

Memorandum

To: Members of the Child Protection Oversight Committee
From: Ken Schatz, DCF Commissioner *KAS*
Date: October 24, 2016
Re: Mandated Reporter Statute

Thank you for the opportunity to testify on Vermont's mandated reporter statute. At last month's Child Protection Oversight Committee hearing, members of the Committee requested that the Department for Children and Families (DCF) propose language for changes to the mandated reporter statute consistent with testimony provided in September. For your consideration, please see the proposed draft language below, which:

- Addresses the duplicative reporting issue with a narrowly tailored exception to reporting when there is written confirmation that a report has already been made and the reporter is reasonably certain he or she has no new information to add to the report (House passed version of H.622); and
- Proposes that failure to report is a civil violation with civil enforcement authority by the State's Attorneys or Attorney General's Office while still maintaining the current criminal penalty for failure to report with intent to conceal.
 - This preliminary draft language was modeled after Vermont's campaign finance law, which has civil enforcement for violations and criminal penalties for intentional violations.
 - If the Committee is interested in pursuing this model of enforcement, the Department recommends that it seek input from stakeholders, including State's Attorneys, the Attorney General's Office and mandated reporters.
 - In the draft below, DCF did not propose any changes from current law to the financial penalty amounts, though the violation for failure to report reflects a civil \$500 fine rather than a criminal fine.

Draft Language

Sec. 1. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

* * *

(c) Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of section 4914 of this title within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed. A





mandated reporter who reasonably suspects abuse or neglect of a child, and who has written confirmation that the same incident of suspected abuse or neglect was already reported, is not required to report that same incident of suspected abuse or neglect if the mandated reporter is reasonably certain that there is no additional information to report.

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(h)(1) A person who violates subsection (a)(c) of this section shall be subject to a civil enforcement penalty of up to ~~fined not more than~~ \$500.00.

(2) A person who violates subsection (a)(c) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

Sec. 2. 33 V.S.A. § 4913a is added to read:

§ 4913a. CIVIL INVESTIGATION

(a)(1) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of subsection (c) of section 4913, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, or physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation.

(2) The Attorney General or a State's Attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no





place of business within the State and may take testimony and require proof material for his or her information and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(3) The Attorney General or a State's Attorney shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses personally or by certified mail upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Such notice shall include a statement that a violation of section 4913(c) with intent to conceal abuse or neglect of a child is subject to criminal prosecution.

(4) Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this State for good cause shown, be disclosed to any person other than the authorized agent or representative of the Attorney General or a State's Attorney or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same, except that any transcript of oral testimony, written responses, documents, or other information produced pursuant to this section may be used in the enforcement of this chapter, including in connection with any civil action brought under section 4913(h)(1) or subsection (c) of this section.

(5) Nothing in this subsection is intended to prevent the Attorney General or a State's Attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter or of any rule or regulation made pursuant to this chapter.





(6) This subsection shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b)(1) A person upon whom a notice is served pursuant to the provisions of this section shall comply with its terms unless otherwise provided by the order of a court of this State.

(2) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place; conceals, withholds, or destroys; or mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to such notice or mistakes or conceals any information shall be fined not more than \$500.00.

(c)(1) Whenever any person fails to comply with any notice served upon him or her under this section or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender the material, the Attorney General or a State's Attorney may file, in the Superior Court in the county in which the person resides or has his or her principal place of business or in Washington County if the person is a nonresident or has no principal place of business in this State, and serve upon the person a petition for an order of the Court for the enforcement of this section.

(2) Whenever any petition is filed under this section, the Court shall have jurisdiction to hear and determine the matter so presented and to enter any order or orders as may be required to carry into effect the provisions of this section. Any disobedience of any order entered under this section by any court shall be punished as a contempt of the court.





(d) Any person aggrieved by a civil investigation conducted under this section may seek relief from Washington Superior Court or the Superior Court in the county in which the aggrieved person resides. Except for cases the Court considers to be of greater importance, proceedings before Superior Court as authorized by this section shall take precedence on the docket over all other cases.

