



**DEPARTMENT FOR CHILDREN AND FAMILIES**

To: Senator Dick Sears, Chair, Senate Judiciary Committee  
Senator Claire Ayer, Chair, Senate Health and Welfare Committee  
Representative Ann Pugh, Chair, House Human Services Committee  
Representative Maxine Grad, House Judiciary Committee

From: Ken Schatz, Commissioner, Department for Children and Families

Date: January 21, 2015

Subject: S.9 Testimony

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Please see attached for Commissioner Schatz's written testimony regarding S.9 (An act relating to improving Vermont's system for protecting children from abuse and neglect) before a joint meeting of the Senate Health and Welfare, Senate Judiciary, House Judiciary, and House Human Services committees on January 21, 2015.

## Overview

- DCF is committed to working with partners to strengthen the child protection system.
- After the two tragic child fatalities last year, we immediately acted to strengthen the Department's approach to child safety, drawing on the insight from external reports (VCAB, Casey, National Center on Substance Abuse and Child Welfare, Secretary Chen's report to the Governor). These actions include:
  - o Synthesizing the recommendations and creating priority action steps;
  - o Stabilizing caseload through the addition of 37 new positions, including 18 front-line social workers, additional FSD central office and district staff as well as FSD and ESD management positions to strengthen DCF;
  - o Requesting technical assistance from the National Center on Substance Abuse and Child Welfare;
  - o Contracting with Lund to co-locate substance abuse screeners in 6 of the 12 FSD district offices;
  - o Making policy changes to clarify procedures that promote child safety including:
    - revising the policy on serious physical injury (68) mandating district staff consult with central office staff on all serious physical injury cases for investigations and case planning (pulled out of policy 52 to make it a stand-alone policy);
    - revising policy 98 to specify that trial reunification for children placed with a parent in a residential treatment program begins when the parent is discharged from the program to live independently;
    - revising policy 55 to create clarity of expectation where a new report is received but does not meet criteria for investigation or assessment and there is already an open case with an assigned worker;
    - revising policy 57 (pulled out from policy 52) on risk of harm/sexual to make it a stand-alone policy
- Even with these positive changes, we acknowledge ongoing challenges:
  - o The number of intakes received by the Child Protection Hotline has risen steeply in the last year, from 17,476 in 2013 to 19,292 in 2014. We must increase our use of temps in our call center in order to accommodate this increased volume. The call center is already heavily dependent upon temps, which means that turnover is a constant challenge which negatively affects capacity and quality.
  - o The number of child abuse investigations and assessments increased from 5,136 in 2013 to 5,841 in 2014. The trends of the last 6 months cause us to project 5,942 for 2015, even without the changes proposed in S.9.
  - o Currently, we have 1,185 children in DCF custody, up about 200 from a year ago. This is a 20% increase. Of these, 404 have entered custody in the last 6 months. The rise has been steepest in children under the age of three. Of the 245 children under 3 currently in custody, over half (134) have entered custody in the last 6 months.
  - o Other court-involved CHINS cases without DCF custody have also increased. Currently, we have over 550 children who are the subject of conditional custody orders pursuant to CHINS proceedings.
  - o All of this translates to significantly increased pressure on the courts, attorneys and DCF Family Services staff.
- The topics addressed in S.9 are key issues deserving of wide debate and public engagement. We welcome the opportunity to provide DCF's perspective on the proposed legislation and look forward to working with the Committees to rebuild public confidence in the Department and keep children safe.

## Section 1: Legislative Findings

- This section highlights the need for a comprehensive approach to child protection that engages a wide range of partners and addresses the systemic, environmental factors that undermine child safety.
- We support the need for a renewed focus on child safety and are committed to finding ways to support families while keeping children safe.

## Section 2: Establishing a New Crime of Failure to Protect a Child

- We believe that the Committee's objective in creating a new crime of failing to protect a child is to increase accountability for caregivers that knowingly allow a child to experience abuse or neglect.
- We agree that it makes sense to address the policy and clarify what is harmful to a child. However, the proposed language is broad in scope.
  - o It is unclear what the term "suffer" means in (a)(1).
  - o It is unclear what is meant by "exposure" to the unlawful possession, use, manufacture, cultivation, or sale of illegal substances.
  - o In addition, the connection between child safety and marijuana use (in particular) is unclear.
  - o A person who has "custody, charge or care" of a child is very broad.
  - o Victims of domestic violence may be inappropriately and disproportionately affected due to the dynamics of power and control in their relationships.
- For these reasons, the Department would like to explore alternatives to the creation of a new crime, such as:
  - o Implementing the VCAB recommendation to create the rebuttable presumption in cases where the court has found serious bodily injury to a child and reasonable medical evidence cannot corroborate the cause of the injury as described by the custodial parent. In those cases, reunification of the child with the parent caretaker is presumed to be against the best interests of the child.

