

Memorandum

To: Rep. Ann Pugh, Sen. Dick Sears
From: Ken Schatz, Commissioner, Department for Children and Families
Subject: **Mandated Reporter Discussion Points**
Date: June 29, 2016

Mandated Reporter Discussion Points

Standard for Reporting

- Under the current law, every mandated reporter has an independent obligation to report when he/she reasonably suspects abuse or neglect of a child
- Reports must be made within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed
- This means that mandated reporters who receive information about reports that have already been made to DCF must also report this same information to DCF

How Do We Address the Problems that this Standard Has Created?

- Mandated reporters are now spending valuable professional time making duplicate reports to DCF
- DCF has experienced a marked increase in the number of calls it is receiving and processing, many of these being duplicate calls with no new information
- Last legislative session, the House proposed a bill to address the problem of duplicate reports
- One option to address duplicate calls is to provide more staff for our 24/7 Centralized Intake and Emergency Services call center
- This would require resources, which would help DCF, but does not address the problem many mandated reporters are facing

House Proposed Language in H.622 (2016)

- The House version of H.622 proposed an exception to the reporting requirement if all of the following are true:
 - ✓ The mandated reporter reasonably suspects abuse or neglect of a child, and



- ✓ The mandated reporter has written confirmation that the same incident of suspected abuse or neglect was already reported, and
- ✓ The mandated reporter is reasonably certain he/she has no new information to add to the report
- DCF continues to support the H.622 House language as a very narrow exception to reporting when all of the above criteria are met.
 - ✓ Requiring written confirmation that another reporter has made the same report provides a level of assurance that a report has indeed been made
 - ✓ DCF acknowledges and appreciates that many reporters may not have written confirmation and so will continue to report
 - ✓ For other mandated reporter settings, however, this will cut down on the number of duplicate reports such as in hospital/medical settings
- Last session, prosecutors raised the concern that because the penalty for failure to report is criminal and defendants have the constitutional right to not incriminate themselves, it is impossible to prove in court that the exception did not apply and therefore, impossible to prosecute violations of this law
 - ✓ DCF supports the proposal of VT-NEA to decriminalize the penalty for failure to report and more closely align the penalty for not reporting with the DAIL statute regarding reporting abuse/neglect of vulnerable adults, which is an administrative penalty with higher fines for failure to report
 - DCF criminal penalty for negligent failure to report is a fine of up to \$500
 - DCF criminal penalty for a willful violation with the intent to conceal abuse or neglect of a child is 6 months in jail and up to \$1,000 fine
 - DAIL has an administrative penalty for willful violations of up to \$500 per violation, levied for every 24-hour period that the reporter failed to report, up to a maximum fine of \$5,000 per reportable incident
 - ✓ In our opinion, the DAIL administrative penalty more closely fits the alleged misconduct than does being charged with a crime and potentially imprisoned
 - ✓ Decriminalizing the penalty also addresses the issue raised by prosecutors of not being able to prove that the exception to reporting did not exist. Civil discovery tools would be available in a non-criminal setting.

Addressing Failure to Report

- There are options to consider for addressing the failure to report if the penalty for failure to report suspected child abuse/neglect was not a criminal penalty
 - ✓ One option is the administrative Commissioner's review process that is in the DAIL statute (33 V.S.A. §6913)
 - ✓ Another option is a civil enforcement penalty that could be brought by State's Attorneys or the Attorney General's Office



- ✓ At this point, DCF prefers the civil enforcement by SAs or the AGO over the DAIL Commissioner's administrative process for the following reasons:
 - DCF volume of reports and potential volume for failure to report far exceed that of DAIL's, which could create a resource issue for DCF
 - DCF works closely with mandated reporters and we feel that bringing the failure to report penalty process in-house could undermine that close working relationship
- Should DCF continue to have a penalty for both negligent failure to report and also intentional failure to report?
 - ✓ DAIL only has penalties for intentional failure to report (willful violations)

Discussion Suggestions for Future Meetings

- DCF would appreciate the opportunity to discuss with this committee other issues and ideas that impact child protection
 - ✓ Hearsay exception for children in Human Services Board child abuse/neglect substantiation hearings (from H.398 (2016))
 - ✓ Issues related to patient privilege and state and federal confidentiality laws and how these laws impact child protection work, including investigations, assessments and court and administrative proceedings

