



VERMONT

DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Division

To: Members of the Senate Judiciary Committee
Members of the Senate Health and Welfare Committee
From: Cindy Walcott, Deputy Commissioner
Leslie Wisdom, General Counsel
Date: February 17, 2015
Subject: Child Abuse Definitions, etc.

As we sit before you today, we are mindful that almost one year ago today, Dezirae Sheldon sustained the injuries that would lead to her death on February 21, 2014. This event, followed by the death of Peighton Geraw just 6 weeks later have rightfully caused all of us to wonder what we could have done to prevent these tragedies. In trying to get to these questions, we have undergone an unprecedented number of reviews and inquiries that have led to many, many recommendations. Just counting the three formal systems evaluations alone, 156 recommendations have been made by Sec. Chen, VCAB and Casey Family Programs.

All of you have taken your responsibilities seriously as well; first the Senate Committee on Child Protection, the Legislative Committee on Child Protection, and now three Senate Committees have spent countless hours focusing on child protection. Before you make your final decisions about S.9, I hope you will consider the following data, information and recommendations.

Changes in Caseload and Staffing 2013-2014

	2013	2014	Net Chg	% Change
Intakes	17,460	19,292	1,832	10%
Investigations and Assessments	5136	5848	712	14%
Children in Custody at Year End	1000	1185	185	19%
Children < 6 Yrs in Custody at Year End	281	403	122	43%
Social Worker FTEs in Districts	146.5	159.5	13	9%
Assigned to Investigations	51	56	5	10%
Assigned to Ongoing Casework	94.5	103.5	9	10%
# Families/Social Worker'	17	16.9	-0.1	-1%

Central Office Capacity

In the spring of 2014, the Family Services Central Office was still suffering from the position cuts taken during the years of the recession. Nearly all cuts had been taken in the Central Office, leaving it 2/3 its former size. The capacity of the central office to provide the kind of support and oversight needed by the district offices had been seriously eroded – both in terms of direct operational capacity, and capacity to compile, organize, interpret and use data. It is no wonder, then, that we saw variations in district practice.

Since that time, through our position pilot authority, we have begun to address that.

- FTEs overseeing districts have increased from 2 to 4;
- We added a Child Safety Manager, to focus on Investigation and Assessment practice;
- Quality assurance staff has increased from 1 to 2, and we will add one more position this spring;
- We are in the process of increasing policy staff from 1 to 2.
- We are increasing contracted substance abuse screeners from 2 to 6 district offices.

Promoting Consistency

The consistent application of law, regulation and policy requires:

- Clearly written, up-to-date policies and procedures;
- Quality training for new and experienced staff;
- Regular supervision;
- Reasonable caseloads, so that social workers and supervisors can
 - be proactive, rather than crisis-driven;
 - communicate and collaborate with others;
 - meet deadlines, including court deadlines;
 - attend training without undue anxiety about undone work;
 - take the time to think through important decisions to be made.
- Modern data systems that capture critical information that guides planning, resource allocation and decision-making at the state and local level.
- Regular data reports staff understand and use.
- An internal system to respond to and learn from complaints and concerns.

Statutory Definitions of Child Abuse and Neglect

As you have reflected over time, there are many players in the Child Protection System, and collaboration is key. For instance, in cases of serious physical and sexual abuse, DCF Family Services social workers collaborate with law enforcement, but play a separate and unique role. This is a strength of our system. Our guiding statutes should be different. The child protection statutes are designed to allow DCF to have broad responsibility to intervene in the lives of

families, and to place persons on the Child Protection Registry using the reasonable person standard. Most often, the concerns that bring us into the lives of a family are not potentially chargeable under the penal code.

The following table contains information about the Child Abuse Definitions in S.9 As Introduced, the concerns we have, and our best recommendations.

