



DEPARTMENT FOR CHILDREN AND FAMILIES

To: House Committee on Judiciary
From: Ken Schatz, Commissioner
Date: April 15, 2015
Subject: S.9

Thank you for the opportunity to provide comments to your Committee on S.9. I would like to express my appreciation for the work that the Senate and House has done so far on this bill. Specifically, I am very pleased about the thoughtful approach that the House Committee on Human Services has taken to review this bill, prioritize and reorganize the sections of the bill to make improvement to the child protection system forefront.

I would like to start my comments by reminding us why we are here talking about child protection. In 2014, two young children who had spent time in the custody of DCF were murdered, allegedly by their caregivers. Rightfully so, their deaths caused all of us to question what we could have done to prevent their deaths. In trying to answer this question, Vermont's child protection system has undergone an unprecedented number of reviews and inquiries:

1. Secretary Chen's Report dated October 1, 2014 focused on DCF as a whole. Specifically, recommendations were designed to enable the DCF Commissioner, who has wide purview, to spend more time on child protection issues.
2. Vermont Citizen's Advisory Board (VCAB) report dated November 7, 2014 made systems recommendations based on a comprehensive review of the DS and PG cases.
3. Casey Family Programs (Casey) report dated December 15, 2014, based its recommendations on Casey's knowledge of national best practices, focus groups for Family Services Division (FSD) staff and stakeholders, a targeted case review of a sample of cases involving opiate use, and a review of FSD data trends as compared to national trends.
4. Legislative Child Protection Summer Study Committee during the summer of 2014 that resulted in proposed legislation, S.9.

Since the deaths of these two toddlers, DCF has been examining its FSD policies and practices and has implemented improvements. In addition, DCF has reviewed the recommendations from VCAB and Casey and has drafted a response to these reports that can be found on our website at <http://dcf.vermont.gov/strengtheningDCF>.

DCF cannot and does not act alone in addressing child protection. The Department works closely with both state and community partners to keep children safe and healthy. The above-mentioned systems evaluations recognized this reality in making recommendations for changes in areas outside of DCF's purview. The Department has appreciated the attention paid to child protection issues over the past year, as it has created numerous opportunities for dialogue.

In the past year, the child protection system has experienced increased pressures. The Department has received more reports (intakes) of child abuse and neglect than it did one year ago. This higher number of intakes has led to an increase in the number of child safety interventions (investigations and assessments). We also have more children in DCF custody, with a notable increase of 82 percent from 2013 to 2014 in the number of children under six years old in custody.

DCF added 18 new social worker positions through the position pilot authority during the spring and summer of 2014. At that time, it was the hope that these 18 additional direct service positions would allow us to reduce social worker caseloads. However, since the number of cases we are handling has substantially increased, the additional positions have only enabled us to prevent the average caseload per social worker from rising dramatically. Still, the average caseload is rising and is higher now than it was before we added these new positions. The April 2015 average is 17.5 families per social worker.¹

	2013	2014	Mar 2015	Net Chg from 2013	% Chg from 2013
Intakes	17,460	19,292		1,832	10%
Investigations and Assessments	5136	5848		712	14%
Children in Custody at Year End	1000	1185	1251	251	25%
Children < 6 Yrs in Custody at Year End	281	403	511	230	82%
Social Worker FTEs in Districts	146.5	159.5	159.5	13	9%
Assigned to Investigations	51	56	56	5	10%
Assigned to Ongoing Casework	94.5	103.5	103.5	9	10%
# Families/Social Worker FTE	17.0	16.9	17.4	0.4	2%

The increased number of cases that social workers have has also resulted in an increased turnover rate, 22 percent in 2014. The increased turnover means that 41 percent of the current social worker staff has less than two years of experience.

These increased pressures are not just on DCF. In the past year, prosecutors and the judiciary experienced an increase in the number of petitions filed for children in need of care and supervision (CHINS) and termination of parental rights (TPR) filings. From the fall of 2013 to the fall of 2014, CHINS petitions filed increased 60 percent and TPR filings increased 30 percent.

¹ In the way that caseloads are currently measured, we assume that every social worker position is filled, which they are not.

