



House of Representatives

General Assembly

File No. 600

January Session, 2005

Substitute House Bill No. 5057

House of Representatives, May 2, 2005

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF CHILDREN AND FAMILIES AND CHILD ABUSE OR NEGLECT PROCEEDINGS.

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

1 Section 1. Section 17a-101k of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) The Commissioner of Children and Families shall maintain a
4 registry of [the] findings of abuse or neglect of children, as defined in
5 section 46b-120, as amended by this act, and reports received pursuant
6 to sections 17a-101a to 17a-101d, inclusive, and section 17a-103 [and
7 shall adopt regulations to implement the provisions of this section,
8 including] that conform to the provisions of this section and due
9 process of law. The regulations adopted pursuant to subsection (i) of
10 this section shall provide for the use of the registry on a twenty-four-
11 hour daily basis to prevent or discover abuse of children and the
12 establishment of a hearing process for any appeal by a person of the
13 commissioner's determination that such person is responsible for the

14 abuse or neglect of a child pursuant to subsection (b) of section 17a-
15 101g, as amended by this act. The information contained in the registry
16 and the reports and any other information [relative] related to child
17 abuse, wherever located, shall be confidential subject to such statutes
18 and regulations governing their use and access as shall conform to the
19 requirements of federal law or regulations. Any violation of this
20 section or the regulations adopted by the commissioner under this
21 section shall be punishable by a fine of not more than one thousand
22 dollars or imprisonment for not more than one year.

23 [(b) Notwithstanding the provisions of subsection (a) of this section,
24 the Commissioner of Children and Families shall disclose to the
25 Commissioner of Social Services, or his designee, registry information
26 necessary for the evaluation of the temporary family assistance
27 program operated by the Department of Social Services.]

28 (b) Upon the issuance of a recommended finding or substantiation
29 of abuse or neglect pursuant to subsection (b) of section 17a-101g, as
30 amended by this act, the commissioner shall immediately provide
31 notice of the recommended finding to the individual who is alleged to
32 be responsible for the abuse or neglect. The notice shall:

33 (1) Be by certified mail, return receipt requested;

34 (2) Contain a short and plain description of the finding that the
35 individual is responsible for the abuse or neglect of a child;

36 (3) Inform the individual of the existence of the registry and of the
37 commissioner's intention to place the individual's name on the registry
38 unless such individual exercises his or her right to appeal the
39 recommended finding as provided in this section;

40 (4) Inform the individual of the potential adverse consequences of
41 being listed on the registry with regard to obtaining or retaining
42 employment involving direct contact with children and inform the
43 individual of (A) the individual's right to a mediation conference with
44 the commissioner or the commissioner's designee, as provided in this

45 section, and (B) the individual's right to appeal any finding that is
46 upheld after the mediation conference is concluded by seeking an
47 expedited administrative hearing as provided in this section; and

48 (5) Include a written form for the individual to sign and return
49 indicating whether or not the individual will invoke the mediation or
50 appeal procedures provided in this section.

51 (c) (1) Except in cases of death, serious physical abuse or sexual
52 abuse as provided in sections 17a-101b and 17a-101j, the commissioner
53 or the commissioner's designee shall hold a mediation conference,
54 upon request, with the individual against whom a recommended
55 finding of responsibility for the abuse or neglect of a child has been
56 made. The conference shall be held not later than thirty business days
57 after notice of the finding is mailed to the individual.

58 (2) Prior to the conference, the individual shall have access to all
59 relevant documents in the possession of the commissioner regarding
60 the finding of responsibility for the abuse or neglect as provided in
61 subsection (m) of section 17a-28, as amended by this act.

62 (3) At the conference, the individual may be accompanied by legal
63 counsel and any person who has personal knowledge of the
64 circumstances concerning the finding of responsibility for the abuse or
65 neglect. A guardian, parent or legal representative of the child alleged
66 to be the victim of the abuse or neglect may attend the conference.

67 (4) The mediation shall be conducted for the purpose of allowing all
68 parties to discuss the allegations of abuse or neglect and allowing the
69 individual to demonstrate, through documentation or discussion with
70 the individual or the individual's representative, that the finding of
71 responsibility for the abuse or neglect, as defined in section 46b-120, as
72 amended by this act, is factually or legally deficient and should be
73 reversed.

74 (5) The mediation conference shall be recorded on a visual, audio,
75 magnetic or electronic recording and a copy of the recording shall be

76 made available to all parties upon request.

77 (6) If, as a result of the mediation conference, the commissioner or
78 the commissioner's designee agrees that the finding of responsibility
79 for the abuse or neglect is factually or legally deficient, the
80 commissioner shall so indicate in writing and reverse the finding of
81 responsibility for the abuse or neglect.

82 (d) (1) If, as a result of the mediation conference, the commissioner
83 or the commissioner's designee concludes that the finding of
84 responsibility for the abuse or neglect is factually and legally
85 supportable, the commissioner shall designate the finding as
86 "indicated". The commissioner shall send notice to the individual by
87 certified mail, return receipt requested, of the commissioner's decision
88 to reverse or maintain the finding as indicated not later than three
89 business days after the decision is rendered. The notice shall be made
90 in accordance with section 4-177, and the hearing shall be scheduled
91 not later than thirty days after the decision of the commissioner on the
92 indicated finding of responsibility for the abuse or neglect, except for
93 good cause shown by either party.

