



**DEPARTMENT FOR CHILDREN AND FAMILIES**

**To: Senate Health and Welfare Committee**  
**From: Ken Schatz, Commissioner, Department for Children and Families**  
**Date: February 18, 2016**  
**Subject: S.189 Foster Parent Bill of Rights**

Thank you for the opportunity to provide testimony on S.189. Foster parents are Vermont families who open the hearts and their homes to children in need. We agree with the spirit of this bill, that they deserve our support and recognition of their role in our child welfare system.

However, many of the-proposed provisions are already contained in DCF policy or regulation. We have provided a point-by-point analysis below, which will inform the committee about existing policy content. We have also noted those sections where more discussion is needed in order to avoid unintended consequences, including conflict with existing state or federal law.

If you do decide to proceed with this bill, please know that we are concerned about the inclusion of whistleblower provisions. These provisions would suggest that there is an employer-employee relationship between DCF and licensed foster parents. This is not the case. Foster parents provide a highly valued service to vulnerable children in Vermont, but they do so as volunteers. They are compensated only for the expenses they incur – room and board, clothing and incidentals for the child.

We note that the primary provisions have been borrowed from similar statutes in other states. Here is a link to those statutes:

<http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Parents>

<b>Foster Parent Bill of Rights – amends 33 V.S.A. § 4906</b>		
<b>Provision</b>	<b>Comment/Reference to Policy and Statute</b>	<b>Does DCF Object?</b>
The right to be treated with dignity, respect, value, and consideration as a primary provider of foster care and a member of the professional team caring for foster children.	Policy 94: “Resource families are valued members of the child and family support team.”  Note: use of the word “primary” should not be construed to elevate the rights and interests of foster parents over the rights of the child’s parent who retain parental rights.	No
This includes the right to communicate with health care and education professionals who are providing services to a child in his or her care.	This communication is expected. Some providers may require DCF to a written release of information for this occur.	No
The right to be free from discrimination on the basis of religion, race, color, creed,	We agree that we cannot and should not discriminate for the purposes of licensing foster parents. However, there is no right to placement for a licensed foster parent.	No

gender, sexual orientation, national origin, age, or physical impairment.	Children are matched with foster parents based on the child's needs and case plan. For instance, if DCF seeks a foster home that is a potential adoptive home for a young child, we would likely not place that child with older foster family.	
The right to receive timely financial reimbursement according to the agreement between a foster parent and the Department and to be notified of any costs or expenses for which the foster parent may be eligible for reimbursement.	We agree that foster parents have the right to timely reimbursement.  Policy 268 on Foster Parent Expenses is available on our public web site. Primary categories of reimbursement are: mileage expenses, expenses related to case plan requirements, damage claims.	No
The right to have access seven days a week, 24 hours a day, to a staff person representing the Department.	Foster parents have access to staff 24/7 by telephone, through our after-hours Emergency Services Program. They do not necessarily have in-person access to the staff person. The department is not staffed or budgeted to provide in-person access 24/7.	Needs discussion.
The right to have his or her personal information exempt from public inspection and copying under the Public Records Act and kept confidential, including his or her telephone number, address, and e-mail address unless explicit permission is given to the contrary.	Foster Care Licensing Regulations:  Foster Home Records 044 The department shall keep records on each foster home applicant and licensee. Records shall include applications, reference letters, compliance checklists, licensing reports and notes regarding communication with or about the applicant(s) or licensee(s). <b>These records are the property of the department and shall only be disclosed as set forth below. [emphasis added]</b>  045 The department shall, upon request, make available to the subject applicant(s) or licensee(s) all information contained in the licensing record except information received from third persons, such as reference letters and information which is made confidential by law. The department shall, upon receiving a written release from the subject applicant(s) or licensee(s), make available to designated third persons all information contained in that applicant's or licensee's licensing record to which he would have access.	No
The right to receive respite upon request. A foster parent shall provide reasonable notice of a request for planned respite.	The department is not budgeted to provide unlimited respite care for all children in foster care. In FY 2016, the budget for respite is \$196,741, with a BAA request of \$128,874. As 12/31/2015, we spent \$148,680 on respite care for foster parents.	Yes
The right to be fully informed when a placement is terminated, including specification of the reason for termination and information about the appeals process.	Policy 94 specifies "Once a plan is made to move a child to a new placement, the division will notify a resource family, <b>in writing</b> 14 days in advance of the date of the move. <b>Written notice may be electronic.</b> [emphasis added]  Notice is not required when: <ul style="list-style-type: none"> <li>• The resource family has requested the child's immediate removal.</li> <li>• Their license has been suspended or revoked; or</li> </ul>	No

