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June 11, 2014

Commissioner David Yacavone
Department for Children and Families
103 South Main Street
Waterbury, VT 05671

Re: *Attorney General's Review of D.S. - DCF Investigation*

Dear Commissioner Yacavone:

The Vermont Attorney General's Office (AGO) has completed its review of the Vermont State Police (VSP) criminal investigation of the circumstances surrounding the investigation of child abuse or neglect of D.S., a one year old child, who was found to have two broken legs of unexplained origin on February 14, 2013. The VSP investigation examined: 1) the DCF investigative process done in conjunction with the Rutland Police Department (RPD); and 2) the DCF case planning and review process done in conjunction with the Rutland County State's Attorney's Office and attorneys for the child and her parents that was ultimately subject to review and approval by the Vermont Superior Court, Rutland Family Division. This Office has determined that there is no evidence of criminal misconduct on the part of any individual involved in the investigation and handling of D.S.'s case. Accordingly, there is no basis to file criminal charges against any DCF employee in this case.

D.S. was taken into DCF custody pursuant to a petition filed in the Vermont Superior Court, Rutland Family Division, that alleged D.S. was a child in need of care or supervision (CHINS). An emergency care order was sought and obtained on February 14, 2013. A temporary care hearing was held in the Family Division on February 19, 2013. The Family Court case was resolved on March 21, 2013, when all parties (the Rutland County State's Attorney, D.S. through her attorney, and D.S.'s parents) stipulated and agreed that D.S. was a child in need of care and supervision because of her mother's failure to provide timely medical care for D.S.'s injuries. The Family Court ordered that D.S. was to remain in DCF custody and was placed with her paternal aunt and uncle.

In April 2013, after the CHINS petition was filed, D.S.'s mother was criminally charged by the Rutland County State's Attorney's Office with Cruelty to a Child under 10 years old, in violation of 13 V.S.A. § 1304, because she neglected to provide proper and timely medical care to D.S. On July 31, 2013, she pled guilty as charged.

The cause of D.S.'s injuries was never conclusively determined. There was an apparent assumption they were caused by her mother, due to the fact that she gave multiple conflicting statements, all of which were inconsistent with the medical evidence. Nevertheless, DCF determined that it was in D.S.'s best interests to be reunited with her mother, and developed a case plan based on that goal. By all accounts, D.S.'s mother participated, and made progress, in counseling, gained parenting skills, and maintained visitation with D.S., first under supervision, and later unsupervised. DCF decided to place D.S. back in her mother's home in October 2013. Full custody was returned to the mother by the Family Court on February 6, 2014.

Two weeks later, on February 19, 2014, D.S. was admitted to the hospital with multiple severe head trauma resulting in her death. The mother's husband (who was her boyfriend a year earlier at the time of the broken legs) has been charged with Second Degree Murder in connection with the death.

Although this Office finds no criminal conduct, the investigation revealed some striking examples of flaws in how the case was handled that demand immediate changes in practice and policy as well as legislative changes that will avoid similar tragic outcomes in the future.

There were significant flaws in the handling of the case, particularly in the area of information sharing, which inhibited informed decision making, outlined more fully below:

1. The coordination and communication between the Rutland Police Department detective and the DCF investigator assigned to the case was deficient.

Although the focus of the RPD investigation (to determine possible criminal culpability for D.S.'s injuries), may have differed from that of the DCF investigation (to determine if D.S. was a child in need of care or supervision), complete sharing of information between the two would have enhanced both goals. RPD had an incomplete copy of the DCF investigator's report. The mother's boyfriend, who had arrived at the hospital with the mother when D.S. was admitted with broken legs, was briefly interviewed at the hospital by the DCF investigator. This information was apparently not shared with the RPD detective and the boyfriend was never interviewed by the police. A

later phone conversation between the DCF investigator and the boyfriend, regarding an allegation that he had caused bruising to the child's face at an earlier time, established that at least on one prior occasion he had assisted with care of the child. This was documented in her report, but was not included in the materials sent to RPD. The RPD file did have a copy of a medical report indicating the mother was living with her "boyfriend" at the time of the broken legs incident, but RPD never interviewed the boyfriend, apparently relying on the mother's statements that she was the sole caregiver.

2. The final DCF Investigation and Case Determination Report does not appear to have played any significant role in the subsequent case-planning and decisions about D.S.'s safety.

The final DCF report documented interviews that raised questions about the mother's mental state, as well as noting that her boyfriend, on at least one occasion, had access to D.S. and assisted with her care. Though the DCF social worker assigned to the case had access to the report, DCF did not distribute the report to the various parties to the CHINS proceeding. Prior to agreeing to DCF's recommended disposition and to signing off on subsequent case plans, the Rutland County Deputy State's Attorney did not receive nor request the full DCF investigative file or the social worker's continuing contact case notes.

Because there was a stipulation in the Family Court CHINS proceeding, no pre-hearing discovery was provided to counsel for D.S. or to D.S.'s parents. The attorney representing D.S. did not receive, nor request, the full DCF investigative file or continuing contact social worker's case notes, prior to disposition or signing off on subsequent case plans. She did request D.S.'s medical records after the initial detention hearing (in anticipation of a possible contested merits hearing), but did not receive them or follow through, in light of the stipulation to merits.

