

# Juvenile Defender Newsletter

## Winter 2010

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### Facts v. Allegations

Don't just enter wholesale admissions on the merits on behalf of a parent or delinquent, unless you and your client agree with all the facts alleged in the supporting affidavits. Those facts can come back to hurt your client later. Also make sure that the admission addresses only those facts that your client agrees to. It is important to go through each paragraph of these documents and ask your client if they agree with what is stated. You must inform the court about any alleged facts which your client denies, and that those facts will be contested unless they are stricken from the document. If the parties won't stipulate to or the court won't agree to strike the disputed portions before a hearing, ask the court to include in its findings that your client disagrees with the following statements or does not stipulate to the following in the report so this disagreement is on the record. If there is some agreement, state so, and add that there is agreement except for whatever it is and if the Court is going to include this statement as a finding of fact, you will litigate on those disputed facts.

In a delinquency proceeding the criminal rules apply, and there must be a meaningful Rule 11 colloquy.

Rule 11(d) requires the court to address the defendant to determine that the plea is voluntary, and Rule 11(f) requires an inquiry into the factual basis for the plea. *Id.* In re E.F., 177 Vt. 534, 535

In re E.F. was reversed because an eleven-year-old child was adjudicated delinquent for aiding an attempt to poison based solely on

facts stipulated by his attorney, without a contested merits hearing. "Nowhere does the record reflect that the court conducted a Rule 11 colloquy at any time, either prior to accepting the stipulated facts, or prior to entering the disposition order based on upon those facts." In re E.F., supra at 535

Under V.R.F.P. 1(c), "a denial shall be entered to the allegations of the petition unless the child, after adequate consultation with the guardian ad litem and counsel, enters an admission." Communication with your client is of the utmost importance.

"As [the Court] explained in *In re J.M.*, special rules govern pleas, or in this case, wholesale admissions, in juvenile proceedings. V.R.F.P. 6(d)(3) provides specifically that the court may not accept a juvenile's waiver of constitutional rights or admission unless it determines, among other things, that there is a factual and legal basis for the waiver or admission, that the attorney has investigated the relevant facts and law and consulted with the juvenile, and that the juvenile has entered into the waiver or admission knowingly and voluntarily." In re E.F., 177 Vt. 534, 536

You should also be aware of the fact that a new section (i) was added to V.R.F.P. 1 (the delinquency rule) and became effective on January 12, 2009. It governs the withdrawal of admissions in delinquency cases and reads as follows:

"A motion to withdraw an admission of delinquency must be made prior to or within 30 days after date of entry of an adjudication of

delinquency. If the motion is made before a disposition order is made, the court may permit withdrawal of the admission if the child shows any fair and just reason and that reason substantially outweighs any prejudice which would result to the state from the withdrawal of the admission. If the motion is made after disposition, the court may set aside the adjudication of delinquency and permit withdrawal of the admission only to correct manifest injustice.”

If your client informs you that she or he totally didn't understand, had the wrong information, or was sick at the time she or he entered an admission to a delinquent act, think about pursuing a motion to withdraw.

## **October 28 Justice for Children Conference**

There was a very good turnout for this conference and a lot of material available. Participation of juveniles in DCF custody on the panel and at the lunch time guerilla theatre presentation proved particularly revealing. These juveniles want to talk to their attorney and often find they have little contact. One attorney made the following suggestion for improving representation of children and involving them more in their court process:

Prior to the conference I had taken a look at how I represent juveniles and concluded I could do a better job. I made some changes. One of the changes was to ask each child via letter to parents and/or child to schedule an office appointment prior to the initial court hearing. In the past, the form letter sent by my office simply informed the family that I was assigned to represent the child and would meet the child at the court

house. I now invite an appointment. For those who have taken me up on the invitation, it has made a startling difference in my relationship with the child and his/her family. I will now ask the children I represent to schedule an appointment prior to virtually every court appearance. Even if the invite goes unheeded, I believe it will make a difference in the child's outlook on the process (and me).

