

S.9

January 14, 2015

Joint hearing of the House and Senate
Committees on Judiciary, the Senate
Committee on Health and Welfare, and
the House Committee on Human
Services

Today's Schedule

- Brief review of summer study committee
- Review committee's decisions
 - Background information
- Section by section walk-through
 - Explanation of most important aspects of section
 - Please hold questions until end
- Goal: Get through all of S.9 today

Today's Materials

- Materials available electronically via link on webpages
 - Bill
 - Today's power point presentation
 - Briefing papers & other materials from summer
 - Briefing papers

Summer Study Committee Hearings & Process

- Child Protection Committee established in Act 179
- Committee held hearings from June until December
 - 9 hearings across Vermont to obtain public input
 - 9 more all-day hearings in Montpelier; 52 hours
- Heard from 186 witnesses
- 1,250 pages of materials submitted

Summer Study Committee

Decisions & S.9

- Create a new crime for a failure to prevent harm to a child (Sec. 2, p. 4-6)
- Special Investigation Units (SIUs) & investigation of child abuse cases
 - All SIUs statewide should handle cases concerning physical and sexual abuse of children (Sec. 3, p. 7-8)
 - Standard for referral & SIU investigation should be “serious bodily injury” as defined in 13 V.S.A. § 1021 (Sec. 3, p. 7)
 - Uniform referral process (Sec. 3, p. 7-8 & 9)
 - Investigations carried out by law enforcement officers (Sec. 3, p. 7-8)
 - Improve investigatory capabilities DCF by requiring that all DCF workers conducting investigations have investigative experience and hold an MSW or equivalent degree (Sec. 15, p. 37)

Summer Study Committee

Decisions & S.9

- Postadoption contact agreements (Sec. 5, p. 10-12)
- Addressing prevalence of substance abuse in cases in which children abused or neglected
 - Broaden the definition of “harm” in 33 V.S.A. § 4912 to include exposing a child to illegal substances (Sec. 6, p. 12-14)
 - Provide a mechanism for continued oversight of families by DCF (Sec. 16, p.41)

Summer Study Committee Decisions & S.9

- Confidentiality and information sharing
 - Expand the “cone of confidentiality” (Sec. 7, p. 15-19)
 - Allow entities that administer drug tests to share results with DCF, and authorize DCF to require tests (Sec. 15, p. 38)
- Allow DCF workers to remove a child on an emergency basis and to do the affidavit and paperwork in support of an emergency care order (Sec. 9-10, p. 19-21)

Summer Study Committee

Decisions & S.9

- Create a custody hierarchy at temporary care hearings that prioritizes the best interests of the child (Sec. 11, p. 21-28)
- Establish a legislative oversight committee (Sec. 12, p. 29-33)
- Create expectation that DCF will report to committees of jurisdiction on policy and practice changes they are implementing (Sec. 15, p. 39).
- Establish an advocate's or ombudsman's office that would function independently of DCF (Sec. 14, p. 34-37)

Summer Study Committee

Decisions & S.9

- Improve DCF policies, procedures, and practice
 - Require screening of caregivers when children are reunified (Sec. 15, p. 38)
 - Elevated observation/protection of child returned home when other children have been removed from parental custody (Sec. 15, p. 39)
 - Clearer policies i.e. parent-child contact, visitation, supervised visitation and home visits, esp. unannounced home visits (Sec. 15, p. 39)
 - Consistency in policies and practices (Sec. 15, p. 37)
 - Metrics to measure appropriate caseloads for social workers that take into account level of experience and acuity and difficulty of cases (Sec. 15, p. 37)
 - Ensure courts have all relevant information (Sec. 15, p. 38)

Summer Study Committee Decisions & S.9

- Delays in CHINS court proceedings and quality of decisions
 - Working group to develop solutions as to issues including court delays, failure to appear or prepare, and work quality (Sec. 16, p. 40-42)
 - Recommend that judges take GAL's opinion into consideration. (Sec. 16, p. 41)
 - Pilot project to use case managers (Sec. 17, p. 42-43)

Summer Study Committee Decisions & S.9

- Resources & support (Sec. 1, p. 4)
- Finding that GAL program should be adequately supported (Sec. 1, p. 4)