Physical Injury		
S.9 as Introduced	Concerns	Recommendation
<p>Physical injury would mean "bodily injury or serious bodily injury" as in 13 VSA 1021.</p> <ul style="list-style-type: none"> • Bodily injury – physical pain, illness, or any impairment of physical condition. • Serious bodily injury – a bodily injury which creates any of the following: <ul style="list-style-type: none"> • A substantial risk of death; • A substantial loss of impairment of the function of any bodily member or organ; • A substantial impairment of health; • A substantial disfigurement; OR • Strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person. 	<p>Does not include death</p> <p>Eliminates "other than by accidental means" - children who experience an accidental injury will be considered the victims of child abuse. Parents might not seek needed medical treatment, as a result.</p> <p>"Bodily injury" includes pain, making corporal punishment child abuse</p> <p>Bodily injury also includes illness.</p>	<p>Retain existing definition.</p>
Risk of Harm		
S.9 as Introduced	Concerns	Recommendation
<p>"Risk of harm" means a <u>significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment, or sexual abuse.</u></p>	<p>Incorporates the new definition of "physical injury" (including physical pain, illness, or any impairment of physical condition). So, we would investigate a danger that the child will suffer physical pain, illness, or any impairment of physical condition, even by accidental means.</p>	<p>Retain "Risk of harm" <u>means a significant danger that a child will suffer serious harm other than by accidental means.</u></p> <p>Add new language already contained in rule:</p> <p><u>Risk of harm includes but is not limited to:</u></p> <p>(A) <u>a single, egregious act that resulted in significant risk that a child could have been seriously physically injured, including production or pre-production of methamphetamines in a dwelling where a child reside;</u></p> <p>(B) <u>being absent and not arranging for a child to be supervised in a manner appropriate to the child's age and circumstances;</u></p> <p>(C) <u>not providing developmentally</u></p>

		<p><u>appropriate supervision or care for a child due to use of illegal substances, misuse of prescription drugs or alcohol;</u></p> <p>(D) <u>not appropriately supervising a child in a situation in which drugs, alcohol or drug paraphernalia are accessible to the child;</u></p> <p>(E) <u>knowingly allowing a child to be at substantial risk of sexual abuse;</u></p> <p>(F) <u>failure by a registered sex offender or person substantiated for sexually abusing a child to refrain from residing with or spending unsupervised time with a child.</u></p>
Exposure to Substance Abuse		
S.9 as Introduced	Concerns	Recommendation
<p>Exposure to the unlawful possession, use, manufacture, cultivation, or sale of the following regulated drugs, as defined in 18 V.S.A.12 § 4201:</p> <p>(i) a narcotic drug;</p> <p>(ii) a depressant or stimulant drug, other than methamphetamine;</p> <p>(iii) a hallucinogenic drug;</p> <p>(iv) Ecstasy;</p> <p>(v) methamphetamine; or</p> <p>(vi) marijuana or hashish in violation of the following subsections and subdivisions of section 4230 of this title:</p> <p>(I) subdivisions (a)(2), (3), and (4);</p> <p>(II) subdivisions (b)(2) and (3); and(III) subsection (c).</p>	<p>Incorporates the concept of exposure without defining it, and without making a connection to harm to the child.</p> <p>Does not include impact of alcohol abuse on harm to children.</p>	<p>Eliminate the language on exposure in S.9. Address the impact of <u>both</u> drug and alcohol use on the safety and wellbeing of children in the definition of risk of harm (see above)</p>
Sexual Abuse		
S.9 as Introduced	Concerns	Recommendation
<p>“Sexual abuse” means:</p> <p>(A) lewdness and prostitution in violation of 13 V.S.A. chapter 59;</p> <p>(B) human trafficking in violation of 13 V.S.A. chapter 60;</p> <p>(C) obscenity in violation of 13 V.S.A. chapter 63;</p> <p>(D) sexual exploitation of children in violation of 13 V.S.A. chapter 64; or</p> <p>(E) sexual assault in violation of 13 V.S.A. chapter 72.</p>	<p>We think this might narrow our scope.</p> <p>We investigate cases in which person is not chargeable, due to age or competency. Would this eliminate that possibility?</p>	<p>Although we do not feel as strongly about this one, we feel it is better to retain the current definition, and to add: <u>“Sexual abuse also includes the viewing, possession or transmission of child pornography, excluding exchanges of images between mutually consenting minors.</u></p>

Fiscal Note Needed

In January 2015, DCF Family Services re-screened a week's worth of intakes using criteria contained in S.9 as introduced – specifically the proposed definitions of physical injury, risk of harm and exposure to drugs. Using those definitions, based on the intakes we receive now, the number of child abuse and investigations commenced that week would have risen from 123 to 215, an increase of 92. The detail is:

New Definition of:	# Accepted
Physical Injury	23
Risk of Harm	28
Exposure	29
More than one	12
Total	92

Annualized, this would result in:

Weekly Additional Accepted Reports	92
Yearly Additional Accepted Reports	4784
Addl SW FTEs required at 100 interventions/FTE/year	48
Addl Supervisors needed	8

