To: Chair Maxine Grad and Members of the House Judiciary Committee

From: Jennifer Myka, General Counsel, DCF

Date: April 19, 2022

Re: H. 534

I am writing to clarify DCF's position on H. 534. I understand that a representation was made in your committee on Tuesday that DCF's testimony in the Senate Judiciary Committee was solely to expand DCF access to sealed or expunged records. If that was the takeaway from my testimony in the Senate, then I was not clear.

When I testified in Senate Judiciary, I testified regarding concerns raised by DCF's Commissioner's Registry Review Unit, which provides processes for placement of an individual's name on the Child Protection Registry when there is an investigation and a decision to "substantiate" a particular person for abusing or neglecting a child. The only individuals with access to the Child Protection Registry are listed at 33 V.S.A. §4919. Law enforcement is not included in that list.

DCF is both obligated and authorized to participate in joint investigations with law enforcement.   *See* 33 V.S.A. §4915 and 24 V.S.A. §1940. This is usually in the interests of the child victim, for whom multiple interviews are often traumatizing. Information from these joint investigations, such as a transcript of an interview of a child by a law enforcement officer, becomes part of the DCF file.

DCF's purpose in testifying in the Senate was to seek statutory clarification that records DCF acquires and creates during our joint investigations with law enforcement can be utilized even where no criminal conviction has resulted and the criminal court records are subject to an order sealing or expunging them.

To be clear, DCF does not seek *expanded* access. DCF has different purposes and, crucially, *a different standard of review* than that of a criminal proceeding. In a criminal case, the standard is proof beyond a reasonable doubt. In a Child Protection matter, the standard is preponderance of the evidence. A prosecution may fail due to sufficient evidence under the former standard, but there may nevertheless be more than sufficient evidence under the latter.

Investigations involving allegations of child sexual and physical abuse are extremely difficult to prove in a criminal court. The Child Protection process provides an essential backstop, namely preventing future harm to children, regardless of whether there was sufficient proof to prevail in a criminal prosecution. Title 33 clearly intended it to provide that backstop. DCF continues to seek legislative clarification on the scope of a sealing or expungement order for purposes of ensuring that

the investigations we undertake can yield results for the protection of children, even where criminal prosecutions fail.

We are not parties to a criminal case and are not involved at any point in the decision in the criminal court to order the sealing or expungement of a criminal record. We do not receive notification of a sealed or expunged record unless and until a former defendant brings that order to our attention through the CRRU process, which can be before or after a person's name has been placed on the Child Protection Registry. In the case of sealing or expungement, whether after conviction or after a dismissal of a criminal case, it is almost always the case that a state's attorneys' office is unaware of our concurrent CRRU proceedings. It is also important to note that a case may be sealed within months of it being dismissed.

Finally, I would like to clarify that DCF did not testify in opposition to H. 534. DCF's sole purpose in appearing was to obtain clarity on the question of what *is* a "criminal record" for purposes of DCF's legislatively mandated work in child protection. The Senate Judiciary committee started to broach this topic, but time was short and they were unable to examine it. DCF continues to believe this is an essential endeavor.