

Joint Legislative Child Protection Oversight Committee

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Testimony: Child Protection System

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Good morning. For the record my name is William Young. I appreciate the opportunity to testify this morning about my concerns regarding our Child Protection System. My comments are based on my 20 years of experience as a District Director and then Commissioner of the former Department of Social and Rehabilitation Services (now the reorganized DCF), as well as my work to understand the report of the Vermont Parent Representation Center (VPRC), published last November. My own work in the past has been driven by an understanding of the abuse and neglect that happens to some of our State's children, some of it truly horrific, our responsibility to protect them and to work with parents in trouble, also knowing that many children are able to remain in their homes or return there. As in any child protection system, actions must meet not just the requirements of law, but also ethical standards, fairness, honesty to all involved and an understanding that the most awesome power exercised by any State is the power to separate children from their parents.

I do not work for the Center and in fact was not aware of its existence until Larry Crist asked for my opinion about taking a position as Executive Director a few years ago. I had nothing to do with writing the report or advising Larry about it. I'm speaking to you today about my concerns and recommendations. Larry will obviously speak for himself about his own.

Larry worked for me as Director of the SRS Licensing Division many years ago. We have kept in touch, meeting for lunch once every 2-5 years to catch up. I didn't support his taking the job but he did anyway. Some months later he asked me to have lunch to discuss his concerns about problems with the system. I met with him, the concerns were troublesome, but I told him I was retired and had avoided getting embroiled in the work of my former Department. As a former Commissioner my default position is to support the Department and the Commissioner.

When the report was published, Larry contacted me and sent me a copy, wanting to meet to discuss it. I read the report and developed a list of the 7 findings that I thought were most serious and which I have sent to members of this Committee previously. I found them to be unbelievable: kids separated from their parents with incomplete investigations or no investigations; social workers lying to the courts in affidavits or providing skewed information that misled Judges; unconstitutional procedures in appeals at DCF and the Human Services Board, children unnecessarily in custody and more. It is unbelievable.

So I went home and thinking about it, realized that in the past couple of years two families who were involved with DCF had asked me for advice and their experiences and my inquiries matched two of the major findings on my list. But it still seemed just beyond belief. So I went back to Larry and said, "I don't believe it. Prove to me that you are not just repeating the excuses of a bunch of abusive parents trying to avoid the result of their actions." And over the course of a month or two, we met, and talked on the phone and emailed each other and he did prove it to my satisfaction and has continued to do so to this day. While Larry has no authority to compel information from DCF or to compel records, many of these findings do not require

such authority. If you have a substantiation or a court affidavit that makes a particular statement of fact, in many cases you can go out and verify that statement, not just depending on a parent's viewpoint. If the statement isn't true, the conclusion is pretty straightforward. And this is true for all of these findings. He has worked very hard to not take anything for granted and to be able to demonstrate the truth of the report's statements.

This gets me to my main point this morning. I know that Larry gave a copy of the report to Commissioner Schatz and met with him, with no apparent results. Two meetings were scheduled with the former Secretary of Human Services and were cancelled with the promise of another, which was never scheduled, nor was there further communication from the Secretary. A copy was sent to the Governor with an offer to meet, but there was no acknowledgement. Larry and I have met with legislators during the last session and he has testified before some Committees. But there has been no action, which is not to discount the several legislators who have met with me and/or Larry Crist and two fairly lengthy meetings with Rep. Pugh. And of course, we're here today. This has been a topic of discussion since November. To my knowledge I am the only person in Vermont who has gone to Larry Crist and said, "I don't believe it. Prove it."

So as I've thought about it, it seems to me the only reason that nothing seems to have been done is that people don't believe it. It is pretty unbelievable. I can't be critical of you or anyone for that. I didn't believe it. So my strong recommendation to you, since it's not very efficient for a group of individual legislators to do what I did, is immediately act to find someone independent of DCF and the Administration to go to Larry and say, "Prove it. Show me cases that demonstrate your statements (or my list of the most important ones). Show me how you verified them and I will talk to the sources directly, or review them, if necessary to prove that it's accurate." Hearings on the subject will only leave you with a "He said, she said" situation and take up needless time. I recommend an independent review, not to disparage Commissioner Schatz or Deputy Commissioner Johnson (who is new in the job, but to her credit has independently met with both myself and with Larry Crist), but rather because, given the seriousness of these charges, it is just not credible to have the Department investigate itself or oversee an investigation.

