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In re E.W. Custodial Interrogation

In re E.W., 2015 VT 7 (2015) reverses the denial of a motion to suppress statements to police, finding that the critical that E.W. was “in custody” and upon analysis, the Vermont Supreme Court held that E.W.’s admissions were improperly obtained.

The year after deciding E.T.C., 141 Vt 375 (1982) the Vermont Supreme Court held “[T]hat a juvenile’s right to consult with an independent interested adult under Article 10 attaches simultaneously with the right to Miranda warnings – during custodial interrogation – and not before and not without custody.” State v. Piper, 143 Vt.468, 473 (1983).

E.W.’s claim was that the foster father was not an independent interested adult as required by Article 10 and in violation of E.T.C. but the Court focused on whether E.W. was “in custody, i.e., whether a reasonable person in E.W.’s position would have felt free to terminate the interview.”

For the custody analysis the Court looked to State v. Hieu Tran, 193 Vt. 148, 71 A.3d 1201 (2012) (recognizing relevant factors which include the location and duration of the questioning, the extent the suspect was confronted with evidence of his or her guilt, the use of deceptive police practices and whether the suspect was told he was free to leave.) and J.D.B. v. North Carolina, 564 U.S. ____, 131 S. Ct at 2402-06 (2011) (recognizing the suspect’s age and how that might impact other factors).

The interrogation took place in the foster parents’ home and outdoors but that was not the salient fact.

Here the Court found that the “officer plainly knew that E.W. was a minor in foster care,” therefore finding it significant that the officer failed to expressly inform E.W. and his foster parent of the right to terminate the interview.

The Court focused on “E.W.’s circumstances: he was in state custody and living in a foster home where he had been placed some six to eight weeks earlier, and had recently – according to the officer – been reported as a “runaway”.” The conclusion of this Court is fact specific. Familiar surroundings and the comforts of home available to most minors were not enjoyed by E.W., as “a ward of the state living in an assigned placement”. His status was “far less conducive to withstanding police authority than another minor in similar physical circumstances.”

Strengthening DCF

Following the tragic deaths of two children with Family Services Division (DCF) involvement, recommendations to improve child safety were made December 15, 2014 by Casey Family Programs which did an assessment of the Family Services Division Safety Decision Making. The recommendations suggest essential first steps to improve child safety and the performance of Vermont's child protection system and included:

- Strengthening the Child Protection Workforce
- Improving Safety and Risk Assessments and Safety Planning Practices
- Strengthening the Alternative/Differential Response Track
- Working More Effectively With Substance Abusing Families
- Improving Outcomes Measurement and Reporting

The full report can be found on the DCF website:

<http://dcf.vermont.gov/strengtheningDCF>

Also available on the DCF website is the Report to Governor Peter Shumlin from Acting Secretary of the Agency of Human Services, Harry Chen and DCF Commissioner Ken Schatz, which details some of the actions taken and actions proposed to strengthen DCF as of October 1, 2014.

S.9

A bill relating to improving Vermont's system for protecting children from abuse and neglect has been introduced in the legislature to address problems and

implement the recommendations of the Child Protection Committee, established in Act 179, which met over the summer and fall of 2014.

The bill would create a new crime for failure to prevent harm to a child by either causing a child to suffer numerous enumerated harms, which would now include exposure to the unlawful possession, use, manufacture, cultivation or sale the numerous illegal substances (excluding lower level marijuana offenses in 18 V.S.A. § 4230); or knows, or reasonably should have known that the child is in danger of the same listed harms, and fails to act to prevent the child from any one of them.

The definition of "harm" would also be broadened in 33 V.S.A. § 4912 to include exposing a child to illegal substances in an effort to address the prevalence of substance abuse in cases in which children have been abused or neglected. But the definition of "risk of harm" would be simplified by removing "significant" and "serious..." so that it would mean the child would suffer "physical injury, neglect, emotional maltreatment, or sexual abuse," which is defined.

A procedure is outlined whereby statewide Special Investigation Units (SIU) would be established and would coordinate efforts. The standard for referral which would initiate a SIU investigation would be where a child suffers serious bodily injury as defined in 13 V.S.A. § 1021. All DCF investigators should be required to have investigative experience and hold an MSW or equivalent degree.

