

Legal Backdrop for Child Welfare Work in Vermont



**FEDERAL STATUTE
STATE STATUTE
DCF FAMILY SERVICES POLICY**

**MARCH 2014
CINDY WALCOTT, DEPUTY COMMISSIONER**

Request from Senators



- A broad overview of the current laws and processes.
- The impact of federal law on state law regarding placement, reunification, permanency plans, etc.

Overview of DCF Responsibilities



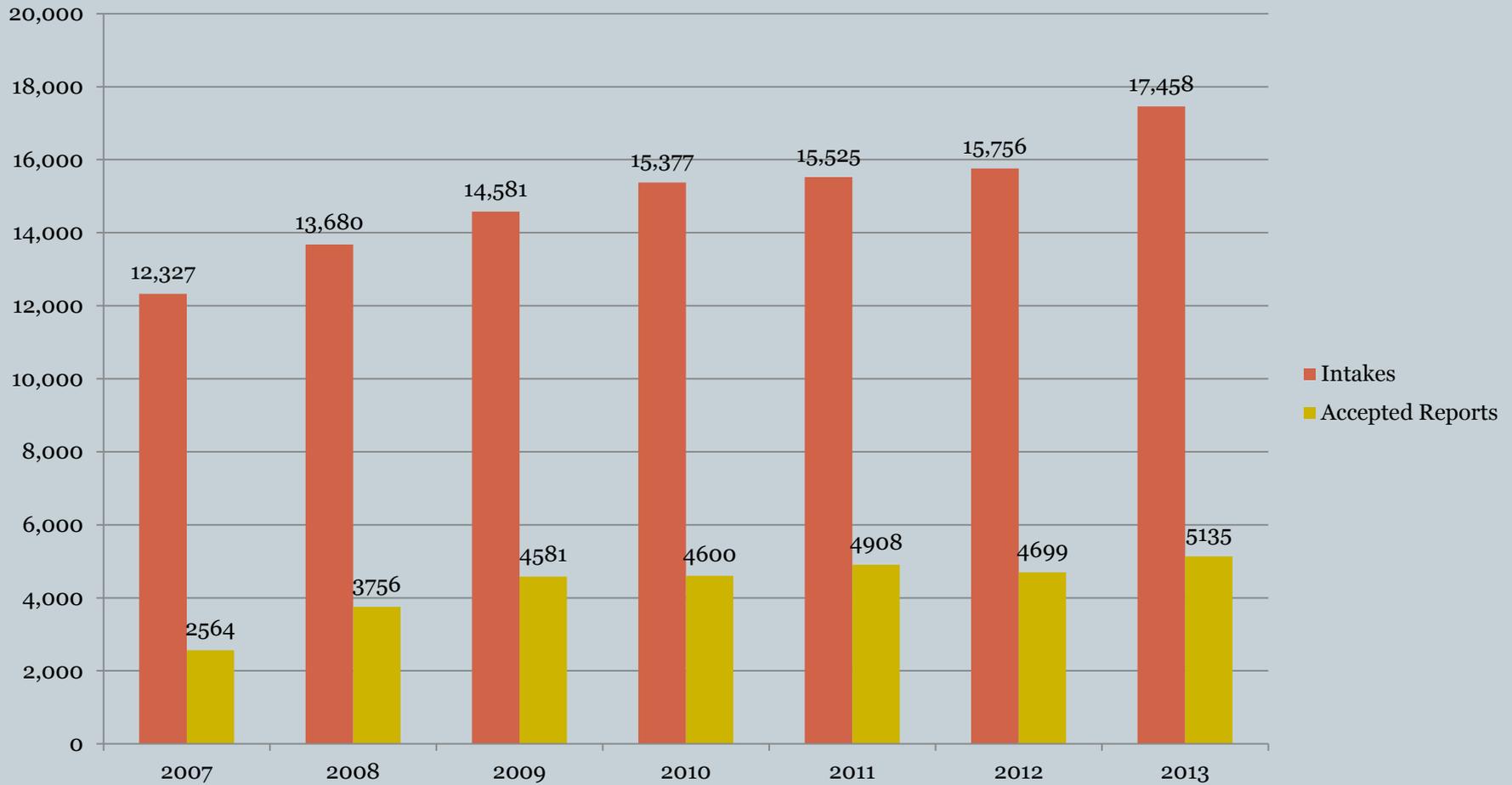
TYPES OF CASES
CASELOAD
