

Drivers of Custody Rates in Vermont

Policy Brief for Vermont Courts

2021

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The Vermont State General Assembly contracted with the University of Vermont (UVM) to investigate and report on the factors that have contributed to the number of children in state custody for their protection and safety. Specifically, UVM was asked to consider the influence of state policies, programs and practices, and resources that may contribute to, or conversely prevent, Vermont children being placed in foster care.

Vermont's judiciary play an important role in the process of determining whether a child is placed in foster care as well as the terms of a child's placement. The purpose of this policy brief is to summarize the study's findings and implications as they apply to Vermont courts.¹

Systems-level Factors Contributing to Foster Care Placement Rates in Vermont

The decision to place a child in foster care is influenced by factors that are and are not policy malleable.

Consistent with existing research and evidence in other states, we find that **contextual factors outside of policymakers control** impact whether a child is placed in foster care, including: (a) **child age**; (b) **household economic circumstances**; and (c) **likelihood of immediate threat or danger to a child**.

We also identified other **aspects of state policy, programs and practices**, and resources that impact decisions to place a child in foster care. Specifically:

- **Data systems that support field personnel's decision making are inadequate.** Vermont's child welfare data systems do not allow court and child welfare professionals to meaningfully measure and track child safety, permanency, or well-being. Data are inadequate to support data-informed practices recognized as effective in the field and create opportunities for individual bias in decisions to place a child.
- **Field personnel do not uniformly apply protocols for safety and risk assessment.** Vermont, like many other states, requires child welfare professionals to systematically assess child safety and risk using the *Structured Decision Making (SDM)* tool. This tool is designed to guide decision making related to child welfare practice. The study found that child welfare personnel do not uniformly or consistently apply this tool in their practice, especially when making decisions related to child custody. Additionally, the study finds that child welfare caseworkers' background, training, and potential bias can influence removal decisions.

Strolin-Goltzman, J., Holbrook, H., & Kolbe, T. (2021). Drivers of Custody Rates in Vermont Final Report. Burlington, VT: *University of Vermont*.

- **Access to evidence-informed, community-based services is uneven across the state.** Not all Vermont families with children have similar access to evidence-informed and community-based services that provide the types of supports and services struggling families need to stay intact. Such services include evidence-based mental health treatment, family counseling, childcare, parenting supports, and legal representation and advocacy that assist families both before and during times of crisis. Access to these supports and services varies considerably among Vermont communities, with places with low-population density and higher proportions of economically disadvantaged households at particular risk of not having access to these essential services.
- **Vermont has not yet maximized federal dollars to improve statewide practice.** The Federal Families First Prevention Act (FFPSA; 2018) intends for Title IV-E dollars to be invested in programs that support families *before* children are removed from their home. However, this funding can only be used to pay for evidence-based practices identified on a US Department of Health and Human Services' registry. Currently, it is unclear the extent to which evidence-based practices are employed by community partners, and there lacks consistent evidence that the opportunity to use federal funding to transition to using evidence-based approaches is being maximized.

Implications & Considerations for Vermont's Court System

The study's findings have several identifiable implications for Vermont's court system, as well as offer opportunities for future consideration and policy development. Specifically, the Vermont courts should:

- **Request and incorporate documented evidence of immediate danger prior to making custody decisions.** The case studies undertaken for this study revealed that children frequently entered custody before an updated SDM safety assessment was completed. The SDM was designed to be used prior to custody decisions, particularly whether safety concerns and threats to imminent danger for a child can be adequately mitigated by implementing a safety plan. Whether danger can be mitigated is a necessary consideration for the courts prior to placing a child in custody. Judges should request documented evidence of completed safety assessments (e.g., updated SDM) at the time they are asked to consider a child's case.

The study shows that incorporating documented evidence of immediate danger is not standard practice in judicial proceedings for child custody cases. As noted above, whether danger can be mitigated is a necessary consideration for the courts prior to placing a child in custody. Time pressure and emergency situations may place pressure on the process to skip this step, or the data may not have been requested by the courts at the time of adjudication.

Establishing a shared database between FSD and the courts where this information can be easily tracked and accessed by the courts could encourage the use of safety assessments in decision making and may also streamline access to available information. For instance,

comprehensive data systems (e.g., Casenotes) would allow the completed safety assessment data to be stored electronically and easily retrieved by both FSD and court personnel.

Judges may also benefit from additional training on the SDM tool and how this tool may best be used in evidence-informed determinations that are aligned with best practices for collaborative child welfare approaches to support families.

- **Consider the match between family needs and the services they have received.** The study found evidence that not all families have received the range of possible evidence-based services that might mitigate the risk of immediate danger and harm to a child. Judges may not always know what constitutes the appropriate constellation of services and supports needed by a family. Judges should be encouraged to inquire about what evidence has been collected to demonstrate that a family has received services/interventions, and whether these services are evidence-based or shown to be effective with other families.

Multidisciplinary representation that includes a licensed social worker and high-quality legal representation for families may also provide the courts with the additional knowledge and capacity to evaluate whether appropriate steps have been taken to mitigate risk.² This model has been successful at assisting the courts in adjudication and as a result reducing custody and disproportionality in custody, while increasing family engagement in services.

² This recommendation was also highlighted by Deal & Robinson (2021) in the CHINS report that discusses how Title IV-E prevention funds can be used for multidisciplinary representation.