

# Vermont Juvenile Defender Newsletter

Summer 2012

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**Congratulations to John Finlay who was honored with a KidSafe Award for being an Outstanding Professional!**

**KidSafe recognizes the work of individuals and teams in Chittenden County who help strengthen families and keep children safe from abuse and neglect. The South Burlington awards ceremony was attended by 250 people, including Governor Peter Shumlin!**

## Legislative News

Vermont is unique in that its State's Attorneys have almost absolute discretion to file charges against 16 and 17 year-old youth, including the most minor misdemeanor chargers, in either juvenile (Family Division) or adult (Criminal Division) court. Prosecutors historically have filed the vast majority of these cases (70% for 17year-olds and over 50% for 16 year-olds) in Criminal Division. For several years advocates, with little results, have sought to have these cases filed in juvenile

court to provide for confidentiality of these proceedings as well as to prevent youth from being burdened with adult criminal records.

In the past, legislation proposing to have these cases initiate in juvenile court has met strong opposition from state's attorneys and law enforcement. In an effort to encourage state's attorneys to initiate these cases in Family Division all state's attorneys were surveyed last fall to determine what were the greatest systemic barriers to their filing these cases in Family Division. Their overwhelming response was that Family Division jurisdiction over delinquents ended at age 18.

Legislation was introduced this past session which would have extended the jurisdiction of Family Division up to age 20 for delinquency cases involving 16 and 17 year-olds. Unfortunately, while it passed the Vermont House with broad-based support from the Defender General, the State's Attorneys, DCF and Diversion, it met resistance in the Senate and a much weaker bill emerged as the result of an effort to secure passage.

The end result was **Act No. 159, (H. 751) Human services; crimes and criminal procedures; juveniles** which went into effect on July 1, 2012:

<http://www.leg.state.vt.us/DOCS/2012/ACTS/ACT159.PDF>

Summary: This act allows for Family Court jurisdiction over a child to be extended up to age 18 years 6 months if the offense for which the child has been

adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years when he or she committed the offense. DCF **custody** of the child as a delinquent cannot be continued past age 18 and there shall be no extended jurisdiction in CHINS cases.

Prior to a preliminary hearing in the delinquency case the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by DCF or a community provider that has contracted with DCF to provide such screenings.

At disposition the court may refer the child directly to a youth-appropriate community-based provider that has been approved by DCF which may include a community justice center or a balanced and restorative justice program. Such a referral shall NOT require the court to place the child on DCF probation.

The act also allows for the transfer from Family Division to Criminal Division of a delinquency proceeding if the child was 16 or 17 at the time of the alleged act and the act was not one of the big twelve listed in 33 V.S.A. § 5204(a). Such transfer may only be made after specific findings are made by the court after hearing on such a motion of the state's attorney and any transfer can only occur prior to an adjudication on the merits in the Family Division case. The court shall not be required to make findings if the parties stipulate to a transfer.

This section was added to encourage State's Attorneys to initially file these cases in Family Division while addressing their concern that if more information came to light prior to a merits adjudication indicating that the case really was more appropriate for Criminal Division or Youthful Offender status there would be

a mechanism to move for transfer to Criminal Division. In cases where an accused is cited into Family Division and could face potentially serious adult sanctions counsel may wish to consider an early admission to the delinquency to avoid possible transfer to Criminal Division.

In a separate and unrelated section student teachers are added to the list of mandatory reporters of child abuse and neglect listed in 33 V.S.A. § 4913(a).

A study committee is established to study the effectiveness of the juvenile justice system in reducing crime and recidivism.

## USSC

The US Supreme Court held in **Miller v. Alabama and Jackson v. Hobbs** that **states may no longer impose mandatory life without parole sentences on juveniles under the age of 18 convicted of homicide crimes.** Writing for the 5-4 majority, Justice Elena Kagan said, "Such a scheme prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change.' "

Juveniles will now be entitled to present mitigating evidence in support of sentences that provide for review and the possibility of release," said Marsha Levick, Deputy Director and Chief Legal Counsel at Juvenile Law Center. "The Court has rightly returned discretion to the sentencer to make individualized determinations about each youth who stands before them, based on that youth's particular qualities and degree of blameworthiness."

