

Juvenile Defender Newsletter

Spring 2009

A special thanks to the Court Improvement Project for making this newsletter possible!

According to Bob Sheil, who has been the Juvenile Defender for 21 years, there are seven areas in which there have been changes that are of particular concern to those practicing juvenile law:

- Kinship placements
- The citation process now used in delinquency petitions
- Restitution
- Conditional custody orders
- Protective orders
- The procedure involving Youthful Offenders, which has been completely revamped.
- Access to juvenile records will undergo some further changes under S.13, which was recently passed.

Kinship Placement

Under the new Juvenile Judicial Proceedings Act there is a provision that creates an order of preference for transfers of custody to others where full custody cannot be returned to the custodial parent. Relatives are considered for placement after consideration of the noncustodial parent, and both placements are preferred to a transfer of custody to DCF. A person with significant ties to the juvenile could also be considered for placement.

A dramatic increase in the number of kinship placements has been reported. The court now

considers a person with a significant relationship with the child based on suitability criteria. This mandate is found in 33 V.S. A. 5308(b)(4) as it pertains to the Temporary Care Order and in 33 V.S.A. 5318(a)(7) as it pertains to the disposition order.

The relative or person with a significant relationship with the child who has custody has the legal decision-making authority, subject only to possible protective order by the Court which would be supervised by DCF, and the child cannot be removed from that relative's home without a modification of the court order.

Generally more financial support is available to a child in foster care, but this must be weighed very carefully with other factors such as school placement, other supports for the parents, reimbursement of certain other expenses, such as mileage to doctor's, counseling, etc, and phone calls to siblings, respite services and trainings available for foster parents.

To clarify the appointment of counsel, Title 13 Section 5232 (3) allows the court to appoint counsel for needy persons in "Proceedings arising out of a petition brought in a juvenile court when the court deems the interests of justice require representation of either the child or his parents or guardian or both, including any subsequent proceedings arising from an order therein." The Public Defender statute appears to allow the court to appoint counsel for kin only for Family Court proceedings if the kin has already been appointed as the child's guardian.

Kin can be appointed as an educational surrogate parent when they are a foster parent

for a child in custody. In fact, according to Michael Mulcahy of the Vermont Education Surrogate Parent Program (828-5108), kin who are foster parents would be the first people the team would look at in assigning an educational surrogate parent for the child. Kin who have custody would have the same rights to notice and participation in the IEP process.

Lynn Granger at Vermont Kin as Caregivers (VKAC) is a great resource. She can be reached at 802-338-4725.

Kinship placement is also addressed in the Federal act passed in October 2008 entitled Fostering Connections to Success and Increasing Adoptions. A link to a summary of some of the provisions in this act is below in Helpful Links.

An important requirement in the Act is that notice must be provided to relatives within 30 days after the child is removed from the home. States must also make reasonable efforts to place siblings together, and to strive for educational stability. Relative guardianships may also be subsidized up to an amount no greater than the amount of the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.

Citation Process

In Delinquency petitions they've now moved to a citation process as opposed to a summons. A citation to appear before a judicial officer is issued in lieu of arrest. See 33 V.S. A. 5221

Restitution

Be aware that now when an adjudicated delinquent as part of disposition is ordered to pay restitution, that can follow them after attaining the age of 18, because the party owed can make a claim in small claims court and this is not subject to a limitation period. 33 V.S. A. 5235(k)(1) and (2)

Conditional Custody Orders

Now at any stage of proceedings in CHINS cases there may be situations where the court determines a temporary care order is not necessary but that the child may remain in or return to the custody of the custodial parent, guardian, or custodian subject to conditions or limitations. If these conditional custody orders issued by the court are not followed, custody may be taken away. One of the conditions that may be listed is that the compliance with conditions can be monitored by DCF through unannounced home visits. 33 V.S.A. 5305 (c)

Protective Orders (Amended Generally)

Protective orders can be sought at any time now, not just after merits. Whoever is the moving party pays for the service of the notice of the order. Lora would need to approve payment of the fee for service where assigned counsel or public defense attorneys request to order. In addition there is a criminal penalty for violation of the order the same as if someone violates an abuse prevention order. 33 V.S. A. 5115

Also, the requirement under the old law that the alleged harmful or detrimental conduct will tend to defeat the execution of the order of disposition made or to be made, had been eliminated.

Youthful Offenders

See link to Bob's chart under Helpful Links. The statutes pertaining to youthful offenders (33 V.S.A. 5281 -5288) have been complete revamped. Particularly of note is that now under 33 V.S.A. 5286(d)

“If the court finds that it is in the best interest of the youth and consistent with community safety to continue the case past the age of 18, it shall make an order continuing the court's jurisdiction **up to the age of**

22 [emphasis added]. The order shall specify whether the youth will be supervised by the department or the department of corrections.”

