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H.B. 6816 -- Closed courtrooms and records in family matters

Judiciary Committee Public Hearing -- February 26, 2007
Testimony of Raphael L. Podolsky

Recommended Committee action: **REJECTION OF THE BILL**

Under existing law, Superior Court judges can close a courtroom or seal records for good cause. See C.G.S. 46b-49. It is a power that is exercised fairly sparingly. This bill, in contrast, routinely closes family courts to the public upon the request of either or both parties, unless the court makes an affirmative finding that the public interest "requires" that the hearing not be private. It closes all family relations files to public inspection, except upon specific court order. If the bill is passed, it is likely that lawyers will advise their family clients to exercise the new right of secrecy in nearly all cases; and courtrooms in family court will soon become closed as a matter of routine. The proposed changes are undesirable for both policy and practical reasons and should be rejected.

Since at least the adoption of the modern Freedom of Information Act in 1975, Connecticut public policy has been clear that government functions best when it does not operate in secrecy. Secrecy invites arbitrary decision-making and undermines public confidence in the court system. It conveys the wrong message to judges – that they can conduct court in any manner they please without fear that they will be observed or evaluated. It treats the Judicial Branch of state government as if it is a private entity, rather than an essential element of the public decision-making process. It prevents the public, often through the press, from understanding how the courts operate and whether they are doing their job well. Indeed, it makes research on the family court system nearly impossible, since the raw data needed for research will become unavailable. It is worth noting the public furor that arose when it was discovered that some cases in the court system were being treated with such a level of secrecy that their very existence was not being disclosed in public records.

There are also some practical reasons why courts and records should ordinarily be open. Pro se litigants may be barred from bringing non-lawyer friends into the courtroom with them if courtrooms are closed to non-parties, yet those friends may be critical for assistance or emotional support. Closed courtrooms preclude litigants from observing courts in action to understand what will happen in their own cases. They also prevent them from seeing how a particular judge handles cases. Closed files make it difficult for lawyers to gather the information needed to determine whether or not to accept a case in which they are not yet representing a party.

Under existing law, courts have the power to close courtrooms and seal records in appropriate cases. There is no need to change this system, and the bill should not be adopted.