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CONGRATULATIONS

Dori Jones, who has worked for sixteen years in the Chittenden Public Defender's office, was recognized by KidSafe in April for her outstanding contributions to improving the safety and well-being of children in our community.

JUVENILE PROBATION

When you are sixteen, being on probation for two years until you are eighteen can seem like an awfully long time. The period of probation can be much shorter, such as three months, or six months and not necessarily until the juvenile turns eighteen.

One of the changes that was made regarding juvenile probation under the new Juvenile Judicial Proceedings Act was to allow the court to include an order for term probation in its disposition order. 33 V.S.A. § 5232(b)(1) This allows the court to place the youth on juvenile probation for a fixed period of time and not simply have the youth remain on probation until either further order of the court or until the youth ages out of the system at age 18.

At the disposition hearing if it is appropriate a request should always be made for as short a term of probation as is reasonable in every case.

UNMANAGEABLE VS. BEYOND CONTROL

The new definition in 33 V.S.A. § 5102(3)(C) for a CHINS(C) no longer uses the term "unmanageable" which has been replaced with "beyond the control of his or her parent, guardian or custodian." This term seems more acceptable to Vermont youth, some of whom would prefer simply any reference to their status be referred to as CHINS(C) rather than any words that seem to be finger pointing about the youth's perceived behavior. Some states use the term "incorrigible" or "ungovernable" for this category of youth in state custody.

CHILDHOOD TRAUMA AND DR. BRUCE PERRY

About twenty people who work with the Office of the Defender General were able to attend the presentation by Dr. Perry at the Vermont Foster and Adoptive Family Association's Annual Conference on April 8, 2011. Dr. Perry is an internationally-recognized authority on children in crises and the effects of trauma on children. Dr. Perry's neuroscience and clinical research has been instrumental in describing how childhood experiences, including neglect and traumatic stress, change the biology of the brain and thereby

the health of the child. See his article on NMT (Neural Sequential Model Therapeutics) here: <http://www.hbafam.org/articles/ChildrenInCare.pdf>

Dan Albert, who attended the conference, has a case where he thinks the juvenile could benefit from an NMT Assessment – essentially an assessment of brain function, and a NMT Functional Review which helps develop a working Functional Brain Map for the individual. This can be very helpful in talking about trauma, brain development, and the rationale for various recommendations with education, mental health staff, caregivers and clients. It also helps track progress. Improvement, which is shown by changes in the shadings of the various brain areas, is quickly seen when comparing today’s brain map with one from six months ago and is a powerful reinforcement for tired parents and hard-working front line staff who feel their efforts are for naught.

The Child Trauma Academy is currently working to help certify programs and institutions integrating NMT into clinical practice and program development. (<http://childtrauma.org/index.php/services/neurosequential-model-of-therapeutics>)

In Vermont one of the programs actively obtaining this Institutional Certification is NFI in Burlington, Vermont.

LAW ENFORCEMENT INTERVIEWING CHILDREN

Parents often call the office of the Juvenile Defender when the police are asking them to allow them to interview their child. With very rare exceptions, the standard line is “Don’t have them talk to the police.” This is all fairly straight-forward.

A more complex scenario occurs when a child is already in DCF custody. When it is alleged that a child who is in state custody has committed an act that could potentially lead to either a substantiation and/or delinquent/criminal charges, and the allegation is one of child sexual abuse by an alleged perpetrator age 10 or older or of serious physical abuse or neglect likely to result in criminal charge, statute requires that DCF report and request assistance from law enforcement. Under DCF’s Family Service policy # 66, “In cases where the alleged perpetrator is in the custody of DCF, the DCF worker should refer any law enforcement officer who wants to interview the child to the child’s attorney.”

The child’s attorney, with extremely rare exception, should not grant permissions for law enforcement to interview the child.

Policy 66 then offers more problematic guidance to social workers in these situations further stating that “...if permission is not granted law enforcement to interview the child, DCF (as the child’s custodian) has the obligation to interview the child for the purpose of determining any treatment needs, appropriately planning for the child and families (sic) needs and to ensure the physical safety of any other child that may be residing in the same home. DCF will interview the child to complete the Department’s Chapter 49 investigation. **Upon request, DCF will make the interview available to law enforcement in the same manner that other information is shared in a joint investigation.**”

DCF believes that this sharing of information because it will only be done

upon request by law enforcement, after law enforcement has been told not to interview the youth, would not later be admissible in court. However, it may well not be that clear cut, although there is the obvious argument that the DCF worker is acting as an agent of law enforcement.