94 (2) The prehearing procedure and the hearing shall be conducted in
95 accordance with sections 4-177 to 4-181a, inclusive, except that the
96 commissioner shall designate an individual who is not an employee of
97 the Department of Children and Families as a hearing officer in the
98 matter.

99 (3) At the hearing, the individual may be represented by legal
100 counsel. The burden of proof shall be on the commissioner to prove
101 that the indicated finding is supported by a fair preponderance of the
102 evidence submitted at the hearing.

103 (4) Not later than thirty days after the conclusion of the hearing, the
104 hearing officer shall issue a written decision to either reverse or uphold
105 the indicated finding. The decision shall contain findings of fact and a
106 conclusion of law on each issue raised at the hearing.

107 (e) Any individual aggrieved by the decision of the hearing officer
108 may appeal the decision in accordance with section 4-183. Any
109 individual aggrieved by the decision of the hearing officer may also
110 seek a stay of the adverse decision of the hearing officer in accordance
111 with subsection (f) of section 4-183, except that the individual shall
112 apply first to the department and then, if necessary, to the court.

113 (f) Following the issuance of a decision to uphold the indicated
114 finding, the Commissioner of Children and Families shall forward the
115 information as required by law to the central registry established in
116 section 17a-110 and shall also disclose to the Commissioner of Public
117 Health and the Commissioner of Social Services and to any other state
118 agency or official required to be notified by law that the recommended
119 finding of responsibility for the abuse or neglect has been upheld, and
120 shall disclose to such agency or official only such information as
121 required to be disclosed pursuant to any provision of the general
122 statutes.

123 (g) Not later than December 1, 2005, the commissioner shall notify,
124 by certified mail, return receipt requested, all individuals against
125 whom findings of abuse or neglect were substantiated prior to May 1,
126 2000, of the existence of the substantiated findings, the inclusion of
127 their names on the registry and of information regarding the potential
128 consequences of their inclusion on the registry and right to appeal as
129 set forth in subdivision (4) of subsection (b) of this section.

130 (h) Records containing unsubstantiated findings shall remain
131 sealed, except that such records shall be made available to department
132 employees only in the proper discharge of their duties, and shall be
133 expunged by the commissioner two years from the completion date of
134 the investigation if no further report is made about the individual
135 subject to the investigation, except that if the department receives more
136 than one report on an individual and each report is unsubstantiated,
137 all reports and information pertaining to the individual shall be
138 expunged by the commissioner five years from the completion date of
139 the most recent investigation.

140 (i) Not later than October 1, 2005, the Commissioner of Children and
141 Families shall adopt regulations, in accordance with chapter 54, to
142 implement the provisions of this section.

143 Sec. 2. Section 17a-101g of the general statutes is repealed and the
144 following is substituted in lieu thereof (*Effective October 1, 2005*):

145 (a) Upon receiving a report of child abuse or neglect, as provided in
146 sections 17a-101a to 17a-101c, inclusive, or section 17a-103, in which
147 the alleged perpetrator is (1) a person responsible for such child's
148 health, welfare or care, (2) a person given access to such child by such
149 responsible person, or (3) a person entrusted with the care of a child,
150 the Commissioner of Children and Families, or the commissioner's
151 designee, shall cause the report to be classified and evaluated
152 immediately. If the report contains sufficient information to warrant an
153 investigation, the commissioner shall make the commissioner's best
154 efforts to commence an investigation of a report concerning an
155 imminent risk of physical harm to a child or other emergency within
156 two hours of receipt of the report and shall commence an investigation
157 of all other reports within seventy-two hours of receipt of the report.
158 The department shall complete any such investigation within thirty
159 calendar days of receipt of the report. If the report is a report of child
160 abuse or neglect in which the alleged perpetrator is not a person
161 specified in subdivision (1), (2) or (3) of this subsection, the
162 Commissioner of Children and Families shall refer the report to the
163 appropriate local law enforcement authority for the town in which the
164 child resides or in which the alleged abuse or neglect occurred.

165 (b) The investigation shall include a home visit at which the child
166 and any siblings are observed, if appropriate, a determination of the
167 nature, extent and cause or causes of the reported abuse or neglect, a
168 determination of the person or persons suspected to be responsible for
169 such abuse or neglect, the name, age and condition of other children
170 residing in the same household and an evaluation of the parents and
171 the home. The report of such investigation shall be in writing. The
172 investigation shall also include, but not be limited to, a review of

173 criminal conviction information concerning the person or persons
174 alleged to be responsible for such abuse or neglect and previous
175 allegations of abuse or neglect relating to the child or other children
176 residing in the household or relating to family violence. After an
177 investigation into a report of abuse or neglect has been completed and
178 the commissioner has reasonable cause to believe that abuse or neglect,
179 as defined in section 46b-120, as amended by this act, has occurred, the
180 commissioner shall issue a recommended finding that such abuse or
181 neglect has occurred to the person or persons suspected to be
182 responsible for such abuse or neglect. Notwithstanding the provisions
183 of subsection (f) of section 17a-28, as amended by this act, except in
184 cases of death, sexual abuse or serious physical abuse of a child as
185 provided in sections 17a-101b and 17a-101j, and except as provided in
186 section 17a-101i with reference to abuse of a child that results in death,
187 sexual abuse or serious physical abuse, no entry of the recommended
188 finding shall be made on the child abuse or neglect registry nor shall
189 any information concerning the recommended finding be disclosed by
190 the commissioner to any other state official or state agency or any
191 private person or entity until the exhaustion or waiver of all
192 administrative appeals available to the person or persons alleged to be
193 responsible for the abuse or neglect as provided in section 17a-101k, as
194 amended by this act.

