



DEPARTMENT FOR CHILDREN AND FAMILIES

To: House Committee on Human Services
From: Cindy Walcott, Deputy Commissioner & Leslie Wisdom, General Counsel
Date: March 20, 2015
Subject: S.9

Thank you for the opportunity to comment on S.9. We appreciate the questions that you posed to witnesses and have framed our testimony in response. The questions posed by your committee on the different provisions of S.9 are:

1. Is this section essential in meeting goal of improving Vermont’s child protection responses?
2. What pieces are helpful, but not essential?
3. What is missing to move the State toward reaching its goals?
4. What sections should be amended in order to move us toward this goal?

Which sections are essential in meeting the goal of improving Vermont’s child protection system?

Section in S.9 as passed by Senate	Description	Comments	Suggested amendments
Sec. 12	DCF’s mandated reporter section	DCF supports conceptually the language in S.9 that requires the Department to provide information to mandated reporters engaged in a working relationship with a child or family who is the subject of the report. Improved communication is essential to improving the child protection response system.	DCF suggests modifying the language in in S.9 at 33 V.S.A. §4913(b)(4) from “records” to “information” to be consistent with the other language in the statute.

Section in S.9 as passed by Senate	Description	Comments	Suggested amendments
Sec. 13	Disclosure of the Department's records of abuse and neglect	<p>As in the section above, the Department supports the improved sharing of information and communication among all those involved in the child protection system. We believe that this section could be categorized as essential as long as some changes are made to the S.9 language.</p> <p><u>Redacted investigation file in 33 V.S.A. §4921(c) of S.9</u></p> <p>The Department does not support the addition of language in (c)(3) that allows access to DCF's redacted investigation file to "the parents of a child residing in a home with a person alleged to have abused or neglected a child." This language appears to allow a non-custodial parent of a child who is residing in a home with a person alleged to have abused or neglected <i>another</i> child (not the child of the non-custodial parent) access to the Department's chapter 49 redacted investigation file. If the non-custodial parent thinks that their own child is at risk in any way, they can make a report to DCF. If the chapter 49 investigation involved their own child, parents have access already in statute to the redacted investigation file.</p>	<p>Suggestion – Remove the new language in S.9 in 33 V.S.A. §4921(c)(3) from the bill.</p>

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		<p><u>Mandatory disclosures of chapter 49 records in S.9 Paragraph (d) of this section requires DCF to automatically disclose records to the parties listed in (d). The Department supports the sharing of information with these listed people. However, the automatic disclosure of the Department’s records created under chapter 49 does not necessarily solve the identified problem of ensuring that all people who need information receive it when they need it. Department records created under Chapter 49 include the intake report, activities summary and case determination report. It may be many weeks or months until an investigation or assessment is complete and these documents available. The Department suggests that if a change is needed it would be to modify the juvenile proceedings chapter to require the Department to provide a current and prior history of the family and child to the Court and parties at the temporary care hearing stage.</u></p>	<p>DCF suggests that the original language providing for the sharing of records upon request is retained. DCF also suggests moving some of the provisions in (e) of S.9 to (d). The language in S.9 should read:</p> <p>(d) Upon request, Department records created under this subchapter shall be disclosed to:</p> <p>(1) the court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the Commissioner;</p> <p>(2) the Commissioner or person designated by the Commissioner to receive such records;</p> <p>(3) persons assigned by the Commissioner to conduct investigations;</p> <p>(4) law enforcement officers engaged in a joint investigation with the Department, an assistant Attorney General, or a State's Attorney;</p> <p>(5) other State agencies conducting related inquiries or proceedings; and</p> <p>(6) a Probate Division of the Superior Court involved in guardianship proceedings. <u>The Probate Division of the Superior Court shall request the record directly from the Department and conduct an <i>in camera</i> review of the information in accordance with the Vermont Rules of</u></p>

