

VERMONT'S CHINESE DEFENSE ATTORNEYS

Office of the Defender General 5/21/25

CHINS REPRESENTATION IN VERMONT

- Two primary forms of representation – staff attorneys and conflict contract attorneys.
- Every CHINS case has conflicts in it, so every case involves the local staff office *and* contract attorneys.
- We have approximately 15 staff and contract public defenders representing parents and children in CHINS cases and almost 40 more contractors who represent other parties in our cases.
- The *general* rule is that our staff office is assigned to represent the child and that the other parties are assigned to conflict attorneys. *But* about 50% of the time, our office has represented a parent in the past and we represent that parent in the CHINS proceeding. So it's really not true that most children are represented by staff attorneys and most parents are represented by contract attorneys. In reality, it's about 50/50.

GENESIS OF THIS PROVISION

- Last biennium H.398 proposed to create a group consisting of everyone except the Office of the Defender General (and specifying that no members of the group could have any connection to the ODG), tasked with designing a system of representation to replace the Office of the Defender General.
- This year, H.193 was a toned-down version of the same bill, proposing the same group but including our office among the group.
- The provisions of H.193 are now being rolled into the miscellaneous judiciary bill.

MISSTATEMENTS

- Vermont contract attorneys taking CHINS cases are underpaid, they cannot support themselves on the work, so they take many extra cases.
- Vermont attorneys do not have investigative resources
- Vermont attorneys do not have interdisciplinary practices
- Vermont attorneys are not supervised
- There are no standards for Vermont attorneys
- There are no performance measures for Vermont attorneys
- There is no mandated training for Vermont attorneys
- The Office of the Defender General is not pursuing funds to expand interdisciplinary representation.

CHINS ATTORNEYS IN VERMONT ARE NOT UNDERPAID

- Staff attorneys are paid on a straight step system like other state attorneys. They are paid the same as attorneys who take criminal cases.
- Contract attorneys are paid a flat-rate for the year based on historical caseload data and trend analysis.
- Caseload (which we'll talk about in a minute) is calculated in terms of LEC – Lawyer Equivalent Caseload – the amount of cases of a particular type that should represent a full-time caseload for a single lawyer.
- In FY 2024, the Office of the Defender General paid juvenile contract attorneys an average of **\$227k per Lawyer Equivalent Caseload**.

WHAT IS A LAWYER EQUIVALENT CASELOAD?

- We count added case events, not pending cases because even though pending cases are easier to count, added case events give a more accurate picture of workload.
- According to the National Advisory Commission on Criminal Justice Standards, lawyers should have no more than 200 added juvenile cases per year.
- Our office finds this standard outdated, so we have “re-weighted” it. We lowered the added cases to 150 and we changed it to “case events” rather than cases. So a “case” is a juvenile docket. But a juvenile docket may include filing an initial petition, post disposition process, or even a TPR. We count each event separately, so a case that is filed, goes to disposition, and has a post-disposition hearing before reunification and case closure might only count as 3 case events. On the other hand, a case that is filed, goes to disposition, has multiple post-disposition events, and ends in a TPR may count as up to 9 or 10 “case events.”
- In our office, 150 juvenile “case events” per year is a “lawyer equivalent caseload.”
- If you look at pending cases, you’ll see that most of our attorneys have between 30 and 60, but that measure does not reflect the workload.

HOW TO WE CALCULATE PAY

- We look at 3 years of historical caseload data, take into account any trend up or down, and establish an expected LEC for the upcoming year. Using a real example, if a contract has trended from a .35LEC to a .45LEC to a .6LEC, we may assume it will be a .75LEC in the upcoming year.
- We then multiply that fractional LEC against our target “per-LEC” rate of \$185k (using the .75 example, that would be 139k). Then we make adjustments for level of experience, willingness to work in remote regions, etc. (in this case, we bumped the contract to 155k because of the remote court and the experience of the contractor, for a “per-LEC” payment of 206k/year).
- At the end of the year, we look at the actual caseload data and figure out how accurate our predictions were and we use that information to guide our future forecasting.
- Based on actual caseload data from FY24, our average per-LEC pay was \$227,000 per year.

