

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number: S.9 Name of Bill: **Systemic changes to response to child protection**

Agency/ Dept: **Public Safety – State Police** Author of Bill Review: **Detective Sergeant Benjamin D. Katz**

Date of Bill Review: **February 2015** Status of Bill: (check one):

☒ **Upon Introduction** ☐ **As passed by 1st body** ☐ **As passed by both bodies** ☐ **Fiscal**

Recommended Position:

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

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

1. This bill was introduced as a response to recent tragedies involving child protection. The intent of this bill is to fortify the systemic structures surrounding the investigation and response to disclosures and allegations of child abuse. The bill clarifies who (Special Investigation Units & Department of Children and Families Investigators) will be tasked with investigating these reports and, as S.9 is currently written, institutes severe penalties for mandated reporters who are found to not follow the new guidelines. S.9 further attempts to clarify the CHINS process and the assignment of legal counsel for children in the custody of the State. The bill also adds DCF investigators as those persons who, in addition to law enforcement, may take a child into custody without a Court order.

2. This response is designed to shore up any systemic shortfalls in the protection of children as well as to assign the investigation of human trafficking and child exploitation and child pornography cases to the SIUs.

3. As previously stated, this bill was drafted in response to recent tragedies, and was created to bridge perceived gaps that exist in the systemic response to child abuse.

2. Is there a need for this bill?

1. Yes, it is important to continuously evaluate the response to child abuse and this bill forces the State to reevaluate its systemic and programmatic approach. With regards to the aspects of the bill that directly impact law enforcement, the bill provides clarification as to what entities “shall” investigate certain crimes. Currently the SIUs predominately investigate child sexual and physical abuse as well as adult sexual assaults. The investigators with the Attorney General currently investigate some child exploitation cases to include possession and transmission of child pornography. This helps the SIUs as these cases are often time intensive. Should this bill pass as written, the SIUs will be tasked with the investigation of all these crimes. While the SIUs

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are best equipped to investigate these cases, and the greater intentions of this bill will be realized, as the bill is currently written, (v.5) there is no mention of addressing the increased workload of the SIUs.

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

1. The obvious programmatic implications are that the SIUs will be tasked with investigating two more types of crimes (human trafficking and child exploitation), both of which can be extremely time intensive. With the SIUs' current staffing, this is not possible without assigning more overflow cases to outside investigators. This is done differently depending on each county's policies and procedure. Unfortunately, this will have a negative effect on all areas of the criminal justice response as it defeats the goal of having all units in-house and co-located.

2. The SIUs provide the best services for victims as that is what they are set up best to do. As more and more SIUs work with their county partners to offer co-location for the many services offered, the SIUs become a stronger unit which only offers a better outcome to the victims and the State's Attorneys. Currently at NUSI (Northwest Unit for Special Investigations) there are criminal investigators, DCF investigators, a victim advocate, a therapist, and a State's Attorney on site. Although not scheduled, there are daily discussions regarding cases, and the parties collaboratively work to formulate the best response both for the victim and the criminal component.

3. NUSI currently has two full time and one part time investigators. Routinely cases are assigned as overflow to State Police Detectives as the NUSI Investigators are already tasked with investigations or they have training, special teams calls, or on leave. When cases are assigned to investigators outside the unit, the investigators have a difficult time scheduling interviews as they have to make multiple calls to locate the other partners and insure that their schedules can allow them to break free to get to the SIU for the interview. Unfortunately, future correspondence is predominately handled through email, voicemail, and phone, and as a result the case may not progress as cohesively as if it were assigned to an SIU investigator. This defeats the benefits of co-location. With the current language of S.9, more cases would be forced to be triaged and reassigned outside the SIUs as the SIUs do not have the staffing needed for all human trafficking cases and child exploitation cases.