Responding to testimony that "open adoptions" could reduce the number of contested CHINS proceedings and alleviate delays due to contested temporary care and

merits hearings, the bill proposes post adoption contact agreements, which become part of the TPR order. The bill lists requirements for entering into and executing an enforceable agreement which includes a provision for modifying or terminating the agreement. This allows for communication or contact between either or both birth parents and the adopted child, if the court determines that the child's best interests will be served, and each adoptive parent consents to the agreement.

New guidelines on confidentiality would be included amending 33 V.S.A. §§ 4913 and 4921.

New authority would be given to a social worker employed by DCF under 33 V.S.A. §5301 to determine that a child should be removed and taken into custody without law enforcement assistance if they have reasonable grounds to believe the child is in immediate danger, or has run away. The DCF social worker would be able fill out the affidavit to make the request for an emergency care order.

Where a Temporary Care Order is being considered, the new legislation would change the analysis used to determine whether legal custody should be returned to the child's parent under 33 V.S.A. § 5308 allowing the Court to issue an order unless it finds by a preponderance of the evidence that it would be contrary to the best interests of child. The Court would now be able to consider ordering transfer of temporary legal custody of the child without preference to a non-custodial parent, a person with a significant relationship with the child or DCF, if not to the parent. The existing hierarchy of custodial choices would be eliminated from the present law.

A Joint Legislative Child Protection Oversight Committee would be established with a broad mandate to oversee the "system" and DCF. Additionally The Office of the Child Protection Advocate would be created in the Agency of Administration. The Advocate would investigate and resolve complaints; monitor development laws, regulations and policies; provide information to the public; promote citizen involvement; develop a system; and may pursue judicial remedies.

Additionally a working group to recommend ways to improve the efficiency, timeliness, process and results of CHINS proceedings would be established to report and sunset in November 2015. A pilot project is proposed to use case managers in two counties to determine if they can improve the efficiency and timeliness of the proceedings. This would be in effect from July 1, 2015 through June 30, 2017.

Lastly by statute, the Commissioner for Children and Families would be tasked with implementing multiple improvements within DCF focusing on: statewide consistency of policies and practices; improving caseload for social workers taking into account the experience and training of the worker, the number of families and children the worker is responsible for and the acuity or difficulty of the cases with the goal of more face-to-face meetings and increased home visits including unannounced visits; improving information sharing; increased monitoring of a child's safety in certain circumstances where other children have been removed from the home; and requiring criminal background checks for all household members or anyone in the household who will have child care responsibilities.

Ohio v. Clark

The US Supreme Court will hear oral arguments for Ohio v. Clark (No. 13-1352) on March 2, 2015. The issues are: (1) Whether an individual's obligation to report suspected child abuse makes that individual an agent of law enforcement for purposes of the Confrontation Clause; and (2) whether a child's out-of-court statements to a teacher in response to the teacher's concerns about potential child abuse qualify as "testimonial" statements subject to the Confrontation Clause.

Specifically the State of Ohio asks 1.) whether a daycare teacher's obligation to report suspected child abuse make that teacher an "agent of law enforcement" for purposes of the Confrontation Clause, and 2.) whether a child's out-of-court statements to daycare teachers in response to the teacher's concerns about potential child abuse qualify as "testimonial" statements subject to the Confrontation Clause?

Advocating for Transition Services for Youth

There are three major categories within the Extended Care services available to children and youth who have been in DCF custody. They are referred to as Category A, Category B and Category C.

Additionally, the Youth Development Program has some resources to support incidental living costs through their Incidental Living Grants.

Out in the field, there is confusion regarding what circumstances lead to eligibility to Category A, B, or C supports. Questions about whether there is a loss of transition services resources when a youth

enters permanent guardianship need to be examined with the specific situations of the youth in mind. That said, when a youth goes into Permanent Guardianship rather than aging out of custody at age 18, they do lose access to Category A services, which support the youth with placement and DCF case management services through completion of high school.

However, they may still qualify for Category B or Category C. See the basic category and eligibility outlined on the next page.

Youth who leave DCF custody prior to age 18 due to discharge of custody to a parent or due to a permanent legal guardianship may also still qualify for Category A or B supports as they transition to adulthood.

