

# Juvenile Defender Newsletter

Fall 2009

This newsletter is made possible through the Vermont Court Improvement Program with federal funding from the U.S. Administration on Children and Families.

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## Youthful Offenders

Has there been an increase in the number of youthful offender cases? One objective of re-writing the juvenile statutes was to increase the use of youthful offender treatment of minors charged in district court. While it is still early to draw conclusions, court statistics show that in the five months before the JJPA became effective, there were eight YO cases entered in family court. In the five months following the JJPA, there were 12 YO cases entered, a 50% increase.

In State v. Dixon Judge VanBenthuyzen pointed out the policy shift expanding the age at which one can apply for youthful offender treatment: now “[A]ny youth charged with *any* crime committed between the ages of 10 and 18 can apply for youthful offender treatment, *regardless of the seriousness of the offense.*” (emphasis added) See [Decision on Motion for Youthful Offender Status in State of Vermont v. Jonas A. Dixon](#), June 16, 2009, Docket No. 69-1-07 Cacr.

Jurisdiction can now continue up until age 22 under supervision by either DCF or DOC.

According to Bob Sheil, Vermont’s Juvenile Defender, the difficulty is that many juveniles just want to get it over with and would rather be under the sole supervision of DOC with adult probation than have a joint plan coordinated by DCF and DOC under 33 V.S.A. § 5286(d).

If the defendant is between the age of 10 – 18 at the time of the offense, the state’s attorney, the youth or the court may file a motion for Youthful Offender treatment under 33 V.S.A. § 5281(a). The Youth enters a conditional guilty plea in District Court. The District Court enters an order deferring sentencing and transfers the case to Family Court to determine whether Youthful Offender status should be granted under 33 § 5281(b), (c).

Once the case has been sent to family court the process is a bifurcated proceeding. The first part of this is a non confidential or open proceeding to determine whether the criteria ensuring public safety will be protected by treating the youth as a

youthful offender. 33 V.S.A. § 5284(a) Once it's determined that the public safety will be protected by treating the youth as a youthful offender the hearing then becomes a closed proceeding where the determination to then be made by the court is whether the youth is amenable to treatment or rehabilitation, and whether there are sufficient services in the juvenile court system and the department to meet the youth's treatment and rehabilitation needs. 33 V.S.A. § 5284(b) (1) and (2)

If Youthful Offender status is granted the defendant is not entitled the right to a jury trial.

In the vast majority (45 in 2007) of states, charges against a juvenile start in juvenile court. Vermont is one of only 3 states that allows any misdemeanor charge against a 16-17 year old to be brought first in district court, allowing prosecutors total discretion, with no guidelines, to decide to file any criminal charge-- no matter how minor against a juvenile who is 16-17 in adult court. The Vermont Statute effectively lowers the age of majority to 16. Florida and Nebraska also allow prosecutors to bring misdemeanor charges against 16 and 17 year olds in district court, but they both add more restrictions than Vermont.

When interviewed for the Rutland Herald in September 2008 Vermont Defender General Matthew Valerio said he thinks too many 15- to 17-year-olds are charged as adults.

"The adult system isn't designed to

meet the needs of kids that age," he said. "It's designed primarily to deal with punishment and supervision rather than dealing with the developmental needs of the kids. It's not designed to put the kids in a place where they will not reoffend."

In other states, Valerio said, a minor's case begins in juvenile court and can be moved to adult court following a hearing.

"In Vermont, we do it backwards," he said. "We start in adult court and you have an opportunity to have it transferred to juvenile court, but it rarely is. There's plenty of literature about adolescent brain development and why a remedial system would be better for 16- and 17-year-olds."

