

Memo

To: Senate Health & Welfare Committee
From: Pamela A. Marsh, J.D., CWLS
Date: February 5, 2015
Re: S.9, Sections 7 & 8

Thank you for inviting me to comment on Sections 7 and 8 of S.9.¹ This is a long and complicated bill, intended to avert the tragic deaths of children in custody or formerly in the custody of the Department for Children and Families, Child Welfare Division [hereinafter DCF]. Overall, while the intent of the bill is good, it goes way beyond what is needed to try to prevent such tragedies. We must also recognize that child deaths, in or out of custody, are not completely preventable. What is needed is a balanced approach that provides DCF with the tools and incentives needed to reduce the likelihood of such incidents in the future.

Section 7 of S.9. This section renumbers several paragraphs, and adds the provision that, “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.” I am concerned with the breadth of this provision with respect to non-mandated reporters. While I could endorse this provision for mandated reporters only, for other reporters, I would limit the response to the reporter to whether the report was accepted or rejected, and a brief summary of the reasons for the decision taken.

I think that some people who have read this section have misunderstood the provision to open up the entire investigation file to the reporter, rather than the portion directly relating to the report. However, even though the Bill is more narrowly tailored than some have read it, except for mandated reporters, I believe opening the entire investigation of the report to the reporter could easily result in losing confidentiality for families involved with DCF. We want to encourage families to work with DCF and accept services that can avoid children coming into custody, rather than making families fear that there is no confidentiality in the process.

¹ I believe you have my background and qualifications, along with my resume, on file from my testimony to the Special Committee last summer, so I am not addressing them now. Although I am the chair of the Juvenile Law Section of the VBA, too few Section members have been involved in our meetings for me to speak on behalf of the Section in this matter.

Most mandated reporters are subject to confidentiality rules (doctors, counselors, school employees, day care employees) that would lead me to believe that they would not inappropriately share information that came back to them regarding their reports. However, random reporters, such as friends, acquaintances, relatives, and strangers, may not feel obliged to maintain any confidentiality as to the Department's response. It is often information from such reporters that alerts the Department to the need to intervene in some manner in a family situation, yet sharing too much information back could be detrimental to the family's engagement with services. Therefore, for such non-mandated reporters, I would suggest that they get a little more information than they do at present, but with the proviso that the report and the case remains confidential. Such reporters should be told whether the report was accepted for assessment or investigation. If it was accepted, the reporter may be told when the investigation is complete and whether services have been offered to the family. If a report is not accepted, the reasons for not accepting the report should be briefly explained. For example, if it was not accepted, the response may be that the report did not meet the Department's criteria for accepting reports, with an explanation of what the criteria are. Or it might be that the report was not accepted because the information could not be verified, allowing the reporter to bring forth more information if there is more that might be helpful. Or it could be that the report was not accepted because there is already an ongoing assessment or investigation addressing the same or similar issues. I do not support turning over even the portion of the investigation file related to the report to the non-mandated reporter.

Section 8 of S.9. This section provides for the sharing of information between DCF and other parties. Subsection (d) eliminates the necessity of the enumerated persons requesting the DCF file. DCF must affirmatively disclose its files to the court and parties involved in a juvenile proceeding. Such a step might have averted one of the child deaths.² Communication with all parties, including the attorneys for the parents, in a pending Chapter 53 case, is essential.

Such information is also to be reported to the Child Protection Advocate created under Section 13 of S.9.³ I'm not sure how practical this would be – it essentially means that every single case file for every child in custody would be sent to the office of the Child Protection Advocate. Surely that is not the intention of this provision. If the Office of the Child Protection Advocate is created, which may be beneficial, I would allow the Child Protection Advocate to request to review files as it wishes, as well as any files brought to its attention by persons aggrieved by the actions of DCF.

Paragraph (e)(1) of Section 8 requires the disclosure of Department records, upon request, to treatment teams, health and mental health providers, educators working with the child or family, and licensed or approved foster care givers, as well as mandated

² It appears in the case of D.S., DCF had information that was not shared with the parties or the court that may have implicated the mother's boyfriend in the child's broken leg, and which may have affected the decision to reunify her to the household with the boyfriend present. In addition, the police may have had information not shared with DCF. It also appears that neither the deputy state's attorney, the child's attorney nor the GAL reviewed the DCF file, and that information given to the court was incomplete, creating a "perfect storm" resulting in a tragic reunification decision.

³ I believe the reference to section 8001 of this title is inaccurate, as the proposed Child Protection Advocate is to be created in Title 3 § 2284.

reporters. I agree with the sharing of information to all of these categories, except for the mandated reporters, unless they happen to fit one of the other categories to whom the information must be disclosed. In other words, a mandated reporter who has made a report but is no longer actively working with the child or the family should not be given ongoing case work information.

Paragraph (e)(2) of Section 8 is designed to ensure that the reports remain confidential, and similar to 33 V.S.A. § 5118(i), imposes a fine of up to \$2000.00 for intentional dissemination of this confidential material.

I believe that this is a reasonable compromise, designed to ensure that necessary information is shared with the people who are working with the child and family, all of whom are bound by confidentiality. More information from reliable sources such as doctors, therapists, educators and multidisciplinary teams helps create a stronger plan for the child and in determining whether reunification is in the best interests of the child. I support the inclusion of foster parents in this group; however, I am not sure what the drafters meant by “licensed or approved foster care givers.” Is that intended to include conditional custodians, who are not parents, but who are caring for the child?⁴ I would suggest that paragraph (e)(1)(D) be rephrased to clarify what is meant by “licensed or approved foster care givers.”

I thank you for the opportunity to speak as to these aspects of S.9, and welcome your questions as to these remarks and other sections of the Bill.

⁴ I understand that the proposal to eliminate conditional custody orders in this Bill has been reconsidered, and that conditional custody orders are back in a draft that has not been released. I strongly support that – without conditional custody orders, some of which go to parents, but many of which go to relatives, even more children would be taken into DCF custody. There are too few foster homes as it is, and research shows that children that can safely remain at home or with family are generally likely to be better than those removed to DCF custody for any significant length of time.