	<ul style="list-style-type: none"> <li>• There is reason to believe that the child’s health or safety is in jeopardy, because:</li> <li>• the resource family is under investigation due to alleged abuse or serious misconduct;</li> <li>• an emergency situation exists that cannot be mitigated in another way.</li> </ul> <p style="text-align: center;"><i>When the child’s social worker believes that a child must be removed from the home under such circumstances, the district director must review and approve that decision.</i></p> <ul style="list-style-type: none"> <li>○ The child meets criteria for admission to the Woodside Juvenile Rehabilitation Center.”</li> </ul> <p>Two levels of review are available: (1) district director and (2) commissioner-level.</p>	
<p>The right to read his or her foster child’s records upon request</p>	<p>This has long been permitted by policy 94: “The resource family may review the case record for a child in their care. Before reviewing the record, they will be asked to sign a Statement of Confidentiality (FS-250).” Note that some materials are removed prior to inspection, such as protected health information about parents, confidential information about previous foster parents, information about identity of mandated reporters and other information as required by state or federal law.</p>	<p>Needs discussion</p>
<p>to receive information from the Department regarding the number of times a foster child has moved and the reasons why, including a foster child’s dangerous behaviors, if any; and to receive the names and telephone numbers of a child’s previous foster parents if the previous foster parents have authorized this release.</p>	<p>Policy 94 requires:          “In order to facilitate a resource family’s informed decision, DCF staff must communicate comprehensively, known relevant information about the child and family, including:</p> <ul style="list-style-type: none"> <li>• the reason for the child’s need for a resource family;</li> <li>• the primary family’s and child’s understanding of the reason for placement;</li> <li>• the goal of the placement and the anticipated length of stay;</li> <li>• the child’s and family’s history and summary of the current situation;</li> <li>• the child’s behaviors and needs, including medical and educational needs;</li> <li>• any safety concerns related to the child’s behavior and a plan to minimize those risks;</li> <li>• any safety concerns related to the child’s family and a plan to minimize those risks. The Domestic Violence Unit should be consulted to assist with safety planning when domestic violence is an issue;</li> <li>• DCF expectations of the resource family in this situation;</li> <li>• goal(s) and anticipated time frames of the case plan;</li> </ul>	<p>No</p>

	<ul style="list-style-type: none"> <li>the plan for the child’s contact with family members and other persons (including a list of those whom the child may not have contact);</li> <li>the resource family’s role on child and family support team; and</li> <li>supports that will be available to the resource family.</li> </ul> <p>Updated information will be provided to the resource family as it becomes available.”</p> <p>Further: “If the child exhibits inappropriate sexualized behavior or poses other risks to safety, special attention must be paid to the safety needs of others in the home. The social worker or resource coordinator must discuss these risks, and develop a plan to reduce them, with the resource caregivers.”</p>	
The right, without threat of reprisal, to refuse placement within his or her home	Not explicitly covered in policy, but assumed by the following: “In order to facilitate a resource family’s informed decision. . .” (see above). We do not want foster parents to accept children into their homes if it is not the right time for them, or if they feel that they cannot provide appropriate care for the particular child.	No
or to request with at least one week’s notice to the Department the planned removal of a child from his or her home for good cause.	Agree. It is not unusual for foster parents request the immediate removal of a child.	No
The right to be included in all aspects of caring for a foster child in his or her home, including:		
(A) ongoing case plan development and review;	<p>Policy 94: “Resource families are valued members of the child and family support team. Their input should be sought and considered at all points, including during the development of the case plan.</p> <p>It is important to note that the case plan for the child, including the case plan goal, is approved by the court.”</p> <p>Policy 122: “Title IV-E of the Social Security Act requires a case plan review meeting be facilitated by an impartial party, who is not responsible for case management or delivery of services to the child or parents.</p> <p>In addition, the following persons must be invited to participate:</p> <ul style="list-style-type: none"> <li>Child;</li> <li>Child's attorney;</li> <li>Parent’s attorney;</li> <li>Guardian ad litem;</li> <li>Mental health provider;</li> <li>Both parents (unless parental rights have been terminated), and/or legal guardians;</li> <li>Social worker;</li> </ul>	No

