

## TESTIMONY OF PAMELA A. MARSH, ESQ.

I hope you have had an opportunity to read my resume, and to understand my commitment to Child Welfare and Juvenile Justice. I am the Chair of the Juvenile Law Section of the Vermont Bar Association. I am one of two certified Child Welfare Law Specialists in Vermont (along with Kate Piper). I have been practicing juvenile law in Addison County since 1985, and as the primary juvenile contractor since 1992. In Addison County, the public defender's office handles only adult cases, and my firm handles the juvenile caseload. I served on the Chapter 55 Committee that recommended revisions to the previous Juvenile Procedures Act, most of which were adopted by the legislature and became effective in 2009. I currently serve on the Justice for Children Task Force, which focuses on child welfare cases, as well as the Juvenile Justice Workgroup, which focuses on delinquency cases.

The two tragedies that caused the appointment of this panel must be seen in context. There is an old adage that, "bad cases make bad law." We must not be hasty to change the system without understanding what is working well and what is not working well with the current system.

### **1. What is working well with the current child protection system?**

I must preface these remarks by saying that I work primarily in Addison County, where there is a long history of working with community partners to try to assist parents and keep children out of custody. Even if children subsequently need to come into custody, the community partners including the Counseling Service of Addison County, the Parent-Child Center, Addison County Home Health, WIC, DCF Family Services Division [DCF-FSD] and DCF Economic Services Division [DCF-ESD], the Department of Health, CVOEO, HOPE, schools and many local churches, among others, help to support the family in its work towards reunification. I am aware from statewide meetings of my colleagues as well as state-wide cross trainings and my work on the Task Force that such a level of cooperation and resources are not universally available across the state. What isn't clear to me is whether the resources really are unavailable, or whether other counties lack the cooperation of community partners with DCF.

To the extent Chapter 49 (Child Welfare Services) and Chapters 51 and 53 of Title 33 (Juvenile Proceedings, General and Children in Need of Care and Supervision) are deemed to require absolute confidentiality of juvenile proceedings, such an interpretation of the law might discourage DCF-FSD from forming those community partnerships that are so necessary to providing both prevention services and services to families whose children are taken into custody.

The Department has been using Family Safety Planning [FSP] Meetings as a tool to prevent court intervention, or shortly after court intervention to identify potential family members with whom a child can be placed while the case is pending. Such meetings necessarily require the Department to provide information to family members invited to

attend. Often the family members invited are identified by the parents as potential supports; occasionally the child may identify family or community members they would like to attend these meetings. Generally these meetings are facilitated by Easter Seals or Eckerd (the local contractor for providing family time visits), and provide a forum for people to identify the concerns that have brought the family to the attention of the state, and to brainstorm ways to address the concerns. I believe these meetings are highly successful in case planning for children on both the “assessment”<sup>1</sup> and “investigation”<sup>2</sup> tracks.

Building and maintaining community partnerships helps keep children out of custody, as well as aids in providing services to children in custody.

## **2. What does not work well and therefore should be changed? How?**

We are seeing a significant increase in CHINS case filings, resulting in more children coming into DCF custody, as well as more children subject to conditional care orders with non-custodial parents, kin and fictive kin. Realistically, the system is not prepared to deal with this without additional funding. More social workers, judges, prosecutors, and child’s and parent’s attorneys are needed to do a good job with the increasing caseload. Most of the social workers, supervisors and district directors that I have had contact with are truly dedicated to their jobs. However, they are often overwhelmed by climbing case loads and increasingly complicated cases.

Statewide we are seeing more and more cases of children coming into custody due to their parent’s substance abuse and mental health issues (or a combination thereof). This is causing stress on the entire system: investigators, social workers, attorneys, judges and courts. In addition, there are often long waits for treatment that can result in termination of parental rights being filed due to Adoption and Safe Families Act [ASFA] guidelines<sup>3</sup> because the parents haven’t been able to access recommended treatment. (ASFA generally requires termination of parental rights to be filed when a child has been in DCF custody for 15 of the last 22 months, with certain exceptions.)

Confidentiality of CHINS proceedings can lead to information not being shared among all parties and their counsel, and with the judge – information that may be critical to making an informed decision as to whether a child should be returned home or not. It is important the police, DCF workers and community partners working with the family, share the information they learn about household composition, residential stability, drug abuse, domestic abuse, whether a parent is compliant with treatment (not merely attending), etc., with all parties to the case in a timely fashion. This means the attorneys for all parties, any self-represented parties, the State’s Attorney AND the guardian ad litem [GAL] should be informed of any substantive developments as they happen, not minutes before the next court hearing. This would allow parents’ attorneys

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<sup>1</sup> 33 V.S.A. § 4915 and § 4915a.

