

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<b>82</b>
<b>Chapter:</b>	Working with Families in Court	
<b>Subject:</b>	Juvenile Court Proceedings – CHINS	Page 1 of 12
<b>Approved:</b>	Karen Shea, Interim Deputy Commissioner	Effective: 8/24/2016
<b>Supersedes:</b>	Family Services Policy 82	Dated: 8/31/2015

## Purpose

To outline:

- When it is appropriate to seek an emergency care order (ECO); and
- The division’s responsibilities during Child in Need of Care or Supervision (CHINS) proceedings.

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## Related Policies

Family Services [Policy 80](#): Working with Families in Court – Definitions

Family Services [Policy 84](#): Conditional Custody Orders (CCOs)

Family Services [Policy 89](#): Locating and Evaluating Suitability of Noncustodial Parents, Relatives and Others

Family Services [Policy 98](#): Reunification of Abused or Neglected Children and Youth

Family Services [Policy 122](#): Case Plan Reviews and Permanency Hearings for Children and Youth in Custody

Family Services [Policy 124](#): Family Time

Family Services [Policy 125](#): Permanency Planning for Children and Youth in DCF Custody

## Policy

### Seeking an Emergency Care Order (ECO)

Division staff will request that the State’s Attorney seek an emergency care order (ECO) when:

- A child is in immediate danger from their surroundings and removal from their current home is necessary for the child’s protection; or the child has run away; and
- Other alternatives are not available or appropriate to resolve the current concerns.

Only a law enforcement officer has the authority to take a child into physical custody.

### Seeking a Non-Emergency CHINS Petition

Division staff may also find it appropriate to request that the State’s Attorney file a non-emergency CHINS petition if:

- A family is classified as high risk and/or there are unresolved dangers on the *SDM Safety Assessment*, the family refuses to accept services, but the child is not in immediate jeopardy; or

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- Following a CHINS assessment, the child is judged to be in need of care and supervision, but is not in immediate jeopardy.

If a child has been in voluntary care and is unable to return home within 180 days, a court hearing must be held before the 180<sup>th</sup> day.

#### **Additional Law Enforcement Responsibilities in CHINS Situations**

When an officer takes physical custody of a child, the officer must contact the division, and deliver the child to a location designated by the division. Division staff shall ensure that the expectations for the officer’s travel are reasonable.

Pending the issuance of an emergency care order, the division has the authority to make reasonable decisions concerning the child’s immediate placement, safety, and welfare.

#### **Emergency Care Order (ECO)**

When requesting an emergency care order, the division may recommend:

- A transfer of temporary custody to DCF pending a temporary care hearing; or
- A conditional custody order allowing the child to remain with the custodial parent, subject to conditions necessary and sufficient to protect the child pending a temporary care hearing.

Vermont statute does not provide for a conditional custody order transferring custody to a noncustodial parent, relative, or other person at the emergency care stage.

#### **Providing Notice to the Noncustodial Parent**

Division staff must make reasonable efforts to locate any noncustodial parent and provide the parent with:

- A copy of the emergency care order or conditional custody order, and
- Notice of the temporary care hearing, and of their right to counsel.

If applicable, the division’s brochure titled [Your Child is in DCF Custody: Information for Non-Custodial Parents](#) should be shared with noncustodial parents.

If the noncustodial parent cannot be located, division staff must provide the court with a summary of the efforts made to locate the parent.

#### **Providing Information to Parents**

If, as a result of a court hearing, a child is ordered into the custody of the commissioner, division staff shall promptly provide the child’s parents of their rights to appeal certain

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decisions made by the division. The division’s brochure titled [Your Child is in DCF Custody: Information for Custodial Parents](#) will be given to the parents of all children in custody, including temporary custody.

**Child’s Presence Required at Temporary Care Hearing**

The child must be present at the temporary care hearing, unless:

- He or she is under 10 years of age and his or her attorney waives the child’s presence;
- The court finds good cause to waive the presence of a child who is 10 years of age or older.

If the child is in DCF custody, division staff must arrange for the child to be present. There is no statutory requirement for the child to be present at other hearings. However, children and youth should be given the opportunity to attend and speak to the judge whenever appropriate.

