

Senate, April 6, 1998. The Committee on Education reported through SEN. GAFFEY, 13th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE DISCLOSURE OF INFORMATION BY THE DEPARTMENT OF CHILDREN AND FAMILIES.

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

1 Section 1. Section 17a-28 of the general
2 statutes, as amended by public act 97-104, section
3 25 of public act 97-259 and section 8 of public
4 act 97-319, is repealed and the following is
5 substituted in lieu thereof:

6 (a) As used in this section:

7 (1) "Person" means (A) any individual named
8 in a record, maintained by the department, who (i)
9 is presently or at any prior time was a ward of or
10 committed to the commissioner for any reason; (ii)
11 otherwise received services, voluntarily or
12 involuntarily, from the department; or (iii) is
13 presently or was at any prior time the subject of
14 an investigation by the department; (B) the parent
15 of a person, as defined in subparagraph (A) of
16 this subdivision, if such person is a minor; or
17 (C) the authorized representative of a person, as
18 defined in subparagraph (A) of this subdivision,
19 if such person is deceased;

20 (2) "Attorney" means the licensed attorney
21 authorized to assert the confidentiality of or
22 right of access to records of a person;

23 (3) "Authorized representative" means a
24 parent, guardian, conservator or other individual
25 authorized to assert the confidentiality of or
26 right of access to records of a person;

27 (4) "Consent" means permission given in
28 writing by a person, his attorney or his
29 authorized representative to disclose specified
30 information, within a limited time period,
31 regarding the person to specifically identified
32 individuals;

33 (5) "Records" means information created or
34 obtained in connection with the department's child
35 protection activities or activities related to a
36 child while in the care or custody of the
37 department, including information in the registry
38 of reports to be maintained by the commissioner
39 pursuant to section 17a-101k, AS AMENDED, provided
40 records which are not created by the department
41 are not subject to disclosure, except as provided
42 pursuant to subsection [(e), (k) or (m)] (f), (l)
43 OR (n) of this section;

44 (6) "Disclose" means (A) to provide an oral
45 summary of records maintained by the department to
46 an individual, agency, corporation or organization
47 or (B) to allow an individual, agency, corporation
48 or organization to review or obtain copies of such
49 records in whole, part or summary form.

50 (b) Notwithstanding the provisions of section
51 1-19, AS AMENDED, 1-19a, AS AMENDED, or 1-19b, AS
52 AMENDED, records maintained by the department
53 shall be confidential and shall not be disclosed.
54 Such records of any person may only be disclosed,
55 in whole or in part, to any individual, agency,
56 corporation or organization with the consent of
57 the person or as provided in this section. Any
58 unauthorized disclosure shall be punishable by a
59 fine of not more than one thousand dollars or
60 imprisonment for not more than one year, or both.

61 (c) When information concerning an incident
62 of abuse or neglect has been made public or when
63 the commissioner reasonably believes publication
64 of such information is likely, the commissioner or
65 his designee may disclose, with respect to an
66 investigation of such abuse or neglect: (1)
67 Whether the department has received a report in
68 accordance with sections 17a-101a to 17a-101c,
69 inclusive, AS AMENDED, or section 17a-103, AS
70 AMENDED, and (2) in general terms, any action

71 taken by the department, provided names or other
72 individually identifiable information of the minor
73 victim or other family member shall not be
74 disclosed, notwithstanding such individually
75 identifiable information is otherwise available.

76 (d) THE COMMISSIONER SHALL MAKE AVAILABLE TO
77 THE PUBLIC, WITHOUT THE CONSENT OF THE PERSON,
78 INFORMATION IN GENERAL TERMS OR FINDINGS
79 CONCERNING AN INCIDENT OF ABUSE OR NEGLECT WHICH
80 RESULTED IN A CHILD FATALITY OR NEAR FATALITY OF A
81 CHILD, PROVIDED DISCLOSURE OF SUCH INFORMATION OR
82 FINDINGS DOES NOT JEOPARDIZE A PENDING
83 INVESTIGATION.

84 [(d)] (e) The commissioner shall, upon
85 written request, disclose the following
86 information concerning agencies licensed by the
87 Department of Children and Families, except foster
88 care parents, relatives of the child who are
89 certified to provide foster care or prospective
90 adoptive families: (1) The name of the licensee;
91 (2) the date the original license was issued; (3)
92 the current status of the license; (4) whether an
93 agency investigation or review is pending or has
94 been completed; and (5) any licensing action taken
95 by the department at any time during the period
96 such license was issued and the reason for such
97 action, provided disclosure of such information
98 will not jeopardize a pending investigation.

