

## **Best Interests of a Child Standard**

To be eligible for federal funds under title IV-E of the Social Security Act, states must ensure that court orders removing a child from his or her home, even temporarily, must contain a determination that “continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child.” Therefore, even an initial ex parte custody order must contain a determination that it would be “contrary to the welfare” of the child to remain, or in the “best interests” of the child to be removed. However, this exact wording need not be used.

### **The standards applicable at the different stages of a CHINS proceeding and how those standards impact custody decisions**

Under the General Provisions of the Juvenile Proceedings Chapter of Title 33 (33 V.S.A. § 5114), the Court must consider the best interest of the child at the following stages of a proceeding:

- At a permanency hearing (when Court determines the permanency goal for a child and estimated time for achieving the goal)
- At a modification hearing, and
- Anytime a petition or request to terminate parental rights is filed by DCF or the child’s attorney.

The Court shall consider the best interest of the child in accordance with:

- the interaction and interrelationship of the child with his or her parents, siblings, foster parents, and any other relevant person;
- the child’s adjustment to his or her home, school, and community;
- “the likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time;” and
- whether the parent plays a constructive role in the child’s welfare.

Under current Vermont law, there are different standards applied by a court depending upon the stage of the proceeding:

- Removal of a child: “child in danger.”
- Emergency care order: “contrary to child’s welfare” to remain in the home.
- Temporary care hearing: after S.9, the court may issue a temporary care order upon a finding that returning home would be contrary to the best interests of the child, and provides for a list of custody options for courts to consider.

Prior to S.9, the court was required to return the child to the parent unless it is “contrary to the child’s welfare” because there is a substantial danger or risk. The court determined custody according to a multi-step hierarchy, where it was required to look at custody options “in order of preference.”

- Merits hearing: child in need of care and supervision.
- Disposition hearing: “best interests” of the child.

- Permanency hearing: “best interests.”

Removal: A child can be removed from his or her home by a law enforcement officer if the officer believes the child is in immediate danger and removal is necessary for the child’s protection. 33 V.S.A. § 5301(2).

Emergency care order: After a child is removed, the State’s Attorney will contact the court and request an emergency care order. 33 V.S.A. § 5302(c). If the court determines that the child’s “continued residence in the home is contrary to the child’s welfare,” the court may issue an emergency order transferring temporary custody of the child to DCF pending a temporary care hearing. If, however, the court determines that the child can safely remain in the home, the court can order the child to be returned to the home “subject to such conditions and limitations necessary and sufficient to protect the child.” 33 V.S.A. § 5305(c).

Temporary care hearing: Within 72 hours of the issuance of an emergency care order (transferring custody to DCF) or a conditional custody order (returning the child to the home subject to conditions), a temporary care hearing should be held. 33 V.S.A. § 5307(a). Upon finding that a return home would be contrary to the best interests of the child, the Court may consider various custody options and issue a temporary care order.

Merits hearing: A merits hearing must be held within 60 days of the date of the temporary care order (if child removed from parent’s custody). 33 V.S.A. § 5313(b). At the merits hearing, the State bears the burden of establishing that the child is in need of care and supervision.<sup>1</sup> If the court finds that the State has not met its burden of establishing that the child is in need of care and supervision, the petition will be dismissed and any orders vacated. If the court finds that the allegations in the petition are established, it shall order DCF to prepare a disposition case plan within 28 days and set the matter for a disposition hearing. 33 V.S.A. § 5315.

Disposition hearing: The next step in the CHINS process is for DCF to file a disposition plan, and for the court to conduct a hearing concerning that plan. At the conclusion of the hearing, the court decides the legal custody of the child, including whether the child should be returned to the parent(s), parental rights should be terminated, custody transferred to DCF, or other options. The court’s decision should be based on the “best interest of the child.” 33 V.S.A. § 5318(a).

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<sup>1</sup> 33 V.S.A. § 5102 defines a child in need of care and supervision as a child that has been abandoned or abused by the parent or guardian, is “without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being,” is beyond the control of the parent, or is habitually truant.

Permanency hearing: If the goal is reunification with a parent, a review hearing must be held within 60 days. 33 V.S.A. § 5320. An order transferring custody to DCF shall be subject to periodic review at a permanency hearing. 33 V.S.A. § 5321. At such a hearing the court shall consider “the best interests of the child” and weigh: 1) the interaction and interrelationship of the child with his or her parents, siblings, foster parents, and any other relevant person; 2) the child’s adjustment to his or her home, school, and community; 3) “the likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time;” and 4) whether the parent plays a constructive role in the child’s welfare. 33 V.S.A. § 5114.

Best interest standard is used in divorce proceedings: In divorce proceedings a best interests of the child standard governs. 15 V.S.A. § 665 states that a court shall make an order concerning parental rights and responsibilities, “guided by the best interests of the child,” and in doing so shall consider nine factors, including “the ability and disposition of each parent” to provide love and assure that the child’s material and developmental needs are met, the child’s adjustment, and the child’s relationship with the parent or with “any other person who may significantly affect the child.”