<sup>2</sup> 33 V.S.A. § 4915 and 4915b.

<sup>3</sup> P.L. 105-89 (1997)

to intervene with their clients to keep them on track with their disposition case plan goals, as well as for the other parties to the case to be privy to full information for case planning and court purposes. Better and more open communication with all parties would be beneficial.

Current DCF Policy 70 requires social workers to visit in person, preferably in the home setting, with the child, the parent(s) and the caretaker. This is very important for case planning and for understanding how the child, parent(s) and foster parents are doing, identifying unmet needs, providing support to these people, etc. However, this policy only applies to children in DCF custody, leaving the vast majority of children in out-of-home placements under conditional custody orders out. This policy should be amended to include all children, parents and substitute caregivers subject to the jurisdiction of the court as CHINS. Further, even though Policy 70 requires these monthly visits, I have received frequent complaints from children and foster parents that they have not seen their DCF worker as required by this policy.<sup>4</sup> The failure of social workers to make these visits no doubt reflects the rising caseloads they carry.

We are learning more and more about substance abuse, and that it cannot be addressed by short-term inpatient treatment followed by group therapy and AA/NA, with any real level of success.<sup>5</sup> Research has shown that substance abuse and virtually all addictions are the products of childhood trauma, and until the childhood trauma is treated, the parent is unlikely to be able to leave their addiction behind.<sup>6</sup>

Expectations for parents must be clear, reasonable and achievable. Sometimes parents are given such a laundry list of things they need to complete in order to get their children back that they just give up. Other times, they have no idea how to go about getting signed up for counseling or parenting classes. The Office of the Defender General was providing limited social worker services to parents, but that ended recently when the budgetary recission was announced by the Shumlin administration on 7/24/14. This program was limited due to budgetary constraints, but quite successful in terms of achieving reunification for the families worked with.

Ideally, FSD would assign one social worker to work with the parents, to help them with meeting every aspect of their case plan, and another social worker to work with the child, focusing on the safety of the child, obtaining all necessary services for the child, continuing educational stability for the child, etc. Obviously there are funding considerations that have to be taken into account for such a practice. While I realize that no one wants to be the one to raise (or pay) more taxes, without an adequately funded social service and court system, there is little chance of improvement in practice.

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<sup>4</sup> I have also heard about complaints from parents' regarding lack of contact from their DCF workers.

<sup>5</sup> In the Realm of Hungry Ghosts: Close Encounters with Addiction, Gabor Maté, M.D., North Atlantic Books, Berkeley, CA and The Ergos Institute, Lyons, CO, 2010.

<sup>6</sup> Id.

We also know that achieving permanency for children in the time frame viewed from the perspective of the child is a basic principle of the best interests of the child.<sup>7</sup> Too often reunification is attempted before the child and parents are ready, in order to avoid the ASFA timelines. Under current DCF policy, DCF supervision is then discharged after 60 days (which can be extended by 30 days by the District Director).<sup>8</sup> In the opinion of the undersigned, DCF should return to its prior policy of retaining custody for up to six months following return home to ensure that the child is safe and the reunification is successful. Especially with parents with addictions, where remission is frequent, children are endangered by returning them home too early and with too little supervision.

### **3. Are there ways CHINS proceedings can be improved?**

CHINS proceedings could be improved. There are a number of issues that result in delays in the court process that can be harmful for children. In addition, advocacy for children and parents in CHINS proceedings should be improved. Conditional Custody orders need to be more closely monitored by DCF and the Courts. Finally, allowing more people with a direct interest in a CHINS case to attend court, except during contested hearings where witnesses are being called, without opening up juvenile proceedings to public generally, would be beneficial.

#### **A. Delays in the Court Process**

33 V.S.A. Chapter 51 sets forth the goals for intervening in a family's life:

(a) The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes:

(1) To provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters.

... [Omitted as it relates to delinquency cases]

(3) To preserve the family and to separate a child from his or her parents only when necessary to protect the child from serious harm or in the interests of public safety.

(4) To assure that safety and timely permanency for children are the paramount concerns in the administration and conduct of proceedings under the juvenile judicial proceedings chapters.