**Division Responsibilities at the Temporary Care Hearing**

At the temporary care hearing, the division must provide information about:

- (1) Any reasons for the child’s removal which are not set forth in the officer’s affidavit, which includes the division’s history with the child and family;
- (2) Services, if any, provided to the child and the family in an effort to prevent removal;
- (3) The need, if any, for continued custody of the child with the department, pending a hearing to adjudicate the merits of the petition;
- (4) Services which could facilitate the return of the child to the custodial parent, guardian, or custodian;
- (5) The identity and location of a noncustodial parent, a relative, or person with a significant relationship with the child known to the division who may be appropriate, capable, willing, and available to assume temporary legal custody of the child;
- (6) Additional information as required by:
  - a. the Uniform Child Custody Jurisdiction Act pursuant to 15 V.S.A. § 1037 regarding the child’s residence over the last five years, and
  - b. The Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq. regarding the child’s membership or possible eligibility for members in a federally recognized Indian tribe.

The [FS-605](#) (Information for the Temporary Care Hearing) is used to report this information.

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### Indian Child Welfare Act

The division recognizes and supports the intent of the Indian Child Welfare Act to support and preserve the family, tribal, and cultural affiliations of Indian children.

Briefly summarized, the requirements of the Act that are relevant in Vermont are:

- (1) The state must identify Indian children subject to the act, including a child who is a member of an Indian tribe or is eligible for membership in an Indian tribe or is the biological child of a member of the Indian tribe.
- (2) Indian parents and tribes have the right to notice of and to intervene in state proceedings involving Indian children;
- (3) In placing an Indian child, special preference must be given to a member of the child's extended family, other members of the child's tribe, and other Indian families, in that order.

Therefore, the division will inquire if a child is or may be an Indian child as defined in the Act. If so, the district office will promptly contact the Assistant Attorney General for DCF for specific instruction on compliance with the Indian Child Welfare Act.

### Identifying and Notifying Kinship Resources

See Family Services [Policy 89](#) for information on federal requirements to notify the child's relatives of the child's removal, within 30 days.

### Assessing Suitability of Noncustodial Parent, Relatives, and/or Persons with Significant Relationship

When the division has identified a person who may be appropriate, capable, willing, and available to assume temporary custody of the child, the division must conduct an assessment of suitability to care for the child. The assessment of suitability shall include consideration and documentation of the person's ability to care for the child's needs, a criminal history record check, and a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home. The court may request that the hearing be continued when necessary to complete the assessment.

Priority will be placed on relatives who have a relationship with the child and proximity that would allow the child to remain in the same school.

See Family Services [Policy 89](#) for detailed information and guidance about locating, assessing and notifying relatives as required by state and federal law, including procedures for obtaining criminal records.

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**Protective Orders**

Under 33 V.S.A. § 5115, the division (or any other party) may file a motion for the court to make an order restraining or otherwise controlling the conduct of a person when that conduct is or may be detrimental or harmful to a child. Such orders may be issued ex parte or after a hearing, and may be reviewed at subsequent hearings.

A person subject to a protective order who intentionally violates provisions concerning contact with the child is subject to punishment as provided in 13 V.S.A. § 1030.

**Protective Supervision**

Protective supervision is the authority granted by the court to the Department for Children and Families (DCF) in a juvenile case to take reasonable steps to monitor compliance with the court’s conditional custody order, including unannounced visits to the home in which the child currently resides.

At a temporary care hearing, the court may make an order establishing protective supervision and requiring the department to make appropriate service referrals for the child and the family, if legal custody is transferred to an individual other than the commissioner.

The court may order protective supervision as part of a disposition order.

**Merits Hearing**

At times, parties to a CHINS proceeding may propose entering into a stipulated finding of merits. At any time after the filing of a CHINS petition and before a merit finding is issued by the court, the court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, parent-child contact or services.

All of the parties to the proceedings, including DCF, must agree to the stipulation. The court must establish that their agreement is voluntary, that they understand the nature of the allegations, and what rights they are waiving based on the stipulation. CHINS merits findings are not final orders and are subject to appeal separately from the disposition order.

If social workers are uncertain about or disagree with the content of proposed stipulated agreements, they should consult with a supervisor or AAG before stipulations are finalized and signed.