	<ul style="list-style-type: none"> <li>• School personnel, including special education administrator (if child has an IEP);</li> <li>• <b><i>Substitute care provider; [emphasis added – this includes foster parents]</i></b></li> <li>• Educational Surrogate;</li> <li>• Child care provider; and</li> <li>• Transitional Services Coordinator (for youth age sixteen and older).</li> </ul>	
written receipt of two weeks’ notice in advance of Department and court meetings	<p>Policy 94: “DCF must give verbal or written notice of all post-disposition court hearings to the child’s resource family. Resource families have the right to an opportunity to be heard, but not necessarily to present during the entire court hearing.” Court hearings may not be set 2 weeks in advance</p> <p>Meetings concerning a child are often not able to be set 2 weeks in advance, as we are often dealing with more immediate issues. Written notice to foster parents is impractical; we do not have the capacity to provide this.</p> <p>33 VSA 1320 restricts foster parent notice and participation to post-disposition hearings, as follows:</p> <p>§ 5320. <b><i>Postdisposition</i></b> review hearing</p> <p>“If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the Court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, or relative caregiver shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding.”</p>	Needs discussion
written receipt of any changes that affect the legal, educational, or medical status of a child in his or her home.	Unclear what is meant by this.	Needs discussion
The right to have his or her schedule and that of a child in his or her care considered in arranging court-ordered visits with biological family members. Special consideration shall be given to dates and times, as well as details pertaining to pick-up and drop-off, snacks and gifts during visits, flexibility around last minute visitation changes, and expectations	<p>Parent-child contact is governed by court orders, which may be quite specific (see emphasized content below). When that is the case, DCF must comply with those orders.</p> <p>§ 5319. Parent-child contact and contact with siblings and relatives</p> <p>(a) The Court shall order parent-child contact unless the Court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires. Except for good cause shown, the order shall be consistent with any</p>	Needs discussion

<p>around interactions between biological and foster parents during and after each visit.</p>	<p>existing parent-child contact order.</p> <p>(b) The Court may determine the reasonable frequency and duration of parent-child contact and <b>may set such conditions for parent-child contact as are in the child's best interests</b> including whether parent-child contact should be unsupervised or supervised. The Court may allocate the costs of supervised visitation.</p> <p>(c) Parent-child contact may be modified by stipulation or upon motion of a party or upon the Court's own motion pursuant to section 5113 of this title.</p> <p>(d) The Court may terminate a parent-child contact order in a juvenile proceeding upon a finding that:</p> <p>(1) a parent has without good cause failed to maintain a regular schedule of contact with the child and that the parent's failure to exercise regular contact has had a detrimental impact on the emotional well-being of the child; or</p> <p>(2) continued parent-child contact in accordance with the terms of the prior order will have a detrimental impact on the physical or emotional well-being of the child.</p> <p>(e) Upon motion of the child's attorney, the Court may also order contact between the child and the child's siblings, an adult relative with whom the child has a significant relationship, or an adult friend with whom the child has a significant relationship.</p> <p>(f) Failure to provide parent-child contact due to the child's illness or other good cause shall not constitute grounds for a contempt or enforcement proceeding against the Department.</p> <p>Policy 94: "Also, court orders often govern the plan for family contact. Depending upon the stage of the juvenile court case, the resource family may or may not have the opportunity to be heard in court on these matters. All districts will ensure that there are informal avenues for communication and conflict resolution when resource families disagree with the division's plans and strategies."</p>	
<p>The right to be notified and considered as: (A) a preferential placement option when a child who was formerly placed with the foster parent has reentered the foster care system; and</p>	<p>This should be qualified – that DCF will do this when consistent with the child's best interest and the goals of the child's case plan. Also, per federal law, DCF must notify relatives when a child enters DCF custody. We should not have a Foster Parent Bill of Rights that is inconsistent with that requirement.</p>	<p>Needs discussion</p>
<p>(B) the first-choice permanent placement option for a child who was formerly placed with the foster parent</p>	<p>This should be qualified – that a child would not be moved from his or her current placement just because he or she is "released for adoption", assuming that placement is a permanent option for the child. Also it</p>	<p>Needs discussion</p>

and has been released for adoption.	should be consistent with the child's best interest and the goals of the child's case plan.	
The right to be informed in person and in writing of any allegations of maltreatment of a child in the foster parent's home perpetrated by a member of his or her household, including the process for disposition of the allegations and any review process for reports of indicated child abuse and neglect.	The following policy is based on the federal Child Abuse Prevention and Treatment Act (CAPTA)  Policy 52: "In all child safety interventions the division must: • Inform the parent or guardian of the child that a report has been accepted as a valid allegation and that the division is conducting an investigation or assessment. • Inform the alleged perpetrator, at the time of the initial contact, about the complaint or allegation made against the individual. In making this notification, the confidentiality of the reporter will be protected, unless the reporter has given permission for his or her identity to be shared."  Policy 56: "In all cases, the perpetrator must be notified of the outcome and of appeal rights, when applicable."	Needs discussion
The processing of allegations shall be conducted in a district other than the foster family's home district to ensure that the foster family's home district continues to support the foster family throughout the process.	Per policy 54, all investigation of child abuse and neglect in regulated facilities (included foster home) are conducted by the Residential Licensing and Special Investigations Unit, not the district office.	Needs discussion
The right to copies of all information pertaining to his or her family and services contained in the personal foster home record.	See content of Foster Home Records, above, which is generally aligned with this, but contains some necessary restrictions, such as letters from references.	Needs discussion
The right to appeal without threat of reprisal the closing by the Department of a foster home in accordance with any appeal procedure adopted by the Department and the Vermont Foster and Adoptive Family Association Board.	Foster parents have long had the right to appeal a denial or revocation of a foster care license to the Human Services Board. Policy 221 specifies:  "If at any point the LSW [Licensing Social Worker], in consultation with the licensing supervisor, determines that the applicant does not meet regulations, the licensing report will recommend denial of the application. An Assistant Attorney General shall review the proposed action. The Residential Licensing Chief will inform the applicant in writing of this decision. The letter will note specific areas of noncompliance, and inform the applicant of the process to appeal the denial."  And  "If the LSW, in consultation with the licensing supervisor, determines that the licensee is not in compliance with regulations, the licensing or investigation report will recommend revocation of the license. An Assistant Attorney General shall review the proposed action.  The Residential Licensing Chief will inform the licensee in writing of this decision. The letter will note specific	Needs discussion

