

Thank you for giving me the opportunity to discuss H.114. As legislators we are the ones who can bring the concerns of our constituents to the legislature, H.114 brings forth a problem I believe exists in DCF.

“The reason for this request is that the "would lead a reasonable person to believe" standard results in very broad discretion at the agency level; in particular, any accusation from a seemingly reliable source having familiarity with the child will result in abuse substantiation. This means, if DCF thinks someone may have abused a child, they can substantiate the person and put them on the registry, even though it is not more than 50% likely that the person actually abused a child. Changing the language would require DCF to assess the information and determine that it was more likely than not that the substantiated person abused a child. The more likely than not - or preponderance of the evidence standard - is the lowest standard applied in civil proceedings. The "would lead a reasonable person to believe" language is not a standard, as it leaves the DCF worker to determine not whether it is likely the abuse occurred, but just whether a reasonable person would believe abuse had occurred based upon the information available. This is too ambiguous and elastic to constitute a real standard. It results in the actual test being whether the DCF worker subjectively thinks abuse occurred, rather than an objective determination. DCF should be making objective determinations as to whether abuse occurred before placing people's names in the registry, and changing the standard for abuse substantiations to the lowest standard known in the civil law (preponderance of the evidence / more likely than not / greater than 50%) would provide greater protections against inaccurate abuse substantiations, would reduce the burden on the Human Services Commission, and on the courts. The Commission has to hear many cases where they apply a slightly more rigorous standard. Shouldn't the DCF workers be applying the same standard as the Human Services Board? Shouldn't the Board and the Court be saved from having to overturn weak abuse substantiations, and Vermonters be protected against erroneous decisions? To protect these interests, the almost unfettered discretion given to DCF workers (and, to be fair, the teams that evaluate these decisions), should be modified to require an objective, preponderance of the evidence finding prior to an abuse substantiation being finalized. This would bring DCF into line with other agencies that have to make objective decisions based

upon the preponderance of the evidence, would better protect innocent Vermonters, and would save the state resources that are now spent litigating appeals of abuse substantiations that are more likely to occur, and more likely to be overturned, under such a vague standard as "would lead a reasonable person to believe".

I am not sure there is anywhere else in the law where a reasonable person's belief is substituted for an objective factual finding based upon an established evidentiary standard. There are generally 3 standards of proof: preponderance of the evidence, clear and convincing evidence, and evidence that is beyond a reasonable doubt. This proposed amendment simply seeks to apply the lowest standard of proof to these important substantiation cases, rather than allow a system to continue that applies no standard of evidence at all, but instead replaces an evidentiary standard with a standard of reasonable belief.” - Brice Simon, Esq.

The proposal I am advocating for is to change "would lead a reasonable person to believe" to "establishes by a preponderance of the evidence"

Our laws are based on the presumption of innocence. The burden of proof lies with who declares, not who denies. Although our constitution does not site it explicitly, presumption of innocence is widely held to follow from the 5th, 6th and 14th amendment. Coffin v. United States

As the law stands now, we as a state are causing great undue terror, pain and grief to people who have been substantiated and placed on the Child protection Registry based on the department's belief. I would also say that it really doesn't appear fair that a review is done internally rather than from an impartial board.