

Basic Court Skills

Presented by the Office of the
Attorney General

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The Executive Branch

- **ENFORCES THE LAWS** : DCF is part of the Executive Branch of Government



The Judiciary

- INTERPRETS THE LAWS
- ENSURES RIGHTS OF CITIZENS ARE PROTECTED
- Only a Judge can order the removal of a child from a parent's custody.



Constitutional basis of child protection law

- Parents have a fundamental liberty interest protected by the 14th Amendment of U.S. Constitution in the care, custody and management of their children on which the State may infringe only for compelling reasons and insofar as that infringement is necessary to protect the State's interest.
- *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944).

Responsibility of the State

- Few would challenge the authority of the state, pursuant to its *parens patriae* power, to intervene when parental neglect, abuse or abandonment has been established. In such a case the state most certainly has a compelling interest in protecting the welfare of the child.”
- *Matter of Joseph*, 416 N.E. 2d 857 (Indiana Court of Appeals 1981);
- See also, *In Re Neglected Child*, 130 Vt. 525 (1972) (State has legitimate interest in separating children from abusive and neglectful parents)

Authority of State to Intervene

- 33 V.S.A. Chapter 49
Vermont's child abuse reporting and investigation law
- 33 V.S.A. Chapters 51-53
Vermont's Juvenile Judicial Proceedings Act

Federal Law

- Provides important funding to the States to subsidy a child welfare program
- Establishes minimum standards that State child welfare systems must meet to receive federal funding
- In Vermont, the child welfare and juvenile court systems strive to meet minimal requirements established by the federal law in order to receive federal monies

Why go to court at all?

The power and authority of the legal system is necessary to protect the safety and welfare of the child

Why a Family Court case happens

Interest of State in protecting children from abuse and neglect

+

Interest of parents in raising children free from governmental interference

=

Court Case

The Players in a Juvenile Proceeding

- The child
- The Judge
- The guardian ad litem
- The parents
- The social worker
- The State's Attorney
- The parents' attorney(s)
- The child's attorney
- The foster parents

Who else gets to participate?

- Grandparents to pursue visitation per Vermont law
- At permanency hearings, staff from a child's residential placement
- Anybody else the court approves as being "proper" and "necessary" to the proceedings.

ICWA

- Always ask both parents and other family members if there is Indian heritage
- If yes, call your AAG immediately about what to do
- Tribes must be notified of custody proceedings

What happens at a juvenile court hearing?

It depends on the type of hearing

- *Temporary care hearing*
- *Pretrial hearing/status conference*
- *Merits hearing*
- *Disposition hearing*
- *Post-disposition review hearing*
- *Permanency hearing*
- *Termination of parental rights hearing*
- *Visitation hearing*

Temporary Care Hearing

- Held within 72 hours after child removed from home
 - Usually held within 24 hours
 - Who gets custody of the child
 - Under what conditions
- Note that is DCF gets custody, there can be no conditions on DCF's custody
- Court cannot order specific placement of child if in DCF custody

CONTACT AAG IMMEDIATELY IF THIS HAPPENS

Reasonable Efforts Determination

- Required by federal law
- Necessary to receive federal funds for child welfare system

Issue:

Whether DCF made reasonable efforts to prevent child's removal from home or

Whether such efforts were not required due to exigent nature of situation

Absent Parents

DCF has responsibility to

- Inquire about and locate absent parents
- Keep court apprised of its efforts
- See DCF policy 88
- Remind state's attorney and courts to establish identity of both parents

UCCJEA

- What State should hear child custody case?
- Vermont Courts can always intervene on an temporary, emergency basis to protect a child
- Call your AAG

Merits Hearing

- Formal, evidentiary hearing
- Witnesses are called
- State must prove CHINS facts
- Preponderance of evidence
- Rules of evidence apply

Merits Stipulations

- Stipulation is an agreement by the parties
- Must state facts that support CHINS finding
- DCF must be heard on facts are stipulated to
- DCF should reserve right to address all issue in CHINS affidavit in disposition case plan

Disposition Hearing

- What is plan for child?
- Permanency goal
- Recommendation for services, placement
- Changes parents need to make
- Parent child contact
- Request for child support
- Notice that TPR could happen

Disposition Order

Approves the case plan goal

Case plan goal cannot be changed unless

- Parties agree and court approves or
- Court finds changed circumstances

DCF can always recommend a change in case plan goal, but court must approve this change.