### **Consequences of an Adult Conviction**

The Juvenile Law Committee of the Vermont Bar Association has come up with a handout which quite effectively explains to a minor the ramifications of a conviction in district court. The district court managers are meeting to discuss distribution of this handout. Hopefully they will attach this handout to the information and affidavit and give it to the juveniles. The handout suggests possible consequences that your juvenile client should consider when weighing whether to request a transfer to juvenile court under 33 V.S.A. § 5281. These include the following:

- ▶ Difficulty in obtaining employment, even if you have successfully completed a Diversion Program

- ▶ Restrictions on travel (such as entering Canada)
- ▶ Drug convictions may result in loss of federal financial aid for college or trade schools, and may prevent you from being able to live in federally subsidized housing
- ▶ Loss of your right to vote in some states, primarily for felony convictions
- ▶ Restrictions on future occupations based on conviction of certain types of crimes
- ▶ Restrictions on the ability to adopt children
- ▶ Requirement of registration as a sex offender and placement on the online sex offender registry (for certain offenses)
- ▶ Should you decide to enlist in the military, a criminal conviction may delay or have other impacts on your ability to serve.

### **Confidentiality of Juvenile Records**

The Summer issue of the newsletter explained the new provision to 33 V.S.A. § 5117(b)(1) allowing the commissioner of corrections access to juvenile delinquency records for PSI reports, and the new additional exception to inspection of juvenile records for anyone convicted of a registrable offense under 33 V.S.A. § 5119(e)(2)(A).

Now as previously under 33 V.S.A. § 5117(a) juvenile files are maintained separately and not open to public inspection with an exception where the delinquent act would have been a felony if committed by an adult, in which case the child's name shall be made available, if requested, to the victim or their representative.

Inspection is not prohibited under 33 V.S.A. § 5117(b)(1) by the following: (A) A court having the child before it in any juvenile judicial proceeding, (C) A court in which a person is convicted of a criminal offense for the purpose of imposing sentence upon or supervising the person, and (D) Court personnel, the state's attorney or other prosecutor authorized to prosecute criminal or juvenile cases under state law, the child's guardian ad litem, the attorneys for the parties, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child.

When a juvenile is in DCF custody many times evaluations are done before the juvenile is 18. These may be useful in defending a subsequent charge. Under the circumstances listed above if the evaluation identifies mitigating factors Central Office may be able to help determine whether these evaluations are available so it would be worthwhile contacting the juvenile defender's office about these cases.

### **Sealing of Juvenile Records**

Effective July 1, 2009 under 33 V.S.A. § 5119(f)(6) "If a person is convicted of a sex offense that requires registration pursuant to subchapter 3 of chapter 167 of Title 13, the court in which the person was convicted:

(A) may inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense; and

(B) shall examine court indices developed pursuant to subdivision (e)(2)(A) of this section. If the offender appears on any of the court indices,

the court shall unseal any court files and records relating to the juvenile adjudication and shall make them available to the commissioner of corrections for the purposes of preparing a presentence investigation, determining placement, or developing a treatment plan. The commissioner shall use only information relating to adjudications relevant to a sex offense conviction."

Generally as in the past, when a juvenile has been adjudicated delinquent, sealing that record is addressed in 33 V.S.A. § 5119. Subsection (a) applies to those adjudicated delinquent on or after July 1, 1996. The court shall order sealing of all files and records relating to the proceeding if two years have elapsed since the final discharge of the person, unless on motion of the state's attorney the court finds that the person was convicted of a listed crime as defined in 13 V.S.A. § 5301 or rehabilitation has not been attained to the satisfaction of the court.

The state's attorney may object to the sealing and a hearing may be held. The order to seal may be limited to court files and records only upon good cause shown by the state's attorney.

Under 33 V.S.A. § 5119(b) and (c), if the child was adjudicated delinquent prior to July 1, 1996, or if a person who, while a child, was found to be in need of care or supervision, either the child may apply to have the records sealed or the court may motion to have them sealed. The court must make findings similar to those above in the first situation, and in the second situation sealing may be ordered if it finds (1) the person has reached the age of majority; and (2) sealing the person's record is in the interest of justice. After notice and a hearing, if the above conditions are met, the court shall order the sealing of the records.

