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Subject:	Juvenile Court Proceedings – Delinquency	Page 1 of 14
Approved:	Karen Shea, Interim Deputy Commissioner	Effective: 8/24/2016
Supersedes:	Family Services Policy 83	Dated: 12/20/2012

Purpose

To outline:

- When it is appropriate to seek an emergency care order (ECO); and
- The division’s responsibilities during juvenile court proceedings for delinquency.

This policy does not address youthful offender status (Family Services [Policy 164](#)).

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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 162](#): Youth Justice and Juvenile Probation

Family Services [Policy 163](#): Notifying Victims of Juvenile Delinquency

Family Services [Policy 165](#): Sealing of Juvenile Records

Family Services [Policy 171](#): Woodside Admissions

Policy

Seeking an Emergency Care Order (ECO)

Division staff will request that law enforcement seek an emergency care order for a youth alleged to commit a delinquent act only when:

- the child’s immediate welfare requires removal from the home; or
- the child’s welfare is otherwise endangered

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

Emergency Care Order (ECO)

At the emergency care hearing, the division may recommend:

- A conditional custody order (CCO) allowing the child to remain with the custodial parent, subject to conditions necessary and sufficient to protect the child, the community or both; or
- An order transferring temporary custody of the child to a noncustodial parent or relative; or

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- A transfer of temporary custody to DCF pending a temporary care hearing.

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 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.

Youth’s Presence Required

The youth must be present at the temporary care hearing, a preliminary hearing and a merit hearing. If the youth is in DCF custody, the social worker must arrange for the child to be present.

There is no statutory requirement for the child to be present at other hearings. However, the 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;

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- (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.

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.

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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.

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.

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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.

District Referral from Court to a DCF Approved Community Justice Program

The court may directly refer a youth to a youth-appropriate community-based provider that has been approved by the division. This may include a community justice center or a balanced and restorative justice program (BARJ). Referrals to a community-based provider do not require the court to place the youth on probation. If the community-based provider does not accept the case or if the youth fails to complete the program in a manner deemed satisfactory and timely by the provider, the youth will return to the court for disposition.

Disposition Case Plan for Youth Adjudicated for a Delinquency

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. To the extent that the safety of the public and the youth allow, plans for the youth should focus on the family and allow him or her to remain in his or her own community.

The division may recommend one or more of the following dispositional options:

- (1) Juvenile probation for fixed period of time or until further order of the court; in addition to this a youth who has been adjudicated delinquent may be extended on probation under the supervision of the division until six months beyond the youth’s 18th birthday if the offense for which the youth has been adjudicated delinquent is a nonviolent misdemeanor and the youth was 17 years old when they committed the offense.
- (2) Continuing or returning legal custody to the custodial parent, guardian, or custodian. The division may recommend that for a fixed period, this order be subject to such conditions necessary and sufficient to provide for the safety of the

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child and the community, including protective supervision for up to six months unless further extended by court order.

- (3) Transfer of legal custody to a noncustodial parent, relative, or person with a significant connection to the child. This may be a conditional custody order, and include protective supervision, for a period not up to six months unless further extended by court order.
- (4) Transfer of custody to DCF;
- (5) Termination of parental rights without limitation to adoption or permanent guardianship;
- (6) Referring a youth to a youth-appropriate community-based provider approved by the division, which may include a community justice center or restorative justice program. The youth need not be placed on probation in order for this option to be exercised.

Juvenile probation will be recommended for all youth adjudicated of a delinquency regardless of custody status in order to:

- Support the full range of community-based placement options for youth who are in custody for delinquency, including placement home;
- Assure that the benefits of a balanced approach to juvenile offenses is available to all delinquent youth; and
- Facilitate the youth's reintegration to the community from restrictive placement.

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.

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Family Contact

33 V.S.A. Chapter 52 on delinquency does not contain detailed provisions for parent-child contact. However, the act specifies that a disposition case plan for a youth in DCF custody contain a recommendation for parent-child contact if appropriate. Both a temporary care order and a disposition order may contain orders for parent-child contact under such terms and conditions as are necessary for the protection of the child.

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

Sixty Day Post-Disposition Review

For any youth whose custody is transferred to DCF, or who is the subject of a conditional custody order, 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. Social workers should use the division's [Post-Disposition Review Template](#) for this report.

The division must notify the youth's foster parent, pre-adoptive parent, custodian, or relative caregiver 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 in accordance with this subsection may petition the court for admittance by filing a request with the clerk of the court.

See Family Services [Policy 122](#) for information on case plan reviews.

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.

CCOs with Custodial Parents	<p>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>, unless otherwise extended by the court. If the department, or any party, recommends that the order remain in effect for a longer period, they must file a petition at least 14 days before the presumptive expiration date. 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>
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CCOs with Noncustodial Parents and Non-Parents	<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"> • Transfer either full or conditional custody to a parent; • Establish a permanent guardianship; • Move towards termination of parental rights and adoption; OR • 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.
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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.