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			<p><u>Evidence 401- 403. The Probate Division of the Superior court shall then provide a copy of the relevant record, for use in the guardianship proceeding to the respondent, the respondent’s attorney, the petitioner, the guardian upon appointment and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of the respondent-; and</u></p> <p><u>(7) a Family Division of the Superior Court involved in a proceeding where a child’s custody and parent child contact is an issue. The Family Division of the Superior Court shall request the record directly from the Department and conduct an <i>in camera</i> review of the information in accordance with Vermont Rules of Evidence 401-403. The Family Division of the Superior Court shall then provide of copy of the relevant information to the parties for use in the proceedings.</u></p> <p>Suggestion for additional language - DCF also proposes that language could be added to the juvenile proceedings chapters to ensure that DCF provides a current and prior case history to the Court and parties to a juvenile proceeding at the temporary care hearing stage. We could work with legislative counsel to draft this language.</p>

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		<p><u>Disclosure upon request to service providers and others</u></p> <p>Paragraph (e) of S.9 proposes disclosure of relevant Department records upon request to service providers, mandated reporters and others working with a child or family. DCF supports the clarification of this information sharing in statute. However, we propose to add the word “information” to this subparagraph to be clear that other forms of communication may also be appropriate for sharing information.</p>	<p>DCF proposes the following language for (e):</p> <p>(e)(1) Upon request, relevant Department records created under this subchapter <u>or information</u> may be disclosed to:</p> <p>(A) service providers working with a person or child who is the subject of the report; and <u>A person, agency, or organization, including a multidisciplinary team empaneled under section 4917 of this title, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or records created under this subchapter, or who is responsible for the child’s health or welfare.</u></p> <p><u>(B) Health and mental health care providers working directly with the child or family who is the subject of the report or record.</u></p> <p><u>(C) Educators working directly with the child or family who is the subject of the report or record.</u></p> <p><u>(D) Licensed or approved foster care givers for the child.</u></p> <p><u>(E) Mandated reporters as defined by section 4913 of this subchapter, making a report in accordance with the provisions of section 4914 of this subchapter and engaging in an ongoing working relationship with the child or family who is the subject of the report.</u></p> <p>(B) <u>(E)</u> Other governmental entities for purposes of child protection.</p>

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		<p>DCF also suggests further clarifying this statute with an (e)(4) to encourage information sharing among all the parties working together to support children and families.</p>	<p>(2) Determinations of relevancy shall be made by the Department. <u>In providing records under this subsection, the Department may withhold information that could compromise the safety of the reporter or the child or family who is the subject of the report.</u></p> <p>(3) <u>In providing information under this section, the Department may also provide other records related to its child protection activities for the child.</u></p> <p>(4) <u>Notwithstanding any other provision of law, agencies, persons and organizations working with children and families who are authorized to receive records from the Department under this subsection may share information with each other and the Department for the purposes of providing services and benefits to the children and families they mutually serve.</u></p>
Sec. 14	Who can be present at a confidential juvenile proceeding	The language in S.9 clarifies the existing law to provide a mechanism for individuals without party status but who have a proper interest in a confidential Family Division case (such as a CHINS case) to petition the Court for inclusion in the hearing.	
Sec. 15	Emergency care orders	The changes proposed in S.9 allow social workers to prepare the affidavit in support of an emergency care order.	

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Sec. 16	Temporary care provisions in Family Division	DCF believes that the changes to this section in S.9 are important to improving the child protection response system. These changes make clear that the custodial hierarchy in the temporary care statutes do not apply and the child's best interests controls when the judge decides temporary placements if a child cannot remain safely in her or his home.	

Which sections are helpful, but not essential?

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Sec. 6	SIU jurisdiction	This section is helpful as it makes clear which cases the SIUs will investigate and ensure collaboration between DCF and SIUs on these specific cases.	
Sec. 7, 8 & 9	Post-adoption contact agreements	<p>DCF worked with the judiciary and others on this language. We understand that the Judge Grearson will be commenting on this section.</p> <p>The theory for including a provision on post-adoption contact agreements was to help alleviate the current Family Division termination of parental rights (TPR) caseloads. The thought is that if parents can enter into legally enforceable agreements to have some kind of contact with their children, they may be more willing to voluntarily relinquish their parental rights, thus avoiding lengthy contested TPR cases.</p>	

