



*Division of Public Defender Services  
State of Connecticut*

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**COMMITTEE ON CHILDREN  
FEBRUARY 16, 2017**

**H.B. No. 6741 (COMM) AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS RECORDS IN  
CERTAIN ABUSE AND NEGLECT PROCEEDINGS.**

The Office of Chief Public Defender supports legislation that makes it easier for lawyers representing children in child protection matters to access information about their clients. This Agency has worked with the Department of Children and Families to discuss delays in the process of records disclosure and to work on solutions to provide counsel with necessary information without compromising the rights of the parties in the case. The Department of Children and Families has created a new protocol that seeks cross releases from parties at the initial child protection hearings and prioritizes requests from lawyers in pending child protection matters.

There are situations where a respondent parent will, either on their own or upon the advice of counsel, not wish to sign releases. At the beginning of a child protection case, parents maintain some decision making rights even when they no longer have physical custody of a child. In order to ensure that children are kept safe, DCF is able to intervene and remove a child from a home based on allegations. Children will sometimes remain in DCF care while the facts are sorted out. Because children are removed before a parent is actually adjudicated as being abusive or neglectful, parents retain some decision making rights even if they do not have physical custody of their children.

Current law allows lawyers appointed to represent children to access many records without a release from the parents. C.G.S. Section 46b-124(b) deals with the confidentiality of juvenile court records and specifically provides that the attorney



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representing the child has access to all court records. C.G.S. 17a-28(g)(3) gives the attorney for the child access to DCF records without a release from the parent. Often, educational or medical records will be included in the court or DCF file.

Raised Bill 6741 would appear to address situations where the respondent parent refuses to consent to the release of records to the attorney for the child. This would generally involve medical, behavioral health or educational records not already in the DCF or court file. However, the bill as currently proposed may impermissibly infringe on the parent's constitutional right to parent one's child, as it requires the court to give the attorney the power to access records without providing the parent with due process, or the opportunity to be heard.

The United States Supreme Court has held that "*the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own."* it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Glanville, 530 U.S. 57 (2000). It is clear that the protections outlined by the United States Supreme Court apply to "fit" parents. However, an allegation that a parent abused their child is not a proven fact, rising to the level of removing parental rights. In order to interfere with a parent's right to make important decisions regarding their children, including the federally protected right to release educational and medical records, parents must be provided with due process. This generally means a hearing. The Office of Chief Public Defender respectfully suggests that the language be amended to indicate that, in situations where the respondent parents do not consent to the release of records, the court should hold a hearing to consider whether the interests of the parent are outweighed by the best interest of the child.

The proposal as currently drafted appears to apply only to cases where a child is alleged to be abused, not in the majority of cases where neglect is the allegation. A



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mandate that the court conduct a hearing on the issue of access to records where consent cannot be obtained could apply to all child protection matters. The Office of Chief Public Defender appreciates the Committee's interest in child protection issues and would be anxious to assist in the drafting of new language.

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