



March 19, 2015

TO: Rep. Ann Pugh, Chair
Rep. Sandy Haas, Vice Chair
House Committee on Human Services

FROM: Auburn Watersong, Associate Director of Public Policy

RE: S.9 - Section 3 Failure to Protect

In order to address the following question from the committee: “The goal of the bill S.9 is to improve Vermont’s child protection responses....From your perspective, what sections should be amended in order to move us towards this goal?”

Thank you, Representatives for your thoughtful consideration of our state’s response to children at risk, as detailed in S.9, and for the opportunity to provide our perspective on the critically important task of striving to keep children in Vermont safe from harm. The Vermont Network supports the Legislature’s efforts to improve Vermont’s child protection responses and shares the belief that our state’s child protection system must ensure safe and nurturing homes for children who have suffered abuse and neglect. The Vermont Network believes that Section 3 does not move Vermont toward this goal. As currently written, Section 3 would harm the very children it aims to protect. This section creates a felony crime which would separate an abused child from their victimized parent and potentially incarcerate that victim for up to ten years.

As you are aware, the problems of domestic and sexual violence are present in many of the families with whom DCF is interacting on a daily basis. National research indicates that 30% to 60% of perpetrators of domestic violence also abuse children in the household.ⁱ Sadly, domestic violence and violence against children often coexist in families—the frequency of child abuse doubles in families experiencing domestic violence, compared to families with nonviolent partners, and the rate of child abuse escalates with the severity and frequency of the abuse against the protective parent.ⁱⁱ

HERE IS WHAT WE KNOW:

Separation does not equal safety for victims of domestic violence and their children

When one parent is subject to the other's physical abuse, continual coercive control, regular intimidation and repeated threats, reporting or attempting to report child abuse can place the victimized parent and the child at even greater risk. For victims of domestic violence, separation does not equal safety. Perpetrators of domestic violence too often use threats of violence or death toward the victim, children, family and friends as weapons to control a victim who is striving to protect their children. A victimized parent may face threats from their abuser that the abuser will hurt or kill the child or others in the household and the victimized parent if the victim attempts to report her violent partner or flee with her child. It is well known that a victim's risk of homicide dramatically increases upon leaving. In fact, women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship. Women who leave abusive relationships are 25 times more likely to be assaulted by ex-mates and 5 times more likely to be murdered".ⁱⁱⁱ

In domestic violence cases, removal may not be in the best interest of the child

Domestic violence experts have highlighted the trauma caused to children by being removed from their home and placed in foster care, particularly with strangers, stating that children in homes where there is domestic violence may be even more vulnerable to the trauma created by removal. Removing them from their protective parent (or removing their protective parent from them) will only reinforce their sense of trauma and fear. Further research on resilience tells us that a consistently loving, nurturing relationship with a non-abusive parent or an adult caregiver who is involved in a child's life over time is the single greatest resource for children's healthy development and recovery from exposure to domestic violence and other trauma.^{iv}

Vermont is a national leader in domestic violence/child welfare collaboration that ensures perpetrator accountability and victim support

Vermont has a long history supporting children and protective parents where there is both child abuse and domestic violence. Through the federal Office of Violence Against Women Rural Grant funding first secured in 1996, Vermont established and continues to provide children's advocacy services in domestic violence programs and sustains the Domestic Violence Unit at DCF in order to provide consultation on cases where domestic violence and child abuse coexist.

Vermont services systems have worked hard to move away from the punitive model which potentially re-traumatizes victimized parents and abused children into a model in which DCF staff work to find safety for both abused children and their victimized parents while holding the perpetrator accountable. The Safe and Together model is one example of a recent tool that has strengthened this approach. In all, nearly two decades of work in Vermont has created a state that is considered a national leader in domestic violence/child welfare collaboration and other states look to our model as best practice. This positive trend in Vermont child protective services toward a child centered system that holds perpetrators accountable while supporting the protective parent in cases of domestic violence, is critical in ensuring that children are cared for and feel secure and that adult victims are not experiencing further trauma at the hands of the systems they turn to for help.

Affirmative Defense is no answer:

The Vermont Network does not support adding an affirmative defense to S.9. Here's why:

We do not know of any affirmative defense situation in which the child has *not* been removed prior to or upon the protective parent's arrest.