	areas of noncompliance, and inform the licensee of the process to appeal the revocation.”	
The right to request that one or more persons serve as a volunteer advocate and be present at all meetings between the foster parent and the Department, including individualized service planning, administrative hearings, grievance and mediation processes, adoption processes, and allegation processes where the foster parent is present. The Department shall permit a volunteer advocate to be educated concerning the procedures relevant to investigations of alleged abuse and neglect and the rights of an accused foster parent. All communications received by the volunteer advocate shall be confidential.	<p>Policy 94 regarding foster parents’ request for a review of a decision to remove a child: “The resource family may bring a support person, and at the discretion of the reviewer, other persons who may be able to provide information relevant to the review. The district director’s decision will be based on the child’s best interest.”</p> <p>There is no prohibition against bringing a support person to “including individualized service planning, administrative hearings, grievance and mediation processes, adoption processes, and allegation processes.” However, to the extent that confidential information about the parents or family members of a foster child will be discussed at a planning meeting, careful consideration about who is present is important.</p>	Needs discussion

**Whistleblower Provisions**

<b>Provision</b>	<b>Comment/Reference to Policy and Statute</b>
Neither the Agency of Human Services nor any of its departments, divisions, employees, agents, or representatives shall take retaliatory action (defined as discrimination, threat, suspension, or termination of a foster parent’s duties, or any other adverse action regarding the foster parent’s responsibilities, rights, compensation, conditions, or privileges) against a foster parent because the foster parent engages in, or the Agency believes that the foster parent has engaged in or is about to engage in, any of the following conduct:	Needs discussion
(1) discloses or threatens to disclose to a person, public body, or entity any activity, policy, practice, procedure, action, or failure to act pertaining to the treatment of a foster child that the foster parent reasonably believes is a violation of the law or otherwise constitutes unethical treatment of a foster child;	Presumably, this does not allow foster parents to disclose confidential information about children or their families.
(2) provides information to or testifies before any public body conducting an investigation, hearing, or inquiry that involves allegations that the Agency or participant of the foster care system has	Presumably, this does not allow foster parents to disclose confidential information about children or their families.



<p>violated the law or otherwise caused or enabled unethical treatment of a foster child; or</p>	
<p>(3) objects to or refuses to participate in any activity, policy, or practice of the Agency or foster care system that the foster parent believes is a violation of law or constitutes unethical treatment of a foster child.</p>	<p>Presumably, this does not give foster parents an avenue to not follow orders of the court, or to act in ways that are contrary to an order of the court, such as an order for parent-child contact. Nor does it provide an avenue to be out of compliance with licensing regulations.</p>
<p>(c) Subsection (b) of this section shall apply only if a foster parent first reports the alleged violation of law or unethical treatment of a foster child to the Agency, and the Agency or an entity designated by the Agency has had a reasonable opportunity to address the alleged violation or unethical treatment.</p>	
<p>(d)(1) A foster parent aggrieved by a violation of this section may bring an action in the Superior Court of the county in which the violation is alleged to have occurred.  (2) If the court finds that the Agency or its entities violated subsection 8 (b) of this section, the court shall order, as appropriate:  (A) reinstatement of the same duties and responsibilities that the foster parent had prior to the retaliatory action;  (B) payment of lost compensation;  (C) any appropriate injunctive relief;  (D) actual, compensatory, and punitive damages;  (E) costs and reasonable attorney’s fees; or  (F) any other appropriate relief.</p>	<p>Note that foster care reimbursement is not “compensation”. It is reimbursement for the expenses of caring for a child. If a child is not in the home, the foster parent does not incur the expense.</p>