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

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- (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.

Victim Notification

For the purposes of victim notification, when a youth has been adjudicated of an act listed in 13 V.S.A. § 5301 (see Appendix I for list), the district office will send the [FS-320](#) (Request For Notification For Victims of Juvenile Delinquency) to the victim. The State’s Attorney’s office will promptly notify a victim in a delinquency proceeding when conditions of release relate to the victim or a member of the victim’s family or current household.

If the victim requests notification, the district office must attempt to notify the victim before the youth is released from residential facility to a community setting. The name of the facility will not be disclosed.

If the victim cannot be reached, the discharge may still occur. If release without notification occurs, the district office will take reasonable steps to give notification of the release as soon as possible. Notification efforts are considered reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

Notice may be verbal, but in cases when verbal notice is given, the district office will follow up with written notice, using the [FS-321](#) (Victim Notification Letter). A copy of the written notice will be filed in the youth’s case record.

Modifying Court Orders & Violations of Probation

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.

During the period of probation, the division may request that the court modify or add to the conditions of probation, including when the youth fails to comply with conditions of probation.

Minor violations (e.g. cutting classes, being late for curfew, missing appointments) should be evaluated in light of patterns of behaviors and risks. Social workers should consider whether other social work interventions could be more effective than a probation violation hearing. Other interventions include utilizing engagement

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strategies, meeting with the child, meeting with the family, exploring the child’s network of supports, and holding a team meeting or restorative group conference.

Probation violations should be filed to modify probation conditions following unsafe or illegal behavior and/or to modify custody status and/or placement to ensure community or youth safety. Violations of conditions associated with high risk behaviors such as substance abuse, possession of a weapon, non-compliance with a relapse prevention plan, or physical aggression may indicate the need to file a petition with the court alleging the violation of a condition of probation.

Refer to Family Services [Policy 162](#) for additional information on juvenile probation and violations of probation.

Probation Detention

Division social workers may detain a youth on probation or authorize any law enforcement officer to do so by giving the officer a written statement ([FS-316: Detention of Juvenile Probationer](#)), which specifies the violation.

This method of initiating violation of probation proceedings may be employed when the youth has violated a condition of their probation certificate and the youth's behaviors constitute:

- immediate risk to public safety;
- immediate risk to abscond; or
- a chronic pattern (three or more) of minor violations.

Placement of Youth on Probation Detention

The full range of placements available to youth who are in custody for committing a delinquency may be considered for a youth on probation detention. Depending on the needs of the youth and the risks posed, placement may be made at home or in substitute care, including Woodside. The social worker may place reasonable restrictions or limitations on the youth to assure his or her presence in court on the next business day.

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.

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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 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.

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Appendix I

Victims' Rights – Listed Acts

"Listed act" means any of the following offenses listed in 13 VSA Chapter 165§ 5301:

- (A) stalking as defined in section 1062 of this title;
- (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4) of this title;
- (C) domestic assault as defined in section 1042 of this title;
- (D) first degree aggravated domestic assault as defined in section 1043 of this title;
- (E) second degree aggravated domestic assault as defined in section 1044 of this title;
- (F) sexual assault as defined in section 3252 of this title or its predecessor as it was defined in section 3201 or 3202 of this title;
- (G) aggravated sexual assault as defined in section 3253 of this title;
- (H) lewd or lascivious conduct as defined in section 2601 of this title;
- (I) lewd or lascivious conduct with a child as defined in section 2602 of this title;
- (J) murder as defined in section 2301 of this title;
- (K) aggravated murder as defined in section 2311 of this title;
- (L) manslaughter as defined in section 2304 of this title;
- (M) aggravated assault as defined in section 1024 of this title;
- (N) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;
- (O) arson causing death as defined in section 501 of this title;
- (P) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;
- (Q) maiming as defined in section 2701 of this title;
- (R) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;
- (S) unlawful restraint in the second degree as defined in section 2406 of this title;
- (T) unlawful restraint in the first degree as defined in section 2407 of this title;
- (U) recklessly endangering another person as defined in section 1025 of this title;
- (V) violation of abuse prevention order as defined in section 1030 of this title, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);
- (W) operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in section 1210(e) and (f) of Title 23;

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(X) careless or negligent operation resulting in serious bodily injury or death as defined in section 1091(c) or (d) of Title 23;
(Y) leaving the scene of an accident with serious bodily injury or death as defined in section 1128(b) or (c) of Title 23;
(Z) burglary into an occupied dwelling as defined in section 1201(c) of this title;
and
(AA) the attempt to commit any of the offenses listed in this section. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986; amended 1989, No. 290 (Adj. Sess.), § 1; 1995, No. 170 (Adj. Sess.), § 5, eff. Sept. 1, 1996; 1999, No. 4, § 1.)

Charges – Listed Acts

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).