

DRAFT



DEPARTMENT FOR CHILDREN AND FAMILIES

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CC: Hal Cohen, Dixie Henry, Monica Hutt, Cindy Walcott, Dawn O'Toole, Karen Vastine, April Allen, Leslie Wisdom
From: Ken Schatz, Commissioner
Date: January 20, 2015
Subject: DRAFT Proposed Talking Points for S.9 Testimony

Please see attached draft proposed talking points for Commissioner Schatz's January 21 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.

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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 (excluding reference to the HAEU position pilot), 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 policy on serious physical injury (68) to mandate 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 parent is discharged from 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;
 - also 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% rise. 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 order 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.

*women/domestic
abuse / power imbalance*

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 extremely broad in scope, and criminalizes far too many behaviors.
 - 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 and certainly broader than the "person responsible for" a child currently used in Ch. 49. As written, this would include foster parents, teachers, coaches, scout leaders, etc. This new crime could have a chilling impact on the recruitment of foster parents and other volunteers.
 - o It is unclear how "knows, or reasonably should have known" will be proven.
 - o Definition of "bodily injury" would make corporal punishment by parents a crime. Is that the intent?
 - o There is no exception for accidents – parents and others who accidentally cause "physical pain, illness or any impairment of physical condition" would be found guilty of a crime under this proposed language.
 - o "Death" of a child is not included in the definitions of bodily injury or serious bodily injury.
 - o Victims of domestic violence may be inappropriately and disproportionately affected due to the dynamics of power and control in their relationships.
- Other recommendations in this bill may improve the child protection system and lessen the need for the creation of this new crime (ex. clarity on SIUs)
- 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)

- Value joint investigations.*
- 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.
 - *Appreciate bodily damage.* We generally support these changes, as currently DCF has a statutory responsibility to ask for assistance from SIUs, but SIUs have no obligation to provide assistance (presumably a budget impact on SIUs).
 - 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

- Conceptually support. Hard to allow for these contacts. May reduce parental rights disputes. Needs fine-tuning. Questions about etc*
- 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 work is required to define several key elements of this section. For example:
 - o "Best interest" of the child is not defined.
 - o It is unclear which court (Probate vs. Family Court) will be responsible for making the best interests determination. The legislation amends the adoption statute, which is in Probate Court, but TPRs occur in Family Court.
 - o Potential adoptive parents would be asked to enter into legally enforceable agreements that will have far-reaching ramifications after adoption is finalized. Birthparents and children in DCF custody will be represented by counsel as they are parties to CHINS proceedings. Should adoptive parents have benefit of advice of counsel as well? Should this be court-appointed counsel paid for by the State if adoptive parents cannot afford an attorney?
 - o Should the order for contact be part of the TPR or a separate order?
 - o What if the adoption falls through or dissolves sometime in the future? Does this have an effect on the TPR?
 - o The provision which allows the adoptive parent, guardian *ad litem* (GAL), or court to petition for changes does not take into account that there will not be a GAL or any court involvement several years after adoption proceedings have concluded.
 - o What court will handle the enforcement? Who will pay for mediation?
 - DCF will research how post-adoption agreements are handled in other states and can make recommendations for clarifying this section.

Abuse reports can go to people
Chapter 49 § on reports; can go to employees.

Diff. to broad scope of people reported & substantiated. Exposure to substances; bodily injury.

Section 6: Definitions of Harm, Injury, and Abuse - Not challenging

- 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.
 - Also, 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, as we 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 is too low a bar, as a parent could be substantiated for causing pain by accidental means. Theoretically, parents might not seek needed medical treatment for an accidental injury, fearing child protection involvement, which could result in job loss.
 - New proposed definition eliminates "death" since it cross-references the criminal statute and only includes "substantial risk of death".
 - o 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.
 - o Sexual abuse: The definition of sexual abuse has been narrowed with this change that ties the definition of sexual abuse to criminal statutes. The criminal definitions set too high of a bar.

- Currently, under Chapter 49, DCF is not required to prove sexual intent of 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 with both training and staffing implications.
- 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.
- Using the proposed definitions, an analysis of one week's worth of intakes suggests that the number of accepted reports would double. This has clear implications for DCF's workforce and resource needs.

Sections 7&8: Confidentiality → *mandated reporter not getting enough info.*

- This section seeks to improve feedback to mandated reporters and relax confidentiality requirements to allow greater information sharing with services 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 automatic disclosures are overly broad and DCF does not support the general concept of automatic disclosure.
- This proposal does not address access to information that is connected to a juvenile court proceeding (treatment teams currently allow for limited sharing on a need-to-know basis).
- Other concerns regarding automatic disclosure include:
 - There are many types of mandated reporters with varying levels of involvement with the family. It would be helpful to clarify what information must be shared to be sure there are no conflicts with federal child welfare laws as well as existing statutes that protect the confidentiality of health and substance abuse records.
 - It will be difficult to comply with the requirement to automatically share information with "other state agencies" that are conducting inquiries, as DCF will not know that other agencies are involved unless we are informed.
 - Given the definition of the Child Protection Advocate's role as investigating and resolving complaints on behalf of persons in the child protection system, we do

- o not believe it is necessary to automatically disclose all case files with this Office to fulfill the legislative intent of this oversight body.
- o There are workload implications for requiring the redactions and disclosures of all case files. (It takes one hour to redact a simple case file, but approximately four hours or more to redact complex case files. DCF estimates that 3.5 new FTEs would be required to implement this provision.)
- With regard to the permissive disclosure section, DCF also has some concerns:
 - o The definition of relevance has been removed in the new requirement to share information with service providers and mandated reporters. Further definition is needed in this area, as it is unclear whether this requirement applies to a particular child or all children in the family.
 - o There are also concerns that this requirement will undermine safety in cases where domestic violence offenders seek access to information.
 - o The Department would like clarity that this provision requires a link to current involvement with the child and relevance to that relationship/services.
- 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.

Section 9: Removal of a Child from the Home

- need definition

- 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.
- In addition, DCF is also concerned with how this language will work with the new proposed Failure to Protect crime and the implications for social workers.

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.

- 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.
- 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.
- 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 suggests 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 implies that DCF will be responsible for providing services for all children and families with any level of involvement with the Department. This has significant implications for DCF's budget.
- Focus on services to families (as opposed to the child) has potential for redirecting the legal conversation away from child's best interests to whether DCF provided services when and to whom. Also has the potential to encourage reunification when it may not be appropriate.
- 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: Joint Legislative Child Protection Oversight Committee - good

- This section seeks to establish and define a legislative oversight committee for child protection. DCF supports the creation of this Committee and welcomes the opportunity to work with legislative partners to strengthen the child protection system.
- We support the confidentiality provisions included in this section, but it would be helpful to consider consequences for re-disclosure of confidential information (as noted above in records shared with mandated reporters and others involved with the family).

Sections 13 & 14: Office of the Child Protection Advocate

- This section establishes a permanent Office of the Child Protection Advocate to provide ongoing oversight and advocacy on behalf of individuals involved with the child protection system.
- We support the introduction of oversight mechanisms, but it would be helpful to clarify some aspects of the proposed office.
 - As an Office within the Agency of Administration, the Child Protection Advocate will not be able to pursue judicial remedies against state agencies.
 - The Office's role in assisting "persons" involved with the child protection system is very broadly defined. Does the committee intend for this Office to assist children, parents/caregivers, or both? What about mandated reporters and others? Also, what about DCF employees and community service providers?
 - There is a potential duplicative role for the Office of the Child Protection Advocate and GALs/attorneys for the parent and child when the Child Protection Advocate is involved in legal proceedings.
 - It would be helpful to consider consequences for re-disclosure of confidential information.

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 written broadly 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 which encourages 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 Requiring unannounced visits has a dampening effect on family engagement, and so it is not indicated in all cases, particularly those in the assessment track. This also has substantial workload implications, as clients are often not home for unannounced visits.
 - o We believe it is important to assess all individuals in a household or child care setting for criminal history, but there is a cost associated for fingerprint-supported checks and workload. We currently have authority for criminal history checks for foster homes. If the goal is to allow record checks without consent, could amend Title 20. 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.
 - o Existing DCF policies already provide standards for filing paperwork and reports in a timely fashion. We fall short of attaining these standards due to workload pressures. A separate House bill proposes to revise certain timelines, making it easier for DCF to be in compliance.
- 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.

- The pilot project that seeks to assess whether court proceedings can be improved through the use of case managers does not address the fact that many delays in the court system are due to a lack of dedicated attorneys for certain courts.

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.

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