

*** Confidentiality ***

Sec. 7. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(b)~~(1)~~ The Commissioner shall inform the person who made the report under subsection (a) of this section:

~~(1)(A)~~ whether the report was accepted as a valid allegation of abuse or neglect;

~~(2)(B)~~ whether an assessment was conducted and, if so, whether a need for services was found; and

~~(3)(C)~~ whether an investigation was conducted and, if so, whether it resulted in a substantiation.

~~(2) 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.~~

DCF Explanation: The Department's position is that this proposed language in §4913 is not necessary. Sharing information with mandated reporters who are working with a child is more appropriately addressed in §4921 (please see below).

Sec. 8 33 V.S.A. § 4921 is amended to read:

§ 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

(a) The Commissioner shall maintain all records of all investigations, assessments, reviews, and responses initiated under this subchapter. The Department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child's family, or for other legal purposes.

(b) The Commissioner shall promptly inform the parents, if known, or guardian of the child that a report has been accepted as a valid allegation pursuant to subsection 4915(b) of this title and the Department's response to the report. The Department shall inform the parent or guardian

of his or her ability to request records pursuant to subsection (c) of this section. This section shall not apply if the parent or guardian is the subject of the investigation.

(c) ~~Upon request, the~~ The ~~Upon request, the~~ redacted investigation file shall be disclosed to:

(1) the child's parents, foster parent, or guardian, absent good cause shown by the Department, provided that the child's parent, foster parent, or guardian is not the subject of the investigation; and

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title.

(d) ~~Upon request,~~ Department records created under this subchapter shall be disclosed to:

(1) ~~the~~ The court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the Commissioner; ~~;~~

(2) ~~the~~ The Commissioner or person designated by the Commissioner to receive such records; ~~;~~

(3) ~~persons~~ Persons assigned by the Commissioner to conduct investigations; ~~;~~

(4) ~~law~~ Law enforcement officers engaged in a joint investigation with the Department, an ~~assistant attorney general~~ Assistant Attorney General, or a ~~state's attorney~~ State's Attorney; ~~;~~

(e) Upon request, Department records created under this subchapter shall be disclosed to:

~~(5)(1) other~~ Other State agencies conducting related inquiries or proceedings; ~~and;~~

~~(6)(2)~~ The Child Protection Advocate appointed under section 8001 of this title.

~~(7)(3) a~~ A Probate Division of the Superior Court involved in guardianship proceedings.

The Probate Division of the Superior Court shall provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of the respondent.

~~(e) (f)~~ (1) Upon request, ~~relevant~~ Department records created under this subchapter ~~may~~ shall be disclosed to:

(A) ~~service providers working with a person or child who is the subject of the report; and a person, agency, or organization, including a multidisciplinary team empaneled under section 4917 of this title, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record created under this subchapter, or who is responsible for the child's health or welfare;~~

(B) ~~health and mental health care providers working directly with child or family who is the subject of the report or record;~~

(C) ~~educators working directly with the child or family who is the subject of the report or record;~~

(D) ~~licensed or approved foster care givers~~ for the child;

(E) ~~mandated reporters as defined by section 4913 of this subchapter, making a report in accordance with the provisions of section 4914 of this subchapter~~ working with the child or family who is the subject of the report; and

(F) other governmental entities for purposes of child protection.

(2) ~~Determinations of relevancy shall be made by the Department.~~ In providing records under this subsection, the Department may withhold information that could compromise the safety of the reporter or the child or family who is the subject of the report.

(3) In providing information under this subsection, the Department may also provide other records related to its child protection activities for the child.

(4) Notwithstanding any other provision of law, agencies, persons and organizations working with children and families who are authorized to receive records from the Department under this subsection may share information with each other and the Department for the purposes of providing services and benefits to the children and families they mutually serve.

~~(g)(3)~~ Any records or reports disclosed under this section and information relating to the content of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than those persons or agencies authorized to receive information pursuant to this section. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

DCF Explanation: In paragraph (c), the Department has restored the language to make the redacted investigation file available to a child's parents, foster parents and guardians and the person alleged to have abused or neglected the child available only upon request. In all cases, parents and guardians are promptly informed when a report is accepted as a valid allegation and of the Department's response to the report. Not all parents and guardians want the redacted investigation file. The Department is concerned about automatically sending these redacted investigation files to people who are not requesting them. Providing information when it is not requested poses a risk to the confidentiality of the information and potential stigma to the child.

Foster parents are allowed access to the entire Department record (not just the redacted investigation file) under the new paragraph (f).

The Department supports the automatic disclosure of the Department's Chapter 49 records to the court and others listed in paragraph (d).

The Department suggests that a new paragraph (e) is inserted to allow for disclosure upon request, as opposed to automatic disclosure, to other state agencies conducting related inquiries, the Child Protection Advocate and the Probate Division. The Department would not be aware of other state agencies conducting related inquiries unless notified. Similarly, the Probate Division would have to notify the Department of the guardianship proceeding and request the records. Finally, the Department is happy to provide records to the Child Protection Advocate upon request. Providing every record created under Chapter 49 automatically to the Child Protection Advocate would be overwhelming for both the Department and the Child Protection Advocate.

