MEMORANDUM

To: **Senate Committee on Finance; Senate Committee on Health and Welfare; House Committee on Human Services; House Committee on Health Care**

FROM: **Vermont Office of the Child, Youth, and Family Advocate (OCYFA)**

DATE: **May 12, 2026**

RE: **H.657 Restraint and Seclusion provisions - Fiscal and System of Care Impact**

Dear Colleagues:

As you know, the Vermont Office of the Child, Youth, and Family Advocate ("OCYFA") is an independent, non-partisan State of Vermont office that advocates for children, youth, and families served by DCF, with a focus on child welfare and juvenile justice.[1]

This memo clarifies the rationale and legal framework behind the H. 657 restraint and seclusion provisions (Secs. 12 and 13) in light of the May 6, 2026 AHS memo to your committees.[2] We begin by summarizing the three main points of this document, with additional detail regarding each point in the sections that follow.

I. Main Points

1. The restraint and seclusion provisions within H. 657 are necessary because current law, regulations, and practice are insufficient to protect the safety of children and youth in DCF custody, both in state and out.
2. H. 657 does not conflict with federal or state law or regulation. Rather, H. 657 enhances, clarifies, and provides specificity to existing law and practice while minimizing the resulting administrative burdens on DCF, DMH, and DAIL. In particular, we can find no justification for AHS's assertion that "to operate as a PRTF, the program must be able to use chemical restraints." This fundamental misconception helps demonstrate the necessity of H. 657.
3. The changes to AHS business practices that enactment of H. 657 would bring are reasonable, necessary, and aligned with the State of Vermont's long-term goals of supporting families, reducing institutional care, and promoting cost efficiencies.

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[1] See Act 129 of 2022.

[2] This memo refers to Draft 2.1 of H. 657, dated 4/27/26. See also AHS Memo, May 6, 2026.

II. Discussion

1. **The restraint/seclusion provisions of H. 657 are necessary to protect the safety of children in DCF custody and in DCF facilities.**

H. 657 emerges after decades of inadequate protections for children in DCF custody and in DCF facilities, resulting in harm to children and youth and excessive state spending.[3] Vermont's historical lack of effective safeguards, reporting requirements, and oversight of restraint and seclusion practices has increased the isolation, objectification, and traumatic stress of children in institutions, many of whom do not have family or kin able to advocate on their behalf.

To our knowledge, neither DCF nor AHS have, in their history, voluntarily issued any reports or data about the restraint or seclusion of children in DCF custody—one reason for the creation of the OCYFA. In 2023, as part of the enabling legislation for this office, Vermont law began requiring DCF to notify the OCYFA of instances of restraint or seclusion, injury, or fatality, of any child in DCF custody. Since then, the OCYFA has published restraint and seclusion data, along with recommendations for system improvements, in each of our annual reports.[4] Unfortunately, in our fourth year, reporting from DCF to OCYFA remains inconsistent, incomplete, and often delayed to the extent that precludes timely responses on behalf of impacted children and youth.[5]

Especially concerning is that, in the three years during which reporting has been legally required, DCF has failed to report a single instance of the restraint or seclusion of a child in DCF custody at the Brattleboro Retreat inpatient units, despite the known routine occurrence of restraint and seclusion in that program.[6] Because the new, not-yet-opened, Vermont Psychiatric Residential Treatment Facility (PRTF) will be run by the Retreat and will adhere to the same restraint and seclusion regulations that govern the inpatient units there (see Section 2 of this memo, below), there is little reason to believe that DCF will report restraint and seclusion incidents from the new program either.

[3] See, e.g., Joe Sexton, The Loss of Grace: An Investigation of Woodside Juvenile Rehabilitation Center | Seven Days, October 25, 2023; United States Senate Committee on Finance, "Warehouses of Neglect: How Taxpayers are Funding Systemic Abuse in Youth Residential Facilities," 2024.

[4] 33 VSA § 3206. See, e.g., OCYFA 2023 Annual Report, p. 65 ("The OCYFA received just one batch of restraint and seclusion data regarding one residential treatment program in 2023, comprising 92 individual incidents of restraint"), OCYFA 2024 Annual Report, p. 17 ("DCF has failed to meet its obligations under this law, sending just three batches of restraint/seclusion reports from four facilities since February 2023, despite multiple requests"), and 2025-2026 OCYFA Annual Report, pp. 21-22 ("DCF's current data systems do not track comprehensive, child-centered, actionable data on children restrained or secluded... DCF has not committed to including mechanisms for reporting this data to OCYFA in its new CCWIS data system").

[5] 2025-2026 OCYFA Annual Report, pp. 21-22: "Restraint and seclusion reports are written in multiple formats, are sent via different forms and methods, and contain inconsistent data categories...More than 130 instances were not reported to the OCYFA until at least 30 days after the incident occurred. At least 182 reports were undated, or it was impossible to determine the date the program wrote the report given the information OCYFA received."

[6] Based on multiple, direct conversations between OCYFA and Retreat staff.

In terms of out-of-state PRTFs where DCF places children, the OCYFA received restraint and seclusion reports from just one facility in 2025.[7] Among these was a highly concerning incident in which the facility forcibly administered Thorazine to a teenage girl, after which she suffered from "seizure-like activity" and was taken to hospital. In reporting this incident, neither DCF nor the program clearly identified it as involving chemical restraint. DCF reported this incident to the OCYFA 22 days after it took place. Current law sets no time limit for incident reporting and does not require notification to the child's guardian ad litem or attorney.

