth, the extent to which they will have contact with siblings, whether they will maintain any relationship with their birth families, and how long they will remain in foster care. For courts to come to the best outcomes for children and youth in these cases, they need high quality legal representation for all parties involved so that the judges have complete information about child safety, family need, and what interventions serve the best interests of the children. Connecticut is vulnerable to legal challenge given the current system's gross inadequacies.

Fortunately, Connecticut can learn from other states that have both changed the model of legal representation to one that assures greater oversight and specialization and also increased compensation to attract attorneys who can provide high quality representation with manageable caseloads. The experience of these states shows that when quality legal representation is provided, child outcomes markedly improve and net costs to the state decline, as lengths of stay in foster care and re-referrals decline – a true win-win. These alternative models are discussed later in this testimony.

The Governor's proposed budget, however, would continue Connecticut on its current course, assuring that hundreds of children and youth will continue to suffer from inadequate representation and the state will continue to bear the costs of this malfunctioning system. To assure a *change* in course and quality representation, we support the Commission on Child Protection's requests for:

- Additional funds for pre-service and in-service training and certification of appointed counsel;
- Additional funds to move from the flat case fee to an hourly fee of \$60 to improve accountability and quality;
- Funds to begin to phase-in a transition from the current independent contractor model to a model that relies for many cases on non-profit legal services organizations or specialized law firms, by creating two "pilot" demonstration sites and an independent evaluation to learn from the sites before the transformation is taken statewide.

We also support the Commission's request for several additional staff to monitor attorney billings, provide training, respond to client complaints, and assess attorney performance.

1. Additional Funds for Training and Certification Will Rapidly and Significantly Improve the Quality of Representation and the Lives of Connecticut's Children, Resulting in Significant Cost Savings in the Future.

The Chief Child Protection Attorney's Office requires additional funds to fulfill its training mandate. The Governor's budget proposal of only \$75,000 in FY 08 and \$45, 000 in FY 09 is grossly insufficient to meet the standards recommended by the Governor's own Committee on the Quality of Representation of Children and Families. Training programs are essential to building and maintaining the skills required to successfully represent a child client, and to keep attorneys up to date on relevant case law, statutes, and procedures. **Increased training leads to better, faster outcomes for children and families.** Connecticut has only recently instituted training requirements for juvenile contract attorneys, including pre-service training and three seminars of in-service training each year. The Chief Child Protection Attorney is also coordinating an informal mentoring system to assist new contract attorneys in getting their footing in the demanding job of representing children and families.

These programs are a tremendous step forward, but additional changes to the training program would enhance attorney competence and lead to better outcomes for the children and families involved.

These changes include:

- **Offering additional training areas:**

The American Bar Association (ABA) and the Governor's Committee on the Quality of Representation of Children and Families recommend training in two areas not currently required in pre-service training for child protection attorneys.³ These include training in child development and psychology and training in how to interview children. These topics would allow attorneys to better understand child clients' situations and mental and emotional states, enabling them to more accurately and fully represent the interests of the children.

- **Offering additional training sessions:**

Mandatory pre-service training should be offered more than once a year, which is currently the practice. The contract attorneys are overbooked, with only 144 of them attempting to provide representation in over 3500 cases in the first quarter of FY 2007 alone.⁴ Allowing new attorneys to enter the system and alleviate this burden just once each year exacerbates this problem that could easily be fixed with additional training programs.

- **Offering mentoring programs:**

The CCP should coordinate a formal, compensated mentor program, and new attorneys should be required to assist their mentor in bringing several cases before they are permitted to bring their own. Other states use such mentor programs to great effect, and the in-courtroom training requirement helps new attorneys avoid simple mistakes that cause delays and lead to poorer outcomes for children.⁵

- **Adopting a formal certification procedure:**

A formal certification procedure should be adopted for lawyers after three years of practice in the field including peer reviews, writing samples, and an exam. The National Association of Counsel for Children (NACC) already runs

³ AM. BAR ASS'N CTR. ON CHILDREN AND THE LAW, FINAL REPORT: MICHIGAN COURT IMPROVEMENT PROGRAM: ASSESSMENT OF PROBATE COURTS' HANDLING OF CHILD ABUSE AND NEGLECT CASES 61 (1997).

⁴ Data compiled by the Chief Child Protection Attorney's Office.

⁵ Please see Connecticut Voices for Children's forthcoming white paper, *Giving Families a Chance*. Section V.A details the systems in other states.

such programs in several states to ensure that attorneys who represent children and families have the skills and knowledge required.⁶

These additional training measures would improve the quality of representation throughout the state and result in better, faster permanent placements and outcomes for children and families, ultimately saving the state money from foster care and court delays.

