



Committee on Child Protection

September 25, 2014

Committee Charge

(b) The Committee shall **investigate and evaluate Vermont's current system** of child protection ... including:

(1) examining Vermont's laws, policies, and procedures and **evaluating whether those laws, policies, and procedures are effective** in protecting children ...

(4) examining **whether the departments, agencies, branches, and entities** that are responsible for child protection cooperate and **are effectively** fulfilling their role ...

(5) examining whether specific crimes or incidents reveal **shortcomings in current laws, policies, and procedures in how the current system operates** ...

(6) examining **how the child protection system operates in different parts of the State** and whether similar cases or allegations are handled differently ...

(7) determining whether legislative or other changes are necessary to improve the child protection system ...

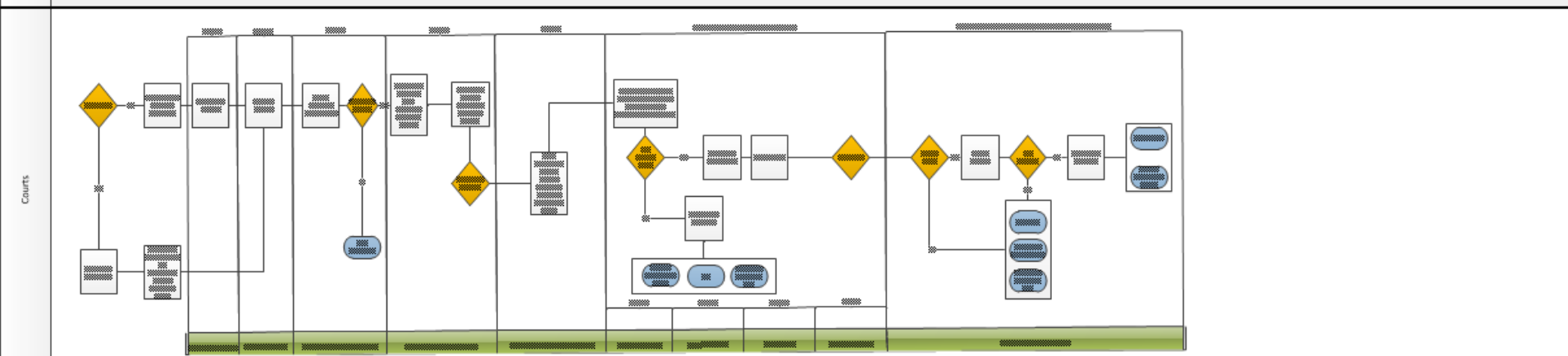
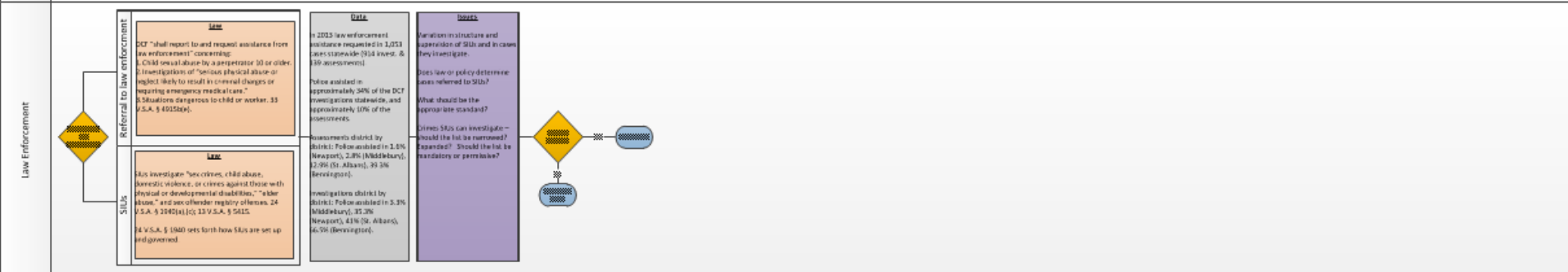
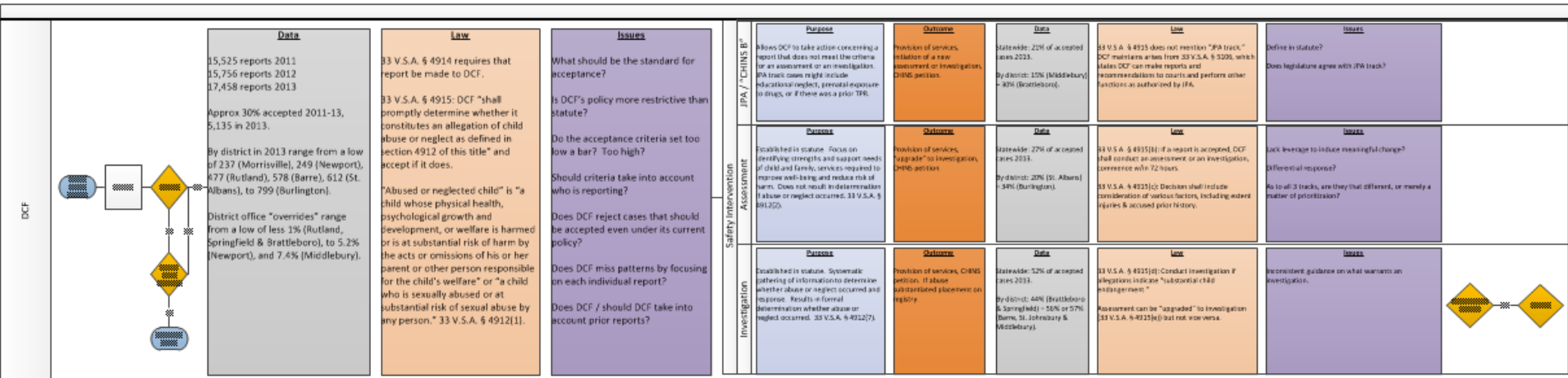
What has the Committee done so far?

