

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.9

Name of Bill: An act relating to improving Vermont's system for protecting children from abuse and neglect

Agency/ Dept: AHS/DCF

Author of Bill Review: Cindy Walcott

Date of Bill Review: February 27, 2015

Related Bills and Key Players: DCF, Judiciary, AG's office, SIUs, VT Network, Defender General's office, State's Attorneys, parents' representatives, children's attorneys, guardians ad litem, ACLU, parent-child centers, ADAP

S.36 is a related bill with regard to post-adoption contact agreements in private adoptions. H.41 is related as it addresses mandated reporters of child abuse and neglect. S.35 is also related as it addresses the sharing of DCF's chapter 49 records of abuse and neglect with the Family Division in custody proceedings. **Neither have seen action in the Sentate to date.**

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. *S.9 seeks to improve the child protection system. The Senate has devoted considerable time on S.9, and made significant changes to the "as introduced" version. As passed by the Senate, the bill:*

- *amends language defining the misdemeanor offense of Cruelty to a Child, proposes a new felony offense of Failure to Protect a Child in order to increase accountability for caregivers that knowingly allow (or reasonably should have known) a child to experience harm. An affirmative defense is included for victims of domestic violence and for parents exercising reasonable judgment regarding medical treatment for a child;*
- *provides for a more severe sentence for those convicted of methamphetamine production, if a child was present;*
- *specifies which cases must be investigated by special investigation units (SIUs);*
- *creates enforceable post-adoption contact agreements in order to reduce the number of contested termination of parental rights (TPR);*
- *changes the definitions of harm, injury, risk of harm and sexual abuse in Title 33, Chapter 49. The definition of sexual abuse cross-references the criminal;*
- *changes confidentiality provisions in Title 33, Chapter 49 as they relate to sharing of information with mandated reporters and incorporating some automatic or "upon request" disclosures of DCF's*

Chapter 49 records related to DCF's investigations and assessments of alleged child abuse and neglect to courts, law enforcement and others providing services to children and families;

- *allows DCF social workers to submit affidavits on their own in support of emergency care orders;*
- *clarifies the judicial framework for decision-making for placements at the temporary care order stage of a juvenile proceeding by emphasizing that the child's best interest is the controlling principle;*
- *eliminates the order of preference and custodial hierarchy at the temporary care order stage;*
- *creates a legislative oversight committee of Vermont's Child Protection System (not DCF specifically);*
- *directs DCF to adopt certain policies and ensure consistency among districts;*
- *creates a working group to recommend improvements to children in need of care and supervision (CHINS) proceedings; and creates a pilot program for court process improvement. DCF will be a member of this group;*
- *Directs AHS to utilize evidence-informed approaches and to report to the legislature on this.*

2. Is there a need for this bill? *This bill was introduced as the report of the Child Protection Summer Study Committee that was formed after the tragic deaths of two young children this past year who had been in DCF custody. There are some positive aspects to this bill to improve the State's child protection system. However, this bill also has some concerning implications with respect to the new crime as well as changes to DCF's definitions of harm as well as DCF practices.*

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

If passed, this bill will have fiscal and programmatic impact on DCF, but a far lesser impact than the "as introduced" version. The new proposed crime could mean that many parents are convicted of this new felony, which could mean that their children come into DCF custody. In addition, we are concerned that parents who are the subject of CHINS proceedings may be advised by their attorneys not to cooperate with DCF social workers, due to the potential of being charged with Failure to Protect. The new crime could also possibly affect social workers, Woodside staff, foster parents, residential and child care providers if they were found to have failed to protect a child.

The cumulative impact of this lengthy bill on DCF is substantial: Staffing the Legislative Oversight committee, changing policies, IT systems, training, reporting, etc.

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?

The number of people incarcerated because of this new proposed crime could impact the Department of Corrections.

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)

The ACLU and others have commented on the proposed new crime and expressed concern about its potentially overly broad and far-reaching implications, including possibly deterring people from volunteering to work with children as coaches, leaders for youth groups, babysitting and teaching etc. The SIUs generally support the clarification in the statute defining which cases they are mandated to take. The post-adoption contact agreements may reduce the number of contested TPRs in Family Court.

6. Other Stakeholders:

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

Please see above.

- **Who else is likely to oppose the proposal and why?**

In addition to the above, two other groups have expressed concerns:

- (1) The Network Against Domestic and Sexual Violence is concerned about the affirmative defense, as victims of domestic violence would still be charged and would then have to prove the affirmative defense;*
- (2) The Vaccination Choice lobby is concerned for a parallel reason.*

7. Rationale for recommendation: *DCF continues to be concerned about the Failure to Protect felony, which puts social workers, Woodside staff, foster parents, residential providers, and child care providers (and many others who are not DCF staff or provider groups) at risk of a felony conviction.*

8. Specific modifications that would be needed to recommend support of this bill: *Please see above. Currently the bill contains two provisions that DCF cannot implement: (1) encourage substance abuse providers to provide us with test results (not permitted by federal reg, absent release from client) and (2) conduct background checks on household members – cannot do without specific authorizing legislative.*

Also, we still have significant concerns about the Failure to Protect section of the bill, which put social workers, foster parents, residential providers, child care providers at risk for a felony charge. This will need continued work in the House.

Gubernatorial appointments to board or commission? N/A

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