While failure to provide such discovery would not have impacted the agreement by the parties that D.S. was indeed a child in need of care and supervision, it did mean that none of the parties had all of the information available to properly evaluate the wisdom of future disposition and case plans for D.S. As a result, there was almost total deference and reliance given to the recommendations of DCF. Certain information and reports gathered by DCF during the course of their involvement with D.S. prior to her return to the mother's custody in 2014 would have raised questions about the case plan if shared within DCF. At the time the plan was finalized, the boyfriend had become the mother's husband, the mother was reportedly pregnant with his child and he had been noted as "connected/important" to the child.

Despite these developments, and the mother's allegation that the boyfriend caused D.S.'s injuries noted below, the file does not reflect any contact or interviews with him or follow-up as to his past or future role in D.S.'s household. The final January 7, 2014, case plan was remarkably devoid of any recognition of his past contact with D.S., the mother's allegation that he was responsible for the injuries, or that he could be expected to play a significant role in D.S.'s life now that he was married to her mother and they were expecting his child.

3. The coordination and communication within DCF on matters related to D.S. were deficient.

On May 6, 2013, the mother submitted a request to the DCF Commissioner's Registry Review Unit to appeal her "substantiation" for having physically abused and medically neglected D.S. The mother acknowledged the neglect but claimed in that request that her boyfriend caused D.S.'s injuries. Neither the social worker nor her supervisor were made aware or advised of this request. Further, a hearing officer for DCF issued a written denial of the mother's appeal on December 5, 2013, which was sent to the DCF Commissioner and to the DCF Rutland District Director. According to the VSP investigation, neither the District Director, the social worker, her supervisor; the Deputy State's Attorney nor the child's attorney saw this report prior to the February 2014 determination that full custody of D.S. be returned to her mother.

4. The Superior Court Judge with the most knowledge of the parties and the facts in the CHINS proceeding did not preside over the final disposition hearing.

A CHINS court proceeding generally entails several pre-disposition hearings including a temporary care hearing, pre-trial conferences, a merits hearing, disposition and subsequent post-dispositions reviews prior to a final review and determination of continued custody for the child. The same Superior Court judge presided over these proceedings in the D.S. case except for the final review hearing held on February 6, 2014, at which a different Superior Court judge presided. At this final hearing the parties stipulated that custody of D.S. could be safely returned to the mother and the judge accepted the stipulation. A review of the transcripts of the proceedings showed that the judge who presided over the pre-disposition proceedings was very familiar with the parties, the potential impact of the mother's criminal case on final disposition and other unresolved factual matters in the case. Although no one can conclude with certainty that the outcome would have been different, the independent review of an agreement of the parties in child abuse and neglect

cases should be conducted by the same judge who has presided over all aspects of the case.

There is no doubt that the State must work immediately to improve its system for protection of our most vulnerable Vermonters. Immediate attention should be directed to improving the internal communications and information sharing within DCF between (1) social workers who are conducting abuse and neglect investigations, (2) those workers who are responsible for the subsequent case planning and disposition when a child is determined to be a victim of abuse and neglect, and (3) those who participate in substantiation determinations and reviews. As importantly and as immediately, all information gathered by DCF must be provided to the state prosecutors, all parties and the court regardless of the expectation that a case will be disposed of by agreement as opposed to contested on its merits.

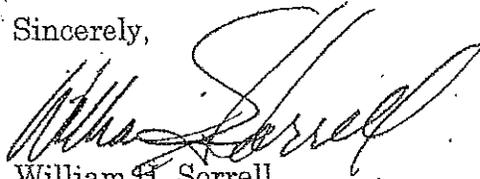
In the long term, I will be recommending that the Legislature consider again the change to Vermont's Cruelty to Children laws recommended in the past by this Office -- most recently in H. 645 introduced in the 2011-12 session. As this case illustrates, in situations where infants and young children have been killed or seriously injured and may be in the care of more than one person, the criminal justice system's response is often compromised by the inability to conclusively establish which caretaker caused the injury. This is especially true when the only two witnesses to an event blame each other or agree to remain steadfast in their silence. The proposed amendment in H. 645 would criminalize not only acts of assault or neglect but also the act of allowing a child to suffer death, serious body injury or to be sexually assaulted --in other words, the failure to intervene.

Additionally, it is time for the State to revisit the scope of confidentiality afforded these investigations and proceedings under current law. Although confidentiality serves the purpose of protecting the identity of those young victims from embarrassing publicity about often horrific events, the system as a whole will benefit from increased public awareness of the scope of child abuse and neglect in Vermont, the child protection process generally, and the decision-making in particular cases. I look forward to working cooperatively with DCF during its internal reviews, the Senate Committee on Child Protection, and the Legislature in developing further proposals to strengthen this State's response to child abuse and neglect.

Enclosed is the completed Vermont State Police investigation into the State's response to the injuries sustained by D.S. in February 2013. This investigation focuses solely on the State's response to these injuries. Pursuant to 33 V.S.A. § 306(c), this Office consents to public disclosure of the report and other information relevant to the investigation in the injuries sustained by D.S. to the extent the statute allows. This Office will undoubtedly receive a public records request for the

report and we will comply fully with our expanded obligations in the recently amended provision of 1 V.S.A. § 317(c)(5).

Sincerely,

A handwritten signature in cursive script, appearing to read "William H. Sorrell". The signature is written in dark ink and is positioned above the printed name.

William H. Sorrell
Attorney General