- 9 public hearings
117 witnesses
- 5 hearings in Montpelier
59 witnesses
- 14 total hearings, 176 witnesses, 60 hours of testimony
- 800 pages of written testimony and materials

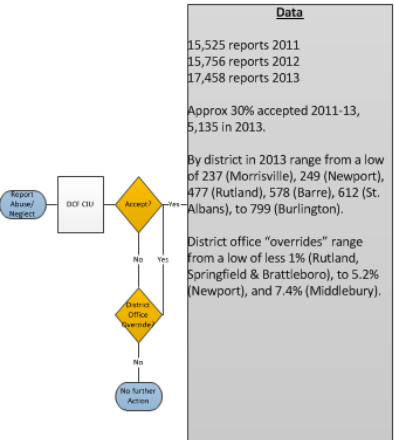
What does the Committee have left to do?

- Pull the threads together
- Today's presentation begins this process
 - ✓ Explain current "system"
 - ✓ Highlight themes & issues
 - ✓ Provide legal background
 - ✓ Provide a structure to facilitate your discussion this afternoon & at subsequent meetings

CHILD PROTECTION SYSTEM



DCF



Data

15,525 reports 2011
15,756 reports 2012
17,458 reports 2013

Approx 30% accepted 2011-13, 5,135 in 2013.

By district in 2013 range from a low of 237 (Morrisville), 249 (Newport), 477 (Rutland), 578 (Barre), 612 (St. Albans), to 799 (Burlington).

District office "overrides" range from a low of less 1% (Rutland, Springfield & Brattleboro), to 5.2% (Newport), and 7.4% (Middlebury).

Law

33 V.S.A. § 4914 requires that report be made to DCF.

33 V.S.A. § 4915: DCF "shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 of this title" and accept if it does.

"Abused or neglected child" is "a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare" or "a child who is sexually abused or at substantial risk of sexual abuse by any person." 33 V.S.A. § 4912(1).

Issues

What should be the standard for acceptance?

Is DCF's policy more restrictive than statute?

Do the acceptance criteria set too low a bar? Too high?

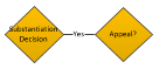
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Does DCF reject cases that should be accepted even under its current policy?

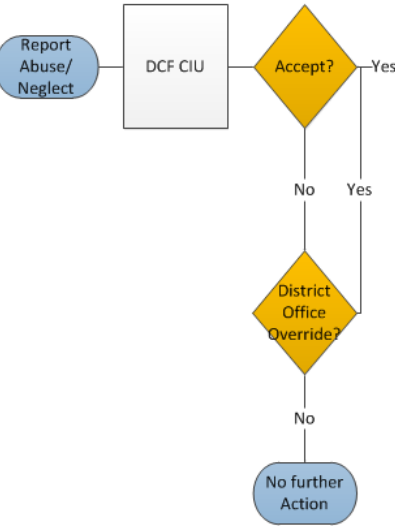
Does DCF miss patterns by focusing on each individual report?

Does DCF / should DCF take into account prior reports?

	JPA / "CHINS B"				
	Purpose	Outcome	Data	Law	Issues
Safety/Intervention Assessment	Allows: DCF to take action concerning a report that does not meet the criteria for an assessment or an investigation. JPA track cases might include educational neglect, prenatal exposure to drugs, or if there was a prior TPR.	Provision of services, initiation of a new assessment or investigation, CHINS petition.	Statewide: 71% of accepted cases 2013. By district: 15% (Middlebury) - 30% (Brattleboro).	33 V.S.A. § 4915 does not mention "JPA track." DCF maintains arises from 33 V.S.A. § 510E, which states DCF can make reports and recommendations to courts and perform other functions as authorized by JPA.	Define in statute? Does legislature agree with JPA track?
	Established in statute. Focus on identifying strengths and support needs of child and family, services required to improve well-being and reduce risk of harm. Does not result in determination if abuse or neglect occurred. 33 V.S.A. § 4912(2).	Provision of services, "upgrade" to investigation, CHINS petition.	Statewide: 27% of accepted cases 2013. By district: 20% (St. Albans) - 34% (Burlington).	33 V.S.A. § 4915(b): If a report is accepted, DCF shall conduct an assessment or an investigation, commence w/in 72 hours. 33 V.S.A. § 4915(c): Decision shall include consideration of various factors, including extent injuries & accused prior history.	Lack leverage to induce meaningful change? Differential response? As to all 3 tracks, are they that different, or merely a matter of prioritization?
	Established in statute. Systematic gathering of information to determine whether abuse or neglect occurred and response. Results in formal determination whether abuse or neglect occurred. 33 V.S.A. § 4912(7).	Provision of services, CHINS petition. If abuse substantiated placement on registry.	Statewide: 52% of accepted cases 2013. By district: 44% (Brattleboro & Springfield) - 56% or 57% (Barre, St. Johnsbury & Middlebury).	33 V.S.A. § 4915(d): Conduct investigation if allegations indicate "substantial child endangerment." Assessment can be "upgraded" to investigation 33 V.S.A. § 4915(e) but not vice versa.	Inconsistent guidance on what warrants an investigation.