This is a likely a substantial under-estimate, as it does not account for the high number of additional reports we anticipate we would receive. The Department does not object to the new chapter 49 definitions proposed in S.9 because of the increased workload, though it is clear that we would need additional staff to implement these changes to definitions. Rather, the Department does not support the policy behind the new definitions. The goal should be to define the right policy for the child protection system and then evaluate the workload associated with implementing that policy. We believe that many of the changes we are currently implementing will help to address the differences in practice that the legislative summer study committee is concerned about. In addition, we believe that the changes to child abuse and neglect definitions we propose above are the right policies to protect the safety of children in Vermont¹.

Additional Ramifications of Changing Child Abuse Definitions

The problems and challenges that led to the deaths of Dezirae and Peighton will not be fixed by changing the child abuse definitions in Title 33. In fact, changing them will cause significant challenges that will distract us from focusing on continued systems improvement. The ramifications include:

¹ DCF is not addressing potential additional staffing needs or caseload ratios in this memo.

- Current rules and policies will have to be re-written;
- 35 years of case law will be moot;
- Automated decision-making supports will have to be re-designed;
- Staff training will have to be re-designed and re-delivered to centralized intake, central office and district staff;
- Mandated reporter training will have to be re-designed and re-delivered.

Comments on the Senate Judiciary Strike All Version of DCF's Chapter 49 Definitions

The Senate Judiciary committee proposed some of its own changes in the strike-all version of S.9 introduced at the joint meeting of the three committees of jurisdiction on February 13, 2014. DCF has the following comments on these newly proposed changes to the definitions of child abuse and neglect in chapter 49 of title 33.

Senate Judiciary proposed chapter 49 definition of "harm"

The committee seeks to change the current statutory definition of "harm" to include the "possession, use, or sale of" alcohol or regulated drugs "in a manner that "harms or creates a substantial risk of harm to the physical health, psychological growth and development or welfare of a child"². The addition of this language that incorporates substance abuse is confusing as it mixes the concepts of actual harm and risk of harm in one definition. In statute, "risk of harm" is addressed separately.

DCF respectfully suggests that it is unnecessary to include any language directly relating to use of substances and harm. If the actual harm happened, DCF can investigate, regardless of the cause. Risk of harm relating to the use of substances, both legal and illegal, is covered under DCF's suggested language for the definition of risk of harm.

Senate Judiciary proposed chapter 49 definition of "physical injury"

DCF's comments on the proposed Senate Judiciary language are the same as our comments on the as introduced language. These comments include the following: the Senate Judiciary definition does not include death; the Senate Judiciary definition eliminates "other than by accidental means", which means that children who experience an accidental injury will be considered the victims of child abuse and parents might not seek needed medical treatment as a result; the inclusion of the criminal definition of "bodily injury" includes pain, which means that the new definition will make corporal punishment child abuse and anyone who is substantiated will be placed on the Child Protection Registry; finally, the criminal definition of bodily injury also includes illness.

² The language relating to the "physical health, psychological growth and development, or welfare" is taken from the existing statutory definition of an "abused or neglected child".

As discussed above, the child protection agency definition of "physical injury" is appropriately different than the criminal definition. There are many instances when DCF substantiates someone for physically injuring a child and places that person on the Child Protection Registry for the protection of all children in Vermont. That does not necessarily mean that this same person will also be charged with a crime and there are many different reasons for that. If the two systems were identical, we would only need one system. They appropriately serve different purposes and operate under different rules.

Senate Judiciary proposed definition of chapter 49 "sexual abuse"

DCF respectfully disagrees with the conclusions drawn by the Senate Judiciary committee in the comparison memo. The Senate Judiciary version is the same as the as introduced version. Again, the child protection agency definition of "sexual abuse" is appropriately different than the criminal code. This does not mean that DCF cannot or does not collaborate with SIUs and law enforcement in many investigations. However, DCF investigates and substantiates some instances of child sexual abuse that law enforcement does not investigate and DCF's ability to do so should not be hindered. The definition of "sexual abuse" proposed by Senate Judiciary will mean that fewer people are substantiated for child sexual abuse and placed on the Child Protection Registry. If the definition is narrowed, as proposed by Senate Judiciary, the potential for future risk of harm to all children in Vermont increases.