The Department supports the disclosure upon request to those listed in the new paragraph (f). The Department also supports the deletion of the word "relevant". The Department proposes, however, to add language allowing the Department to withhold information that could compromise the safety of the child (please see the new (f)(2)).

In (f), the Department also suggests adding language to allow the Department to share its records related to CHINS assessments. These cases come into the Department through our Centralized Intake Unit and start out as Chapter 49 intakes. However, if they are placed on a CHINS track, as opposed to a Chapter 49 investigation or assessment, they are categorized as a Chapter 53 assessment. The Department would like to be able to share its records related to these cases with the appropriate services providers, etc.

In order to clarify confidentiality and improve communications among service providers and others working with children and families, the Department proposes adding subparagraph (4) to (f) to make clear that agencies, departments and service providers listed in this subsection who have mutual clients may share information among each other for the purposes of providing services and benefits.

Finally, the Department proposes that paragraph (g), which prohibits redisclosure of information unless authorized under this section, apply to all of 33 V.S.A. §4921.

*** Children in Need of Care or Supervision; Removal of a Child From the Home***

Sec. 9. 33 V.S.A. § 5301 is amended to read:

§ 5301. TAKING INTO CUSTODY

A child may be taken into custody:

(1) Pursuant pursuant to an order of the Family Division of the Superior Court under the provisions of this chapter;

(2) By by an officer ~~or a social worker employed by the Department for Children and Families~~ when the officer ~~or social worker~~ has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal from the child's current home is necessary for the child's protection;

(3) By by an officer ~~or a social worker employed by the Department for Children and Families~~ when the officer ~~or social worker~~ has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.

DCF Explanation: The Department does not support the authority of a DCF social worker to take a child into custody without the support of law enforcement. Currently, if a social worker thinks that a child needs to be removed from a home or other dangerous situation, the social worker calls 911. This protocol works well. Social workers are not law enforcement officers and do not carry weapons. The risk of danger to the child and social worker is too great to allow removal of a child without the assistance of law enforcement.

Sec. 10. 33 V.S.A. § 5302 is amended to read:

§ 5302. REQUEST FOR EMERGENCY CARE ORDER

(a) If an officer ~~or a social worker employed by the Department for Children and Families~~ takes a child into custody pursuant to ~~subdivision~~ section 5301(1) or (2) of this title, the officer ~~or social worker~~ shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the

officer determines that the child's immediate welfare requires the child's continued absence from the home.

(b) If the officer ~~or social worker~~ determines that the child's immediate welfare requires the child's continued absence from the home, the officer shall:

(1) Remove the child from the child's surroundings, contact the Department, and deliver the child to a location designated by the Department. The Department shall have the authority to make reasonable decisions concerning the child's immediate placement, safety, and welfare pending the issuance of an emergency care order.

(2) ~~The officer or social worker shall prepare~~ Prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the State's Attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, potential placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer ~~or social worker~~ shall contact the Department and the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer ~~or social worker~~ if the Department has additional information with respect to the child or the family.

DCF Explanation: The Department supports the ability of social workers to submit affidavits in support of a request for an emergency care order either on their own or as a supplement to the affidavit of law enforcement officers. Currently, social workers do submit affidavits in support of those of law enforcement.

*** Temporary Care Order; Custody ***

Sec. 11. 33 V.S.A. § 5308 is amended to read:

§ 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's welfare because any one of the following exists:~~ child. ~~child.~~ The Court shall include a finding that at least one of the following exists:

(1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(2) The child or another child residing in the same household has been physically or sexually abused by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian.

(3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(A) a custodial parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(B) a custodial parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(4) The custodial parent, guardian, or guardian has abandoned the child.

(5) The child or another child in the same household has been neglected and there is substantial risk of harm to the child who is the subject of the petition.

~~(1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.~~

~~(2) The child or another child residing in the same household has been physically or sexually abused by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian.~~

~~(3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:~~

~~(A) a custodial parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and~~

~~(B) a custodial parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.~~

~~(4) The custodial parent, guardian, or guardian has abandoned the child.~~

~~(5) The child or another child in the same household has been neglected and there is substantial risk of harm to the child who is the subject of the petition.~~

~~(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, 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 and sufficient to protect the welfare and safety of the child, including, in order of preference:~~

~~(1) A conditional custody order returning legal custody of the child to the custodial parent, guardian, or custodian, subject to such conditions and limitations as the Court may deem necessary and sufficient to protect the child.~~

~~(2)(A) An order transferring temporary legal custody to a noncustodial parent. Provided that parentage is not contested, upon a request by a noncustodial parent for temporary legal custody and a personal appearance of the noncustodial parent, the noncustodial parent shall present to the Court a care plan that describes the history of the noncustodial parent's contact with the child, including any reasons why contact did not occur, and that addresses:~~

~~(i) the child's need for a safe, secure, and stable home;~~

~~(ii) the child's need for proper and effective care and control; and~~

~~(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.~~

~~(B) The Court shall consider court orders and findings from other proceedings related to the custody of the child.~~