DCF continued on next slide



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 account prior reports?

Safety Intervention

Law

33 V.S.A. § 4915(a), (b): DCF shall determine if a report constitutes an allegation of “child abuse or neglect,” and accept if a valid allegation.

33 V.S.A. § 4912(1): “An “abused or neglected child” means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare” or “a child who is sexually abused or at substantial risk of sexual abuse by any person.”

Therefore, DCF is empowered to accept any valid allegation concerning:

1. Harm, or substantial risk of harm, to a child’s:

physical health
psychological growth
psychological development
welfare

} caused by act
or omission of
caregiver

2. Sexual abuse or substantial risk of sexual abuse – by anyone

DCF Policy 51

Rule 2002.01 & Policy 51 state that a report shall be considered valid when the division suspects that:

1. The person responsible for the child's welfare has harmed or is harming the child by:

a. **physical injury**

b. neglect

c. medical neglect

2. The person responsible for the child's welfare has, by acts or omissions, placed the child at significant risk of **serious** physical harm.

DCF Policy 51 continued

In determining whether to accept a report of physical abuse, DCF shall consider whether the report alleges that a person responsible for the child's welfare caused:

1. Death due to physical abuse;
2. Permanent or temporary disfigurement; or
3. Impairment of any bodily organ or function.

When the allegation is that the child has a mark, not accepted unless the mark has lasted for more than twenty-four hours.

DCF will not accept concerns about a child's general condition. Report only accepted if there is a valid allegation of harm or a risk of harm.

Law as to sexual abuse

33 V.S.A. § 4912(1): DCF accept valid allegation of sexual abuse or substantial risk of sexual abuse.

DCF Policy 51 – sexual abuse

	Perpetrator 9 or under	Perpetrator 10 or older
Age of victim: 9 or under	5 year developmental or chronological age difference, aggravating circumstances such as insertion of objects, intercourse, prostitution or exploitation, incest.	Perpetrator entrusted to care for the child by law, victim is perpetrator's child, grandchild, foster child, adopted child or stepchild, 5 year developmental or chronological age difference, use of force or coercion, victim did not have opportunity to consent, prostitution or exploitation, incest.
Age of victim: 10-15	5 year developmental or chronological age differential, use force, threat or coercion, victim did not have opportunity to consent, prostitution or exploitation, incest.	5 year developmental or chronological age differential, use force, threat or coercion, victim did not have opportunity to consent, prostitution or exploitation, incest.
Age of victim: 16-17	Significant developmental difference, other factors similar to victim 10-15 and perpetrator 9 or under.	Significant developmental difference, other factors similar to victim 9 or under and perpetrator 10 or older.

Practice

Testimony that:

- DCF policies convoluted and hard to understand.
- CIU only accepts a report of physical abuse if child suffered a significant injury.
- CIU asks for information caller could not reasonably have, and if not provided report not accepted.
- CIU does not follow its own policies – examples.

Law v. policy v. practice acceptance of reports

	Law	DCF policy	Practice?
Physical abuse	Broad: Harm / substantial risk harm to health, psychological growth and development, or welfare. Act or omission of parent / caregiver.	Narrower: Physical injury, neglect, medical neglect, or significant risk of serious physical harm by act or omission.	Narrower still?
Sexual abuse	Broad: Sexual abuse or substantial risk sexual abuse.	Narrower: Accept only if factors in chart on prior slide.	Narrower still?

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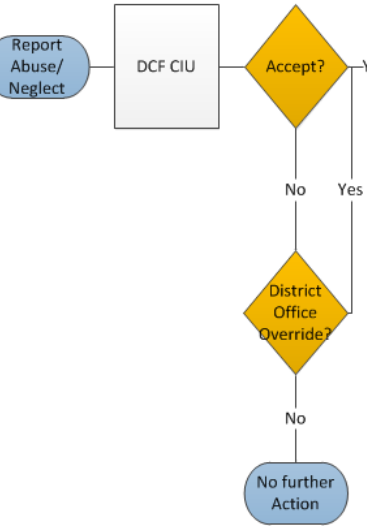
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Safety Intervention