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Sec. 11	DCF's collaboration with law enforcement	<p>The current statute at 33 V.S.A. §4915b(e) directs DCF in reporting to and requesting assistance from law enforcement. The proposal in S.9 is to mirror this section with the SIU jurisdiction section of the bill (Sec. 6). DCF supports clarity in when law enforcement should be involved, though suggests some amendments to the language in S.9.</p> <p>The Department proposes to move this language from the current statutory location (33 V.S.A. §4915b(e)), which addresses only DCF investigations, to the statutory provision that addresses both DCF's assessments and investigations. This proposal will make clear that no matter what kind of child safety intervention the Department is pursuing, law enforcement support should be sought in certain situations.</p> <p>DCF also proposes to modify the S.9 language in paragraph (1) to clarify that DCF shall report to law enforcement and that law enforcement shall respond to the request in certain situations. Right now, the current statutory definition holds that DCF shall report and request assistance, but does not make clear that law enforcement has the duty to respond. The language in (2) still says that DCF may report to and request assistance in other listed situations.</p> <p>DCF proposes to modify the word in S.9 that refers to "incident" to "valid allegation" as this language mirrors the language in §4915 and refers to a situation in which</p>	<p>DCF proposes the following language for S.9:</p> <p>Sec. 11. 33 V.S.A. §4915 is amended to read:</p> <p><u>(g) The Department:</u></p> <p><u>(1) shall report to and receive assistance from law enforcement in the following circumstances:</u></p> <p>(A) <u>a valid allegation in which a child suffers other than by accidental means death or serious bodily injury as defined in 13 V.S.A. §1021; and</u></p> <p>(B) <u>potential violations of:</u></p> <p>(i) <u>13 V.S.A. § 2602;</u></p> <p>(ii) <u>13 V.S.A. chapter 60</u></p> <p>(iii) <u>13 V.S.A. chapter 64;</u></p> <p>(iv) <u>13 V.S.A. chapter 72; and</u></p> <p>(C) <u>Situations potentially dangerous to the child or the Department; and</u></p> <p><u>(2) may report to and request assistance from law enforcement when appropriate, including:</u></p> <p>(A) <u>a valid allegation in which a child suffers:</u></p> <p>(i) <u>bodily injury, by other than accidental means, as defined in 13 V.S.A. §1021;</u></p> <p>(ii) <u>and</u></p> <p>(B) <u>potential violations of:</u></p> <p>(i) <u>13 V.S.A. §2601;</u></p>

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		<p>the Department initiates a child safety intervention.</p> <p>Finally, DCF proposes to move the provisions regarding a child death and situations potentially dangerous to the child or the Department to the mandatory section requiring DCF to report and receive assistance from law enforcement. While the SIUs may not investigate a child death, the Department does conduct investigations of child deaths due to suspected abuse or neglect and the Department requires the expertise and assistance from law enforcement in these situations.</p>	<p>(ii) <u>13 V.S.A. §2605</u></p> <p>(iii) <u>13 V.S.A. §1304; and</u></p> <p>(iv) <u>13 V.S.A. §1304a</u></p>
Sec. 17	Joint Legislative Child Protection Oversight Committee	DCF believes that this committee will be helpful for providing oversight and improvement of the child protection system as a whole.	
Sec. 18	DCF's policies	<p>While we support the goals in this section and agree that many of them could improve the Department's child protection responses, we are not able to fully achieve these policy goals without additional resources. Because of this, the Department is categorizing this section as helpful to improving the child protection response system. The Department suggests that language is added in paragraph (a) of this section that states that the Department shall make its best efforts within available resources to accomplish the listed objectives. This is especially important as this section takes effective upon passage.</p>	<p>DCF proposes the following change to this section:</p> <p>(a) <u>The Commissioner for Children and Families shall make his or her best efforts within available resources to:</u></p>