In most instances interviews by DCF staff would not be considered custodial interrogation and our clients rarely have their attorney or someone from their attorney's staff present.

If you are asked by law enforcement to allow one of your clients to be interviewed by them, our recommendation is not only that you decline to have your client interviewed but that you contact your client's social worker and advise them that you do not want her or him to discuss with your client allegations that could potentially lead to a substantiation and/or delinquent or criminal charges.

Under 33 V.S.A. § 5228, "Any extrajudicial statement, if constitutionally inadmissible in a criminal proceeding shall not be used against the child. Evidence illegally seized or obtained shall not be used over objection to establish the charge against the child. A confession out of court is insufficient to support an adjudication of delinquency unless corroborated in whole or in part by other substantial evidence."

We are still waiting for the US Supreme Court's decision in *J.D.B. v. North Carolina*, USSC No. 09-1121, where the question is whether, in the context of interrogating a juvenile in a school setting, "custody" for purposes of triggering Miranda warnings is determined by a purely objective test; or includes subjective considerations such as the subject's age and status as a special education student.

PROBATE VS. FAMILY COURT

In some areas of the state Probate Court judges are noting a considerable increase in the number of filings of petitions for voluntary guardianship of a minor. While there is only anecdotal evidence at this point, one explanation that is being put forward is that families who are involved with DCF prior to any filing of a CHINS petition regarding their children in the Family Division, are told that the filing of such a petition may be avoided if the parent goes to Probate Court and petitions to have a relative granted guardianship of their minor child.

There may be perfectly valid reasons why this type of approach is reasonable and in the best interests of the child. For families this allows them to care for their own and to avoid state involvement in their personal lives. On the other hand, if this choice of venue is chosen over the filing of a CHINS petition in the Family Division there are other considerations that may impact the child and family.

If Probate Court is chosen as a venue for pursuing a voluntary guardianship for a minor child it is very unlikely that any party in the Probate Court proceeding will have counsel assigned and also very unlikely that a guardian ad litem will be appointed for the child. Consequently, the Probate Judge may not have much of the information that she or he needs to decide if the guardianship is in the best interests of the child.

Additionally, there will be no caseplan for the child presented to the Probate Court and there will not be anyone assigned, like a DCF caseworker, to

monitor the progress of the case and to report back to the court.

A bill was introduced this past legislative session by Rep., Michael Fisher, H. 209, which would allow transfer of the guardianship or adoption proceedings from probate to family court, which may be taken up next session. Such a change in the law would be a dramatic one and would probably garner opposition from a number of sources. We will keep you posted.

OUT OF STATE PLACEMENTS

We now have larger numbers of juveniles in out of state residential placements. Barb Gassner and Dotty Donovan visited five of these placements in Massachusetts last month. Here are their observations for your consideration in advocating for your juveniles in need of a residential placement where an in-state placement doesn't seem to be appropriate:

“Devereaux: The foundation there is based in principles of organizational development and learning organizations that is really serving everyone well from the residents to staff to, hopefully, the organization's decision/policy-makers. They have everyone at all levels of the organization, consciously work from an agreed upon set of values. These are basic values and there are about six of them. Everywhere in the various buildings and programs in the facility these values are posted with examples of what they look like in action. They are readily visible and are referred to and talked about throughout the day to help everyone operate in ways that are congruent with the skills, knowledge and attitudes that residents are being asked to develop. Staff is expected to adhere to these same values in the way they

conduct themselves. Programs are developed to express the same values. Residents, staff and programs evaluations are done based on those same values. This approach is comprehensive; congruent across all levels of the organization, and the result is a very consistent learning environment for everyone. It's the best application of the principles of a learning organization that I've seen visible anywhere. Not just in this field, but anywhere and I've done a lot of consultation work with a variety of types of organizations.

