


Juvenile Judicial Proceedings: Delinquencies and Youthful Offenders

Benjamin E. Novogroski, Esq.

Office of Legislative Counsel

January 15, 2025

Glossary of Terms

- **Child** – includes an individual who is alleged to have committed or committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age, unless otherwise provided in 33 V.S.A. chapters 52 or 52A
- **Court** – the Family Division of the Superior Court
- **Delinquent Act** – an act designated a crime under the laws of this State or of another state if the act occurred in another state, or under federal law.
- **Party** – includes the child; the State’s Attorney; Commissioner for Children and Families; Commissioner of Corrections (Youthful Offender cases only); or other persons who are proper and necessary to the proceedings
- **Probation** – the legal status created by order of the court involving a violation of law whereby a delinquent child is subject to supervision by DCF under conditions specified by the court’s juvenile probation certificate and subject to return to and change of legal status by the court for violations of conditions of probation
- **Youth** – an individual who is the subject of a motion for youthful offender status or who has been granted youthful offender status
- **Youthful Offender** – a status that allows older youth with more serious offenses a path to avoid criminal sentencing by addressing the offense in family court

What is Juvenile Justice?

- State's policy proclaims that an effective juvenile justice system protects public safety; connects youths and young adults to age-appropriate services that reduce the risk of reoffense; and, when appropriate, shields youth from the adverse impact of a criminal record
- The system strives to use data-driven, evidence-based practices that offer a broad range of alternatives, such that the degree of intervention is commensurate with the risk of reoffense
- Purpose is to remove from children committing criminal acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation that ensure:
 - Balanced attention to the protection of the community;
 - Accountability to victims and the community for offenses; and
 - The development of competencies to enable children to become responsible and productive members of the community

Juvenile Jurisdiction Generally

- Family Division generally has exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child
- Generally, the court's jurisdiction and any DCF supervision starts at 10 years of age and does not extend beyond a child's 18th birthday
- However, jurisdiction and supervision of a child may be extended in the following circumstances:
 - to 19.5 years old if child was 16 or 17 at time of offense; or
 - to 20.5 years old if child was 18 at time of offense
- Jurisdiction over youthful offenders cannot extend beyond youth's 22nd birthday
- Juvenile proceedings are generally confidential

Delinquency Procedure



- Law Enforcement Encounter
- Emergency Care Order
- Temporary Care Hearing
- Filing of Delinquency Petition
- Preliminary Hearing
- Risk and Needs Screening
- Pre-Trial Hearing
- Merits Hearing
- Disposition Case Plan
- Disposition Hearing
- Disposition Order

Law Enforcement Encounter

- Citation

- Law enforcement officer has probable cause to believe that delinquent act occurred, and circumstances do not warrant taking the child into custody
- Law enforcement officer cites child to appear in Family Court and child is released
- Custodial parent, guardian, or custodian is also issued citation
- Citation and officer's probable cause affidavit filed with State's Attorney

- Custody

- Child can be arrested or taken into custody by court order
- Custodial parent, guardian, or custodian is immediately notified that child is in custody and child released to them unless child's immediate welfare, the protection of the community, or both, require continued removal from home
- Child can only remain in custody pending issuance of an emergency care order

Emergency Care Order

- Court may issue an emergency care order transferring temporary custody of a child to DCF pending a temporary care hearing.
- Request for Emergency Care Order
 - State's Attorney must immediately file request for an emergency care order or direct the immediate return of the child
 - If child taken into custody after hours, during a weekend, or during a holiday, the State's Attorney must contact a judge to request an emergency care order. If order is granted, the State's Attorney must file a supporting affidavit with the court the next business day
 - Law enforcement affidavit required; can be supplemented by DCF if it has knowledge of situation
 - Can be submitted ex parte if affidavit supports it
- Issuance of Emergency Care or Conditional Custody Order
 - Child can remain in DCF custody or conditional custody ordered if:
 - Probable cause that child committed delinquent act
 - Continued residence in home is contrary to child's welfare
 - Notice of order sent to custodial parent, guardian, custodian, and other parties, including reasonable efforts to notify non-custodial parent

Temporary Care Hearing

- Evidentiary hearing where court orders the child returned home *unless* it finds by a preponderance of the evidence that such a return is contrary to the welfare of the child because of any of the following:
 - Cannot be controlled at home and risk of harm to self or others;
 - Continued residence in home will not protect community because of serious and dangerous nature of the act child is alleged to have committed; or
 - Child's welfare is otherwise endangered
- Temporary care hearing must be held within 72 hours of issuance of emergency care order
 - State's Attorney files petition on or before the temporary care hearing
 - If no petition filed, previous orders are vacated
- Temporary care order
 - Conditional custody returning child home with conditions and limitations court deems necessary and sufficient to protect child and community (6-month presumptive duration)
 - Transfers custody to noncustodial parent or relative (next hearing scheduled in 6 months)
 - Transfers temporary custody to DCF Commissioner (initial case plan must be filed within 60 days from home removal)
 - Child can only be held at a secure facility upon court order and recommendation by DCF that placement is necessary due to risk of injury to person or property