Bring someone in and get this settled to your satisfaction. It took me about 20 or so hours over about a month, but I took Larry's word for some things that you would probably want your person to check out from the source, so it could take a little longer. I understand that \$250,000 was set aside for a review of our child protection system. I don't know who is doing that, but I would think that, or some small part of that could be used to look at this. If it shows to your satisfaction that these failings are true, then I have no doubt that there will be a thorough and meaningful discussion and action to correct the problem.

I said earlier that the power of the State to separate children and parents is the most awesome power that our State government can exercise. In this country and in this State, we believe that government power uncontrolled and unchecked is sooner or later, always abused. So, like other States, we have put in place regarding our child protection system a variety of checks and balances to guard against the abuse of that awesome power. But if these charges are true, then those checks and balances are failing, with disastrous impacts for many children and parents,

millions of dollars are being spent unnecessarily, much of it on children in custody and a huge liability potential for the State. One lawsuit has been filed already. I will be surprised if more don't follow.

So the essential step is to immediately act to prove or disprove, to your satisfaction, these charges. Given their nature, timely action is vital and doing nothing will ultimately be seen as incompetence or, worse, condoning abuses.

I do not recommend what seems often to be done in government, which is to conduct a punitive review to identify faults, point to those responsible and punish them. I believe we got to this point through a cascading series of events and decisions, some of which were beyond anyone's control, with other decisions and actions being made for very good reasons, but with unintended consequences. My only exception is where instances of false information are found to be included in affidavits to the Court. Such actions are inexcusable and are a crime that can ruin lives. Any such instances should be reported to the appropriate State's Attorney and the Attorney General, aside from any personnel action.

And finally, considering what it means if this is true – the need to “fix” an entire system can be over-whelming to think about. But be confident that it can and will be done if it needs to be. Our little State has tremendous potential to tackle difficult problems. If we need to, it may be time to consider instituting a very different approach to child protection. I don't recommend going back to the old system. I'd suggest addressing some of these specific issues while putting in place a Restorative Approach to Child Protection, of which there is much information and experts available. But this is getting way ahead of the issues and what needs to be done now. The first step is to recognize the gravity of these charges and to prove or disprove them.

I have attached to my testimony for your convenience the 7 major findings of the report, with examples of each, which I have previously sent you. Below are two recommendations for action which should be taken, regardless of any review.

1. Correct current practice of ex parte discussions between hearing officers and DCF staff in DCF Commissioner's Reviews and Human Services Board appeals hearings. Supreme Court Justice Robinson, in a footnote to a Supreme Court case over 1 ½ years ago, said that such practices must stop. It is beyond me to understand why nothing has been done yet.
2. Take steps to ensure that both children and parents are assigned competent legal counsel as soon as DCF opens an investigation. Given the expanded availability of the child abuse/neglect registry to a wide variety of employers and the negative consequences for parents in terms of loss of job and the impact of such a loss, not making legal counsel available as soon as an investigation is opened is absurd. The inadequacy and unethical character of the current system is generally recognized by almost everyone familiar with our current system. It is one of the most important checks and balances to State power to intervene in and separate parents and children. If we are not willing to provide that, we should just get out of the child protection business.

There are other actions which should be taken, but until you can feel convinced of the issues we are raising, I would think considering other actions will be difficult.

Thank you again for the opportunity to speak with you today.

Respectfully submitted,

William M. Young
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Major Findings of VPRC Report with Examples

- 1. There are cases where investigations were never performed by DCF but children were removed (via court action or coercion).**

Example: In the middle of a winter snow storm parents are called by a DCF worker who tells them she is investigating a report of child abuse. The worker tells them the storm is too bad for her to drive to their home, so the parents must immediately move their children to someone else, or DCF will take them into custody. The parents, though reluctant to involve their landlord for obvious reasons, contact him, explain the situation and are able to take the children to his house to stay.