TRENDS

DCF Responsibilities

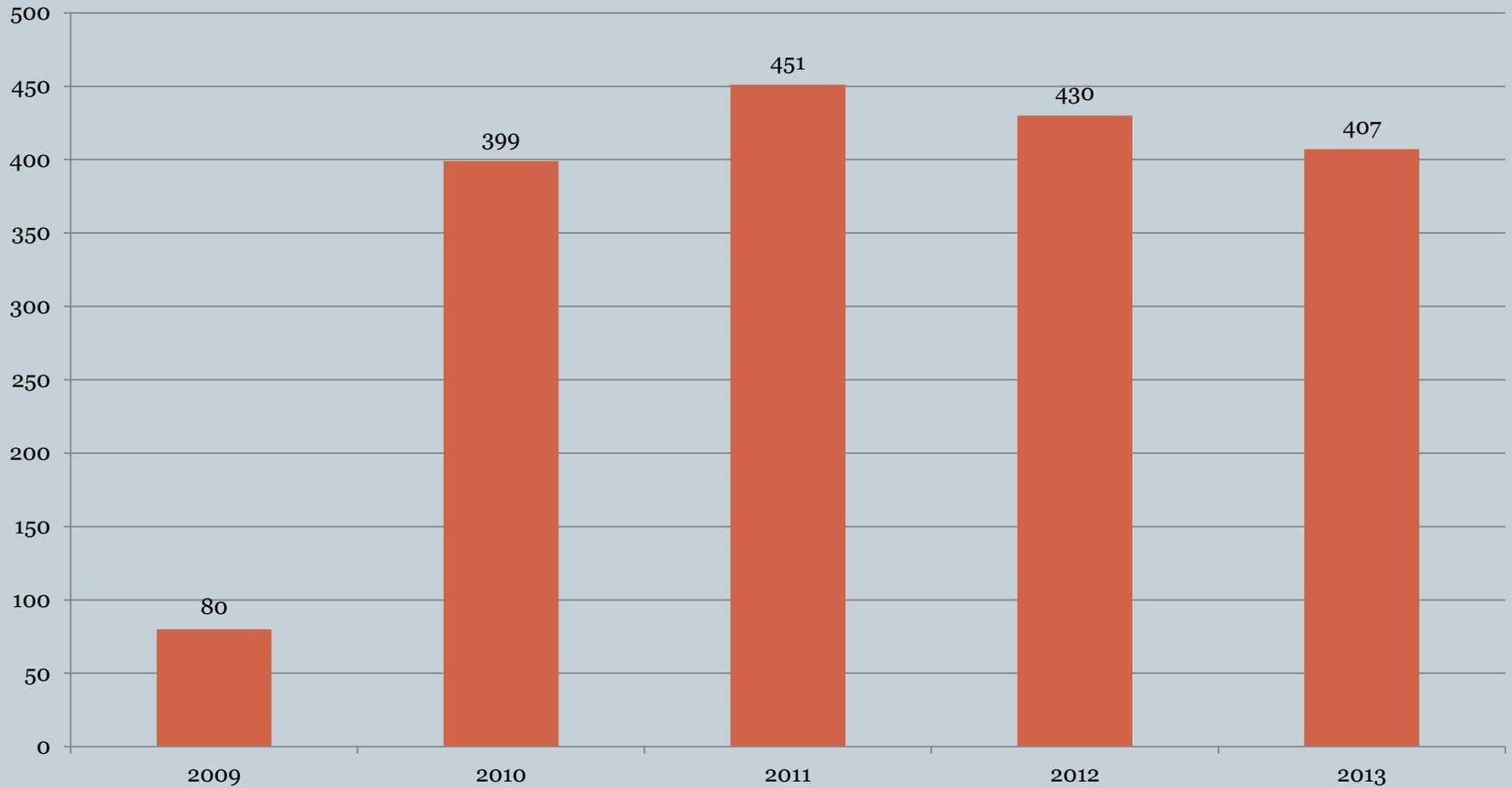


Responsibilities	Number	Time Period
Child Abuse and Neglect Intake	17,458	2013 Total
Child Abuse and Neglect Investigations and Assessments	5,135	2013 Total
Children in DCF Custody	982	12/31/2013 point in time
Children Under Court-Ordered Protective Supervision or Conditional Custody Order	168	12/31/2013 point in time
Youth on Probation	149	12/31/2013 point in time

