

Review of the Act 11, CHINS Reform Workgroup Report
and an Alternative Proposal

January 15, 2019

I. Analysis of the December 1, 2018, CHINS Reform Workgroup Report:

The legislatively required report's primary purpose was to review the system by which CHINS cases are processed and adjudicated, and to propose changes to that system utilizing \$7m in one-time money. It is obvious that the individuals assigned this task attempted to identify specific deficiencies in the current system and propose possible solutions. Unfortunately, it also appears that the "CHINS system" is far more broken than the work group had time to analyze. As a result, the proposed solutions fall short of the system reforms required (as recently documented in the comprehensive analysis entitled Bending the Curve to Improve Our Child Protection System¹), and in some instances are replications of efforts already tried and found wanting relative to CHINS families. In light of what can only be objectively described as a collapsed child protection system today, proposing to spend some \$7m in one-time funds on the Work Group's recommendations appears to be akin to re-arranging the deck chairs on the Titanic shortly after it is determined that the ship is being abandoned. Too little, too late and with the wrong outcomes.

The current failures attributed to the CHINS process are system-wide failures, not isolated component breakdowns. None of the 6 recommendations put forth in the Working Group report relates directly to the CHINS process, and are highly unlikely to have any appreciable impact upon the number of CHINS cases arriving at the court, the resulting backlog, the extended duration of CHINS cases, the quality of information available to the court, or the successful engagement of parents who are instrumental in CHINS issues, much less the associated disruption of families, extended duration of foster care placements and multiple foster home relocations for the children involved. Specifically:

1. Study Home Studies (\$25,000 - \$50,000): It is unclear whether this recommendation is intended to address Home Studies or Home Visiting. In either case, Home Visiting programs flourished in Vermont under AHS Deputy Secretary Cheryl Mitchell who piloted them in Addison County and then established the practice state-wide via Success By Six. If it is Home Visiting that is intended to be studied via this recommendation, that work was done, and done well, long ago. However, what we have learned since that time, is that families in poverty need good old fashion social work by people whom the families trust, not by professionals who they consider to be part of the system and who they have grown to distrust. To restudy Home Visiting is completely unnecessary.

If, on the other hand, this recommendation is in regard to Home Studies, Home Studies are typically an element of Assessment, not Investigation, and Assessments rarely lead to a family being engaged in the

¹ Bending the Curve to Improve Our Child Protection System (Nov. 8, 2018) located at www.vtprc.org

CHINS Process. In reality, the recommendation to create greater Home Study capability is geared toward extending home studies to families who are not under investigation, and thus unlikely to be engaged in a CHINS matter, but who are undergoing an Assessment (a voluntary activity). Assessments have little to do with CHINS. If anything, expanding Home Studies will further clog an already disastrously clogged child protection system while providing little relief in regard to the CHINS process.

2. Judicial Master and Associated Staff (\$ 400,000): The creation of a Judicial Master will add another layer of bureaucracy, while further undercutting the ability of Family Court to process CHINS cases effectively and efficiently. CHINS cases have to do with abuse and neglect and should be based upon a timely, thorough and factually balanced investigation, resulting in an investigative report that may be followed by intensive service delivery if abuse/neglect are found. This critical element (competent investigations resulting in a knowledgeable understanding of the family's strengths and weaknesses) is routinely lacking in the current CHINS process and a Judicial Master will have no effect in remedying this fatal flaw:

- Mediation has been tried in CHINS cases and found not be an effective tool. The mediators who did this work can testify that in CHINS cases parents have no bargaining power, and thus the premise of mediation, that people can be at the table with if not equal, at least some power, is completely lacking when the State is threatening to remove your child or has already removed them. As a result, mediation has no role in relieving the backlog of CHINS cases. One does not "mediate" whether there is abuse or neglect. What is frequently needed, however, is mediation between families and DCF relative to DCF's failure to follow statute, policy and procedure, but this has little to do with CHINS.

- Preliminary hearings are critical elements in a CHINS proceeding, and as such should be handled by the same Family Court judge who will follow the case throughout his/her tenure in that court. The availability of an investigative report that can be viewed in advance by effective counsel (defense and prosecutor alike), and then argued before a judge who will "own" the case and has a sound working knowledge of the facts from which to hold all parties accountable, is a far better method of handling preliminary hearings. A Judicial Master will bring little or no advantage to this process.

- Status Conferences are the primary mechanism whereby a Family Court judge follows the progress of a given CHINS case and can hold both the state and parents accountable. Having a Judicial Master and staff perform this function further removes the judge from understanding the intricacies of a case.

3. Alternative Dispute Resolution (\$400,000): ADR is, in fact, Mediation and it is unclear how this proposal is any different from the preceding section on Mediation? Thus, it has little to no effect regarding the disposition of CHINS proceedings. CHINS begins with an investigation that determines whether there appears to be abuse/neglect and then proceeds to a point where a judge decides whether the allegations are true and if so, what the next steps (if any), should be. Alternative Dispute Resolution has already been tried and found to have little to no effect on this process, thus would seem far outside of the focus intended by Act 11.