The Court's decision builds upon previous decisions in **Roper v. Simmons** and **Graham v. Florida** in which the Court

similarly struck extreme sentences for youth, citing their developmental and neurological differences from adults. This decision, like Roper and Graham contains good language on juveniles' reduced culpability.

## **New Hampshire Cuts Funding**

The state of New Hampshire cut funding for parent representation in abuse/neglect cases. The question of a parent's constitutional right to representation was decided June 29, 2012 by the New Hampshire Supreme Court. See In re C.M., 2012 WL 2479619 (N.H.).

After the legislature repealed a statute providing attorneys for indigent parents in child abuse and neglect cases, the New Hampshire Supreme Court concluded "that while due process does not require the appointment of counsel in every such proceeding, the facts of a particular case may require the appointment of counsel."

### **Education Matters**

Truancy may not be a problem during the summer months but the school year will soon begin. Underlying causes of truancy are often undetected. There may be mental or physical problems with the child or the family which should be addressed before they contribute to a child missing out on getting an education.

Often a child is not ever tested to ascertain whether they might qualify for an IEP or 504 plan to assist them in getting the education they need. We should be on the lookout for these potential students, who end up dropping out at an early age.

According to the latest "Kids Count" data book for 2011 published by the Annie E. Casey Foundation, in Vermont, 59% of our fourth graders are not proficient in reading and 54% of our eighth graders are not proficient in math, a slight improvement over previous years. Fifty two per cent of our children did not attend preschool in 2008-10. Ten percent of our high school students did not graduate on time in 2008/09.

In his budget address last year Governor Shumlin expressed a commitment to early childhood education emphasizing that the years up to age five are a critical time in brain development, and that every dollar spent on early education saves \$7 to \$16 later on in life.

This year S.233, a bill that would gradually increase the age for mandatory school attendance was introduced and passed by the Senate.

On May 4, 2012 about 100 community professionals attended a summit focused on the Rutland County Truancy Project. Judge Nancy Corsones suggests that the mission of the project is "to define the causes of truancy in our schools, to collaborate to ameliorate the causes of truancy, to clarify and to improve the responses of the legal, educational and mental health systems in our community to truancy, thereby reducing truancy in Rutland County."

A survey of the participants at this summit identified several problems and factors contributing to truancy, such as the fact "that there is no consistent [statewide] definition of "truancy", [n]or is there a consistent definition of what is an "excused" absence. Root causes of truancy were identified as "including: poverty/homelessness; lack of parental support for the idea that a child "has" to go to school; alcohol and/or drug involvement by parent, student or both; bullying and

peer problems, and mental health problems for parents and children.”

Judge Corsones plans to reconvene the summit by the end of September 2012 after smaller summer meetings to develop concrete proposals to address these issues. The goal is that the smaller groups meeting this summer will work on:

- “1. standardizing truancy definitions and updating the truancy protocol;
2. collecting and cataloging various school responses to the root causes of truancy and identifying those strategies which have been successful;
3. removing communication barriers between community partners and the court;
4. developing funding sources for a permanent truancy coordinator, and
5. incorporating available yet underutilized community resources to handle the educational and court systems’ responses to truancy.”

Though truancy is not specifically defined in 33 V.S.A. § 5102(3) where CHINS are defined, a child in need of care or supervision means a child who “is habitually and without justification truant from compulsory school attendance.” 33 V.S.A. § 5102(3)(D)

DCF may recommend a CHINS(D) petition be filed only when other available remedies in the community have not resulted in the child or youth’s regular school attendance. Generally, the division will not become involved until the child/youth has missed twenty days of school due to unexcused absences that have resulted in a negative impact on the child/youth’s school performance.

The Chittenden County truancy project and the Office of the Defender General’s Family support Project have had excellent results in helping juveniles access the appropriate education.

As Governor Shumlin suggests bold, preventative action is needed to further improve the education of our children through not just early education but right through high school. The efforts in Burlington and Rutland County to eliminate truancy will hopefully be replicated state wide and prove helpful to resolving truancy problems throughout the state.