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		<p>The provision in this section at (a)(6)(E) that requires DCF to assess all persons living in a household for criminal history will require explicit statutory authority.</p> <p>The provision in (a)(6)(J) appears to be duplicative of other provisions and DCF suggests removing this language from S.9.</p>	<p>DCF proposes that the following language is added to S.9 to implement this provision:</p> <p>33 V.S.A. § 152 is amended to read:</p> <p>§152 Access to Records (a) The Commissioner may obtain from the Vermont Crime Information Center the record of convictions of any person to the extent the Commissioner has established by rule <u>or the Legislature identified through law</u> that such information is necessary to regulate a facility or individual subject to regulation by the Department <u>or for child protection pursuant to chapter 49 of this title.</u> The Commissioner shall first notify the person whose record is being requested.</p> <p>DCF proposes to strike Sec. 18, (a)(6)(J).</p>
Sec. 20	CHINS workgroup	DCF believes that this workgroup will be helpful. One of the issues that was identified but not directly addresses by S.9 was reunification. This CHINS workgroup will be a good forum for discussion about how to improve this process and ensure the safety of children.	

What sections are not necessary to improving Vermont’s child protection responses?

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3	New crime of failure to protect	<p>DCF does not believe that this new crime is essential to improving Vermont’s child protection system. The new crime of failure to protect will hamper DCF’s ability to work with families as they may be afraid to disclose information to the Department about their situation for fear of prosecution of a felony.</p> <p>While the language of the crime has been narrowed as compared to the as introduced version of S.9, the Department remains concerned that the new crime as written potentially criminalizes the judgment of the DCF caseworkers, foster parents, child care and day care providers, kin who have assumed guardianship through a minor guardianship proceeding, educators, residential treatment providers, babysitters, camp counselors and others. These are the people who work every day to care for and protect children. Criminalizing their judgment will have a negative impact on the child protection system as a whole. Having the potential of criminal prosecution and liability hanging over them due to the actions of someone else who harms a child may change the basis for decision-making from the best interest of the child to avoidance of the risk of criminal liability.</p> <p>DCF is hearing from many concerned DCF social workers, staff and supervisors who fear that if a child in their care is harmed, they will be charged with a felony.</p>	

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		<p>This new crime as written will have a negative impact on the ability of DCF and others to recruit and retain staff. In addition, we are concerned that it will negatively impact our ability recruit care providers and foster parents for children in DCF custody. With the number of children in DCF custody rising, the Department is already facing challenges recruiting enough foster parents to fill the current need.</p> <p>The affirmative defense as currently drafted would not be available to many of DCF's staff and others. In order to prevail on the affirmative defense in (b)(1), the defendant must fail to act out of a reasonable fear that she or another person would suffer death, bodily injury, serious bodily injury or sexual assault. In most cases, this means that the defendant was in the room when the perpetrator harmed the child. A day care provider, teacher or DCF caseworker may not be in the home at the time the harm occurred, which renders this defense unavailable to them. Even if the language in the affirmative defense was drafted in a way to include caseworkers, teachers, babysitters and others, the affirmative defense is not a solution that alleviates our concerns as raising the defense means that the accused has been arrested and charged with a crime and now has the burden of successfully raising the affirmative defense.</p>	<p>If this new crime is included in S.9, DCF could support an exemption from prosecution of the crime for DCF caseworkers, foster parents, day care providers and others. An exemption would mean that these groups of people could not be charged with the crime for acting in the course of their duties. We think that it would be important to carefully craft this language to apply to all professionals and volunteers who devote their time and energy to caring for children in Vermont.</p>

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		<p>Please note - there already exists a crime in Vermont statutes that applies to DCF staff who fail to carry out their duties– criminal neglect of duty by a state officer, 13 V.S.A. § 3006:</p> <p>§ 3006 Neglect of duty by public officers A state, county, town, village, fire district or school district officer who wilfully neglects to perform the duties imposed upon him or her by law, either express or implied, shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.</p> <p>DCF currently has tools to protect children when we believe they are in a home or living situation in which they may be harmed. We can work with State’s Attorneys to seek a CHINS petition to protect the child and we can also substantiate a parent or caregiver for risk of harm if we believe that the parent/caregiver is not protecting a child from abuse.</p> <p>We believe that efforts on stopping and prosecuting the perpetrators of assaults on children should be the goal, not prosecuting those who are working every day to parent, care for, nurture, educate and protect children.</p>	
Sec. 10	DCF’s chapter 49 definitions	DCF does not believe that changing the definitions in title 33 chapter 49 will solve any identified problem. That being said, upon reviewing our definitions of child abuse and neglect that guide the Department in	