99 [(e)] (f) The commissioner or his designee
100 shall, upon request, promptly provide copies of
101 records, without the consent of a person, to (1) a
102 law enforcement agency, (2) the Chief State's
103 Attorney or his designee or a state's attorney for
104 the judicial district in which the child resides
105 or in which the alleged abuse or neglect occurred
106 or his designee, for purposes of investigating or
107 prosecuting an allegation of child abuse or
108 neglect, (3) the attorney appointed to represent a
109 child in any court in litigation affecting the
110 best interests of the child, (4) a guardian ad
111 litem appointed to represent a child in any court
112 in litigation affecting the best interests of the
113 child, (5) the Department of Public Health, which
114 licenses any person to care for children for the
115 purposes of determining suitability of such person
116 for licensure, (6) any state agency which licenses
117 such person to EDUCATE OR care for children
118 pursuant to section 10-145b OR 17a-101j, [and] AS

119 AMENDED, (7) the Governor, when requested in
120 writing, in the course of his official functions
121 or the Legislative Program Review and
122 Investigations Committee, the committee of the
123 General Assembly on judiciary and the committee of
124 the General Assembly having cognizance of matters
125 involving children when requested in the course of
126 such committees' official functions in writing,
127 and upon a majority vote of said committee,
128 provided no names or other identifying information
129 shall be disclosed unless it is essential to the
130 legislative or gubernatorial purpose, [. The
131 commissioner shall disclose to such law
132 enforcement agency or attorney] AND (8) A LOCAL OR
133 REGIONAL BOARD OF EDUCATION, PROVIDED THE RECORDS
134 ARE LIMITED TO EDUCATIONAL RECORDS CREATED OR
135 OBTAINED BY THE STATE OR CONNECTICUT-UNIFIED
136 SCHOOL DISTRICT #2, ESTABLISHED PURSUANT TO
137 SECTION 17a-37. A DISCLOSURE UNDER THIS SECTION
138 SHALL BE MADE OF any part of a record, whether or
139 not created by the department, provided no
140 confidential record of the Superior Court shall be
141 disclosed other than the petition and any
142 affidavits filed therewith in the superior court
143 for juvenile matters, except upon an order of a
144 judge of the Superior Court for good cause shown.
145 The commissioner shall also disclose the name of
146 any individual who cooperates with an
147 investigation of a report of child abuse or
148 neglect to such law enforcement agency or state's
149 attorney for purposes of investigating or
150 prosecuting an allegation of child abuse or
151 neglect. The commissioner or his designee shall,
152 upon request, promptly provide copies of records,
153 without the consent of the person, to (A) the
154 Department of Public Health for the purpose of
155 determining the suitability of a person to care
156 for children in a facility licensed under sections
157 19a-77 to 19a-80, inclusive, AS AMENDED, 19a-82 to
158 19a-87, inclusive, and 19a-87b, AS AMENDED, and
159 (B) the Department of Social Services for
160 determining the suitability of a person for any
161 payment from the department for providing child
162 care.

163 [(f)] (g) When the commissioner or his
164 designee determines it to be in a person's best
165 interest, the commissioner or his designee may
166 disclose records, whether or not created by the

167 department and not otherwise privileged or
168 confidential communications under state or federal
169 law, without the consent of a person to:

170 (1) Multidisciplinary teams which are formed
171 to assist the department in investigation,
172 evaluation or treatment of child abuse and neglect
173 cases or a multidisciplinary provider of
174 professional treatment services under contract
175 with the department for a child referred to the
176 provider;

177 (2) Any agency in another state which is
178 responsible for investigating or protecting
179 against child abuse or neglect for the purpose of
180 investigating a child abuse case;

181 (3) An individual, including a physician,
182 authorized pursuant to section 17a-101f to place a
183 child in protective custody if such individual has
184 before him a child whom he reasonably suspects may
185 be a victim of abuse or neglect and such
186 individual requires the information in a record in
187 order to determine whether to place the child in
188 protective custody;

189 (4) An individual or public or private agency
190 responsible for a person's care [and] OR custody
191 and authorized by the department to diagnose, care
192 for, treat or supervise a child who is the subject
193 of a record of child abuse or neglect OR A PUBLIC
194 OR PRIVATE AGENCY RESPONSIBLE FOR A PERSON'S
195 EDUCATION for a purpose related to the
196 individual's or agency's responsibilities;

197 (5) The Attorney General or any assistant
198 attorney general providing legal counsel for the
199 department;

200 (6) Individuals or public or private agencies
201 engaged in medical, psychological or psychiatric
202 diagnosis or treatment of a person perpetrating
203 the abuse or who is unwilling or unable to protect
204 the child from abuse or neglect when the
205 commissioner or his designee determines that the
206 disclosure is needed to accomplish the objectives
207 of diagnosis or treatment;

208 (7) A person who reports child abuse pursuant
209 to sections 17a-101a to 17a-101c, inclusive, AS
210 AMENDED, and section 17a-103, AS AMENDED, who made
211 a report of abuse involving the subject child,
212 provided the information disclosed is limited to
213 (A) the status of the investigation and (B) in
214 general terms, any action taken by the department;

215 (8) An individual conducting bona fide
216 research, provided no information identifying the
217 subjects of records shall be disclosed unless (A)
218 such information is essential to the purpose of
219 the research; (B) each person identified in a
220 record or his authorized representative has
221 authorized such disclosure in writing; and (C) the
222 department has given written approval;

223 (9) The Auditors of Public Accounts or their
224 representative, provided no information
225 identifying the subjects of the records shall be
226 disclosed unless such information is essential to
227 an audit conducted pursuant to section 2-90.

228 [(g)] (h) The commissioner or his designee
229 may disclose the name, address and fees for
230 services to a person, to individuals or agencies
231 involved in the collection of fees for such
232 services, except as provided in section 17b-225.
233 In cases where a dispute arises over such fees or
234 claims or where additional information is needed
235 to substantiate the fee or claim, such disclosure
236 of further information shall be limited to the
237 following: (1) That the person was in fact
238 committed to or otherwise served by the
239 department; (2) dates and duration of service; and
240 (3) a general description of the service, which
241 shall include evidence that a service or treatment
242 plan exists and has been carried out and evidence
243 to substantiate the necessity for admission and
244 length of stay in any institution or facility.

245 [(h)] (i) Notwithstanding the provisions of
246 subsections (f) and (1) of this section, the name
247 of an individual reporting child abuse or neglect
248 shall not be disclosed without his written consent
249 except to (1) an employee of the department
250 responsible for child protective services or the
251 abuse registry; (2) a law enforcement officer; (3)
252 an appropriate state's attorney; (4) an
253 appropriate assistant attorney general; (5) a
254 judge of the Superior Court and all necessary
255 parties in a court proceeding pursuant to section
256 46b-129, AS AMENDED, or a criminal prosecution
257 involving child abuse or neglect; or (6) a state
258 child care licensing agency, executive director of
259 any institution, school or facility or
260 superintendent of schools pursuant to section
261 17a-101i, AS AMENDED.

262 [(i)] (j) Notwithstanding the provisions of
263 subsection [(f)] (g) of this section, the name of
264 any individual who cooperates with an
265 investigation of a report of child abuse or
266 neglect shall be kept confidential upon request or
267 upon determination by the department that
268 disclosure of such information may be detrimental
269 to the safety or interests of the individual,
270 except the name of any such individual shall be
271 disclosed to the persons listed in subsection
272 [(h)] (i) of this section.

273 [(j)] (k) Notwithstanding the confidentiality
274 provisions of this section, the commissioner, upon
275 request of an employee, shall disclose such
276 records to such employee or his authorized
277 representative which would be applicable and
278 necessary for the purposes of an employee
279 disciplinary hearing or appeal from a decision
280 after such hearing.

281 [(k)] (l) Information disclosed from a
282 person's record shall not be disclosed further
283 without the written consent of the person, except
284 if disclosed to a party or his counsel pursuant to
285 an order of a court in which a criminal
286 prosecution or an abuse, neglect, commitment or
287 termination proceeding against the party is
288 pending. A state's attorney shall disclose to the
289 defendant or his counsel in a criminal
290 prosecution, without the necessity of a court
291 order, exculpatory information and material
292 contained in such record and may disclose, without
293 a court order, information and material contained
294 in such record which could be the subject of a
295 disclosure order. All written records disclosed to
296 another individual or agency shall bear a stamp
297 requiring confidentiality in accordance with the
298 provisions of this section. Such material shall
299 not be disclosed to anyone without written consent
300 of the person or as provided by this section. A
301 copy of the consent form specifying to whom and
302 for what specific use the record is disclosed or a
303 statement setting forth any other statutory
304 authorization for disclosure and the limitations
305 imposed thereon shall accompany such record. In
306 cases where the disclosure is made orally, the
307 individual disclosing the information shall inform
308 the recipient that such information is governed by
309 the provisions of this section.

310 [(1)] (m) In addition to the right of access
311 provided in section 1-19, AS AMENDED, any person,
312 regardless of age, his authorized representative
313 or attorney shall have the right of access to any
314 records made, maintained or kept on file by the
315 department, whether or not such records are
316 required by any law or by any rule or regulation,
317 when those records pertain to or contain
318 information or materials concerning the person
319 seeking access thereto, including but not limited
320 to records concerning investigations, reports, or
321 medical, psychological or psychiatric examinations
322 of the person seeking access thereto, provided
323 that (1) information identifying an individual who
324 reported abuse or neglect of a person, including
325 any tape recording of an oral report pursuant to
326 section 17a-103, AS AMENDED, shall not be released
327 unless, upon application to the Superior Court by
328 such person and served on the Commissioner of
329 Children and Families, a judge determines, after
330 in camera inspection of relevant records and a
331 hearing, that there is reasonable cause to believe
332 the reporter knowingly made a false report or that
333 other interests of justice require such release;
334 and (2) if the commissioner determines that it
335 would be contrary to the best interests of the
336 person or his authorized representative or
337 attorney to review the records, he may refuse
338 access by issuing to such person or representative
339 or attorney a written statement setting forth the
340 reasons for such refusal, and advise the person,
341 his authorized representative or attorney of the
342 right to seek judicial relief. When any person,
343 attorney or authorized representative, having
344 obtained access to any record, believes there are
345 factually inaccurate entries or materials
346 contained therein, he shall have the unqualified
347 right to add a statement to the record setting
348 forth what he believes to be an accurate statement
349 of those facts, and said statement shall become a
350 permanent part of said record.

351 [(m)] (n) (1) Any person, attorney or
352 authorized representative aggrieved by a violation
353 of subsection (b), [(e),] (f), (g), (h), (i), (j)
354 or [(k)] (l) of this section or of subsection
355 [(1)] (m) of this section, except subdivision (2)
356 of said subsection [(1)] (m), may seek judicial
357 relief in the same manner as provided in section

358 52-146j; (2) any person, attorney or authorized
359 representative denied access to records by the
360 commissioner under subdivision (2) of subsection
361 (1) of this section may petition the superior
362 court for the venue district provided in section
363 46b-142 in which the person resides for an order
364 requiring the commissioner to permit access to
365 those records, and the court after hearing, and an
366 in camera review of the records in question, shall
367 issue such an order unless it determines that to
368 permit such access would be contrary to the best
369 interests of the person or authorized
370 representative.

371 [(n)] (o) The commissioner shall promulgate
372 regulations pursuant to chapter 54, within one
373 year of October 1, 1996, to establish procedures
374 for access to and disclosure of records consistent
375 with the provisions of this section.

376 Sec. 2. Section 17a-101c of the general
377 statutes, as amended by section 11 of public act
378 97-319, is repealed and the following is
379 substituted in lieu thereof:

380 Within forty-eight hours of making an oral
381 report, a mandated reporter shall submit a written
382 report to the Commissioner of Children and
383 Families or his representative. When a mandated
384 reporter is a member of the staff of a public or
385 private institution or facility that provides care
386 for such child or public or private school he
387 shall also submit a copy of the written report to
388 the person in charge of such institution, school
389 or facility or the person's designee. In the case
390 of a report concerning a certified school
391 employee, a copy of the written report shall also
392 be sent by the person in charge of such
393 institution, school or facility to the
394 Commissioner of Education or his representative.
395 In the case of an employee of a facility or
396 institution that provides care for a child which
397 is licensed by the state, a copy of the written
398 report shall also be sent BY THE MANDATED REPORTER
399 to the executive head of the state licensing
400 agency.