Response to Child Abuse and Neglect: Trends



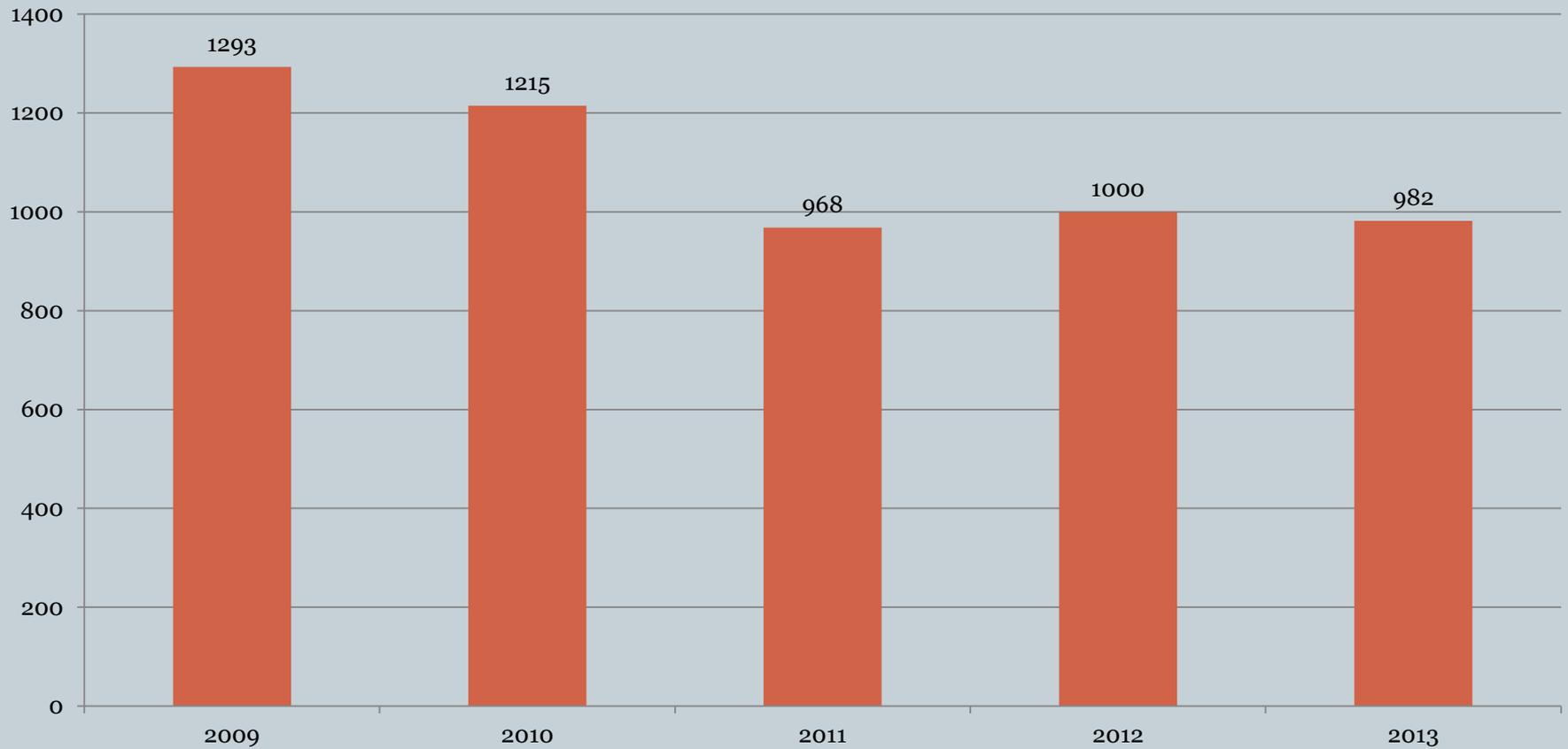
Family Support Cases: Point in Time Trends



Children in DCF Custody: Trends



Children in DCF Custody - Point in Time



Child in DCF Custody 12/31/13



	Abuse/neglect	Child Behavior	Delinquency
Age 0-5	264		
Age 6-11	166	6	
Age 12-17	233	107	138

Where do Children in Custody Live?



