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April 16, 2014

Senate Health and Welfare Committee
Sen. Claire Ayer, Chair
115 State Street
Montpelier, VT 05633

Re: H.790 (“An Act Relating to Reach Up Eligibility”)

Dear Sen. Ayer and Members of the Committee,

Thank you for inviting additional testimony on H.790. Vermont Legal Aid has consistently testified in support of increasing (or eliminating) the asset test for Reach Up eligibility and for “making work pay” and creating greater work incentives by increasing the earned income disregard. We oppose grant reductions to achieve these policy outcomes.

I would like to direct the Committee’s attention to the recently concluded “Reach Up Work Group report (Dec. 3, 2013). That report is the product of months of research, witness testimony, and subcommittee deliberation covering the full scope of the Reach Up program. The report confirms that Reach Up is an important and largely successful safety net program for qualifying low-income Vermonters. It also looked at specific questions or issues requested by the legislature. My testimony today relates to two of them.

In the first instance, the report provides unqualified support for addressing so-called “benefit cliffs” through increased asset limits and earned income disregards. The second highest priority of the Work Group indicates that “financial stability” for Reach Up families is imperative and that greater ability to earn and save is a desirable outcome for families in need. See Work Group report at pp. 5, 13, 14. Greater financial stability did not include any recommendation for grant reductions. In fact, grant reductions would lead to greater financial instability for many families who are not in a position to take advantage of new work opportunities or incentives until they can overcome certain barriers to employment or are out of work deferred status. The Work Group report bolsters the position of more than 30 organizations and community members who oppose grant reductions to Reach Up households to fund what is otherwise a new and important work incentive with the potential to help families re-enter the workforce and ultimately successfully graduate from the program.

In addition, the legislature expressly required the work group to examine the question of eligibility for families with a household member convicted of drug felonies. The Work Group, after careful consideration and deliberation deemed that approach inadvisable. Accordingly, inclusion of S.179 as an amendment to H.790 is not supported by the experts who reviewed

provisions similar to those contained in S.179. The reasons, in part, for that conclusion are set out below.

First, any prohibition of access to TANF/Reach Up as a result of a drug crime is highly likely to disproportionately affect women (given the overwhelming profile of Reach Up participants – approximately 80-85% are women with children), particularly potential victims of physical or sexual abuse, and may prevent reunification of mothers with children, foreclose certain housing opportunities, or otherwise impede the ability of women seeking rehabilitation and stabilization in the community. Vermont Legal Aid opposes such an amendment.

Studies show the disproportionate impact of, in particular, drug-related criminal activity on increased prison population of women and the disproportionate collateral consequences of conviction to women as well -- many of whom are victims of domestic or sexual violence and who are the sole care providers for their children.¹

Specifically, here are some of the findings:

“Many women caught up in the criminal justice system are victims of abuse: Most recent research literature devoted to analysis of women in the criminal justice system presents four distinct themes to describe the etiology of women’s criminal behaviors and their personal and social problems. First, most women in the criminal justice system come from neighborhoods that are entrenched in poverty and largely lacking in viable systems of social support. Second, **alarmingly large numbers of these women have experienced very serious physical and/or sexual abuse**, often commencing when they were young children. Third, as adults, most of these women are plagued with high levels of physical and mental health problems as well as substance abuse issues. Often these problems are combined and compounded. Fourth, the great majority of the women who have suffered from these deprivations, histories of trauma and abuse, and health deficits are mothers—**and they are far more likely than men in the criminal justice system to be the sole support and caregivers for their children.**

The relationship between violent physical and sexual abuse and women’s incarceration has been traced by Angela Browne in her research on the high rates of women in prison with histories of abuse. She reports strong associations between histories of childhood sexual abuse and violence and subsequent problems such as alcohol and drug abuse; involvement in prostitution; involvement with violent intimates who are involved in other criminal activities; and arrests for criminal offenses.”