## **Relatives Seeking Custody and Adoption Subsidy**

A Program Instruction came out in late August from the U.S. Children's Bureau ([http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2009/pi0910.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2009/pi0910.htm))

clarifying how the 2008 federal Fostering Connections to Success Act amends title IV-E adoption assistance eligibility requirements.

The Act requires that a child be in custody of the state or a child placing agency at the time adoption proceedings are initiated in order to be eligible for adoption assistance funds. This means that a relative who was given custody of the child during a juvenile court proceeding is NOT able to take advantage of the adoption subsidy program, even if the court had issued an initial "contrary to the welfare" finding for the child in order to make that child eligible for federal Title IV-E funding at the beginning of the court case.

This poses another financial obstacle to relatives who want to adopt. This should be pointed out early in a case to relatives who may want to take legal custody of the child, as opposed to the child being in foster care and placed by DCF with the relative.

A relative seeking a subsidized permanent guardianship of the child could be disadvantaged by taking legal custody of the child as opposed to becoming the foster parent for the child. The Fostering

Connections to Success Act also authorizes the use of title IV-E funds to subsidize permanent guardianships. Vermont's Justice for Children Task Force has recently endorsed a plan to seek funding for subsidized permanent guardianships in Vermont. A subcommittee has put together a report with recommendations regarding how to implement this plan. The report can be accessed on the Defender General website. For further information, contact Kate Piper.

## Transport of Juveniles

Act 28, enacted by the Vermont Legislature on May 21, 2009 addressed the transportation of juveniles, which was omitted inadvertently from the new juvenile code which became effective on January 1, 2009. The final version of 33 V.S.A. 5123(a)(1) replaced the word "prevents" with "reasonably avoids" where it addresses the possibility of "physical and psychological trauma" as a result of shackling.

<http://www.leg.state.vt.us/docs/2010/Acts/ACT028.pdf>

The DCF policy is that "Children and youth in DCF custody will be transported using the least secure method that can reasonably assure safety." DCF's policy (#150) on the Transportation of Youth in Custody is online.

[http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/policies/150\\_Transportation\\_of\\_Youth.pdf](http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/policies/150_Transportation_of_Youth.pdf)

A January 2009 report to the legislature on this topic may be found at

[http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/Act\\_172\\_Transporting\\_Children.pdf](http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/Act_172_Transporting_Children.pdf)

Additionally, the mandate in the Fostering Connections Act to ensure school stability includes a mandate to provide, arrange and fund transportation whenever necessary. (See Deb Quackenbush article below) DCF policy #151 addresses this need for stability and under 16 V.S.A. 1075(c)(3) and (c)(4)(A) requests may be made to DCF to pay for transportation:

"Typically, the school district in which a student resides is responsible for his or her education. However, the

Commissioners of the Department of Education (DOE) and the Department for Children and Families have entered into a Memorandum of Understanding (MOU) that has developed a procedure by which children in DCF custody may be able to maintain an appropriate educational placement despite a change in foster home placement. The assigned worker should discuss with his or her supervisor the details of this procedure." (Policy #151)

## Recent Cases

### In re C.C., Juvenile

<http://info.libraries.vermont.gov/supct/curr/ent/op2008-287.html>

The Court reversed the trial court's denial of defendant's motion to suppress following the pat down of defendant who was a passenger in a speeding vehicle. At issue was "the "immediately apparent" probable cause standard for removal of pill [from the juvenile's pocket] under the "plain-feel" doctrine under the exception to the Fourth Amendment's warrant requirement."

### In re J.G.

<http://www.vermontjudiciary.org/d-upeo/eo09-193.pdf>

This was an appeal of the Human Services Board's order dismissing the appeal as untimely filed, which the Court affirmed. The Court found there was no good cause for the untimely filing. Additionally the Court rejected the suggestion that placement on the registry for a substantiated report is "harsh", citing multiple avenues of appeal in the statutory scheme, refuting that the child protection registry "directly contradicts the purposes of the juvenile justice system".

