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Bending the Curve to Improve Our Child Protection System

Executive Summary

This comprehensive report is not a report designed to defend parents, rather it is intended to depict a system that is intended to protect both children and families. Unfortunately, the report details what can only be described as a collapse of that system across multiple agencies in Vermont, resulting in both children and families being harmed. The system includes the Department for Children and Families, Family Court, Agency of Human Services, Attorney General's Office, State's Attorneys, and the Office of the Defender General.

The 117-page report contains over 60 findings and 80 specific recommendations that are designed to reform the system, not just apply piecemeal and ineffective repairs to a broken system, tactics used too often in the past and with little or negative effect. The report is based on direct experience and knowledge gained from face to face work with 70 families, and another 350+ families assisted via VPRC's HelpLine over a 9 year period.

Overview of the Issues:

1. The System - Suffers from Chronic Systemic Failure at every point.
2. DCF Practice – DCF can't distinguish between abusive and non-abusive families.
3. Investigations & Affidavits – are poorly done, or not done at all.
4. State's Attorneys – can't / won't validate DCF information.
5. Public Defenders – frequently fail to challenge DCF misinformation or present exculpatory information.
6. Case Plans – have few, or no, measurable goals or objectives.
7. Family Court – frequently marked by extensive delays, turnover and poor information.

Results of a Collapsed System:

1. Too many questionable cases dilute DCF's ability to focus on families wherein abuse & neglect are present.
2. Children are needlessly in custody and for far too long.
3. Court backlogs are endemic, leading to chronic needless delays.
4. Too many Terminations of Parental Rights occur because kids are in custody too long and public defenders frequently fail to present evidence to the contrary.
5. More money and state employees make little positive difference.

Why?

1. There is no effective oversight, transparency or complaint resolution.
2. Performance Measures are almost entirely absent.
3. The system is marked by diminishing professional credentials for essential workers.
4. Family Assessments and Risk Assessments are grossly misused by DCF, resulting in virtually every family experiencing an open services case regardless of actual need.
5. The current Public Defender System is incapable of fulfilling its responsibilities due to inadequate pay, excessive workload and virtually no oversight or accountability for performance.
6. No one is responsible for success or failure of the system.

Key Steps to Begin to Fix the Problem:

1. Establish a dedicated Parent and Child Defender Program using new federal Title IV-E funds, utilizing dedicated defenders who specialize in the respective field, and are adequately paid, supervised and have performance measurements. This is the single most important step in reforming the current system.
2. Engage an independent entity to validate Bending the Curve report findings.
3. Create an Office of Child Advocate / Ombudsman for oversight and complaint resolution.
4. Reform the Substantiation and Abuse Registry system, especially Risk of Harm definitions.
5. Recognize that unless DCF is reformed, the rest of the child protection system will always be overloaded and produce substandard results in too many instances.

Highlights of the report are:

- The number of reports of child abuse and neglect, as well as the number of young children in custody, especially very young children, have steadily risen year after year, even though the state population is static.
- The state appears largely incapable of distinguishing between families wherein children are abused or neglected, and the much larger pool of families who simply need assistance and support but not ineffective and intrusive state monitoring.
- Vermont ranks 4th in the nation in the termination of parental rights for very young children, yet is touted as one of the best places for families to live.
- Families are routinely coerced into “voluntary” removal and state monitoring without any finding of abuse or neglect
- Substantiations for Risk of Harm have skyrocketed as the definition of Risk of Harm has become increasingly subjective.
- Violations of basic civil rights protections are routine.
- Effective legal counsel for indigent parents is the exception rather than the rule.
- The application of more money, state positions, and pilot projects has had little effect, in fact the result has been increased backlogs of CHINS cases, increased delays in substantiation appeals and increasingly deficient Investigation and Assessment reports.

Among key findings are:

1. The current state child protection system operates without effective internal or external oversight and accountability. There is no effective complaint resolution and quality

assurance mechanism available to parents. Creation of an Office of Child Advocate or Child Protection Ombudsman would begin to resolve this.

