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| Chapter: | Working with Families in Court | |
| Subject: | Juvenile Court Proceedings -- CHINS | Page 1 of 11 |
| Approved: | Cynthia K. Walcott, Deputy Commissioner | Effective: 1/1/09 |
| Supersedes: | 82, Emergency Detention and Temporary Custody 83, Preparing Disposition Reports 85, Child Support for Children in Custody 86, Indian Child Welfare Act 87, Vacating Court Orders /Terminating Juvenile Court Jurisdiction | Dated: 7/1/04 |

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Purpose

To outline (1) when it is appropriate to seek an emergency care order and (2) the division's responsibilities during CHINS proceedings.

Policy

Seeking an Emergency Care Order

Division staff will request that the state's attorney seek an emergency care order only when:

- The child is in immediate danger from his or her surroundings and removal from his or her 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.

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

At the emergency care hearing, 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.

Providing Notice to 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 right to counsel.

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

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.

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 the Uniform Child Custody Jurisdiction Act pursuant to 15 V.S.A. § 1037 regarding the child's residence during the last five years; and
- 7) 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.

Information for the Temporary Care Hearing (FS-605) 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. 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.

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 court may request that the hearing be continued when necessary to complete the assessment.

The assessment shall include:

- 1) consideration of the person's ability to care for the child's needs;
- 2) a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home; and,
- 3) a criminal history record (see next section).

See Policy No. 89 for detailed guidance on this topic.

Obtaining Criminal Records

For any person being assessed for suitability, the division will seek written authorization to obtain their criminal history record from the Vermont Criminal Information Center (VCIC). All releases for VCIC checks will be sent to the Residential Licensing Unit.

If the division has reason to believe that person has resided or been employed in any other state, the division must request, through VCIC, criminal history record information from those states. As part of the VCIC release, the individual is asked to identify other states of residence and employment.

If no disqualifying record is identified at the state level, the division must request, through VCIC, a national criminal history record check of the person's criminal history through the Federal Bureau of Investigation (FBI). The Residential Licensing Unit will inform the social worker if this is necessary and send the required documents to the potential caretaker who must obtain fingerprints through a fingerprinting center and pay the fee.

Division staff will promptly provide a copy of the criminal history record, if any, to the person, along with information about his or her right to appeal the accuracy and completeness of the record through the Vermont VCIC.

Protective orders

The division 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 issue ex parte or after a hearing, and may be reviewed at subsequent hearings.

Filing of Initial Case Plan within Sixty 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.

Disposition Case Plan for CHINS

Once the court makes a merits finding and order, the division must submit a disposition case plan within 28 days of the date of the order. 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 for a fixed period not to exceed two years;
- 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 order may be a conditional custody order for a fixed period not to exceed two years, 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.

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.

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 – CHINS Proceedings

The division will make a recommendation for parent-child contact. If the recommendation is not consistent with existing parent-child contact orders, the division must justify that inconsistency based on the child's best interest. 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:

- 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.

Sixty Day Post-Disposition Review

For any child whose permanency goal is reunification with a parent, 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, preadoptive parent, or relative caregiver of the hearing and that they have an opportunity to be heard at the hearings.

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
- 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 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.

Social Worker/District Office Tasks

Emergency Care Hearing

- Obtains supervisory approval to seek an emergency care order or responds to call from Emergency Services Program.
- If the danger to the child is immediate and severe or if it is after hours, enlists the appropriate law enforcement agency to take the child into custody and deliver him or her to the juvenile court or to a place designed by the division. Otherwise, follows local protocol for requesting emergency care hearing.
- Unless a police officer has taken the child into custody, completes affidavit describing the conditions that require an emergency order.
- Attends hearing, testifying as necessary.
- Obtains copy of order, if granted.

Following the Emergency Care Hearing

- If child is not already in custody, obtains law enforcement assistance, if necessary.
- Makes every effort to locate and notify the child's parents, including any absent (custodial or noncustodial) parent, of the child's status as soon as possible. Informs them of the date and location of the temporary care hearing, and of the procedure for them to obtain legal representation. Provides the relevant information sheet:
 - Information for the Custodial Parent (FS-801)
 - Information for the Noncustodial Parent (FS-802)
 - Information for Relatives and Friends (FS-803)
- Completes or assures completion of:
 - Face Sheet (FS-609)
 - Contact Sheets FS-240)
 - Placement Form (FS-580)
 - Incident of Abuse/Neglect /Form (FS-585), if appropriate
 - Medicaid Application/Title IV-E (FS/DSW 201-FC/M)
 - Placement Checklist

- Addresses the service needs of the parents and child at the earliest opportunity.
- Coordinates with Guardian-ad-litem and the child's attorney to assess the best plan for the child.
- If needed, arranges for medical and dental care for the child, psychological evaluation, and or special education evaluation.

Temporary Care Hearing

- Arranges for any child in DCF custody to be present unless he or she is under 10 years of age and his or her attorney or the court waives the child's presence.
- Prepares appropriate paperwork for the State's Attorney and/or Court.:
 - Information for the Temporary Care Hearing (FS-605)
 - Assessment of Suitability for Noncustodial Parent and/or Relatives
- If it appears the child may be subject to the Indian Child Welfare Act, notifies assigned Assistant Attorney General.

Following Merits Adjudication

- If CHINS (A) or (B), and there is no Chapter 49 substantiation of child abuse or neglect, completes Child Abuse or Neglect Form (FS-590), indicating that the substantiation is judicially determined ("J").

Child Support

- Responds promptly to requests from the CBU. When requesting discharge or termination of parental rights, includes request for termination of orders of child support to DCF, except arrearages owed.

For Disposition Hearing

- Works with family, the child if appropriate, and others to formulate a disposition recommendation and case plan, including information about (1) the child's needs and strengths in the context of his or her family, education and community; and, (2) the available resources of the family and community.
- Discusses dispositional options with supervisor.
- Initiates child support activities, according to office protocol.
- Submits Disposition Case Plan to the Court and/or State's Attorney with sufficient copies of reports for all parties, according to local protocols, within 28 days of merits finding.
- If contested case, assists the state's attorney with development of witness list.
- Attends hearing, testifying as necessary.

- Obtains copy of any order and/or probation certificate issued.
- Explains all decisions and orders to the child (if age appropriate) and his or her parents, including the consequences of violation of an order.

Sixty Day Post-Disposition Review

- Notifies child's foster parent, preadoptive parent, or relative caregiver of the hearing and that they have an opportunity to be heard at the hearing.
- Prepares to provide information about the progress towards case plan goals and the status of parent-child contact.

Permanency Hearing

- Notifies child's foster parent, preadoptive parent, or relative caregiver of the hearing and that they have an opportunity to be heard at the hearing.
- Files a notice of permanency review together with an undated case plan.

Vacating Orders

- Discusses proposed action with supervisor, determining the appropriate scope of the petition, and whether or not all parties agree.
- Prepares Petition to Vacate (FS-312 A or B, see below):
 - If all parties agree, prepares Petition to Vacate (FS-312A) and obtains signatures of all parties, including at a minimum (1) the child, when age appropriate; (2) both parents and any guardian; (3) guardian ad litem; (4) attorneys of record; and (5) any other unrepresented party. (Note: parties who are competent may sign without an attorney.)
 - If all parties do not agree, or it is desirable to schedule a hearing, prepares Petition to Vacate (FS-312B) and Affidavit listing the reasons that court orders should be vacated and/or jurisdiction terminated.