## Section 3: Special Investigative Units (SIUs)

- This section deletes general descriptions of cases and substitutes the requirement to investigate specific crimes, including all cases of serious bodily injury to children, and also promotes the equal and effective use of SIUs across the state.
- We generally support these changes.
- We do have some concerns however that cross-references to criminal statutes may have the effect of limiting what the SIUs investigate. For example:
  - o In order to meet the definitions of these crimes, must all the elements of the crime be met?
  - o Must probable cause exist in order for an SIU to have jurisdiction over these cases?
- There is also concern that this section (and the chapter 49 section that also cross-references criminal statutes) may require social workers to have training and expertise as if they are law enforcement officers.
- We support the concept of improving collaboration and moving toward a more coordinated system. We suggest that DCF work with State's Attorneys, Department of Public Safety and Child Advocacy Centers to review and discuss this proposal and report back to you.

## Sections 4&5: Post-Adoption Contact Agreements

- This section seeks to reduce the number of contested termination of parental rights (TPR) proceedings by creating enforceable post-adoption contact agreements between adoptive and biological parents.
- Conceptually, we support the use of these agreements, but believe that further clarification is required. For example, it is unclear which court (Probate or Family Court) will make decisions and how the two courts will coordinate to make this process work.
- DCF will research how post-adoption agreements are handled in other states and can make recommendations for clarifying this section.

## Section 6: Definitions of Harm, Injury, and Abuse

- This section seeks to update and clarify the definitions of harm and injury as they relate to child abuse and placement of substantiated individuals on the Child Protection Registry. In particular, exposures to illegal substances are now included in the definition of harm.
- We agree with the need to clarify what constitutes harm to a child, particularly around the issue of illegal substances.
- There are some areas of concern in the legislation as presently drafted, and we also request that the committee consider further revisions to support the Department's work of determining what constitutes harm, injury, and abuse:
  - o Exposure to substances: Inclusion of language around substance abuse is important. However, as noted above, this concept requires further definition and the connection between child safety and some of the substances listed remain unclear.
    - Similar to our comments on the Section 2 (Failure to protect), what does "exposure" mean? The language as written does not include a clear nexus between exposure to illegal substances and harm to a child. The language also does not make any allowances for the age of the child.
    - There could be some unintended consequences. Under this new language, if a parent comes forward for treatment, the parent could be reported to DCF for suspected child abuse (and/or to the police as a crime). The Department does not want its definitions and policies to be a deterrent to families seeking treatment.
    - We would appreciate the opportunity to make a recommendation in the future, based on the ongoing technical assistance we are receiving from the National Center on Substance Abuse and Child Welfare. In the meantime, we have already shifted decision-making and practice in this area to now assume that opiate use around very young children constitutes danger and accept these reports at intake.
  - o Physical injury: The definition of "bodily injury" referenced in 13 VSA §1021 includes "physical pain, illness, or any impairment of physical condition."
    - This definition is much broader than current definition in some respects. For example, the proposed definition would incorporate corporal punishment as a basis for substantiation.
    - The definition also removes the caveat of "by other than accidental means." This means a parent could be substantiated for causing pain by accidental means.
    - New proposed definition eliminates "death" since it cross-references the criminal statute and only includes "substantial risk of death".

- Risk of harm: This definition substantially broadens the current definition and potential for placement on the Child Abuse Registry. The proposal removes both the risk of “significant” danger and “serious harm other than by accidental means.” In theory, a parent could be substantiated for accidentally causing risk of harm.
- Sexual abuse: The definition of sexual abuse has been narrowed with this change that ties the definition of sexual abuse to criminal statutes.
  - Currently, under Chapter 49, DCF is not required to prove the sexual intent of the perpetrator. The focus is on the resultant sexual harm to the child victim.
  - 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.
  - DCF also currently investigates sexual acts by one youth against another and sexual acts by adults who may not be “criminally competent”. This proposed change to tie definitions to the criminal statutes would 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.
- Use of the criminal standards for purposes of Chapter 49 reporting and placement on the Child Protection Registry will require more legal expertise in the Centralized Intake Unit and the Registry Review Unit.
- An additional concern is that the new proposed definitions will have a disproportionate impact on low-income families, who come into contact with mandated reporters more often than higher-income families, and thus may experience greater contact with child protection services.
- This broad expansion of the definitions for harm, injury, and abuse will have a direct impact on the number of individuals included on the Child Protection Registry, which has wide-ranging implications for employment.

#### Sections 7&8: Confidentiality

- This section seeks to improve feedback to mandated reporters and relax confidentiality requirements to allow greater information sharing with service providers and other parties involved with a family.
- We believe that current statutes support information sharing, but acknowledge that we need to do more training with staff and stakeholders to more effectively share information.
- The proposed disclosures are extremely broad. We would welcome the opportunity to work with Legislative Counsel to clarify the confidentiality provisions in Title 33. If the goal is to address system-wide information sharing, perhaps language could also be added to the Juvenile Proceedings and other titles and chapters.
- The Department can improve communication outside of statutory changes, and we are working to address this issue. We are happy to provide a detailed plan to the Committees.

