

AHS
Proposals for Legislative Initiatives for 2015
Internal Document

Department: Department for Children and Families

Division: Family Services

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Issue or Legislative "Title": Revisions to DCF's Confidentiality Provisions, Human Services Board Practices, Registry Review Procedures and Other Changes to Support Child Safety and Protection

Proposal for Legislative Initiative

- 1. Describe your legislative proposal and the issue or problem it addresses. Please note if there is existing legislative that needs to be changed or modified.**

Confidentiality

- 1. This proposal includes a new provision to be added related to the confidentiality of DCF's records (proposed new section in title 33).**

DCF's statutes do not include one general statement of confidentiality. Rather, confidentiality provisions are scattered throughout different sections of title 33 by subject matter. For example, confidentiality of registry review records is found in 33 V.S.A. §4916, while the confidentiality of the Department's records of abuse and neglect are discussed in 33 V.S.A. §4921. There are other provisions that generally apply to confidentiality of DCF's records and information that are found in 33 V.S.A. §§105 and 111. DCF proposes to work with legislative counsel to improve the clarity of DCF's confidentiality provisions in title 33 to ensure that service providers and other departments and agencies in government may appropriately share information to advance the mission of child protection.

Human Services Board Provisions

- 2. HSB chapter 49 child abuse and neglect substantiations may be reversed by the Secretary of AHS (3 V.S.A. §3091).**

In order to improve child safety, the Department proposes to add to the Secretary's statutory authority the ability to reverse HSB decisions relating to substantiations of child abuse and neglect. The Secretary has authority currently to reverse HSB decisions regarding Reach Up, child support and Medicaid. We propose adding §4916b substantiations to that list.

- 3. Makes clear that children who have who have been allegedly abused or neglected are not required to testify at the hearing and that their hearsay evidence may be admissible (33 V.S.A. §4916(b)(3)).**

This change is necessary to prevent child victims from having to testify about the abuse they suffered and confront their abuser, which further harms the child.

- 4. Decisions by the Family Services Division (FSD) whether to assess or investigate a report of suspected child abuse is not reviewable by the HSB (§4915(g)).**

The purpose of the HSB is to review actions by the State that affect the receipt of assistance, benefits or services. Families who are working with FSD in either an investigation or an assessment have the same access to services by the Department. The decision about which track the family is placed should not be reviewable by the HSB and is beyond its authority.

Further, at the time that these kinds of cases are heard by the HSB, the family involved has already been working with the Department for months. These decisions negatively affect that process as they require the Department to start over with the family on a different track.

- 5. Similarly, an assignment of a child protection level by FSD is not reviewable by the HSB (§4916(f)).**

The Commissioner of DCF is tasked with the responsibility of creating a Child Protection Registry that includes a system of child protection levels based on an evaluation of the risk the person responsible for the abuse or neglect poses to the safety of children. The HSB has the authority to review the substantiation decision, but this authority should not be extended to the child protection level assigned by the Commissioner.

- 6. Proposed language to clarify that information related to a case where a person has a deferred sentence that has since expired is relevant evidence in an HSB hearing on a substantiation that arose out of the same incident (§4916b(4)).**

This language is necessary to respond to some HSB rulings that information related to deferred sentences that have since expired are not relevant in the related substantiation case.

- 7. In cases where HSB hearing has been stayed upon request of petitioner because of a pending related criminal or family division case, this proposal requires that the petitioner notify the HSB within 30 days after the pending related matter is resolved so that the stayed hearing can be reactivated. Failure to do so forecloses further review (§4916b(c)).**

HSB would not have knowledge of the conclusion of the pending related case since HSB is not a party to the case. If the petitioner does not notify HSB, the administrative review could be pending for months and years. This proposal places the burden on the petitioner, who requested the review, to notify HSB so that the review may be completed.

Commissioner's Registry Review Unit

- 8. Clarification that there is no subpoena power to registry review conferences and registry reviews are not evidentiary hearings where witnesses testify (§4916a(d)).**

The Registry Review hearing is not a contested case under the Vermont Administrative Procedures Act and, therefore, the rules of evidence do not apply.

