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To: Senate Judiciary Committee
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Subject: "Bending the Curve to Improve Our Child Protection System" Report

Mr. Chairman, members of the Committee, I appreciate the opportunity to talk with you today about our report: "Bending the Curve to Improve Our Child Protection System". The report demonstrates in detail that our child protection system is broken from top to bottom. I take no pleasure in saying that. I started my career in Vermont working for the Department of Social and Rehabilitation Services as the Director of that Department's Licensing Division. In that job, I had the opportunity to see in detail, and be proud of, the work done by that Department to protect children and support families. Sadly, I don't recognize that effort in today's child protection system.

Certainly there are good people, doing good work, throughout the system. But there are so many instances of failure to follow sound social and legal practice, policy, law, acceptable ethical expectations, and good administrative behavior, that we are compelled to speak out for change. I say "we" because the report is the result of work, not just by myself, but by many people: My predecessor, Trine Beck, current and past Board members, a peer review panel of child protection experts from within and outside Vermont, and the many individual Vermonters who provided their personal and professional insights and experiences with our child protection system.

The report is long – 117 pages. I urge you to read it. And I will provide you with a short summary in my testimony today and in writing. But let me start by putting human faces on that comprehensive information.

Picture yourself *the single parent of a young child who is seen, by a teacher, to have bruises on the child's back. The teacher reports to DCF. When asked how the bruises might have occurred the child first says "sledding, at school." Asked repeatedly how else they might have occurred, the child offers a host of possibilities. You are asked the same questions and your first answer is "possibly sledding", but when pressed for other possibilities you make additional guesses because you don't know.*

- *DCF submits photographs of your child to a doctor some 60 miles away and lists one or two ways that you said the bruises might have happened, but DCF does not include "sledding." The remote physician responds that bruises were unlikely to have been caused by the reasons given, and thereby were highly suspicious.*

- *Your child is removed via an emergency court order and over the next 3 weeks is placed in 4 different foster homes. At the end of three weeks you finally get a court hearing (although the statute says that such a hearing is to occur within 72 hrs. of removal).*
- *You are appointed an attorney and luckily for you, your attorney proves the injury occurred at school, that the school nurse had a detailed report of the incident, however DCF never interviewed the nurse. At the time of the removal you insisted that your child be seen by the child's Pediatrician (who examined the child that day) and determined that there was no sign of abuse then, or in the past. DCF refuses to accept the Pediatrician's diagnosis.*
- *With this evidence the court gives you your child back. The abuse allegation is dismissed, however DCF amends its affidavit and alleges medical neglect, then dental neglect, then truancy. As your attorney demonstrates that DCF has no evidence to support one allegation, DCF moves on to the next allegation.*
- *In the end, the court rules that none of the allegations has merit, however the court tells you that you are guilty of educational neglect (even though you have been a strong advocate with the school and have religiously attended every IEP team meeting for the entire year). The reason: your child missed school 12 times due to your medical and other essential appointments since you rely on public transportation that requires an extended window of time for pick up and return, and you cannot run the risk of not being present when the school bus drops your child off in the afternoon because this is what DCF charged you with the previous school year (but could not substantiate). It is also the one form of assistance that you have repeatedly requested from DCF (transportation vouchers for a cab) but were denied. The court's determination has no impact because the school year is now over.*
- *Four and a half months, 4 foster placements, tens of thousands of dollars and 4 half-day CHINS proceedings all because DCF could not find the time to talk to a school nurse to verify a sledding accident.*

Picture yourself *as a parent accused of abusing your child. There are no details of what that abuse might be and you have not been interviewed by DCF. You talk to the DCF worker and ask her about being interviewed. She states, "I don't need to talk to you. The fact that you are denying it is all I need to know that you did it." The case is substantiated, but you have never been interviewed. You are then told that you can appeal the substantiation but the review officer can't tell you the details of the substantiation because no details appear in the official file.*