DCF
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next slide

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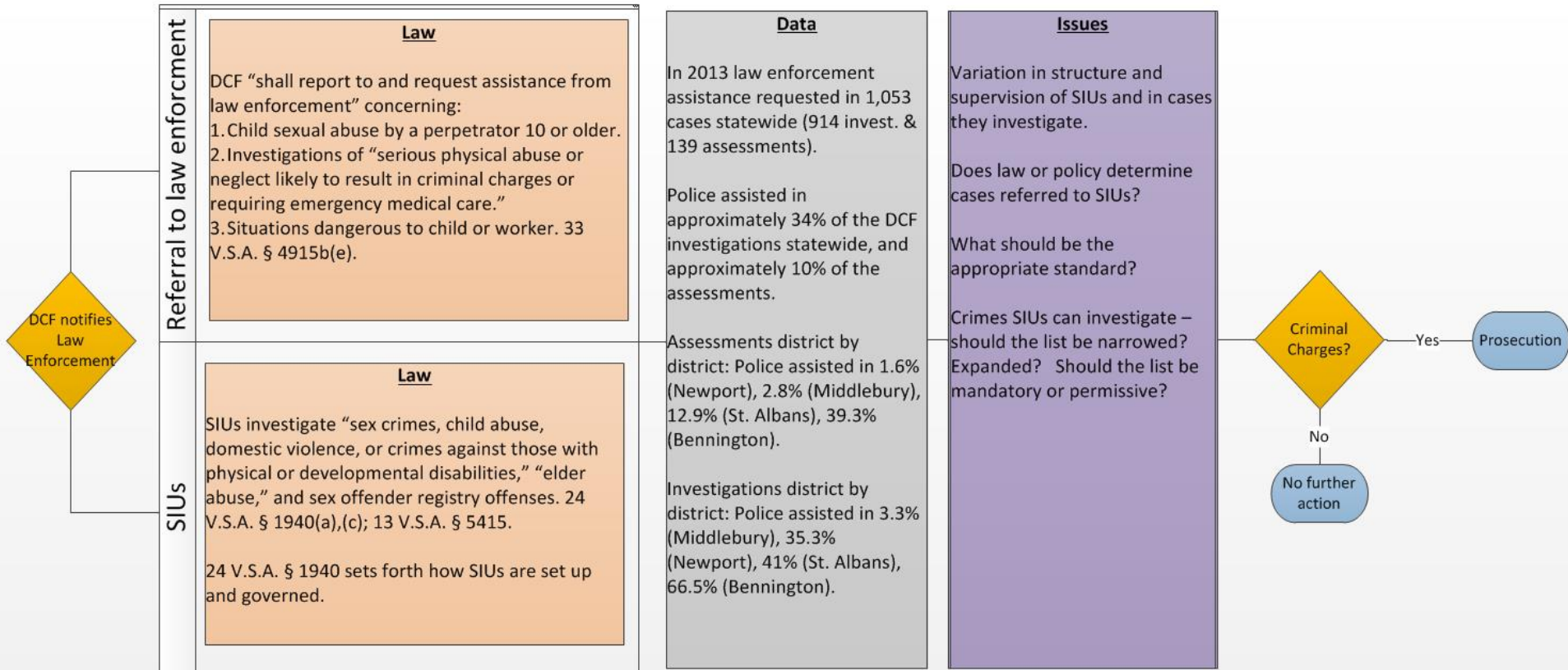
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DCF
continued on
next slide

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Law Enforcement



Law – referral to law enforcement

33 V.S.A. § 4915b(e): DCF “shall report to and request assistance from law enforcement in:”

- (1) Investigations of child sexual abuse by perpetrator age 10 or older.
- (2) Investigations of “serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care.”
- (3) Situations “potentially dangerous to the child or department worker.”

Law continued

“Serious physical abuse” not defined, but penal law definition of “serious bodily injury” (13 VSA § 1021(2)) includes injury that creates:

- a substantial risk of death,
- a substantial loss or impairment of the function of any bodily member or organ,
- a substantial impairment of health, or
- substantial disfigurement, or
- strangulation.

Case law.

DCF policies

Policy 52 tracks 33 V.S.A. § 4915b.

Policy 68 defines “serious physical abuse” as allegations that result in hospital evaluation or admission including death or injury caused by or presenting with: abusive head trauma, fractures, internal injury, poisoning, central nervous system injury, strangulation, retinal hemorrhages, head or brain injury, Munchausen by Proxy Syndrome, or a designation of serious physical injury by a pediatric doctor.

Law v. policy v. practice – referral to law enforcement

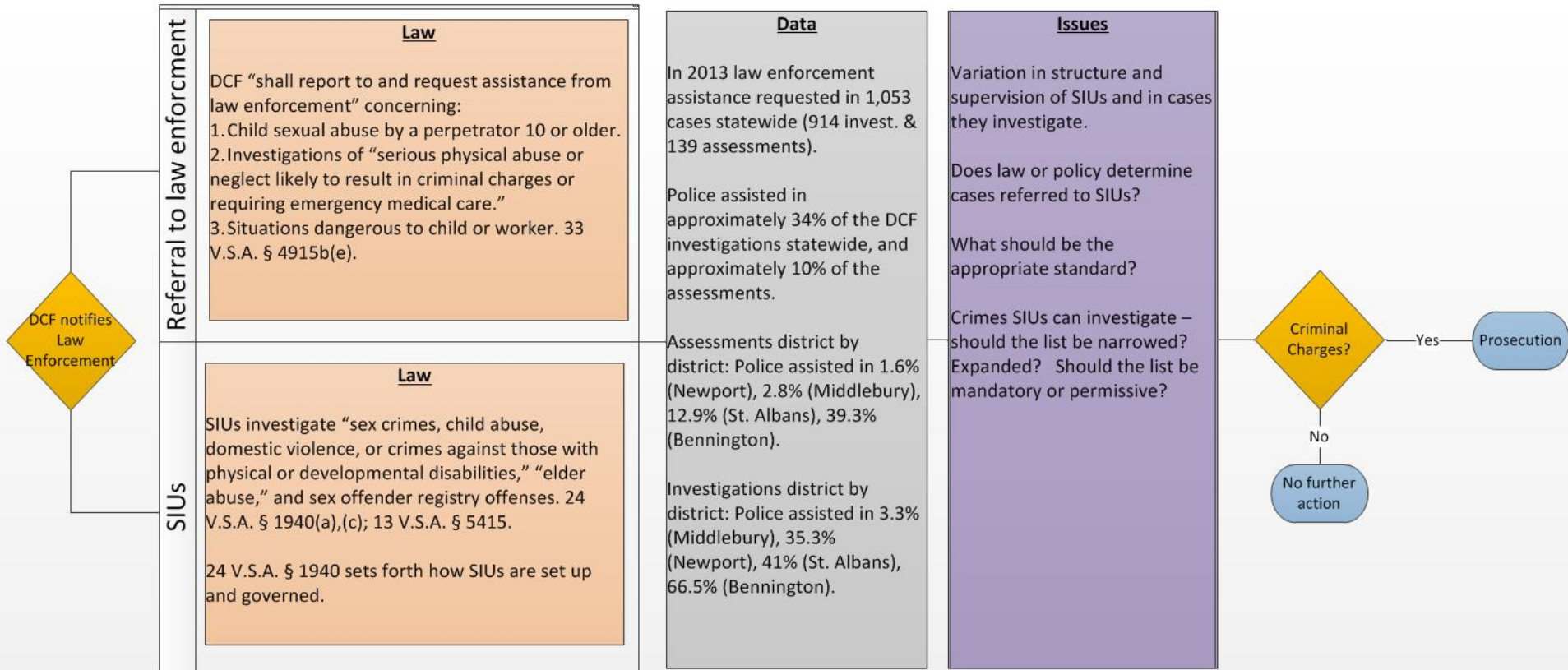
Law	Policy	Practice
<p>DCF shall report and request assistance in investigations of child sexual abuse by perpetrator 10 or older, serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care, situations dangerous to the child or worker.</p>	<p>Narrower: Policy 68 defines serious physical abuse as requiring hospitalization and injuries such as head trauma, internal injuries, and fractures.</p> <p>Data: L.E. only assisted in 34% of DCF investigations in 2013.</p>	<p>Wide variation.</p> <p>Data: District by district, police assistance in investigations ranged from 3.3% to 66%.</p>