Fiscal Note and other considerations also apply to the Senate Judiciary proposed revisions to chapter 49 definitions

DCF has not had the opportunity to analyze intakes and the effect that the changes proposed by the Senate Judiciary committee will have on accepted reports and workforce needs. However, DCF anticipates that additional staff may be needed if these proposed changes are adopted, which will require a fiscal note.

In addition, extensive training will need to be done, current rules and policies will have to be re-written, 35 years of case law will be moot, automated decision-making supports will have to be re-designed, staff training will have to be re-designed and re-delivered to centralized intake, central office and district staff and mandated reporter training will have to be re-designed and re-delivered. These are all things that should be considered before making dramatic changes to the chapter 49 definitions.

Other Changes Proposed by the Senate Health and Welfare Committee Will Help to Improve Consistency across Districts

The Senate Health and Welfare Committee has proposed two changes to chapter 49 that cross-reference the penal code that DCF believes will help address concerns about consistency and collaboration with law enforcement and the SIUs. The first is a proposed change to 33 V.S.A. §4915(d):

(d) The Department shall conduct an investigation when an accepted report involves allegations indicating substantial child endangerment. ~~For purposes of~~ As used in this section, "substantial child endangerment" includes conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious ~~physical~~ bodily injury as defined in 13 V.S.A. § 1021. The Department may conduct an investigation of any report.

This proposed change ensures that the Department will conduct an investigation when there is serious bodily injury of a child as defined in criminal code.

The other proposed change by the Senate Health and Welfare committee addresses collaboration between DCF and law enforcement and makes clear when DCF must report to and request assistance from law enforcement and SIUs in investigation of alleged abuse. This proposed change to 33 V.S.A. §4915b(e) cross-references criminal code definitions:

(e) The Department

(1) shall report to and request assistance from law enforcement in the following circumstances:

- ~~(1)~~(A) investigations of child sexual abuse by an alleged perpetrator age 10 or older;
- ~~(2)~~(B) investigations of serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care;
- ~~(3)~~(C) situations potentially dangerous to the child or Department worker.³

(2) shall report to and request assistance from Special Investigative Units in the following circumstances pursuant to 24 V.S.A. § 1940:

³ This first paragraph ensures that the Department will seek assistance from law enforcement when conducting investigations of the more serious child abuse allegations. This language is in existing law.

- (A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and
 - (B) potential violations of:
 - (i) 13 V.S.A. § 2602;
 - (ii) 13 V.S.A. chapter 60;
 - (iii) 13 V.S.A. chapter 64; and
 - (iv) 13 V.S.A. chapter 72; and
 - (C) situations potentially dangerous to the child or Department worker;
- and⁴

(4)(3) may report to and request assistance from law enforcement in the following circumstances:

- (A) an incident in which a child suffers:
 - (i) bodily injury, by other than accidental means, as defined in 13 V.S.A. § 1021; or
 - (ii) death; and
- (B) potential violations of:
 - (i) 13 V.S.A. § 2601;
 - (ii) 13 V.S.A. § 2605;
 - (iii) 13 V.S.A. § 1304;
 - (iv) 13 V.S.A. § 1304a; and
 - ~~(3)~~(v) situations potentially dangerous to the child or Department worker.⁵

The Department believes that some edits to the above proposed language may be necessary to clarify the statute, but we support the general concept proposed by the Senate Health and Welfare committee.

⁴ This second paragraph, (e)(2), directs DCF to report to and request assistance from the SIUs in cases of serious bodily injury of a child, lewd and lascivious conduct with a child, human trafficking of children, sexual exploitation of children and sexual assault of a child as defined in the criminal code. These are the same criminal definitions referenced in the SIU section of S.9.

⁵ This last paragraph holds that DCF may report to and request assistance from law enforcement in other situations as defined in the criminal code, such as bodily injury, voyeurism, cruelty to a child and the new crime of failure to protect. DCF suggests that investigations of death should be moved to paragraph (e)(1), the mandatory paragraph for requesting assistance from law enforcement. The Department also suggests that reference to 13 V.S.A. §2601 is not needed as this is lewd and lascivious conduct generally. Lewd and lascivious conduct with a child is addressed in paragraph (e)(2), which references 13 V.S.A. §2602. Finally, it is not clear that we need to list specific criminal code definitions in this final discretionary section. If the committees decide that a list is necessary, we suggest that language is added to the effect of "including" so that the Department has discretion to request assistance from law enforcement in any situation it feels is necessary.

