



STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN AND FAMILIES

Public Hearing Testimony of
Commissioner Susan I. Hamilton, M.S.W., J.D.

Human Services Committee
March 9, 2010



**H.B. No. 5271 - AN ACT CONCERNING ACCESS TO RECORDS OF THE
DEPARTMENT OF CHILDREN AND FAMILIES**

The Department of Children and Families has submitted H.B. No. 5271 - AN ACT CONCERNING ACCESS TO RECORDS OF THE DEPARTMENT OF CHILDREN AND FAMILIES to the Human Services Committee for your favorable consideration, and we would like to take this opportunity to thank you for raising this bill on our behalf.

This bill revises, updates, and reorganizes section 17a-28 of the general statutes, DCF's confidential records law. In general, DCF cannot disclose information created or obtained in connection with its child protection activities or other activities related to a child while that child is in its care or custody without (1) obtaining permission from the subject of the record or an authorized representative, or (2) legal authorization to do so without the subject's consent. Existing law specifies a number of officials and entities to whom DCF must disclose information that would otherwise be confidential and, in most cases, states the limited use the recipients can make of the information. The current statute also lists people and entities with whom DCF may share information when the Commissioner or her designee determines disclosure to be in the best interests of the person who is the subject of the record.

One purpose of this bill is to reorganize the statute for clarity and ease of application to real life events. This has been done by placing all of the mandatory disclosure sections together in subsection (g), and all of the discretionary disclosures together in subsection (h). Another purpose of this bill is to update the list of officials and entities to whom records shall or may be released. These updates amend language that has unnecessarily restricted the Department from sharing information with other state agencies and service providers, with resulting inefficient delivery of services to families. The proposed language also permits some additional limited disclosure of information to law enforcement and other entities in order ensure the safety and well-being of children.

A summary of the amended provisions of CGS 17a-28 follows.

New Required Disclosures

Under the proposal, DCF *must* disclose records without the subject's consent to:

(1) DCF foster care and adoption contractors, for the purpose of identifying and assessing potential placements for the child who is the subject of the record, so long as no information that identifies biological parents is disclosed without their consent;

- (2) foster or prospective adoptive parents, but only records relating to social, medical, psychological, or educational needs of children currently placed with them or being considered for placement, and so long as no information that identifies biological parents is disclosed without their consent;
- (3) employees of the Board of Pardons and Parole, Department of Correction, and the Judicial Branch, for the purposes of assessing treatment needs and determining terms or conditions of pretrial release; pretrial or post-disposition detention; or incarceration, probation, or parole;
- (4) employees of the Department of Mental Health and Addiction Services, for the purpose of treatment planning for young adults who have transitioned from DCF care;
- (5) legal counsel representing DCF during the course of a legal proceeding involving the department or a DCF employee;
- (6) an employee of the Department for any purpose reasonably related to the business of the Department;
- (7) Superior Court judges in criminal prosecutions, for purposes of an in camera review if: (a) the court has ordered that it be given the record, or (b) a party to the proceeding has subpoenaed the record; and
- (8) courts or public agencies in other states and federally recognized Indian tribes which are responsible for child protection or provide services to families involved in the child welfare system.

New Discretionary Disclosures

Under this proposal, DCF is *permitted* to disclose records without the subject's consent to:

- (1) individuals it interviews in abuse and neglect investigations who are not otherwise entitled to this information, but disclosure is limited to: (a) the general nature of the allegations, (b) the child's identity, (c) the alleged perpetrator, and (d) the information necessary to further the course of the investigation;
- (2) mental health professionals who work for schools or have direct responsibility for implementing the educational plan of a child receiving DCF services, but disclosure is limited to information reasonably necessary for the provision of educational services;
- (3) people attempting to locate a missing parent or child, but disclosure is limited to information that assists them in doing so;
- (4) courts of competent jurisdiction, when a DCF employee has been subpoenaed to testify about the record's contents; and
- (5) people not employed by DCF who arrange, perform, or assist in performing functions or activities on DCF's behalf, including data analysis, processing, aggregation, or administration;

utilization review; quality assurance; practice management; consultation; and accreditation services.

