

Committee on Child Protection Questions:

1. What is the role of State's Attorneys in child protection in Vt.?
2. Based on recent deaths of children what lessons are learned?
3. What do you suggest can be done to problems or shortcomings?
4. Do you have statutory or regulatory changes that you propose?

1. a. The Role of the State's Attorney (SA) per Statute

The SA is the party made responsible for establishing the CHINS petition (5315). No further specific mention is made of the SA in the statute. Through disposition, 60 day review, and permanency the SA is not mentioned. All parties have a right to contest the disposition plan (5317) but nothing is mentioned about permanency hearings.

Thus, a strict review of the Chapters 51 – 53, (**summarized below**) suggests the SAs are simply laborers, not planners or coordinators, whose role is to file emergency petitions or nonemergency petitions and litigate CHINS merits. We can participate in a disposition contest and our role in permanency hearings is unspecified.

What we really do begins with and is guided by the statutory Purpose of Juv. Proceedings (5101): to provide care and protection and health of kids; to preserve the family; to assure safety and timely permanence for kids; to create good results for kids in the context of their family; and to use the judicial system to ensure the process is fair and orderly. (Left out is the section aimed at delinquency cases but it is in there). The other book end for SAs is laid out at the Best Interests

of the Child (5114) which directs the court to consider the child's interactions with parents, child's adjustment to home, school, and community, the ability and timeframe of parent to resume competence; and if parent has constructive role in the child's life and can demonstrate emotional support and affection for the child.

The statutory directive to the SA is to ensure the statute's purpose is fulfilled using the best interests of the child as a guide to assist in determining if the parents can adequately care for the child.

The statute does not **specifically** state what is the SA's role is in a child protection proceeding. Over a ¼ century of experience in the juvenile court has established for me that the SA's role is to ensure the child is safe and healthy, and lives in an environment where he/she has a reasonable opportunity to become a decent, intelligent, contented human being.

33 VSA Chap 51- 53

1) General Provisions: **Chpt 51** - the mechanics of how the system works = purposes, definitions, jurisdiction & venue, powers and duties of commissioners and courts, tools of the court (issuing warrants, contempt, conduct of hearings, orders and their modification) records and confidentiality

The State Attorney is not mentioned in this section.

2) Delinquency Proceedings: **Chapter 52** - The first mention of an SA is for the Filing of the Petition (33VSA5223) -- the SA is directed to file the petition in a time frame of 10 days before the hearing is scheduled. Otherwise, we are simply mentioned as a party in the process of adjudicating a delinquency, probation, and Youthful Offender (YO) supervision. Delinquency also has an emergency section (5251 – 5256)

which parallels the Chins provisions for taking a child into custody on an emergency basis.

3) CHINS proceeding: **Chapter 53** - creates two tracks for case entry into the juv. process: emergency and nonemergency. 5301 – 5308 detail the emergency process: the SA is noticed by the court (5306) of its order for an temporary care hearing and if the SA seeks a temp. care order, a petition shall be filed (5307). The nonemergency track begins at 5309 where the SA may file a petition when requested by DCF or in a truancy, the school. If the SA doesn't, DCF can request the Attn. General to do so. The nonemergency track is initiated by DCF requesting the SA file a petition (5311); although not explicit, the SA could request an emergency response from the court even with a DCF based affidavit. (In an emergency track case, a law enforcement officer must file the affidavit for the court to consider an emergency grant of custody).

1. b. The de facto role of SA's in child protection

SAs examine and critique affidavits to maximize the necessary information available to the court when emergency or nonemergency petitions are filed. Assist both law enforcement (L.E.) and Dept. of Child and Family Services (DCF) in the investigative and affidavit writing stages by working together on incoming cases and by training on the elements required to establish a CHINS. We need to be coordinators in developing and training the investigators who work in child protection, both DCF and law enforcement.

SAs need to have certain and comprehensive understanding of the law pertaining to child protection, both statutory and case law. We should have a better understanding of the rules and policies of DCF and how they affect their investigative efforts and responses to child

protection. DCF's operation is a two wheeled system (central office – local office) whereas ours is a one-wheeled dynamic (local office).

Coordinate with local law enforcement to educate them that a CHINS investigation does not end with a statement of a child but is as important an investigation as the officer will undertake in a criminal case and requires corroborative efforts just as in a criminal investigation.

In court, the SA is the sole party unencumbered by a client, and can focus solely on the best interest of the child. DCF is required by statute to consider both the child **and** maintaining that child in his/her family or returning the child to her/his family. Obviously, the other lawyers have traditional clients. We have the privilege of advocating for nothing other than what is best for the child: with or outside of the family. We should guide and lead the negotiations to resolving the merits; we should insure we are fully informed by DCF on every aspect of the child's welfare and progress. We have to understand and support the parties' efforts to create non litigious resolutions; we have to be willing to try the merits of the case when all other appropriate efforts have failed. We have to be thorough, competent and professional when litigation commences: we have to be prepared and familiar with our witnesses.

The juvenile process embraces an "odd couple" dynamic: the SA, a separate and distinct party, acts as the attorney for DCF, also a separate and distinct party. Nowhere else in the legal system is this concept reproduced.—probably for good reason. DCF can bring their own attorney into court to represent them, but it is exceedingly rare. If the system is to continue, both agencies need to improve their

coordination and understanding of this unusual structure of representation.

