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Re: H.B. 5271 – AAC Access to Records of the Department of Children and Families

March 9, 2010

Members of the Human Services Committee:

As legal assistance lawyers we come to the examination of this bill with a variety of experiences. In family court we often represent parents in custody disputes with abusive former partners. We also function as guardians or attorneys for children. In juvenile court we represent children and parents in the child protection and delinquency courts. We represent youth accused of crimes in the juvenile, youthful offender and adult criminal court systems and in the various educational systems. Our concerns about this bill are drawn from this broad background.

We at legal services do not oppose the reorganization of this statute and agree this is a very good goal. The statute, as written, is cumbersome. If that were the only change sought we would have no objection.

Our opposition to the substance of the bill is based on concerns about the privacy rights of children and adults involved in DCF investigations. This bill widely expands access to previously confidential records. We understand the administrative task of scrutinizing and redacting records each time a request is made is significant. However, we believe the privacy rights at issue must outweigh that concern. Parents have constitutionally protected rights to care for their children as they see fit, which includes when and where to disclose sensitive information. This bill significantly undermines those rights.

In our experience DCF records are often unreliable for purposes other than DCF investigation. They contain hearsay, often there are inaccurate notes that are not made contemporaneously with the conversations or events they recount, and are rarely complete. The records also include many "unsubstantiated" reports of abuse/neglect.

Another very good reason for protecting the confidentiality of these records is that it encourages DCF clients to be forthcoming about their life histories and the nature of their current problems. The social worker's "running narratives," which are essentially working notes, will frequently recount conversations with clients (whether a parent client or a child client) about extremely sensitive subjects.

Many of the situations this bill seeks to address (sharing records more easily with other state agencies, for example) can be accomplished by the parent signing a release for DCF. This routinely occurs. In situations where DCF is already the guardian of the child these provisions are not even necessary.

We have submitted proposed amendments to this bill. A summary of some specific concerns include the following:

- As proposed, several disclosure categories that were under the "DCF *may* disclose" section now fall under the "DCF *shall* disclose" section. (Such as the Department of Social Services, persons reporting abuse, professionals reporting abuse under 17a-101a, and multidisciplinary teams.) We prefer all the original items remain in the "may disclose" category.

- Remove 1(g)(21) altogether: this is an entirely new and very troubling provision. "An employee of the Board of Pardons and Parole . . ." We strongly oppose this addition for several reason: (1) This is too broad a release; (2) any information pertinent to the parole or probation is already part of the criminal case; (3) the probation and/or parole review is too distant in time from the DCF involvement; (4) victims/children/parents have privacy rights in these types of proceedings as well that are implicated by such a broad disclosure; (5) victims rights statutes already provide for involvement at this level if they want it -- this language assumes all victims would want this information disclosed, which is not accurate; (6) we understand this statute applies to the records of children held in CJTS -- it is totally inappropriate for the Board of Pardons and Parole to have unfettered access to all of the DCF records of a juvenile detained at CJTS.
- Replace 1(g)(22) with the limited language proposed. This is an entirely new provision about mandatory disclosure to the Superior Court or Probate Court and "all necessary parties in a custody proceeding" where the DCF records concern the child/youth who is the subject of the custody proceeding or the parent of the child/youth." This provision will be misused by abusive parents. It will discourage people from talking openly to DCF social workers about their mental health, medical and substance abuse issues. Are DCF social workers going to have parents and children sign some type of acknowledgment saying that they were warned their statements can be disclosed to other family members? There already exists sufficient subpoena and evidentiary rules for the court to access DCF information, if needed.
- We suggest section 1(g)(13) "Any foster or prospective adoptive parent. . ." be amended to state ". . .and the records sought to be released are strictly necessary to address the social, medical, psychological or educational needs of the child or youth . . ."

Thank you for your time and attention to our concerns.

Sincerely,

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Summary of Legal Services proposed changes to DCF legislative proposal
(2010 session HB 5271)
3-9-10

Move the following sections from the (g) "shall disclose" to the (h) "may disclose" category:

- (g) (4) "An employee or former employee . . ."
- (g) (11) "Any provider of professional services . . ."
- (g) (12) "Any individual or agency . . ."
- (g) (16) "The Department of Social Services . . ."
- (g) (19) "Any individual, including a physician . . ."
- (g) (20) "An individual who reports child abuse . . ."
- (g) (24) "Individuals or public or private agencies . . ."
- (g) (25) "Any court or public agency in another state . . ."
- (g) (26) "An individual conducting bona fide research . . ."
- (g) (28) "Individuals or agencies . . ."

Edit the following sections:

- (g) (13) replace "the records are necessary to address" with "the records sought to be released are strictly necessary to address"
- (g) (22) replace existing language with "A judge of the Probate Court where the Probate Court has requested an investigative report by DCF for the purpose of determining custody. Disclosure will be limited to those records necessary for the preparation of the investigative report"

Insert the phrase "subject to the provisions of section 17a-101g and 17a-101k" into each of the following subsections:

- (g) (20) – section (h) (7) in the legal services revision
- (g) (24) – section (h) (8) in the legal services revision
- (g) (25) – section (h) (9) in the legal services revision
- (g) (30)
- (g) (31)
- (h) (2) – section (h) (2) in the legal services revision. Also amend (D) of this subsection to read: "(D) any other information necessary to [further the course of effectively conduct the investigation."
- (h) (8) – section (h) (18) in the legal services revision

Remove altogether these sections:

- (g) (21) "Any employee of the Board of Pardons and Paroles, the Department of Correction . . ."
- (h)(3) "A school employee who. . ."