S.9 Walk-Through

Sec. 1 - Findings

- Importance of adequately funding child protection
- Adequate support for GALs

S.9 – Sec. 2

New Crime of Failure to Protect

- Who is covered: “A person having the custody, charge, or care of a child...”
- What is covered:
 - (a)(1) Directly causing a child to suffer ...
 - (a)(2) “knows, or reasonably should have known, that the child is in danger of, and fails to act to prevent a child from, suffering...”
 - Knowledge vs. strict liability

S.9 – New Crime of Failure to Protect (Sec. 2, p. 4-6)

- Enumerated crimes [same for both (a)(1) & (a)(2)]
 1. Bodily or serious bodily injury
 2. Sexual crimes
 3. Drug crimes

S.9 – New Crime of Failure to Protect

(Sec. 2, p. 4)

- Bodily injury: physical pain, illness, or any impairment of physical condition
- Serious bodily injury: Bodily injury which causes
 - (i) substantial risk of death;
 - (ii) substantial loss or impairment of the function of any bodily member or organ;
 - (iii) substantial impairment of health;
 - (iv) substantial disfigurement;
 - (v) strangulation

S.9 – New Crime of Failure to Protect (Sec. 2, p. 4-5)

- Sexual crimes
 - lewd and indecent conduct (T.13 chapter 59, subchapter 1)
 - sexual exploitation of children (T.13 chapter 64)
 - sexual assault (T.13 chapter 72)
- Not included
 - Prostitution
 - Obscenity

S.9 – New Crime of Failure to Protect (Sec. 2, p. 5)

- Drug crimes: Possession, use, manufacture, cultivation or sale of
 - narcotics, depressants, stimulants, hallucinogenic, ecstasy, and methamphetamine
 - Higher level marijuana related offenses

S.9 – New Crime of Failure to Protect (Sec. 2, p. 5)

18 V.S.A. § 4230 Marijuana offenses – not included in S.9

(a) Possession and cultivation.

(1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate marijuana. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.

(B) A person convicted of a second or subsequent offense of knowingly and unlawfully possessing more than one ounce of marijuana or more than five grams of hashish or cultivating marijuana shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 ...

S.9 – New Crime of Failure to Protect (Sec. 2, p. 5)

18 V.S.A. § 4230 Marijuana offenses – included in S.9

(2) A person knowingly and unlawfully possessing two ounces or more of marijuana or 10 grams or more of hashish or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(3) A person knowingly and unlawfully possessing one pound or more of marijuana or 2.8 ounces or more of hashish or knowingly and unlawfully cultivating more than 10 plants of marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing 10 pounds or more of marijuana or one pound or more of hashish or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

S.9 – New Crime of Failure to Protect (Sec. 2, p. 5)

18 V.S.A. § 4230 Marijuana offenses – not included in S.9

(b) Selling or dispensing.

(1) A person knowingly and unlawfully selling marijuana or hashish shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

S.9 – New Crime of Failure to Protect (Sec. 2, p. 5)

18 V.S.A. § 4230 Marijuana offenses – included in S.9

(2) A person knowingly and unlawfully selling or dispensing one-half ounce or more of marijuana or 2.5 grams or more of hashish shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing one pound or more of marijuana or 2.8 ounces of hashish shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(c) Trafficking. A person knowingly and unlawfully possessing 50 pounds or more of marijuana or five pounds or more of hashish with the intent to sell or dispense the marijuana or hashish shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses 50 pounds or more of marijuana or five pounds or more of hashish intends to sell or dispense the marijuana or hashish.

