



Testimony of Allen Gilbert, executive director, ACLU-Vermont on Section 6 of S. 9, child protection bill, Feb. 3, 2015

The ACLU has concerns about certain provisions in Section 6 of S. 9 that track those in Section 2, the section with the creation of the new “failure to protect” crime.

The provisions include:

- Creation of an additional “harm” arising from “Exposure to the unlawful possession, use, manufacture, cultivation, or sale” of certain regulated drugs, including marijuana (Page 13, changes to 33 VSA 4912 starting on Line 10).
- The redefinition of “physical injury” by utilizing the definition found in 13 VSA 1021 (Page 14, changes to 33 VSA 4912 on Lines 5 and 6).

We are concerned about the creation of an additional “harm” based on “exposure” to certain drugs because the harm is assumed rather than determined. A circumstance of which the child may or may not be aware -- rather than a specific action with known or likely results – becomes grounds for asserting abuse or neglect against a parent or other person responsible for the child. A single oxycontin pill in a medicine cabinet for which a parent doesn’t have a prescription would be seen as harm (even though the parent had the single pill to avoid filling a prescription for two dozen pills written by her dentist in anticipation of a root canal).

We are concerned about the redefinition of “physical injury” because new categories of injury are added that may or may not be the result of actions taken or not taken by a parent. Within the new definition of “physical injury” is illness. We are concerned that defining illness as a “harm” could be seen as conflicting with the religious beliefs protections in existing law [33 VSA 4912 (6) (B), which appears beginning on Line 1 of Page 13 of the bill]. This existing provision states that “a parent or other person responsible for a child’s care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone.”