Living Situation (10/31/2013)	Number of Children/Youth
Kinship Care	247
Foster Care	457
Residential Care	186
Institution	19
Independent Living	10
With Parents	59

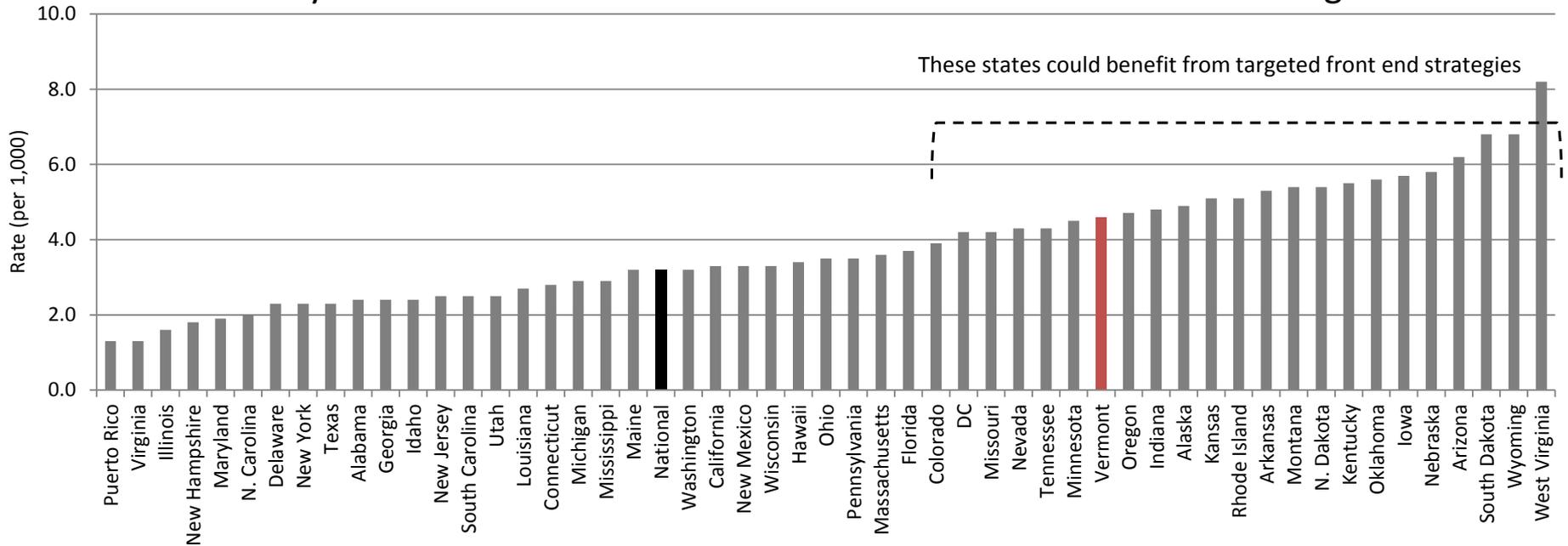
How Do We Compare to Other States?



CHILDREN IN CUSTODY

The entry rate in VT(4.6 per 1,000 in FY12) is higher than the national rate (3.2 per 1,000 in FY11).
 However...not all states include Juvenile Justice entries...