S.9 – Offenses Listed in Sec. 2 (new crime), Sec. 3 (SIU mandate) & Sec. 6 (DCF jurisdiction)

- Bodily injury / assault
- Drug offenses
- Sexual offenses

S.9 – Comparison Secs. 2, 3 & 6

S.9 – Comparison offenses included in Secs. 2, 3 & 6			
Offenses	Sec. 2 (new crime)	Sec. 3 (SIU)	Sec. 6 (DCF)
Assault			
Bodily injury (13 V.S.A. § 1021)	Yes	Yes (may investigate)	Yes
Serious bodily injury (13 V.S.A. § 1021)	Yes	Yes (shall investigate)	Yes
Sex offenses			
Lewd & indecent conduct (13 V.S.A. chap. 59 subchap. 1)	Yes	Yes	Yes
Prostitution (13 V.S.A. chap. 59, subchap. 2)	No	No	Yes
Human trafficking (13 V.S.A. chap. 60)	No	Yes	Yes
Obscenity (13 V.S.A. chap. 63)	No	No	Yes
Sexual exploitation of children (13 V.S.A. chap. 64)	Yes	Yes	Yes
Sexual assault (13 V.S.A. chap. 72)	Yes	Yes	Yes
Drug offenses			
Possession, sale, use etc. of narcotic drug, depressant or stimulant, Ecstasy & meth. (18 V.S.A. § 4201)	Yes	No	Yes
Marijuana – lower level offenses (18 V.S.A. § 4230)	No	No	No
Marijuana – higher level offenses	Yes	No	Yes

S.9 – Sec. 3

SIUs

- Current law: SIU's can investigate sex crimes, child abuse, elder abuse, domestic violence, crimes against those with disability & sex offender registry violations (13 V.S.A. § 5415)
- S.9: SIUs only investigate child abuse, sex crimes & registry violations

S.9 - SIU's (Sec. 3, p. 7-8)

- SIUs “shall investigate”
 - Incident child suffers serious bodily injury
 - Specified sex crimes (adult & child victims)
- SIUs “may investigate” incident child suffers bodily injury

S.9 - SIUs (Sec. 3, p. 9)

- Preference in grant awards to SIU's with policies and practices consistent with rest of State

S.9 - Postadoption Contact Agreements (Secs. 4 & 5, p. 10-12)

- Background:
 - Committee received data and heard testimony that statutory time frames for CHINS cases frequently not met
 - Judges testified that temporary care hearings and merits hearings are frequently contested
 - Committee heard testimony that “open adoptions” could reduce the number of contested CHINS proceedings

S.9 - Postadoption Contact Agreements (Secs. 4 & 5, p. 10-12)

- Does not undermine adoptive parents' rights as legal parents of child
- Person seeking contact doesn't have a surviving parenthood right
- Judicial determination of whether the person seeking contact can contract with adoptive parents to have a continued right of contact with the child, as long as that contact is in the child's best interests

S.9 - Postadoption Contact Agreements (Secs. 4 & 5, p. 10-12)

- Currently, visitation agreements become unenforceable when adoption is finalized
 - Except for stepparent adoptions
- Agreement can be enforced in a civil action if court finds the agreement is in the best interests of the child
- Courts must consider:
 - Preference of child
 - How special needs of child would be affected
 - Length/quality of existing relationship
 - Terms of agreement; likelihood of cooperation
 - Recommendation of child's GAL, attorney, or SW

S.9 - Postadoption Contact Agreements (Sec. 4 & 5, p. 10-12)

- Adds an article to VSA 15A.
- Requirements for enforceable agreement:
 - Child is in DCF custody
 - Order terminating parental rights not yet entered
 - Either or both birth parents agree to voluntarily terminate

S.9 - Postadoption Contact Agreements (Sec. 4 & 5, p. 10-12)

- The Court may order postadoption contact if it finds:
 - Child's best interests served by the contact
 - Each adoptive parent consents
 - Adoptive parent/s and birth parent/s execute an agreement and file it with the Court
 - Agreement is approved by the Court
- Enforceable agreement must contain:
 - Acknowledgment by birth parent/s that TPR and adoption are irrevocable
 - Acknowledgment by adoptive parent/s that agreement grants birth parents right to seek to enforce the agreement

S.9 - Postadoption Contact Agreements (Secs. 4 & 5, p. 10-12)

- Court order approving agreement shall be part of final TPR order
- Disagreement between the parties or action to enforce the agreement does not affect the validity of the TPR or adoption
- Court shall not act on a petition unless petitioner participated in good faith mediation to resolve the dispute
- If adoptive parent believes best interests of child being compromised, court may order the agreement terminated or altered

S.9 – Definition of Harm (Sec. 6, p. 12-14)