4. Another systemic implication is the potential to charge mandatory reporters with a felony for failure to report. The current misdemeanor is an incentive for them to report, and reporters should be encouraged to collaborate with the SIUs instead of being apprehensive of criminal consequences. From my experience working in the SIUs, I have seen many different responses from educators. At times the relationship has been strained and the educators have been advised by attorneys to force me to obtain search warrants for their records within school buildings. On other occasions they had information that the allegations were false to begin with and did not see the point in reporting information they knew to be false. Either way, the goal is to work closer together and for educators and other mandated reporters to feel comfortable calling the SIUs without the potential threat of criminal charges which will only alienate and distance educators and investigators further. A potential modification to the language could be a ladder whereby the States Attorneys have the flexibility to charge a mandated report with a felony if, for example, they failed to report and the child suffered subsequent abuse. Additionally, exposing mandated reporters, to include, clergy, police, teachers, medical staff, and child safety workers to the liability of a felony conviction where they might be removed from their chosen profession for failing to report a case that may not be black and white could have negative effects. The punishment is too severe when considering the vagaries of different cases.

5. Lastly, granting DCF Investigators the ability to take emergency custody of children will lead to dangerous situations for the social workers. Traditionally when the Department of Children and Families learns before the police of a potential CHINS case, the two agencies work together to draft the affidavit, call a judge, and formulate a safe plan for removal of the children. As Vermont is such a rural state, it is vital that the two agencies continue to work together for the safety of DCF Investigators, police, and most importantly children.

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?

1. The Department of Children and Families and the SIUs as a whole are the organizations directly affected by this proposed legislation. With the current language, DCF will be under increased pressure to be involved with more cases. With regards to the SIUs, they will be tasked to do substantially more without additional resources. Additionally the State's Attorneys will have more cases which may have previously gone to the Department of Justice as child exploitation and human trafficking generally cross state lines. Lastly the judiciary and the court system will have more cases adding to the backlog that already exists.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?

1. Currently in Vermont there are 6 SIUs that are accredited Child Advocacy Centers, commonly referred to as CACs. Every other SIU except Lamoille County is attempting to become an accredited CAC. CACs have numerous standards to safe guard children. An example of a rule that may hinder this proposed legislation is that SIUs have to schedule interviews of perpetrators away from CACs or at times when there are no victims or children present. With the addition of human trafficking cases, there is the potential to have a 16 year old prostitute who is addicted to drugs be the victim of human trafficking and considered a perpetrator. This will entail coordination between DCF, Advocacy groups, and investigators to ensure this interview is done on a day when no victims or children are present or it may have to be conducted off site. Again, this will be exacerbated by having investigators that are off site and harder to reach as opposed to walking down the hall.

2. With regards to sexting cases involving persons under age 18, unless aggravating circumstances exist, these cases are often not forwarded to the State's Attorneys. With these cases, there is the potential for both parties to be charged, one for creating child pornography and disseminating it, the other for receiving and possessing it. These cases present a huge time commitment for investigators as the images are often sent to multiple members within a school community who have the potential to all be charged and have their digital devices seized and sent to ICAC for examination.

3. One section that may be added to this bill is legislation under consideration for revenge pornography as that would help to focus sexting investigations.

6. Other Stakeholders:

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

Victims Advocacy groups are likely to support this legislation as it is easier for them to be in contact with the SIUs as all the players are in the same location and communication is facilitated. Without these

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existing relationships, it is harder for the advocates to get the vital information and signatures required so that may assist victims.

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

The State's Attorneys and Judiciary are likely to oppose the legislation as written as it requires more work from the SIUs which will generate more cases and without receiving additional resources, will only add to the strain these entities already feel.

7. Rationale for recommendation:

1. The SIUs are the best units to investigate these additional crimes, but they need more resources to prepare for the strain on staffing. Without any language directly relating to staffing, it is difficult to support this bill in its current version as too many cases are going to be farmed out which has the potential of creating the very issues this bill is attempting to address.

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

1. Specific language should be added to address the increase in workload on the SIUs without adding additional staffing resources.
2. Language regarding charging mandated reporters as felons for not reporting should be left out of this statute. An option could be added to modify the language, adding stiffer penalties for 2nd offense or where the child was injured or suffered abuse after the reporter knew of abuse and failed to report.

During my work on this bill review, I spoke with Robert White Executive Director of NUSI, the Honorable Benjamin W. Joseph a retired State Judge and board member of CUSI, and Deputy States Attorney Diane Wheeler.

Secretary/Commissioner has reviewed this document



Date: 3/11/15