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Agency of Human Services

MEMORANDUM

TO: Senate Panel on Child Protection
FROM: Dave Yacovone, Commissioner *DY*
DATE: April 8, 2014
RE: DCF documents that may be helpful to and are available to the Senate Panel

The Department for Children and Families (DCF) appreciates and supports the work of the Senate Panel on Child Protection (Panel) in its independent review of the system of laws, policies and procedures currently in place to protect children in Vermont. In the course of this review, I understand that the Panel has expressed interest in obtaining subpoena power to compel the attendance of witnesses and the production of records and documents while the General Assembly is not in session.

I would like to inform the Panel about the many types of information, documents and records that are available to the Panel to assist it in its review without the need for subpoena power. Deputy Commissioner of DCF, Cindy Walcott, attended the first meeting of the Panel and provided information about the legal backdrop for child welfare in Vermont, including a broad overview of the current laws and processes in place in Vermont and the impact of federal law on state law regarding placement, reunification and permanency plans. Cindy and other DCF staff are available to provide further information to the Panel on the topic of child welfare and protection in Vermont.

In addition, DCF Family Services Division can provide to the Panel aggregated data on the topic of child protection including district level data on the number and types of people served by DCF, case load information, data on children in state custody, reunification and other outcomes information, number of reports of cases of children with serious physical and other injuries and other aggregated data. DCF could also provide information about and explain a hypothetical schedule for judicial and administrative review for children in DCF custody beginning with the first emergency care hearing through the permanency review hearing. DCF has many other resources readily available to the Panel such as a power point presentation on the hiring and training of social workers, including minimum qualifications required of DCF social workers, education and experience of current DCF social worker staff, staff turnover data and how DCF evaluates social worker performance. DCF also has a flow chart of child safety interventions that explains the investigative process beginning with the initial intake. Further, it may be helpful to the Panel to review and ask questions about the organization of DCF Family Services Division. Finally, DCF would be happy to respond to any requests for aggregated data on a specific child protection topic.

DCF is not able, however, to provide child or person-specific information to the Panel about any open or closed DCF child abuse or neglect case. Both federal and state law mandate the confidentiality of DCF records generated under the State's child abuse reporting and investigation statute. *See* 42 U.S.C. §5106a; 45 C.F.R. §1340.14; 33 V.S.A. §§4913 & 4921. In addition, information maintained by DCF is made confidential as to the general public by other state statutes.¹ *See, e.g.* 33 V.S.A. §§306(a) (protecting the confidentiality of information relating to applicants for or recipients of assistance from DCF); 5110 (mandating that juvenile proceedings are confidential and including a prohibition on giving "publicity" in any juvenile judicial proceeding); & 5117 (generally protecting juvenile proceedings court and law enforcement reports); *see also* *In re J.S.*, 140 Vt. 458, 468-69 (1981) (upholding confidentiality of juvenile proceedings by Vermont statute and holding that the importance of confidentiality in juvenile proceedings is so great that it trumps the First Amendment's interest in access to the information by the press even when the name of the juvenile at issue had already been disclosed through other means). The confidentiality laws surrounding child abuse reporting and investigations and juvenile proceedings are based on the public policies of protecting the identity of children and families involved. Disclosing identifying information could discourage people from being forthcoming with information about child abuse and could also compromise the rehabilitative goals of juvenile proceedings.

In conclusion, DCF has available aggregated data on many child protection topics that can be provided for specific time periods and organized in any way that may be helpful to the Panel such as district level. DCF is not aware of any authority to release confidential information to the Panel relating to specific child abuse responses initiated by DCF or child welfare cases that have been or are the subject of juvenile court jurisdiction even if subpoenaed by the Panel due to the above-referenced laws. Even if DCF could release confidential information, I respectfully submit that aggregated information may be more helpful to the Panel than the review of specific representative cases from around the State as it would be difficult to choose which cases to review and specific cases may not be as informative as broader information and outcomes about the system in place in Vermont to protect children. I am available, along with Deputy Commissioner Cindy Walcott and other DCF staff, to provide testimony and aggregated information to the Panel on many system-wide child protection topics. The Panel may also want to consider other sources for aggregated child protection information such as the Vermont Judiciary and guardian ad litem program. Please feel free to contact me with any requests for DCF testimony, reports or other aggregated child protection information. Thank you.

¹ Information in DCF's files could also include student and school records, which are protected from disclosure by federal and state law. *See* 20 U.S.C. §1232g; 34 C.F.R. Part 99; & 1 V.S.A. §317(c)(11). Further, both federal and state privacy laws prevent the disclosure of individuals' protected health information which could be included in DCF's investigation records and case files. *See* Health Insurance Portability and Accountability Act of 1996 (Pub. Law 104-191); 12 V.S.A. §1612; & 18 V.S.A. §7103; *see also* 42 C.F.R. Part 2 (protecting individuals' substance abuse treatment records).