SIUs

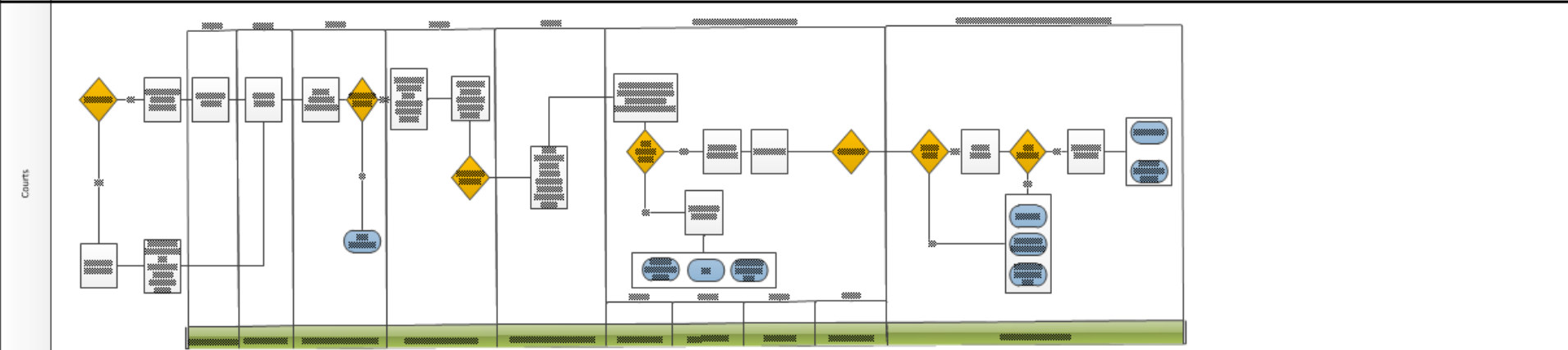
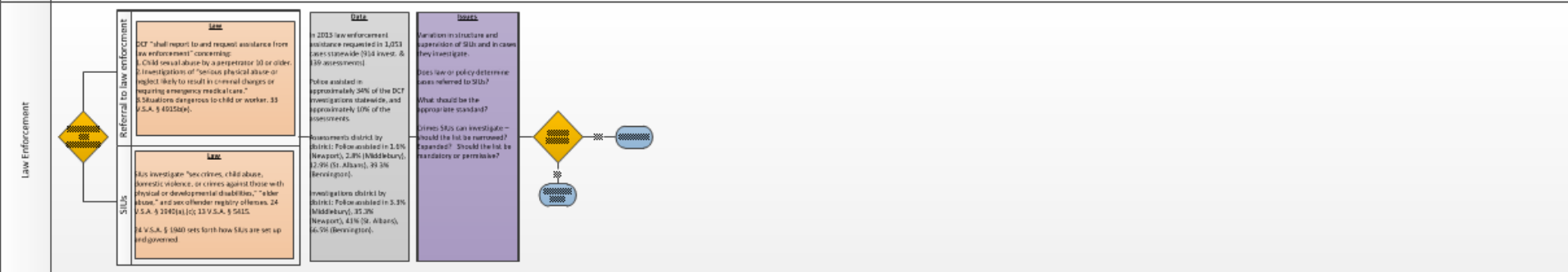
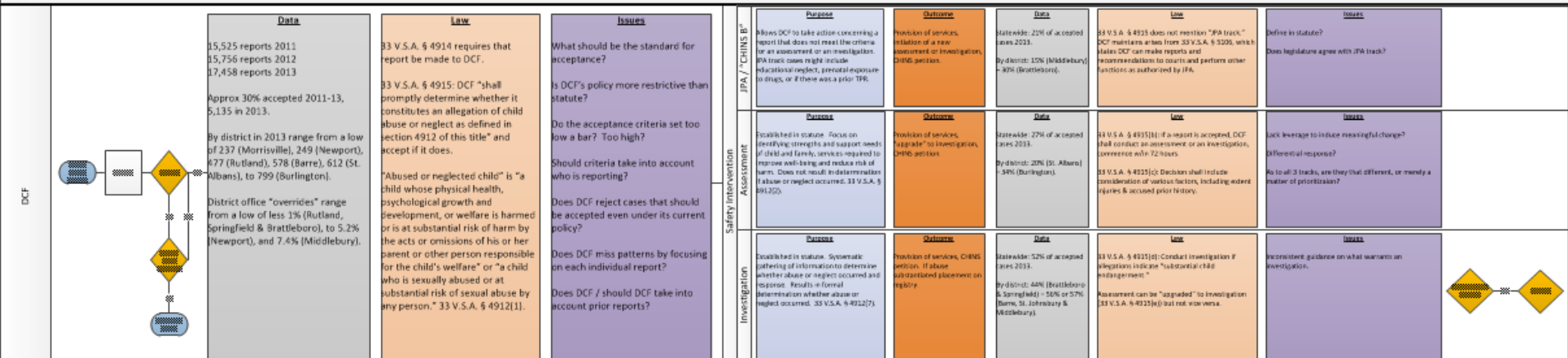
SIUs can investigate “sex crimes, child abuse, domestic violence, or crimes against those with physical or developmental disabilities,” “elder abuse,” and sex offender registry offenses. 24 V.S.A. § 1940(a),(c); 13 V.S.A. § 5415.

