

Looking at S.9 through the lens of the goal of improving child protection responses, our office focused on two primary considerations – ensuring that the child protection system is making *accurate* decisions, and ensuring that it is making *effective* decisions.

What sections of S.9 do you think are essential in meeting this goal?

1. *Section 16 – Amending the Temporary Care Order Statute*

The Temporary Care Order phase of juvenile proceedings is, in many ways, the most critical. It is the first opportunity for all of the parties to address the question of child safety in front of the court. It is also the first time that a judge issues an extended order addressing what needs to be done to protect the child. Unfortunately, the decision is often hurried, the information available to the court and the parties is limited, and the current statute limits the temporary care options available to the court and parties.

Section 16 of the Senate-passed version of S.9 makes an important change to the existing statute by eliminating the hierarchical structure of the temporary care options in 33 V.S.A. § 5308(b). Under the current statute, if a child cannot remain safely in his or her home, the court considers various placement and custody options in an order of preference. Our experience is that the order of preference sometimes leads to unnecessarily disruptive results – a child placed with someone who does not have a close personal relationship with the child, but who is a relative, rather than a neighbor or close family friend, for example.

We see this change as an essential part of improving the effectiveness of the child protection system’s responses because it will allow children subject to temporary removal from their home to be placed in less disruptive placements that will more suitably facilitate the child protection work that must be done. However, there are other essential changes that should be made to the Temporary Care Order statutes – those changes are addressed below.

2. *Section 18 – Changes to Department Policy and Procedure*

The direction that DCF make changes to policy and procedure to improve consistency from region to region, better track worker case loads, improve the training and education of workers, increase face-to-face contact with children, increase the number of home visits, and better share

information is probably the *most* essential section of S.9. The decisions that the child protection system makes can only be accurate and effective if the system is getting quality information from social workers. That requires well-trained workers with case loads and resources that allow them to spend the time necessary to develop quality, timely information.

What sections of S.9 do you think are helpful, but not essential?

1. *Sections 7, 8, 9 – Providing for Post-adoption Contact Agreements*

Termination of Parental Rights proceedings are one of the most difficult and fraught parts of the child protection system. Every attorney who has represented parents in these proceedings has stories of parents who recognized, at some level, that they had lost the opportunity to parent their children, but who love them and could only express that by fighting the proceedings to the end. Every attorney who has represented children, in termination proceedings has similar stories about kids who understand that their parents are not going to provide for them and are anxious to move on to the next phase of their life, but want assurance that they will not lose their connection with their biological parents.

The incredible gravity of a termination order leads these proceedings to take an immense amount of time and resources from the child protection system and causes a great deal of trauma on the children and parents who are affected. Providing for enforceable post-adoption contact will lessen the impact of many such cases. It is not a solution to the larger problems facing the child protection system, but given the indescribable impact of termination proceedings and decisions, anything that can be done to improve that process will have a significant impact.

2. *Section 14 – Allowing Individuals to Petition for Party Status*

This section provides a solution to a small, but vexing problem. Current statute permits courts to include, as parties to a proceeding, anyone who is “necessary and proper.” The current law, however, does not provide a mechanism for those parties to make themselves known to the court. In practice, some courts would accept petitions filed directly with the court, others required non-parties to intervene through an existing party, and other courts had no consistent practice. This statute will clarify the procedure and provide consistency across the state.

3. *Section 20 – Creating a CHINS Working Group*

Everyone recognizes that the timeliness of CHINS proceedings has suffered as case loads have gone up on DCF, the courts, defense attorneys, and prosecutors while financial and human resources have not kept pace. This is a problem that has been the focus of a lot of effort already, and the

working group will complement the work that all of the stakeholders have already done.

What is missing to move towards the goal of improved child protection responses?

1. Consistency in Temporary Care Statutes

There are two Temporary Care Statutes in Title 33. The first, 33 V.S.A. § 5308, relates to CHINS proceedings and is amended by the Senate-passed version of S.9 (Section 16). The second, 33 V.S.A. § 5256, relates to delinquency proceedings and is not amended by S.9. In current law, the two provisions are substantially similar, if S.9 modifies the CHINS temporary care statute, but not the delinquency temporary care statute, there will be significant differences between the statutes.

