

Child Protection Committee

Conditional Custody Orders

Summary: Conditional custody orders (CCOs) can be granted by the Court to confer temporary legal custody of a child to a person subject to Court-imposed conditions designed to protect the safety and welfare of the child. The conditions can only be placed on the custodian of the child under the CCO. A CCO is limited in duration, and typically cannot last for longer than two years. CCOs are only ordered when custody is being transferred to someone other than DCF. The court can also subject the child to protective supervision by DCF, authorizing the Department to make unannounced home visits in order to ensure compliance with the conditions of custody.

Current Law:

Conditional custody orders are issued by the Court in juvenile proceedings to confer legal custody of a child to a parent, guardian, relative, or person with a significant relationship with the child subject to such conditions and limitations as the Court may deem necessary to provide for the safety and welfare of the child. 33 V.S.A. § 5102 (5). Protective supervision is the authority granted by the Court to DCF in a juvenile proceeding to take reasonable steps to monitor compliance with the Court's conditional custody order, including unannounced visits to the home where the child resides. 33 V.S.A. § 5102 (24). Currently, children are not always placed under protective supervision when conditional custody orders are granted.

A conditional custody order may be granted at three stages of the CHINS proceeding. First, at the emergency care hearing, if the Court determines that the child may safely remain in the custody of the parent subject to court-imposed conditions pending a temporary care hearing, the Court may deny the request for an emergency care order and issue an emergency conditional custody order instead. An emergency conditional custody order shall contain the date, hour, and place of the temporary care hearing and notice of a parent's right to counsel at the hearing. 33 V.S.A. § 5305.

At the temporary care hearing, courts must consider custody placement under a temporary custody order in preferential order. If returning the child to the home is contrary to the child's welfare, the Court must issue a temporary custody order to someone other than the custodial parent. However, before granting custody to someone other than a custodial parent, courts must first look to return custody to the custodial parent/guardian under a conditional custody order "subject to conditions and limitations ... necessary and sufficient to protect the child." 33 V.S.A. § 5308.

Finally, at the disposition hearing, the Court may issue a conditional custody order to a custodial parent or guardian, a noncustodial parent, a relative, or a person with a significant relationship with the child. In each scenario, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. When the permanency goal for the child is reunification with a custodial parent/guardian, temporary custody can be granted to a noncustodial parent, relative, or person with a significant relationship with child, and the Court shall schedule regular review hearings to evaluate progress toward reunification. When custody is given to the custodial parent under a

CCO, the Court shall schedule regular review hearings to determine whether conditions of the order continue to be necessary. 33 V.S.A. § 5318.

Issues and Committee Options:

The Committee heard testimony from several parties that monitoring compliance with the conditions of a CCO can be difficult. A child welfare attorney testified that CCOs are issued based on inadequate information regarding the safety of the placement. A judge, State's Attorney, and GAL testified that where there is no protective supervision order in place, DCF will not provide the same level of services or post-dispositional review when the child is placed with parents or relatives under a CCO. Finally, the statute does not provide specific requirements for the monitoring of conditional custody orders. If the Committee wishes to address the protective supervision issue, it could create standard protective conditions for all conditional custody orders, and/or recommend an amendment to require by statute that judges require protective supervision for children placed under a CCO. To address the issue of lack of monitoring, the Committee could recommend an amendment to require regular review hearings and reporting on child well-being and parent progress. Finally, to address the safety of placement issue, the Committee could require evidence be presented and findings made about safety of a placement before a judge can issue a CCO.