2. The CCP Will Improve the Quality of Representation by Switching From a Flat Fee to an Hourly Model of Payment for the Juvenile Contract Attorneys.

a. Flat fee systems provide significant disincentives to putting adequate time into representation of children and families. Currently, the CCP pays contract attorneys a flat \$500 for the first 30 hours of work. This method of compensation provides disincentives for attorneys to spend the time required to provide adequate representation to their clients because each additional hour spent on a case is done without additional compensation, effectively reducing the attorney's hourly rate. Thus, as other states have found, **a flat fee compensation model encourages attorneys to put as few hours as possible into each case, lessening the value the state receives for its dollars.**⁷

b. Hourly compensation models encourage attorneys to spend all necessary time to provide high quality representation to children and families. Other states have seen significant improvement in the quality of representation after transitioning to hourly billing systems.⁸ Attorneys see their clients more often and spend additional time researching permanent placement options, advocating for assistance within school districts, and pushing for the best outcomes for the children and families involved.

To make the transition from the flat fee to an adequate hourly billing model, the CCP requires additional funding to both compensate attorneys at \$60 per hour and hire additional accounting staff to review the detailed billing statements required of the contract attorneys.⁹ **The transition to an hourly billing model will result in rapid and significant increases in the quality of representation provided to children and parents throughout the state. We strongly encourage this Committee to support the appropriation of funds for this transition.**

3. Additional Funds are Necessary in Order to Adequately Compensate Juvenile Contract Attorneys To Ensure That They Provide High Quality Representation to Children and Parents Throughout Connecticut.

The CCP has requested funds to pay attorneys at the rate of \$60 per hour, and we fully support this request.

a. Adoption of a modified compensation scheme may help Connecticut avoid litigation over the adequacy of the compensation it provides to attorneys representing children in child protection proceedings. In 2004, the Juvenile Matters Trial Lawyers Association filed suit in federal district court against the Connecticut Judicial Department, claiming that the compensation rates were substantially lower than those paid to public defenders. The District Court (Droney, J.) dismissed the case on procedural grounds. However, the court warned: “[T]he pay

⁶ See NAT'L ASS'N OF COUNSEL FOR CHILDREN, STANDARDS FOR CHILD WELFARE ATTORNEY CERTIFICATION, available at http://www.naccchildlaw.org/training/documents/StandardsABAOriginal04_001.pdf.

⁷ THERESA SPAHN, COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE, 4TH ANNUAL REPORT, FISCAL YEAR BUDGET REQUEST 2008, at 11-12 (2006).

⁸ *Id.*

⁹ Interview with Carolyn Signorelli, Chief Child Protection Attorney, Office of the Chief Child Protection Attorney in New Haven, Conn. (Nov. 28, 2006).

structure for appointed counsel representing indigent families and children in the Connecticut state courts may result in inadequate resources for effective representation [T]he decision here on the standing of the Association does not mean that other parties could not raise these issues in this Court or the Connecticut Superior Court. Finally, it may very well be that an administrative or legislative review of the issues raised in this suit may be an appropriate course.”¹⁰

Although this suit was dismissed on a technicality, lawsuits in other states have been more successful. In 2003, the New York County Lawyers Association obtained a permanent injunction against the City and State of New York requiring that the City of New York and the State of New York pay assigned counsel \$90 per hour for both in-court and out-of-court work until the legislature modified the laws setting compensation.¹¹ Prior to the suit, New York lawyers received \$40 per hour of in-court work and \$25 per hour for out of court work.¹² It would be in Connecticut’s best interests to take the federal district court’s advice in the recently dismissed Connecticut litigation, and provide adequate compensation to attorneys representing children and indigent families and thereby avoid the costs that would accompany additional litigation.

b. The CCP requires additional funding to increase the number of juvenile contract attorneys to reduce caseloads to acceptable levels. The National Association of Counsel for Children (NACC) and the American Bar Association (ABA) recommend that attorneys working full-time in the area of child abuse and neglect spend no more than 2,000 billable hours representing children each year; (attorneys working less than full-time should reduce these billable hours proportionately).¹³ This translates to a caseload of approximately 80 clients. Contract attorneys in Connecticut currently maintain caseloads well above 100 clients, though many of them do *not* work exclusively on child protection matters. Additional attorneys are required to reduce caseloads to the point where attorneys can meet the Standards of Practice adopted by the Commission on Child Protection and provide adequate representation.

c. An hourly rate of \$60 does not mean that attorneys take home \$60 an hour. The juvenile contract attorneys in Connecticut are not members of firms and must use the money they earn representing children and parents to pay for their offices, their computers, research materials, access to legal databases, and any clerical or staff support they need in preparing for court appearances. The current system pays them \$17 to \$20 an hour when the work is done well, which forces juvenile contract attorneys to take on other work or maintain impossible caseloads to make ends meet. **Even \$60 an hour for the attorney’s time and all expenses and overhead involved is well below the market rate for attorneys in Connecticut.**

d. Attorneys representing children in child protection proceedings should be compensated at an hourly rate comparable to the rate paid in states with comparable costs of living. Connecticut pays its children’s attorneys well below the hourly rate of states with comparable costs of living, and representation suffers as a result. Under the assumption that children’s attorneys in Connecticut spend adequate time per case – 25 to 30 hours – they earn only 17\$ to \$20 an hour under the current flat fee system. **Other states with comparable costs of living, including New York, California, New Hampshire, New Jersey, Washington D.C., and Virginia, all pay their equivalent of juvenile contract attorneys \$60 or more per hour.**

¹⁰ Juvenile Matters Trial Lawyers Ass’n v. Judicial Branch, 363 F.Supp. 2d 239, 251 (D. Conn. 2005) (emphasis added).