24 V.S.A. § 1940 sets forth how SIUs are set up and governed.

Law Enforcement



CHILD PROTECTION SYSTEM



Custody

33 V.S.A. § 5301

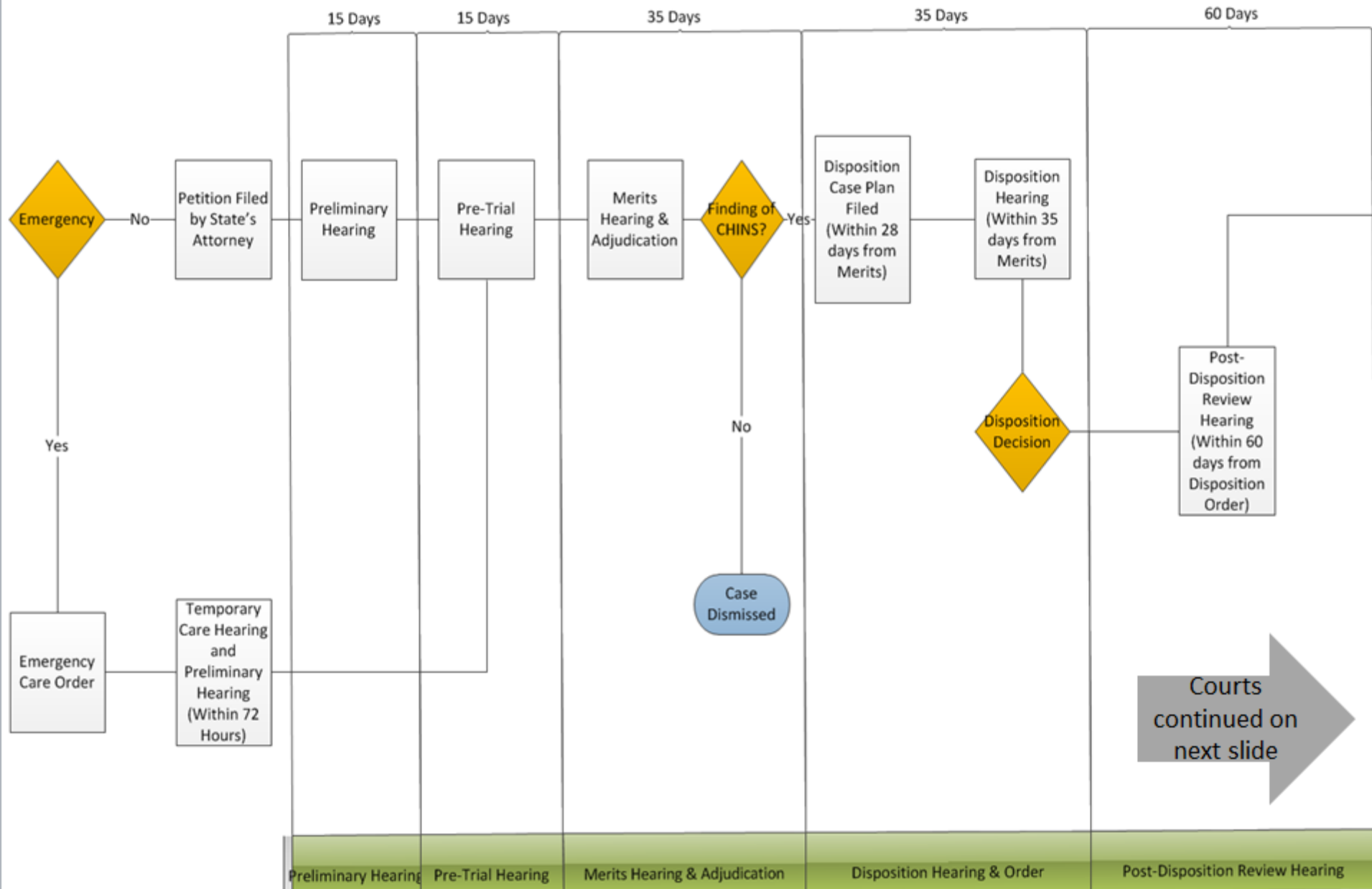
- Although juvenile proceedings are initiated by a "petition," in many cases the child is brought before the court before the petition is filed. This occurs when the child is taken into care but not immediately released to his/her parents, guardian, or custodian.
- Three circumstances under which a child may be taken into custody:
 - pursuant to an order of the juvenile court
 - by a law enforcement officer when the officer has reasonable grounds to believe a child is in immediate danger from his surroundings, and removal is necessary for the child's protection
 - by a law enforcement officer when the officer has reasonable grounds to believe that the child has run away

