



# VERMONT CHILDREN'S ALLIANCE

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Child First  
Advocacy Center of  
Rutland County

The Chittenden  
Advocacy Center  
at CUSI

The Child Advocacy  
Center at The  
Family Place/  
Windsor County  
Unit for Special  
Investigations

Windham County  
Safe Place  
CAC/SUSI

Northwest Unit for  
Special Investigations/  
Child Advocacy Center

Bennington County  
Child Advocacy Center and  
Special Investigations Unit

OUR House of  
Central Vermont

The Child Advocacy Center  
at the Springfield Area  
Parent Child Center

Caledonia Special  
Investigations Unit, Inc.

The Orleans County  
Child Advocacy Center

The Orange County  
Special Investigations Unit

Addison County Unit  
Special Investigations, Inc.

To: Representative Maxine Grad, Chair, House Judiciary  
Representative Willem Jewett, Vice Chair, House Judiciary  
House Judiciary Committee Members

From: Jennifer Poehlmann, Esq.   
Executive Director, Vermont Children's Alliance

Re: Proposed Amendment to Section 20, S.9 as offered by the  
Vermont Network Against Domestic & Sexual Violence

Date: April 22, 2015

I wish to first state that I agree with the vast majority of the testimony offered by Auburn Watersong and Judy Rex. The global discussion relative to the needs of victims of domestic violence, the interplay between child abuse and domestic violence, and the value of the bond between the child and the non-offending parent, was an important discussion and I strongly support the points that were raised.

In fact it is a hallmark of the model of those programs I represent, Vermont's Child Advocacy Centers, that when child abuse is alleged, our best practice response is not just to wrap services around that child, but to wrap services around the non-offending caregiver as well. In that role, we are fortunate to partner with DCF, the Network, and many other partners in our community.

Where we diverge is with respect to the hypothetical versus the actual, and with that in mind we are unable to support the proposed amendment to Section 20 of S.9 as offered by the Vermont Network Against Domestic and Sexual Violence on April 22, 2015.

For us, the concern around the language proposed is highlighted when we recall the reason S.9 was introduced – that being in response to the deaths of Dezirae Sheldon and Peighton Geraw. As we know only too well, almost a year before she was killed, Dezirae was found to have two fractures to her legs that occurred at different times; no one was ever held accountable for inflicting those non-accidental injuries to Dezirae. As I testified to earlier, that our criminal laws are currently insufficient for addressing the non-accidental injury of pre-verbal children was a specific finding of the independent review of these deaths conducted by the Vermont Citizen's Advisory Board.

The natural question then becomes, would the language to amend 13 VSA §1034(a) as proposed ironically have made it even more difficult to have held someone accountable for Dezirae's injuries, and would it make it more difficult moving forward. For us the answer is to both is yes.

To be sure, S.9 promises to implement many meaningful changes to our state's response to child abuse, but adding additional elements to our Cruelty to a Child law, which would need to be proven beyond a reasonable doubt, would cause an already cumbersome statute to become even more so. In our opinion, the inclusion of "emotional harm" as proposed is particularly problematic and would threaten to create a hole so large in the law as to render it almost worthless. We have to consider the impact on the 100% of cases where this statute has been employed for decades and not the extreme hypothetical where it has yet to be.

Our criminal justice system is not intervening in these circumstances for some very good reasons, all of which were offered in testimony today. First, we truly have a system in place in Vermont that is a model for practice in other states for responding to victims of domestic violence and supporting them and their children. We are able to respond appropriately because the services and collaboration exist to make the criminal justice option one which is not even on the table. Moreover, as testified to, our state has made leaps and bounds in terms of training and education, including training for law enforcement officers and prosecutors on domestic violence; in some counties this means that when it comes to allegations of domestic violence, only those with specialized training touch these cases.

As other witnesses have stressed, current law under 13 VSA §1304(a) requires intent – it does not allow for mere knowledge, reason to know, or recklessness. As you know these are lesser requisite mental states which we had hoped to see added. As you have heard from other witnesses, common law defenses such as "duress" currently exist which would be available to a victim of domestic violence who felt forced to act in a way that harmed or exposed her child to harm.

Should the Committee feel the risk of prosecution of a victim of domestic violence was significant enough that existing law should be amended, we respectfully request that any amendment to 13 VSA §1304(a) take the form of providing an affirmative defense rather than add additional elements. This would more appropriately reflect the fact that, again, to date there has been no prosecution of a domestic violence victim in this state under this statute. Rather than alter all investigations and prosecutions under 13 VSA §1304(a), establishing an affirmative defense would provide an explicit "out" in those rare circumstances where a particular fact pattern might fit the elements of 13 VSA 1034a and a prosecution pursued.

In conclusion, we understand the many "balancing acts" you are considering under multiple sections of this Bill. Our concern lies squarely with an attempt to "balance" Section 20 with the language proposed today. Our fear is that by acting to balance a law that in our perspective is not out of balance, we risk swinging the pendulum too far the other way.

We understand the difficult policy choices facing the Committee and truly appreciate your thoughtful deliberation of all aspects of this Bill. Thank you for your time and consideration.