Comments on S.9, House Committee on Human Services Version

Improved Confidentiality and Communication (Sections 4 – 6)

The Department supports the improved confidentiality and communication provisions in sections 4 and 5 of the House Human Services version of the bill. In our view, these are the most important provisions of this bill. We also support section 6, which 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.

DCF's Chapter 40 Definitions of Child Abuse and Neglect (Section 3)

We also support section 3, which includes in statute a version of the Department's current regulatory chapter 49 definitions of "risk of harm" and "serious physical injury". In the "risk of harm" definition, this bill acknowledges the link between the use of substances, both legal and illegal, and potential harm to children and allows the Department to take action in cases when a parent or caregiver cannot provide supervision and care for a child that is age and developmentally appropriate for the child due to the parent's or caregiver's uses of substances.

DCF is appreciative that the House Committee on Human Services heard the testimony from DCF, Judge Grearson, Defender General's Office and others who work in the field of child protection that further changes to DCF's chapter 49 definitions are not recommended. That being said, one improvement to these definitions that we do suggest is to the current definition of "sexual abuse" found in 33 V.S.A. §4912(15). 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 proposed definition excludes the exchange of sexual images between minors when all minors involved consent to the exchange:

33 V.S.A. §4912(15) is amended to read:

"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. 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.

Concern about Increased Requirements for the Department in Section 22

One concern that DCF still has is with regard to section 22 of S.9. This is the section of the bill that directs DCF to adopt specific policies, practices and procedures. In reviewing the list of directives, we support all of the aspirational goals set forth in this section. Some of these directives, however, are not achievable within existing resources. We would also point out that the obligations set forth in this section are not attainable upon passage, the proposed effective date. However, we will make our best efforts to implement the directives as soon as feasible. Consequently, we suggest adding language in

(a) of this section to say that, “The Commissioner for Children and Families shall make best efforts within available resources to”

Some of the directives in this section are to carry out provisions in S.9 and some are recommendations of the VCAB and Casey reports. The following table outlines the requirements of section 22 and DCF’s comments on each.

Requirement in section 22	Can be done within available resources?	Comment
(a) The Commissioner for Children and Families shall:		
(1) ensure that Family Services Division policies, procedures, and practices are consistent with the best interests of the child and are consistent with statute;	Yes	DCF has added through the position pilot authority central office staff devoted to policies and procedures and to measure quality assurance across the State. We would like to note that there are some legitimate variations in practice in districts as communities and resources in each district are not the same.
(2) ensure that Family Services Division policies, procedures, and practices are consistent with each other and are applied in a consistent manner, in all Department offices and in all regions of the State;	Yes	
(3) by September 30, 2015, develop and implement a Family Services Division policy requiring a six-month supervision period by the Department after a child is returned to the home from which he or she was removed due to abuse or neglect;	Yes	DCF can implement this policy.
(4) develop metrics as to the appropriate case load for social workers in the Family Services Division that take into account the experience and training of a social worker, the number of families and the total number of children a social worker is responsible for, and the acuity or difficulty of cases;	Yes	<p>This was a recommendation of the Casey report that the Department is currently working on implementing.</p> <p>We would like to note that the legislature identified in 2008 that the Department should adopt national best practice standards of no more than 12 cases per social worker. One year ago, the average caseload per worker was 17.0. DCF added 18 new social workers using the position pilot authority. However, even with these new positions, average caseloads are currently at 17.4 families per social worker.</p>