It is common for DCF to coerce parents to move their children to someone else's care by threatening them with taking the children into custody. This circumvents judicial review in custody cases, a major check in the system to guard against abuses (and simply poor judgement).

- 2. In Commissioner's reviews and Human Services Board appeals of substantiations, where parents are supposedly getting a "Fair Hearing," there are numerous instances of hearing officers having private conversations with DCF staff unknown to the parents or their attorney, with no opportunity to either know they were taking place, what was said about them, or a chance to respond. There seems to be no doubt that this has been the experience of many people, whose names are now in the registry and some of whom have lost their jobs as a result of an improperly upheld substantiations of abuse/neglect.**

Example: Hearing Officers for Commissioner's Reviews and the Human Services Board acknowledge that this is a regular practice, in spite of a footnote to a Supreme Court case written by Justice Beth Robinson well over a year ago which states that this practice should cease and the Human Services Board remand cases back to DCF when this has been shown to occur. However, since these discoveries of ex parte communications were made through action in individual cases, there is not information at this point regarding how many other cases this has occurred in light of there being 750-800 substantiations each year.

- 3. There are cases where positive information about a parent(s) is removed or not included in substantiation proceedings and/or affidavits for the court in child removal proceedings. There are also instances where information in affidavits is deliberately skewed to improve the DCF case and put the parent in a more negative light, but is not otherwise supported when the full file is reviewed. There are instances of simple false information in affidavits.**

Example: A DCF substantiation states that a child has permanent scarring on his back from abuse. There are no scars on the child's back.

Example: A DCF affidavit states that a mother bruised her young child on the back. In its investigation DCF asks the child how the bruise came about and the child says "sledding while at school." But DCF asks, "How else might it have happened" repeatedly and the child then goes on to add two other possibilities. The mother is asked the same question and says, "I don't know", but is then asked repeatedly for "ways that you think it could have happened" and she identifies other possibilities starting with "probably sledding which she does a lot at school and elsewhere", but under prodding identifies several other possibilities including tripping in her bedroom and falling on a bed frame. DCF then sends a photo of the bruise to a pediatrician and says that the mother said that it happened when the child fell on a bedframe. No mention of

sledding. The doctor says that the bruise could not have happened on a bed frame, so it must be non-accidental (i.e. abuse). DCF takes the child into custody. In desperation the mother calls Larry Crist of the VPRC. Larry asks if anyone talked to the school nurse and the answer is "no." The school nurse is contacted and says, "Yes, she had a sledding accident and crashed into a post on her back, it's right here in my file." In checking with the school Larry learns that neither the nurse nor the principal knew about the DCF investigation because under the new mandated reporter law teachers can report independently. DCF never contacted the school. After 3 weeks in 4 different foster homes the child was returned to her mother.

Example: A couple have their children taken into custody. They have a job but are extremely poor and have no car. They attend almost all parent/child visits scheduled by DCF (in the town where they live). Then, without discussion with them, DCF changes the location of the parent/child visits to another town, many miles away. The parents have no way of getting there and no money. DCF does not offer any help with transportation. They do not attend because they can't. The affidavit to the Court states: "Parents missed half of their parent/child visits," but makes no mention of the reason, or the fact that they attended initially when it was possible for them to do so.

Example: A 35 year old working mother is being investigated for suspected substance abuse because she was seen "staggering" while walking her child to school. The DCF worker asks about any history of suspected drug abuse. The mother states that when she was 17 she became addicted to alcohol and other drugs and "was a mess" until she was 19 when she got into treatment and AA. Since then she has attended an AA meeting every day of her life, chairs her local AA Meeting and is active in other AA activities, speaking at other AA meetings. The DCF file report states only: "Mother has a history of substance abuse problems," with no mention of how old that history is and how she has successfully overcome her earlier addiction problem. VPRC discovered that the mother's "staggering" was the result of a concussion recently experienced by the mother. DCF had the case open and active for over 4 months before VPRC convinced them to close it.

4. There are cases of social workers threatening parents to comply with Family Services Assessment instructions or plans or face transfer to an abuse/neglect investigation and possible substantiation.