Entry Rates: An indicator associated with front end reduction strategies



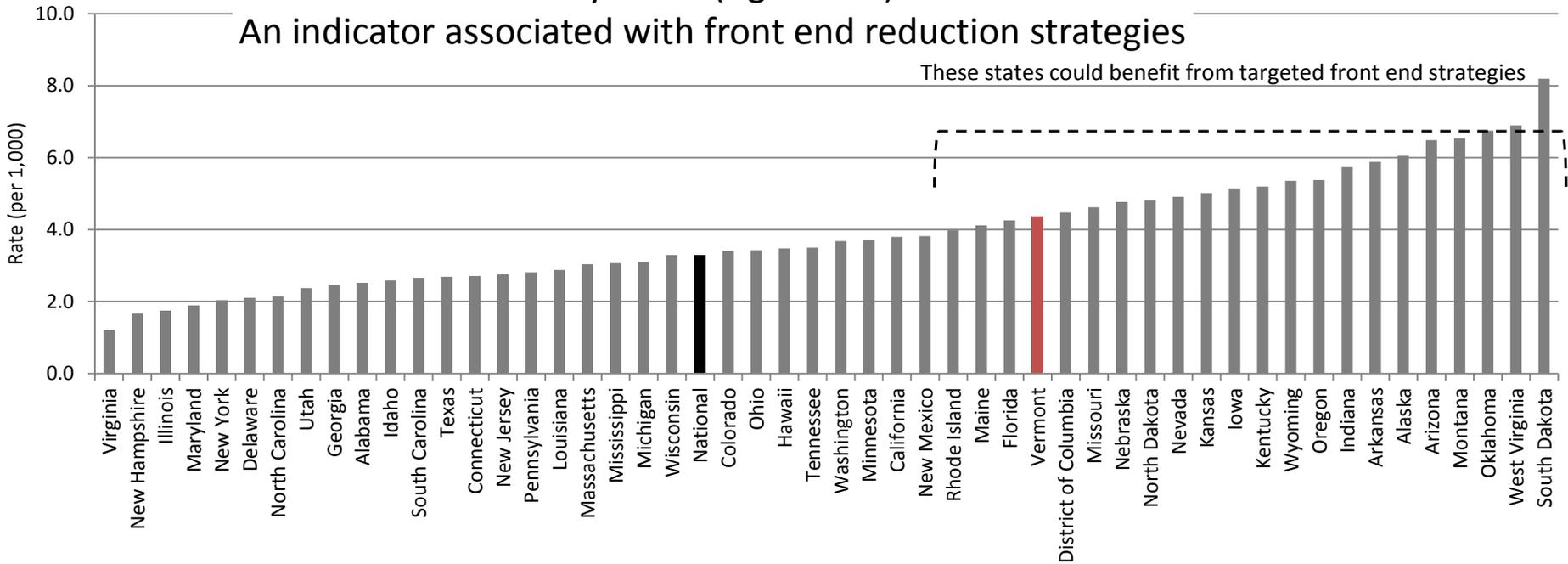
Entry rate is the number of children (ages 0-17) entering care during the year for every 1,000 in the general population.
 Data source is FY12 AFCARS (FY11 in PR, CT, NM, SD and National) CA data from CWS/CMS

Even for just younger children (ages 0-12), VT has an entry rate that is higher than the national rate.

Entry Rates (Ages 0-12):

An indicator associated with front end reduction strategies

These states could benefit from targeted front end strategies



Entry rate is the number of children (ages 0-12) entering care during the year for every 1,000 in the general population.
Data source is FY12 AFCARS (FY11 in CT, NM, SD and National) CA data from CWS/CMS

Federal vs. State Statutes



Federal vs. State Authority



- Primary responsibility for child welfare services rests with states.
- Each State has legal and administrative structures and programs that address the needs of children and families.
- States must comply with specific federal requirements to be eligible for federal funding.

Relevant Statutes



- **Federal –**
 - Child Abuse Prevention and Treatment Act (CAPTA)
 - Titles IV-B and IV-E of the Social Security Act
- **State --**
 - 33 VSA Chapter 49 on Child Protection
 - 22 VSA Chapters 51-53 on Juvenile Proceedings
- **An overview of federal requirements, as they apply to Vermont, can be found in DCF FSD Policy 300:**
<http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/pf/300%20%28I-V-E%20Assurances%29%20FINAL%201.22.2014.pdf>

Required Judicial Findings For Children Entering Custody— Federal and State Requirements



- 1. CONTRARY TO THE WELFARE**
- 2. REASONABLE EFFORTS**

Federal Requirements



- Federal funding for a child is contingent upon two judicial findings:
 - A child-specific reason why it is contrary to the child welfare to continue in the his or her home. This finding must be included in the first court order.
 - A finding that the state made reasonable efforts to prevent removal of the child from the home. This finding must be made within 60 days of the removal.
 - ✦ Judge may find that reasonable efforts were not required to due to an emergency or aggravated situation.
- A judicial finding that the state is making reasonable efforts to finalize a plan for permanence is also due at the 12 month mark, and annually thereafter.