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<sup>7</sup> *In re: D.S.*, 2014 VT 38, ¶ 22, *In re: C.P.* 2012 VT 100, ¶ 30, *In re: B.M.*, 165 Vt. 331 (1996).

<sup>8</sup> DCF Policy 98.

(5) To achieve the foregoing purposes, whenever possible, in a family environment, recognizing the importance of positive parent-child relationships to the well-being and development of children.

(6) To provide judicial proceedings through which the provisions of the juvenile judicial proceedings chapters are executed and enforced and in which the parties are assured a fair hearing, and that their constitutional and other legal rights are recognized and enforced.

33 V.S.A. Chapter 53 contains strict timelines for setting temporary care hearings where an emergency care order is issued,<sup>9</sup> for pretrial and merits hearings,<sup>10</sup> the filing of an initial case plan,<sup>11</sup> the filing of the disposition case plan,<sup>12</sup> and the disposition hearing.<sup>13</sup> However, in practice, these timelines are rarely followed, and the Vermont Supreme Court has noted them to be “directory but not mandatory.”<sup>14</sup> In counties where adequate judge time is assigned, it is easier to stick to the timelines. However, in other counties, such as Addison, where one judge sits on criminal, civil, family and juvenile cases, it is difficult to find court time for contested hearings. Adequate judicial resources must be assigned to this critical docket for the safety of children coming into court as a result of a CHINS petition. The longer the child is in out of home care, the more likely s/he will end up permanently in out of home care.

Further complicating this problem is that many conflict counsel have contracts in multiple counties, which limits the dates on which they are available. Ideally, conflict counsel would be located in the county in which they have a contract, and would not have conflicting contracts in other counties. In addition, their compensation should be increased for the reality that these cases take much more time than typical misdemeanor and even many felony cases, and so that persons doing this work can afford to concentrate solely on their juvenile practices, rather than having to shoehorn in their juvenile cases around more profitable work.

## **B. Advocacy for Children and Parents**

There have been many complaints regarding the adequacy of the representation provided to both children and parents in child welfare cases.<sup>15</sup> The American Bar Association has promulgated standards for the representation of children (1996), very young children (2010) and parents (undated, but appears to be after 2004). In addition,

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<sup>9</sup> 33 V.S.A. § 5307

<sup>10</sup> 33 V.S.A. § 5313

<sup>11</sup> 33 V.S.A. § 5314

<sup>12</sup> 33 V.S.A. § 5316

<sup>13</sup> 33 V.S.A. 5317.

<sup>14</sup> *In re: J.R.*, 153 VT 85, 92-93 (1989).

<sup>15</sup> Parents often complain about being unable to reach their attorneys by phone or to meet with them outside of court. Parents’ attorneys are often challenged to find their clients so that they can meet with them. Older children complain that they never see their attorney outside of court; many children’s lawyers don’t bother even visiting clients under 13 years old.

the National Association of Counsel for Children [NACC] has amended and updated the ABA standards for Representation of Children (1999). Ideally, attorneys would be held to these standards in their respective roles. However, the reality is that the contracts offered by the Office of the Defender General for juvenile representation do not adequately compensate the attorneys involved, requiring them to maintain a private legal practice or to take multiple contracts in order to survive.

The Office of the Defender General does annual training on various aspects of juvenile law. However, there is no pre-service training required of new juvenile attorneys (staff or contract counsel) practicing in this field in Vermont.<sup>16</sup> In Massachusetts, for example, there is a required five day trial panel certification course, and then the attorneys must work with a mentor assigned by the Children and Family Law program. In addition, there are mandatory CLE requirements to remain on the juvenile trial panel.<sup>17</sup>

The Court Improvement Program [CIP], headed up by Shari Young, has provided funding for attorneys to do the NACC Child Welfare Law Specialist Certification.<sup>18</sup> In addition, the CIP has sent some Vermont attorneys to the Parent Representation program at the biennial ABA Children and the Law Conference. Similarly, the Justice for Children Task Force subcommittees on Best Practices and on Legal Representation are working to improve the quality of legal representation in juvenile cases. I do not know what the legislature can do to assist in these areas, except possibly to adopt the ABA standards, require pre-service training, and provide adequate funding to the Office of the Defender General or the Court Improvement Program, restricted for the purpose of training and implementing the ABA and/or NACC Standards.