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If, however, this recommendation is actually intended to facilitate negotiated settlements between parents and DCF pre-CHINS, with the results being available for parents to be utilized in future court proceedings related to CHINS, there may be merit. However, the creation of a Child Advocate/Ombudsman is far more likely to impact CHINS future and current CHINS proceedings to a greater degree. The cost of an Office of Child Advocate / Ombudsman would approximate the cost stated here for ADR.

4. Peer Navigators (\$900,000): Vermont has already demonstrated the use of Peer Navigators, and although they have been shown to be of benefit to families under certain circumstances, CHINS-involved families require far more intense assistance than Peer Navigation. What the current system lacks, and what has been proven to be an essential component of successful CHINS intervention (assisting both the family and DCF accountable) is not “navigation”, but “service coordination”; individuals who have the authority to coordinate services across service lines (and, absent that authority, the knowledge and trust to enlist families in active participation), while ensuring that everyone understands what is expected of them. Peer Navigators have no capability to coordinate, no ability to resolve complaints and no authority to change or ameliorate DCF actions. Peer Navigators need training, supervision and accountability, and may better be utilized in a team with parents’ attorneys.

Peer Navigators can assist Assessment families who voluntarily agree to services, however these families are not part of the CHINS process and are typically served by community agencies.

5. Evaluation of Proposals 1-4 above (\$250,000): Spending a quarter of a million dollars evaluating proposals that have little, or no, impact on the actual problems relating to CHINS, appears to be an unwise use of one-time funds and counter to the intent of Act 11.

6. Review of existing CHINS system (\$ 125,000): Vermont’s CHINS process is an integral component in the larger child protection system and, as such, has been reviewed multiple times, and as recently as November, 2018, in the Bending the Curve to Improve Our Child Protection System report (www.vtprc.org). This report, consisting of 117 pages, comprehensively describes the system and includes 60 findings and 80 recommendations. The vast majority of recommendations are no cost/low cost, and the few that do bring additional cost are far less costly than the figure proposed to be spent by the CHINS Working Group. Vermont has completed all of the “pilot programs” and “studies” it needs in regard to CHINS. The failures of our CHINS system are well known, as are the solutions. What has been missing has been the acumen to view the CHINS process as but one part of the larger child protection system rather than as a stand-alone entity which can be “fixed” separate and apart from the larger system within which it exists. As is documented, the overall system (including CHINS) is severely broken and the solutions must be systemic, not piecemeal. Vermont has a windfall of some \$7m available to underwrite real system change, an opportunity not likely to present itself again.

II. An alternative approach to achieving both CHINS reform and that of the overall child protection system:

The recommendations listed below more accurately comply with Act 11 in that they provide a pathway to permanently fix our broken child protection system by providing front-end strategies to stem the increasing rise in CHINS cases, and back-end strategies to process CHINS cases in a more efficient, effective and certain manner. If the past decade has taught us anything, it is that the current system is immune to piecemeal measures. Estimates of the benefits to be achieved through adoption of the recommendations (below) have already been detailed in Bending the Curve.² Act 11, in conjunction with newly increased federal funding (Social Security IV-E funds) provides Vermont with the opportunity to fix the system itself, not just address a few broken and secondary components. We should not squander this opportunity. Specifically:

1. Consolidate the role of State's Attorney and Attorney General relating to CHINS and TPR. This places, in a single prosecutorial entity, responsibility for managing CHINS cases from the time an affidavit is submitted by DCF for CHINS to the time the court rules on a TPR request.

Projected Cost: None. Funds are already spent in regard to prosecution; realigning those funds with consolidated tasks becomes an administrative process.

2. Establish a free-standing Parent Defender Program, or a dedicated Division of Parent Representation within the Office of Defender General:

The recent addition of federal IV-E funding specifically to support parent representation will provide Vermont with an opportunity that here to fore has eluded our budgetary grasp. This new funding, a federal entitlement, will enable Vermont to create, within, or outside of, the Office of the Defender General, a Parent Defender section with its own chief, attorneys and social service workers, which is separate and distinct from the Juvenile Defender section. These should be dedicated personnel, with their own chain of command and compensation on par with that of the State's Attorney and Attorney General staff. This will assure effective counsel for parents and children alike, beginning at pre-CHINS petition stage and continuing through post-petition and Termination of Parental Rights, as well as representation during Substantiation proceedings. As Vermont-based pilot programs and national studies have conclusively show, this will reduce the number of CHINS cases entering the system, the speed at which CHINS cases proceed and will reduce both TPR and Substantiation rates. Vermont pilot projects have demonstrated significant reductions in young children entering state custody, and foster care, when effective legal counsel and social service personnel are engaged with families early on, including opioid involved families. This is possibly the most critical element in achieving overall system reform because without effective counsel and intervention early in the child protection process, there is no possibility of there being checks and balances on the state's almost unfettered power and the shroud of confidentiality that makes both accountability and quality assurance impossible.