For concerns and questions regarding eligibility for services and how a permanency planning goal does or does not impact a youth's access to Category A, B, or C supports and to Incidental Living Grants resources, contact the Youth Development Coordinator serving the DCF District which case manages the custody case for the child or youth.

Amanda Churchill, the Director of the Youth Development Program, oversees the YDCs and is expert in the resources that should be available to youth who have been in custody. Her contact information is: Amanda Churchill, LICSW 802-229-9159 Office, 802-505-0862 Cell. She can also be reached via email at: achurchill@wcysb.org or at amanda.churchill@partner.state.vt.us

Youth Development Program Extended Care

Category A – Completion of Secondary Education

- Case managed by DCF
- Continuation of case plan through high school graduation
- Financial supports are continued at same rate for licensed providers
- Signed agreement is renewed after six months
- Up to six months of transition may be granted

Eligibility:

- Youth must turn 18 in DCF custody
- Youth must be under 21
- Youth must be enrolled full-time in high school

Category B – Adult Living Program

- Case managed by YDP
- Extended foster care
- Adult commits to provide long-term support and care and to teach life skills to youth
- Financial support is reimbursed at a rate of \$16.82 per day
- Youth contribute to their own costs
- Signed agreement is renewed after six months

Eligibility:

- Youth must leave DCF custody after the age of 16, or spend five years in care between the ages of 10-18
- Youth must be between 18 and 22 years old
- Youth participate in 40 hours per week of productive time

Category C – Housing Support Program

- Case managed by YDP
- Independent living
- Youth must leave DCF custody after the age of 16, or spend five years in care between the ages of 10-18
- Youth must be between 18 and 22 years old

- Financial support is provided based on youth's budget, typically at a rate of \$150-\$400 per month
- Youth typically contribute to the bulk of their own costs
- Signed agreement is renewed after six months

Eligibility:

- Youth must leave DCF custody after the age of 16, or spend five years in care between the ages of 10-18
- Youth must be over 18
- Youth participate in 40 hours per week of productive time (primarily school, work, or job training)

Incidental Living Grants

- Case managed by YDP
- Provides incidental grants to youth for normalcy and enrichment activities; education/training (e.g. GED testing, ACT and SAT testing, college exploration, application, and orientation expenses, computers, text books, college supplies, legal documents (e.g. birth certificates, passports, IDs, green cards, Visa's); driver's license (fees for permit and license, driver's education); security deposits; initial household start-up items (e.g. furniture, dishes, linens); transportation (public transportation costs related to education or family contact, gas cards, bicycle and helmet, minor repairs and tires for vehicle owned by the young person, *(this does not include purchase of vehicle)*; phone and utilities; medical/dental expenses not covered by insurance; work-related items (e.g. tools, apprentice fees, clothing); one-time emergency expenses; or other reasonable expenses, as approved by YDP/DCF central office

Eligibility:

- Youth must leave DCF custody after the age of 16, or spend five years in care between the ages of 10-18
- Youth must be over 18. Exceptions are for drivers' education and permits/licenses and education-related grants.

Important Dates

- Mon. March 9th **and** Tue. March 10th chose **one**
- Mon. March 30th **and** Tue. March 31st chose **one**

Capitol Plaza in Montpelier, Vermont

- The number of children in DCF custody under age six has increased by nearly 40%. This conference focuses on the developmental needs of young children. It is sponsored by DCF-Family Services Division, and is open to judges, attorneys, and GALs. There is no registration fee. You may attend day 1 and/or day 2.
- **Day 1** (9:00 am – 4:00 pm): welcome by DCF Commissioner **Ken** Schatz, Keynote speaker Dr. Brenda Jones Harden, and a multi-disciplinary panel on the implications of trauma on child development
- **Day 2** (9:30 am – 3:30 pm): Keynote topic: “Resiliency” (St. Michael’s psychologist). **Morning and afternoon workshop topics:** Child safety Interventions, Advocating for the Developmental Needs of the Child in Court, Making the Most of Your Home Visits, and Parent-Child Contact – building Capacity for Healthy Development.

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- **Friday, May 22, 2015 Youth Justice Summit: topic is truancy.**

The Youth Justice Summit will be at Capitol Plaza, Montpelier; no registration fee.

The morning session will cover:

- What factors play into truancy?
- What is best practice around working with youth who are truant?
- What is the best timing of intervention?