- 33 V.S.A. § 4912 defines terms that are used by DCF in own policies & in determining what cases to accept
- Adds exposing a child to drug related conduct to definition of “harm”
- Same language as in Sec. 2 (new crime of failure to protect a child)

S.9 – Definitions Physical Abuse, Risk of Harm & Sexual Abuse (Sec. 6, p. 14-15)

- Conform definitions to penal law
- “Physical injury” defined as same as bodily injury or serious bodily injury
- “Risk of harm” simplified by removing “significant” and “serious”
- “Sexual abuse” defined as all of sexual offenses and human trafficking

S.9 – Confidentiality (Sec. 7 & 8, p. 15-19)

- Confidentiality of case records required by federal law with some exceptions
- Anyone authorized to receive confidential information are themselves bound by confidentiality restrictions
- Social Security Act & CAPTA – adherence tied to federal funding

S.9 – Confidentiality (Sec. 7 & 8, p. 15-19)

- State may share confidential info with:
 - Individuals who are subject of report
 - Court
 - Those authorized by statute to receive information pursuant to a legitimate State purpose
- State must provide info to:
 - Federal, State, or local government entity in order to carry out its duty to protect children
 - Child abuse citizen review panels
 - The public, when case results in fatality/near fatality
 - Child fatality review panels

CAPTA § 106(b)-106(c)

S.9 – Confidentiality (Sec. 7 & 8, p. 15-19)

- Mandated reporters required to report child abuse and neglect to DCF
- Under 33 V.S.A. § 4913, DCF shall inform mandated reporter whether:
 - Report was accepted
 - Assessment was conducted and if need for services found
 - Investigation was conducted and if it resulted in substantiation
- Mandated reporters testimony

S.9 – Confidentiality (Sec. 7 & 8, p. 15-19)

- “Upon request, the Commissioner shall provide the person who made the report under subsection (a) of this section with access to information contained in the case records concerning the person’s report.”

S.9 – Confidentiality

(Sec. 7 & 8, p. 15-19)

- Upon request, a redacted investigation file shall be disclosed to:
 - Child's parents or guardian
 - Person alleged to have abused/neglected the child
- Upon request, DCF records shall be disclosed to:
 - The court, parties to the juvenile proceedings, the child's GAL
 - Commissioner or person designated by Commissioner
 - Persons assigned by the Commissioner to conduct investigations
 - Law enforcement officers engaged in joint investigation with DCF, Assistant AG, or State's Attorney
 - Other State agencies conducting related inquiries
 - Probate Division of Superior Court involved in guardianship proceedings
- Upon request, relevant (relevancy determinations made by DCF) DCF records may be disclosed to:
 - Service providers working with the child subject to the report
 - Other governmental entities for purposes of child protection

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 - Other State agencies conducting related inquiries
 - The Child Protection Advocate
 - Probate Division of Superior Court involved in guardianship proceedings

S.9 – Confidentiality (Sec. 7 & 8, p. 15-19)

- Upon request, ~~relevant~~ DCF records ~~may~~ shall be disclosed to:
 - ~~Service providers working with the child subject to the report~~
 - A person, agency, or organization authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a DCF record
 - Health care providers working directly with the child or family
 - Educators working directly with the child or family
 - Licensed foster care providers
 - Mandated reporters
 - Other governmental entities for purposes of child protection
- Unauthorized redisclosure subject to a penalty

S.9 – Removal of Child (Sec. 9 & 10, p. 19-21)

- Current law: Only l.e.o. can remove child and fill out affidavit for court
- S.9: DCF social workers can also remove and do affidavit
- Standard for removal unchanged (reasonable grounds believe child in immediate danger and removal necessary for child's protection)

S.9 – Custody (Sec. 11, p. 21-29)

- Current law: multi-stage hierarchy
- S.9: Best interests analysis
 - Noncustodial parent
 - Person with significant relationship with child
 - DCF

S.9 – Custody

33 V.S.A. § 5308. TEMPORARY CARE ORDER

(a) The Court shall order that legal custody be returned to the child’s custodial parent, guardian, or custodian unless the Court finds by a preponderance of the evidence that a return home would be contrary to the best interests of the child.

