

OVERVIEW OF CHINS PROCEEDINGS

33 V.S.A. chapter 53:

Children in Need of Care or Supervision

House Committee on Health and
Human Services

2/2/2017

Definition of a child in need of care or supervision (33 V.S.A. §5102)

CHINS A: a child who has been abandoned or abused by the child's parent, guardian, or custodian

CHINS B: a child who is without proper parental care or subsistence, education, or medical care

CHINS C: a child who is beyond the control of parents, guardian, or custodian

CHINS D: a child who is habitually truant

Custody

33 V.S.A. § 5301

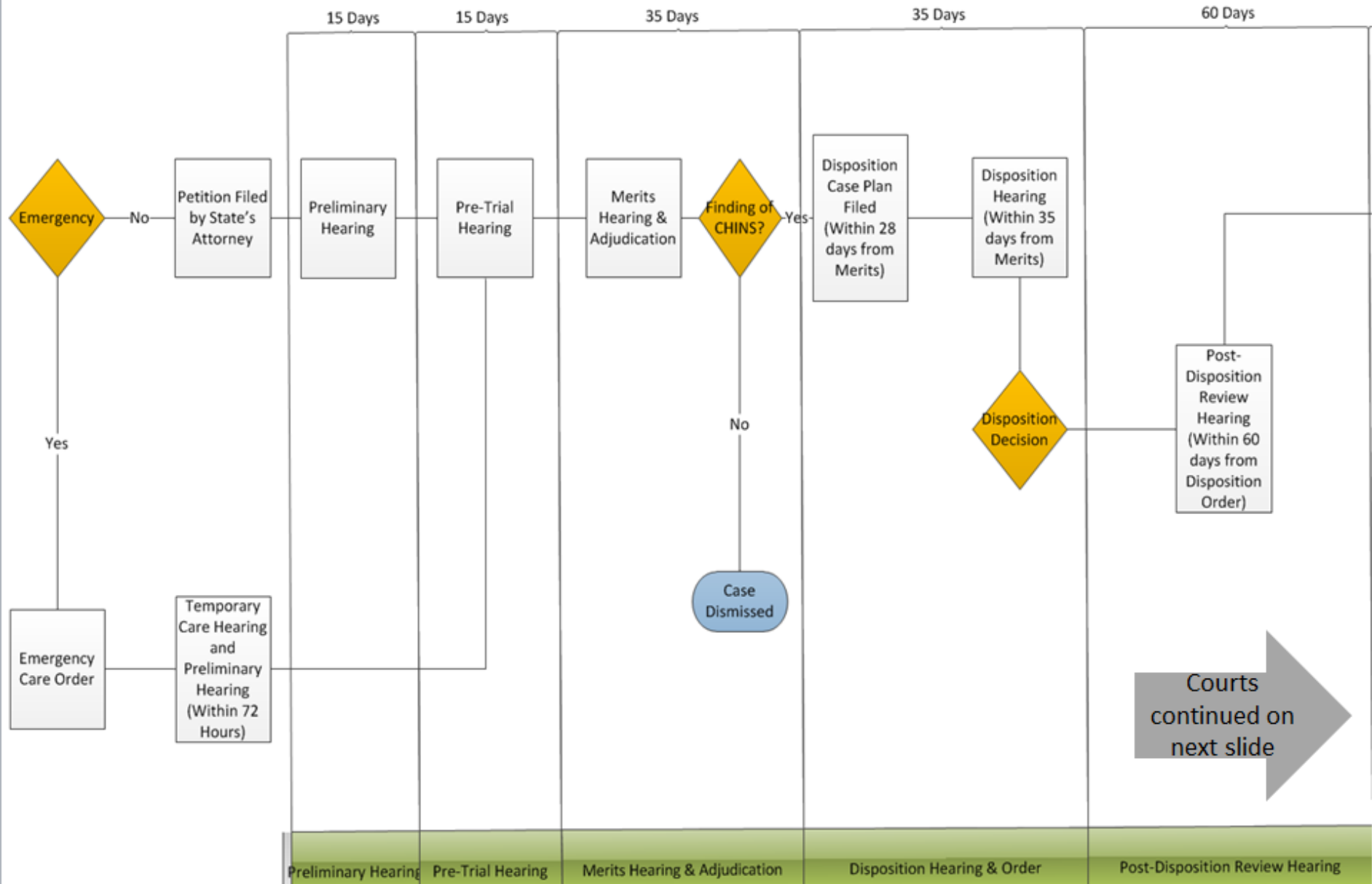
- Although juvenile proceedings are initiated by a "petition," in many cases the child is brought before the court before the petition is filed. This occurs when the child is taken into care but not immediately released to his/her parents, guardian, or custodian.
- Three circumstances under which a child may be taken into custody:
 - pursuant to an order of the juvenile court
 - by a law enforcement officer when the officer has reasonable grounds to believe a child is in immediate danger from his surroundings, and removal is necessary for the child's protection
 - by a law enforcement officer when the officer has reasonable grounds to believe that the child has run away

