Vermont Juvenile Defender Newsletter

Fall/Winter 2013

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Addressing Collateral Consequences and Marijuana

For any charges under 18 V.S.A. § 4230, having to do with marijuana, under the new V.R.Cr.P. 11.1 the court shall address the defendant regarding the collateral consequences of a plea of guilty or a plea of nolo contendere. Potential collateral consequences include loss of educational financial aid, suspension or revocation of professional licenses and restricted access to public benefits such as housing. This rule applies to juveniles whether they are charged as delinquents in the Family Division or criminally charged in the Criminal Division. This rule became effective November 13, 2013. There are provisions in the rule providing relief to those defendants denied this additional colloquy if they prove they were negatively impacted by its omission.

Reinstatement of Parental Rights

There are eleven states with restoration of parental rights statutes. Vermont is not one of them. Those eleven states limit the application of the reinstatement of parental rights to children who have been freed but who have not found permanency through adoption. Legislation addressing the reinstatement of parental rights will be proposed in the upcoming session.

When failed adoptions occur and the biological parents are ready and able to take their children upon the loss of the adoptive parent, a legal mechanism should allow them to do so.

ADA Issues

There was a presentation by the Disability Law Project of Vermont Legal Aid and Vermont Protection and Advocacy (now Disability Rights Vermont) in 2006 on "Legal Issues for Parents with Disabilities in DCF Proceedings". Noting In re: B.S., 166 Vt. 345 (1997), the presenters emphasized that the Americans with Disabilities Act (ADA) complaints about the failure of DCF to accommodate disabilities should be reported to the Court in a timely fashion. Needs of parents with disabilities should be identified right away, as part of the case plan. Resources to give parents with disabilities the same chance to succeed as other parents should be put in place at the beginning of each case. It is too late to raise the ADA as a defense once a TPR petition has been filed.

The presentation pointed out that "There is no conflict between the Adoption and Safe Families Act's (AFSA's) requirement for permanency and the ADA's requirement that people with disabilities be given a fair shot at success through the provision of reasonable accommodations. First, if accommodations are provided early, there may never need to be an extension to the time frame requirements. Second, the

exceptions to ASFA's time-frame requirement can include recognition of the need for accommodations to parents with a disability. DCF can report to the court that, even after 15 months of custody, TPR is not in the child's best interest because the case plan for reunification is showing progress but will take longer than the 15 months due to the reasonable accommodations being utilized by the parents."

More current information focusing on Parents with Disabilities can be found in the current publication,"Child Welfare 360◦" (CW360◦) from The School of Social Work at the University of Minnesota here: http://www.cehd.umn.edu/ssw/cascw/attributes/PDF/publications/CW360_2013-09.pdf

The Family Support Project

There are Family Support Workers in at least seven counties now. Success stories address truancy, finding housing, accessing drug and mental health treatment, accessing transportation, attending visitation and getting appropriate services, among other things. There is a requirement of such a short time to attain permanency that it is most helpful to work with the family as early as possible to help parents understand and participate in the process regarding what they have to do as stated in the DCF case plan. Our workers work with the attorney once a case is assigned by the court. We strive for enormous improvements in the rates of reunification. Where there is a chance of reunification that our workers can help with, call Anna to get approval for Family Support Worker hours.

Visitation

Intensive advocacy is needed within the first 60 days of placement. The New York State Court Improvement Project identifies four key areas of focus to achieve reunification: Placement, Services, Conferences and Visiting. In New York, The Center for Family Representation (CFR) views visiting as the key to parent engagement, enabling parents to continue the relationship with their children and inspiring them to keep working on getting them home. Meaningful and frequent visitation is the single best predictor of safe and lasting reunification according to CFR. They continue the emphasis on visiting as it helps children cope with foster care and eventually with the transition home.

Practitioners should advocate for more frequent visits with as little supervision as necessary. When possible, visits should occur outside the agency and include activities that mimic family life.

Involving the Client

The 1996 "ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases" has been updated by the National Juvenile Defense Standards released by the National Juvenile Defender Center.
http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf

The child's attorney had a basic obligation under the ABA Standard B-1 (5) to "Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process."

The NJDC Standard in Rule 6.3 insists on much more involvement with the client particularly when preparing for disposition. "The attorney must involve the client in developing an individualized and tailored disposition plan and also prepare him or her for the disposition hearing.[26] Specifically, "[c]ounsel must explore disposition options

with the client, explaining the processes and the possible range of dispositions the court will consider. Counsel must advise the client about the obligations, duration, and consequences of failure to comply with a disposition order."[27] Juvenile defense attorneys must be properly trained on available disposition alternatives in order to meaningfully involve clients in discussing the positives and negatives of each disposition option. Throughout, "[c]ounsel must actively engage the client in discussions of available dispositions and should not recommend a disposition to the court without the client's consent."[28] "The Impact of National Standards on Juvenile Defense Practice", Child Law Practice, Center on Children and the Law, Vol 32, June 2013

Corporal Punishment

The on-line journal Pediatrics recently reported on the link between spanking and a child's aggressive behavior and vocabulary. The article urged that "Future work should focus on providing families a clearer picture of the outcomes associated with spanking and more information about what discipline practices may have the desired effect on improving functioning, so that they can move beyond punishment practices to the incorporation of positive parenting behaviors with the potential to encourage healthy child trajectories."

