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COMMITTEE ON CHILDREN
MARCH 6, 2018

S.B. No. 313 (RAISED)
AN ACT CONCERNING MEDICAL CARE FOR CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES

The Office of the Chief Public Defender (OCPD) opposes **S.B. No. 313 – AN ACT CONCERNING MEDICAL CARE FOR CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES,** as written. While OCPD recognizes the need for statutory clarity in terms of how children's non-emergency medical care should be provided prudently and efficiently while they are out of their parents' care, S.B. No. 313 fails to strike the appropriate balance between parents' and children's rights and DCF's interest in providing for the health and safety of children in its care.

As this Committee is aware, the OCPD oversees the contracts with Assigned Counsel who represent children and parents in child protection proceedings in the juvenile court, and OCPD attorneys also represent children in these cases. OCPD also oversees and litigates child protection appeals, representing parents and children. Accordingly, the OCPD has both interest and insight in making sure the child protection system keeps children healthy and safe while respecting their and their parents' wishes and constitutional rights, and in accomplishing this balance through a process that is open and efficient.

This bill seems aimed at addressing concerns raised in our Supreme Court's decision last year in the case of *In re Elianah T.-T.* In that case, the Supreme Court ruled that our statutes do not grant the Department of Children and Families the authority to order the vaccination of children committed to its care under a neglect

petition where the children's parents object to the vaccination. While that case was decided on a narrow basis relating specifically to whether vaccination can be defined as "medical treatment," a subsequent concurrence by five justices suggested that granting DCF broad discretion to authorize medical care or treatment for children in its care whose parents still retained parental rights might be unconstitutional. In that concurrence, Chief Justice Rogers said, "In my view, when [DCF] has only temporary custody over a child and the rights of the parents have not been terminated, the parental right to make decisions for the child, the child's interest in continuing good health and the state's parens patriae interest in protecting the well-being of the child must be balanced."

Parents have a constitutionally recognized right to direct the care and upbringing of their children, and our courts and the U.S. Supreme Court have long recognized that, while child protection proceedings *limit* those rights, they do not do away with them completely. OCPD's experience representing parents and children has shown that there are many medical decisions on which reasonable caretakers can disagree, such as orthodontics, circumcision, experimental medical treatments, birth control, and the HPV vaccine, to name just a few.

S.B. No. 313 does not balance the interests of the parents, children, and DCF, but instead places sole discretion for authorizing non-emergency medical care with DCF. While this grant of discretion would be effective in cases where parents unreasonably refuse to consent to medical care, OCPD's experience has shown that such cases are the distinct minority. The vast majority of parents whom OCPD and the attorneys it supervises represent are eager to be reunited with their children and follow their lawyers' advice to participate and cooperate with DCF. Of the minority who do not, some raise legitimate concerns, based in their constitutional right to direct the care of their children, their religious beliefs, and other legitimate concerns. Others may simply refuse out of frustration and obstinacy.

Judges in the juvenile matters session of the superior court are well situated to perform this balancing. They already oversee child protection cases and have experience discerning which parent objections are rooted in sincere concerns for children and which are merely obstructionist. Such a process would resemble the work juvenile court judges already ably do in assessing whether to allow the disclosure of a child's medical records over parental objection, and most such disputes could receive a hearing in under a month. DCF already seeks parental consent before obtaining non-emergency medical care for children under orders of temporary custody (those who have been removed but not yet found by a court to be neglected), and seeks an order from a juvenile court judge when such consent is not granted. For committed children (i.e., those who are in DCF's care

and have already been found to be neglected), a simple requirement that DCF notify parents of its intention to seek non-emergency care and allow them a reasonable period to object and be heard by a judge, would strike the right balance. As noted, such a procedure would only be invoked in a small minority of cases, would allow for quick resolution of disputes by an experienced, neutral arbiter, and, most importantly, would give parents, children, and DCF an equal voice in a decision that affects all of their rights.