

My Turn Submission to Burlington Free Press

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I write to express my concerns about Senate Bill 9--“An act relating to improving Vermont’s system for protecting children from abuse and neglect.” Although my perspective stems from my professional position as a criminologist and faculty member at UVM, my opinions are my own and do not represent UVM.

I applaud the Vermont legislature for trying actively to address the flaws in our child protection system. Many aspects of S 9 do just that, by providing needed resources and encouraging communication between agencies. The part that stuns me is the provision that would create a 10 year prison term for anyone who knows or “reasonably should have known” about abuse or neglect of a child. Certainly, we want to find ways to encourage people to come forward with genuine suspicions about abuse or neglect. However, there are many reasons why creating this felony is ill-advised. Presumably the intention of creating the new crime is to deter those who might otherwise remain silent about abuse or neglect. However, the research evidence is clear that general deterrence is a complex process. For example, of the three features of deterrence—swiftness, certainty, and severity--only swiftness and certainty of punishment have a positive effect, but severity can actually increase crime. A 10 year prison term for a non-violent crime is reactionary, and counter-productive, just from an evidence-based standpoint. Legislators are elected to be stewards of public funds for the greater good. As such, the members have an obligation to base their decisions on evidence from research, and to spend funds on incarceration in judicious ways. The public may not fully grasp that a prison term for one individual in Vermont costs taxpayers more than \$50,000 (even more for women prisoners). A 10 year term would cost at least half a million dollars. We may be willing to spend that if it were likely to deter, but in fact, prison sentences themselves have a criminogenic effect, meaning they actually increase risk for criminal activity. Given these factors, prison terms should be reserved only for those too dangerous to be among us. Otherwise, the cost to society is high.

Some people may feel that people who fail to protect children should be punished harshly. Even the functional aspects of deterrence—certainty and swiftness—are compromised when we pile on more criminal categories. We currently have a couple hundred detainees waiting months for their trials. Recent evidence demonstrates that even a 72 hour lodging in prison increases risk for re-offending. There is a bottleneck in the criminal justice process, which undermines swift and certain justice. Moreover, in the states that have enacted similar laws, the people prosecuted tend to be battered women, who are too traumatized to protect their children. I would venture to say that incarcerating them does not protect children nor solve any problems. In fact, it would likely create greater family trauma while costing the state in myriad ways.

Many of the states that have enacted similar provisions are ones known for their retributive, reactionary policies. Among them are states like Oklahoma, Mississippi, and Texas—states that continue to use capital punishment and reject expert evidence on deterrence. Legislatures have become reckless about evidence in recent years. Most people do not realize, for example, that a child in Vermont can be tried as an adult at the age of 10—a law enacted after an emotionally-charged, brutal crime in the 1980s. There is an expression in law: “Hard cases make bad laws.”

I am confident that the impulse to “do something” about our recent hard cases of child abuse and neglect stems from good intentions. I support the impulse, but not the approach. I would ask that the legislature and the public at large question any proposal to take away liberties of citizens for non-violent offenses, and that authorize expenditures of public funds for interventions that may in fact be regressive. This provision of the bill does not contribute to the greater good, even if on the surface, it appears to.