Picture yourself *as a parent or foster parent who has been substantiated for child abuse. You are appealing the substantiation. It is upheld at a "Commissioner's Review", which takes place 6 months after the substantiation, not within the 35 days required by law. The Review Officer rules against you, however you don't understand why because you refuted the allegations. After that decision, you learn that the deciding factor for the Review Officer ruling against you was a private conversation he had with the DCF supervisor in the case. You did not know that the conversation was taking place, you don't know what was said and obviously had no opportunity to respond to statements that you did not know about. You later discover that the Vermont*

Supreme Court found exactly the same facts in another case, a case in which the Review Officer readily acknowledged that ex-parte communication is routine for review officers, and that it is the way that the Review Officers can find out what information was not included in the official file provided to you. The Supreme Court case contains a full half-page footnote in the decision clearly stating that such ex-parte communication is not allowed.

Picture yourself *a single parent with three young children. A DCF worker arrives at your home and tells you that it is alleged that you are smoking marijuana. You explain that you have a medical prescription for marijuana to aid in sleeping and you utilize it before bedtime. The DCF worker states that unless you relocate your children to a relative's home until the investigation is completed, the worker will have to go to court and have your children removed to foster care. You don't know what to do, so you agree and take your children to your mother's home.*

- *Shortly afterward, the father of the children (who has had only minimal contact with the children for years) arrives at your mother's home and takes the children, stating that he was contacted by the DCF worker who told him to get the children and file for sole custody.*
- *You are never interviewed and you do not hear from the DCF worker again. The children's father files for sole custody but the court denies the request citing no evidence that you are unfit. The court determines that the children are to be returned to you, however the DCF worker appears in court and voluntarily informs the court that there is an open investigation and that the children should not be returned before the investigation is completed. The judge, reluctantly, agrees but says that if the investigation shows nothing wrong, the children will be returned to you.*

- *You hear nothing more from the DCF worker. Finally, you receive a substantiation letter stating that you placed your children at risk of harm, but no specifics are provided. You call the DCF office and are told that they have no record of you and no file relating to you. You tell them you must have a file because DCF removed your children and you were substantiated. Their response is that "they didn't remove your children" and you should contact the Commissioner's Review Unit. You do so and are told that they can't tell you anything because they are waiting for your file from the District Office. You tell them that the District Office says it has no file and you don't know what to do. They tell you that they don't know either and you should call the District Office, again. You call the District Office back and ask them to contact the DCF worker and find out what is going on. They tell you that they can't because the worker does not work there any longer.*

- *It has been months now, and more than 3 months past the statutory deadline for a Commissioner's Review, yet you know nothing more than you knew initially, your children have been gone for months, the Family Court is waiting for a DCF report that appears not to exist, the Review Unit has sent you no information and there is no one in charge who seems to know any more than you do. You feel like Alice must have felt when she fell down the rabbit hole, only Alice didn't lose her children.*

Picture yourself *as a judge who is assigned to a new family court post. In advance, you review the next day's case files in detail only to find, the next morning, that you are the only person in the court room who knows anything about the case, including the parent's public defender, because everyone else in the court is new to this case, even though it is almost two years old. You discover that a child has been relocated to a home wherein the record indicates a convicted sex offender resides, yet no one, including the new DCF worker, is aware of this. You clear the docket and spend the entire day ensuring that this child is relocated to an appropriate placement, thereby being unable to address the other pending cases for that day.*

Picture yourself *as part of a married couple with 3 young children. A DCF worker tells you that you are being assessed for neglect. The worker determines that no neglect is evident. However, you are told that you need to enter into an open family services case wherein you will be monitored for the next three to six months. You ask why and are told that "this is just what we do" and unless you agree, DCF may have to place your children in foster care. You are aware that state law allows you to decline services and you do so*