## Truancy and Drop-out Prevention

As a requirement of Act 44, the Vermont Dept. of Education had to develop guidelines

for schools regarding drop-out prevention, and report to the legislature on those guidelines early in the legislative session. The Department of Education will not be recommending that one particular protocol be adopted statewide. Instead, the Dept. will be developing guidelines that allow the supervisory unions to use different models, as long as those models are within the guidelines. The Department for Children and Families participated in the development of the guidelines. The report, dated December 15, 2009, includes a truancy protocol and policies from several counties and can be accessed:

[http://education.vermont.gov/new/pdfdoc/laws/legislative\\_reports/09/educ\\_lr\\_act\\_44\\_sec\\_46\\_truancy.pdf](http://education.vermont.gov/new/pdfdoc/laws/legislative_reports/09/educ_lr_act_44_sec_46_truancy.pdf)

## Education Matters

This is the first in a series of articles on the topic of education for at-risk youth and youth in foster care.

### Educational Stability for Court Involved and Vulnerable Youth

*By Deborah Quackenbush, Education Assistant  
Director, Vermont Dept. of Education*

Did you know that a 2008 federal law requires child welfare agencies to have a plan ensuring the educational stability of every child in foster care? <sup>1</sup>

Educational stability is a subject of national attention because foster children who change schools during a school year lose an average of 4-6 months of academic achievement for every move. Not only are there serious academic consequences, there are social and emotional consequences such as the loss of

important adult support, friends, clubs, and sports teams -- all of which contribute to reducing the resilience of our foster youth.

The academic, social, and emotional outcomes for our most vulnerable youth can be improved if we can reduce or eliminate the educational moves a child must make when placed in care. The Department for Children and Families has made an effort over the years to recruit foster homes in the towns where children come into custody; however that alone is not sufficient to reduce educational moves of youth in foster care. Additionally kinship care, relative care, and guardianship options can be explored to develop more permanency for youth in care.

For most foster youth, the best educational scenario would be to remain in their home school district when they first are placed in foster care. This must be a request made to the school administration. It is a matter for the school board to decide, and the commissioner of education to approve, under Vermont laws on residency. 16 V.S.A §1075(b)(c)

If the home school district allows a student in DCF custody who is placed in a foster home outside the school district to remain in attendance in the home school, there is a new statutory provision that DCF will provide the transportation for students deemed in need of educational stability by the Commissioner of Education, if no existing appropriate means of transportation is available through the school. [16 V.S.A. §1075\(c\)\(3\)](#) Link to the MOU is here :

[http://education.vermont.gov/new/html/pgm\\_interagency.html#mou](http://education.vermont.gov/new/html/pgm_interagency.html#mou)

The MOU guidance is here:

[http://education.vermont.gov/new/html/pgm\\_interagency.html#mou\\_guidance](http://education.vermont.gov/new/html/pgm_interagency.html#mou_guidance)

reflecting the changes in the 2009 law is on the Department of Education's website, along with some "questions to consider" to help guide social workers and others with educational stability decisions given the many factors that need to be considered.

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<sup>1</sup> Click here for the link to the [Fostering Connections to Success and Increasing Adoptions Act](#).

A couple of years ago, the Barre DCF District Office convened an interagency group to support educational continuity. As a result of this collaboration, last year 35 of 36 youth who came into foster care in that district were able to remain in their own school!

The Vermont Department of Education plans to spread the practice of considering educational stability in decision making for youth in care beyond the Barre District office and could use your assistance as child advocates! For more information, call Deb Quackenbush, Assistant Director Student Support and Safe and Healthy Schools Team at the VT Department of Education, 828-5877.