Procedure for Runaway Children

33 V.S.A. § 5303

- Officer who takes child into custody shall deliver child to parent/guardian or a shelter designated by DCF
- Upon delivery of child to shelter, the shelter shall notify child's parents/guardian
- Child may remain at shelter for no more than seven days
- After seven days, child shall be released to parent/guardian or an officer shall seek an ECO.

Courts



TPR process completed within 5 months

Appeal Process 4-6 Months | Adoption Process 3-6 Months

Permanency Hearing
(Must occur within 12 months of child entering state custody)

TPR Petition Filed?

Yes

TPR Status Conference

TPR Hearing

TPR Order

No

Parent/DCF Case Plan

- Custody Returned to Parent
- TPR
- Long Term Substitute Care

15 Days

30 Days

30 Days

30 days

Appeal Filed?

Yes

Appeal Process

TPR Upheld?

No

Parent/DCF Case Plan

- Second TPR
- Custody Returned to Parent

Yes

- Adoption
- Permanent Guardianship
- Long Term Substitute Care

No

TPR Petition Filed

TPR Conference

TPR Hearing

TPR Order Issued

Appeal Process & Adoption

Emergency Care Order (ECO)

33 V.S.A. § 5305

- Many juvenile court proceedings start with an emergency care hearing.
- When a child is taken into custody under 33 V.S.A. § 5301 and not immediately released, the court must issue an emergency care order.
- Emergency care hearings are usually held ex parte and sometimes conducted by the judge speaking to DCF over the phone.
- If it determines that continued residence in the home is contrary to the welfare of the child, it may issue ECO, transferring custody to DCF pending the next hearing.
- Court may deny the request for an ECO and issue a conditional custody order.

Temporary Care Hearing/ Preliminary Hearing

33 V.S.A. § 5307

- Must be held within 72 hours of ECO
- Purpose is to determine position of the parties on the petition
- Parties that are notified of hearing and must be present:
 - child, unless under 10, and his/her attorney
 - parent/guardian/custodian and his/her attorney
 - Guardian Ad Litem
 - DCF
 - State's Attorney

Temporary Care Order (TCO)

33 V.S.A. § 5308

- Court must return legal custody to parent or guardian unless it finds, by a preponderance of the evidence, that doing so would be contrary to the best interests of the child because:
 - Return could result in substantial danger to physical or mental health, welfare, or safety
 - Child or another child in household has been physically or sexually abused by parent/guardian/custodian, a member of the household, or a person known to parent/guardian/custodian
 - Child or another child in household is at substantial risk of physical or sexual abuse. Prima facie evidence that child at substantial risk:
 - Parent has actual notice that a person committed physical or sexual abuse of a child AND
 - Parent knowingly or recklessly allows child to be in presence of that person
 - Child or another child in household has been neglected and there is a substantial risk of harm to child
- Upon such a finding, court can order:
 - conditional custody to custodial parent/guardian, non custodial parent/guardian, relative, or person with significant relationship with the child, subject to court-imposed limitations and conditions, or
 - temporary custody to a noncustodial parent or relative, a person with a significant relationship with child, or the Commissioner

Transfer of legal custody?