CHINS ATTORNEYS HAVE RESOURCES

- CHINS attorneys have every resource that is available to criminal attorneys in addition to some resources that are not.
- Every CHINS attorney can (and does) use investigators. We have more than a dozen investigators that we regularly use, and they are the most commonly requested service in our system. The claim that CHINS attorneys lack investigative services is incorrect.
- Every CHINS attorney has access to expert psychologists, to computer forensics experts, to social worker case managers, medical experts, and any other kind of expert or service that would benefit a case. There is no limited list of providers.

CHINS ATTORNEYS HAVE ACCESS TO SOCIAL SERVICES PROVIDERS

- We have a very successful Family Support Worker program to provide social work services in CHINS cases.
- We have more than two dozen skilled Support Workers who provide all manner of social work services from helping to manage difficult interactions, to locating services, finding housing, etc. Some are embedded in offices, others can be retained by individual attorneys.
- Generally, attorneys find a particular FSW that they like working with and use them for all their cases. Sometimes it makes sense to use a different FSW for specialized needs.
- Some of our FSWs are licensed social workers, many (the largest cohort) are former DCF caseworkers, and others have varied backgrounds (teacher, coach, etc.)

VERMONT ATTORNEYS ARE SUPERVISED

- Obviously, we do not manage the work of an attorney on an individual case. That would be unethical and contrary to the principles of legal work which include professional decision making.
- We absolutely supervise all attorneys in the sense that we respond to any complaints brought by parties, judges, or collateral contacts.
- Our complaint investigation process is rigorous and we get the *fewest* complaints about our juvenile attorneys.
- We have never received the complaint calls that were described in yesterday's testimony.

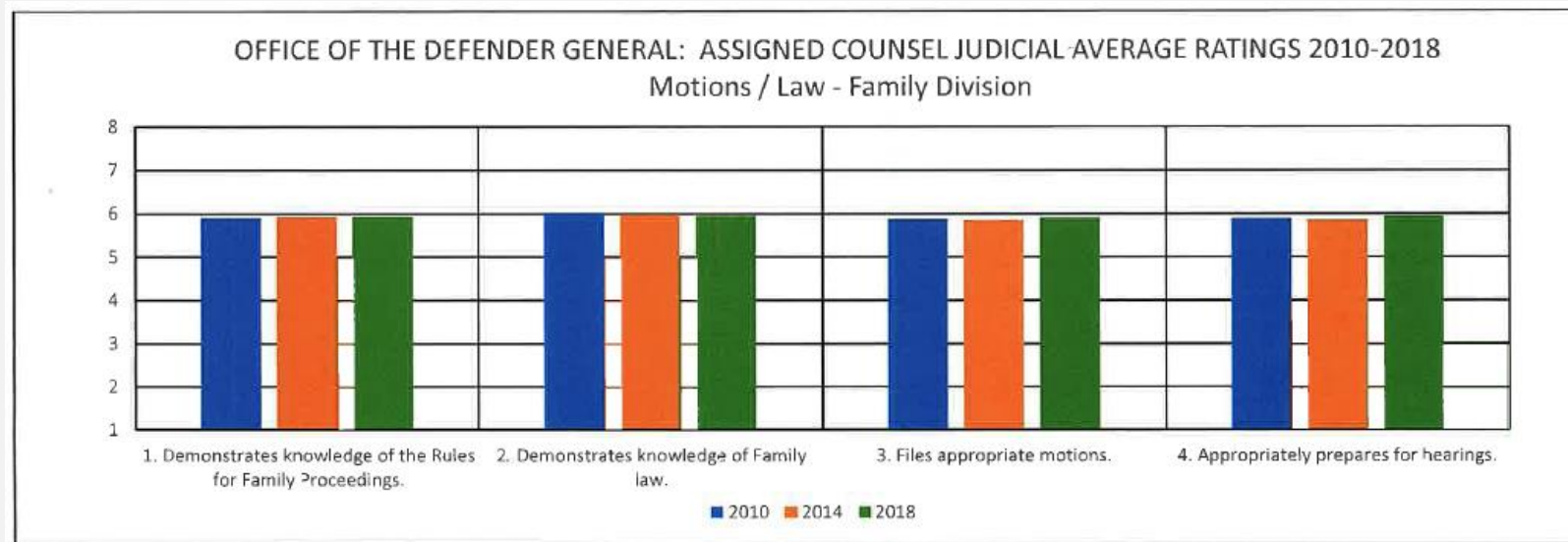
THERE ARE STANDARDS FOR VERMONT ATTORNEYS

- There are two primary sets of standards for attorneys representing children and parents in child welfare proceedings – The ABA Standards for Attorneys Representing Parents/Children in Child Welfare Cases and the NACC Standards of the same name.
- There are very minor but important differences between the two (particularly around ethical issues in the representation of children).
- Our office teaches the ABA standards as our primary standard, but we also "teach the controversy" by teaching about the differences between the ABA standards and the NACC standards.
- It is not correct to say that there are not standards for attorneys in Vermont. We use the same standards that everyone else does.

