

4.3.2024 Family Services Division Testimony

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I was invited to talk to you today about H.644 (An act relating to access to records by individuals who were in foster care). The Department for Children and Families, Family Services Division supports the intent of H. 644 as it creates a legal path for DCF, the Judiciary, and the Vermont State Archives & Records Administration (VSARA) to create a system or systems that addresses the lack of explicit legal access to records for individuals formerly in foster care. H.644 will have an expansive impact to include records of individuals formerly placed in child caring institutions. DCF strongly supports the ability of individuals formerly in foster care to obtain information about their time in care.

Access to Family Services Division records is dictated through a combination of federal law, Vermont law, and division policy. Policy serves to operationalize laws and rules, and cannot conflict with, or grant or withhold rights or obligations provided by law. Historically and currently, DCF has not been able to expand access to records for a person formerly in foster care. Our records are organized and referred to as “child and family records”, where the record is organized by family and includes information about the parent(s), child, siblings, and other family members. Records may contain protected information about substitute care providers (foster parents or kin caregivers), such as detailed demographic details. Therefore, the disclosure of records will almost always require significant redaction and designation of particular documents as having a single individual as subject, to comply with state and federal laws regarding confidentiality around court proceedings, health care, substance use treatment information, and education. Examples of laws guiding information sharing and confidentiality include:

- Health Insurance Portability and Accountability Act (HIPAA)
- Family Educational Rights and Privacy Act (FERPA)
- The Social Security Act (42 U.S. Code § 675)



- Child Abuse Prevention and Treatment Act (CAPTA)
- 42 CFR Part 2 (Confidentiality of Substance Use Disorder (SUD) Patient Records)
- 33 V.S.A. § 5117
- 33 V.S.A. § 4921

In order to meet the intent of H. 644 but ensure compliance with other relevant state and federal laws, DCF proposes moving the current language of Section 1 of H. 644 from 33 V.S.A. § 4921 (d) to 33 V.S.A. § 4921 (e) as follows:

(e)(1) Upon request, relevant Department records or information created under this subchapter shall be disclosed to:

...

(H) other governmental entities for purposes of child protection.

(I) an individual who:

(1) is the subject of the records sought by the request;

(2) is 18 years of age or older; and

(3) as a minor was in foster care or under the supervision of the Department

DCF is proposing two changes here from the House bill. First, the addition of the language “or under the supervision of the Department” intends to include individuals who may have been subject to legal custody statutes which would not be within the scope of the state’s definition of “foster care,” pursuant to 33 V.S.A. § 4902(4), but whose histories would be included in records created by the Department. Second, DCF proposes moving the language into subsection (e) rather than (d).

In consideration of the many confidentiality provisions in state and federal law, review and redaction of records requires multiple layers of review and is consequently very time-consuming. DCF is committed to a system that allows former youth in care to have access to the record of their past. DCF’s recommendations start with the foundation that we already have in place for disclosure to adoptive parents pursuant to Title 15A (which this Legislature was essential in creating) and what we try to provide when youth age out of DCF involvement. DCF would likely work with VSARA and the Judiciary to develop an inventory of records and mechanisms to establish who the subject of a particular record is. On first review, we can imagine that the following list, or something similar, could be disclosed to individuals with our proposed change:

Copy of any vital records

Case plans

Placement history

Any medical/psychological/educational records of the subject

A brief summary of relevant information about the individual from documents which may include records of multiple individuals (i.e., a summary of notes, reports, or correspondence regarding multiple family members)

We recognize the expansion of access to records for individuals formerly in foster care would ideally include a structure of clinical support to process the information and trauma history contained within their records. We recognize knowing one's history and processing difficult history with clinical support is a crucial aspect of healing and moving forward.

The Vermont Adoption Registry may serve as a model and guide in this implementation process, as we have an experienced master's level social worker administering the Adoption Registry. This role is accessible to individuals who experienced adoption as a first point of contact and referral source, and generally receives positive feedback from individuals who access records through the Vermont Adoption Registry. While we are still planning and assessing all options for implementation, DCF expects to initially implement H.644 via administrative processes with existing resources and without a formal structure for support. We will continue to partner with VSARA to plan and conceptualize how we could offer some level of support to individuals formerly in foster care when they are granted access to their records, which may include research of other states' models or exploration of available grant opportunities. It is possible that future implementation of a Comprehensive Child Welfare Information System (CCWIS) would assist us in providing access to records more seamlessly. We look forward to continued research, collaboration, and planning regarding the implementation of H. 644.