### Section 9: Removal of a Child from the Home

- This section seeks to expedite the process for removing children from the home when they are in imminent danger by allowing DCF social workers to remove a child on their own (without law enforcement).
- The current collaboration with law enforcement in this area does not require this change, as DCF has had very good cooperation with law enforcement in this area.
- Consequently, we do not support this proposed change, as having social workers take children into custody alone creates serious safety concerns (for the social worker and the child) and training challenges. DCF's role in this arena is to advise law enforcement and the courts.

### Section 10: Request for Emergency Care Order

- This section seeks to expand DCF social worker's role in preparing an affidavit for an emergency care order to expedite the removal process for children in imminent danger.
- We would support a change to the statute that clarifies that DCF social workers may submit affidavits (In fact, they often do provide affidavits now that supplement the affidavits of law enforcement.)

### Section 11: Temporary Care Order

- This section seeks to clarify the judicial decision-making framework for placements at temporary care hearings by emphasizing the primacy of a child's best interest to further strengthen child safety.
- While we support relaxing the structured placement hierarchy imposed by current statute, there are some concerns with the section as drafted:
  - o The best interest standard is not defined and is also being used in judicial decision-making before a parent is found unfit (the constitutional standard). We are concerned that this change will have a disproportionate impact on families living in poverty.
  - o The proposed legislation eliminates the option of returning a child home with a conditional custody order (CCO) at a temporary care hearing. While CCOs are still an option at disposition hearings, removing the option to use CCOs at the temporary care hearing takes away a useful tool that the courts and DCF use to reduce the trauma of removal while supporting child safety.
  - o This section requires DCF to provide services for a child and family, which is a significant expansion of existing statute which only requires that services be provided for the child (DCF currently refers families for services.) This seems to imply that DCF is financially responsible for all needed services for the family. There is also no clarification that DCF is required to provide services for children in custody; this seems to imply that DCF will be responsible for providing services for all children and families with any level of involvement with the Department.
- If child safety is the objective, DCF would be happy to help draft language to add needed flexibility to the custody hierarchy and/or define best interests.

### Section 12, 13, &14: Joint Legislative Child Protection Oversight Committee; Office of the Child Protection Advocate

- These sections seek to establish and define a legislative oversight committee for child protection and a permanent Office of the Child Protection Advocate to provide ongoing oversight and advocacy on behalf of individuals involved with the child protection system.
- DCF supports the creation of this committee and welcomes the opportunity to work with legislative partners to strengthen the child protection system.
- DCF supports systemic oversight of the child protection system, but would like to avoid duplicating the adversarial process that appropriately exists in Family Court. It would be helpful to clarify some aspects of the proposed Office of the Child Protection Advocate. For example, there is a potential duplicative role for the Office of the Child Protection Advocate and GALs/attorneys for the parent and child.
- We support the confidentiality provisions included in these sections, but it would be helpful to protect against re-disclosure of confidential information (as noted above in records shared with mandated reporters and others involved with the family).

### Section 15: DCF Policies, Procedures, and Practices

- This section seeks to provide additional statutory guidance on DCF operations and policies to strengthen child safety.
- We welcome feedback from legislative partners on ways to continually improve our work. Some concerns with the section as drafted include:
  - o The draft legislation seeks to ensure policies and procedures are applied consistently across the state however, there are no allowances made for variation that may address local needs. The section as broadly written requires consistency in policies across the entire department, not just within the Family Services Division.
  - o We believe that current policies are consistent with statute; in areas where statute is silent, it was necessary for the Department to adopt rules, which have the force of law.
  - o We need clarity around the requirement for DCF social workers to hold an MSW and what “equivalent degree or relevant experience” means. It is important to note that in some areas of the state, we are unable to recruit and hire master’s degree level staff. We believe that the language as drafted would allow us flexibility, as long as training is provided.
  - o The provision encouraging treatment providers and others involved in substance abuse testing to share test results with DCF is not be permitted for cases when a child is not in custody unless a release is signed. This provision may also have a chilling effect on an individual’s willingness to seek treatment.
  - o We believe it is important to assess all individuals in a household or child care setting for criminal history. We currently have authority for criminal history checks for foster homes. If the goal is to allow record checks without consent, Title 20 should be amended also. The Department is currently working with DPS for access to the NCIC. We expect permission to be approved when the Department moves back to Waterbury.
- Report due April 3, 2015 – timeline may have to be amended.

### Section 16: Working Group to Recommend Improvements to CHINS Proceedings; Pilot Program

- This section seeks to assess the current state of CHINS proceedings and make recommendations for improving the efficiency, timeliness, process, and results of these proceedings.
- This workgroup will address crucial issues that directly affect the Department's work with the court system. As such, we would request that a DCF representative be added to this workgroup.

### Effective Date

- The draft legislation proposes that all changes take effect on passage. This is problematic as DCF will require significant lead time to implement required changes in policies, training, and IT systems.
- It would be helpful to establish different dates for different sections of the bill, depending on the complexity of implementation. We would be happy to make a proposal.

In conclusion, we appreciate the time and effort that the Committees are putting into these important issues. We look forward to working with the Committees of jurisdiction to strengthen the child protection system.