Changes in Permissible Uses of Disclosed Records

Current law does not limit the use a law enforcement agency can make of records DCF discloses to it. The proposal specifies that disclosure is for the purpose of investigating cases of suspected child abuse or neglect. It also gives DCF the discretion to disclose records to police and prosecutors when the department has reasonable cause to believe that a child is the victim of a crime involving abuse or neglect.

The proposal also restricts prosecutors' access to juvenile delinquency records. Current law gives prosecutors access to records for purposes of investigating or prosecuting child abuse or neglect allegations. Under the proposal, access to records concerning a delinquency defendant who is not being charged with an offense related to child abuse or neglect is permitted only (1) if the defendant signs a release, and (2) while the case is being prosecuted.

Changes in Disclosure Procedures

People Who Can Authorize Disclosure on a Child's Behalf. The proposal eliminates the authority of a parent to view his or her child's records or give consent to their disclosure once parental rights have been terminated. It adds a child's guardian ad litem (a person appointed by the court to represent a child's best interests) to the list of those persons authorized to access the child's records and to authorize disclosure. Currently, only the child's attorney, parent, guardian, or conservator can authorize disclosure of the contents of the child's records.

Disclosure When Incident Has Been Publicized. Under current law, when an incident of abuse or neglect has been made public, or the DCF Commissioner reasonably believes this will occur, the Commissioner can publicly disclose whether DCF received a complaint and provide a general description of actions taken by the agency, so long as the Commissioner does not disclose personally identifying information about (1) the victim or family, or (2) the suspected abuser unless that person has been arrested for the underlying conduct.

The proposal adds a provision allowing DCF to confirm or deny the accuracy of information that has been made public and generally describe the case's current legal status. Further, it specifies that the prohibition on disclosing identifying information about victims and their families applies even when this information is available from other sources.

Disclosure in Custody Matters. Currently, DCF records can only be disclosed to parties in neglect, abuse or termination of parental rights cases. Under this proposal, disclosure extends to all types of custody cases, including divorce, but only to necessary parties to the case and judges.

Further Disclosure of Record. Current law prohibits information that is disclosed from a person's record from being further disclosed without consent unless it is disclosed pursuant to an order issued by a court in which a criminal prosecution or an abuse, neglect, or termination of parental rights proceeding involving the record's subject is pending.

This proposal permits further disclosure based on an order issued by any court of competent jurisdiction.

Additionally, this proposal permits parties to civil litigation to petition the juvenile court for an order authorizing disclosure to other parties in the litigation. The court can grant the order after reviewing the records in question and determining whether the records are material and relevant and that good cause for disclosure exists. It specifies that "good cause" includes situations in which the party seeking the record has no other means available to obtain the information.

Denying Access to Records. Under current law, the DCF Commissioner can refuse to disclose a record to the person who is the subject of the record when the Commissioner determines that disclosure is not in the person's (or representative's) best interests, so long as the Commissioner gives her reasons in writing and advises the person that he or she may challenge this action in court.

Under this proposal, the Commissioner retains the authority to refuse to disclose records, but the basis for doing so is no longer restricted to considerations of the subject's best interests. Additionally, when the Commissioner refuses a request, the proposal requires that she notify the requestor of the general nature of the records being withheld, in addition to providing her reasons and notice of judicial review options.

The proposal also expands the reasons courts may use to uphold DCF's non-disclosure decisions. Currently, after a hearing and private review of the challenged records, the court must order disclosure unless it determines that this could be contrary to the requestor or requestor's representative's best interests. Under the proposal, the court may also uphold the Commissioner's non-disclosure decision when it determines that disclosure: (1) would be contrary to the best interests of the person who is the subject of the record, (2) could reasonably result in the risk of harm to any person, or (3) would contravene the state's public policy.

It is the Department's position that this bill continues to protect the important confidentiality rights of the children and families we serve while allowing some appropriate discretion to share information when necessary, particularly for purposes of treatment planning and provision of services when clients are receiving services from multiple agencies. In addition, it's our understanding that the existing language of this bill as submitted inadvertently does not reflect the language that the Department had agreed to last session with Connecticut Legal Services, but we remain committed to revising this language, as needed, in accordance with that agreement.

S.B. No. 218 - AN ACT CONCERNING SAFE HAVENS CASES.
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The Department of Children and Families has submitted **S.B. No. 218 - AN ACT CONCERNING SAFE HAVENS CASES** to the Human Services Committee for your favorable consideration, and we would like to take this opportunity to thank you for raising this bill on our behalf.

This bill clarifies DCF's role and responsibility in Safe Havens cases. As many of you know, there have been a number of children who have been afforded important protections due to the Safe Havens law. However, the necessary legal proceedings to free the child for adoption are not clearly spelled out in the existing statute and have been interpreted differently by the courts. The

intent of this proposal is to clarify the ambiguities in the current law, especially as it relates to parents who, due to certain circumstances, do not remain anonymous. This will serve to speed the legal proceedings and ensure that biological parents are afforded the necessary due process so that a child is not potentially subject to lengthy custody litigation after the adoption has been finalized.

The legislature passed this very important initiative in 2000 and the Governor, along with DCF and others, have been aggressively promoting it in order to save infants who might otherwise be abandoned. As you know, this law allows parents, who feel they cannot care for their newborns, to leave them in the care of designated hospital personnel.

The Department of Public Health (DPH) has suggested an amendment for the sole purpose of allowing DPH to seal the original birth record if one is already on file. As currently written, the Safe Haven laws do not permit the identifying information of a parent or infant to be disclosed to DPH. This becomes problematic in situations where a birth certificate has already been filed in the state's birth registry system prior to the child being relinquished under the Safe Haven Act. Because the DPH has not been provided the original name of the infant, it has no way to seal the original birth record, thus it remains a valid record available to the parents named on the certificate, as well as other relatives. This situation allows for the possibility of fraud and other misuses of the birth certificate. We support this amendment.

**H.B. No. 5244 - AN ACT CONCERNING THE ISSUANCE OF EMERGENCY
CERTIFICATES BY CERTAIN STAFF OF THE EMERGENCY MOBILE
PSYCHIATRIC SERVICES PROGRAM**

The Department of Children and Families has submitted H.B. No. 5244 - AN ACT CONCERNING THE ISSUANCE OF EMERGENCY CERTIFICATES BY CERTAIN STAFF OF THE EMERGENCY MOBILE PSYCHIATRIC SERVICES PROGRAM to the Human Services Committee for your favorable consideration, and we would like to take this opportunity to thank you for raising this bill on our behalf.

This bill would give designated professionals operating within the emergency mobile psychiatric service (EMPS) program authority to issue emergency certificates directing a person with psychiatric disabilities to be taken to a hospital for an evaluation. While it is envisioned that such authority would be exercised in a small number of interventions, this will avoid the need in those instances to contact law enforcement for the sole purpose of authorizing the transport to the hospital for the evaluation. This authority mirrors the statutory authority already provided to designated EMPS professionals working with DMHAS and the adult mental health system.

S.B. No. 219 - AN ACT CONCERNING STATE CONTRACT REDUCTIONS

The Department of Children and Families **opposes** S.B. No. 219 - AN ACT CONCERNING STATE CONTRACT REDUCTIONS.

This bill would give a contractor authority to modify their approved budget without approval from the state agency funding the program under certain circumstances. DCF has an established budget revision process that has a generous threshold (\$5,000 per line item) for automatic approval of allowable costs. Above that amount, providers can request, and usually receive,

approval to move money among line items. In addition, both DCF and the Department of Mental Health and Addiction Services have consolidated contracts that fund multiple programs using multiple separate appropriations. As currently worded, this bill would allow contractors to unilaterally decide which programs would be reduced, which adjustments may not be consistent with our service priorities, appropriations or the needs of clients served in those programs.

H.B. No. 5196 - AN ACT CONCERNING CREDIT PROTECTION FOR FOSTER CARE CHILDREN.

The Department of Children and Families **appreciates the intent behind** H.B. No. 5196 - AN ACT CONCERNING CREDIT PROTECTION FOR FOSTER CARE CHILDREN, but **has concerns that the obligations imposed on the Department by the bill may not be achievable, particularly within available resources.**

Although all individuals are susceptible to identity theft, we recognize that youth in foster care may be at greater risk for victimization as they often receive services from multiple agencies and organizations that have access to personal data.

The federal Fair Credit Reporting Act requires that consumers be entitled to a free credit report each year from each of the three nationwide consumer credit reporting companies - Equifax, Experian and TransUnion. However, according to one credit reporting company which we contacted for purposes of understanding our potential obligations under this bill, these agencies do not maintain credit reports on behalf of children. Further, the credit reporting agencies will only conduct a check for the theft of the identity of a child if there is some evidence to believe that the child actually has been a victim of identity theft. In those cases, the Department would need to produce the youth's birth certificate, Social Security Number and a copy of the custody order committing the youth to DCF custody.

DCF has also researched a law that was recently passed in California. That law requires the California child protection agency to conduct a credit check on behalf of a youth in a foster care placement in the county, when the youth reaches his or her 16th birthday, in order to ascertain whether the youth has been the victim of identity theft. If the credit check discloses any negative items, or evidence that identity theft has occurred, the law requires the agency to refer the youth to a nonprofit entity credit counseling organization that provides credit counseling and investigative services to victims of identity theft. The California law also requires the department to develop a list of approved credit counseling organizations for this purpose.

The Department will continue to monitor the legal and administrative issues behind credit protection for child and youth as we want to protect the interests of youth in our care as they transition from our care to adulthood and independence. However, we ask that you consider delaying passage of this bill until it has been determined that there are no practical barriers to the Department carrying out its mandates.

H.B. No. 5429 AN ACT CONCERNING THE BURDEN OF PROOF IN JUVENILE MATTERS.

The Department of Children and Families **opposes** H.B. No. 5429 AN ACT CONCERNING THE BURDEN OF PROOF IN JUVENILE MATTERS.

This bill applies the criminal standard of "beyond a reasonable doubt" to DCF administrative substantiation hearings, Family With Service Needs petitions, motions for Orders of Temporary Custody and Neglect petitions. The Department is very concerned that elevating the burden of proof in these legal proceedings will have a highly negative impact on child safety. The types of cases listed are all civil or administrative in nature. Courts have consistently held that the "preponderance of the evidence" standard used in all civil and administrative cases is constitutionally sufficient for purposes of these categories of child welfare proceedings. Additionally, the civil and administrative burdens of proof currently applied in Connecticut are consistent with those applied in other states. It is also important to note that there is already a heightened "clear and convincing evidence" standard that applies in Connecticut to all Termination of Parental Rights cases.

H.B. No. 5430 AN ACT CONCERNING THE TRANSFER OF CHILDREN AND YOUTH FROM OUT-OF-STATE RESIDENTIAL FACILITIES TO THERAPEUTIC GROUP HOMES IN THE STATE.

The Department of Children and Families **opposes** H.B. No. 5430 AN ACT CONCERNING THE TRANSFER OF CHILDREN AND YOUTH FROM OUT-OF-STATE RESIDENTIAL FACILITIES TO THERAPEUTIC GROUP HOMES IN THE STATE.

This bill would require DCF to develop a plan for the transfer of children and youth who are placed in out-of-state residential facilities to therapeutic group homes in Connecticut, including a timeline to complete the transfer of such children and youth. While we concur with the underlying goal of reducing the number of children requiring treatment in out-of-state programs, we don't believe that it would be realistic or appropriate to assume that all of these children and youth could best be served in therapeutic group homes. We would also note that this legislation applies a much broader definition of what we consider "therapeutic group homes," as it envisions a group home of up to 15 beds, where our current maximum for this type of group home is 6 beds.

In an effort to build more in-state capacity and minimize out-of-state placements, DCF has two major initiatives underway. First, the Department has posted fee-for-service program specifications to encourage providers to develop services in Connecticut for those special population cohorts which are currently being served primarily out of state. Second, the Department is providing data and technical assistance to in-state residential providers with available unused capacity to assist them in re-tooling their programs to serve a broader spectrum of youth, again mitigating the need for new out-of-state placements.

Below is an assessment as of January 1, 2010, which includes all DCF involved children (Child Protective Services, Juvenile Services, Dual Commitments Voluntary Services, etc.) placed in out-of-state congregate care facilities:

- A total of 341 children are placed out-of-state, which reflects an increase of seven children out of state relative to the December 2009 census of 334. Compared to a year ago, in January of 2009, there were a total of 342 children placed out-of-state.
- 246 children (72%) are in New England states.
- 90% of the children are placed in five states as follows: approximately 52% of the children placed out-of-state are in Massachusetts (176 children), 19% are in Pennsylvania

(66 children), 10% are in Vermont (33 children), 5% are in Rhode Island (17 children), and 4% are in Maine (14 children).