Example: This is an experience of many parents involved with VPRC. I was advised by a well-informed DCF person that a family who had come to me for advice should "be careful not to get angry with the social worker or they'll find themselves transferred to the abuse/neglect track and possibly in the registry. It happens all the time."

Example: DCF's own data indicates that virtually every report that is accepted by the Central Intake system ends with an open DCF case. If no abuse/neglect is found families are frequently told that they pose a "risk" based on a standardized risk assessment tool, and must agree to an open family services case for monitoring. This is a major contributor to the DCF workload and it is almost entirely self-imposed. Standardized risk assessment tools should be used as a guide for further investigation and fact checking, never as the basis for opening a "Risk of Harm" case.

5. Parents often get inadequate legal representation from appointed legal counsel who often just tell them to agree to what DCF is asking the Court to do, with attorneys not meeting with the parents before the court appearance and sometimes refusing to confront DCF about false or misleading statements to the Court. This is not an issue of supporting either children or their parents. The experience in other states has been that when everyone gets

good legal support, less children come into custody and more children come home quicker, but also that children who clearly cannot go home are "TPR'd" quicker and adopted quicker. Parents only get legal counsel assigned in custody cases, but not when DCF opens an investigation, in spite of the fact that VT law now gives many employers access to the child abuse/neglect registry. Many parents have lost their jobs as a result, with accompanying problems such as loss of housing and homelessness.

Example: It is common for parents to report meeting their attorney for the first time just before a court hearing in cases lasting up to 2 years. Additionally, it is common for attorneys not to return telephone calls or email ever. Given the impossible caseloads carried by public defenders, some defenders routinely tell parents to "agree with DCF and you'll get your kids back quicker" which is virtually never the case. There are instances of attorneys refusing to ask questions suggested by VPRC, through the parents, that would show mistakes and misinformation on the part of DCF. Some parents can have as many as 5 different public defenders assigned over a two year period, none of whom provide effective counsel. In some cases the attorneys change so quickly that the parent never actually meets them before a new one is assigned. The Defender General contracts for parent legal counsel, often for representing numbers of parents that far exceed caseload numbers recommended by the American Bar Association ethics committee. There is no complaint process or oversight relative to attorneys' failure to effectively represent parents.

- 6. There are instances of children being taken into custody and placed in a foster home when competent relatives were willing to take care of them.**

Example: Two children are taken into custody as a result of their father's substance abuse and mental health problems. A grandmother and an Aunt, who live in another state, contact DCF to say that they want to take them. They are Jews and the father and children were raised in that religion and they want the children to be raised in their family's religion. DCF opposes them in court for months. At one point the Aunt tells the DCF worker they would like the children placed in a Jewish child care program. The worker tells the Aunt that there aren't any in VT. The Aunt replies that there is one in Burlington that would take them. The children are placed in a foster home of an entirely different faith and the children's connection to their faith and culture of heritage is severed.

- 7. There seems to be a "circle the wagons" culture and DCF, an unhealthy culture of "us vs. them." A culture where too often the parents are seen as the enemy, as "perps" before an investigation is concluded, and sometimes to be feared, is a very dangerous culture for such an agency.**

Example: When asked about an investigation, two senior DCF managers stated: "We don't need to investigate allegations, we know who these people are." Or, in another instance, a worker told a parent, "I don't need to interview you. The fact that you are denying that you abused your child is all I need to know that you did it." One parent was recently told that the worker would not visit them at their apartment because it was on a list of places that are unsafe for DCF workers to go, a building that another DCF worker historically visited without incident.

- 8. A note about money: If the above system failings are real, and I am convinced that they are, then the financial impact on the State is significant. It means that children are coming into custody who do not need to be, that children are in custody for longer than they need to be, that investigations are being opened that are unnecessary, that numbers of cases are increasing due in part to children in custody who don't need to be. It has been the experience in other states that when these issues are addressed, there is a significant**

decrease in numbers of children in custody and the concurrent savings. Decisions about children and families should never be made for financial reasons, but neither should State funds be spent unnecessarily.

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