

Testimony for 2024 legislation: H.661

For the record, my name is Bill Young. I worked for 32 years for the State of Vermont, 20 of those years at the Department of Social and Rehabilitation Services (SRS), 2 as a District Director, and then 18 years as Commissioner. After retiring, I formed a consulting business specializing in organizational trouble shooting and also directed a residential addictions treatment program, retiring in 2014.

Thank you for the opportunity to speak with the Committee today regarding H661. Our child protection system is in serious trouble. To understand the challenges you face in correcting the situation, it's necessary to first understand the problems in the system and their scope. To be sure, some of the current problems go beyond DCF, but H.661 is intended to be a start down what can be a successful road to reform.

I want to address three things in my testimony:

1. The size and nature of the problem
2. Three case examples
3. Solutions: H. 661 and further actions

First, the size and nature of the problem:

For the past 5+ years I have worked with Larry Crist of the Vermont Parent Representation Center (VPRC) in an extraordinary test of whether Vermont can reliably and consistently tell the difference between when children are being abused and when they are not. It can't. Over that time, I have seen a steady stream of cases that demonstrate major failings. VPRC's study, Broken System, Broken Promises clearly showed me, as it has to DCF and to others, that these problems are both real and fixable. I urge you to read that study if you haven't already done so. Three years ago, Vermont's Children's Justice Act Task Force (within DCF) began a studied approach to some of the same issues the report raises, with a focus on how we investigate alleged abuse/neglect and how we utilize the Child Protection Registry. In September of this past year, Commissioner Winters convened a working group and, building on this earlier work, charged it with assisting the Department in creating solutions to the most immediate problems uncovered by the VPRC report and the Task Force.

I want to be clear. In January 2022 DCF did 2386 investigations, substantiating 593.. Were all of them flawed? Of course not. I am sure that there are good people acting to protect children and assist parents in very difficult circumstances. I've seen some of them. For example, just before I left Vermont for NC last November, I had an unplanned conversation with a woman about DCF after mentioning I was working on these issues. She told me about a DCF worker doing a wonderful job working with her daughter to get into drug treatment, with the foster parents caring for her grandchildren, and with her. The result, her daughter is in recovery, has her children back and has such a good relationship with the foster parents that they visit to share meals at the foster parents and the grandmother's houses and continue to support her daughter.

It's a textbook case about how the system should work.

But just as there are good people in the system doing good work like this, far too many children and parents are being harmed each year, some of them terribly, by the system that is supposed to protect and support them. This is largely, but not entirely, a systems problem, not a people problem.

The VPRC study showed that 100% of the 27 cases appealing substantiations were overturned or dismissed. It's now up to 38 – no one wins 100% of the time without something being drastically wrong in the system. By comparison recent startling news in MA reported that the Courts there overturned 50% of substantiations. No one knows what our numbers exactly are, but the VPRC experience is very troubling. For example, if 30% of 530 substantiations are flawed, that's 178 cases per year effecting, conservatively, at 4 people per family, 712 children and parents per year. In 5 years that would be over 3,500 people. And whatever the actual number is, whether 10% or 50% of substantiations, what we know without a doubt, is that it's far too many families. And without free help from VPRC I doubt if any of the cases in the study would have been overturned, since appeals are a very legalistic process and parents do not have attorneys. Larry Crist kept track of his time helping parents with those appeals. He estimates that, at private attorney rates, parents would have spent between \$20,000 - \$50,000 per case.

Second, three case examples:

1. A father is divorced. His ex-wife picks up the young children for a visit and later in the day she brings the youngest child to an out-of-state hospital with an injury she said was there when she picked them up and that the father did it. DCF pressures the father to place the children with the mother after a clearly inadequate investigation that included failure to speak with the child's grandmother who was visiting and bathed the child the night before and dressed him to be picked up by his mother and who said the child was not injured. DCF documents that the physician who saw the child at the hospital stated that "This is child abuse." – a very clear statement. But doing his due diligence, which by the way I have found that Larry Crist does in all cases before he speaks about them, Larry calls the physician, explains why he is calling and asks about his finding that the injury was abuse. The physician says: "Who told you that? What I said was that this is a typical childhood injury and could not be attributed to abuse."

Now, let's not fool ourselves in the name of being polite. This isn't a mistake. It's not a misunderstanding. It's an outright lie and it's despicable!

2. This from the VPRC report: A mother is found unresponsive in a car on a hot day with the windows up, drug paraphernalia present and a screaming infant in a car seat needing medical attention. Sounds life threatening, right? She is substantiated and placed in the Registry. Larry does his due diligence and finds that the mother was 8 ½ months pregnant, had been awake all night with a screaming, teething infant, there was no drug paraphernalia present, the child did not need medical attention and the windows were up because the car was running and the air conditioning was on. She is substantiated for Risk of Harm.

3. And, quickly, the case that made me realize that I couldn't walk away from these issues – the full story is much worse than this summary: A little 7-year-old girl comes home from 1st grade on a winter's day. Later in the day DCF arrives, telling the mother they are investigating a report of child abuse, that her daughter has a suspicious bruise on her back. They see the girl, who does have a bruise on her back. She tells them that it happened when she was sliding down a hill at school and hit a post – a pretty reasonable statement and one that could be verified by a brief phone call to the school. But the DCF worker insists repeatedly that the mother guess how else it might have happened. The mother finally says, “Well, I was putting a bed together the other day and she was fooling around and fell on it. I guess it could have happened that way, but I didn't even know that she had a bruise.”