401 KID COMMITTEE VOTE: YEA 11 NAY 0 JFS C/R ED
402 ED COMMITTEE VOTE: YEA 31 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 222

STATE IMPACT	Revenue Loss Avoidance (Federal Funds), Minimal Cost, Within Anticipated Budgetary Resources, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Children and Families

EXPLANATION OF ESTIMATES:

STATE IMPACT: It is anticipated that the Department of Children and Families will be able to comply with the expanded reporting requirements contained within the bill within its anticipated budgetary resources. It should be noted that provisions of the bill regarding public disclosure of findings or information about abuse and neglect cases that result in a fatality or near fatality bring the state into compliance with federal law. If not enacted, federal monies received by the state under the Child Abuse Prevention and Treatment Act (CAPTA) and the Child Justice Act will be jeopardized. Connecticut receives approximately \$273,000 annually under the CAPTA grant and approximately \$122,000 under the Children's Justice Act Grants to States program.

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OLR BILL ANALYSIS

sSB 222

AN ACT CONCERNING THE DISCLOSURE OF INFORMATION BY THE DEPARTMENT OF CHILDREN AND FAMILIES

SUMMARY: This bill expands the type of child abuse-related information the Department of Children and Families (DCF) can disclose and the types of people and institutions who can receive it. It requires the DCF commissioner to make available to the public information or findings related to a child fatality or near fatality caused by child abuse or neglect. It requires her to disclose DCF records to the Department of Education and public school systems receiving a child in DCF care when they ask for it and allows her to disclose such records on her own to public and private schools and educational agencies.

The bill requires DCF to disclose records it did not create to more people who request it, including the governor and specified legislators. And it specifies that a mandated reporter who reports suspected abuse by an employee of a state-licensed child-caring facility must send a copy of his written report to the licensing agency.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION**Child Fatality Information**

The bill requires the DCF commissioner to make information or findings concerning abuse or neglect that resulted in a child's death or "near fatality" (the bill does not define this term) available to the public in general terms. She can disclose the information without the consent of the child, the child's parents, or those being investigated. But she may not disclose anything that would jeopardize a pending investigation.

Disclosing Education Records

The bill requires DCF to disclose (orally or in writing) to a local or regional board of education that

asks for them, educational records about a child in DCF's care that were created or obtained by a state agency or DCF's Unified School District #2. It also requires DCF to disclose to the Department of Education, upon its request, any records it has about an alleged abuser who holds a teaching certificate. DCF can disclose these records without the consent of the person named in the records. DCF is currently authorized to disclose its records upon request to, among others, law enforcement agencies, prosecutors, attorneys representing children, state agencies that license people to care for children, and the governor and some legislators in specific situations.

The bill allows the DCF commissioner, on her own and without consent when she believes it to be in a child's best interest, to disclose nonconfidential information in those records to public and private agencies that educate children (e.g., schools, educational resource centers, residential facilities). DCF is currently authorized to disclose information in such circumstances to, among others, agencies treating abused children, agencies and others investigating abuse, hospitals and doctors who are examining children who may have been abused, and people and agencies treating child abusers.

Expanding Disclosures

The bill requires the commissioner to disclose records DCF receives from other agencies (that is, not created by DCF) to more people. Under current law she is required to provide nondepartmental records to law enforcement agencies and attorneys (e.g., state's attorneys and attorneys representing a child's best interests). The bill requires her to disclose these records to (1) a guardian ad litem appointed to represent a child; (2) the departments of Public Health and Education and any other state agency that licenses facilities that care for children (e.g, Department of Mental Retardation); (3) the governor; and (4) members of the Program Review and Investigations, Judiciary, and Children's committees.

Disclosure of confidential Superior Court records in DCF files continues to be prohibited, except under court order.

Reports by Mandated Reporters

By law those professionals required to report child abuse and neglect must submit a written report to the DCF commissioner within 48 hours of making an oral report. The law also requires that when such a report alleges abuse by an employee of a state-licensed child-caring facility or institution (e.g, a day care center, group home, or residential treatment facility), a copy must be sent to the head of the state licensing agency. The bill makes it clear that it is the mandated reporter who must send the copy.

BACKGROUND**Related Federal Law**

The Child Abuse Prevention and Treatment Act requires states to provide for the public disclosure of findings or information about abuse and neglect cases that resulted in a fatality or near fatality. The act defines "near fatality" as an act that a physician certifies places the child in a serious or critical condition (42 USCA Sec. 5106 (b)(4)).

COMMITTEE ACTION

Children's Committee

Joint Favorable Substitute Change of Reference
Yea 11 Nay 0

Education Committee

Joint Favorable Substitute
Yea 31 Nay 0