Sealing of these records is not to be confused with how the listing on the child protection registry is dealt with in cases of substantiation of abuse or neglect by DCF. These listings have lifelong ramifications unless the procedure is followed to have a name removed from the registry as discussed in the Summer 2009 newsletter and detailed in 33 V.S.A. § 4916c.

For people who were put on the Child Protection registry years ago Act 168 became effective June 7, 2007 and provides in 33 V.S.A. § 4916c(f) that the department [DCF] "shall take steps to provide reasonable notice to persons on the registry of their right to seek an expungement under this section. Actual notice is not required.

Reasonable steps may include activities such as the production of an informative fact sheet about the expungement process, posting of such information on the department website, and other approaches typically taken by the department to inform the public about the department's activities and policies. The department shall send notice of the expungement process to any person listed on the registry for whom a registry check has been requested."

Now under 33 V.S.A. § 4916d for a person who was found to have committed child abuse or neglect when he or she was less than ten years of age, their name shall be automatically expunged when they reach the age of 18, provided that the person has had no additional substantiated registry entries. A person substantiated for behavior occurring before the person reached 18 years of age and whose name has been listed on the registry for at least three years may file a written request with the commissioner seeking a review for the purpose of expunging an individual registry record in accordance with 33 V.S.A. § 4916c.

The Summer 2009 newsletter outlines the procedural changes to the administrative review process by which a person may challenge the placement of his or her name on the department's registry. Note that a review may be stayed upon request of the person alleged to have committed abuse or neglect if the person is party to a criminal or family court case related to the incident of abuse or neglect.

If your client ends up with a substantiation, giving them some direction on when and how to get the record expunged from the child protection registry is important.

## **Challenging Substantiations**

Litigating the merits of a delinquency which is based on a substantiated report remains most important. You are foreclosed from challenging the substantiation if there is any kind of admission or delinquency adjudication in the earlier proceeding.

Currently before the Vermont Supreme Court is a challenge to the Human Service Board decision based on a notice issue. See the Appellate brief [In re J.G.](#) for more insight into the notice issue, other issues involving the due process shortcomings and what constitute good cause to relax the appeal deadlines in the current procedures.

## **Sexting**

Vermont's first case of sexting was dismissed in Chittenden County in September. Two counts of promoting a sexual recording were dropped as part of a plea agreement where an 18 year old's multiple charges were downgraded from charges that focused on sexual assault.

## **Woodside**

Woodside Juvenile Rehabilitation Center opened its doors in 1986. Since then, Woodside has been providing

secure detention and treatment services to Vermont's youth. Recently, the staff at Woodside identified the need to consider a program improvement initiative. A steering committee made up of Woodside staff and significant stakeholders formed, including participation from Dotty Donovan and Bob Sheil. Stacey Jolles, Director, Youth Justice, Department for Children and Families, has identified the following three program improvement areas for focus.

1. Eliminate the physical designation of short-term and long-term wings in the building, allowing for greater flexibility in placing youth within the building based on clinical need and safety concerns.
2. Individualize programming for youth based on their need for secure care. Programming would take into consideration the youth's legal status and needs.
3. Expand available programming services including psycho-educational life skills groups, treatment groups for appropriate youth, family engagement, and restorative justice options.

Woodside staff are examining these three areas to identify appropriate next steps, including focus groups with the broader stakeholders.

Here is a link to the [Woodside Screening Instrument](#) for the 8-day hearings. The hearings take place on Tuesdays and Fridays on or before the 8<sup>th</sup> day of placement at Woodside.

## **In-State and Out-of-State Programs**

Placement of juveniles is often a critical question. Soon there will be an extensive list of in-state and out-of-state programs on the Defender General's web site in the Juvenile section.