The worker takes a picture of the bruise and sends it to a pediatrician, asking for his opinion, not mentioning the girl's statement, but telling him that, “mother says this happened falling on a bed.” He responds that “If that's what the mother said, then I'd be suspicious because I don't think she could have gotten the bruise that way.” DCF uses his opinion to convince a Judge to order the girl into custody. Larry Crist gets involved and contacts the school nurse. Her response? “Child abuse! That's crazy. She was sliding down the little hill out there and hit a post. Two teachers saw it and brought her in to see me. It was such a minor thing I didn't think it even required a report.” Larry works with the mother's attorney and, after two weeks in 3 foster homes, the Court orders that little 7-year-old girl home. DCF never contacted the school. This was clearly a set up that could have been avoided by a brief phone call. But they obviously didn't want to do that. There's no other explanation. It's obscene!

I often think of these cases and ask myself where was the evidence in this case, where was the investigative skill, or at least the interest or the ethics needed to determine what really happened, where was the supervision essential to the exercise of awesome administrative power? And for over five years I have seen cases that are just as bad as these – not all of them. Some appear to just be bureaucratic bungling. But others are just as upsetting and harmful as this one and some more so, some with misleading or outright false statements to the Courts or in appeals. It's a scandal and by comparison they make the EB5 scandal at Jay Peak look like a convenience store stick-up and they are costing the State millions of dollars!

Third, H. 661 and further actions:

H.661 is a very important beginning to a needed overhaul of our child protection system. Two of the major issues addressed are the standard of proof required to substantiate abuse/neglect, and the statutory requirements inherent in appeals of substantiations. H.661 addresses both categories of issues.

I think that the recommended change in the standard of proof from the “reasonable person” standard to “a preponderance of the evidence” standard is the most important part of this bill. You will note that nowhere in the current law is DCF required to actually produce “evidence” of abuse or neglect; just “information” whether confirmed or not. H.661 fixes this, just as it has been fixed in all but a handful of other states.

The current standard of proof simply doesn't make any sense today. A social worker and supervisor in Newport can look at a set of facts and say, "This isn't child abuse." And a social worker and supervisor in Bennington can say "This is child abuse" and they are all right, because they are all "reasonable people." We could do the same exercise with this Committee. And to make it truly crazy for parents, DCF uses this standard for substantiations and appeals, while the Courts and the Human Services Board use a preponderance of the evidence standard once someone appeals the DCF substantiation. This is the definition of administrative madness.

Some will argue that we should err on the side of children. But that reflects a basic misunderstanding. Child protection is very difficult and stressful work. Every decision you make, from beginning to end, carries a risk of harm to children or their parents and often both. And certainly you have to balance risk to the child as you make decisions. But the goal has to be not to err on anyone's side, not the child's, not the parents', because if you make mistakes in this business, you increase the risk of harm to the family members. And we have checks and balances because we are all human and make mistakes although there are some problems with those checks and balances in Vermont.

Among other critical issues addressed in H.661 are to time frames for appeals hearings. Current legislated time frames are rarely met, often fulfilled months and occasionally years beyond the limits currently set in statute. Conversely, the short time frames for parents to appeal a substantiation and the process used by DCF to notify them are clearly unreasonable and unfair to the parents yet, if the parent does not comply they lose their appeal rights whereas if the state doesn't comply there is no penalty regardless of how egregious the state's failures are. I know that DCF has worked with VPRC and others to address this issue.

The good news is that H. 661 does not cost Vermonters any more money and will undoubtedly save money soon after implementation. That is one reason why this legislation is so important as a first step.

There is more to do. The fact that there are so many cases, as identified in the VPRC report, where the system is failing tells us that our systems of administrative and legal checks and balances are failing. In future years I think it will be important for the Legislature to consider how to use available federal funds to improve legal representation for both children and parents, With a few notable exceptions, the current system is worse than useless, it is harmful. I also think consideration of reorganization has the potential to improve management oversight of operations and change in a way that is very difficult now.

The legislature can't do everything. One of the hardest tasks will fall to Commissioner Winters and the staff who are helping them. One of the most difficult things to change is an organizational culture where, in spite of good people throughout the organization, there are also people at all levels who don't want to change and will fight it. That's an administration challenge, not the legislature's. Commissioner Winters and his people will need support.

I'd be remiss if I didn't also applaud the efforts of Commissioner Winter's and his staff to correct this situation. As soon as he took office (and in fact a little bit before taking office) he

said that he recognized that there were problems in the system and wanted to correct them. I think that he wisely took on a part of the system to begin with as reflected in this legislation, rather than trying to do it all at once. He needs you to make the changes proposed in H. 661, and then be allowed to deal with administrative changes that can be made absent legislative action via rulemaking. I strongly suggest that, once you pass H.661, if you pass it, you ask the Commissioner “What’s next? We expect to hear back from you later this year with further recommendations regarding next steps to continue to overhaul the other dysfunctional parts of our child protection system.

Madam Chair, I appreciate your work to understand these issues and that of other legislators and the Committee’s interest. There’s no reason to put up with this in our little state. The clock is ticking for these children and their parents. H.661 is a strong start down the road to successful reform. I urge you to pass this bill and thank you for your time today.

I’d be glad to respond to any question you may have, or to respond to any future questions.

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