In the best of circumstances, an affirmative defense still holds the potential to re-traumatize a child by forcing separation from the victim parent. It also places the victim in the position of fighting against a system that was ultimately designed to protect her child and her from the perpetrator.

Affirmative defense places the protective parent in the position of proving that she is a victim of domestic violence and this creates at least three concerns:

1. Proving domestic violence victimization can be extremely difficult simply because domestic violence by its very nature is based upon secrecy and a pattern of coercive control which is often not readily visible and quite difficult for a victim to describe. The language regarding affirmative defense is too restrictive. It requires the defendant to try to prove that she is a "victim of domestic violence".
2. There will be cases where a parent will not be able to prove her victimization and, according to the penalties as currently laid out in S.9, the protective parent will then be jailed for 10 years while her child grows up in someone else's household (once again potentially re-traumatizing the child one seeks to protect).
3. In cases where battered women have defended themselves against lengthy sentences for failure to protect, there is evidence that women actually serve longer sentences than the perpetrators themselves serve for the abusive crimes they have

committed.^v Data does NOT confirm that affirmative defense prevents disparate sentencing. As currently written, even with an affirmative defense, a victim certainly could be sentenced to serve more time than a perpetrator of a misdemeanor domestic assault. (see 13 VSA §1042 – domestic assault: up to 18 months or not more than \$5,000 or both.)^{vi}

The Vermont Network believes that a truly child-centered approach encompasses perpetrator accountability while continuing to encourage a positive relationship between protective parents and protective services for children. It is critical that Vermont’s laws do not compel victims toward risk rather than safety. For these reasons, the Vermont Network respectfully requests that this committee remove Section 3 of S.9 to ensure that Vermont’s laws do not inadvertently re- traumatize children and push adult victims away from the very services meant to protect them and their children.

ⁱ Edelson, J.L. (1999). “The Overlap Between Child Maltreatment and Woman Battering.” *Violence Against Women*, 5:134-154.

ⁱⁱ Strauss, M., Gelles, R.J., and Steinmetz, S. (1980). *Behind Closed Doors: Violence in the American Family*. New York: Doubleday/Anchor.

ⁱⁱⁱ Browne, A. (1987). *When Battered Women Kill*. New York: The Free Press; Sonkin, D., Martin, D., & Walker, L. E. A. (1985). *The Male Batterer: A Treatment Approach*. New York: Springer; see also: Deborah K. Anderson & Daniel G. Saunders, *Leaving an Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being*, *TRAUMA, VIOLENCE & ABUSE* 163, 179 (2003).

^{iv} Blumfield, Susan, MSW, LCSW *Pioneers in our backyard*, *Synergy: The Newsletter of the Resource center on Domestic Violence: Child Protection and Custody*. See also, Lieberman and Van Horn’s manual on Child-Parent Psychotherapy called “Don’t Hit Mommy” published by Zero to Three (2005).

^v In 2006, Robert Braxton, Jr., pled guilty to abusing his girlfriend's three-month-old daughter by breaking her ribs and femur. He was sentenced to two years in prison. The infant's mother, Tondalo Hall, was found guilty of failing to protect her daughter and given a sentence of [30 years in prison](#). Even though there was no evidence that Hall ever hurt her daughter, and even though there was significant evidence that Hall was abused by Braxton and feared him, her sentence was 15 times greater than his. In a similar case, 21-year-old Arlena Lindley was sentenced to [45 years in prison](#) after her boyfriend, Alonzo Turner, beat her three-year-old son to death. The mother's lengthy sentence came despite a witness's testimony that she had seen Turner threaten to kill Lindley if she intervened. The witness said that, despite the threat, Lindley grabbed her son and ran outside, but Turner dragged them back in and locked the door behind him.

^{vi} *Data note*: Those who support the affirmative defense portion of this bill have argued that in states where an affirmative defense option exists there has been no such known occurrence of victims serving more time than perpetrators. This is not accurate. It is important to note that *there is actually no data indicating causation*. In other words, there are simply states that have not had disparate sentences occur and they currently have an affirmative defense but there is no data indicating that the affirmative defense prevented such discrepancies in sentencing.