Reasonable Efforts to Prevent Removal

(33 VSA § 5102)



“Reasonable efforts” means the exercise of due diligence by the department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the court may find that no services were appropriate or reasonable considering the circumstances. If the court makes written findings that aggravated circumstances are present, the court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

- (A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;
- (B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;
- (C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or
- (D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

Reasonable Efforts to Achieve Permanency (33 VSA § 5321(h))



- Reasonable efforts to finalize a permanency plan may consist of:
 - (1) reasonable efforts to reunify the child and family following the child's removal from the home, where the permanency plan for the child is reunification; or
 - (2) reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification.

How Children Enter DCF Custody



THE ROLE OF THE FAMILY COURT

How Do Children Enter DCF Custody?

33 VSA §5305



- Only a police officer may take a child into physical custody.
- The officer must take the child home, or to a designated shelter, or to the court.
- Only a family court judge may transfer to custody to DCF.
- During work hours, DCF usually initiates a court hearing. After hours, the police usually recommends custody and the hearing is usually held by phone.
- Options judge can consider:
 - Custody remains with custodial parent, with or without conditions.
 - Temporary custody transferred to DCF.

Temporary Care Hearing §5307



- Held within 72 hours of emergency care order.
- Custody must return to custodial parent unless the court finds:
 - Return will result in substantial danger to health, welfare or safety of child;
 - Physical/sexual abuse to child or child in household by custodial parent, household member or person known to custodial parent;
 - Substantial risk of physical/sexual abuse to child or child in household;
 - Abandonment of child; OR
 - Neglect of child or child in household and there is substantial risk to child subject to petition.

Temporary Care Hearing §5307



- **Custody Options with Order of Preference**
 1. Custodial Parent (with or without conditions)
 2. Non custodial parent
 3. Close Relatives
 4. Other Relatives or person with close connection
 5. DCF
- In CHINS proceedings, this order of preference operates as a true hierarchy.
- The judge must evaluate each option and eliminate them, one by one.
- Note: H. 663 proposes to allow the judge to suspend the hierarchy if there are compelling circumstances and it is in the child's best interest.

Merits Adjudication §5315



- Standard of Proof: Preponderance of the evidence, but in the court's discretion may be clear and convincing (e.g. if termination of parental rights is likely to be an issue at disposition);
- Any stipulations must state facts that support CHINS finding;
- In contested cases, all parties can present evidence; court must make findings on the record.

Dispo. Case Plan Requirements § 5316



- **Includes:**
 - Permanency goal and estimated date for achieving.
 - Assessment of the child's needs.
 - Description of the child's home, school, community, & current living situation.
 - Assessment of the family's strengths and risk factors.
 - Statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing the changes.



- Recommendation about custody and for parent-child contact and sibling contact, if appropriate.
- Plan of services.
- Minimum frequency of contact between the social worker assigned to the case and the family.
- Request for child support.
- Notice to the parents that failure to accomplish substantially the objectives stated in the plan within the time frames established may result in termination of parental rights.

Orders for Family Contact §5319



- Parent-child contact ordered unless contact would jeopardize physical safety or emotional well-being of the child.
- Grounds for terminating contact:
 - Parent has (without good cause) failed to maintain contact with the child with detrimental impact on the emotional well-being of the child; or,
 - Continued parent-child contact will have a detrimental impact on the physical or emotional well-being of the child.

Monitoring Progress



DCF AND THE COURT

Post-Disposition Reviews §5320



- If the permanency goal is reunification (even if child not in DCF custody), a review hearing held in 60 days to:
 - monitor progress and
 - review parent-child contact.
- Permanency Review held at 12 months, if the child is in DCF custody. If requested by a party, may be held earlier, as follows:
 - Younger than age three at time of custody --- Every three months
 - Between the ages of three and six at time of custody --- Every six months
- Foster, adoptive and relative caregivers entitled to notice and an opportunity to be heard at any post-dispositions review hearing.

Administrative Case Plan Reviews



- Required every 6 months by federal statute.
- Purpose is to discuss the written plan with the child and family, to document any disagreement and/or information in the meeting that is not already noted in the plan, and to determine:
 - the safety of the child;
 - if it is still necessary for the child to be placed;
 - if so, the appropriateness of the child's placement;
 - that the plan assures the child's safe and proper care and addresses the child's needs;



- that all parties understand and are following through on their commitments;
- that services are provided to the parents, child, and substitute care providers to make it possible for the child to safely return home or be placed in another permanent setting;
- progress towards addressing the conditions that brought the child and family to the division's attention;
- progress towards goals of the plan, barriers to progress, and how they can be addressed;
- the likely date by which permanency for the child may be achieved.