### **C. Review and Reports for Conditional Custody Orders**

There seems to be a difference in practice from DCF office to DCF office and court to court regarding ongoing reviews of Conditional Custody Orders at disposition. At disposition, the Court may order conditional custody to the custodial parent, guardian or custodian,<sup>19</sup> or to a person with a significant relationship with the child,<sup>20</sup> or to a non-custodial parent.<sup>21</sup> All of these orders are to last for a fixed period, not to exceed two years.<sup>22</sup> However, there is nothing in the statute requiring regular reviews of conditional custody orders, or requiring someone to provide a report on whether the parent is

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<sup>16</sup> Jerome Galang, *Specialized Training Requirements for Attorneys Representing Minors in Child Protection Cases: A Survey of State Laws, Standards and Rules*, 2012.

<https://www.law.umich.edu/centersandprograms/pcl/ljohnsonworkshop/Documents/Specialized+Training.pdf> (last tried Saturday, September 06, 2014).

<sup>17</sup> Id. at 21.

<sup>18</sup> However, Matt Valerio made it very clear to attorneys interested in certification that there would not be any increased compensation for those who achieved certification.

<sup>19</sup> 33 V.S.A. § 5318(a)(1)

<sup>20</sup> 33 V.S.A. § 5318(a)(2)

<sup>21</sup> 33 V.S.A. §§ 5318(a)(2) and (a)(3).

<sup>22</sup> Id.

achieving their case plan goals, and how the child is doing. In contrast, if custody is given to the Commissioner (DCF), there is a 60 day post-disposition review hearing,<sup>23</sup> and permanency hearings are held at least annually, and at shorter intervals for young children,<sup>24</sup> at which time DCF must complete and submit a permanency report to the court so that all parties know what progress the parent(s) are making.<sup>25</sup> There is almost no way that a conditional custodian who isn't the parent could report on the progress the parent has made towards the reunification goals. DCF should be required to continue to monitor all cases with Conditional Custody orders and to prepare reports to the court similar to permanency reports. Further, Conditional Custody orders should be reviewed on the same schedule as orders granting DCF custody: at 60 days post-disposition and then, depending on the age of the child, annually, or more often for very young children.

#### **D. Limited Opening Up of CHINS Proceedings<sup>26</sup>**

Currently access to juvenile hearings is limited. 33 V.S.A. § 5110:

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the Court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the Court finds to have a proper interest in the case or in the work of the Court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the Court. This subsection shall not prohibit a victim's exercise of his or her rights under [sections 5233](#) and [5234](#) of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to [Rule 16 of the Vermont Rules for Family Proceedings](#).

I do not support a wholesale removal of confidentiality from Child Protection cases. However, while preserving the rule that the “general public” shall not be admitted, I suggest that § 5110(b) be amended to allow members of the child’s extended family, close friends, as well as community partners working with the family, as well as foster parents, to be admitted as of right in CHINS proceedings only, unless the judge finds their presence would be harmful to the child if the child is present in court. Persons

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<sup>23</sup> 33 V.S.A. § 5320

<sup>24</sup> 33 V.S.A. § 5321

<sup>25</sup> It is not clear whether DCF has to present a report at a postdisposition review hearing, but it is certainly the better practice.

<sup>26</sup> I absolutely do not support opening delinquency proceedings to the public, as it would defeat the entire purpose of delinquency proceedings as set forth in 33 V.S.A. § 5101(a)(2).

admitted under this provision would not be parties, and would not be assigned counsel or be afforded the opportunity to examine or cross-examine witnesses. However, they could inform the attorneys involved of information that might be helpful in making decisions relating to reunification or non-reunification of the family. Such individuals should be excluded during merits and contested disposition and termination of parental rights hearings, where witnesses are being called, except to the extent that they may be witnesses. The National Council of Juvenile and Family Court Judges issued a paper in June 2004 called *To Open or Not to Open: The Issue of Public Access in Child Protection Proceedings*, which surveys state practices with respect to open child welfare proceedings, and sets forth the pros and cons of open and closed proceedings. The Justice for Children Task Force is planning to address this issue at its upcoming meeting on September 26. I do not know what the consensus of the Task Force will be, but in my opinion, some opening of the proceedings would be beneficial. With the adage, "It takes a village to raise a child" seeming more and more true since we rarely have multi-generational nuclear families in the same living space, or even in the same county, to support parents and children. We must create our own villages of natural supports for children to be returned home safely, or even to keep children at risk from coming into care. I see no value, but only harm, in publicizing these cases.

Thank you for this opportunity to address these issues, and I am happy to take questions on these remarks.