It was clearly the intent of the drafters of Chapters 52 and 53 to create parallel proceedings in the context of delinquency and CHINS proceedings. If S.9 makes significant changes to one proceeding, but not the other, the intended symmetry will not exist. Moreover, and perhaps more importantly, the difference could be troublesome in the significant number of cases where children are subject to both CHINS and delinquency proceedings at the same time. In those cases, the proceedings would be bound by two different temporary care order statutes with different standards to determine child safety and placement. Section 5256 should be amended to match § 5308.

2. Review of Temporary Care Orders

Additionally, as discussed above, the temporary care phase of juvenile proceedings is where important decisions are made based on very limited information and with little opportunity for deliberation. It is necessarily a hasty proceeding and decision. Unfortunately, the resulting order is completely unreviewable. The Vermont Supreme Court will not take appeals of temporary care orders because of an old case, *In re C.K.*, 156 Vt. 194 (1996). In that case, the Vermont Supreme Court decided that it would not hear appeals of temporary care orders because it would be pointless – at the time, where a child was placed out of the home at the temporary care hearing, the merits trial had to take place within *fifteen days* of the filing of the CHINS petition and that any appellate review of the temporary care order could not occur within that timeframe without delaying overall resolution of the case.

As everyone is aware, no such timeframe exists anymore in statute or in practice. Cases take months and even years to reach disposition and temporary care orders, decided in the first 72 hours of the case, control placement of a child, custody of the child, and visitation between the child

and the child's parents for months and even longer. The hasty order issued based on limited information in the first days of the case has a huge impact on the case, but is completely unreviewable. To that end, S.9's amendments to § 5308 should include a short subsection (d): "Orders issued under this section are collateral final orders and are appealable under Appellate Rule 5.1." Such a change would allow appellate review of the accuracy and effectiveness of the initial, and arguably most important, court order protecting children in CHINS proceedings.

3. *Definition of CHINS*

Where child protection proceedings reach Vermont's courts, they are guided by the definition of "Child in Need of Supervision" (CHINS) in 33 V.S.A. § 5102. Vermont's current definitions regarding abuse and neglect are vague:

(3) "Child in need of care or supervision (CHINS)" means a child who:

(A) has been abandoned or abused by the child's parent, guardian, or custodian. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

Because the definitions leave a lot of room for judicial determination, they lend themselves to litigation – where definitions are imprecise, it is often possible to argue that particular conduct falls on one side or the other of the statutory line. Attorneys for parents (and sometimes children) advise their clients not to stipulate where there is a good-faith argument that the alleged conduct does not fall within the definition of CHINS, and prosecuting

attorneys argue marginal cases because the boundaries of abuse and neglect are not clearly drawn.

The entire child protection process would be improved by more precise language defining CHINS(A) and CHINS(B). Such language would also put Vermont in line with the vast majority of states which employ precise statutory definitions. Incorporating the language used in New York into Vermont's statutes would yield a much clearer result:

(3) "Child in need of care or supervision (CHINS)" means a child who:

(A) whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed an offense against such child defined in Title 13, Chapters 59, 64, and 72.

(iv) abandons the child. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of

the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(i) in supplying the child with adequate food, clothing, shelter, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(ii) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of

becoming impaired as set forth in paragraph
(A)(i) of this subdivision; or

Clearer language would improve the accuracy and consistency of court child protection determinations and would improve the efficiency of the system by reducing litigation.

What sections of S.9 do not move Vermont towards the goal of improving child protection responses?

1. *Sections 2,3,4 – Criminal Provisions*

The provisions creating and enhancing criminal offenses will not do anything to improve the child protection responses. If anything, such provisions will chill parents' and caregivers' ability to be forthright and open with service providers and the department for fear of exposing themselves to significant criminal liability and will inhibit the ability of the department and other service providers working within the child protection system to make the important judgment calls that guide child protection work.

2. *Section 10 – Changing Definitions in Chapter 49*

Changes to the definitions in Chapter 49 will not lead to better child protection responses. Chapter 49 deals exclusively with the child protection registry, not with child protection proceedings. The child protection registry statutes, in their current form, work well and there is a substantial body of decisions by the Vermont Supreme Court and the Human Services Board that interpret the existing statutes. Changes to the definitions will render existing precedent irrelevant and the new definitions will be subject to extensive litigation.