



VERMONT CHILDREN'S ALLIANCE

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To: House Committee on Human Services

From: Jennifer Poehlmann, Esq. 
Executive Director, Vermont Children's Alliance

RE: S.9

Date: March 31, 2015

The Vermont Children's Alliance is the accredited state chapter of the National Children's Alliance and professional membership organization for Vermont's Child Advocacy Centers (CACs) and Special Investigation Units (SIUs). It is on behalf of the directors of those programs all across the state that I am honored to submit the following.

We are grateful to the Committee for its prompt and careful attention to S. 9 "An act relating to improving Vermont's system for protecting children from abuse and neglect". We feel the bill contains many meaningful and necessary improvements to our state's response to child abuse and appreciate the Committee's request for written remarks in response to the questions below.

We were asked to comment on the following:

1. What sections of S.9 are essential to meeting the goal of improving Vermont's child protection responses?

- Section 2 which amends 13 V.S.A. §1304, the crime of Cruelty to a Child, by eliminating the requirement that the child alleged to have been willfully harmed must have been under 10 years of age at the time the act occurred.
- Section 3 which establishes 13 V.S.A. §1304a, the new crime of Failure to Protect a Child. The "intent" requirement in our current child abuse/cruelty statutes can present an extremely difficult burden for investigators and prosecutors to meet in child abuse cases. We see this play out particularly when we have a very young child - sometimes pre-verbal - who is reported to have been abused and identified caretakers who are not forthcoming. In some of

Child First
Advocacy Center of
Rutland County

The Chittenden
Advocacy Center
at CUSI

The Child Advocacy
Center at The
Family Place/
Windsor County
Unit for Special
Investigations

Windham County
Safe Place
CAC/SUSI

Northwest Unit for
Special Investigations/
Child Advocacy Center

Bennington County
Child Advocacy Center and
Special Investigations Unit

OUR House of
Central Vermont

The Child Advocacy Center
at the Springfield Area
Parent Child Center

Caledonia Special
Investigations Unit, Inc.

The Orleans County
Child Advocacy Center

The Orange County
Special Investigations Unit

Addison County Unit
Special Investigations, Inc.

these situations doctors have examined the child and clearly determined that the injuries the child sustained were in no way accidental - but we have caregivers who are either keeping their mouths shut or pointing the finger at the other; we know something happened but we cannot move forward.

Most other states do have crimes where a lesser mental state, such as “recklessness” or “knows or should have known”, is sufficient to hold someone accountable - and we STRONGLY feel that Vermont needs a crime that would incorporate a lesser mental state as an element. Indeed, this was a finding of the independent investigation of the Vermont Citizen’s Advisory Board (VCAB) in to the deaths of Peighton Geraw and Dezirae Sheldon: “Vermont law and policies do not currently provide sufficient mechanisms to address cases of serious injury to children where the perpetrator cannot be identified and the caretaker cannot reasonably explain how the injuries were caused.” Quoting from VCAB’s Child Death Review Report, released November 7, 2014.

- Sections 12 and 13 significantly enhance the ability of DCF to share information with relevant stakeholders. Surprisingly, even with the empanelment of the SIUs’ multi-disciplinary teams, current concerns about the ability to share information can get in the way of our ability to truly support best outcomes for a child.
2. What pieces are helpful but not essential?
At this time we would not identify a piece of the bill as helpful but not essential. There are certainly sections that have less immediate impact on the work of the CACs/SIUs and on those sections we defer to the agencies and individuals with the requisite knowledge and experience for comment.
 3. What is missing to move the state towards reaching its goals?
Criminal Rule of Evidence 804a should be expanded. Currently, Rule 804a permits hearsay evidence of the statements of a child victim only in cases of sexual abuse and does not apply to Human Service Board hearings. We believe this Rule should be expanded in two ways: 1) to permit hearsay evidence of the statements of the child victim in physical abuse cases; and 2) allow the Rule to apply in Human Service Board hearings (notably DCF’s hearings relative to substantiation determinations). Requiring a young child to testify in front of their alleged abuser is sadly almost always akin to expecting the impossible and generally extremely traumatizing if it does occur. It should be noted that this was also a finding of the independent review conducted by VCAB.
 4. From your perspective, what sections should be amended in order to move us towards this goal?
 - Amend Section 11 by changing current language in 33 V.S.A. §4915(b)e. We recommend 33 V.S.A §4915b(e) should be modified to ensure that the Department for Children and Families “reports to and requests assistance from the **Special Investigations Unit**” in their county, not simply law enforcement as currently stated, on those cases that SIUs are given the mandate and/or discretion to investigate. Clearly, the motivation behind the proposed changes to current law as set out in Section 6 are primarily driven by a desire to create more uniformity and consistency in our

response county to county - and we absolutely support this goal. That being said, challenges remain with obtaining collaboration, cooperation and buy-in to the SIU/multi-disciplinary model from some local law enforcement agencies - in some counties this is more of an issue than in others. Without a change to the cross-reporting statute, there is no guarantee that the SIU will necessarily know about a case - for example if the call gets placed to a local law enforcement agency that chooses to "do its own thing".

While that is currently a problem that we struggle with, in light of the fact that S.9 would mandate our investigation of certain crimes, we find it becomes that much more problematic; we may be held responsible (by both the public and the legislature) for responding to crimes that we may not know about. That this is a bigger issue in some counties contributes to a lack of consistency and uniformity in investigating and responding to these cases. Amending the cross-reporting law should eliminate that gap and would go a long way toward ensuring we have the supports in place to be as consistent as possible in our response.

- Amend Section 12, "Reporting Child Abuse and Neglect: Remedial Action" to impose a time frame under 33 V.S.A. §4913b within which the Department needs to provide information to the mandated reporter on the status/outcome of a report of abuse. Currently it is open-ended and the SIU/CAC directors report that sometimes it has taken months before that information is shared, which can leave the reporter confused, in limbo and feeling unsupported and unsure of how to proceed. We have not offered a specific recommendation on that time frame and defer to the Committee and DCF to determine what is reasonable.

5. If the SIUs/CACs recommended a change to the original Section 6 of S.9 in the Senate, what was the recommendation and what was the rationale behind it?

In testimony offered before Senate Judiciary, we requested that the Senate move the crime of 13 V.S.A. §2601, which criminalizes Lewd and Lascivious conduct, from the list of crimes SIUs are mandated to investigate to one they "may" investigate. These acts are very different than those charged under 13 V.S.A. §2602, Lewd and Lascivious Conduct with a Child, and may involve no contact with anyone at all - a typical example involves allegations of exposure or public masturbation. These are cases which standard law enforcement officers have the training and expertise to handle and will not always require the extremely high level of skill and knowledge the SIUs possess. The sheer number of these cases, should the Units be required to investigate, would significantly drain the SIU resources in total, and specifically detract from and divert time and resources from other, more serious cases.

We also recommended that if a new crime of "Failure to Protect" were to be established, then those cases, along with crimes charged under 13 V.S.A. §1304 "Cruelty to a Child", should be cases the Units/CACs are mandated to investigate under 24 V.S.A. §1940.

I am certainly available at the Committee's convenience if additional information is needed. Thank you again for your important work and for allowing us to contribute to your process.