195 (c) If the Commissioner of Children and Families, or [his] the
196 commissioner's designee, has probable cause to believe that the child
197 or any other child in the household is in imminent risk of physical
198 harm from [his] the child's surroundings and that immediate removal
199 from such surroundings is necessary to ensure the child's safety, the
200 commissioner, or [his] the commissioner's designee, shall authorize
201 any employee of the department or any law enforcement officer to
202 remove the child and any other child similarly situated from such
203 surroundings without the consent of the child's parent or guardian.
204 The commissioner shall record in writing the reasons for such removal
205 and include such record with the report of the investigation conducted
206 under subsection (b) of this section.

207 (d) The removal of a child pursuant to subsection (c) of this section
208 shall not exceed ninety-six hours. During the period of such removal,
209 the commissioner, or [his] the commissioner's designee, shall provide
210 the child with all necessary care, including medical care, which may
211 include an examination by a physician or mental health professional
212 with or without the consent of the child's parents, guardian or other
213 person responsible for the child's care, provided reasonable attempts
214 have been made to obtain consent of the child's parents or guardian or
215 other person responsible for the care of such child. During the course
216 of a medical examination, a physician may perform diagnostic tests
217 and procedures necessary for the detection of child abuse or neglect. If
218 the child is not returned home within such ninety-six-hour period,
219 with or without protective services, the department shall proceed in
220 accordance with section 46b-129.

221 Sec. 3. Subsection (c) of section 17a-28 of the general statutes is
222 repealed and the following is substituted in lieu thereof (*Effective*
223 *October 1, 2005*):

224 (c) When information concerning an incident of abuse or neglect has
225 been made public or when the commissioner reasonably believes
226 publication of such information is likely, the commissioner or [his] the
227 commissioner's designee may disclose, with respect to an investigation
228 of such abuse or neglect: (1) Whether the department has received a
229 report in accordance with sections 17a-101a to 17a-101c, inclusive, or
230 section 17a-103, and (2) in general terms, any action taken by the
231 department, provided (A) the names or other individually identifiable
232 information of the minor victim or other family member shall not be
233 disclosed, [notwithstanding such individually identifiable information
234 is otherwise available] and (B) the name or other individually
235 identifiable information of the person suspected to be responsible for
236 the abuse or neglect shall not be disclosed unless the person has been
237 arrested for a crime related to the abuse or neglect.

238 Sec. 4. Subsections (f) and (g) of section 17a-28 of the general
239 statutes are repealed and the following is substituted in lieu thereof

240 (Effective October 1, 2005):

241 (f) The commissioner or the commissioner's designee shall, upon
242 request, promptly provide copies of records, without the consent of a
243 person, to (1) a law enforcement agency, (2) the Chief State's Attorney
244 or the Chief State's Attorney's designee or a state's attorney for the
245 judicial district in which the child resides or in which the alleged abuse
246 or neglect occurred or the state's attorney's designee, for purposes of
247 investigating or prosecuting an allegation of child abuse or neglect, (3)
248 the attorney appointed to represent a child in any court in litigation
249 affecting the best interests of the child, (4) a guardian ad litem
250 appointed to represent a child in any court in litigation affecting the
251 best interests of the child, (5) the Department of Public Health, which
252 licenses any person to care for children for the purposes of
253 determining suitability of such person for licensure, in a manner
254 consistent with section 17a-101k, as amended by this act, concerning
255 nondisclosure of findings of responsibility for abuse or neglect, (6) any
256 state agency which licenses such person to educate or care for children
257 pursuant to section 10-145b or 17a-101j, in a manner consistent with
258 section 17a-101k, as amended by this act, concerning nondisclosure of
259 findings of responsibility for abuse or neglect, (7) the Governor, when
260 requested in writing, in the course of the Governor's official functions
261 or the Legislative Program Review and Investigations Committee, the
262 committee of the General Assembly on judiciary and the committee of
263 the General Assembly having cognizance of matters involving children
264 when requested in the course of such committees' official functions in
265 writing, and upon a majority vote of said committee, provided no
266 names or other identifying information shall be disclosed unless it is
267 essential to the legislative or gubernatorial purpose, (8) a local or
268 regional board of education, provided the records are limited to
269 educational records created or obtained by the state or Connecticut-
270 Unified School District #2, established pursuant to section 17a-37, in a
271 manner consistent with section 17a-101k, as amended by this act,
272 concerning nondisclosure of findings of responsibility for abuse or
273 neglect, and (9) a party in a custody proceeding under section 17a-112,
274 or section 46b-129, in the Superior Court where such records concern a