## Psychological Maltreatment

The online version of Pediatrics, the Official Journal of the American Academy of Pediatrics published an article August 2, 2012 that referred to mental abuse and psychological maltreatment of children. (see link at end of newsletter) The article cites what D. Glaser refers to as a “repeated pattern of parent behaviors that is likely to be interpreted by a child that he or she is unloved, unwanted, or serves only instrumental purposes and/or that severely undermines the child’s development and socialization.”

These behaviors fall into several categories: Spurning, Terrorizing, Isolating, Exploiting/Corrupting, Denying emotional responsiveness, and Mental health/medical/educational neglect. (See Table 1, page 3 of Pediatrics article, link at end of newsletter)

As defined by Vermont statute 33 VSA § 4912(3) (A) "**Harm**" can occur by [p]hysical injury or emotional maltreatment.

"**Emotional maltreatment**" means a pattern of malicious behavior which results in impaired psychological growth and development. 33 VSA § 4912(7)

An “*Abused or neglected child*” is a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. 33 VSA § 4912(2)

“Because less is known about psychological maltreatment and it has been recognized relatively recently, compared with other subtypes of abuse and neglect, there is even less standardization of approaches to investigation and intervention by child protective services agencies.” (see Pediatrics article)

There is more research being done on the effects of trauma on infants and toddlers, some of it based on the findings of Bruce Perry. Brain mapping is being offered through NFI. There was a great presentation by Dave Melnick at the Defender General training in June 2012.

Programs educating parents about new findings around early childhood development with interventions aimed at promoting the type of parenting that is now recognized to be necessary for optimal child development should be made more available.

## **The Family Support Project**

Here’s where **The Family Support Project** comes into play. The Family Support Project workers have had a good track record increasing reunification in many cases or resolving truancy problems before they lead to TPR, but **the earlier, preferably long before TPR is filed, a Family Support Worker can start working with families the better the outcome.** Finding housing and jobs, increasing visitation, improving parenting skills, identifying medical or educational needs that need to be addressed are all areas

where The Family Support Project workers have helped the attorney by helping their clients navigate the rocky road towards reunification. Where there is hope and a chance of reunification, attorneys owe it to their client to reach out and get approval for the services of a Family Support Worker.

## **Economic Stability and Child Abuse**

There is also a link at end of newsletter to the online version of Pediatrics, the Official Journal of the American Academy of Pediatrics, which published an article July 16, 2012 which suggests a correlation between homelessness and housing security issues, as evidenced by stress over delinquent mortgage and foreclosure rates, and child emergency room admissions for physical abuse and traumatic brain injuries. “The widespread housing crisis affected many families across the nation with nearly 45% of families with children reporting difficulties with stable housing.”

The Kids Count data book from the Anne E. Casey Foundation ranks Vermont 12<sup>th</sup> in the country for 2010 in the Economic Well-Being Domain, with 21,000, 17%, of our children living in poverty, compared to the national average of 22% of the nation’s children living in poverty. In 2010 39% of our children, that is 50,000 children lived in households with a high housing cost burden. These figures are concerning.

While economic factors can’t be the basis for terminating parental rights, DCF is often demanding that parents have stable housing. There are many cases where the Supreme Court concludes that parents have made a choice that contributes to the

instability of their housing situation, when

involuntary nature of some cases of housing instability. Nevertheless, there are a few cases with helpful language concerning this.

In re J. and J.W., Justice Larrow, in a concurring opinion, states that, “The underlying philosophy of the trial court seems to have been that even though the natural mother was making valiant and fruitful efforts to regain her capacity to care for her children, their overall good would be promoted by adoption. I do not view the statute as trying to create the best possible world. I do not think it intends to set up a mechanism for transferring parental rights from those in temporary difficulty to those more affluent and adjudged by the social worker as more capable of educating and rearing the progeny, if not of procreating them. The result below does not accord with our social policy of bolstering the family unit, preserving it, where necessary, by financial and other support.” In re J. and J.W., 134 Vt. 480, 486 (1976); see also In re N.H., 135 Vt. 230, 236 (1977) (“The statute does not allow for intervention simply because a child might be better off somewhere else’.) While the state ultimately won these cases, in at least one case the Court affirmed the denial of the state’s petition to terminate the parental rights of the parents of a three year old with

surely the present economy exacerbates the special needs where the “parents presented coherent testimony in favor of allowing them more time to improve their parenting skills.” The mother had addressed her own medical condition and demonstrated that she had family support from her sister, who had specialized training in caring for special needs children, and from her mother, who would both be able to assist the parents in caring for the child. In re D.A., 172 Vt. 571 (2001)