¹¹ New York County Lawyers’ Ass’n v. State, Index No. 102987/00, at 37 (N.Y.Sup.Ct. 2003), available at <http://www.nycla.org/publications/decision.pdf>.

¹² *Id.* at 3.

¹³ NAT’L ASS’N OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES 7 (2001); *see also* AM. BAR ASS’N, ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, §§L-1, L-2 (1996).

The CCP should improve representation for Connecticut's children and families by switching to an hourly billing model and providing a minimum of \$60 per hour in order to encourage attorneys to spend sufficient time on their cases, attract qualified new attorneys, provide better records of the attorneys' daily activities for quality assurance, and avoid potential law suits against the state for inadequate compensation levels.¹⁴

4. Connecticut Can Significantly Improve Representation and Save Money By Allocating Funds to Allow for More Effective Models of Multidisciplinary Representation, and We Strongly Urge the Committee to Appropriate the Necessary Funds this Session to Begin the Transition.

a. Evidence from other states indicates that providing attorneys through a public agency or nonprofit legal services provider leads to higher quality representation of children and parents.

1. **Training.** A legal services or public defender-like organization can more easily provide centralized training and oversight, as well as the day to day advantages of mentoring, specialization, and institutional memory offered by working in the same office with attorneys working in the same area of the law.

2. **Multidisciplinary Approach.** A centralized office is able to employ social workers, medical experts, and paralegals and support staff that individual attorneys usually cannot afford on their own. These staff can both provide additional expertise on cases and also assure that the attorneys' more costly time is spent most cost-effectively.

3. **Success in Other States.** Data from New Jersey, New York, Massachusetts, Washington, and Michigan, indicate substantial benefits are found in an organizational model, including positive outcomes for children such as decreased length of time in foster care and increased reunification rates with family.

The costs of an improved system of representation in abuse and neglect cases will be matched by the savings the state will experience. Additional expenditures are necessary to give children and parents the representation they need and deserve while in the middle of such traumatic, life-changing events.

b. High quality legal representation leads to cost savings in the longer term. An organizational model would cost roughly 15 percent more up front than an adequate independent contractor model, but evaluations of programs in other states have demonstrated that money is still saved in the long term.

1. A Washington pilot program, for example, reduced the average time (and expense) of foster care by 20%, or 55 days per child. **Reunification rates went up significantly with the Washington program, and termination of parental rights dropped, resulting in a reduction in long-term foster care costs and leading program officials to conclude that these savings alone would offset the cost of the pilot program within three years.**¹⁵

2. An innovative program in New York City with lower caseloads and in-house assistance of social workers resulted in even greater savings, reducing average time in foster care from 4.2 years to less than 4 *months* with few repeat referrals to child welfare.¹⁶

While the changes proposed require additional funding, it is clear that **savings from improved representation in abuse and neglect cases would be substantial in Connecticut.**

In Connecticut, each day in foster care costs between \$24.80 and \$27.40, so **Connecticut would save between \$1,364 and \$1,507 for each child** who spent 55 fewer days in such care. By comparison, the cost of 25 hours of representation

¹⁴ See *Juvenile Matters Trial Lawyers Association v. Judicial Branch*, 363 F. Supp. 2d 239, 251 (D. Conn. 2005) (dismissed on procedural grounds).

¹⁵ JASON A. OETJEN, IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION 7-8 (2003).

¹⁶ See http://www.cfrny.org/2006_accomp.asp.

at \$60 per hour is \$1,500.¹⁷ Much of this representation cost is already being spent in these cases without such savings in foster care. **Thus, a moderate increase in pay is more than offset by the savings in the foster care system.**

Faster permanent placements save money for DCF and the legal system since they eliminate the need for periodic permanency plan hearings, staffing of the case by DCF, and foster care and/or residential care and board payments. **Connecticut would save \$9,052 to \$10,001 for each year of foster care avoided in board and care costs alone.**

c. Appropriating sufficient funds to begin the transition to an organization-based, interdisciplinary model of representation will lead to higher quality representation and better outcomes for children and families, which will save Connecticut taxpayers money in the long term. We recommend that funds initially be appropriated for such a transition in two locations in Connecticut. An organization, most likely a legal assistance group, will represent parents in one location, and another organization will represent children in the other. An independent evaluation of these two sites as the transition occurs will provide valuable data that will allow for a smooth transition throughout the rest of the state. **The overall cost of this first step will be roughly \$300,000, plus \$25,000 for the independent evaluation.**

This transition will lead to more effective legal representation of children and parents throughout the state, resulting in fewer children returning to the system, shorter stays in foster care, and fewer problems with permanent placement, each of which lead to monetary savings for Connecticut taxpayers.

¹⁷ See <http://www.dir.ct.gov/dcf/Policy/Trmt36/36-55-25-2.htm>.