275 child who is the subject of the proceeding or the parent of such child. A
276 disclosure under this section shall be made of any part of a record,
277 whether or not created by the department, provided no confidential
278 record of the Superior Court shall be disclosed other than the petition
279 and any affidavits filed therewith in the superior court for juvenile
280 matters, except upon an order of a judge of the Superior Court for
281 good cause shown. The commissioner shall also disclose the name of
282 any individual who cooperates with an investigation of a report of
283 child abuse or neglect to such law enforcement agency or state's
284 attorney for purposes of investigating or prosecuting an allegation of
285 child abuse or neglect. The commissioner or the commissioner's
286 designee shall, upon request, in a manner consistent with section 17a-
287 101k, as amended by this act, concerning nondisclosure of findings of
288 responsibility for abuse or neglect, promptly provide copies of records,
289 without the consent of the person, to (A) the Department of Public
290 Health for the purpose of determining the suitability of a person to
291 care for children in a facility licensed under sections 19a-77 to 19a-80,
292 inclusive, 19a-82 to 19a-87, inclusive, and 19a-87b, and (B) the
293 Department of Social Services for determining the suitability of a
294 person for any payment from the department for providing child care.

295 (g) When the commissioner or [his] the commissioner's designee
296 determines it to be in a person's best interest, the commissioner or [his]
297 the commissioner's designee may, in a manner consistent with section
298 17a-101k, as amended by this act, concerning nondisclosure of findings
299 of responsibility for abuse or neglect, disclose records, whether or not
300 created by the department and not otherwise privileged or confidential
301 communications under state or federal law, without the consent of a
302 person to:

303 (1) Multidisciplinary teams which are formed to assist the
304 department in investigation, evaluation or treatment of child abuse
305 and neglect cases or a multidisciplinary provider of professional
306 treatment services under contract with the department for a child
307 referred to the provider;

308 (2) Any agency in another state which is responsible for
309 investigating or protecting against child abuse or neglect for the
310 purpose of investigating a child abuse case;

311 (3) An individual, including a physician, authorized pursuant to
312 section 17a-101f to place a child in protective custody if such
313 individual has before him a child whom he reasonably suspects may
314 be a victim of abuse or neglect and such individual requires the
315 information in a record in order to determine whether to place the
316 child in protective custody;

317 (4) An individual or public or private agency responsible for a
318 person's care or custody and authorized by the department to
319 diagnose, care for, treat or supervise a child who is the subject of a
320 record of child abuse or neglect or a public or private agency
321 responsible for a person's education for a purpose related to the
322 individual's or agency's responsibilities;

323 (5) The Attorney General or any assistant attorney general
324 providing legal counsel for the department;

325 (6) Individuals or public or private agencies engaged in medical,
326 psychological or psychiatric diagnosis or treatment of a person
327 perpetrating the abuse or who is unwilling or unable to protect the
328 child from abuse or neglect when the commissioner or [his] the
329 commissioner's designee determines that the disclosure is needed to
330 accomplish the objectives of diagnosis or treatment;

331 (7) A person who reports child abuse pursuant to sections 17a-101a
332 to 17a-101c, inclusive, and section 17a-103, who made a report of abuse
333 involving the subject child, provided the information disclosed is
334 limited to (A) the status of the investigation and (B) in general terms,
335 any action taken by the department;

336 (8) An individual conducting bona fide research, provided no
337 information identifying the subjects of records shall be disclosed
338 unless (A) such information is essential to the purpose of the research;

339 (B) each person identified in a record or [his] the person's authorized
340 representative has authorized such disclosure in writing; and (C) the
341 department has given written approval;

342 (9) The Auditors of Public Accounts or their representative,
343 provided no information identifying the subjects of the records shall be
344 disclosed unless such information is essential to an audit conducted
345 pursuant to section 2-90;

346 (10) The Department of Social Services, provided the information
347 disclosed is necessary to promote the health, safety and welfare of the
348 child;

349 (11) A judge of the Superior Court for purposes of determining the
350 appropriate disposition of a child convicted as delinquent or a child
351 who is a member of a family with service needs; and

352 (12) The superintendents, or their designees, of state-operated
353 facilities within the department.

354 Sec. 5. Subsection (m) of section 17a-28 of the general statutes is
355 repealed and the following is substituted in lieu thereof (*Effective*
356 *October 1, 2005*):

357 (m) In addition to the right of access provided in section 1-210, and
358 consistent with section 17a-101k, as amended by this act, concerning
359 nondisclosure of findings of responsibility for abuse or neglect, any
360 person, regardless of age, [his] the person's authorized representative
361 or attorney shall have the right of access to any records made,
362 maintained or kept on file by the department, whether or not such
363 records are required by any law or by any rule or regulation, when
364 those records pertain to or contain information or materials concerning
365 the person seeking access thereto, including but not limited to records
366 concerning investigations, reports, or medical, psychological or
367 psychiatric examinations of the person seeking access thereto,
368 provided that (1) information identifying an individual who reported
369 abuse or neglect of a person, including any tape recording of an oral

370 report pursuant to section 17a-103, shall not be released unless, upon
371 application to the Superior Court by such person and served on the
372 Commissioner of Children and Families, a judge determines, after in
373 camera inspection of relevant records and a hearing, that there is
374 reasonable cause to believe the reporter knowingly made a false report
375 or that other interests of justice require such release; and (2) if the
376 commissioner determines that it would be contrary to the best interests
377 of the person or [his] the person's authorized representative or
378 attorney to review the records, [he] the person may refuse access by
379 issuing to such person or representative or attorney a written
380 statement setting forth the reasons for such refusal, and advise the
381 person, [his] the person's authorized representative or attorney of the
382 right to seek judicial relief. When any person, attorney or authorized
383 representative, having obtained access to any record, believes there are
384 factually inaccurate entries or materials contained therein, [he] the
385 person, attorney or authorized representative shall have the
386 unqualified right to add a statement to the record setting forth what
387 [he] the person, attorney or authorized representative believes to be an
388 accurate statement of those facts, and said statement shall become a
389 permanent part of said record.