Barbara Gassner, Brandon Wrazen, and Dotty Donovan visited 5 Massachusetts residential programs in mid July and some general information about each of those programs follows:

### **Stetson School** (Males)

A Residential Treatment Facility for Sexually Abusive Youth from 11-22 with specialized service for: sexual abusers – sexual misconduct – sexually reactive, with IQs of 55 and above.

**Devereux** (Male & Female) A Treatment program for teens with Substance Abuse and Emotional Challenges between the ages of 13 and 17 years who struggle with both substance abuse and mental health challenges that interfere with functioning within the family, school, and community.

### **Whitney Academy** (Males)

Serves cognitively impaired, mentally ill young men from 10-22 years who exhibit trauma reactive and abusive sexual behaviors.

### Steven's Treatment Programs (Males)

A therapeutic residential treatment center that offers comprehensive treatment and education services to adolescents who display high-risk behaviors of fire setting and sexual offending who are between the ages of 13 and 22. In addition Stevens also provides services to adolescents who are assaultive and/or delinquent, or are at risk for running away, suicidal behavior and substance abuse.

### Deaconess Home (Females)

Works with individuals with such issues as substance abuse, sexually

aggressive behaviors, lacking social skills including sexual boundaries, and aggressive behaviors, approximately from 13-22 years.

**Lastly, According to Matt Valerio, our Defender General,** there is a growing problem of getting rural attorneys to do assigned counsel juvenile contract work. There are just not enough attorneys, and very few new attorneys are interested in the work.

## UPCOMING EVENTS and HELPFUL LINKS

- **September 28 Standardized Assessment in Child & Youth Mental Health**, sponsored by VT Dept of Mental Health, VT Dept of Health, & VT Center for Children, Youth, & Families, 8:30 am to 4:00 pm, at Ascutney Mountain Resort, Brownsville, \$30, contact Patty Breneman at 652-2033 or [pbrenem@vdh.state.vt.us](mailto:pbrenem@vdh.state.vt.us)
- **October 8 Parenting Revisited- Life on a Trampoline: VT/NH Kinship Conference**, sponsored by Vermont Kin as Parents & NH Relatives as Parents programs, Dr. Joseph Crumbley, presenter, grandparent and relative caregivers FREE, at the Fireside Inn, West Lebanon, NH, go to [https://www.events.unh.edu/RegistrationForm.pm?event\\_id=5964](https://www.events.unh.edu/RegistrationForm.pm?event_id=5964) or call 603-225-5505
- **October 10 Step Up for Kids Day - VT Statehouse Open House**, sponsored by Kids Are Priority One, at the VT Statehouse, FREE, go to <http://www.kidsarepriorityone.org/state-house-open-house.html> for details
- **October 16 7<sup>th</sup> Annual Vermont Collaboration Conference on Children, Youth, & Families**, Anthony Quintiliani, keynoter, at Killington Grand Hotel, Killington, \$90 after Sept 1, go to [http://www.surveymonkey.com/s.aspx?sm=jMGV\\_2bv0vIm4A1NDuYIJwZQ\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=jMGV_2bv0vIm4A1NDuYIJwZQ_3d_3d) or contact [Don.mandelkorn@ahs.state.vt.us](mailto:Don.mandelkorn@ahs.state.vt.us)

- **October 28 - Montpelier at the Capital Plaza - no fee -Don't miss the Conference entitled "It takes a Vision: Changing Lives by Changing Systems"** for Judges, Court Personnel, DCF/Family Services, DCF Field Directors/ Attorneys, Guardians Ad Litem and Community Partners
- The revised edition of the Juvenile Manual will be available soon.

YOUTHFUL OFFENDERS - DOC policy

<http://doc.vermont.gov/about/policies/rpd/final-interim-youthful-offender-status>

YOUTHFUL OFFENDERS - DCF policy

[http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/policies/164\\_Youthful Offender Status 1 09.pdf](http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/policies/164_Youthful%20Offender%20Status%20109.pdf)

[Link to longer description](#) of Dotty and Barb's trip to Massachusetts programs: