



April 22, 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 – Section 20 of Draft 1.1 dated 4.21.15

Thank you for allowing me to address the Network’s concerns about Section 20 in S.9.

Under 13 V.S.A § 1304, a victim of domestic violence could be prosecuted for causing a child to be abused. The phrase, “cause the child to be assaulted, neglected, abandoned, or exposed...” could result in the prosecution of a victim for exposing the child to domestic violence that occurs in the home, through no fault of her own. That is just one example of many that come to mind. Offenders have the power over victims to force them to engage in inappropriate behavior which children might witness.

Under the statute, the prosecution would have to prove a defendant’s willful conduct which posed a danger to the child’s welfare, not the intent to harm. We are proposing language to 13 V.S.A § 1304 to clarify the meaning of willful conduct so that victims will not be unfairly prosecuted. A charge resulting in prosecution would separate the child from the victimized parent, re-traumatizing the abused child.

We would like to propose the following changes to Section 20 of the House Human Services Committee draft to address these very real concerns.

13 V.S.A § 1304

- a) No person over 16 years of age, having the custody or care of a child shall willfully assault, neglect, abandon, or expose the child or willfully cause the child to be assaulted, neglected, abandoned, or exposed, in a manner to cause the child unnecessary suffering, or to endanger his or her health. It shall be considered willful conduct if the person knew the child was at risk of assault, neglect, abandonment, or exposure and would have been able to protect the child without risk of bodily or emotional harm to the person or the child.

- b) A person in violation of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

The Network opposes the increased penalty as proposed in Draft No. 1.1.

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.
- Women who leave abusive relationships are 25 times more likely to be assaulted by ex-mates and 5 times more likely to be murdered".ⁱ

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.
- 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.ⁱⁱ

Criminalizing victim parents has unintended negative consequences for children

- Criminalizing non-offending parents who are victims of domestic violence may inadvertently *keep victims from coming forward* when they need assistance the most – and at worst may unintentionally push victims toward decisions that only *increase risk* toward the children we all hope to protect.

ⁱ 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).

ⁱⁱ 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).