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		<p>accepting intakes and substantiating individuals who have abused or neglected a child for purposes of placing them on the Child Protection Registry, we do have some suggestions for how our definitions can be improved.</p> <p><u>Definition of physical injury</u> The definition of “physical injury” in S.9 as passed by the Senate is broader than our current statutory definition. This will mean that DCF will be involved in more families’ lives as the proposed definition includes “any impairment of physical condition”. The current statutory definition is “death or permanent or temporary disfigurement or impairment of any bodily organ or function”. It is not clear that DCF should intervene in the lives of families for “any impairment of physical condition”. DCF proposes to retain the current statutory definition of “physical injury” (no changes needed in S.9).</p> <p><u>Definition of abused and neglected child</u> If the current statutory definition of “physical injury” is retained, the proposed amendment in S.9 to the definition of “abused or neglected child” is not necessary. The proposed definition picks up death of a child, which is included in the current statutory definition of “physical injury”. DCF proposes to retain current statutory definition of “abused or neglected child” (no changes are needed in S.9).</p>	

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		<p><u>Definition of sexual abuse</u> DCF proposes to retain the current definition of “sexual abuse” found in 33 V.S.A. §4912(15), with one change relating to the viewing or possession of child pornography. This proposed addition to the definition of sexual abuse makes clear that the viewing, possession or transmission of child pornography is sexual abuse of a minor under Chapter 49. This definition excludes the exchange of sexual images between minors when all minors involved consent to the exchange.</p> <p>DCF does not support the changes to the definition proposed in S.9 that incorporate the criminal definitions of various sexual crimes against children in the Chapter 49 definition. The changes proposed by S.9 narrow the cases in which the Department will be able to substantiate a person for sexual abuse of a child. It is the Department’s position that the Chapter 49 definition of sexual abuse may be appropriately different from the criminal definition. The Chapter 49 definition guides the Department in its investigations and substantiations of child abuse for the purpose of placing a person who has abused a child on the Child Protection Registry, thus restricting employment opportunities with access to children. The criminal code has a different purpose, to deter crime and punish. If the definition of Chapter 49 sexual abuse is narrowed by cross referencing the criminal code definitions, the potential for future harm to children increases.</p>	<p>DCF proposes the following change to the current statutory definition of sexual abuse in 33 V.S.A. §4912(15): "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child, including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child. <u>Sexual abuse also includes the viewing, possession or transmission of child pornography, with the exclusion of the exchange of images between mutually consenting minors including the minor whose image is exchanged.</u></p>

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		<p>Under the current Chapter 49 definition, DCF is not required to prove sexual intent of the perpetrator. The focus is on the resultant sexual harm to the child victim. Using the criminal definitions proposed in S.9, sexual intent may need to be proved in order to substantiate. The Senate version of S.9 attempts to alleviate this issue and the issue of proving all of the elements of the crime by adding language that states that “the Department need not establish every element of the crimes listed”. This language in S.9 will lead to further litigation at the Human Services Board, which is the administrative appeals body that reviews the Department’s substantiations of sexual abuse. The HSB has overturned many of the Department’s substantiations of sexual abuse and the proposed definition in S.9 that cross-references criminal code and implies that some of the elements of the crime must be proven will further worsen that problem.</p> <p>Also, the criminal definition of sexual exploitation of minors (use of children in movies and images) is considerably narrower than how DCF defines sexual exploitation (taking unjust advantage of another person for one’s own gain). The current DCF definition has been the basis for intervening in grooming-type situations.</p> <p>Finally, DCF currently investigates sexual acts by one youth against another and sexual acts by adults who may not be “criminally competent”. The change proposed by S.9 to tie definitions to the criminal</p>	