THERE ARE PERFORMANCE MEASURES FOR CHINS ATTORNEYS IN VERMONT

- The Office of the Defender General does attorney evaluations on a 3 year cycle (usually). The process is very in-depth, it includes reviews from peers, supervisors, and (importantly) judges.
- Because we recently switched to a new case management system (from JustWare to Advologix) we need to rebuild our evaluation system and we will have that done in the next year. We're admittedly behind on our evaluations.
- But it is incorrect to say that we do not have performance measures, we do and they show that our CHINS attorneys are doing excellent work.

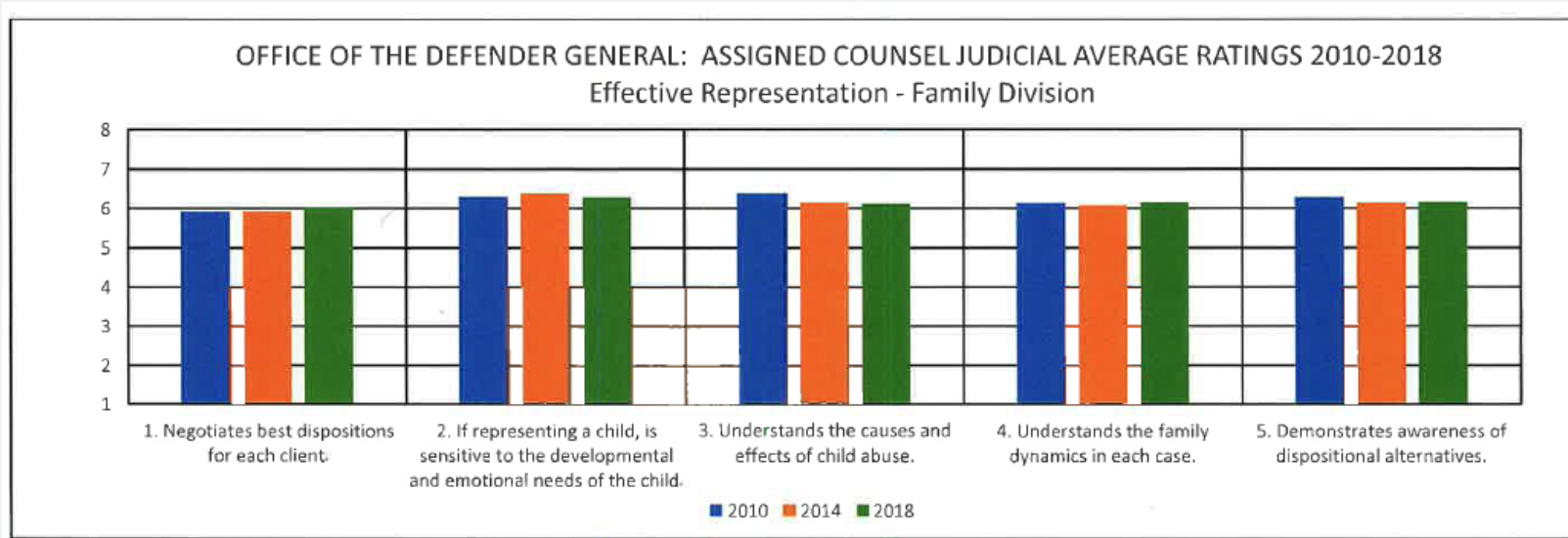
MOST RECENT PERFORMANCE MEASURES – MOTION PRACTICE



