



April 30, 2015

TO: Rep. Maxine Grad, Chair
Rep. Willem Jewett, Vice-Chair
House Judiciary Committee

FROM: Auburn Watersong, Associate Director of Public Policy

RE: S.9 – affirmative defense

The Vermont Network opposes adding an affirmative defense to S.9.

- **Children will be retraumatized by forced separation from the victim parent.**

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.

- Domestic violence experts have highlighted the trauma caused to children by removing them from their protective parent and placing them 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 unpredictability, instability, 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.¹

¹ 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).

- **Affirmative defense places the protective parent in the position of proving that she is a victim of domestic violence** and this creates at least two concerns:
 - 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”.
- **There will be cases where a parent will not be able to prove her victimization**
 - When a victim cannot successfully prove that she is a victim, the protective parent will then be jailed while her child grows up in someone else’s household (once again potentially re-traumatizing the child one seeks to protect). It is important to note that in cases where battered women have defended themselves against lengthy sentences for failure to protect.
 - When victims are prosecuted and lose their cases (cannot prove they are victims of domestic violence), there is evidence that they actually serve longer sentences than the perpetrators themselves serve for the abusive crimes they have committed.²
- **An affirmative defense places the victim in the position of fighting against a system that was ultimately designed to protect her child and her from the perpetrator.**

Thank you.

² 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.