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In cases of serious physical injury, division staff may not agree to stipulated agreements without consultation and approval from the assigned policy and operations manager. See Family Services [Policy 68](#) for additional information on serious physical injury case planning.

**Filing of Initial Case Plan within Sixty (60) Days**

If the court grants DCF custody at the temporary care hearing, the division must file an initial case plan for the child and the family within 60 days. The department must provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem. If the disposition takes place within 60 days of the court transferring custody to DCF, the dispositional case plan may serve as the initial case plan.

33 V.S.A. § 5314(b) specifies that the initial case plan shall not be used or referred to as evidence prior to a finding that a child is in need of care or supervision. If a parent or their attorney has questions about the use of this information in upcoming court proceedings, he or she should be referred to the state’s attorney.

Refer to Family Services [Policy 122](#) for information on case plans and plan reviews.

**Disposition Case Plan for CHINS**

Once the court makes a merits finding and order, the division must submit a disposition case plan no later than seven (7) business days before the scheduled disposition hearing. The division may recommend one of the following dispositional options:

- (1) Continuing or returning legal custody to the custodial parent, guardian, or custodian. This may be a conditional custody order.
- (2) Transfer of temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child, with a goal of reunification with the custodial parent. This may be a conditional custody order and may provide for parent-child contact;
- (3) Transfer of legal custody to a noncustodial parent, closing the juvenile proceeding. The order may provide for parent-child contact with the other parent;
- (4) Transfer of custody to DCF;
- (5) Termination of parental rights without limitation as to adoption;
- (6) Permanent guardianship;
- (7) Transfer of legal custody to a relative or another person with a significant relationship with the child. This order may be a conditional custody order and may provide for parent-child contact with one or both parents.

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### Child Support

The payment of child support is one way that parents continue their commitment to and responsibility for their children who are in the commissioner’s custody. The division will request that the court address child support to be paid by each parent for all children in custody except:

- A parent who is supported by Reach Up Family Assistance (RUFA) or SSI will not be asked to pay child support;
- In rare cases, in which requesting child support is clearly detrimental to the child’s best interest, including when the Office of Child Support has granted a domestic violence waiver.

The Child Benefits Unit (CBU) will address child support at disposition for each new custody entrant. When the court has not already addressed child support issues, the CBU will request that child support be addressed at the next Permanency Hearing.

### Genetic Testing

Where parentage of a child is in question, or the court orders genetic testing, the CBU will assist the district office in obtaining genetic testing.

### Family Contact

The division will make a recommendation for parent-child contact. If the recommendation is not consistent with existing orders for parent-child contact orders, the division must justify that inconsistency based on the child’s best interest. VCAS is a resource for determining if there are existing orders issued by a Family Court in Vermont. If an order exists, the social worker should ask the parent to provide a copy of the order or allow the social worker to make a copy.

The recommendation must include:

- The frequency and duration of parent-child contact; and
- Any conditions for parent-child contact that are in the child’s best interests including whether parent-child contact should be supervised.

The division may recommend no contact if necessary to protect the physical safety or emotional well-being of the child.

If it is the child’s best interest to modify the order, the division must file a motion to modify the order. The motion may include a recommendation to terminate contact because:

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- (1) A parent has without good cause failed to maintain a regular schedule of contact with the child and that the parent’s failure to exercise regular contact has had a detrimental impact on the emotional well-being of the child; or
- (2) Continued parent-child contact in accordance with the terms of the prior order will have a detrimental impact on the physical or emotional well-being of the child.

Upon motion of the child’s attorney, the court may also order contact between the child and the child’s siblings, an adult relative with whom the child has a significant relationship, or an adult friend with whom the child has a significant relationship.

Failure to provide parent-child contact due to the child’s illness or other good cause shall not constitute grounds for a contempt or enforcement proceeding against the department.

See Family Services [Policy 124](#) for additional information on family time.

#### Sixty Day Post-Disposition Review

Unless the court has returned full custody to one or both of the parents, the court will hold a post-disposition review within 60 days of the date of the disposition for the purpose of monitoring progress and reviewing the parent-child contact order.

The division must notify the child’s foster parent, pre-adoptive parent, relative caregiver or any custodian of the child of the hearing and that they have an opportunity to be heard at this and any post-disposition hearings. Any individual without party status seeking inclusion in the hearing may petition the court for admittance by filing a request with the clerk of the court.

