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**STATE OF VERMONT  
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Timothy Lueders-Dumont  
Dep't of States' Attorneys & Sheriffs

Sarah Robinson  
Vt. Network Against Domestic & Sexual Violence

**In re: H.41 - an act relating to referral of domestic and sexual violence cases to community justice centers**

Dear Tim & Sarah,

I wanted to formalize my thoughts on this bill and provide some recommendations on revisions that could lead to greater support of prosecutors and victims' advocates within the Department. My thoughts here are my own and should not be interpreted as an assertion of the Department's position.

As a threshold matter, I believe there is value in extending the availability of restorative justice to domestic and sexual violence cases. I also appreciate fully that this is a priority bill for the Network. My reservations, however, are centered on the limited breadth of the proposed revisions to 24 V.S.A. § 1967. As drafted, the bill does little to address the concerns raised – ranging from oversight to victim safety. My goal is to outline and propose a more formalized set of referral sources and clear rules beyond the requirements for a community justice center to participate in such activities, and mitigate the concerns raised.

In preparing my thoughts, I reviewed the report produced pursuant to Act 146 (2018). Many of the recommendations made are not addressed in the proposed statutory changes. For example, Recommendation #2 set forth in the report states:

Programmatic criteria for programs offering restorative justice interventions to address domestic violence, sexual violence and stalking should be formalized by a body or agency that is authorized to create readiness criteria, provide support and technical assistance, and offer oversight.

Unfortunately, there is presently no unified agency or department tasked with the regulation or oversight of community justice centers.<sup>1</sup> The closest state agency that may be able to provide

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<sup>1</sup> The variance in community justice center capabilities, funding, and oversight may in part lead to mixed perceptions among prosecutors on their ability to take on these types of cases. From my perspective, those already

oversight is the Office of the Attorney General – with the Community Justice division as a possible lead within that agency. Consistency in programming, data collection, and a central point of contact for these efforts is appropriate – especially if there is to be referrals coming from multiple streams and decision points in criminal, family, or juvenile proceedings. Accordingly, I recommend that H.41 be amended to address recommendation #2 of the Act 146 report.

Recommendation #5 of the report provides:

Vermont should explore a focused effort to integrate restorative practices into Relief from Abuse Order processes in Family Court

Further, Recommendation #6 states:

DCF should expand family group conferencing capacity and offerings.

I, like most other State's Attorneys, am concerned by the notion of pre-charge or direct referral of cases where there is probable cause for a criminal offense and there has been law enforcement involvement (e.g. physical violence, threats of violence and reasonable apprehension of serious bodily injury, sexual contact or abuse, etc.). There are, however, many cases where a victim seeks relief directly from the Family Division, and situations where the basis for relief does not rise to the level of a chargeable offense. The recommendations noted above are potentially appropriate procedural settings to consider integration of restorative justice. Particularly:

a. In the context of relief from abuse orders, one potential referral path could occur at the hearing for a final order. The court could, upon assent of the parties, and after a plaintiff has an opportunity to consult with a confidential advocate, issue an extended temporary order with a referral to a community justice center in lieu of a final order and reserve findings until the completion (or non-completion) of the restorative process. This would tend to achieve the goal of reducing risk, while still maintaining a legally actionable order of protection, in circumstances where a continued relationship or reconciliation of the parties is anticipated.

b. The Department for Children and Families, parties to a proceeding, or court could also recommend (or order) referral to restorative justice as part of the disposition of delinquency, youthful offender, or children in need of supervision (CHINS) proceedings, where all parties, including the victim, assent to such program as part of case resolution. Likewise, this could also be a condition set or agreed to as part of family group conferencing prior to the formal initiation of any court processes.

The hallmark of all of these referrals must be (1) a degree of court or agency oversight and involvement, (2) direct access to a victim advocate or confidential advocate from a domestic or sexual violence advocacy organization by the victim, (3) a knowing and voluntary decision to engage in restorative justice by the victim, and (4) the willingness the other party or parties to engage as well.

Turning to criminal division, the same rubric of a victim informed approach is essential. I also believe that, if implemented, referral of these cases should be post-adjudication only – until such

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administering or providing domestic violence accountability programming (e.g. Montpelier) may be better situated to administer restorative programming. However, some centers are relatively modest operations with limited staff and expertise available.

time as the practices, procedures, and policies are fully developed. Post-adjudication referrals also limit the problems presented by pre-adjudication (or even pre-charge) referrals – where the statements of an offender in sessions or meetings are not privileged or protected. It seems unlikely that any defense counsel would recommend a client to participate in such programming pre-adjudication. However, as part of a sentence, wherein jeopardy for the charge has attached, the risks of self-incrimination are reduced considerably.

Likewise, post-adjudication there is assurance that a victim is adequately supported – both through a victim advocate and protective conditions from probation or other Department of Corrections supervision. These factors limit the risks of coercion, undue influence, or using the restorative process as a means of furthering control or perpetuating abuse.

To conclude, I share the concerns that Tim has raised on behalf of the Department – however, I believe many of the concerns may be mitigated through a more comprehensive effort to provide statutory standards. Deferring or hoping that local memorandums of understanding can address these critical concerns will only serve to reduce the cooperation of key stakeholders in this effort, and set the stage for an uneven and geographically disparate outcomes.

I encourage the Network to consider supporting amendments or a redraft of the bill that integrate and address specific referral sources and corresponding processes, victim-centric gatekeeping, and a designated oversight and administrative office or agency.

Please let me know if you have any further questions or concerns. Thank you.

Very respectfully,



Rory T. Thibault  
State's Attorney