Procedure for Runaway Children

33 V.S.A. § 5303

- Officer who takes child into custody shall deliver child to parent/guardian or a shelter designated by DCF
- Upon delivery of child to shelter, the shelter shall notify child's parents/guardian
- Child may remain at shelter for no more than seven days
- After seven days, child shall be released to parent/guardian or an officer shall seek an ECO.

Courts



TPR process completed within 5 months

Appeal Process 4-6 Months | Adoption Process 3-6 Months

Permanency Hearing
(Must occur within 12 months of child entering state custody)

TPR Petition Filed?

Yes

TPR Status Conference

TPR Hearing

TPR Order

No

Parent/DCF Case Plan

- Custody Returned to Parent
- TPR
- Long Term Substitute Care

15 Days

30 Days

30 Days

30 days

Appeal Filed?

Yes

Appeal Process

TPR Upheld?

No

Parent/DCF Case Plan

- Second TPR
- Custody Returned to Parent

Yes

- Adoption
- Permanent Guardianship
- Long Term Substitute Care

No

TPR Petition Filed

TPR Conference

TPR Hearing

TPR Order Issued

Appeal Process & Adoption

Emergency Care Order

33 V.S.A. § 5305

- Many juvenile court proceedings start with an emergency care hearing.
- When a child is taken into custody under 33 V.S.A. § 5301 and not immediately released, the court must issue an emergency care order.
- Emergency care hearings are usually held ex parte and sometimes conducted by the judge speaking to DCF over the phone.
- Court may deny the request for an ECO and issue a conditional custody order.

Temporary Care Hearing/ Preliminary Hearing

33 V.S.A. § 5307

- Must be held within 72 hours of ECO
- Purpose is to determine position of the parties on the petition
- Parties that shall be present:
 - child, unless under 10, and his/her attorney
 - parent/guardian/custodian and his/her attorney
 - Guardian Ad Litem
 - DCF
 - State's Attorney

Temporary Care Order (TCO)

33 V.S.A. § 5308

- Court must return legal custody to parent or guardian unless it finds, by a **preponderance of the evidence**, that doing so would be contrary to child's welfare.
- Upon such a finding, court can order:
 - conditional custody to parent/guardian subject to court-imposed limitations and conditions
 - temporary custody to a noncustodial parent
 - temporary custody to a relative
 - temporary custody to a person with a significant relationship with child
 - temporary custody to the Commissioner
- Reasonable efforts required to prevent the removal of child from the home
- Court shall set a pretrial hearing on the petition to occur within 15 days
- If child is removed from custody of parent pursuant to a TCO, a merits hearing shall be held and adjudicated no later than 60 days from date the TCO is issued, except for good cause shown.

“Contrary to the Child’s Welfare”

33 V.S.A. § 5308(a)

At the temporary care hearing, the court must return custody to the child’s legal parent/guardian/ custodian unless it can make at least one of the following findings:

1. Return of custody “could” result in substantial danger to the physical health, mental health, welfare, or safety of the child.
2. Any child in the same household has been physically or sexually abused by any member of the household or by anyone known to the parent/guardian/custodian.
3. Any child in the household is at substantial risk of physical or sexual abuse by any party delineated in no. 2, above.
4. Child has been abandoned by parent/guardian/custodian.
5. Any child in the household has been neglected and there is “substantial risk of harm” to the child who is the subject of the petition.

Pretrial Hearing

33 V.S.A. § 5313

- Shall be held within 15 days of the temporary care hearing/preliminary hearing.
- Pretrial motions and discovery requests must be made at or before a pretrial hearing, or, if there is no pretrial hearing, then at or before the merits hearing or within 28 days of the preliminary hearing, whichever occurs first.
- DCF records may be reviewed and photocopied pursuant to V.R.F.P. 1(d)(5). DCF may request a protective order or object to disclosure of a specific record.

Merits Hearing

33 V.S.A. § 5315

- If TCO in place, merits hearing shall be adjudicated within 60 days from date TCO issued. 33 V.S.A. § 5313(b).
 - Approximately 45% of cases are not meeting this timeframe
- The child who is the subject of the hearing must be present in court. 33 V.S.A. § 5229(a).
- State has burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. The court may make findings by clear and convincing evidence.
- Parties may stipulate to or contest the merits of the petition. If contested, all parties may present evidence.
- Rules of Evidence apply, so any hearsay must clear the 804a hurdle to be admissible.