The division shall, and any other party or caregiver may, prepare a written report to the court regarding progress under the plan of services specified in the disposition case plan. Social workers should use the division’s [Post-Disposition Review Template](#) for this report.

#### Conditional Custody Orders – Duration, Review, and Division Responsibilities

CCOs are meant to be time-limited. Division staff will make efforts to ensure a timely ending to CCOs and safe closure of these cases.

<b>CCOs with Custodial Parents</b>	The presumptive duration of the order is no longer than six months from the date of the disposition order or conditional custody order, <u>whichever occurs later</u> ,
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	<p>unless otherwise extended by the court. If the department, or any party, recommends that the order remain in effect for a longer period, they <b>must file a petition at least 14 days before the presumptive expiration date</b>. Following a hearing, the court may extend the order for a period not to exceed six months. When the final order expires, the court will issue an order vacating the conditions, and transferring full custody to the parent without conditions.</p>
<p><b>CCOs with Noncustodial Parents and Non-Parents</b></p>	<p>These orders will be reviewed at a hearing to be held six months from the date of the disposition order or conditional custody order, <u>whichever occurs later</u>. At the hearing, the court shall determine whether it is in the child's best interest to:</p> <ul style="list-style-type: none"> <li>• Transfer either full or conditional custody to a parent;</li> <li>• Establish a permanent guardianship;</li> <li>• Move towards termination of parental rights and adoption; OR</li> <li>• If the court determines that reasonable progress has been made towards reunification, and that reunification is in the best interest of the child, the court may extend the CCO for a period not to exceed six months, and set the matter for further hearing.</li> </ul>

During the period of a CCO, the division shall maintain an open case with a case plan, and provide appropriate service referrals to the parent(s) and custodian. See Family Services [Policy 84](#) for additional information on conditional custody orders.

**Permanency Hearing**

The transfer of legal custody to the department is for an indeterminate period but is subject to periodic review at a permanency hearing. The permanency hearing must be held within 12 months of the transfer of custody away from the custodial parent, and every 12 months thereafter.

The division must file with the court a notice of permanency review together with a case plan and recommendation for a permanency goal. The court must hold a permanency review hearing within 30 days of that filing.

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The division must provide notice to the state’s attorney, all parties to the proceeding, and the child’s foster, pre-adoptive or relative caregivers.

**Permanency Reasonable Efforts Finding**

The division must also file a petition for a finding of reasonable efforts and a report or affidavit, with notice to all parties. Reasonable efforts to finalize a permanency plan may consist of:

- (1) Reasonable efforts to reunify the child and family following the child’s removal from the home, where the permanency plan for the child is reunification; or
- (2) Reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification.

**Modifying Court Orders**

A disposition order is a final order. The division or any other party may file a motion to modify the disposition order, or any other order when there are changed circumstances that require the modification to serve the child’s best interests.

**Vacating Court Orders**

The division or any other party may petition the court to vacate some or all of its disposition order and/or to terminate its jurisdiction over the child. Unless all parties waive their right to a hearing, the court must hold a hearing on the petition and give notice to all parties.

Once the juvenile court’s jurisdiction has been terminated, any previous orders regarding the legal relationships between the child and his other parents and/or guardians are fully effective. Examples of these types of orders include custody orders from a parentage or divorce proceeding, or a guardianship order from a probate proceeding. There is an important exception to this: if a judge in a disposition order (1) transfers legal custody of a child to the parent who was formerly the noncustodial parent and (2) closes the juvenile court case, this disposition order is not confidential and will be made part of the record in any existing parentage or divorce proceeding. In these limited circumstances, the juvenile court’s disposition order actually replaces the previous custody order in the divorce/parentage case.

If the social worker recommends a different custody arrangement other than the arrangement that was in place prior to the commencement of the juvenile court proceedings, the juvenile court should not be asked to vacate orders and terminate

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jurisdiction. Rather, at the next permanency hearing, the social worker should make his or her recommendations for the child’s custodial arrangements to the court.

If either parent owes court-ordered child support to the division, the child support order should not be vacated. Rather, it should be modified to order the parents to pay arrearages.