Juvenile Records

Note that in the recently passed Act Relating to Improving Vermont’s Sexual Abuse Response System, S. 13, there is a change regarding access to juvenile records. Previously these were available only to the court for sentencing purposes in sex offenses. Now the Department of Corrections will have access to these records for the purpose of preparing the presentence report. 28 V.S.A. Section 204 is amended to read

“If the presentence report is being prepared in connection with a person’s conviction for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13, the commissioner shall obtain information pertaining to the person’s juvenile record, if any, in accordance with 33 V.S.A. §§ 5117 and 5119(f)(6), and any deferred sentences received for a registrable sex offense in accordance with 13 V.S.A. § 7041(h), and include such information in the presentence report.”

*******Important News*******

Attorneys: Seek Social Work Support for Parents

The Defender General has partnered with the Chittenden County based Vermont Family Network to provide social work support for parents in CHINS cases. This new program can be of great assistance to parents’ counsel and their clients. The Vermont Family Network will

provide assistance to parents in overcoming barriers to accessing services required under their case plan, with the hope of improved outcomes and satisfaction with the court process. Chittenden County attorneys can access this service by contacting Anna Saxman for approval.

Generally Speaking

There seem to be lots of accelerated TPR’s now.

Judge Crucitti has been very good about preserving the parents’ rights to parent child contact with his new system of Parent Child Contact Orders, which have an order specific to the Initial Phase, Part one and two of the Central Phase and lastly the Reunification Phase.

As always it takes perseverance and following up to make sure the visitation is really happening as ordered.

Recent VT Supreme Court Opinion

One termination of parental rights (TPR) was reversed and remanded for a new termination hearing in January as required by In re M.T., 180 Vt. 643 and V.R.F.P. 3(a), which requires that the court directly notify the client of the scheduled termination hearing. No longer can the court rely on the attorney to notify the client. See In re D.M., Juvenile an unpublished Entry Order decision from the January Term, 2009 <http://www.vermontjudiciary.org/d-upeo/eo08-337.pdf>

JJDPA

Senator Leahy was among the senators who reintroduced the Juvenile Justice and Delinquency Prevention Reauthorization Act on March 24, 2009, designed to protect our communities and our most precious asset, our children. A summary can be found below.

Helpful Links

Bob's flow chart on Youthful Offenders can be found on the Defender General's Website at:

http://defgen.vermont.gov/sites/defgen/files/Youthful_Offender_Flowchart.pdf

DCF has a number of initiatives around transition-age youth – it might be helpful for an attorney advocating for a youth to know what those things are. Some of it might be in the DCF policies, other things might be in DCF/FSD's "Transformation Plan."

Transformation Plan - : http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/FSD_Transformation_Plan.pdf

Family Services Division Policies - <http://dcf.vermont.gov/fsd/policies>

DCF Rules Pertaining to Transition Age Youth -

http://defgen.vermont.gov/sites/defgen/files/Transition_Age_Youth.pdf

For a detailed summary of the act on "Fostering Connections to success and Increasing Adoptions" passed in October of 2008 see: <http://www.clasp.org/publications/fctsaiaact2008resources.htm>

A lot of information on the new juvenile statute can be found on the Judiciary web site:

<http://www.vermontjudiciary.org/GTC/Family/Juvenile.aspx> which has the following links:

Guide to New Juvenile Statute

Guide to New Juvenile Statute Conversion Charts

Guide to New Juvenile Statute Highlights

Guide to New Juvenile Statute Section by Section Analysis

Guide to New Juvenile Statute Text of the Act

Juvenile Justice and Delinquency Prevention Reauthorization Act summary from 2008:

<http://www.govtrack.us/congress/bill.xpd?bill=s110-3155&tab=summary>

Educational Opportunities

May 15 4th Annual Working with Youth Conference, sponsored by VT Coalition of Runaway & Homeless Youth Programs, at the Sheraton Hotel & Conference Center, South Burlington, contact Kreig Pinkham, kreigpinkham@comcast.net or at 229-9151 or Diane Robie at wwy@robie.info.

June 3 – Juvenile Law Training Sponsored by the Defender General's office at the Inn at Essex, contact trish.halloran@state.vt.us for agenda. At present topics being considered for discussion on the juvenile day of summer training are the changes to the Youthful Offender statute, new federal requirements for support for families with children in custody, and new mandates for services for youth transitioning out of DCF custody.

August 19-22 National Juvenile and Family Law Conference, at the New York Marriott at the Brooklyn Bridge sponsored by the National Association of Counsel for Children 1-888-828-NACC or www.NACCchildlaw.org

**Save the Date for the 7th Annual Collaboration Conference on Children, Youth, & Families ~ Friday, October 16, 2009 at the Killington Grand Hotel