Disposition Case Plan

33 V.S.A. § 5316

- Must be filed within 28 days of the merits hearing.
- There is a requirement under 33 V.S.A. § 5121 that DCF 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.
- Disposition case plan shall include:
 - permanency goal
 - assessment of child's needs
 - description of child's situation
 - assessment of family's risks and strengths
 - statement of changes family needs to make
 - recommendation for legal custody of child
 - plan of services
 - request for child support
 - notice to parents that failure to comply with plan could result in TPR

Disposition Hearing

33 V.S.A. § 5317

- When court makes a CHINS finding at the merits hearing, the disposition hearing shall be within 35 days from finding of CHINS
 - approximately 55% of cases are not meeting this timeframe
- Purpose is to achieve a goal determined by DCF in the disposition case plan and approved by the court.
- Standards of proof:
 - on the issue of termination, standard is clear and convincing evidence
 - on all other issues, standard is preponderance of the evidence

Postdisposition Review Hearing

33 V.S.A. § 5320

- Court shall hold review hearing within 60 days of the date of the disposition order.
- Purpose of hearing is to monitor progress under disposition case plan and review the parent/child contact.
- Foster parent, preadoptive parent, or relative caregiver shall have opportunity to be heard at the hearing.

Permanency Hearing

33 V.S.A. § 5321

- An order transferring custody or parental rights to the Department shall be subject to periodic review at a permanency hearing. Must be held within 12 months of date legal custody of child was transferred, and no less than every 12 months thereafter.
- Purpose is for court to determine the permanency goal for the child and adopt a case plan to achieve permanency goal.
- From the date custody is transferred, court can hold permanency review hearings:
 - every three months if child is 0-3
 - every six months if child is 3-6
 - at least every 12 months if child is 6+
- Foster parent, preadoptive parent, or relative caregiver shall have opportunity to be heard at any permanency hearing.
- Reasonable efforts: if a party files a petition, court shall hold a hearing within 30 days of filing to determine whether DCF has made reasonable efforts to finalize the permanency plan.

TPR process completed within 5 months

Appeal Process 4-6 Months | Adoption Process 3-6 Months

Permanency Hearing
(Must occur within 12 months of child entering state custody)

TPR Petition Filed?

Yes

TPR Status Conference

TPR Hearing

TPR Order

No

Parent/DCF Case Plan

- Custody Returned to Parent
- TPR
- Long Term Substitute Care

15 Days

30 Days

30 Days

30 days

TPR Petition Filed

TPR Conference

TPR Hearing

TPR Order Issued

Appeal Filed?

Yes

Appeal Process

TPR Upheld?

No

Parent/DCF Case Plan

No

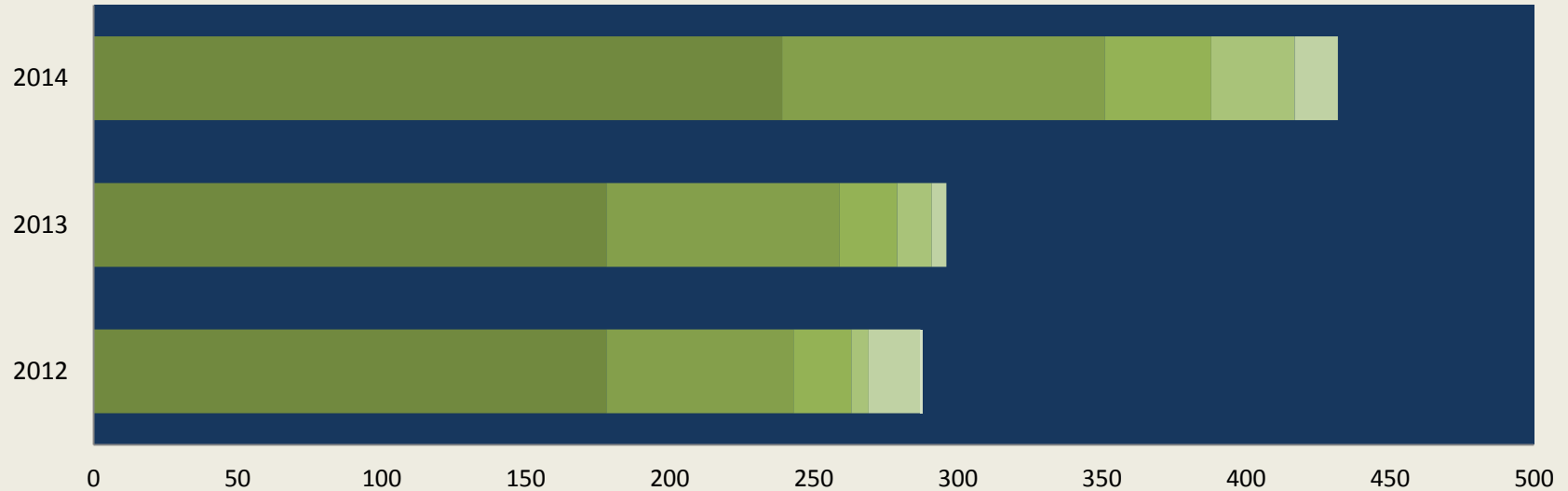
- Adoption
- Permanent Guardianship
- Long Term Substitute Care

Yes

- Second TPR
- Custody Returned to Parent

Appeal Process & Adoption

Backlog of CHINS abuse/neglect cases in FY 2012-2014



	2012	2013	2014
<= 90	178	178	239
91-180	65	81	112
181-270	20	20	37
271-365	6	12	29
366-730	18	5	15
>730	1	0	0

■ <= 90
 ■ 91-180
 ■ 181-270
 ■ 271-365
 ■ 366-730
 ■ >730

Missing “lanes”

- Schools
- Oversight of system
 - ✓ Legislative oversight?
 - ✓ Advocate or omnibudsperson?



Committee on Child Protection

September 25, 2014