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		<p>statutes could eliminate DCF’s ability to investigate these cases, which would narrow the scope of who may be substantiated and placed on the Child Protection Registry.</p> <p><u>Definition of risk of harm</u> DCF supports the definition of risk of harm included in the Senate version of S.9 with one change, removal of the reference to neglect in the definition.</p> <p>The language in S.9 addressing the use of substances and appropriate care and supervision of a child is from DCF’s regulations.</p>	<p>DCF proposes to remove the word “neglect” in the S.9 definition of risk of harm as “risk of neglect” is difficult to conceptualize and define.</p>

What is missing in S.9 that will help improve Vermont’s child protection response system?

Topic of Proposed Addition to S.9	Comments	Suggested Language
DCF Access to DAIL’s Adult Protection Registry	DCF receives reports and conducts investigations into allegations of abuse or neglect of children, but does not have access to DAIL’s Adult Protection Registry. DCF and DAIL intervene with persons with similar behaviors and the evidence of maltreatment of either a child or an adult could elevate potential risk for the other population. It is essential for protecting children and	<p>33 V.S.A. § 6911 is amended as follows:</p> <p>§ 6911. Records of Abuse, Neglect, and Exploitation</p> <p>(a) (1) The investigative report shall be disclosed only to: the Commissioner or person designated to receive such records; persons assigned by the Commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the Office of Professional Regulation when deemed appropriate by the Commissioner; the Secretary of</p>

Topic of Proposed Addition to S.9	Comments	Suggested Language
	strengthening Vermont’s response to child protection for DCF to have access to this information.	<p>Education when deemed appropriate by the Commissioner; <u>the Commissioner for Children and Families, or the Commissioner’s designee, for purposes of review of expungement petitions filed pursuant to 33 V.S.A. § 4916c</u>; a law enforcement agency; the State’s Attorney, or the Office of the Attorney General, when the Department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.</p> <p style="text-align: center;">****</p> <p>(c) (5) the Commissioner for Children and Families, or the Commissioner’s designee, for purposes related to: <u>(A) the licensing or registration of facilities and individuals regulated by the Department for Children and Families; and</u> <u>(B) child protection pursuant to chapter 49 of this title;</u></p>
Human Services Board Administrative Proceedings	DCF proposes to include a hearsay exception for the testimony of children who have been allegedly abused or neglected at hearings on substantiations before the Human Services Board. This change is necessary to prevent child victims from having to testify about the abuse they suffered and confront their abuser, which further harms the	<p>§ 4916b. Human Services Board Hearing</p> <p>(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board for relief. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the Board.</p>

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	child.	<p>(b)(1) The Board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.</p> <p>(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.</p> <p>(3) Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to hearings held under this subsection only as follows:</p> <p>(A) V.R.E. 804a(a)(1) and (4) shall apply.</p> <p>(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.</p> <p>(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.</p> <p>(D) 804a(b) shall not apply.</p> <p><u>(3) At a hearing held under this subsection, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, notwithstanding any administrative rule to the contrary, the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege.</u></p>

Topic of Proposed Addition to S.9	Comments	Suggested Language
	<p>DCF also proposes some other procedural changes to this statute to improve the process and protect children.</p>	<p><u>(A) An individual under the age of 18 who is alleged to have been abused or neglected shall not be required to testify or give evidence at any hearing held under this subsection.</u></p> <p><u>(B) V.R.E. 804a shall not apply to hearings held under this subsection.</u></p> <p>(4) Convictions and adjudications which arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence <u>which has otherwise expired</u>, shall be competent evidence in a hearing held under this subchapter.</p> <p>(c) A hearing may be stayed upon request of the petitioner if there is a related criminal or family court case pending in court which arose out of the same incident of abuse or neglect for which the person was substantiated. <u>No hearing shall be held and the department’s decision shall become final unless, within 30 days of the conclusion of the related court case, the petitioner contacts the Board and asks that the administrative matter be reactivated.</u></p> <p>(d) If no review by the Board is requested, the department’s decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.</p>