## Woodside News

The juvenile court form order on placements at Woodside (#100) has been revised. The detention wing at Woodside is now called “the short term program.” Woodside has been developing and implementing short term services (not connected to the traditional concept of “detention”) to ensure that each individual youth’s needs are met by assessments and counseling. The terminology in the form was revised to reflect

that change – it no longer refers to the “detention wing.”

## Bills Introduced to the Legislature

S.159 has to do with the Custodial Interrogation of Minors. See: <http://www.leg.state.vt.us/docs/2010/bills/intro/S-159.pdf> The Senate Judiciary Committee has taken this up and it appears that it will be incorporated into another bill that Senator Sears is sponsoring, S. 153, An Act Relating to Preventing Conviction of Innocent Persons. See: <http://www.leg.state.vt.us/docs/2010/bills/intro/S-153.pdf>

Another bill that is going to be introduced has to do with Vermont adopting the updated version of the Interstate Compact on Uniform Child Custody Jurisdiction and Enforcement. See the Uniform Child Custody Jurisdiction & Enforcement Act (Nitka) See: <http://www.leg.state.vt.us/docs/2010/bills/intro/S-227.pdf>

## UPCOMING EVENTS AND HELPFUL LINKS

- January 22      **Adolescent Brain Development & Addictions**, sponsored by VT Addictions Professionals Association, Jody Kamon, trainer, at the Hampton Inn, Colchester, 9:00 am to 4:30 pm, \$25 members, \$65 non-members, CEUs pending, go to [www.vapavt.org](http://www.vapavt.org) for details
- February 9      **Motivational Interviewing**, sponsored by VT Addictions Professionals Association, Win Turner, trainer, at the Capitol Plaza, Montpelier, 9:00 am to 4:30 pm, \$25 members, \$65 non-members, CEUs pending, go to [www.vapavt.org](http://www.vapavt.org) for details
- February 14      **Remarkable Conversations: Victim-Offender Dialogue in Cases of Extreme Violence**, sponsored by the Montpelier Community Justice Center, 6:30 to 8:30 pm, at the Kellogg-Hubbard Library, 135 Main Street, Montpelier, FREE, contact 223-9606 or [mcjc@montpelier-vt.org](mailto:mcjc@montpelier-vt.org) or go to <http://www.montpelier-vt.org/department/79.html>
- February 27 & 28      **VT Parent Information & Resource Center Family EXPO**, sponsored by the VT Family Network, at University Mall, South Burlington, Resources,

Entertainment, Silent Auction, contact Kathleen Kilbourne at 1-800-4005 x 244 or go to [www.pircvermont.org](http://www.pircvermont.org)

- March 11      **Must “Party” = Drinking? How did our kids become drinkers, what’s the problem, and what’s the solution?**, sponsored by the Montpelier Community Justice Center, 6:30 to 8:30 pm, at the Kellogg-Hubbard Library, 135 Main Street, Montpelier, FREE, contact 223-9606 or [mcjc@montpelier-vt.org](mailto:mcjc@montpelier-vt.org) or go to <http://www.montpelier-vt.org/department/79.html>
- March 29      **Skills for Engaging Families into Treatment**, sponsored by VT Addictions Professionals Association, Jody Kamon, trainer, at Best Western, Waterbury, \$25 members, \$65 non-members, 9:00 to 4:30 pm, CEUs pending, go to [www.vapavt.org](http://www.vapavt.org) for details
- April 8        **Healthy Mistrust: Protecting Children from Sexual Predators**, sponsored by the Montpelier Community Justice Center, 6:30 to 8:30 pm, at the Kellogg-Hubbard Library, 135 Main Street, Montpelier, FREE, contact 223-9606 or [mcjc@montpelier-vt.org](mailto:mcjc@montpelier-vt.org) or go to <http://www.montpelier-vt.org/department/79.html>
- April 23-25    **23<sup>rd</sup> Annual VT Foster & Adoptive Family Association (VFAFA) Conference:**  
April 23 Institute – Ross Greene on the Collaborative Problem Solving approach  
April 24-25 conference – keynote by Michael Trout  
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