2. Families have no place where they can obtain accurate and credible information and effective representation and advocacy. Likewise, there is no place for parents to obtain an objective addressing of allegations of mal or misfeasance. The creation of a Parent Defender Program (within or outside of state government) consisting of salaried public defenders (or contract attorneys when a conflict of interest arises) who are dedicated to representing parents and are provided on-going supervision and social service supports comparable to the Juvenile Defenders, State's Attorneys and Assistant AGs can address this issue.
3. DCF *Investigations* are designed, in theory, to focus on instances where there is intentional abuse or serious neglect of children or an imminent threat of such. DCF *Assessments* were designed to enhance the well-being of children and families with the support they may be lacking in order to ensure that abuse/neglect do not occur. But today, there is little difference between these two processes, as *Assessments* have become *Investigations* by another name and mechanisms by which families are monitored and children are relocated without a court order. State law, as it applies to investigations and assessments is routinely ignored by the child protection agency. The prevailing culture within DCF can be described as one in which investigations are not needed because the agency knows the families with which it is dealing. These practice and cultural deficiencies can only be addressed through a major re-tooling of current management or by bringing in outside managers who are experienced in both the legal and social work elements of child protection.
4. DCF writes investigative reports and affidavits that are often poor in quality and accuracy, contain misinformation and outdated material, and are often based on assumptions rather than facts. Parental transgressions occurring decades prior are depicted in such a manner as to appear contemporaneous to new allegations, and family files contain virtually no positive information regardless of how much progress a family has achieved. Again, the prevailing culture can best be described as one in which the agency submits information that is not verified and leaves it up to the court to sort out fact from fiction. Only a significant culture change by DCF will correct this.
5. Our judicial system is based on the concept that all agencies involved in child protection cases provide the court with accurate and comprehensive evidence of the family's circumstances. But the process often starts with inaccurate information from DCF and the attorneys involved do not routinely test the accuracy of the information provided in affidavits. The Court does not have the time to schedule timely hearings for the purpose of contesting the affidavits. As a result, the judicial system is no longer an adequate check on the state's actions. There is a chronic shortage of skilled attorneys who are supposed to test the evidence on which judges can make decisions, resulting in long delays and inaccuracies in adjudication. Constant personnel turnover by attorneys, DCF and rotating judges, result in situations where no one in the courtroom knows the particulars of a given case. Children all too often remain in custody needlessly for

extended durations and endure multiple foster care placements. The co-mingling of children's attorneys and parent's attorneys in the Office of Defender General, where parents contract attorneys are not supported nor held accountable, results in a lack of effective representation for parents. The creation of a Parent Defender program, with an increase in defender pay (via new federal matching money that will come to the state from Title IV E of the Social Security Act), and enhanced accountability will address this issue and reduce and/or shorten both caseloads and custody.

6. Due process protections for placement on the Child Abuse Registry are weak. DCF notifications of substantiation are often inadequate and statutory requirements for timeliness are rarely followed. DCF/HSB hearing officers engage in ex parte communication with DCF staff after parents have presented their rebuttal of the evidence against them, but before rendering a final judgement, thus parents frequently do not know the real reason a substantiation is taking place. The standard for "Risk of Harm" has become so subjective and ill-defined that it now includes harm that is real, potential or imagined, leading to an explosion of substantiations for Risk of Harm. The veracity of registry entries is now highly suspect because underlying investigations are, in many cases, deficient, if not incorrect or non-existent.
7. The manner in which the system operates places Vermont at considerable risk for civil litigation; litigation that can carry significant monetary awards.

This report describes a dysfunctional system that has evolved over multiple government Administrations and Legislatures. The report calls on the agencies involved, the Governor, and the Legislature to act quickly and decisively to correct this grave situation before more children and families are harmed. Vermont children and families deserve better than this, as do the people working in this system, and the taxpayers who underwrite it.

The vast majority of recommendations contained in the report are achievable through routine administrative action, with little or no additional cost. Several recommendations involve significant systemic change and require the Legislature, Judiciary and Administration to work closely together. Finally, state government must come to grips with the reality that families have been separated, frequently irreparably, by a system that lacks the basic elements of due process and adherence to the rule of law, the very bedrock of a democratic society.

The full report can be found at: www.vtprc.org

The Report is authored by:

- Trine Bech, a lawyer and former magistrate, spent many years in leadership positions in child protection systems in several states, and is a founding director of VPRC.
- Larry Crist, Executive Director of VPRC, holds both a law degree and masters in social work, was formerly Director of Vermont's Child and Foster Care licensing systems, Deputy-Commissioner of the Dept. of Health, Commissioner of the Dept. of Aging and Disabilities, Director of Public Health Protection & Preparedness, and Director of the VT Red Cross.