H. 657 would require notice of incidents like this one to DCF, the child's parent or guardian, the child's guardian ad litem, and the child's attorney within 24 hours, and to the OCYFA within two business days. It would ensure that key information is included in each report, such as the race of the child, the type of restraint or seclusion used, and the duration of the incident. And it would require that any extant audio or video recordings of restraint/seclusion incidents be provided to DCF and thus OCYFA, which several programs have recently refused to do.[8]

The children and youth this bill covers are isolated. If information about their daily experience does not make it to their advocates, their rights under federal law, including the right to personal privacy, the right to receive care in safe settings, and the right to be free from all forms of abuse and harassment, will remain hollow.[9] DCF cannot be expected to simultaneously play the role of regulator, payor, HIPAA covered entity, *and* legal parent of the children placed in the programs it contracts with and oversees.

2. **H. 657 does not conflict with current federal or state law or regulation. Rather, it enhances, clarifies, and provides specificity that balances protections for children with the goal of minimizing administrative burden for DCF, DMH, and DAIL.**

As the AHS memo points out, Psychiatric Residential Treatment Facilities (PRTFs) are governed by an extensive framework of federal and state laws and regulations, in which restraint and seclusion is tightly regulated. The notion that H. 657 enactment would cut against AHS's legal obligations, however, is upside down. Federal law centers on protecting children and youth in PRTFs, not on providing tools to control their behavior. Among other protections, federal regulations of PRTFs assert that "each resident has the right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation"; that "restraint or seclusion must not result in harm or injury to the resident and must be used only: (i) To ensure the safety of the resident or others during an emergency safety situation; and (ii) Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured…"; and that "a physician…

[7] 2025-2026 OCYFA Annual Report, p. 23.
[8] See 2025-2026 OCYFA Annual Report, p. 22 and 41.
[9] 42 CFR § 482.13(c).

must order the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation…"[10]

Vermont DMH's "Emergency Involuntary Procedures" regulations, which adhere to federal law and which will govern the new Vermont PRTF, contain similar provisions, including that restraints and seclusions are "safety measures of last resort," that "there shall be no protocol, written or unwritten, that requires a patient to ingest oral PRN medications as a condition to release from seclusion or restraint," and that "designated hospitals shall continually explore ways to prevent, reduce, and strive to *eliminate* restraint, seclusion, and emergency involuntary medications through education, training, and effective performance improvement initiatives."[11]

These same DMH regulations also make clear that federal law presents a *floor* of protections for children in these facilities, over which states are expressly authorized to provide enhanced protections. The new Vermont PRTF must "meet *or exceed* standards set by the Centers for Medicare and Medicaid Services and the Joint Commission, as well as rights and protections that reflect evidence-based best practices…"[12] The standards set by the Joint Commission, the main accrediting body for the PRTF and the Brattleboro Retreat inpatient adolescent units, repeatedly clarify that states may adopt standards more stringent or restrictive.[13] Other states have, in fact, done so.[14]

In sum, we can find no support for AHS's claim that the Vermont PRTF "must be able to use chemical restraints."[15] Rather than conflict with existing federal and state law and regulation, H. 657 supports their implementation. H. 657 adds crucial but reasonable requirements onto existing regulations—such as the requirement that residential programs include incident duration in their reporting, as PRTFs are already required to do—and provides clarity for programs on how they can satisfy existing regulations.[16] It supports AHS in better understanding how children are cared for in the increasingly complex and expensive world of residential and PRTF-level care.

[10] 42 CFR § 483.356(a)(1) and (3); 42 CFR § 483.358(c).
[11] EIP 1.1 (c) and (d), 3.1(j). Emphasis added.
[12] EIP 1.1. Emphasis added.
[13] See, e.g., Joint Commission, "R3 Report Issue 44: New and Revised Restraint and Seclusion Requirements for Behavioral Health Care and Human Services Organizations," June 20, 2024: "If time limits differ in applicable law and regulation, the organization uses the more stringent requirement" (p. 6), "States may have statute or regulation requirements that are more restrictive than the requirements in this element of performance" (p. 7), and "Unless state law is more restrictive, at least every 24 hours, a physician or other authorized licensed practitioner responsible for the individual served sees and evaluates the individual before writing a new order for restraint or seclusion in accordance with organization policy and law and regulation" (p. 7).
[14] See, e.g., DE ST TI 16 § 5161 and 5162.
[15] AHS Memo, May 6, 2026, p.1.
[16] EIP 3.6. For example, current regs require only that programs "document" incidents but do not specify a time requirement. H. 657 provides clarity to programs that they must submit reports to DCF within 24 hours.

3. **The changes to AHS business practices H. 657 brings are reasonable, necessary, and aligned with the State of Vermont's long-term goals of supporting families, reducing institutional care, and promoting cost efficiencies.**

It is unquestionable—and by design—that passage of H. 657 would require changes to State of Vermont contracting and business practices. It is possible that programs would balk at separate standards for DCF youth or refuse to accept the logical step of elevating standards for *all* youth to meet the provisions of H. 657. But, on the other hand, programs that do accept the higher standards will signal their commitment to quality and safety. And passage of H. 657 supports in-state programs by ensuring that out-of-state programs follow the same requirements, thus leveling the playing field. Moreover, under current practice, DCF contracts already have separate requirements for children placed by each of the three agencies (DCF, DAIL, and DMH) in areas such as agency contacts, performance requirements, and payment rates. Finally, any added contracting costs will be outweighed by, and must be measured against, the value of the bill's reduction in trauma to children, its increases in due process protections for children and youth, and its promotion of best practices to keep children safe through least restrictive interventions.

III. Conclusion

H. 657 is a necessary step for improving the safety and promoting the rights of children in institutions. It aligns with state and federal goals and supports DCF's mission of "healthy development, safety, well-being, and self-sufficiency of Vermonters."[17] It does demand change in state systems. But the restraint and seclusion protections in H. 657 are nonetheless imperative.

[17] DCF mission.