1= No information
2= Poor/Ineffective
3= Needs Improvement
4= Satisfactory

5= Good
6= Very Good
7= Excellent
8= Preeminent

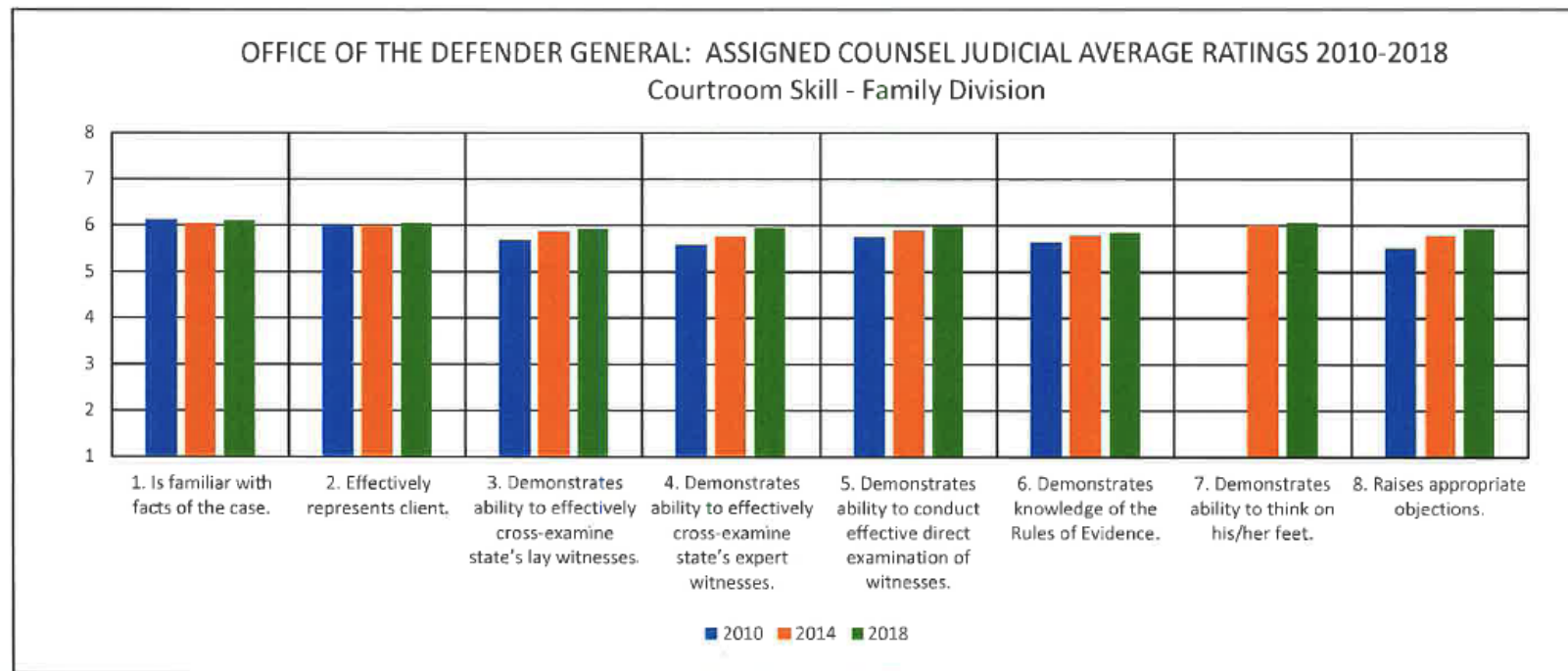
MOST RECENT PERFORMANCE MEASURES – EFFECTIVE REPRESENTATION



1= No information
2= Poor/Ineffective
3= Needs Improvement
4= Satisfactory

5= Good
6= Very Good
7= Excellent