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	<p>The Department proposes this language in §4915 to clarify that the decision whether to assess or investigate a report is not subject to review by the HSB. The HSB has held that it has the authority to review these decisions and subsequently reversed the Department’s substantiations of abuse based on this initial decision-making by the Department.</p> <p>Similarly, the assignment of a child protection level is not subject to review by the HSB.</p>	<p>33 V.S.A. §4915 Assessment and Investigation</p> <p><u>(g) A decision whether to assess or investigate a report of suspected child abuse or neglect is not reviewable under 3 V.S.A. §3091.</u></p> <p>33 V.S.A. §4916 Child Protection Registry</p> <p><u>(f) An assignment of a child protection level is not reviewable under 3 V.S.A. §3091.</u></p>
DCF’s Registry Review Unit	<p>The Department proposes changes to the expungement process from the Child Protection Registry to ensure the safety and protection of children, including:</p> <ul style="list-style-type: none"> • clarifying that registered sex offenders are not eligible for expungement • providing that the nature and number of substantiations may be a basis for denying a request for expungement. 	<p>§ 4916c. Petition For Expungement from the Registry</p> <p>(a)(1) <u>A Except as provided in this subdivision, a person whose name has been placed on the Registry prior to July 1, 2009 and has been listed on the Registry for at least three years may file a written request with the Commissioner, seeking a review for the purpose of expunging an individual Registry record. A person whose name has been placed on the Registry on or after July 1, 2009 and has been listed on the Registry for at least seven years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual registry record. The Commissioner shall grant a review upon request.</u></p>

Topic of Proposed Addition to S.9	Comments	Suggested Language
		<p data-bbox="1129 233 1881 407"><u>(2) A person who is required to register as a sex offender on a state’s sex offender registry shall not be eligible to petition for expungement of his or her Registry record during the period in which the person is subject to sex offender registry requirements.</u></p> <p data-bbox="1129 448 1898 581">(b)(1) The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children. Factors to be considered by the</p> <p data-bbox="1129 626 1824 688"><u>(2) The Commissioner shall include consider the following factors in making his or her determination:</u></p> <p data-bbox="1129 732 1835 797">(1)(A) The nature of the substantiation that resulted in the person’s name being placed on the Registry.</p> <p data-bbox="1129 841 1797 867">(2)(B) The number of substantiations, if more than one.</p> <p data-bbox="1129 911 1766 972">(3)(C) The amount of time that has elapsed since the substantiation.</p> <p data-bbox="1129 1016 1841 1078">(4)(D) The circumstances of the substantiation that would indicate whether a similar incident would be likely to occur.</p> <p data-bbox="1129 1122 1812 1222">(5)(E) Any activities that would reflect upon the person’s changed behavior or circumstances, such as therapy, employment, or education.</p> <p data-bbox="1129 1266 1803 1328">(6)(F) References that attest to the person’s good moral character.</p>

Topic of Proposed Addition to S.9	Comments	Suggested Language
		<p><u>(3) The nature or number of substantiations alone may be sufficient evidence to deny the petition.</u></p>
<p>Protection of Family Services Division social workers and other staff</p>	<p>DCF FSD social workers and staff encounter dangerous situations every day. An enhanced penalty for assaulting a Family Services Division employee could help to deter threats and violence against our staff. There are existing statutes for enhanced penalties for assaulting law enforcement, firefighters, emergency medical personnel, correctional officers and others. This proposed language is modeled after those statutes.</p>	<p>13 V.S.A. § 1028b is added:</p> <p><u>(a) A person convicted of a simple or aggravated assault against an employee of the Family Services Division of the Department for Children and Families who was performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:</u></p> <p><u>(1) For the first offense, be imprisoned not more than one year; and</u></p> <p><u>(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.</u></p> <p><u>(b) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with an employee of Family Services Division acting in the scope of employment unless the employee's scope of employment requires the contact.</u></p> <p><u>(c) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.</u></p> <p><u>(d) A sentence imposed for a conviction of this section shall be served consecutively with and not concurrently with any other sentence.</u></p>