- 9. In the cases where a registry review has been stayed because of a pending related criminal or family division case, this proposal requires that the petitioner notify the Commissioner's Registry Review Unit within 30 days after the pending related matter is resolved so that the stayed review can be reactivated. Failure to do so forecloses further review (§4916a(c)(2)).**

The CRRU would not have knowledge of the conclusion of the pending related case since CRRU is not a party to the case. If the petitioner does not notify the CRRU, the review could be pending for months and years. This proposal places the burden on the petitioner, who requested the review, to notify the CRRU so that the review may be completed.

- 10. Proposed language to state that there is no right of expungement from the child abuse registry for a person who is listed on a state's sex offender registry (§4916c(a)).**

Expungement is appropriate when a person no longer presents a risk to the safety or well-being of children. The legislature has stated as a matter of public policy that persons listed on the sex offender registry are a danger to the public. Therefore, DCF should not grant expungement for persons substantiated for child abuse or neglect if the person is currently listed on any state's sex offender registry. Please note that DCF is currently working with the Director of VCIC to get access to the NCIC database.

- 11. DCF may deny a petition for expungement based solely on the nature or number of substantiations (§4916c(b)).**

In cases where there has been severe physical abuse or sexual abuse or a person has been substantiated for multiple incidents of abuse, the potential for serious harm is too great a risk to permit the removal of the person's name from the Child Protection Registry.

General Provisions - DAIL

- 12. This proposal includes language to permit DCF to receive the Department of Disabilities, Aging and Independent Living's (DAIL) Vulnerable Adult Protection Registry information in certain circumstances, for general child protection purposes and in considerations of petitions for expungement from the DCF Child Protection Registry (§6911).**

DCF receives reports and conducts investigations into allegations of abuse or neglect of children. DCF does not have access to DAIL's Adult Protection Registry. DCF and DAIL intervene with persons with similar behaviors and the evidence of maltreatment of either a child or an adult could elevate potential

risk for the other population. Currently DCF considers petitions for expungement from its Child Protection Registry without access to DAIL's Adult Protection Registry. DCF's threshold for expungement from its Child Protection Registry is that the person no longer is a risk to the safety or well-being of children. DCF's Child Protection Registry and DAIL's Adult Protection Registry populations contain names of persons who have engaged in similar behaviors. In order to assess risk thoroughly it is necessary to have access to DAIL's Registry information. This concept was proposed last session in H.680 (Rep Pugh), but later tabled.

General Provisions – Judiciary

- 13. This proposal includes a clarification of the process for disclosure of records to probate courts for in camera review as well an addition of a similar provision to family court for use in divorce, parentage and other cases (§4921(d)).**

These proposed provisions allow the probate and family courts to conduct an in camera review of DCF records in order to determine whether the records are relevant to the proceedings in these courts.

- 14. Addition to §5223 to allow the court to provide notice to DCF in delinquency proceedings.**

Courts have not been providing notice to DCF of petitions filed in delinquency proceedings as they have felt that statutorily they were not authorized to include DCF in the notice. DCF needs to know about these petitions and is required to file a disposition case plan once the merits have been decided. Judge Davenport suggested that we modify §5223 to include DCF in the notification of the proceedings and stated that she does not believe that the judiciary would object to this proposed change.

- 15. DCF proposes to change some of the statutory timelines related to disposition case plans in juvenile delinquency and CHIN proceedings (§§5229, 5230, 5315 and 5316).**

Currently, under Vermont law, DCF is required to file disposition case plans in these proceedings no later than 28 days following a decision on the merits. The statute goes on to provide that no later than 35 days following a decision on the merits, the disposition hearing will be held. Based on this timeline, the disposition case plan is to be filed at least seven days before the disposition hearing. In practice, the disposition hearings are not held within the 35 day timeframe. Rather a conference is scheduled and the matter is continued. This proposed change allows the Department to file the disposition case plan at least seven days before the hearing rather than filing it 28 days after the merits.

This proposed change ensures that the case plan is the most current and up to date plan. It also eliminates the current problem where DCF prepares a case plan following the merits, but then has to revise/redraft the case plan later down the road when the disposition hearing is finally scheduled.

