

Memorandum

To: Representative Pugh and Members of the Child Protection Oversight Committee

From: Ken Schatz, Commissioner of the Department for Children & Families (DCF)

Date: September 26, 2016

Subject: DCF Mandatory Reporting Legislative Proposal

Introduction:

We have a proposal amending the mandated reporter statute to address the issue of duplicative reports while also holding mandated reporters accountable, should they fail to report.

Background:

Act 60, the child protection bill from the 2015 legislative session, made many improvements to our system. However, some unintended consequences have occurred from the removal of statutory language allowing a mandated reporter “to cause a report to be made” to DCF. Under the current law, 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. As the committee is aware, this has been particularly challenging in settings where multiple mandated reporters become aware of suspected abuse or neglect either concurrently or sequentially; such as in medical, educational and child care settings. This results in many duplicative reports to DCF of the same information.

DCF shared these concerns with the Child Protection Oversight Committee (CPOC) last fall. Per the committee’s request, DCF reached out to stakeholders to solicit input on a proposed change to the mandated reporter statute. DCF 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. The comments were all supportive of the concept of a legislative solution allowing a mandated reporter, who has reliable information that a report has been made regarding an incident of suspected child abuse/neglect that they are aware of, to not make a report to DCF if the mandated reporter is reasonably certain that they have no new information to add. The chair of the CPOC sponsored H.622 during the most recent legislative session, which included this concept to address duplicative reporting. It also required a mandated reporter to have *written confirmation* that a report had already been made to DCF and that the reporter was reasonably certain that they had no new information to add to the report.





The failure of mandated reporters to report suspected abuse or neglect holds criminal consequences under Vermont law. During last legislative session, prosecutors raised concerns that the exception to the requirement to report in the House version of H.622 made the crime impossible to prosecute due the fact that when facing criminal charges, defendants have constitutional rights to not provide evidence. Prosecutors testified during committee hearings that it was impossible to prove that the exception to the requirement to report did not apply due to this potential lack of evidence. Ultimately, differences in how to approach H.622 resulted in the bill not passing conference committee.

Proposal:

DCF has consulted several stakeholders, chief among them, the State's Attorney's Association and the Attorney General's Office, to develop a legislative concept that would address the concerns raised with respect to failure to report. Both offices are supportive of the approach outlined below:

1. Address the duplicative reporting with a narrowly tailored exception to report when there is written confirmation that the report has already been made and the reporter is reasonably certain that he or she has no new information to add to the report. (This is the exception to reporting that was included in the House version of H.622.)
2. We propose that failure to report is a civil violation. A civil violation allows the prosecution to use discovery tools that are not available in criminal proceedings due to 5th amendment rights against self-incrimination. This civil process addresses the concerns raised by prosecutors last year because civil discovery allows prosecutors to make inquiries as to whether a mandated reporter has written documentation that a report of the same suspected incident of child abuse or neglect was made to DCF.

We look forward to working with you on this amendment. If your committee is in support, we are happy to draft language for your review. Thank you.

