

## TESTIMONY OF PAMELA A. MARSH, ESQ., CWLS

I hope you have had an opportunity to read my resume, and to understand my commitment to Child Welfare and Juvenile Justice. I am the Chair of the Juvenile Law Section of the Vermont Bar Association, although I am not speaking today on their behalf. I am one of two certified Child Welfare Law Specialists in Vermont. I have been practicing juvenile law in Addison County since 1985, and as the primary juvenile contractor since 1992. In Addison County, the public defender's office handles only adult cases, and my firm handles the juvenile caseload. I served on the Chapter 55 Committee that recommended revisions to the previous Juvenile Procedures Act, most of which were adopted by the legislature and became effective in 2009. I currently serve on the Justice for Children Task Force, which focuses on child welfare cases, as well as the Juvenile Justice Workgroup, which focuses on delinquency cases.

Last year, I testified on S.9, which contained a provision for the creation of the Office of Child Advocate. When the relevant sections were removed from the Bill, I submitted a letter on behalf of the Juvenile Law Section of the Vermont Bar Association expressing the Section's dismay at the removal of the Office of Child Advocate from the bill.

<http://legislature.vermont.gov/assets/Documents/2016/WorkGroups/Senate%20Health%20and%20Welfare/Bills/S.9/Public%20Comments/S.9~Pamela%20Marsh~Juvenile%20Law%20SEction%20of%20the%20Vermont%20%20Bar%20Association%20Comments%20on%20Removal%20of%20Office%20of%20Child%20Advocate~2-20-2015.pdf>

I have read and agree with the remarks of Michelle Fay for Voices for Vermont's Children and Trina Bech, Esq., on behalf of the Vermont Parent Representation Center, Inc., and the 10/1/2015 Vermont Digger Editorial by Megan Palchek. An independent agency to whom any person involved in the child welfare system can appeal for a fresh and independent look at the systems established for the protection of Vermont's children, and to bring concerns about whether systemic changes are needed to improve the child welfare system. Michelle Fay's proposed changes to the language of the bill seem appropriate to me.

I must respectfully disagree with the testimony of Ken Schatz, Commissioner of the Department for Children and Families, who suggests that the existing individual and systematic oversight is enough. If they were, in fact, enough, we should not have had the child death cases in 2014. Aside from that, there are many situations for which no formal review processes exist. These include interventions when DCF believes that an adult should not be around children, but there was no prior substantiation of abuse to appeal. In addition, there is no formal way for relatives to appeal a decision not to place a child with them in kinship care post termination, even when they have remained involved in the child's life pre-termination. (An example of this is when the relative lives in another county or out of state, and the initial case plan is reunification with a parent. Placement may appropriately be in foster care close to where the parent resides. Even if the relative visits with the child during this time, by the time of the termination, DCF often decides that the child has "bonded" with the foster parent, so that the relative is not a suitable placement.) The Joint Legislative Child Protection Oversight Committee

is scheduled to sunset on June 1, 2018. It really has a different focus: to recommend legislative changes that would enhance child protection, rather than the purposes set forth in proposed 3 V.S.A. § 2284(c). The Justice for Children Task Force is also not a substitute for the Child Protection Advocate. It can't and doesn't respond to individual complaints. It is designed to improve best practices, representation of parents and children in the legal system, and to coordinate work between the many agencies that provide services to parents and children involved in the child welfare system. The existing systems do not obviate the need for the Office of the Child Protection Advocate.

Please note that I would prefer to see civil penalties, rather than criminal penalties, for hindering the Child Protection Advocate or taking discriminatory, disciplinary or retaliatory action against a person for communications made or information disclosed to the Child Protection Advocate. Aside from a general belief that we already have criminalized too much conduct in Vermont, criminal penalties are often difficult to enforce due to the standard of proof required (beyond a reasonable doubt). Civil penalties, which could include legal fees to a prevailing party, only have to be proven by a preponderance of the evidence – a much easier standard. There could be a set monetary damage award for a violation. You'd probably have to provide that recoupment could be made from Vermont income taxes for those cases where violators have less income, and possibly loss of professional licenses if violators are members of professions who are subject to regulation.

Finally, with respect to funding in Section 3, I do not think that creation of a single position is enough. One individual is not going to be able to handle all the tasks assigned to the Child Protection Advocate. You would probably need funding for at least two additional employees in order to minimally staff such an office. This provision is clearly intended to make the bill revenue/expense neutral, but creating the office and not adequately funding it simply would not be helpful.