Engaging Families in Case Planning (33 V.S.A § 5121)



- “The department shall actively engage families, and solicit and integrate into the case plan the input of the child, the child’s family, relatives and other persons with a significant relationship to the child. Whenever possible, parents, guardians and custodians shall participate in the development of the case plan.”

Planning for Permanence



Permanency Planning (Policy 125)



Keeping Families Together and Safe

- Because it is usually the child's primary family that can best offer positive continuity of relationships, the division offers a variety of services, both directly and by contract, designed to keep families together. These services help us to meet important goals:
 - ✦ Protecting the health, safety and well-being of the child;
 - ✦ Reinforcing or establishing a set of stable, nurturing relationships between the child and his or her primary family;
 - ✦ Preserving the primary family.

Permanency Planning (Policy 125)



- Federal law and good casework practice require that division staff make reasonable efforts to ensure permanence for children. In making those efforts, the child's safety is always paramount. The division will make reasonable efforts to:
 - Keep children and youth home whenever safely possible;
 - Reunify children and youth with their families whenever safely possible; and
 - For those children who cannot return home, achieve another permanent plan within a reasonable period.

Permanency Planning (Policy 125)



- For most children entering custody, the goal of the case plan will be reunification with family. Children in custody will be reunified with their parents whenever it is in their best interest.
- When a child is returned home, a specific plan should be made to support the family and monitor the child's safety. This plan should be made with the child's parents, the child if age appropriate, and other members of the child's treatment team. It should include actions to be taken if the child is abused or other risk factors increase.

Permanency Planning (Policy 125)



- The decision to reunify is not related to the standard for taking the child into custody. In determining the appropriate time to reunify the child, the social worker should evaluate the extent to which:
 - the safety of the child and community can be assured;
 - the family has achieved the goals of the case plan;
 - the youth in custody as a delinquent or CHIN(c) has achieved the goals of the case plan;
 - other service providers and involved parties support the plan for reunification.

Permanency Planning (Policy 125)



- For some children, it may be clear from the beginning that reunification with family is contrary to the child's best interest. Reunification efforts are not required by either state or federal statute. Examples of situations in which termination of parental rights should be considered at the time of initial custody include but are not limited to:
 - the parent has been convicted of a murder or voluntary manslaughter of another of his or her children;
 - the parent has aided or abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of his or her child; or
 - the parent has committed a felony assault that results in serious bodily injury of his or her child.

Federal Requirement to Pursue Termination of Parental Rights



- For all children who have been in out of home care for 15 of the last 22 months, the state is required to seek termination of parental rights unless a compelling reason why this is not in the child's best interest is documented in the child's case plan.
- Usually, the determination about compelling reasons is made at the 11 month administrative case plan review.

Terminating Parental Rights



- In determining whether to terminate parental rights, the Court shall consider the best interests of the child;
 - (1) The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests.
 - (2) The child's adjustment to his or her home, school, and community.
 - (3) The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time.
 - (4) Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare.

Data About Permanence



Discharge of Children Under 6 - 2013



Type of Discharge	Number	Percent
Adoption	91	43%
Custody to Relative	24	11%
Discharge to Parent	87	41%
Discharge to Other Parent	11	5%
Total	213	100%

Discharge of Children All Ages- 2013



Type of Discharge	Number	Percent
Adoption	172	26.1%
Custody to Relative	67	10.2%
Discharge to Parent	288	43.9%
Discharge to Other Parent	39	5.9%
Aged Out	72	10.6%
Total	559	100%

Median Stay for Discharged Children – All Ages



Type of Discharge	# children	FFY 2012
Reunification	318	6.5 months
Guardianship	24	9.6 months
Adoption	171	21.7 months
Other (mostly aging out, but include transfers to an adult-serving state agency)	77	33.7 months
Average of all		15.4 months

Federal Monitoring of Outcomes



What Outcomes do Feds Monitor?

(Data available upon request)



- % of children who remain safe in 6 Months following substantiated abuse.
- % of children who are safe in out of home care.
- % of reunifications which occur in 12 months.
- % of adoptions which occur in 24 months.
- % of children who entered DCF custody who had been discharged from custody in last 12 months.
- % of children who have 2 or fewer placements in first 12 months of custody.
- % of children in custody who receive a monthly face to face contact.