Whitney: The learning facility is clean, bright, well-designed with an eye to having the school feel like a school rather than like an institutionalized, hospitalized version of "school". They have great longevity in their professional staff. No one seems harried, hurried, overwhelmed, on the brink of losing it...and I'm talking about the professionals here. They all seem prepared to respond calmly to any upsets the residents experience or present. They are working on the development of data to look at the long-term results for their students/residents after they leave Whitney. The data doesn't seem directly linked into a total quality improvement feedback loop, but the collection and presentation of the data show they are thinking about the long-term impacts of their program on past residents. The housing for the kids is cozy and familial with big yards and areas for them to learn and practice social skills.

Center Point: The most meaningful piece of information about this program for me is that they have successfully reduced restraints and did so before

there was an initiative by the State of Massachusetts for residential programs to work to reduce restraints. In spite of a very institutional appearance to the grounds, the inside is warm and the staff has great longevity with attitudes that are relaxed. When they spoke about the rarity of physical restraint, they addressed it as something they worked on from the lens of a cultural change within the program and among staff. Since they are home to and work with youth who have significant histories of explosive behaviors in other residential settings, this is particularly impressive.

Cottage Hill: What was abundantly clear is that Cottage Hill is down in referrals and they need referrals to stay in business, which is not necessarily a bad thing. To increase referrals, they will require becoming specialized in certain areas. The staff are under-going full training in Trauma Focused Cognitive Behavioral Therapy. They also use well-trained dogs, owned by one of the clinical therapists as pet therapy. They (the clinical staff) find that the girls can really decrease their anger and aggression when the dogs are present. We got to meet these dogs and they are a wonderful addition to the Cottage Hill team. Cottage Hill has a strong focus on a well-run educational program. The building is designed to keep kids in the school room/area as there are resources areas/rooms in and around each classroom. The grounds are wonderfully maintained.

Fall River Deaconess Home: This program focuses on individuality, building self-esteem, and residents receive a strong educational base. Each home is made to look very much like a normal home would look. Girls are

required to prepare a meal when it's their turn. They have to decide on what the meal will be and then purchase the ingredients and prepare the meal from start to finish. The school house is equipped with hallways that are the size of rooms where residents can take a time out if they need it and are supported by a staff member until they are ready to re-join the classroom. So far, every Vermont girl that we have sent there has grown by leaps and bounds as was the case with the two girls that we visited who were from Vermont. The houses are all large Victorian style houses located on a very beautiful hill area in Fall River.”

MANY THANKS

Kate Piper has worked tirelessly with families in Caledonia and Essex County for the office of Defender General for many years. She helped revise the Juvenile Practice Manual that was updated last year. Kate has served on numerous committees always bringing her well-considered position to whatever task was at hand. Now as Kate moves on to graduate school and grandmotherhood we wish her well.

The Education Matters column will return next issue dovetailing on the presentation by Professor Joseph Tulman at the Juvenile Defender training June 2, 2011 entitled “Using Special Education Law to Help Families in Family Court Cases: What every Lawyer should Know. Professor Tulman is the director of the Took Crowell Institute for At-Risk Youth and who also directs the University of the District of Columbia’s Law School and Special Education Clinic.

Upcoming Events

July 14, 2011 -The Lake Morey Resort, Fairlee, Vermont 9:00-4:00

The Vermont Adoption Consortium presents...

Being Mindful About the Brain: Examining the Neuro-developmental Impact of Trauma and Attachment Difficulties. Kevin Creeden, M.A., LMHC

<http://voicesatthetable.files.wordpress.com/2011/05/workshop-on-brain-development-and-trauma.pdf>

August 12, 2011 - The First Annual New England Juvenile Defender

Conference 9:00 am – 5:00 pm University of New Hampshire School of Law (*formally known as Franklin Pierce Law Center*) 2 White Street Concord, New Hampshire, *Attendance is Free State CLE's to be provided*

September 16, 2011 - Lake Morey Resort, Fairlee

Back to School: Children, Courts, and Education Success

The Vermont Justice for Children Task Force invites you to a conference aimed at improving education success for children and youth involved in juvenile court proceedings. Workshops will cover a variety of other topics.

No registration fee • Network with professionals from throughout the state • Hear from youth

Workshops on non-education topics as well • CLE credits for attorneys