

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.35

Name of Bill: An act relating to access to Department for Children and Families' records of abuse and neglect

Agency/ Dept: AHS/DCF

Author of Bill Review: Leslie Wisdom

Date of Bill Review: February 19, 2015

Related Bills and Key Players: S.9, DCF's proposed legislation (no bill # yet)

Status of Bill: (check one): ☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both

Recommended Position:

☐ Support ☐ Oppose ☐ Remain Neutral ☒ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses.

This bill proposes access to DCF's confidential records in two different instances:

- This bill proposes to allow access to parties in a Family Court custody proceeding to DCF's records relating to assessments and case plans for children who are the subject of a child in need of care or supervision (CHINS) petition.
- The language in the bill is a little confusing, but I think based on testimony this summer of the Child Protection summer study committee that the goal of the following language is to allow a non-custodial parent of a child who is residing in a home with a person alleged to have abused or neglected *another* child access to the Department's chapter 49 redacted investigation file.

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

(3) the parents of a child residing in a home with a person alleged to have abused or neglected a child.

2. Is there a need for this bill?

Under current law, all juvenile proceedings records, including DCF's records, are confidential and may not be used in a Family Court custody proceeding. DCF has proposed a bill (no bill number yet) that would allow a Family Court to request DCF's chapter 49 records directly from the Department and conduct an *in camera* review of the information contained in the records in order to provide copies of the relevant information to parties for use in the Family Court proceedings where a child's custody and parent child contact is an issue.

Chapter 49 records are not the same as CHINS records, which are Juvenile Proceedings Act records (chapters 51 – 53 of title 33).

Language included in the current draft of S.9 could be used to also allow the Family Court to request other records related to the Department's child protection activities, which would include DCF's CHINS assessments and case plans, and conduct an *in camera* review of the information and provide copies of the relevant information to the parties.

DCF would rather the courts review the records and only provide the relevant information as opposed to the language in S.35 which provides access to the full DCF record. DCF would like to protect sensitive confidential information about children and families that may not be relevant to a divorce or custody proceeding.

DCF does not support the second proposal in this bill to allow access to non-custodial parents of redacted investigation files about a person residing in the home with their child/another child for whom they are not the parent. If the non-custodial parent thinks that their own child is at risk in any way, they can make a report to DCF. If they chapter 49 investigation involved their own child, parents have access already in statute to the redacted investigation file.

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

The fiscal and programmatic implications for DCF would include some training for staff on this new change to provide records to Family Courts.

If the proposal to allow greater access to DCF's redacted investigation files is adopted, DCF may need additional staff as redaction can be very time consuming.

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

Under DCF's alternative proposal to S.35, the judiciary would have the responsibility of reviewing records *in camera* for the purposes of determining which records are relevant. The judiciary would have to weigh in on the extra amount of time and work this proposal would have on judges and courts.

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

Attorneys representing parents in divorce and custody proceedings would likely support S.35. These attorneys may also accept DCF's alternative proposal for the courts to first conduct a review of the records for the purposes of determining which records are relevant.

These attorneys would likely also support the proposal in S.35 to allow access to redacted investigation files about persons residing in the home with their child who are the subject of a DCF chapter 49 investigation not related to their child.

6. Other Stakeholders:

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

Parents would likely support the changes in S.35.

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

The Defender General's Office and the Vermont Network would likely oppose S.35 as drafted, but may support DCF's alternative proposal to allow *in camera* review of records. These same groups would also likely oppose the proposal to allow greater access to redacted investigation files to non-custodial parents about persons residing in a home with their child.

7. Rationale for recommendation:

DCF has supported increased sharing of records and information in S.9 in order to improve the child protection system. However, DCF is mindful of the need to also balance the sharing of information with the protection of confidential information related to children and families.

8. Specific modifications that would be needed to recommend support of this bill:

Please see alternative proposal referenced in #2 above for the proposal to allow access to parties in Family Court divorce and custody proceedings. DCF's alternative proposed language to 33 V.S.A. §4921 (would be paragraph(e)(1)(I) according to the current version S.9, which also proposes changes to §4921):

(e)(1)(I) A Family Division of the Superior Court involved in a proceeding where a child's custody and parent child contact is an issue. The Family Division of the Superior Court shall request the record directly from the Department and conduct an *in camera* review of the information in accordance with Vermont Rules of Evidence 401-403. The Family Division of the Superior Court shall then provide a copy of the relevant information to the parties for use in the proceedings.

It would also be necessary to include the following language that is part of S.9 now in order to allow access to DCF's CHINS records:

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

In DCF's proposed bill, we also add similar language to the existing statutory language allowing Probate Courts involved in guardianship proceedings access to DCF records. We could include that proposal as well in response to S.35:

(e)(1)(H) a Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall request the record directly from the Department and conduct an *in camera* review of the information in accordance with the Vermont Rules of Evidence 401-403. The Probate Division of the Superior Court shall then provide a copy of the relevant record, for use in the guardianship proceeding 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.

DCF proposes removing the new language proposed in S.35 that amends 33 V.S.A. §4921:

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

~~(3) the parents of a child residing in a home with a person alleged to have abused or neglected a child.~~

9. Gubernatorial appointments to board or commission?

Secretary/Commissioner has reviewed this document: _____ ***Date:*** _____