

LYNN, LYNN & BLACKMAN, P.C.

Joint House Human Services and Judiciary on S.9
March 17, 2015

Dear Committee Members:

I am an attorney who works extensively with the Vermont School Board Insurance Trust (“VSBIT”) handling school related issues. I am regularly involved in counseling school clients around reporting possible abuse or neglect to DCF and how best to fulfill the reporting obligations. Please accept this written testimony in opposition to portions of bills S.9 and H.41. Specifically, I believe that the provisions that create criminal exposure school officials who act in good faith and ones that create ambiguous duties for them ought to be reconsidered.

Child abuse and neglect are serious issues facing our community and our schools are on the frontlines. I know from personal experience that the dedicated professionals in our education community take their obligations to report child abuse and neglect very seriously. They have dedicated their careers to our children and work tirelessly for their interests. Unfortunately, S.9 and H.41 have the potential to do more harm than good by exposing school personnel to potential criminal charges and monetary fines without establishing clear guidance as to when they must act and by creating a climate of fear in our schools.

Specifically, S.9 creates a new criminal penalty of up to ten years imprisonment and a monetary penalty of up to \$20,000 for failure of a person having custody or care of a child to protect the child. While the protection of children is of paramount importance, the bill substantially extends any existing duty owed by school personnel to students and subjects them to serious criminal penalties under ambiguous circumstances, regardless of their intent. Under existing law, school personnel are already mandated reporters, obligated to report abuse and neglect to DCF. It is my experience that school employees understand their duty and fulfill it every day. They report abuse and neglect when there is any reason to believe it exists.

The bill establishes a “reasonably should have known” standard for criminal liability where a school employee fails to “protect” a student. That means that even good faith mistakes may subject the educator to imprisonment. Teachers and administrators will work in fear that any possible, slight suggestion of abuse or neglect requires exhaustive investigation. Any bump or bruise they observe could trigger the statutory duty and, thus, expose them to jail time if they do not “protect” the child. That environment will further strain resources at our schools and erode the relationship of trust between parents and their community schools.

Effectively, the bill turns our school teachers and other professionals into full-time criminal investigators to make sure that there can be no later argument that the school employees should have known that there was some ongoing abuse and that they failed to protect the victims.

Further, the contours of the duty to protect are unclear. Is it sufficient to make a report to DCF? Must educators take action to separate students from their parents if they suspect that there is abuse? How far must schools go to fulfill this obligation? It is realistic to assume that schools will feel compelled to take some action over and above reporting to DCF. The consequences of failing to comply with the statute are too serious to do otherwise.

Similarly, H.41 replaces the “reasonable cause to believe” standard for mandated reporters with the more ambiguous “cause to believe” in the case of possible sexual abuse. School employees fully comply with their existing obligation. They report abuse and neglect when they believe it may have occurred. The new language gives no definition to what constitutes “cause to believe” or how it differs from the existing language. I strongly urge that there to be definitional clarity within the statute to dispel the ambiguity the change necessarily creates. Under the existing statute, educators know that they must report abuse or neglect where there are reasonable grounds to conclude it is present. I am concerned, again, about any change that creates uncertainty as to what triggers the obligation. I am opposed to any statute that creates criminal exposure for well-meaning, conscientious educators.

School personnel are trained to report child abuse and neglect. More than that, they are mandated reporters by law. As a community, we rely on mandated reporters to see things that others do not see because of their unique relationships with children. I worry that as written S.9 and H.41 will create uncertainty, suspicion, and fear among the group, educators, who are already working hard to protect and nurture our children.

I urge that S.9 be amended to remove criminal liability for those officials who “should have known” of the abuse so that school officials acting in good faith are not sent to jail. I also believe the term “protect” should be defined for schools as a report to DCF. As to H.41, I suggest that either the standard for reporting remain the same as it now is or that the new standard include a definition so that school employees and other mandatory reporters will better understand the circumstances triggering a duty.

Thank you for your time and consideration.

Very truly yours,

Lynn, Lynn & Blackman, P.C.

/s/ Pietro J. Lynn

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