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Agency of Human Services

Memorandum

To: **Senate Judiciary Committee**
From: **Ken Schatz, DCF Commissioner**
Re: **H.727: Children's Hearsay Statements**
Date: **April 12, 2018**

Thank you for the opportunity to testify in support of H.727. As representatives from DCF testified to last week, this is an important bill for the protection of children in Vermont.

Child Protection Data
DCF receives over 20,000 reports each year from citizens concerned about the welfare of children in our State. In 2016, DCF:

- Received 20,583 reports of alleged child abuse or neglect
- Opened 5,509 child safety interventions (2,674 assessments and 2,835 investigations)
- Substantiated 737 incidents of abuse, neglect or risk of harm

As Deputy Commissioner Karen Shea shared with you last week, DCF has refined its track acceptance practices to reserve the investigation route for child safety interventions for only the most serious kinds of alleged child maltreatment (sexual abuse, child fatalities, serious physical injury, etc.). Only investigations result in substantiation, assessments do not. The focus of an assessment is to identify the strengths, resources and service needs, and to develop a plan of services that reduces the risk of harm and improves or restores family well-being.

Vermont is One of the Few State Child Protection Agencies that Investigates Non-Caretaker Sexual Abuse
Vermont is unique in that it places some youth on the confidential Child Protection Registry. Vermont is unique in that respect because it is one of only a few states in the country that investigates non-caretaker sexual abuse. Most other states rely solely on law enforcement to perform this function. Vermont DCF is statutorily required to investigate sexual abuse by any person against a child. We believe that this is an important function as it results in our ability to protect children from future harm by ensuring that sexual abuse perpetrators may not have access to employment opportunities caring for children. Of the 737 substantiations in 2016, 61 cases (8%) were of child sexual abuse involving a perpetrator under the age of 18. The vast majority of substantiations are related to the conduct of adults perpetrated on children.

DCF has put into place policies to avoid placing a youth on the Registry when possible. As part of the refinement of its track assignment of cases to investigation v. assessment, DCF does not investigate cases of sexual abuse for youth conduct under the age of 14. If DCF receives a report of sexual abuse of an alleged perpetrator under age 14, DCF initiates an assessment response. In addition, as part of the changes made by Act 60 (S.9), the sweeping child protection reform

legislation, the legislature made it clear that sexting between mutually consenting youth is not sexual abuse.

Importance of the Admission of Reliable Hearsay in Human Services Board Appeals
DCF staff shared with you last week the various opportunities substantiated individuals have to request review of their child abuse/neglect substantiation. The admission of reliable hearsay from child victims at the Human Services Board (HSB) stage of appeal is important for the protection of child victims, who don't gain from the substantiation or appeal process. We ask child victims to testify in appeals so that we can protect future children from future harm by ensuring that child abuse perpetrators do not have access to certain employment opportunities.

In many cases, by the time a case reaches the HSB appeal hearing stage, child victim witnesses are either unavailable and cannot be located or are unwilling to testify and confront their abuser, who in most cases is a trusted adult. The current statutory framework does not allow for the admission of reliable hearsay when the child is over 12 years old. And even in those instances, the testimony of a therapist currently engaged with the child is required to make the trauma exception. By the time a case reaches the HSB hearing stage, many child victims are no longer in therapy for the abuse as it is not clinically indicated to continuously re-live the traumatic experience.

Please consider the following example from a HSB decision of a case decided after the Vermont General Assembly amended title 33 to state the Vermont Rule of Evidence 804a applies (HSB Fair Hearing No. 16,391). This case involved two child victims of sexual abuse, who were sisters, in which neither child victim was available to testify at the HSB hearing—one child committed suicide at age 14, and the other child's therapist reported that she would be traumatized by having to testify. Because the living witness was 16 at the time of the hearing, Vermont Rule of Evidence 804a didn't apply to allow for the admission of reliable hearsay. As a result, father, who had murdered mother and sexually abused both daughters, had his name removed from the Child Protection Registry. The hearing officer noted in the decision that:

> SRS has presented an affidavit from D.'s therapist indicating that she is working on issues associated with her "mother's murder, her sister's suicide and vague memories of childhood sexual abuse". It is her professional opinion that it would not be in D.'s best interests to have her appear and give testimony because it could cause "serious detrimental consequences, and adversely affect her ability to function, undoing the progress she has made in treatment thus far" as well as, "retraumatize her and cause her substantial harm". For these reasons the Department has determined that it will not call D. as a witness and has asked that for reasons of "unnecessary hardship" that it be allowed to prove the facts through the child's recorded interviews and written statements, and the testimony of therapists and investigators. It has made the same request with regard to proving the facts of M's abuse because there is no way to present her live testimony now.
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> If the Board were operating under the "relaxed hearsay" rule (Fair Hearing Rule 12) apparently approved in Selivonik, supra, the hearing officer would undoubtedly find an unnecessary hardship in this case, admit the hearsay testimony and carefully scrutinize it for reliability. The petitioner would be provided with copies of this hearsay evidence or a chance to talk with witnesses before the hearing and could attack the reliability of the evidence at the hearing. SRS argues that this is the standard the Board should adopt in this case since 804a does not specifically apply when the alleged victims are over ten at the time of the hearing.
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> This ruling represents a considerable change in the way facts can be proved before the Board in sexual abuse cases. This ruling will present the Department with some very difficult decisions and is certainly going to be hard on the young children it must protect.
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Unfortunately, the tragic set of facts above are not unique. This case, as well as many others, describe why it is important to allow for the admission of reliable hearsay for children of all ages, as well as the opportunity for the appellant to attack the reliability and present their own evidence in support of the appeal.

Opportunities for Expungement after a Person's Name has been Placed on the Registry
It is important to note that in addition to the appeal opportunities, DCF has a process by which a person may request their name is expunged, or removed, from the Child Protection Registry. The person requesting expungement must show that a reasonable person would believe they no longer present a risk to the safety or well-being of children. To provide you with some data, in 2016, 45% of the requests for expungement were granted, 41% denied, and 14% were withdrawn. Expungement decision are unique in that as Commissioner of DCF, I have the non-delegable authority to decide each request, a responsibility that I do not take lightly.

Conclusion
Thank you again for the opportunity to provide some additional information to you in support of H.727. As we shared last week, we believe that the Child Protection Registry is an important tool for the protection of children. It is a lot to ask of a child to testify and retell their story again at an administrative hearing so that we, as a State, may prevent future harm to other children. In New England, two states – Maine and Connecticut – go even further than the proposal in H.727 and completely prohibit the testimony of child victims. We believe that the admission of children's reliable hearsay statements in this bill strikes the right balance. Under this proposal, youth who want to testify are not prohibited from doing so.

Thank you.