

## Memorandum

**To: Members of the House Human Services Committee**  
**From: Ken Schatz, DCF Commissioner**   
**Date: January 27, 2016**  
**Re: H.622**

---

I am happy to be here today in support of H.622. This is a bill that clarifies certain provisions of Vermont's child abuse reporting law and that also allows health care professionals and clinicians to cooperate with the Department in investigations of alleged child abuse or neglect without fear of violating Vermont's patient privilege doctrine.

### *Proposed Change to the Mandated Reporter Statute*

The first proposed change is to the child abuse reporting statute. Act 60, the child protection bill from last legislative session, made many improvements to our system. There was one change specific to the mandated reporter statute that has had some potentially unintended consequences. This was the change to remove from statute language that allowed a mandated reporter "to cause a report to be made" to DCF. Under the current law, now every mandated reporter who reasonably suspects child abuse or neglect has an independent obligation to make a report to DCF, even if they know a report has already been made. This has been particularly challenging in settings in which multiple mandated reporters become aware of suspected abuse or neglect either concurrently or sequentially, such as in medical, educational and child care settings, which results in many duplicative reports to DCF of the same information.

DCF shared these concerns this fall with the Child Protection Oversight Committee. The Committee requested that DCF reach out to stakeholders to solicit input on a proposed change to the mandated reporter statute. DCF followed through with that task and solicited feedback from a wide audience including educators, child care providers, medical providers, residential treatment program providers and others on proposed draft language. We received 25 comments in response. There were some specific questions and suggestions for language, though generally, the comments were all supportive of the concept of a legislative solution that would allow a mandated reporter, who reasonably suspects abuse or neglect of a child and who has reliable information that the same incident or suspected abuse or neglect has already been reported, to not make a report to DCF if the mandated reporter is reasonably certain that he or she has no new information to add.





DCF provided suggested language to amend 33 V.S.A. §4913(c) to the Committee that is substantially similar to the language proposed in H.622 and we support the language that was ultimately included in the bill. DCF also supports the other technical changes to address the cross-referencing in §4913.

***Proposed New Language for a Patient Privilege Exception***

DCF also supports Section 2 of H.622 that allows for a patient privilege exception for DCF child abuse investigations and we also have some suggested additions to this section.

Vermont's child abuse reporting law has historically provided that mandated reporters may not assert privilege as a basis to withhold a report. *See* 33 V.S.A. §4913(i). For example, a doctor may not assert patient privilege as a reason to not make a mandated report of suspected abuse or neglect of a child to DCF.

Vermont law does not specifically extend this privilege exception beyond the child abuse reporting law. Section 2 of this bill proposes to extend this privilege exception beyond the initial report of suspected child abuse to cooperating with DCF in the investigation of suspected child abuse or neglect. We support this expansion of the privilege exception. Please note that the mandated reporter exception to privilege is mandatory with respect to the initial report of suspected abuse/neglect. The expansion of the privilege exception beyond the initial report is permissive and would allow, but does not require, a reporter to participate further in the investigation by DCF without fear of violating state law and/or facing a licensing or professional regulation violation.

**Suggested Additions:**

1. DCF requests that reference to "assessments" is added to lines 3 and 11 on page 4 of the bill to be clear that reporters can cooperate with the Department's ongoing investigations *and* assessments. This would cover all possible child safety interventions initiated by the Department.
2. The State of Maine has a statute that extends Maine's privilege exception beyond the initial report of child abuse/neglect and allows physicians, clinicians and others to not only make the initial report but to also cooperate with the child protection agency, investigators, prosecutors and guardians ad litem in child protection cases, such as CHINS proceedings. We propose that Vermont's statute is broadened in a similar way to allow for participation in child protection cases generally, not just DCF investigations and assessments. To accomplish this, language could be added to the proposed §4914a and the Department would be happy to work with legislative counsel on suggested language.





3. Finally, it might be further helpful to reporters with patient privilege to include a provision similar to the immunity from civil and criminal liability found in the mandated reporter statute at 33 V.S.A. §4913(f) in §4914a that allows a person working with DCF or State's Attorneys in a child protection proceeding who disclosed information pursuant to 33 V.S.A. §4914a immunity for acting in good faith. We suggest that language is added to the proposed §4914a to that effect.

Thank you.

