



## **DEPARTMENT FOR CHILDREN AND FAMILIES**

To: Senator Dick Sears, Chair, Senate Judiciary Committee  
Senator Claire Ayer, Chair, Senate Health and Welfare Committee

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

Date: January 28, 2015

Subject: S.9 Testimony on Sections 7 through 11 (Confidentiality and Custody)

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Thank you for the opportunity to provide comments and suggested language on the confidentiality and custody provisions of S.9.

Attached to this memo, please find DCF's proposed amendments to the text of S.9, indicated in yellow highlighted text. Please note that we included the original text of S.9 with strikethrough and underlined text as a starting point for our suggested changes.

### Summary of Comments

DCF supports the overarching goal of improving communication and information sharing, including information sharing with mandated reporters working with a child who is the subject of a report. We also support some automatic disclosures of DCF records, though would urge you to reconsider the automatic disclosure of redacted investigation files for the reasons outlined below. We have also included some suggestions for providing disclosure upon request, rather than automatic, to other agencies making related inquiries, the Child Protection Advocate and the Probate Division. In addition to S.9's provisions regarding disclosure of DCF's records, we propose adding a provision to §4921 that clarifies that agencies, departments and service providers working with children and families may share information among each other for the purposes of providing services and benefits to their mutual clients.

In the custody provisions of S.9, DCF does not support the concept of allowing social workers to take a child into custody without assistance from law enforcement as the risk of danger to the child and social worker is too great. We do support the ability of social workers to submit affidavits in support of emergency care orders. In the temporary care order provisions, DCF supports the change to a best interests of the child standard. In order to define best interests, DCF proposes to retain paragraphs (a)(1)-(5) of §5308. Finally, DCF respectfully requests that the proposed language in S.9 that significantly expands the services that are to be provided by DCF to children and families as part of a temporary care order is not included in the final bill.

## I. Confidentiality

### A. 33 V.S.A. §4913 (Sec. 7 of S.9)

This statute addresses the sharing of information with mandated reporters. DCF respectfully suggests that changes to §4913 are not necessary and that the proposed changes to §4921 (see below) accomplish the goal of clarifying the confidentiality provisions in Chapter 49 of Title 33, including the sharing of information with mandated reporters providing services to children and families who are the subject of reports to the Department.

DCF proposes to retain the original language in 33 V.S.A. §4913.

### B. 33 V.S.A. §4921 (Sec. 8 of S.9)

This statute addresses the confidentiality of the Department's Chapter 49 records, which includes records of assessments, reviews and responses initiated under Chapter 49.

- Paragraph (c) – The Department respectfully proposes to restore the original language of this paragraph that addresses who may receive redacted investigation files to disclosure “upon request” rather than automatic disclosure.
  - A redacted investigation file is defined in §4912 as the intake report, the investigation activities summary and case determination report that are amended in accordance with confidentiality provisions of §4913. In redacting an investigation file for disclosure under this subsection, the Department redacts the name of the reporter and other individually identifying information before disclosing the file.
  - Persons eligible to receive the redacted investigation file under this provision include the child's parents, foster parents and guardians who are not the subject of the investigation as well as the person who has been alleged to have abused or neglected the child.
  - In all cases of Chapter 49 investigations, parents and guardians are promptly informed by the Department when a report has been accepted as a valid allegation as well as the Department's response to the report.
  - Not all parents and guardians also want the redacted investigation file. The Department is concerned about automatically sending these redacted investigation files to people who are not requesting them as providing information when it is not requested poses a risk of confidentiality of the information and potential stigma for the child.
  - Foster parents will have access to the full DCF record (not just the redacted investigation file) pursuant to the proposed paragraph (f) (see below).
  - Also, persons alleged to have abused or neglected the child may request the redacted investigation file for purposes of requesting a review of the substantiation. The Department does not support sending the redacted investigation file to every person alleged to have abused or neglected a child when it is not requested as this also poses a risk to the confidentiality of the information, which could potentially negatively impact the child.
- Paragraph (d) – This paragraph addresses the disclosure of DCF's Chapter 49 records (not redacted and also including assessments, not just investigations as in the paragraph above). S.9 proposes to make disclosures under this paragraph automatic. DCF supports the automatic disclosure of records to many of those listed in S.9 (court,

parties to a juvenile proceeding and others), but proposes to add a paragraph (e) to S.9, which clarifies that disclosure is upon request rather than automatic for:

- Other state agencies conducting related inquiries – The Department would not be aware of these other related inquiries unless notified.
  - Child Protection Advocate – The Department supports providing its records to the Child Protection Advocate. Providing every record automatically, however, would be overly burdensome for both the Advocate and the Department.
  - Probate Division involved in guardianship proceedings – The Department supports providing records in these cases, but would need to be notified by the Probate Court that there is a guardianship proceeding.
- Paragraph (f) – This paragraph applies to the sharing of DCF records, upon request, with persons, organizations and agencies, including empaneled MDTs, foster care providers, teachers, health care providers and others, providing services to children and families who are the subject of reports. The Department supports providing records upon request to those listed in this paragraph. The Department also supports the deletion of the word “relevant” in this paragraph in order to promote the sharing of information. The Department respectfully suggests the following changes to this paragraph:
    - The Department would like to retain authority to withhold records when it believes that disclosure could compromise the safety of the reporter or child who is the subject of the report.
    - The Department proposes adding a subparagraph (3) to clarify that the Department may also share other records related to its child protection activities. The provisions of §4921 apply to DCF’s Chapter 49 records, which are its Chapter 49 investigations and assessments. All intakes that come into DCF start out as Chapter 49 intakes. Sometimes a Chapter 49 investigation or assessment is opened, but other times the case heads down a CHINS assessment track and is not labeled a Chapter 49 record. This proposed language in (3) allows DCF to share its records in these cases.
    - In order to address not just confidentiality, but also better communication, the Department also proposes to add a new subparagraph (4) to make clear that agencies, departments and service providers listed in this subsection working with children and families may share information among each other for the purposes of providing services and benefits to their mutual clients.
  - Paragraph (g) – Finally, the Department proposes that this paragraph, which prohibits redisclosure of information unless authorized under this section, apply to all of 33 V.S.A. §4921.

## II. Custody

### A. 33 V.S.A. §5301 (Sec. 9 of S.9)

The Department does not support the authority of a DCF social worker to remove a child without the support of law enforcement as the risk of danger to the child and social worker is too great. The Department respectfully suggests retaining the original language of §5301.

B. 33 V.S.A. §5302 (Sec. 10 of S.9)

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. The only changes suggested to this section include removal of the language that refers to the authority of social workers to remove a child on their own.

C. 33 V.S.A. §5308 (Sec. 11 of S.9)

This section addresses temporary care orders. The Department supports the concept of making clear that the best interests of the child controls in temporary care orders.

- Paragraph (a) – The Department suggest that the language in §5308(a)(1)-(5) be retained to define what best interests means.
- Paragraph (b) - The Department also supports taking out language in the temporary custodial hierarchy that refers to an order of preference. The Department proposes adding a new subparagraph (1) to make clear that parents can be granted temporary custody.
- Paragraph (c) – The Department proposes the addition of a new paragraph (c) to allow the court to issue conditional custody orders consistent with the Court’s determination of the best interests of the child for temporary care orders under paragraph (b) ordering temporary custody to parents, noncustodial parents, relatives or others.
- Paragraph (d) – The Department supports the proposed language in S.9 that allows the Court to direct the Department to conduct an investigation of a person seeking custody of a child and the suitability of that person’s home.
- Paragraph (e)(2) – This is the provision that allows the Court to order other provisions as may be in the best interests of the child. DCF supports the change to the best interests standard, but respectfully suggests that the provisions regarding services that DCF provides to the child and family are not changed from the statute that is currently in effect.
  - 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’s proposed changes to §5308(e)(2) reinstate the original statutory language.