

## Child Protection Committee

### Substance Abuse

**Summary:** Multiple witnesses highlighted the impact of substance abuse upon families and upon the child protection system. For example, on September 2, Judge Gearson testified that substance abuse is a factor in 75–85% of CHINS cases. Current DCF policies limit the circumstances under which DCF will accept a report based on a parent’s drug use. However, these policies are under review. The Committee’s options include clarifying the circumstances under which DCF should intervene based on substance abuse or waiting for the results of DCF’s review.

**Current Law:** 33 V.S.A. chapters 49, 51, and 53 are largely silent on the issue of substance abuse. However, an “abused or neglected child” is defined as a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm due to the act or omission of a parent or caregiver. 33 V.S.A. § 4912(1). 33 V.S.A. § 4912(6) further defines “harm” as including not only physical injury, but also a failure to supply a child with adequate food, clothing, shelter, or health care. Therefore, a failure of a parent to care adequately for a child as a result of substance abuse can establish a basis for DCF intervention under the statutory definitions of “abuse or neglect” and “harm.”

This is reflected in case law. For example, in *In re L.M.*, 2014 VT 17, ¶ 29, 93 A.3d 553, 561–62 (2014), the Supreme Court held that a child may be in need of care and supervision based upon a father’s “longstanding and continued drug addiction, his lack of stable housing, and his failure to follow through,” and that DCF need not establish “actual harm” to the child.

**Current DCF Policy:** Current policy addresses four scenarios:

1. a pregnant woman’s use of drugs;
2. a parent’s use of drugs if a child is less than six years old;
3. methamphetamine use and production; and
4. drug testing.

**1. A pregnant woman’s use of drugs.** According to Policy 51, DCF will accept a report and conduct a child safety intervention when:

- A woman is pregnant and either parent has a “substantial history with DCF.” The intervention will begin one month before the due date.
- A physician certifies or the mother admits to using illegal substances or nonprescribed prescription medication during the last trimester of her pregnancy.
- A newborn has a positive toxicology screen for illegal substances or prescription medication.
- A newborn has been deemed by a medical professional to have Neonatal Abstinence Syndrome as the result of maternal use of illegal substances or prescription medication, or to have Fetal Alcohol Spectrum Disorder.

- There is likely to be a serious threat to a child’s health or safety, or due to the mother’s substance abuse during pregnancy, intervention before a child’s birth may assist the family to remediate the issues and avoid the need for DCF custody after the birth (pages 4–5).

2. A parent’s use of drugs if a child is less than six years old. DCF Rule 2002.04 lists “additional considerations” in determining whether a report will be accepted, including:

“The reporter has observed or a professional reports that a parent or caretaker of a child under the age of six ... has a current pattern of use of illegal substances or misuse of prescription drugs and the child lacks age-appropriate supervision as a result; or is regularly impaired by use of alcohol and the child lacks age-appropriate supervision as a result.” 2002.04(d) (emphasis added); see, Policy 51, page 10.

3. Methamphetamine use and production. DCF will accept a report that a parent or caretaker is using or producing methamphetamine. Rule 2002.04(d), (e), Policy 63. Any allegation that a child has been in a clandestine lab within 30 days or is being exposed to a lab must be reported to law enforcement. Policy 63, page 2.

4. Drug testing. Policy 65 concerns drug testing during an investigation; however, the parent must consent to be tested. A positive result is used to develop an intervention plan. Policy 65, pages 3–5.

**Changes to DCF Policy and Practice:** As explained above, the circumstances under which DCF will accept a report based on drug use are limited. For example, DCF will only accept a report of a pregnant woman’s use of drugs during the last trimester of her pregnancy.

However, DCF may be reconsidering its current approach. Acting Secretary Chen and Commissioner Schatz indicated in their report to Governor Shumlin that DCF is “anticipating provision of technical assistance from the National Center on Child Welfare and Substance Abuse,” which will “focus on improving current practice and identifying changes that can be made to enhance child safety.” *Actions to Strengthen the Department for Children and Families’ Focus on Vulnerable Children and Families*, October 1, 2014, p. 8.

**Issues and Committee Options:** As noted above, witnesses emphasized the impact of drug abuse upon children and the child protection system. Information was provided to the Committee that reports of drug abuse were not accepted by DCF, even when parents were rendered unconscious or children were being exposed to drug use and paraphernalia. This may be the result of DCF’s current policies which, as explained above, focus on four scenarios. Information was also provided to the Committee that parents are infrequently tested for drug use and that parents who had successfully completed treatment and retained custody of their children relapsed, resulting in cycles of treatment, relapse, and a new report and intervention. This may be the result of DCF and

the courts lacking an ability to continue to monitor a family once a case is closed or a CHINS proceeding is resolved.

As to the basis for DCF to intervene based on substance abuse, the Committee could:

1. Take no action.
2. Explicitly define “harm” in 33 V.S.A. § 4912 as including exposing a child to illegal substances. The Attorney General has suggested this. This would give DCF a statutory basis to take action in more cases.
3. Seek to define better in statute the circumstances under which DCF should accept a report concerning parent or caregiver substance abuse. The Committee would have to consider how expansive or narrow the circumstances should be, and whether intervention by DCF should be mandatory or permissive. A significant expansion of the circumstances in which DCF could intervene raises resource issues.
4. Wait for the results of DCF’s consultation with the National Center on Child Welfare and Substance Abuse.

As to drug testing, the Committee could:

1. Take no action.
2. If the Committee wishes to encourage or mandate the increased use of testing, it could do so in statute. If the Committee does so, it may wish to discuss the goal of testing. For example, is it to promote treatment? Monitor compliance? Ensure parents who have retained custody remain drug-free? DCF has concerns about how increased testing would be carried out.
3. A judge suggested that drug treatment and testing should be part of a conditional custody order. If the Committee wants to encourage this approach, it may want to consult with the Judiciary.

As to parents who may have completed treatment and retained custody of their children, but who relapse, resulting in cycles of treatment, relapse, and new interventions, the Committee could:

1. Take no action.
2. Make statutory changes to allow DCF and the courts to monitor families over a longer period of time. This approach is similar to the conditional custody order idea described above.