² Bending the Curve to Improve Our Child Protection System, VPRC, Nov. 8, 2018, www.vtprc.org

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Projected cost: To Be Determined. Funds currently utilized by the ODG for contract parent defenders can be matched with federal IV-E funds, and re-directed to permanent staff. Costs above and beyond what is currently being spent can then be calculated based on compensation of current ODG and OAG staff and the addition of social service personnel. Any shortfall (from the combination of state and IV-E funding, could be addressed with a portion of the \$7m allocated for CHINS reform to pilot this approach for at least several years. A Parent Defender program would replace the Judicial Master identified in the Act 11 report and part of the Peer Navigator estimated costs.

3. Adopt a “One Family, One Judge” Policy:

Establish a policy by which a CHINS case is heard by a single judge throughout that judge’s tenure. This will significantly reduce delays in CHINS cases in that judges will be highly informed as to the particulars of a given case and in a position to hold DCF, prosecutors and defense counsel accountable to a far great degree than is currently experienced.

Projected cost: None, judges are already in place, unless the current backlog will demand the temporary addition of judges (retired or otherwise) who would follow the same “one family, one judge” formula.

4. Establish an Office of Child Advocate / Ombudsman:

Establish an external child protection Advocate/Ombuds Office, charged with monitoring system outcomes, procedure, policy, practice, and fielding complaints relating to the efficacy of the overall system. This entity should report to the secretary of the Agency of Administration, with an annual report to the governor, legislature, and the judiciary outlining findings and recommendations for improvement in efficiency and effectiveness. The entity should be adequately staffed and funded. Essentially, this Office would serve as the Quality Assurance entity for the entire child protection system and bring a degree of transparency currently lacking. An initial task for the office should be to establish a comprehensive cost and benefit analysis of the current system.

Projected Cost: To Be Determined. This Office would replace the Alternative Dispute Resolution program proposed in the Act 11 Report, as well as a portion of the Peer Navigator program.

5. Require DCF to:

- a. Conduct investigations that are consistently thorough, balanced, accurate and timely and which serve as the basis for standardized investigative reports at each stage of proceedings where DCF affidavits or testimony are involved, and insure that the facts stated in reports are true and complete. This ensures that prosecutors, defense counsel and the judge all receive the most accurate and timely information available prior to the submission of a CHINS petition or initiation of TPR proceedings and throughout same.

- b. Require a report of “reasonable efforts made” prior to initiation of TPR proceedings and at each stage of the judicial process.

c. Meet statutory timelines for Commissioner's Review and Fair Hearings.

d. Cease coercion of families into open family services cases following Assessments as well as Investigations which do not find abuse or neglect.

Projected costs: None. Investigative reports should be standardized already. Requiring that such actually take place and be presented each time an affidavit is contemplated should be standard practice that requires no additional cost.

6. Instruct DCF and the Human Services Board to cease the practice of having review and hearing officers engage in ex-parte communication with DCF after hearing a defendant's presentation, but before rendering a judgment, without ever informing the defendant of the new information.

Projected cost: none

7. Assign defense counsel to represent parents during Commissioner's Review Hearings and Human Services Board Fair Hearings. It is unconscionable that indigent and often under-educated Vermonters must defend themselves against a state-action absent legal representation when the State is represented at each step of these proceedings by DCF employees and Assistant Attorney Generals. Calling this due process and fair hearing is a dis-service to both terms.

Projected cost: TBD, but is likely to be an allowable IV-E service eligible for a 50% federal match. Utilizing Act 11 funds to cover any shortfall over a 2-3 year period would enable Vermont to better understand the value, fairness and legality of parent representation during substantiation hearings.

8. Review AG training of DCF workers in regard to maintaining complete and balanced case files.

Projected cost: none

9. Carefully review Bending the Curve to Improve Our Child Protection System (www.vtprc.org) and create a working group to make collaborative proposals for action.

Summary:

In the final analysis, based on the extensive work already in place, the aforementioned reforms are likely to cost less than \$2m annually (once IV-E funding is factored in), which would enable the state to maintain this structure and evaluate its effectiveness and efficiency for up to 3 years utilizing the \$7m appropriation. If past history is any indication, based on VPRC pilot programs and similar efforts nationally, the savings achieved should enable the state to maintain this reformed structure indefinitely, pending a thorough fiscal analysis that factors current expenditures and long-term projected savings. Such an approach might assist in the thwarting of a federal or class action law suit brought against Vermont, based on current system failings and a finding that both parent and child civil rights are being systematically violated which, in turn, could bring about the reversal of past substantiations and call into question the past forced removal of children from their families that has resulted from these inequities.