- Court must make two findings in the temporary care order (TCO):
 - Remaining in the home is contrary to the best interest of the child
 - Reasonable efforts were made to prevent unnecessary removal from the home.
- If child is removed from custody of parent pursuant to a TCO, a merits hearing shall be held and adjudicated no later than 60 days from date the TCO is issued, except for good cause shown.

Pretrial Hearing

33 V.S.A. § 5313

- Shall be held within 15 days of the temporary care hearing/preliminary hearing.
- Pretrial motions and discovery requests must be made at or before a pretrial hearing, or, if there is no pretrial hearing, then at or before the merits hearing or within 28 days of the preliminary hearing, whichever occurs first.
- DCF records may be reviewed and photocopied pursuant to V.R.F.P. 1(d)(5). DCF may request a protective order or object to disclosure of a specific record.

Merits Hearing

33 V.S.A. § 5315

- If TCO in place, merits hearing shall be adjudicated within 60 days from date TCO issued. 33 V.S.A. § 5313(b).
- The child who is the subject of the hearing must be present in court. 33 V.S.A. § 5229(a).
- State has burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. The court may make findings by clear and convincing evidence.
- Parties may stipulate to or contest the merits of the petition. If contested, all parties may present evidence.
- Rules of Evidence apply, so any hearsay must clear the 804a hurdle to be admissible.

Merits stipulation

33 VSA 5315a

Court may approve a written stipulation on the merits if:

- Parties agree to the terms, and
- Court determines that:
 - the agreement is voluntary,
 - parties understand the nature of the allegation, and
 - parties understand the rights waived

Disposition Case Plan

33 V.S.A. § 5316

- Must be filed 7 days prior to the scheduled disposition hearing
- There is a requirement under 33 V.S.A. § 5121 that DCF actively engage families and solicit and integrate into the case plan the input of the child, the child's family, relatives, and other persons with a significant relationship to the child.
- Disposition case plan shall include:
 - permanency goal
 - assessment of child's needs
 - description of child's situation
 - assessment of family's risks and strengths
 - statement of changes family needs to make
 - recommendation for legal custody of child
 - plan of services
 - request for child support
 - notice to parents that failure to comply with plan could result in TPR

Disposition Hearing

33 V.S.A. § 5317

- When court makes a CHINS finding at the merits hearing, the disposition hearing shall be within 35 days from finding of CHINS
- Purpose is to achieve a goal determined by DCF in the disposition case plan and approved by the court.
- Standards of proof:
 - on the issue of termination, standard is clear and convincing evidence
 - on all other issues, standard is preponderance of the evidence

Postdisposition Review Hearing

33 V.S.A. § 5320

- Court shall hold review hearing within 60 days of the date of the disposition order.
- Purpose of hearing is to monitor progress under disposition case plan and review the parent/child contact.
- Foster parent, preadoptive parent, or relative caregiver shall have opportunity to be heard at the hearing.

Duration of conditional custody orders postdisposition (33 VSA 5320a)

- Whenever the court issues a CCO to a parent at or following disposition, the presumptive duration shall be no more than 6 months
- Any party may file a request to extend the order for a period of time not to exceed 6 months.
- If no one files the motion to extend, court vacates the conditions and transfer custody to the parent without conditions

Permanency Hearing

33 V.S.A. § 5321

- An order transferring custody or parental rights to the Department shall be subject to periodic review at a permanency hearing. Must be held within 12 months of date legal custody of child was transferred, and no less than every 12 months thereafter.
- Purpose is for court to determine the permanency goal for the child and adopt a case plan to achieve permanency goal.
- From the date custody is transferred, court can hold permanency review hearings:
 - every three months if child is 0-3
 - every six months if child is 3-6
 - at least every 12 months if child is 6+
- Foster parent, preadoptive parent, or relative caregiver shall have opportunity to be heard at any permanency hearing.
- Reasonable efforts: if a party files a petition, court shall hold a hearing within 30 days of filing to determine whether DCF has made reasonable efforts to finalize the permanency plan.

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TPR
Petition
Filed?

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TPR Status
Conference

TPR Hearing

TPR Order

Appeal
Filed?

Yes

Appeal
Process

TPR
Upheld?

No

Parent/DCF
Case Plan

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Custody
Returned to
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