390 Sec. 6. Section 46b-120 of the general statutes is repealed and the
391 following is substituted in lieu thereof (*Effective October 1, 2005*):

392 The terms used in this chapter shall, in its interpretation and in the
393 interpretation of other statutes, be defined as follows: (1) "Child"
394 means any person under sixteen years of age and, for purposes of
395 delinquency matters, "child" means any person (A) under sixteen years
396 of age, or (B) sixteen years of age or older who, prior to attaining
397 sixteen years of age, has violated any federal or state law or municipal
398 or local ordinance, other than an ordinance regulating behavior of a
399 child in a family with service needs, and, subsequent to attaining
400 sixteen years of age, violates any order of the Superior Court or any
401 condition of probation ordered by the Superior Court with respect to
402 such delinquency proceeding; (2) "youth" means any person sixteen or
403 seventeen years of age; (3) "youth in crisis" means any youth who,

404 within the last two years, (A) has without just cause run away from the
405 parental home or other properly authorized and lawful place of abode,
406 (B) is beyond the control of parents, guardian or other custodian, or (C)
407 has four unexcused absences from school in any one month or ten
408 unexcused absences in any school year; (4) "abused" means that a child
409 or youth (A) has been inflicted with physical injury or injuries other
410 than by accidental means, or (B) has injuries that are at variance with
411 the history given of them, or (C) is in a condition that is the result of
412 maltreatment such as, but not limited to, malnutrition, sexual
413 molestation or exploitation, deprivation of necessities, emotional
414 maltreatment or cruel punishment, except that nonaccidental injury
415 resulting from bona fide disciplinary efforts of a parent or guardian
416 shall not be considered abuse if such disciplinary efforts were
417 reasonable under the circumstances considering the child's family
418 situation, the age of the child, the mental and physical condition of the
419 child and the matter for which the child was being disciplined; (5) a
420 child may be found "mentally deficient" who, by reason of a deficiency
421 of intelligence that has existed from birth or from early age, requires,
422 or will require, for [his] the child's protection or for the protection of
423 others, special care, supervision and control; (6) a child may be
424 convicted as "delinquent" who has violated (A) any federal or state law
425 or municipal or local ordinance, other than an ordinance regulating
426 behavior of a child in a family with service needs, (B) any order of the
427 Superior Court, or (C) conditions of probation as ordered by the court;
428 (7) a child or youth may be found "dependent" whose home is a
429 suitable one for the child or youth, save for the financial inability of
430 parents, parent, guardian or other person maintaining such home, to
431 provide the specialized care the condition of the child or youth
432 requires; (8) "family with service needs" means a family that includes a
433 child who (A) has without just cause run away from the parental home
434 or other properly authorized and lawful place of abode, (B) is beyond
435 the control of parent, parents, guardian or other custodian, (C) has
436 engaged in indecent or immoral conduct, (D) is a truant or habitual
437 truant or who, while in school, has been continuously and overtly
438 defiant of school rules and regulations, or (E) is thirteen years of age or

439 older and has engaged in sexual intercourse with another person and
440 such other person is thirteen years of age or older and not more than
441 two years older or younger than such child; (9) a child or youth may be
442 found "neglected" who (A) has been abandoned, or (B) is being denied
443 proper care and attention, physically, educationally, emotionally or
444 morally, or (C) is being permitted to live under conditions,
445 circumstances or associations injurious to the well-being of the child or
446 youth, or (D) has been abused. A finding of neglect shall not be made
447 pursuant to subparagraph (B) or (C) of this subdivision if the denial of
448 proper care or attention or the child's being permitted to live under the
449 injurious conditions, circumstances or associations were caused by a
450 lack of access to health care, employment or social services that can be
451 rectified by a referral to appropriate employment, social or disability
452 support services. The Commissioner of Children and Families shall
453 apply a reasonableness standard when considering an allegation of
454 neglect and shall take into account the child's family situation, the age
455 of the child and the physical and mental condition of the child; (10) a
456 child or youth may be found "uncared for" who is homeless or whose
457 home cannot provide the specialized care that the physical, emotional
458 or mental condition of the child requires. For the purposes of this
459 section, the treatment of any child by an accredited Christian Science
460 practitioner in lieu of treatment by a licensed practitioner of the
461 healing arts, shall not of itself constitute neglect or maltreatment; (11)
462 "delinquent act" means the violation of any federal or state law or
463 municipal or local ordinance, other than an ordinance regulating the
464 behavior of a child in a family with service needs, or the violation of
465 any order of the Superior Court; (12) "serious juvenile offense" means
466 (A) the violation by a child, including attempt or conspiracy to violate
467 sections 21a-277, 21a-278, 29-33, 29-34, 29-35, 53-21, 53-80a, 53-202b,
468 53-202c, 53-390 to 53-392, inclusive, 53a-54a to 53a-57, inclusive, 53a-59
469 to 53a-60c, inclusive, 53a-70 to 53a-71, inclusive, 53a-72b, 53a-86, 53a-92
470 to 53a-94a, inclusive, 53a-95, 53a-101, 53a-102a, 53a-103a, 53a-111 to
471 53a-113, inclusive, subdivision (1) of subsection (a) of section 53a-122,
472 subdivision (3) of subsection (a) of section 53a-123, 53a-134, 53a-135,
473 53a-136a, 53a-166, 53a-167c, subsection (a) of section 53a-174, 53a-196a,