Requirement in section 22	Can be done within available resources?	Comment
(5) ensure that all employees assigned to carry out investigations of child abuse and neglect have training or experience in conducting investigations and have a master's degree in social work or an equivalent degree, or relevant experience;	Yes	This requirement is DCF's current practice with regard to the hiring of social workers. Please note, however, that due to increasing caseloads, we are experiencing a high social worker turnover rate (22 percent). 41 percent of our current social workers have less than two years of experience. It is not possible to ensure that we will send an experienced social worker to investigate every accepted allegation of child abuse and neglect.
(6) ensure that all Family Services Division employees receive training on: (A) relevant policies, procedures, and practices; and (B) the employees' legal responsibilities and obligations;	Yes	DCF currently does this.
(7) develop policies, procedures, and practices to:		
(A) ensure the consistent sharing of information, in a manner that complies with statute, treatment providers, courts, State's Attorneys, guardians ad litem, law enforcement, and other relevant parties;	Yes	This is a requirement to implement other sections of S.9, which we will do.
(B) encourage treatment providers and all agencies, departments, and other persons that support recovery to provide regular treatment progress updates to the Commissioner;	Yes	We agree that this is important information to have and will encourage appropriate information sharing.
(C) ensure that courts have all relevant information in a timely fashion, and that Department employees file paperwork and reports in a timely manner;	No	We will do our best to implement this provision, but cannot guarantee success in every case due to the ever increasing caseloads of social workers.
(D) require that the Family Services Division assess a child's safety if: (i) the child remains in a home from which other children have 1 been removed; or (ii) the child remains in the custody of a parent or guardian whose parental rights as to another child have been terminated;	Yes	DCF assesses a child's safety in these situations. Safety is our primary concern.

Requirement in section 22	Can be done within available resources?	Comment
(E) require that all persons living in a household, or that will have child care responsibilities, will be assessed for criminal history and potential safety risks whenever a child who has been removed from a home is returned to that home;	No	Section 12 of S.9 provides DCF with the statutory authority to implement this requirement. However, the Department would potentially require additional staff to perform these checks. We agree that this requirement would be an improvement in our ability to protect children, but are concerned about the increased staffing pressure this requirement may create.
(F) increase the number of required face-to-face meetings between Family Services Division social workers and children;	No	<p>DCF is currently in compliance with the federal requirement of face-to-face meetings once per month at least 90 percent of the time (we are at 90.26 percent). With our current caseloads, we do not think that we will be able to increase this percentage.</p> <p>We would like to note that there are many other interested parties and providers that have regular eyes on and contact with children including our FSD partners such as contracted community providers, child care providers and schools. Our hope is that the improved confidentiality and communication provisions in S.9 will allow us to better share information and improve communication and collaboration with those working to protect children.</p>

Requirement in section 22	Can be done within available resources?	Comment
(G) increase the number of required home visits and require unannounced home visits by Family Services Division social workers;	No	<p>The federal requirement is that at least 50 percent of the above face-to-face meetings occur in the child’s home. We are in compliance with this requirement at 55.37 percent. With current resources and caseloads, we do not believe that we can increase this percentage.</p> <p>DCF does not track the number of unannounced visits and does not currently have any way to track this data point. Unannounced visits occur on a case by case basis as necessary.</p>
(H) improve information sharing with mandatory reporters who have an ongoing relationship with a child;	Yes	This is a requirement of S.9 in section 4 that we will implement.
(I) ensure that mandatory reporters are informed that any confidential information they may receive cannot be disclosed to a person who is not authorized to receive that information;	Yes	We will implement this by including this information in our mandated reporter training, posting information on our website and including this information in written communications to mandated reporters.
(J) ensure all parties authorized to receive confidential information are informed of their right to receive that information; and	Yes	We will implement this by posting information on our website and also including this information in our written communications.
(K) apply results-based accountability or other data-based quality measures to determine if children who receive services from the Family Services Division in different areas of the State have different outcomes and the reasons for those differences.	Yes	<p>DCF currently measures district outcomes through the monitoring of six key indicators: rate of kinship placement, face-to-face contact, timely closure of child safety interventions, discharge to permanence, absence of maltreatment recurrence and placement stability.</p> <p>We will also have a federal review in June that includes data-based quality measures.</p>

Requirement in section 22	Can be done within available resources?	Comment
(b) On or before September 30, 2015, the Commissioner shall submit a written response to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary with the Commissioner’s response to the issues in subsection (a) of this section, including the language of any new or amended policies and procedures.	Yes	DCF believes that it is important to consider the effective date of section 22 and include language suggested above that requires the Commissioner to carry out the requirements of this section of S.9 with best efforts and within available resources.