- 16. Finally, DCF proposes an amendment to the Title 14 guardianship provisions to provide notice to DCF when a guardian dies and also to improve clarity (14 V.S.A. §§2666 & 2667).**

Under the current law, when a guardian dies, custody of the child automatically reverts back to the Department. However, DCF does not have any way of knowing that the guardian has died and that the

child's custody has been transferred back to the Department other than by chance. This proposed change requires the probate division to notify DCF. This proposed change also clarifies the role and authority of DCF as the guardian of the child in these situations.

2. Why is this proposed legislative initiative or change needed?

Please see above.

3. What are likely to be the fiscal and programmatic implications of this for your Department?

These proposed changes are aimed at improving child safety and protection by improving the Department's operations. These proposed changes also seek to improve the exchange of information that the Department feels is necessary to do its work. Finally, the Department and outside stakeholders will benefit from clarifying DCF's confidentiality provisions.

4. What might be the fiscal and programmatic implications of this proposal for other departments in state government, and what is likely to be their perspective on it?

The HSB will likely object to allowing Secretary reversal of HSB decisions of child abuse and neglect substantiation cases as this proposed change challenges the authority of the Board. The Department's position is that the HSB improperly overturns some cases of substantiated abuse and neglect and that this proposed change is necessary to protect the safety of children. As an alternative to this proposal, the Department considered and rejected the idea of changing the standard of review by the Board of these cases from de novo to abuse of discretion. The Department rejected this proposal because the HSB is currently the only stage of review of these decisions that allows for evidentiary findings. Changing the standard of review at the HSB level would mean that the Department would have to change the internal Commissioner's Registry Review Unit (CRRU) process to allow for evidentiary hearings, which would require more Department staff and resources.

The HSB will likely also object to the change to allow hearsay testimony of child victims. However, it should be noted that the HSB has stated in a memo earlier this year that DCF substantiation hearings often involve multiple status conferences, detailed preliminary rulings and lengthy and highly contested evidentiary hearings and that the HSB cannot meet its current caseload and timeliness demands. This change to allow children's hearsay testimony should help to address this problem somewhat.

The removal of jurisdiction by the HSB of Department decisions on assessment/investigation tracks and child protection levels should also help somewhat to alleviate the HSB caseload pressure. Please note, however, that the HSB will also likely object to these changes. Only cases on investigative tracks may result in child abuse and neglect substantiations. Assessment track cases do not. The HSB has challenged the investigative track placement in order to conclude that the Department should not have substantiated a person for child abuse/neglect. The assigned child protection registry level determines how long a person's name appears on the registry and when and how names are expunged from the registry. HSB decisions on this issue can affect child safety if the decision results in a person's name being removed from the registry sooner.

Finally, the HSB will also likely object to the proposed change to clarify that information related to deferred criminal sentences that have expired is relevant and admissible evidence in a related child abuse substation hearing. The Department's proposal is in response to HSB rulings that this information is not relevant and admissible evidence.

With regard to the proposed change regarding DAIL's Adult Protection Registry, DCF could have an electronic "read only" access to DAIL's registry. In DCF expungement considerations, this provision would only apply in those cases where DAIL has also substantiated the same person. In 2012, DCF had less than 200 petitions for expungement and it would be a smaller subset of that number where DCF would request copies of DAIL materials. Last year, DCF and DAIL worked together on this issue and at that time DAIL understood and supported this proposed change. DCF is notifying DAIL that it seeks to revive this proposal.

5. What might be the fiscal and programmatic implications of this proposal for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc),

DCF believes that the Vermont Network to Prevent Domestic and Sexual Violence will support the sharing of adult abuse registry information.

It is not known at this time whether outside stakeholders such as defense attorneys will oppose some of the changes such as the proposed change to the timing of the filing of the disposition case plan and removal of the ability of the HSB to review some DCF decisions.

Defense attorneys will likely oppose the change to allow hearsay evidence for children's testimony in HSB hearings and Secretary reversal of HSB decisions.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

6.2 Who else is likely to oppose the proposal and why?

7. Potential Legislative Sponsors

DCF believes that some members of the House Human Services committee and the Senate Health and Welfare committee would support these changes. DCF has approached Representative Pugh as a sponsor.