474 53a-211, 53a-212, 53a-216 or 53a-217b, or (B) running away, without
475 just cause, from any secure placement other than home while referred
476 as a delinquent child to the Court Support Services Division or
477 committed as a delinquent child to the Commissioner of Children and
478 Families for a serious juvenile offense; (13) "serious juvenile offender"
479 means any child convicted as delinquent for commission of a serious
480 juvenile offense; (14) "serious juvenile repeat offender" means any
481 child charged with the commission of any felony if such child has
482 previously been convicted delinquent at any age for two violations of
483 any provision of title 21a, 29, 53 or 53a that is designated as a felony;
484 (15) "alcohol-dependent child" means any child who has a
485 psychoactive substance dependence on alcohol as that condition is
486 defined in the most recent edition of the American Psychiatric
487 Association's "Diagnostic and Statistical Manual of Mental Disorders";
488 and (16) "drug-dependent child" means any child who has a
489 psychoactive substance dependence on drugs as that condition is
490 defined in the most recent edition of the American Psychiatric
491 Association's "Diagnostic and Statistical Manual of Mental Disorders".
492 No child shall be classified as drug dependent who is dependent (A)
493 upon a morphine-type substance as an incident to current medical
494 treatment of a demonstrable physical disorder other than drug
495 dependence, or (B) upon amphetamine-type, ataractic,
496 barbiturate-type, hallucinogenic or other stimulant and depressant
497 substances as an incident to current medical treatment of a
498 demonstrable physical or psychological disorder, or both, other than
499 drug dependence.

500 Sec. 7. (NEW) (*Effective October 1, 2005*) (a) Nothing in chapter 815t
501 of the general statutes shall be construed to be in derogation of the
502 rights of a parent or guardian to discipline a child in the parent's or
503 guardian's care to the extent otherwise permitted by law.

504 (b) The Commissioner of Children and Families shall adopt
505 regulations, in accordance with chapter 54 of the general statutes, to
506 implement this section and section 46b-120 of the general statutes, as
507 amended by this act, with respect to findings of abuse or neglect made

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Children & Families, Dept.	GF - Cost	At least \$1,855,000	At least \$1,612,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	At least \$196,975	At least \$664,950
Attorney General & Judicial Dept.	GF - Cost	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill makes numerous policy changes concerning the Department of Children and Families' (DCF's) handling of reports of suspected child abuse or neglect, and broadens the appeals process for alleged perpetrators. Implementation will result in a significant cost to the DCF, as described in the following sections.

Notice Of Findings Of Alleged Child Abuse Or Neglect

The bill requires the department to send (by certified mail - return receipt requested) a notice to each individual alleged to be responsible for child abuse or neglect in a recommended finding or substantiation, on or after October 1, 2005. Notice is currently sent via first class mail.

An FY 06 postage cost of \$25,970 will result, based on an expected 8,550¹ substantiations and increased postage per mailing of \$4.05 (\$4.42 certified return receipt less \$0.37 first class mail). In FY 07 and subsequent fiscal years this cost will increase to \$34,630 based on full year implementation.

The department will also be required, not later than 12/01/05, to

notify (by certified mail - return receipt requested) all individuals having substantiated findings of abuse or neglect that predate May 2000. Assuming a look back period of ten years, an estimated total of approximately 110,000 notifications will be required.

A one-time FY 06 cost of approximately \$486,200 will be incurred in postage charges (at \$4.42 per notification). Additionally, one-time consultant services, at a cost of approximately \$230,000, will be required to create a computer program to extract the pre-May 2000 reports from the agency's data systems (\$10,000) and perform clerical work to prepare the 110,000 mailings (at \$220,000).

Mediation Conferences

The bill extends the right to request a mediation conference to persons notified of a finding of alleged child abuse or neglect. The mediation conference must be recorded and copies of the recording must be provided to the alleged perpetrator upon request.

An estimated 2,000² mediation conferences will be held annually. The department will require four additional staff (2 Social Workers, 2 Program Supervisors) at an FY 06 cost of \$230,900 (including other expenses) to conduct these conferences. In FY 07 and subsequent fiscal years this cost will increase to \$307,860 to reflect full year implementation. An additional cost of approximately \$25,900 will be incurred to purchase recording devices and tapes.

Agency costs will be supplemented by fringe benefit costs of \$47,540 in FY 06 and \$150,880 in FY 07 and subsequent fiscal years³.

¹ Average based on 2000 - 2004 data.

² Approximately 2,000 initial appeals of substantiated reports were reviewed by the agency in 2004.

³ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

Post Mediation Conference Appeals

Parties aggrieved by a decision rendered after a mediation conference may request a hearing, which must occur within thirty days and involve a prehearing. Administrative hearings are currently conducted within three months, on average, and do not involve a prehearing. The bill requires that the hearing officer must be an individual who is not an employee of the Department of Children and Families.

To conduct the hearings in accordance with the bill's provisions, the agency will require an estimated \$150,000 in FY 06 to retain 3 non-DCF hearings officers for eight-months, and \$36,119 for 1 Paralegal Specialist. In FY 07 these costs will increase to \$279,179 to reflect full-year implementation. Fringe benefit costs of \$8,180 in FY 06 and \$29,208 in FY 07 and subsequent fiscal years will also ensue.

Additional Appeals Generated by Notice of Pre-2000 Findings

Additional costs will be incurred to support staff needed to participate in additional mediation conferences and/or administrative hearings requested by individuals notified of pre-May 2000 substantiated reports. The exact number of such requests cannot be determined in advance, however a minimum of 4 staff will be required if one percent (or approximately 1,100) of the 110,000 noticed persons request conferences and/or appeals.

This staff will include 1 Administrative Hearings Attorney, 1 Adjudicator and 1 Paralegal Specialist. Six month funding of \$106,873 will be required in FY 06. In FY 07 needed funding will increase to \$213,746 based on full year implementation. Fringe benefit costs of \$23,054 in FY 06 and \$109,743 in FY 07 will also ensue.

DCF Administrative & Legal Costs

Additional clerical staff will be required to implement the new

notification protocol, monitor the return of postal receipts, schedule mediation conferences and process requests for copies of recordings. A cost of \$333,634 will be incurred to support the three-quarter year salaries of 10.5 full-time equivalent (FTE) Office Assistants assigned to the agency's area offices in FY 06 and associated other expenses. In FY 07 and subsequent fiscal years this cost will increase to \$444,845 to reflect full year implementation. Fringe benefit costs of \$68,698 in FY 06 and \$218,015 in FY 07 and subsequent fiscal years will also ensue.

The DCF's Legal Division will require additional staffing to represent the department in mediation conferences and subsequent administrative hearings and/or appeals to the Superior Court. An FY 06 cost of \$229,488 will be incurred to support 1 Administrative Hearings Attorney and 4 Paralegal Specialists. In FY 07 and subsequent fiscal years this cost will increase to \$305,984 to reflect full-year implementation. Fringe benefit costs of \$49,503 in FY 06 and \$157,101 in FY 07 and subsequent fiscal years will also ensue.

The department will be able to adopt regulations as required in the bill without requiring additional resources.

Other Agencies

The bill provides for administrative appeals related to pre-May 2000 substantiated findings of abuse or neglect to Superior Court for any person aggrieved by a decision with regard to the substantiation of a report of abuse or neglect. The Office of the Attorney General, which must represent the Department of Children and Families in any appeals proceeding, and the Judicial Department could accommodate the potential caseload resulting from this change without requiring additional appropriations.

OLR Bill Analysis

sHB 5057

AN ACT CONCERNING THE DEPARTMENT OF CHILDREN AND FAMILIES AND CHILD ABUSE OR NEGLECT PROCEEDINGS**SUMMARY:**

This bill establishes notice, hearing, and appeals procedures for people the Department of Children and Families (DCF) finds reasonable cause to believe are responsible for neglecting or abusing a child. The bill prohibits, in most cases, the agency from disclosing anything about the accused or the case until he has waived or completed all available procedures to overturn the finding. Current law requires the DCF commissioner to make disclosures to various state agencies and to place the individual's name on the registry as soon as she finds that the abuse or neglect charge has been substantiated.

The bill also requires DCF to notify people whose names have been listed on its sexual abuse and neglect registry for charges substantiated before May 5, 2000, that (1) charges against them have been substantiated, (2) their names are listed in the registry and its potential consequences, and (3) how they may get their names removed.

It adds provisions requiring expungement of case files in which the report was unsubstantiated, and specifying circumstances under which actions that might otherwise be considered abuse or neglect are excusable.

The bill requires the commissioner to adopt implementing regulations.

EFFECTIVE DATE: October 1, 2005

SUBSTANTIATED AND RECOMMENDED FINDINGS OF ABUSE AND NEGLECT (§§ 1 & 2)

When DCF completes an investigation into a report of abuse or neglect and the commissioner has reasonable cause to believe that abuse or neglect occurred, the bill requires her to issue a recommended finding to this effect to the accused. Except in cases involving death, sexual abuse, or serious physical abuse, she cannot enter this recommended

finding in the child abuse registry and cannot disclose any information regarding the recommended finding to any other state official, state agency, or any private person or entity until the accused has exhausted or waived all available administrative appeals.

Notice

The bill requires DCF to immediately notify people when (1) it concludes that abuse or neglect charges against them have been substantiated or (2) issues a recommended finding of substantiation. It must send the notice by certified mail, return receipt requested, and include:

1. a short and plain description of the finding that the accused is responsible for the abuse or neglect of a child;
2. notice of the commissioner's intention to place the individual's name on its abuse and neglect registry unless the accused files an appeal;
3. a description of the potential adverse consequences of being listed on the registry, including its effect on obtaining or keeping a job that involves direct contact with children;
4. information about his rights to participate in a mediation conference and to an expedited administrative appeal if the conference results in a decision upholding the abuse or neglect finding; and
5. a form he can sign and return indicating whether he will invoke the mediation or appeal procedures.

