



Committee on Child Protection

October 7, 2014



Committee on Child Protection

Hearsay

Hearsay

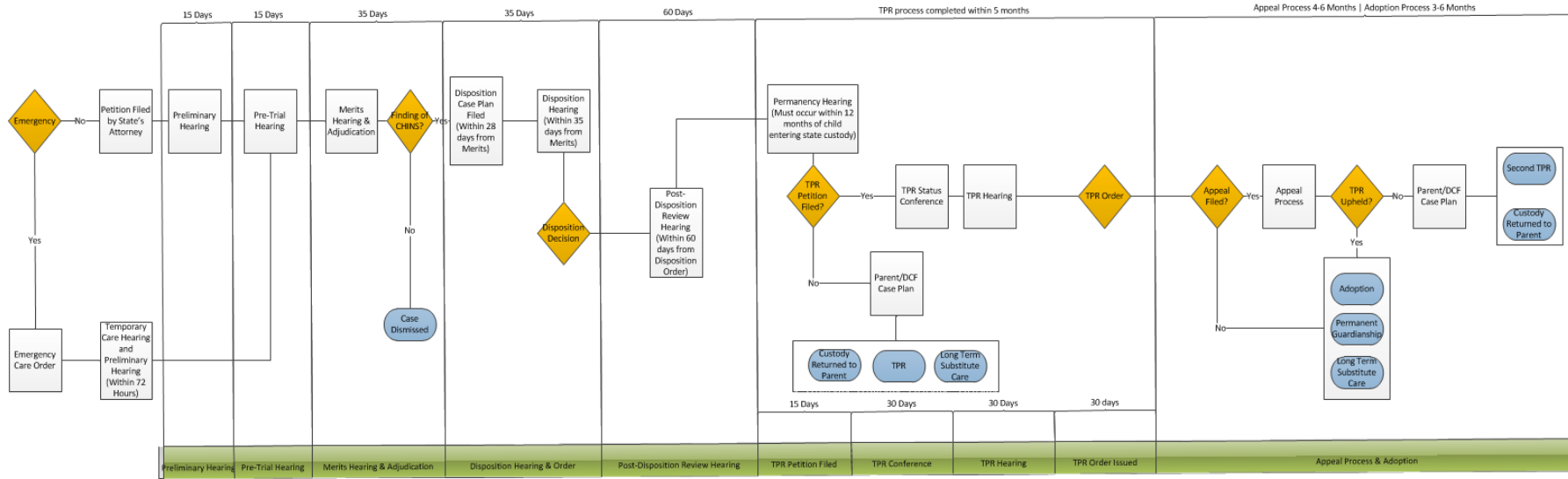
Admissible at:

- Emergency care hearings
- Disposition hearings
- Permanency hearings

Not admissible at merits hearing

CHINS flow chart

Courts



Hearsay: Options

Committee could:

- Take no action
- Amend statute to allow hearsay at a merits hearing
- Expand Rule 804a to cover not only sexual abuse but also physical abuse at all CHINS hearings (including merits hearings)
- Expand Rule 804a beyond CHINS proceedings



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Open Adoptions

Postadoption Contact Agreements

What is “Open Adoption”?

- Referred to as postadoption contact agreements or cooperative adoption
- Can range from informal understandings to written formal contracts
- Includes arrangements that allow contact between a child’s adoptive family and members of the child’s birth family after the adoption has been finalized

What is Generally Allowed by States?

- In general, State law does not prohibit postadoption contact or communication because adoptive parents have the right to decide who may have contact with their adopted child without formal agreements.
- Agreements for postadoption contact or communication have become more prevalent in recent years. Currently, 26 states have statutes that allow written and enforceable contact agreements. Most state statutes permit contact for any adoptive child, but Vermont restricts the enforceable agreements to stepparent adoptions.

What Does Vermont Allow?

Title 15A (Adoption Act)

§ 1-109. When a decree of adoption becomes final, any order or agreement for visitation or communication with the minor shall be unenforceable, except:

→ Contact agreements for stepparent adoptions are enforceable in a civil action if enforcement is in the best interests of the child

What Does Vermont Allow?

Title 15A (Adoption Act)

- Failure to comply with an order or agreement is not grounds for challenging the validity of adoption of a stepchild, and adoption is not affected by any action to enforce, modify, or set aside an agreement
- An agreement or order can be modified if the court finds modification is in the best interest of the child

Example: Open Adoption in CT

“The plaintiff does not seek to ‘open,’ to set aside or to diminish in any way the adoptive process that has substituted the defendants as the legal parents of the child. The plaintiff’s rights are not premised on an ongoing genetic relationship that somehow survives a termination of parental rights and an adoption. Instead the plaintiff is asking us to decide whether, as an adult who has an ongoing personal relationship with the child, she may contract with the adopting parents, prior to adoption, for the continued right to visit with the child, so long as that visitation continues to be in the best interest of the child.” Michaud v. Wawrack, 209 Conn. 407, 412-413, 551 A.2d 738 (1988).

