



VERMONT CHILDREN'S ALLIANCE

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To: House Judiciary Committee
From: Jennifer A. Poehlmann, Esq.
Executive Director, Vermont Children's Alliance
Re: H.523
Date: March 11, 2016

Child First
Advocacy Center of
Rutland County

The Chittenden
Advocacy Center
at CUSI

The Child Advocacy
Center at The
Family Place/
Windsor County
Unit for Special
Investigations

Windham County
Safe Place
CAC/SUSI

Northwest Unit for
Special Investigations/
Child Advocacy Center

Bennington County
Child Advocacy Center and
Special Investigations Unit

OUR House of
Central Vermont

The Child Advocacy Center
at the Springfield Area
Parent Child Center

Caledonia Special
Investigations Unit, Inc.

The Orleans County
Child Advocacy Center

The Orange County
Special Investigations Unit

Addison County Unit
Special Investigations, Inc.

Thank you for the opportunity to testify on H.523. I am the Executive Director of the Vermont Children's Alliance, the accredited state chapter of the National Children's Alliance and professional membership organization for our state's 13 Special Investigation Units/Child Advocacy Centers. It is on the behalf of the directors of those programs that I am here to voice our strong support for H.523, which would extend the same protections our system provides for children who have been sexually abused to those who have been physically abused. If enacted, we feel this would fill a significant hole in our response to child physical abuse that lingers even after the passage of S.9/Act 60.

As you may recall from the deliberations during S.9/Act 60, cases of child physical abuse are very challenging to even charge, never mind obtain a conviction. This holds especially true with young children, as the challenge to them from being interviewed or forced to sit in the same room as the person who harmed them is terrifying. Fortunately, this Committee and this Body recognized that cases of serious child physical abuse are complex and deserving of the very best tools our system can marshal in response. By this, I point to the fact that Act 60 mandated that all cases of serious child physical abuse are to be handled by our Special Investigation Units/Child Advocacy Centers. These cases are now coming through the doors of every program and receiving the care and attention they deserve.

In 2014, the Governor-appointed, 21-member Vermont Citizen Advisory Board (VCAB) completed their investigation into the deaths of Dezirae Sheldon and Peighton Geraw. The Board unanimously recommended that the current child hearsay exception in 804a be expanded to cover instances of child physical abuse and also to apply in Human Services Board hearings. While many of VCAB's recommendations were included in S.9, to our dismay, expanding 804a was not. From our vantage point, we saw action in this area as a cornerstone for improving the system and are extremely grateful you have chosen to continue your work from last session.

It is our contention that there is no basis for not extending the same protections to child victims of physical abuse as we provide to children who have been sexually abused. I understand that previous testimony on behalf of the Judicial Evidentiary Rules Committee indicated that the Committee denied expanding 804a, in part, due to the lack of scientific evidence "establishing"

On top of this, we must consider the general dynamics of sexual and physical abuse cases. As we know, the sexual abuse of a child most frequently occurs after a perpetrator has "groomed" the child – thus, it is entirely possible that at the time the abuse occurred the child may not have been afraid or understood what was happening. A child who has been seriously injured will of course have experienced significant pain and fear at the time the injury was inflicted. In no way is this meant to try to quantify the level of trauma experienced by any child who has been abused. Rather, if the justification for the current exception is to minimize the trauma to the child and the potential for intimidation, it is hard to understand how victims of child abuse should be treated differently based upon the act that inflicted the trauma.

A review of the Rules of Evidence governing criminal prosecutions in other states shows that if enacted, H.523 would actually bring Vermont in line with the way the majority of states treat the out-of-court statements of a child victim. Currently, 29 states provide a hearsay exception in cases of both physical and sexual abuse. Notably, of those 29 states, 10 states go even farther – with the exception applying in cases of neglect and/or when the child is witness to violence or sexual abuse. Vermont is one of only 9 states that confine the exception strictly to cases of sexual abuse. The remaining 12 states have no specific hearsay exception for a child's out-of-court statements.

It is also my understanding there was a concern that the expansion proposed would place an administrative burden on the courts by creating the potential for additional hearings. While I sit on the outside of the process, the Directors for the programs now mandated to pursue serious physical abuse cases find that difficult to envision given the relatively small number of child physical abuse cases which go to court. However, if it should be determined that H.523 as proposed would place an unmanageable burden on the courts, we would request the Committee consider narrowing the proposed expansion to apply only to cases where the child experienced serious bodily injury, as defined in 13 VSA §1021 or Cruelty to a Child, 13 VSA §1304a.

Our world is an entirely different one from when Rule 804a was established back in 1985. We had no Special Investigation Units or CACs; interviews were not recorded; children were interviewed countless times by people who were not trained to work with children. This is perhaps particularly significant with respect to expanding Rule 15 relative to depositions. Children that come through the doors of a SIU/CAC are interviewed by a trained forensic interviewer and that interview is video recorded and available to the defense/defendant for inspection. We also have the recent United States Supreme Court decision in *Ohio v. Clark* which I understand has already been discussed.

In short, the primary goal of all child advocacy centers is to ensure that children disclosing abuse are not further victimized by the intervention systems designed to protect them. Within Act 60, you recognized the seriousness of child physical abuse and ensured that those children would have access to the very same resources as those who have been sexually abused. There is still inequity however. We take these cases, we know these children, and we see first-hand the impact the judicial process has on them. We sincerely hope your Committee will support this important Bill and give us the tools to accomplish our goals for Vermont's children. Thank you.