http://pediatrics.aappublications.org/content/132/5/e1118.full?sid=6bd4836c-688f-4054-93e3-f79f9c02f2db

Those working to ban physical discipline cite studies which show spanking may impair cognitive development and encourage more aggressive behavior in the long run, results in lower self-esteem, antisocial behavior, and increased incidence of juvenile delinquency. Cited from: Is It Legal to Spank Your Kids? - NakedLaw by Avvo.com http://nakedlaw.avvo.com/family-2/is-it-legal-to-spank-your-kids.html#ixzz2l86MnXvP

Many factors including the child's age, size and general health, and whether the child has developmental or other disabilities will be considered by DCF when they investigate allegations of abuse. Any time that the "punishment" leaves bruises, welts, scars or open wounds is cause for alarm. If an object is used for the spanking, its characteristics and type will be considered. Even if the "spanking" is done with an open hand, if it is done for an extended duration or repeatedly, or with such force that the child is left with marks, bruises or broken skin, the agency will likely be concerned and may reach the conclusion that the parent has abused the child.

A parent may find himself or herself on the defensive once the agency opens an investigation of alleged child abuse. The identity of the person who made the report to the agency will not be revealed, and the agency will likely interview the child, the parents, and other witnesses such as the reporting witness, teachers, day care providers and grandparents. A parent should, if possible, seek the representation of an attorney during this investigative process to help safeguard the parent's rights and to keep check on the agency's procedures.

If the child welfare agency has concluded that the parent has abused or neglected a child, it is essential that the parent **immediately** seek representation by an attorney. Once such an "indicated finding" has been made, there is a very limited window of time in which the parent can seek a review, by the agency and then by the

Human Services Board, of that finding. Such an indicated finding will remain on a person's record and may prevent the parent from working in many areas including day care, education and health care.

In State v. Martin, 170 Vt. 614 (2000) the Vermont Supreme Court found no error in the

> "[C]ourt's instruction [which] conveyed to the jury the implicit intent to harm that separates lawful parental discipline from unlawful corporal punishment. Punishment that is "motivated by a corrective purpose and not by anger" is necessarily fueled by an intent other than to harm or is aimed at instructive upbringing rather than venting passion. Likewise, if discipline is "inflicted upon frivolous pretenses," it is the product of a motive other than that which seeks to correct behavior." State v. Martin, 170 Vt. 614, 616 (2000)

Under Vermont law, a school teacher has the right, when necessary to maintain discipline, to moderately chastise his pupils; but the punishment should not be excessive or improper. Discipline using reasonable and necessary force is allowed in certain circumstances as detailed in 16 V.S.A. §1161a such as to quell a disturbance, to obtain possession of weapons, self-defense, or for the protections of persons or property.

The Vermont Human Services Board addresses the use of corporal punishment in two older decisions. In Fair Hearing No. 10,687 the substantiation of the father was reversed. The Board focused on the word "can" in a case where the social worker didn't believe the child was abused.

Nevertheless the language of the statute mandates abuse findings whenever a bruise is found on a child. But substantiating the risk of harm relies on the definitions of harm that "can" occur, leaving room for interpretation as to the degree of necessity and severity of the corporal punishment. 33V.S.A. § 4912(3)

Affirming the substantiation of the father, but not the mother in Fair Hearing No.10,941 The Human Services Board decision reiterated that "The statute says only that "harm" can occur when a bruise is found but statutory "harm cannot be presumed solely from the existence of a bruise without investigation of other surrounding factors."

DCF Administrative rule 2010.04 adopted in May 2009, states that "Visible bruises are not required in order to substantiate. Physical injury is abuse when the injury occurred non-accidentally, or there was intent to cause harm, or a reasonable person could have predicted the harm."

Indian Child Welfare Act (ICWA) educational video

At the bottom of the page at this link is a link to a video on ICWA.
http://courts.ms.gov/trialcourts/youthcourt/youthcourt_ycvideos.html

This 18 minute ICWA educational resource video (2013) is the culmination of the ongoing collaboration between the Mississippi Administrative Office of Courts, Mississippi Department of Human Services/Division of Family and Children's Services, and the Mississippi Band of Choctaw Indians in consultation with the National Resource Center on Legal and Judicial Issues and the National Resource Center for Tribes. The video was produced

by Mad Genius, Inc., Ridgeland, Mississippi. The video will be a companion to the National ICWA Judicial Curriculum currently in development as a resource designed for judges, courts, and judicial educators.

Save the Date!!!

April 18, 2014

Youth Justice Summit

Franklin Conference Center

Rutland, VT

9:00am – 3:30pm

This summit brings together social workers, attorneys, GALs and judges for a multi-disciplinary day of exploring how to develop a trauma-informed youth justice system.

Learning Objectives:

- **Integrate understanding of complex trauma and working with youth.**
- **Understand effective trauma-informed ways to guide youth through the youth justice system.**
- **Identify ethical issues related to working with youth who have experienced trauma.**
- **Develop action steps toward a trauma-informed youth justice system in your own community.**

Eligible for 4 hours of general CLE credit

TO REGISTER: **click on this link** REGISTER for the 2014 Youth Justice Summit

Space is limited. If all spaces are filled, we will let you know if your name has been put on the waiting list.

Mark your calendar!

Co-sponsored by Vermont DCF Family Services Division,
UVM Child Welfare Training Partnership and the Vermont Court Improvement Program