Options for case plan goals at disposition

- Return child to custodial parent
- Temporary custody to non-custodial parent with reunification plan
- Permanent custody to non-custodial parent
- Custody to DCF with reunification plan
- Termination of parental rights
- Permanent guardianship
- Custody to relative or other person

Post-Disposition Review Hearing

Held 60 days after disposition hearing

Purpose

- Monitor progress on disposition case plan
- Review parent child contact order

Parent Child Contact

Legal presumption in favor of parent child contact

Court may

- Set conditions on visits
- Determine frequency and duration
- Terminate PCC under specified conditions

Permanency Review/Hearing

- Held 12 months after child removed from parent's custody
- Court determines permanency goal
- Court may accept or reject permanency plan
- Court may not designate placement of child
- Court makes reasonable efforts determination

Termination of Parental Rights

Can be sought at initial disposition

Can be sought at any time when in the child's best interests

Termination of Parental Rights: What to do?

Discuss with Supervisor

Contact AAG assigned to your district

TPR petition must be filed with any report recommending TPR, so don't list as case plan goal UNTIL you've discussed with your supervisor and AAG



Delinquency

Delinquency is behavior that if done by an adult would be a crime under the laws of the State of Vermont.

Because a child breaks the law, it is called a delinquent act, not a crime.

Woodside Placement

- Flexible order: until DCF finds other suitable placement, must follow administrative admissions policy
- Time limited inflexible order: good for only 7 days, must be reviewed by court before order expires
- Social worker may not advocate for inflexible order per DCF policy #171.

Merits hearings in delinquency cases

- DCF usually not involved unless child in DCF custody
- State must prove elements of offense
- Evidentiary standard: *beyond a reasonable doubt*

Disposition Hearing

Similar to CHINS except

- Impact of child's behavior on victim and community
- Victim's impact statement
- Proposed conditions of juvenile probation

Disposition Hearing

- Responsibility of child
- Responsibility of parent

A child can be both CHINS and delinquent. If you believe that a CHINS petition should be filed based on the child's home situation, advocate strongly for this with the State's Attorney.

Disposition Options

- Juvenile Probation
- Same options that are available in CHINS cases
- Child can be in DCF custody and on juvenile probation for same case

Violation of Probation

- Social worker prepares the complaint
- Includes affidavit
- Gives to State's Attorney
- VOP hearing scheduled and held

Violation of Probation Outcomes

- Probation modified with additional conditions
- Probation discharged
- Transfer of legal custody



Subpoenas

- Formal (and official) legal document
- Issued by a judge, a clerk on behalf of a judge, an attorney or a pro se litigant
- Directing appearance* at a legal proceeding such as a hearing or a deposition

* *Can also direct production of records*

What happens if I ignore a subpoena?

- Nothing good.
- A court order will likely issue
- An arrest warrant may issue

What to do if subpoenaed

- Do not ignore
- Look at the date
- Talk to your supervisor immediately
- Call the AG' s office immediately

What does a court order mean?

- Pay attention
- You are being commanded by a court to do something
- You must do what the order commands—even if you disagree with it--unless the order is changed

COURT ORDER RULE #1

- **Do not ignore the court order:
read it**
- What must you do?
- When must you do it?

COURT ORDER RULE # 2

You must do what the court directs---even if you disagree or don't want to—until the order is changed by the court.

When in doubt, call the Attorney General's Office

If you are sued...

- CALL THE ATTORNEY GENERAL' S OFFICE
IMMEDIATELY
- DO NOT PASS GO
- DO NOT COLLECT \$200

*Timeframes in civil cases are tight and
unyielding*

THE END

Thank you for your time and
interest. See ya in Court.