
OLR Bill Analysis

sSB 1043

AN ACT CONCERNING ACCESS TO RECORDS OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

SUMMARY:

This bill expands the list of parties to whom the Department of Children and Families (DCF) must disclose its otherwise confidential records without the consent of the person named in the record. It also expands the list of parties to whom DCF may, at its discretion, disclose records without consent. It makes some of the disclosures that are mandatory under current law discretionary and others that are currently discretionary, mandatory.

The bill broadens DCF's ability to refuse to disclose such records, and it prohibits disclosure of records that are (1) privileged (e.g., doctor-patient or attorney-client communication) or (2) confidential under federal law or regulation unless authorized by law or court order.

By law, the penalty for unauthorized disclosure of DCF records is a fine of up to \$1,000, imprisonment for up to one year, or both. Employees who reasonably suspect that another employee has violated this rule are required to file written reports with the commissioner.

The bill also makes conforming minor, and technical changes.

EFFECTIVE DATE: October 1, 2011

DCF RECORD DISCLOSURE

Records that Can be Disclosed; People Who Can Consent to Disclosure

By law, records DCF maintains are confidential and cannot be disclosed unless (1) DCF receives written consent from the person

named in the record or (2) the law otherwise requires or allows disclosure. By law, a “record” is information DCF created or obtained as a result of its child protection activities or other activities related to a child (a person under age 16) who is or was in its care or custody. Records include information in DCF’s child abuse registry and information obtained while a child received services from the department. The bill eliminates a partial restriction on DCF’s disclosing records that it did not create, expanding those records that can be shared.

Under current law, consent to disclosure is required from the “person” named in a DCF record who (1) is, or was, committed to DCF; (2) received services voluntarily or involuntarily from DCF; (3) is, or was, the subject of a child abuse or neglect investigation; or (4) is the parent of someone currently or previously committed to DCF, if the person is still a minor. The “authorized representative” of a deceased person who was committed to DCF can consent on that person’s behalf. Authorized representatives can also receive certain disclosed records.

The bill eliminates the ability of a parent whose parental rights have been terminated to view that child’s records or consent to their disclosure. It adds a child’s guardian *ad litem* (a person representing a child’s best interests) to the list of authorized representatives, thus giving him or her broader access to the child’s records and authority to allow disclosure. Currently, only the child’s attorney, parent, guardian, or conservator can authorize disclosure of the contents of the child’s records.

New Mandatory Disclosures

Under the bill, DCF must disclose records without consent from the subject of the record (as opposed to current law, which requires consent from the person named in the record) to the following parties, who are not entitled to disclosure under current law:

1. the child advocate or a designee, for any purpose;

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 the biological parents' consent;
3. 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;
4. 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;
5. probate court judges as required to perform their official duties; and
6. the Department of Developmental Services (DDS), for determining eligibility, facilitating enrollment, and planning services for a DDS client who is not participating in its voluntary services program.

The bill requires DDS to notify a child's parent or guardian when they apply to place the child in DDS's voluntary services program or when the child's annual individual plan is updated that these records may be disclosed without their consent.

Revisions to Existing Mandatory Disclosures

The bill eliminates an express reference to a prosecutor's duty to turn over exculpatory evidence or materials that could be the subject of a disclosure order.

This bill also limits some disclosures and the purposes for which parties currently entitled to receive mandatory disclosures can use them.

Records Pertaining to an Individual. Current law gives anyone, or his or her attorney or other authorized representative, access to records that pertain to or contain information about the person, including records concerning investigations and medical or psychiatric examinations. The DCF commissioner can refuse access if she determines it would not be in the person's best interests.

The bill instead requires limited disclosure to:

1. the person named in the record, or his or her representative, limited to information contained in a record about him or her or about the individual's biological or adoptive child under age 18 (if the parent's parental rights have not been terminated) and
2. if the named person is the alleged perpetrator of abuse or neglect, information identifying someone who reported abuse or neglect by that person, if a court determines (a) there is reasonable cause to believe the reporter knowingly made a false report or (b) the interests of justice require disclosure.

DCF Employees. The bill broadens required disclosure to DCF employees by requiring it for any reason reasonably related to DCF's purposes. Current law restricts disclosure to DCF employees to the following situations: (1) the name of someone reporting abuse must be released to child protection and abuse registry personnel and (2) when a record would be necessary for an employee's disciplinary hearing or an appeal from a hearing decision.

Treatment Providers. The bill broadens, to records involving 16- and 17-year-olds, information that must be given to physicians and others authorized to take children and youth into protective custody.

Prosecutors. The bill restricts prosecutors' access to delinquency records. As under current law, the bill gives prosecutors access to records only for investigating or prosecuting abuse and neglect. The bill gives them access to records concerning a delinquency defendant who is not charged with child abuse only (1) while the abuse case is being prosecuted and (2) after obtaining a release from the defendant.

Chief Child Protection Attorney. The bill removes the current restrictions on the chief child protection attorney's use of DCF records. Under current law, she has access only to ensure competent representation by the attorneys with whom she contracts for services and to ensure they are properly paid.

Legislative Committees. The bill adds the Human Services Committee to the legislative committees that must receive records in the course of their official functions. The Judiciary, Program Review, and Children's committees can already obtain records in this situation.

Department of Motor Vehicles (DMV). The bill requires disclosure to DMV of information obtained in child abuse investigations, in addition to the already required disclosure of information from the child abuse registry. DMV may use this information for criminal background checks for license endorsements involving school buses, student transportation, and student activity vehicles.

Law Enforcement Agencies. Current law does not limit the use a law enforcement agency can make of records DCF discloses to it. The bill specifies that disclosure is to police officers, not the agency, and is just for investigating child abuse cases. It also specifies that disclosure for this purpose is required to both state and federal officers.

Mandatory to Discretionary Disclosures

State attorneys general, DCF legal representatives, and judges of the Superior Court all gain mandatory rather than discretionary access under the bill.

Attorneys General. Currently, DCF may give state attorneys general access to DCF records to provide legal counsel to the department. Under the bill, they must be given access for a more narrow purpose—representing the department in a legal proceeding involving the department.

Auditors of Public Accounts. The bill also makes records disclosure to the state auditors mandatory rather than discretionary. DCF cannot release personally identifiable information from a record

unless it is essential to the audit.

Judges of the Superior Court. By law, Superior Court judges have access to DCF records for a variety of reasons. Under the bill records must, rather than may, be disclosed to assist the judge in deciding how to dispose of a delinquency or family with service needs matter.

New Discretionary Disclosures

The bill (1) permits DCF to disclose records without consent from the record's subject to the following parties who do not currently have access to these records and (2) eliminates the requirement that DCF first find disclosure is in the subject's best interest:

1. DCF employees or former employees, or their authorized representatives, for purposes of participating in any court, administrative, or disciplinary hearing, as long as DCF discloses only records it determines are relevant to the proceeding;
2. providers of professional services for children, youth (16- to 18-year-olds), and parents, provided disclosure is limited to information they need to provide services;
3. DCF contractors, to identify and assess potential foster and adoptive parents, as long no information identifying a child's or youth's biological parent is disclosed without that parent's consent;
4. law enforcement officers and prosecutors if there is reasonable cause to believe a child or youth is being, or is at risk of being, abused or neglected as a result of criminal activity;
5. anyone interviewed in a child abuse or neglect investigation who is not otherwise entitled to disclosure, as long as the information disclosed is limited to (a) the general nature of the allegations, (b) the identity of the alleged victim, and (c) information needed to effectively conduct the investigation;
6. individuals who are looking for a missing parent, child, or

youth, provided the disclosure is limited to information that helps in the search;

7. a court of competent jurisdiction when a DCF employee is subpoenaed and ordered to testify about the records; and
8. non-DCF employees who arrange, perform, or help perform functions on DCF's behalf, such as data processing, aggregation, or analysis; utilization review; quality assurance; and practice management.

DCF can disclose to these people only information it gathers in an abuse or neglect investigation or from the abuse registry.

Revisions to Existing Discretionary Disclosures

The bill makes discretionary some previously mandated disclosures, and changes some of the conditions for already discretionary disclosures. And it adds people and entities that may receive record disclosures. It eliminates a requirement that DCF find that discretionary disclosure is in the requestor's best interest.

Cases Made Public

Currently, DCF can disclose information about an incident of abuse or neglect that the public is likely to find out about. Disclosure is limited to:

1. whether the department received a report of abuse or neglect; and
2. in general terms, any action DCF took, provided (a) the names or other individually identifying information about the minor victim or other family member is not disclosed and (b) the name and other individually identifying information about the suspect is not disclosed unless he or she has been arrested for the crime.

Under the bill, the same criteria are applicable, but in addition, (1) information about the victim and family cannot be disclosed even if it has been made otherwise available, (2) the agency must confirm or

deny the accuracy of information that has been made public, and (3) it must describe, in general terms, the legal status of the case.

Fatalities. The bill makes discretionary, rather than mandatory, DCF's disclosure of information about fatalities or near-fatalities resulting from abuse or neglect. It eliminates a requirement that a physician certify that the child's condition is near fatal but extends the bill's coverage to youths rather than only children. It continues to limit such disclosures to general information that does not jeopardize a pending investigation.

The Abuser's Treatment Providers. The bill limits the records medical or mental health providers treating an abuser or someone who is unwilling to protect a child from abuse or neglect can obtain. Under the bill, they may not get records unless there has been a substantiated finding of abuse or neglect arising from the patient's actions.

Out-of-State Agencies. Current law permits disclosure to any agency in another state that is responsible for investigating or protecting children from abuse and neglect, solely for the purpose of investigating abuse. The bill specifies that DCF can give records to out-of-state courts, agencies, and federally recognized tribes that are responsible for investigating abuse or neglect or preventing it, for purposes related to those functions

Researchers. The bill removes a requirement that requires each person identified in a record or his or her authorized representative to consent in writing before DCF can disclose records to a researcher.

Individuals Interviewed During an Abuse or Neglect Investigation. Currently, abuse reporters may get limited information about the case. Under the bill, anyone interviewed who would not otherwise be entitled to information may be told about: (1) the general nature of the allegations, (2) the identity of the child or youth suspected of being abused or neglected, and (3) information necessary to effectively conduct the investigation.

Confidentiality of Identity of Abuse or Neglect Reporter

The bill changes restrictions on DCF's disclosing the name of a person who reports abuse or neglect. It does this by applying to abuse reporters the confidentiality protections that currently apply to people who cooperate with abuse and neglect investigations.

Currently, DCF cannot disclose the name of an abuse reporter without the person's written consent except to:

1. a DCF employee responsible for child protective services or the abuse registry;
2. a law enforcement officer, an appropriate state's attorney, or assistant attorney general;
3. a Superior Court judge and all necessary parties in abuse and neglect proceedings or a criminal prosecution involving abuse or neglect; or
4. a state child care licensing agency, executive director of any institution, school, or facility, or superintendent of schools.

The bill permits (1) an abuse reporter to request confidentiality or (2) DCF to determine that disclosing the reporter's name might be detrimental to her or his safety or interests. But it requires DCF to disclose the reporter's name (and the name of people who cooperate with an investigation) to:

1. a DCF employee for reasons reasonably related to DCF business;
2. a law enforcement officer or a state's attorney for purposes of investigating or prosecuting abuse or neglect;
3. an assistant attorney general representing DCF;
4. a Superior Court judge and all necessary parties in abuse and neglect proceedings or a criminal prosecution involving abuse or neglect (same as above); or
5. a state child care licensing agency, executive director of any

institution, school, or facility, or superintendent of schools (same as above).

As under current law, information identifying someone who reports abuse or neglect cannot be disclosed to the person named in the record or his or her representative unless a Superior Court judge finds, after reviewing the records privately, that the reporter knowingly made a false report or the interests of justice require disclosure.

Changes in Disclosure Procedures

Denying Access to Records. Under current law, the DCF commissioner can refuse to disclose a record to the person who is its subject when she determines that disclosure is not in the person's (or representative's) best interests, so long as she gives her reasons in writing and advises the person that he or she may challenge this action in court. Under the bill, her authority to refuse to disclose extends to anyone who asks for information, and the basis for refusal is no longer restricted to considerations of the requestor's best interests. When she refuses a request, the bill requires her to notify the requestor that she is withholding records and their general contents, in addition to providing her reasons and notice of judicial review options.

The bill 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 this could be contrary to the requestor or requestor representative's best interests. Under the bill, the court may also uphold DCF's 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.

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, commitment, or termination of parental rights proceeding involving

the record's subject is pending. The bill permits further disclosure based on an order issued by any court of competent jurisdiction or for day care licensing and investigation purposes.

COMMITTEE ACTION

Select Committee on Children

Joint Favorable Substitute

Yea 11 Nay 1 (03/03/2011)

Judiciary Committee

Joint Favorable

Yea 44 Nay 0 (04/12/2011)