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- *At that point you are told that DCF has run you through the standardized risk assessment tool and you have scored High or Very High and therefore must enter into a family services case anyway. You ask how you scored so high and are told that you have very young children, your spouse was a foster child so there is a long history of involvement with child protection and you have a substance abuse and criminal history (charged with possession of marijuana 6 years earlier) and unless you agree to the open case there is a good chance that the court will remove your children. You reluctantly agree. For the next 6 months a DCF worker calls you on occasion and drops by the house, then closes the case.*

Finally, picture yourself *a parent who has had your child removed because your ex-partner has a substance abuse problem, however you were not listed on the birth certificates so DCF would not grant you visitation until you established parentage, which you do immediately. The results show that you are the biological father, however, the court has a 6 month backlog and the parentage information is not acknowledged by the Court for 6 months, during which you are not allowed by DCF to have visitation or other contact with the child.*

- *Over the next 3 years you are provided with 4 different public defenders, the 3rd whom you never met and were not informed had moved away. Not one of your attorneys has met with you outside of a few minutes just prior to going into the courtroom and none have ever discussed evidence or strategy with you.*

- *DCF is now proposing TPR and adoption for your child although DCF has never identified the "reasonable efforts" required by the federal government before a TPR can occur, and the DCF file consists mostly of historical information that has little bearing upon your case and other information that is factually incorrect. The primary reasons for the TPR, as stated by DCF, are that you have not maintained consistent contact and that your child seems upset when being returned to the foster parent (who has planned to adopt your child since being given the child as a foster placement).*

- *The DCF file does not mention the 6 months in which you were denied access to the child, or the fact that Easter Seals workers have cancelled half of the visitations that you are alleged to have missed. Your current attorney, although well intentioned, tells you that the attorney has 35+ parent defense cases and no time to research your case.*

- *You turn to the Vermont Parent Representation Center to assist you in putting a defense together so you can present it to your attorney for them to, hopefully, present to the court.*

Our report finds that these stories are common and not all that unusual. My purpose here today is to do three things:

- Present an overview of the findings of the report
- Present an overview of our recommendations
- Urge you to take immediate action to protect both children and their families and to avoid future litigation alleging the violation of basic due process and other civil rights.

I. Introduction:

We are a relatively small agency, although our report is based on work with 500 families. No doubt some may say that our work is biased or inappropriately slanted. I urge you, if you have such doubts, to immediately arrange for an outside expert, not connected to us or to the Agency of Human Services or DCF, to verify our statement, with authority to access any information needed to complete such work, with appropriate safeguards of the privacy of the children and families involved. They will get our full cooperation.

II. Major Findings:

- The child protection "system" is not held accountable, either in its components or as a whole, for its outcomes or its practices.
- Current "oversight" by the Administration is minimal, while that by the Legislature is ineffective in light of the enormity of the task and confidentiality.
- The system operates on the basis of "trust but don't verify" and "plausible deniability". Each step in the process accepts the information arriving from the preceding step with little challenge as to its veracity.
- Performance measures focus on process, not outcomes, and in many cases even process is absent.
- Confidentiality protects the system from meaningful scrutiny.
- Indigent families operate largely without an understanding of the system, their rights or access to a real complaint resolution process.
- Basic federal and state due process protections are largely absent.
- In those instances when DCF and State's Attorneys are confronted by competent legal professionals who are supported by social service professionals, children are typically not removed and when they are, the removal is reversed in short order. Otherwise, children remain in out of home placement for extended periods, families operate in turmoil, backlogs mount and successful outcomes diminish accordingly.
- Statutory requirements are treated as soft guidelines rather than law by the state.

III. The result being that Vermont has:

- the second highest rate of terminating parental rights (TPR) in the U.S;
- the highest rates of child removal in the Northeast;
- wildly fluctuating rates of removal and detention of children from district to district;
- a demonstrated history of losing removal actions when confronted by competent defense counsel who are supported by social service personnel;
- a demonstrated history of subjectively substantiating abuse and neglect;
- routinely coerced families into relocating children absent court orders;
- routinely coerced families into open service cases absent any finding of abuse or neglect When that fails, coerces families into open monitoring cases through the misapplication of a standardized risk assessment tool, when no abuse or neglect, or even a need for services, is otherwise found.
- Creates judicial backlogs and swamps the system with open family services cases wherein no abuse or neglect has been found and no discernable need for services exists.

IV. Our child protection agency (DCF):

- Consistently demonstrates an inability/ unwillingness to fulfill its basic obligation of investigating allegations of abuse & neglect;
- Denies parents due process in reviews and fair hearings by violating state statute and fair hearing standards.
- Operates absent discernable quality assurance or complaint resolution processes.
- Maintains a culture of "we don't need to investigate allegations; we know these families."
- Operates under a veil of confidentiality that protects misfeasance and malfeasance.
- Decision making and interpretation of laws and policies is arbitrary and capricious;
- Misfeasance, and malfeasance, are frequently the norm rather than the exception;
- Individual workers are largely untrained and inadequate to the tasks assigned;
- Record keeping is poor, at best, and frequently consists of information having little bearing on allegations or materially that is factually incorrect:
- Does not utilize a standardized investigative report format that serves as the foundation for affidavits or testimony, and much of the recordkeeping is conducted in hardcopy and subject to misplacement or loss. Records rarely contain positive information regardless of the existence of such. This makes effective file review next to impossible in an efficient and accurate manner.
- Frequently, fails to develop Case Plans regardless of the passage of time or update those that do exist.

V. Our public defender agency (ODG):

- Routinely employs private attorneys who, in many cases, never meet their clients until minutes before hearings, regardless of the duration of representation; and fail to hold strategy discussions, review documents, develop evidence or file motions, and who routinely instruct clients to "plead to the merits" regardless of whether "merits' are actually supported by evidence;

- Provides virtually no supervision or oversight; and fails to maintain a discernable complaint resolution mechanism.
- Manages and contract attorneys in a manner far inferior to that utilized for state government staff attorneys.
- Effectively, the ODG has little knowledge of the level of deficient performance of many of its contract attorneys.

VI. Our State Attorneys (SA) and Attorney General (AG):

- Routinely rely upon DCF affidavits and testimony that is suspect at best, and generally goes unchallenged as to its veracity yet is accepted as valid.

VII. Our Judiciary:

- Routinely does not hold hearings within the prescribed 72 hours following an emergency removal. Rather the 72 hrs. is interpreted to mean that a future hearing is scheduled within the 72 hrs. This hearing can occur months later, resulting in children being in custody for months absent a determination that there was cause for the separation from their family.
- Routinely rotates justices to the degree that frequently, there is no one in the court room who is fully aware of the particulars of a given case even though the case has been active for years.
- Routinely experiences backlogs that show no indication of being cleared.

VIII. Recommendations:

Review the 60 findings and 80 recommendations contained in the report, specifically:

A. Establish oversight capability via a Child Advocate or Ombudsman Office which will provide system-wide oversight, complaint resolution and performance measures.

B. Establish a Parent Representation Office or division, consisting of dedicated, salaried attorneys and social service workers who represent parents in pre-CHINS, post-CHINS matters, as well as Substantiation hearings, and who provide parent education regarding rights and responsibilities. Such program to be in statute, and separate and distinct from Juvenile Representation. Social Security Act IV-E money enables this now.

C. Replace the current standard for substantiation for abuse or neglect from the current "reasonable person" standard, to a standard of proof requiring "proof that an objective, reasonable person would find convincing." Clarify what the Legislature intended in its definition of "risk of harm."

D. Combine all child protection cases under the Attorney General's purview.

E. Establish a One Case/One Judge system of case management.

F. Require DCF to produce a standardized investigative report for every Investigation, Assessment and affidavit. Require an affirmative statement of "reasonable efforts made" prior to TPR initiation.

G. Immediately arrange for an outside expert, not connected to us or to the Agency of Human Services or DCF, to verify our statement, with authority to access any information needed to complete such work, with appropriate safeguards of the privacy of the children and families involved. They will get our full cooperation.

Thank you for bearing with me.