8= Preeminent

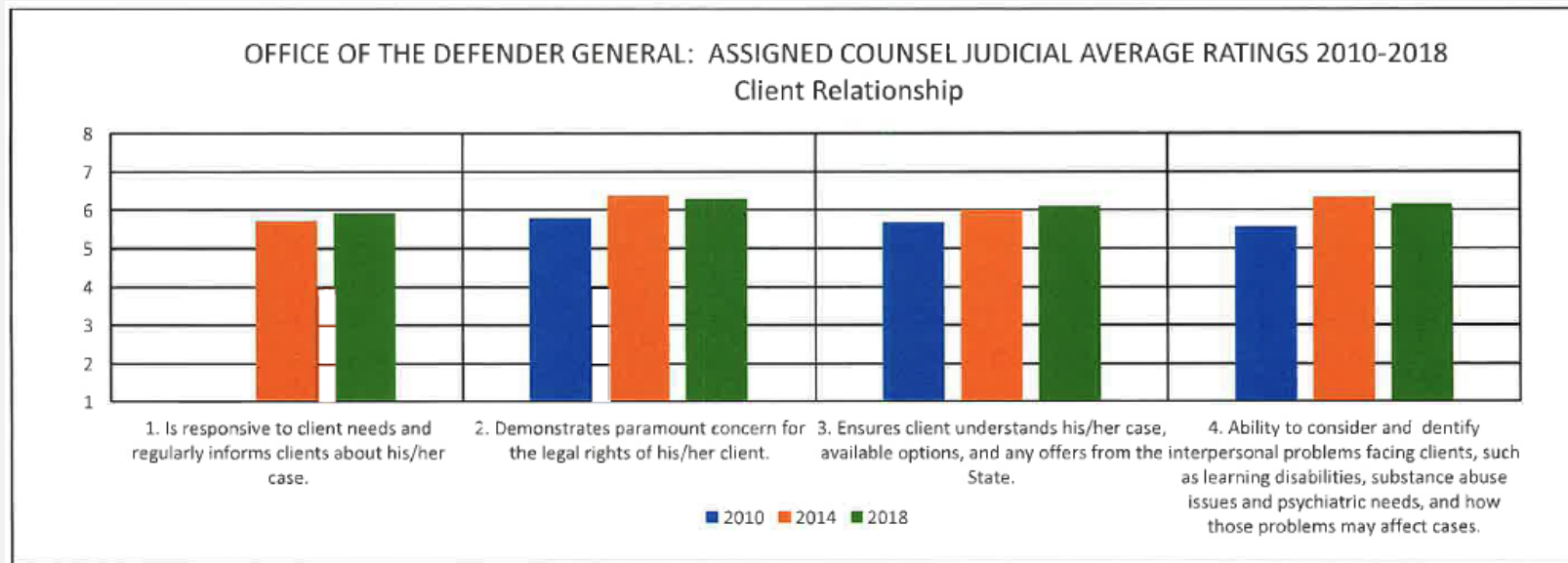
MOST RECENT PERFORMANCE MEASURES – COURTROOM SKILL



1= No information
2= Poor/Ineffective
3= Needs Improvement
4= Satisfactory

5= Good
6= Very Good
7= Excellent
8= Preeminent

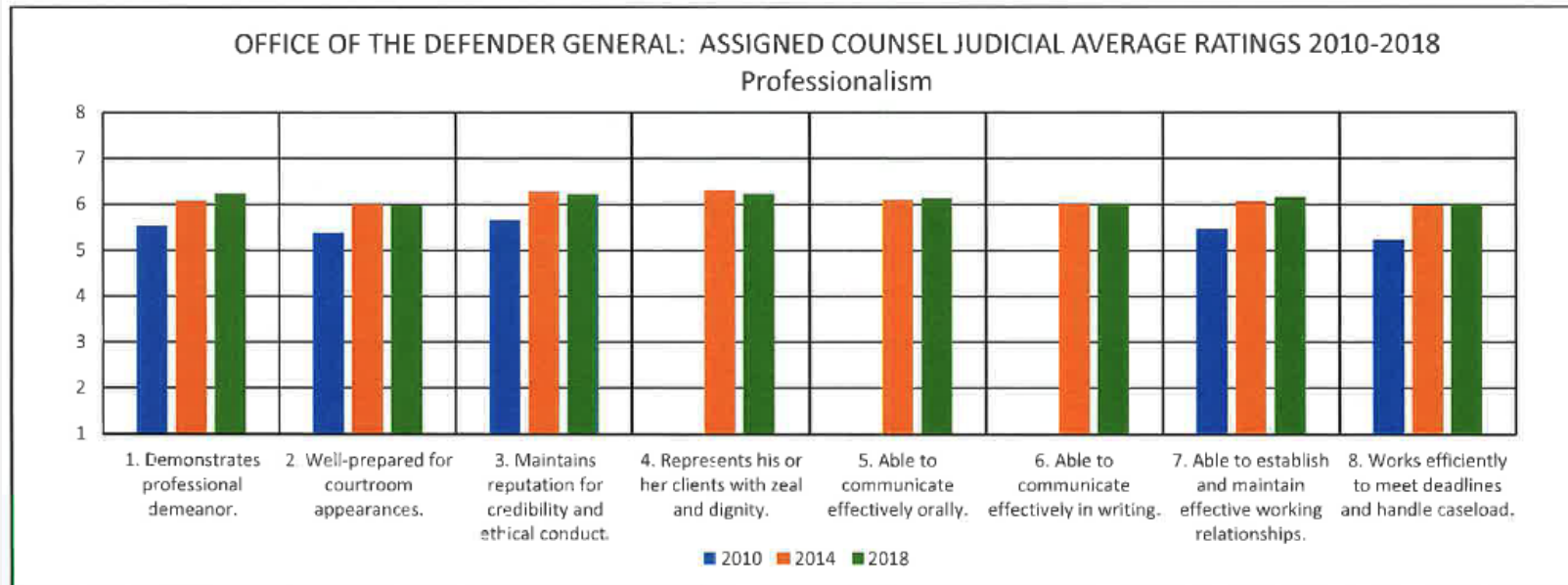
MOST RECENT PERFORMANCE MEASURES – CLIENT RELATIONSHIP