(b) Upon a finding that a return home would be contrary to the best interests of the child, the Court may issue such temporary orders related to the legal custody of the child as it deems necessary, including:

- (1) an order transferring temporary legal custody of the child to a noncustodial parent or to a relative;
- (2) an order transferring temporary legal custody of the child to a person with a significant relationship with the child; or
- (3) an order transferring temporary legal custody of the child to the Commissioner.

(c) In considering an order under subsection (b) of this section, the Court may order the Department to conduct an investigation of a person seeking custody of the child, and the suitability of that person’s home, and file a written report of its findings with the Court. The Court may place the child in the temporary custody of the Commissioner, pending such investigation.

(d) If the Court transfers legal custody of the child, the Court shall issue a written temporary care order.

(1) The order shall include:

(A) A finding that remaining in the home is contrary to the best interests of the child and the facts upon which that finding is based.

(B) A finding as to whether reasonable efforts were made to prevent unnecessary removal of the child from the home. If the Court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

(2) The order may include other provisions as may be in the best interests of the child, including:

(A) establishing parent-child contact and terms and conditions for that contact;

(B) requiring the Department to provide services for the child and the family, including a consideration of the needs of children and parents with disabilities;

(C) requiring genetic testing if parentage of the child is at issue;

(D) requiring the Department to make diligent efforts to locate the noncustodial parent;

(E) requiring the custodial parent to provide the Department with names of all potential noncustodial parents and relatives of the child; and

(F) establishing protective supervision.

(3) In his or her discretion, the Commissioner may provide assistance and services to children and families to the extent that funds permit.

S.9 – Oversight, Legislative Committee (Sec. 12, p. 29-33)

- Joint Committee
- 10 members, including from specified committees (p. 30)
- Meet year-round
- Duties include mandatory duties (shall) and optional duties (may)
- Broad mandate to oversee “system” & DCF

S.9 – Legislative Committee

(Sec. 12, p. 30-31)

- “Shall” exercise oversight of “system” and DCF, including
 - Determining effectiveness of branches, agencies, & organizations
 - Determining deficiencies & causes
 - Evaluate cost-effectiveness of programs
 - Statewide variation, causes & results
 - Improving data sharing
 - Review & made recommendations as to DCF’s operating plans, policies, procedures, staffing, organization & budget

S.9 – Legislative Committee (Sec. 12, p. 31-33)

- “May”
 - Recommendations to Appropriations Committees as to DCF & other budgets
 - Review specific reports & cases
- Access to confidential records
- Protection against retaliation
- Committee not permanent; sunsets December 2020

S.9 – Office Child Protection Advocate (Sec. 14, p. 34-37)

- New office, appoint by Governor with advice & consent of Senate to a four-year term

S.9 – Office Child Protection Advocate (Sec. 14, p. 34-36)

- Shall
 - Investigate & resolve complaints
 - Monitor development laws, regulations & policies
 - Provide information to public
 - Promote citizen involvement
 - Develop reporting system
- May
 - Pursue judicial remedies
 - Take any other action as necessary

S.9 – DCF Policies (Sec. 15, p. 37-38)

- Ensure consistency of policies & practices
- Policies & practices consistent with laws
- Metrics appropriate caseload social workers
- Training, experience, education in investigations
- Improve information sharing & provision information to courts

S.9 – DCF Policies (Sec. 15, p. 38-39)

- Increased monitoring
- Criminal background checks
- Increased face-to-face visits & unannounced visits
- By April 3rd report committees of jurisdiction with specific responses to VCAB & Casey reports

S.9 – CHINS Working Group (Sec. 16, p. 40-42)

- Report & sunset in November 2015
- Study & make recommendations concerning
 - Statutory time frames not met; goal of 90%
 - Problems with failure to appear or prepare
 - Shortage of attorneys
 - GALs
 - Role continuing monitoring of families

S.9 – Pilot Project (Sec. 17, p. 42-43)

- Use case managers in 2 counties
- Specific data & findings as to effectiveness

S.9

January 14, 2015

Joint hearing of the House and Senate
Committees on Judiciary, the Senate
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the House Committee on Human
Services