Example: Open Adoption in CT

Conn. Gen. Stat. § 45a-715

(j) A cooperative postadoption agreement shall contain the following: (1) An acknowledgment by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative postadoption agreement; and (2) an acknowledgment by the adoptive parents that the agreement grants either or both birth parents the right to seek to enforce the cooperative postadoption agreement.

(k) The terms of a cooperative postadoption agreement may include the following: (1) Provision for communication between the child and either or both birth parents; (2) provision for future contact between either or both birth parents and the child or an adoptive parent; and (3) maintenance of medical history of either or both birth parents who are a party to the agreement.



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Creating a New Crime for a
Caregiver's Failure to Prevent Injury

New Crime: Caregiver's Failure to Prevent Harm to Child

A.G.'s proposal to amend 13 V.S.A. § 1304

Elements of crime:

- (1) causes or allows the child to suffer bodily injury or serious bodily injury
- (2) subjects the child to, or allows the child to be subjected to, sexual exploitation or assault
- (3) permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a location used to manufacture or sell methamphetamine or a controlled substance
- (4) fails to exercise a reasonable degree of care and supervision over the child, which results in unnecessary suffering or endangerment to the child's physical and mental health

Intent:

"... it shall not be necessary for the state to prove that the defendant acted intentionally, knowingly, willfully, recklessly, or negligently"



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Role of DCF Investigators

Role Investigator

- Matter of qualifications and policies, not statute
- Steps in investigation (tab 12)
 - Interview child within 72 hours
 - Interview witnesses and establish time line
 - Go to home
 - Take photos and order medical tests
 - Interview alleged perpetrator

Role Investigator - Options

- Statute v. policy
- Resources
- Training
- Fundamentally change role of DCF and law enforcement in investigating serious cases?



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Oversight Structures in Other States

Oversight Structures in Other States

Statutory child welfare ombudsperson or child advocate	Statutory statewide ombudsperson for all governmental agencies	Statutory ombudsperson-like programs	Nonstatutory county-based or program-based offices
22 states CO, CT, GA, IN, ME, MA, MI, MO, RI, TN, WA, CA, TX, UT, AR, KY, IL, OK, NH, NJ, NY, OR	5 states AK, AZ, HI, IO, NE	4 states DE, MD, MN, NV	5 states MT, OH, SC, NC, VA



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Information Sharing &
Communication

Information Sharing: DCF & Reporters

33 V.S.A. § 4913(b): DCF “shall inform the person who made the report under subsection (a) of this section [a mandated reporter]:

- (1) whether the report was accepted as a valid allegation of abuse or neglect;
- (2) whether an assessment was conducted and, if so, whether a need for services was found; and
- (3) whether an investigation was conducted and, if so, whether it resulted in a substantiation.”

Information Sharing: DCF, Law Enforcement & Court Parties

33 V.S.A. § 4921: Upon request DCF:

- shall release “redacted investigation file” to parents etc., and person alleged to have abused the child
- shall disclose all records to a court, parties to a juvenile proceeding, law enforcement officers “engaged in a joint investigation,” State’s Attorney or Assistant Attorney General, and “other State agencies conducting related inquiries or proceedings”

Information Sharing: Options

1. Information sharing with individuals who report abuse and neglect:
 - Mandated reporters' desire for more detailed information: Amend statute
 - Mandated reporters' complaints that never received letter, or that it was late: Unclear how amending the statute would fix this problem
 - Require, or permit, broader disclosure of information to nonmandated reporters: Amend statute
 - Issue: Potential conflict with confidentiality
 - Suggestion: Expanding "cone of confidentiality"

Information Sharing: Options

2. Information sharing between DCF, law enforcement, & court parties:
 - Current problems result practice, not statute?
 - Amend 33 V.S.A. § 4921 to remove “upon request”?

3. Information sharing between DCF, General Assembly, and the public:
 - Establishing oversight committee or body: Statutory change
 - Modifying confidentiality laws: Statutory change



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Substance Abuse

Substance Abuse

Current DCF policy addresses four scenarios:

- a pregnant woman's use of drugs
- a parent's use of drugs if a child is less than six years old
- methamphetamine use and production
- drug testing

Substance Abuse: Options

Basis for DCF to intervene based on substance abuse - Committee could:

- Take no action
- Explicitly define “harm” in 33 V.S.A. § 4912 as including exposing a child to illegal substances
- Better define in statute circumstances under which DCF should accept a report concerning parent or caregiver substance abuse
- Wait for results of DCF’s consultation with National Center on Child Welfare and Substance Abuse

Substance Abuse: Options

Drug testing - Committee could:

- Take no action
- Encourage or mandate increased use of testing in statute?
- Conditional custody order



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