- Of the 341 children placed out of state, 259 had only a CPS status, 70 had only a Juvenile Services status, and 12 had a Dual Commitment status.

Among those receiving treatment in out-of-state facilities, the following is a break down of their primary diagnoses:

Out of State Admissions by Diagnostic Category

Diagnostic Category	2008 OOS Admits	2009 OOS Admits
Fire Setters/ Sex Offenders	65	44
MR/PDD	32	42
Conduct Dx/ JJ	43	70
Substance Abuse	8	11
Psychiatric	67	62
Total Out of State Admissions	215	229

We look forward to working in collaboration with our private providers and others in developing the infrastructure to serve the current cohorts of children receiving services in out-of-state placements. We would urge the Human Services Committee to take no action on this particular bill given our current efforts to address this issue in collaboration with our providers and other key stakeholders and our assurance that we are committed to developing workable and timely solutions.

H.B. No. 5443 AN ACT CONCERNING PARENTAL RIGHTS IN JUVENILE MATTERS.

The Department of Children and Families **opposes** H.B. No. 5443 AN ACT CONCERNING PARENTAL RIGHTS IN JUVENILE MATTERS.

Section 1 of this bill calls for DCF to verify and substantiate allegations of abuse and neglect *before* we begin the investigation. The investigation process is, of course, designed to determine whether there is sufficient evidence to verify and substantiate allegations. Therefore, this bill would require us to reach a determination *before* proceeding with fact-finding and gathering any information. Such a process is illogical and conflicts with the Department's statutory mandates.

To put this in perspective, in State Fiscal Year 2009, the DCF Hotline received approximately 91,000 calls. These included over 41,000 reports of suspected abuse or neglect, of which only 23,000 were accepted for investigation. Of these, approximately 6,800 reports were substantiated. The Department is extremely concerned that if we were required to substantiate or

not the reporter's allegations before actually beginning an investigation, our ability to gather all relevant facts would be extremely limited, thus seriously compromising child safety.

The language of section 1 also prevents us from starting the investigation (i.e., talking to others) before we have given notice to the parents of their rights. This is similar to the provisions contained in H.B. No. 5143, which was already reported favorably by the Human Services Committee. There are also similar provisions contained in sections 3, 4 and 5, which we believe have been addressed by this Committee in H.B. No. 5143.

Section 2 again calls for DCF to verify and substantiate information before opening the investigation. In addition, it adds a provision that law enforcement cannot be notified until the allegation is substantiated if the alleged perpetrator is *not* a parent or person responsible for the care of the child, a person given access to the child by that person, or a person entrusted with the care of the child. However, the Department currently does not have jurisdiction to investigate those cases. Therefore, there would be no DCF substantiation, and law enforcement would never be notified of these alleged crimes against children. In essence, this prevents DCF from notifying the police of a potentially serious case of abuse or neglect in a timely manner, which impact law enforcement's jurisdiction, delays the start of a criminal investigation, and , again, seriously compromises child safety.

Section 8 potentially changes DCF practice in a way that appears contrary to the underlying family rights philosophy of the bill in that it requires the Department to reopen and substantiate an investigation that may not have been previously substantiated in order for the court to issue certain orders in child protection proceedings. This may be a misunderstanding of the Department's current process for opening cases for ongoing services by the Department. The Department does not require a substantiation before offering services to our families. In many cases, although a child has not actually been abused or neglected, sufficient risk factors are present that warrant the provision of services to the family to assist them in addressing those risk factors to prevent a substantiation of abuse or neglect.. This process benefits the parents since a substantiation will not be on their record. Most families appreciate this opportunity to access services in this way. However, occasionally, the circumstances in the home deteriorate and/or the parents stop cooperating. In those cases, the Department may have to resort to court intervention to ensure the safety of the children. However, we do not go back and enter a substantiation in lieu of the previous unsubstantiated allegation. Requiring the Department to re-open investigations and substantiate against a parent before the court can issue certain orders in child protection proceedings is unnecessary and counterproductive to what appears to be the intent of this bill.

The Department urges the Committee to take no action on this bill.