



Testimony for HB 377, relative to the best interests of the child under the child protection act.

March 5, 2018

Dear Chairman Long and Legislators of the Children and Family Law Committee:

Last year, New Hampshire legislators recognized the importance of passing a bill into law that recognizes foster parents as essential members of the foster care team, helping to cultivate better relationships between foster parents and the Division of Children, Youth and Families (DCYF).

This year, we are advocating for the “best interests of the child” to ensure that all child abuse and neglect cases are *child-centered* and that the safety and well-being of a child supersedes parental rights, DCYF agendas and old-school views about child development in the court room. Every child in care deserves safety, emotional security & proper developmental health that comes from a persistent judicial focus on a child’s developmental needs. This starts with a law that focuses on a child’s best interests.

Once again we find that New Hampshire is behind the times. Almost half the states throughout the country and the District of Columbia have laws listing specific factors for courts to consider when making determinations regarding the best interests of the child. This includes all the New England states: Massachusetts, Connecticut, Maine and Vermont. New Hampshire is the only New England state in which a foster child’s future relies on the *opinions* of DCYF workers, attorneys and volunteer CASAs (Court Appointed Special Advocates). This needs to change.

Determining a foster child’s future requires that fact-based recommendations are given to the court while navigating the complexities of the best interests of the child. As Federal law, the Adoption and Safe Families Act (ASFA) of 1997 makes clear, “the rights of the child are paramount” and one of the requirements to advance the multiple goals of permanency is assessing a child’s well-being, which is “best approached by focusing on the child’s specific developmental and emotional needs.”¹ New Hampshire is not adhering to federal guidelines. Children in care deserve to have a law in place that protects their “best interests.”

Although the ultimate goal of foster care is reunification, ASFA clearly indicates that the child’s basic needs for “health and safety” supersede the less basic needs of the parent to raise a child. Following ASFA, the underlying concept of basic needs can be summarized in practical terms. These basic needs endow the child with three primary rights:

1. The right to safe surroundings

¹ Dr. James Kenny, MSW, Ph.D., excerpt from Attachment and Bonding in Foster Care and Adoption, p.5.

2. The right to maintain significant relationships

3. The right to a permanent home

Foster children of all ages are in desperate need of a law in New Hampshire that protects their basic rights, especially infants, toddlers and preschoolers who are not old enough to speak up for themselves. "Decisions made in family court that affect the life of the young child, but that are not based on well-researched theories of psychosocial development, such as attachment theory, hurt the very validity of the court."²

We must pass HB-377 so that the foster children in our state can be assured that their lives matter now and in the future. Passing this bill is a positive step towards creating a child-centered culture in child welfare throughout New Hampshire and a major step towards providing trauma informed care throughout child welfare. "Striving to implement a developmentally responsive approach to Court practice is being inclusive of trauma-informed practice, as trauma and development are inextricably linked."³

According to the American Bar Association Standard B-5: *Determining the Very Young Child's Interests*, The determination of the child's legal interests should be based on objective criteria as set forth in the laws that are related to the purpose of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing and permanent environment, and the use of the least restrictive or detrimental alternatives available.⁴

Family preservation and a child's safety are at the forefront of what DCYF and the foster care system stands for. By passing a law that provides consistency for all the children in foster care, regardless of their age and circumstances, you can ensure that any decisions once being made under the guise of a "child's best interests" are now truly child-centered, developmentally appropriate and trauma informed. The foster children of our state need your help for fair and ethical treatment, please pass HB-377.

Respectfully submitted,

Cindy Clark, MSW, CCLS
Founder: Fostering Change: Alliance for NH Foster Parent
Email: fosterchangenh@gmail.com

² Healthy Beginnings, Healthy Futures: A Judge's Guide, p. 4.

³ NCJFCJ Enhanced Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases, 2016, p. 78-79, 94.

⁴ Advocating For Very Young Children in Dependency Proceedings, 2010, p. 34.

References:

Advocating For Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation, October 2010. Retrieved from: https://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ethicalrep_final_10_10.authcheckdam.pdf

Department of Health and Human Services, Children's Bureau, *Determining the Best Interests of the Child*, 2016. Retrieved from: https://www.childwelfare.gov/pubpdfs/best_interest.pdf

Gatowski, Sophia & Miller, Nancy & Rubin, Stephen & Escher, Patricia & Maze, Candice. NCJFCJ The Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases. The National Council of Juvenile and Family Court Judges: Reno, NV, 2016. Retrieved from: <https://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>

Kenny, James and Kenny, Peter. *Attachment and Bonding in the Foster and Adopted Child*. [Excerpt pre-publication]. Indianapolis, IN: Briggittine Press, 2014.

Klain, E. J., & Sandt, C. *Healthy Beginnings, Healthy Futures: A Judge's Guide*. Chicago: American Bar Association, 2009. Retrieved from: https://www.americanbar.org/content/dam/aba/administrative/child_law/healthy_beginnings.authcheckdam.pdf

Maze, C.L. *Advocating For Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, JD Practice Policy Brief: American Bar Association and Center on Children and the Law, October, 2010. Retrieved from: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ethicalrep_final_10_10.authcheckdam.pdf

Perry, Bruce D. *Maltreatment and the Developing Child: How Early Childhood Experience Shapes Child and Culture*, The Margaret McCain Lecture Series: Center for Children and Families in the Justice System, 2005. Retrieved from: <http://www.lfcc.on.ca/mccain/perry.pdf>