Other Improvement in DCF’s Ability to Protect Children (Sections 13 and 14)

We are very pleased that the House Committee on Human Services included in these sections authority for DCF to access the Department for Disabilities, Aging and Independent Living’s Adult Protection Registry for purposes of reviewing petitions for expungement from the Child Protection Registry and also for our general child protection activities. One technical correction that we would request in section 13 is that in 33 V.S.A. §6911(c)(5)(B), the reference to the Department’s child protection obligations is changed from “chapters 49 – 55 of this title” to “chapters 49 – 59”.

We are also very pleased to see that the House Committee on Human Services included section 14 in the bill which allows for improved child protection authority in considering petitions for expungement from DCF’s child protection registry. This section states that a person may not apply for expungement if they are currently listed on any state’s sex offender registry and also clarifies the factors that the Commissioner may consider in making expungement determinations.

Emergency Care Orders and Temporary Care Hearings (Sections 7 and 8)

The Department supports the language in the bill in sections 7 and 8 that address the emergency care order and allowing a social worker to submit the affidavit in support of the emergency care order. The Department also supports the provisions in the bill that remove the custodial hierarchy in the temporary care order stage.

Postadoption Contact Agreements (Sections 9 – 11)

The Department supports the postadoption contact agreement sections 9 through 11. One change that we would request is that language in section 10, 33 V.S.A. §5124(b)(1)(B)(ix), is amended to remove the words “involved in the proceeding and actively engaged with the child” in referring to the recommendation of the guardian ad litem (GAL). GALs are volunteers and are essential to the CHINS and TPR process in representing the best interests of the child. Because they are volunteers and these proceedings sometime can take many months, GAL turnover in a child’s life is possible. The opinion of a former GAL and even that of a new GAL in a child’s life is still valuable to the Court in deciding whether to approve a postadoption contact agreement.

SIU Jurisdiction and DCF's Requirements in Reporting to Law Enforcement and SIUs (Sections 15 – 17)

The Department supports the language regarding when it must report to law enforcement and the provision that holds that law enforcement has a reciprocal obligation to respond to DCF's request. The Department also supports the clarifying provision that directs DCF to report to the SIUs in situations in which the SIUs are statutorily required to act.

Criminal Provisions (Sections 18 – 21)

DCF is supportive of the decision by the House Committee on Human Services to not include the new proposed crime of failure to protect and instead amend existing laws that provide for criminal penalties in certain situations including the mandated reporter law, cruelty to a child statute and neglect of public duty. The Department is opposed to the Senate's proposed new crime of failure to protect and is concerned about its potential impact on DCF staff, foster care providers and others who care for and protect children.

One concern that the Department does still have is with respect to the potential liability of DCF social workers and the requirements in section 22 of the bill that apply to DCF's policies, practices and procedures. As discussed above, the Department is concerned about these new requirements without additional resources to fulfill them. Adopting policies that social workers are unable to meet exposes social workers to potential prosecution under section 19 of the bill, neglect of duty by public officers. Neglect of public duty is not a new crime. More requirements imposed on social workers, however, increase the potential liability under this crime of social workers who cannot meet their current workload. DCF requests that section 22 of the bill is amended to be clear that the Commissioner of DCF shall make best efforts to implement the requirements in section 22 of the bill within available resources.

Legislative Oversight and the CHINS Working Group (Sections 23 and 24)

DCF supports legislative oversight. We also support the provision in the bill for the CHINS working group.

Child Protection Advocate (not included in S.9)

The House Committee on Human Services did not include in its version of S.9 a provision for the creation of an Office of Child Protection Advocate. While DCF does support oversight generally, we have concerns about the creation of this new office in state government as it requires additional resources. We would like to note that there are many different existing avenues of for advocacy and oversight including attorneys for children and parents, guardians ad litem, the Family Courts, the existing Human Services Board appeals system, VCAB, Justice for Children Task Force and the Department's internal complaint review process.

Protection of Family Services Division Social Workers and Other Staff (not included in S.9)

DCF requests that the Committee consider adding language to S.9 that provides for an enhanced criminal penalty for assaults on FSD staff. 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:

13 V.S.A. § 1028b is added:

(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:

(1) For the first offense, be imprisoned not more than one year; and

(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.

(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.

(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.

(d) A sentence imposed for a conviction of this section shall be served consecutively with and not concurrently with any other sentence.