~~(C) The Court shall transfer legal custody to the noncustodial parent unless the Court finds by a preponderance of the evidence that the transfer would be contrary to the child's welfare because any of the following exists:~~

~~(i) The care plan fails to meet the criteria set forth in subdivision (2)(A) of this subsection.~~

~~(ii) Transferring temporary legal custody of the child to the noncustodial parent could result in substantial danger to the physical health, mental health, welfare, or safety of the child.~~

~~(iii) The child or another child residing in the same household as the noncustodial parent has been physically or sexually abused by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent.~~

~~(iv) The child or another child residing in the same household as the noncustodial parent is at substantial risk of physical or sexual abuse by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:~~

~~(I) a noncustodial parent receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and~~

~~(II) the noncustodial parent knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.~~

~~(v) The child or another child in the noncustodial parent's household has been neglected, and there is substantial risk of harm to the child who is the subject of the petition.~~

~~(D) If the noncustodial parent's request for temporary custody is contested, the Court may continue the hearing and place the child in the temporary custody of the Department, pending further hearing and resolution of the custody issue. Absent good cause shown, the Court shall hold a further hearing on the issue within 30 days.~~

~~(3) An order transferring temporary legal custody of the child to a relative, provided:~~

~~(A) The relative seeking legal custody is a grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, stepparent, sibling, or step-sibling of the child.~~

~~(B) The relative is suitable to care for the child. In determining suitability, the Court shall consider the relationship of the child and the relative and the relative's ability to:~~

- ~~(i) provide a safe, secure, and stable environment;~~
- ~~(ii) exercise proper and effective care and control of the child;~~
- ~~(iii) protect the child from the custodial parent to the degree the Court deems such protection necessary;~~
- ~~(iv) support reunification efforts, if any, with the custodial parent;~~
- ~~(v) consider providing legal permanence if reunification fails.~~

(1) an order granting temporary legal custody of the child to a custodial parent;

~~(1)~~ (2) an order transferring temporary legal custody of the child to a noncustodial parent or to a relative;

~~(2)~~ (3) an order transferring temporary legal custody of the child to a person with a significant relationship with the child; or

~~(3)~~ (4) 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 issue a conditional custody order pursuant to subsection 5102(5) consistent with the Court's determination of the best interests of the child.

~~(d)(C)-(e)~~ (e) In considering the suitability of a relative under this subdivision (3), 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 ~~Department~~ Commissioner, pending such investigation.

~~(4) A temporary care order transferring temporary legal custody of the child to a relative who is not listed in subdivision (3)(A) of this subsection or a person with a significant relationship with the child, provided that the criteria in subdivision (3)(B) of this subsection are met. The Court may make such orders as provided in subdivision (3)(C) of this subsection to determine suitability under this subdivision.~~

~~(5) A temporary care order transferring temporary legal custody of the child to the Commissioner.~~

~~(e)(e) (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 A finding that remaining in the home is contrary to the ~~child's welfare~~ best interests of the child and the facts upon which that finding is based; ~~and~~.

(B) a 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 ~~necessary for the protection and welfare~~ in the best interests of the child, such as including:

(A) ~~Establishing~~ establishing parent-child contact ~~under such terms and conditions as are necessary for the protection of the child. and terms and conditions for that contact;~~

~~(B) Requiring the Department to provide the child with services, if legal custody of the child has been transferred to the Commissioner;~~

(B) requiring the Department to provide the child with services, if legal custody of the child has been transferred to the Commissioner;

~~(C) (B) Requiring requiring the Department to refer a parent for appropriate assessments and services provide services for the child and the family, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration.;~~

(C) requiring the Department to refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration;

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

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

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

~~(G) (F)~~ Establishing establishing protective supervision and requiring the Department to make appropriate service referrals for the child and the family, if legal custody is transferred to an individual other than the Commissioner.

(G) establishing protective supervision and requiring the Department to make appropriate service referrals for the child and the family, if legal custody is transferred to an individual other than the Commissioner.

(3) In his or her discretion, the Commissioner may provide assistance and services to children and families to the extent that funds permit, ~~notwithstanding subdivision (2)(B) of this subsection~~ notwithstanding subdivision (2)(B) of this subsection.

~~(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the Commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the Commissioner.~~

DCF Explanation: The Department supports the concept of making clear that the best interests of the child control in temporary care orders. The Department suggest that the language in §5308(a)(1)-(5) be retained to define what best interests means.

The Department also supports taking out language in the temporary custodial hierarchy that refers to an order of preference. The Department proposes to reinstate language allowing the court to order conditional custody orders for parents and guardians.

The Department does not support the change in language directing the Department to provide services to all children and families whether or not the children are in DCF custody. This is a significant expansion of the current statute and DCF's practice. DCF agrees that the focus should remain on protection of the child. A focus on services to all families (as opposed to the child) has potential for redirecting the legal conversation away from the child's best interests to whether DCF provided services when and to whom.

Under the current statute, the Department provides services to the child when the child is in custody and in those cases, makes appropriate referrals for services for parents. Also, the Department currently makes referrals for children and their caregivers when custody is transferred to an individual other than DCF. DCF proposes retaining the original statutory language with regard to providing services.