One key takeaway: “Women arrested for involvement in the drug trade tend to play peripheral or minimal roles, selling small amounts to support a habit, or simply living with intimates who engage in drug sales. Once arrested under mandatory minimum drug laws, women face intense pressure to plea bargain but are likely to have little or no information about larger drug market operations to use as bargaining chips. Mandatory minimum drug laws remove the discretion that judges might otherwise use to take account of mitigating factors such as a woman’s role giving primary support and care to children or to elder relatives. The drug war has been a major driver of female prison population growth but not the only one. Between 1995 and 2004, arrests of adult women for drug offenses rose by 48 percent compared

to 23 percent growth for men (emphasis added).” The report of the Incarcerated Women’s Initiative in Vermont also speaks to this growing problem.ⁱⁱ

In addition, prohibition of access to public benefit programs will pose new problems for formerly incarcerated heads of households who attempt to reunify their families, and who may still be subject to a sentence (out on probation or parole or subject to community service requirements). Without housing, for example (and the cash benefits help pay for housing), moms cannot get their kids back:

“More than 80 percent of mothers in prison plan to reunify their families upon release, but accomplishing this goal is often very difficult. Prior to a mother’s arrest and incarceration, the typical family unit survived on an income of less than \$500 per month. Generally lacking adequate job skills and an acceptable record of past employment, most women are ill-prepared to support a family upon their release from prison. Moreover, the communities to which they return are ill-prepared to receive them.

The Legal Action Center has cataloged the many ways that a women’s criminal record may restrict access to vital resources when she returns from prison: denial of public housing; denial of welfare benefits and food stamps; denial of financial assistance for education; and barriers to employment. These post-conviction penalties constitute an additional layer of punishment that endures far beyond the prison sentence handed down by a judge. One problem associated with such a proposal may be that if it includes time out on probation or parole as part of the “sentence” it could create other problems, or unintended consequences in terms of people being back in the community but left with no resources and no way to care for their children.”

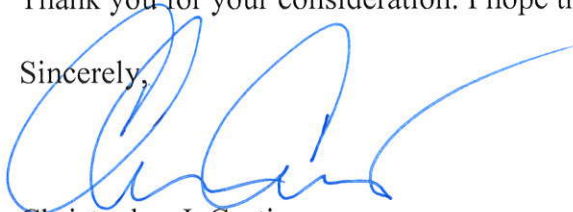
The other major question before you is whether or not such a proposal is warranted in the first instance. For post-conviction felons there is little doubt that repeat violations of conditions of release or probation and parole may result in re-incarceration. At that point, no Reach Up benefits are forthcoming as there is no child in the “household.” For those not complying with family development plans which may include conditions to meet regularly with a case manager, counselor, or to seek assistance with a co-occurring addiction or disorder a violation of the family development plan may result in fiscal sanction to the family (loss of \$75 or \$150 depending on the month of sanction). For those families in deferred status over 60 months, sanction leads to termination from the program. So, many of the goals of such a proposal (incentive to comply, sanction or penalty, or loss of benefit) are already available to the Department and/or corrections officials.

Such a proposal warrants more careful consideration and study of likely outcomes for women and children because it disproportionately impacts them, and because it is being with little or no information about unintended costs – both with respect to families and to taxpayers – as a result of its adoption. Are there circumstances that would mean corrections cannot release some individuals? Without income or housing would the state take custody of children? What are the long-term costs of preventing reunification? To date, I am unaware of testimony from law enforcement, prosecutors, corrections, or victims advocates on such a proposal. We do know that the Agency of Human Services – both in testimony and through the Work Group have indicated

a better approach is to not pursue such a course, and instead to allow new approaches to substance abuse/mental health take root before considering such a proposal.

I am pleased that the work group recommendations will reflect and amplify the Department's past position on this thorny and controversial issue that does little or nothing to solve the intractable problem of poverty in Vermont (or anywhere else, for that matter!). Thank you for your consideration. I hope this is useful to the Committee in its deliberations.

Sincerely,



Christopher J. Curtis
Staff Attorney
Vermont Legal Aid, Inc.

ⁱ Source: http://www.wpaonline.org/institute/hardhit/part1.htm#_ftnref25

ⁱⁱ Source: <http://www.uvm.edu/~jeffords/reports/pdfs/Incarcerated%20Women's%20Initiative.pdf>.