Mediation Conferences

Under the bill, the purpose of the mediation conference is to allow all parties to discuss the allegations and permit the accused to demonstrate, through documentation or discussion with the individual or his representative, that the finding of responsibility is factually or legally deficient and should be reversed.

The bill requires the commissioner, or a designee, to hold a mediation conference within 30 business days after she mails the notice of the

abuse or neglect finding to the accused, if he requests this. People accused of abuse resulting a child's death, serious physical abuse, or sexual abuse are not eligible for mediation.

DCF must provide the accused access to all relevant documents it possesses regarding the finding of responsibility for the abuse or neglect before the hearing.

Conference Procedures

The bill permits the accused to bring to the conference legal counsel and witnesses with personal knowledge about the case. The victim's guardian, parent, or legal representative may also attend. The conference must be recorded on a visual, audio, magnetic, or electronic recording and DCF must make copies available to all parties who request it.

Results

If the mediation conference results in the commissioner finding that the abuse or neglect finding is factually or legally deficient, the bill requires the commissioner to indicate this in writing and reverse the finding.

If her conclusion is that the abuse or neglect finding is factually and legally supportable, she must designate the finding as "indicated."

Within three business days after the decision is rendered, the commissioner must send notice to the accused by certified mail, return request requested, of her decision to reverse or maintain the finding. (She must schedule a contested case hearing within 30 days of any case she designates as "indicated" unless any party shows good cause for delay.

The notice must include:

1. the contested hearing's time, place, and nature;
2. the legal authority and jurisdiction that will govern it;
3. the particular statutes and regulations involved; and

4. a short and plain statement of the matters asserted.

Prehearing and Hearing Procedures

The bill requires prehearing and hearing procedures to conform with the state's Uniform Administrative Procedure Act, except that the hearing officer cannot be a DCF employee.

At the hearing, the accused may be represented by legal counsel. The commissioner has the burden of proving that the indicated finding is supported by a fair preponderance of the evidence submitted at the hearing.

Decisions

The hearing officer must issue a written decision within 30 days after the hearing concludes. It must contain findings of fact and conclusions of law on each issue raised at the hearing. The hearing officer can either reverse or uphold the commissioner's indicated finding.

Court Appeals

Anyone aggrieved by the hearing officer's decision can file an administrative appeal in the Superior Court. The bill permits those appealing to ask DCF to stay its decision until the appeal is concluded. If the agency refuses to issue the stay, the appealing party may seek a court order staying its implementation.

DCF Disclosure of Information Relating to Abuse and Neglect Findings

Following the issuance of a court decision upholding DCF's abuse or neglect finding, the bill requires the DCF commissioner to forward the information as required by law to the child abuse registry. She must also disclose to the Public Health and Social Services commissioners, and any other state agency or official the law entitles to notice that the recommended finding of responsibility for the abuse or neglect has been upheld. She cannot disclose information other than that required under existing state statutes.

NOTICE TO CERTAIN PEOPLE LISTED ON THE ABUSE AND NEGLECT REGISTRY (§ 1)

The bill requires the commissioner to notify everyone against whom findings of abuse or neglect were substantiated before May 1, 2000, that (1) the substantiated findings exist, (2) their names are on the registry and the potential consequences of this, and (3) they have the right to appeal. She must send a notice to each of these individuals by certified mail, return receipt requested, by December 1, 2005.

EXPUNGING UNSUBSTANTIATED CASE FILES (§ 1)

The bill requires DCF to seal records containing unsubstantiated abuse and neglect allegations, but it can permit access to agency employees who need this to properly discharge their job duties. It requires the commissioner to expunge unsubstantiated case files two years after DCF completed its investigation if no further reports involving him have been received. But if DCF receives more than one report involving the accused that it has been unable to substantiate, it must keep the records for five years from the date the most recent investigation is completed.

OTHER CONFIDENTIALITY REQUIREMENTS (§ 3)

By law, DCF may disclose limited information about ongoing investigations that it determines are likely to be reported by the media. Currently, it cannot disclose the names or other individually identifiable information about the victim or other family members. The bill extends the same confidentiality provisions to people suspected of having committed the abuse or neglect unless they have been arrested for a related crime.

EXCUSABLE ABUSE AND NEGLECT (§§ 6 & 7)

The bill requires DCF to apply a reasonableness standard when considering any allegation of neglect and take into account the child's family situation, age, and physical and mental condition. It prohibits the abuse and neglect statutes from being construed to limit the rights of a parent or guardian to discipline a child in their care to the extent otherwise permitted by law.

It exempts from the statutory definition of "abuse" nonaccidental injuries resulting from bona fide disciplinary efforts of a parent or guardian. The discipline must be reasonable under the circumstances considering the child's family situation, age, mental and physical condition, and the matter for which he was being disciplined.

It also prohibits a finding of neglect if the denial of proper care or attention or the child's being permitted to live under the injurious conditions, circumstances, or associations were caused by a lack of access to health care, employment, or social services that can be rectified by referral to appropriate support services.

COMMITTEE ACTION

Select Committee on Children

Joint Favorable Change of Reference
Yea 12 Nay 0

Human Services Committee

Joint Favorable Change of Reference
Yea 16 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 40 Nay 0