The outcome of this case should not be so unusual, even with our shorter timelines to achieve permanency for children at risk. In In re D.A., supra at 573, “The family court recognized that Vermont law is not intended to place troubled or needy children in the best possible homes, but rather must be construed to preserve the family unit if it can be done within a reasonable period of time without physically or emotionally harming the child. See In re R.B., 152 Vt. 415, 421, 566 A.2d 1310, 1313 (1989) (because freedom of children and parents to relate to one another in context of family free of governmental interference is fundamental right, courts are constrained to achieve statute’s stated purpose, whenever possible, in family environment, separating child from parents only when necessary for child’s welfare).”

## Helpful Links and Upcoming Events

### **Articles in Pediatrics:**

#### **Local Macroeconomic Trends and Hospital Admissions for Child Abuse, 2000–2009**

<http://pediatrics.aappublications.org/content/130/2/e358.full>

#### **Psychological Maltreatment**

<http://pediatrics.aappublications.org/content/130/2/372.full.pdf+html>

Two trainings being offered by Children's Integrated Services in Morrisville:

**October 13, 9:00-4:00** Early Childhood is a Limited Opportunity, Experiences do Matter Pat Messerlee, Licensed Clinical Psychologist, M.A. will teach this training on Infant and Toddler brain development and Executive Functioning. This training will also include: Attachment- the beginning of Emotional and Self Regulation and Developing Healthy Relationships.

Pat is currently the psychologist for South Burlington School District and working with children 3-22 years of age. She also teaches Graduate School for Southern New Hampshire University and is a member of the Early Childhood Mental Health Credentialing Committee. Pat has worked with Family Infant Toddler and screened for autism within infants in their first years.

**November 3, 2012 9:00-4:00** Advanced Specialized Services - the Effects of Trauma on Infants and Toddlers In this training, participants will learn about the effects of Trauma on infants and toddlers using the findings of Bruce Perry.

The presenter will also talk about Babies Born Addicted and Developmental Disorders such as Autism and AD-/HD. Pat Messerlee, the instructor, is currently the psychologist for South Burlington School District and working with children; EEE-22 years of age. She also teaches Graduate School for Southern New Hampshire University and is a member of the Early Childhood Mental Health Credentialing Committee. Pat has worked with Family Infant Toddler and screened for autism within infants in their first years.

Contact : Jill Pearl,Lamoille Family Center,Children's Integrated Services

480 Cadys Falls Road, Morrisville, Vermont 05661 802-888-5229 ex.122

fax - 802-888-5392<tel:802-888-5392 email - [jpearl@lamoillefamilycenter.org](mailto:jpearl@lamoillefamilycenter.org)

**November 8 and 9** NFI Vermont Presents: A Two Day "Symposium on Adolescence 2012"

**Raymond J. Chin, PhD, MFA & Martha B. Straus, PhD.**

**"Training Teen Brains to Become Minds: Ready, Fire, Aim!"**

This presentation will focus on the neuropsychology of adolescent brain development especially the prefrontal cortex and the executive functions. Participants will experience Cognitive Behavioral Therapy and Mindfulness interventions designed to develop executive functions.

**"Undoing Aloneness: Strategies for Co- Regulation with Traumatized Adolescents"**

Traumatized adolescents struggle with self-regulation. Anxious and vigilant, they experience even loving relationships as confusing and frightening. To learn self-soothing, they must first be able to rely upon others, and discover the joy of co-regulation. In this workshop, we will describe and practice mindful, empathic strategies to help these teens feel more secure, connected, present, and stable.

For more information please contact:

[anywhitemore@nafi.com](mailto:anywhitemore@nafi.com)

(802) 658-0040 (ext. 1017)