1= No information
2= Poor/Ineffective
3= Needs Improvement
4= Satisfactory

5= Good
6= Very Good
7= Excellent
8= Preeminent

MOST RECENT PERFORMANCE MEASURES - PROFESSIONALISM



1= No information
2= Poor/Ineffective
3= Needs Improvement
4= Satisfactory

5= Good
6= Very Good
7= Excellent
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THERE IS MANDATED AND OPTIONAL TRAINING FOR VERMONT CHINS ATTORNEYS

- Every contract requires every assigned-counsel CHINS attorney to attend all in-person mandatory juvenile trainings.
- That means that each juvenile attorney is required to attend two or three days of full-day juvenile training in June (depending on our budget) in addition to a one-day juvenile training in December. (Obviously, we'll make an exception for medical needs or serious family obligations, but these trainings are treated as mandatory.)
- All staff attorneys are required to attend the same trainings.
- Additionally, we offer regular (2x per month) online trainings on Fridays at lunch – those are non-mandatory because people's schedules don't always allow them to participate, but we usually have 40-80 attorneys on each zoom training.

THE ODG IS ALREADY DOING WHAT THIS BILL IS TRYING TO DO

- At the end of 2018, Federal AHS made Title IV-E money available for parent and child representation.
- The ODG immediately started working with other New England states to come up with a plan to draw down those funds for three primary purposes:
 - Increase interdisciplinary practice by increasing the use of social workers and embedding social workers in our larger offices
 - Funding collateral representation (landlord-tenant, immigration, education)
 - Creating a pre-petition representation partnership with hospitals to identify and provide legal services to families before they even have children.

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- That effort was fruitful in that we came to an agreement with DCF, drafted the necessary Memorandum of Understanding, and were pretty confident that AHS would accept our proposal because we based it on the work of another state which saw their proposal approved.
- Then we were told that DCF's antiquated software system would not allow us to identify cases eligible for reimbursement, so the effort ground to a halt and the focus shifted to getting DCF's computer system up to snuff so that we could draw down that IV-E money.
- In 2024, we found a private company that we are working with – they are providing services to other states with the same problem and they can do the data processing and reporting that DCF cannot.
- We've had several productive meetings with them and have included DCF in that process and we anticipate that we will be able to come up with a system that will satisfy AHS and allow the ODG to draw down the federal funds to expand our services as we have planned.

THERE IS A LACK OF LEGISLATIVE OVERSIGHT OF THE CHINS SYSTEM

- In 2023, the Joint Legislative Child Welfare Oversight Committee folded. At the time we were told that its responsibilities would be transferred to the Joint Legislative Justice Oversight Committee, but Joint Justice has not held a child welfare hearing since that time. The Child Welfare Oversight Committee should be brought back – it was where the legislature interfaced with issues like this.
- Since 2023, the Judiciary's Justice for Children Task Force, which always included a number of legislative members, has ceased meeting. It used to be a large group of stakeholders, including legislators and administration officials, which met quarterly. Recently it has not met even once a year. The Task Force should be restarted – by the legislature if the Judiciary is not willing. It was a great interdisciplinary working group.

OVERSIGHT IS WELCOME, INDEPENDENCE IS NECESSARY

- The independence of organizations *within* branches of government is as important as the independence of *between* branches of government. Internal checks and balances are as important as external checks and balances.
- This provision targets a single aspect of the child welfare system for scrutiny – the defense bar. It does not even consider the role of prosecutors, the attorney general, DCF, judges, external service providers, designated agencies, residential service providers, or anyone else involved in child welfare.
- The proposed committee is largely made up of organizations that are not involved in the work of family defense.