The SA needs to have a complete understanding of the dispositional plan, and should take the time to insure his/her comprehension and agreement. The same holds true for a permanency review. Again, the SA should be the informed focal point for negotiations to resolve disputes about the plan. We should cultivate and support DCF's expertise in planning for child protection, and balance our ideas about the family carefully. As at merits, the SAs have the same obligations for being prepared and professional.

The SA needs to support and become involved in the programs, agencies, and efforts which seek to protect kids. We need to be active members in the bench-bar meetings, juvenile justice meetings, child advocacy programs and SIUS, truancy teams, domestic violence prevention organizations, and have a connection in every school in our community. We need to be familiar and knowledgeable of the myriad of community efforts and programs aimed at keeping kids safe.

2. Problems in child protection highlighted by recent child deaths

The central problem is pulling together the various sources of information between multiple agencies involved in a CHINS case. From the investigation through disposition DCF is the central hub for the information which is generated from either multiple investigations or investigators when a child is at risk.

There are at least 9 potential sources of information in the community in any case: DCF investigator, DCF case worker, L.E. investigator, SA's office, DOC officer, medical personnel, schools and

day care centers, and mental health personnel. Within a given agency, there may be various levels, each of which may have relevant information bearing upon the case and child protection. Utilization of all of these information resources must be the goal of every initial child protection investigation.

DCF and L.E. are joint investigative agencies. Their focus is on investigating and documenting a crime or neglect.

The SA provides outside review and coordination. Statutorily the SA organizes and presents the investigation to the court up to and through the merits. The merits hearing is a critical stage. It provides the evidentiary foundation for court orders which will be in the best interests of the child.

A child protection case evolves into different stages and additional information becomes available at each stage. At each level – initial hearing, merits, disposition, permanency – the most recent information has to be available as well as the information generated in the earlier stages. This conglomeration has to be accessible for use and incorporation at whatever stage the case resides. Disposition is the culmination of the previous stages, but earlier inadequate information gathering can be crippling.

Disposition must first identify the needs of the family, environment, parent and child. Determining the areas of conflict and causes of dysfunction accurately is absolutely crucial – we have to find out what is wrong (point A). A social worker might also add the family strength must be identified and recognized. Second, the disposition report must identify what community resources are needed to address the areas of need and dysfunction (point B). And third, the disposition

plan has to be a blueprint of how to travel from point A to point B: how the family can access those resources. In order to accomplish each step of this scheme, reliable and accurate information is essential.

Effective child protection, not only gathers the best information; it not only stores it in an accessible location which can easily be supplemented and updated; it uses this information in formulating a plan which identifies needs, resources, and the routes between the two.

A lesson from the tragic death in Rutland is that there is a huge hole in this dispositional scheme. Identifying what resources are needed to address family dysfunction does not create those resources – does not make those resources available. Knowing what is needed is hardly the same as having what you need. The paucity of resources for children and families, sadly, is historical. Second, and related, the legislative mandate and statutory emphasis on reuniting family and kinship care creates a vacuum wherein the inadequacy of community resources can be closeted if not hidden. The Rutland case illustrates the staggering conflict and tension between two laudable goals – and the deepening abyss between them: child protection and family reunification

3) Recommendations

The 9 potential sources of information essential to a quality investigation are frequently inaccessible due to a host of confidentiality requirements. Juvenile confidentiality can be counter-productive. Child protection efforts are harmed by the inability to share and exchange information with the important players in a child's life. If information is the life breath of child protection, then confidentiality

strangles it. Confidentiality statutes must be changed to permit the rapid and sensible flow of information between the community resources charged with child protection. The statute on mandated reporters begins the description of those community partners who need to share information with each other.

DCF is torn between being a child welfare agency and an investigative agency (along with a host of other responsibilities: child protection agency, a family rebuilding agency). An investigative agency should have police powers, or at least, police training. DCF should have its investigators trained in both child protection and police investigation. The investigative units of DCF must be strengthened and supported, and should be a specialized unit just as qualified DCF caseworkers should be recognized as experts in child welfare and protection

DCF needs a process to have expert status in juvenile proceedings. A training, education, and experience criteria should be developed and anyone who satisfies the requirements should be statutorily recognized as an expert in the field of child care.

An information system should be developed wherein differing agencies (possibly with court sanctioned authorization on a case by case basis) should be able to add to and access information in a case. All documentation, within DCF, involving family, parent or child, education, mental health, should be accessible from a single computer located at each desk in the DCF office. If the legislature wants the best child protection they are going to have to pay for the technology to enable it to happen.

The definition of “truancy” at 33 VSA 5102(3)(D) needs to be rewritten and made applicable to the truancy protocols in most counties.

DCF needs to be statutorily authorized to write emergency affidavits; presently, only law enforcement officers can author an affidavit requesting immediate custody from the court. The process during work hours is cumbersome and time consuming. Where DCF initiates the investigation, the officers are simply adapting or adopting whole scale the DCF work into their affidavits without doing an independent investigation. A work hours affidavit has to be reviewed by the SA so there is a layer of review between the author and the court. Both DCF and law enforcement benefit from this modification without risk to the process. Again, DCF investigators need to receive law enforcement training.

Law enforcement is typically hesitant to become involved in taking a child into custody primarily because of the time involved in the process. This reluctance to engage in both on scene child protection and assisting DCF with investigation should be addressed by two methods: increased training along with stream lining the paperwork for taking a child into custody. The emphasis needs to be on training, but minimizing the time law enforcement spends with the child in their care and the associated paperwork can only be a boon to their motivation for involvement.

4) Statutory & Regulatory Changes

See # 3 above.

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