Risk and Needs Screening

- Prior to the filing of a delinquency petition, a child has the option to engage in a risk and needs screening based on a subset of questions from the Youth Assessment and Screening Instrument (YASI)
- The screening assesses the child's risk to reoffend and is conducted by DCF or a community-based provider
- Results are provided to the State's Attorney and child's attorney.
- Results assist the State's Attorney in determining whether to file a delinquency petition or to make a direct referral to diversion
- Children presenting a low-to-moderate risk to reoffend are referred to diversion unless the State's Attorney states on the record why such a referral will not serve the ends of justice



Delinquency Petition

- A concise statement of facts supporting the conclusion that the child has committed a delinquent act, together with a statement that is in the best interests of the child that proceedings be brought
 - Akin to a charging document, like an information or indictment, in a criminal case
- Must be accompanied by a law enforcement officer's affidavit
- When notice of preliminary hearing provided by citation, State's Attorney must file petition at least 10 business days before the hearing
- Court provides copy to DCF and it is made available to all parties required to receive notice by the State's Attorney
 - Must be done as soon as possible after filing and at least five business days prior to the date of the preliminary hearing

Preliminary Hearing

- Generally, the initial appearance in a delinquency case
 - Akin to an arraignment in a criminal case
- Failure to appear at hearing may lead issuance of a summons to appear, order for child to be brought to court, or warrant for a party to appear
- If child held in custody prior to hearing, the preliminary hearing is held at the same time as the temporary care hearing
 - Expedited timelines for merits and disposition hearings when child held in a secure facility
- Counsel is assigned to child prior to hearing
- Guardian ad litem (GAL) is assigned at hearing
- A denial of the allegations of the petition is entered unless the child, after consulting with counsel and GAL, the child enters an admission. If admission entered, the court may proceed directly to disposition if the parties agree

Pre-Trial and Merits Hearings

A detailed stone sculpture of Lady Justice, the personification of the goddess of justice, is positioned on the roofline of a classical building. She is depicted seated, holding a pair of scales in her left hand and a sword in her right. The background shows the ornate architectural details of the building's facade, including columns and decorative carvings.

- Pre-trial hearing
 - Scheduled at the preliminary hearing and must be held within 15 days
 - If no admission or dismissal of the petition by the pre-trial hearing, the court sets the matter for a merits hearing
- Merits hearing (a.k.a. the trial)
 - Must be held and all merits adjudicated no later than 60 days of the preliminary hearing unless good cause shown
 - If child submits an admission, the court must engage in a colloquy to address the child personally in open court. This is a set of questions aimed to ensure that the admission is voluntary, understood by the child, and that a factual basis exists for the delinquent act
 - If merits contested, the court hears evidence and make findings on the record
 - State has burden to prove the delinquent act beyond a reasonable doubt
 - If State fails to meet burden, the petition is dismissed and all custody orders are vacated
 - Court may proceed right to disposition hearing if the parties agree to the disposition case plan

Disposition Case Plan

- The case plan includes:
 - an assessment of the child's medical, social, educational, and vocational needs
 - an assessment of the impact of the delinquent act on the victim and community, including a victim statement, if possible
 - a description of the child's home, school, community, and current living situation
 - an assessment of the child's and family's strengths and risk factors
 - the proposed conditions of juvenile probation
 - the plan of services and responsibilities of the child and other parties, including the services required for successful completion of probation
 - if child is in custody of DCF, the permanency goal of the child and how it is achieved (reunification, adoption, guardianship, or other goals)
 - may also include recommendations for parent-child contact
 - request for child support if child is in DCF custody or DCF recommends custody transfer
 - psychosexual evaluation to determine appropriate probation conditions if clinically indicated and child charged with a sex-related crime
- Case plan cannot be used or referred to as evidence prior to a finding of delinquency

Disposition Hearing

- Hearing to determine the disposition of a case where a child was found delinquent
 - Akin to sentencing hearing in criminal case
- Procedure
 - Held no later than 35 days after finding that child is delinquent
 - If disposition is contested, evidence can be presented
 - Hearsay permitted; reports permitted, and authors of reports can be questioned but underlying sources of confidential information are not disclosed
 - If termination of parental rights is part of disposition, termination must be supported by clear and convincing evidence; other issues standard of proof is preponderance of the evidence
 - If termination of parental rights and custody transfer to DCF is sought, court considers the best interests of the child pursuant to 33 V.S.A. § 5114

Disposition Order

- Disposition order aims to achieve the statutory goals of providing for:
 - the child's supervision, care, and rehabilitation;
 - the protection of community;
 - accountability to victims and community for offenses committed; and
 - the development of competencies to enable child to become responsible and productive member of society
- Several options at the court's disposal:
 - Place child on juvenile probation under DCF supervision;
 - Custody given to a custodial parent, guardian, or custodian
 - May have conditions and limitations, including 6-month protective supervision, which are subject to review pursuant to 33 V.S.A. § 5320
 - Custody transferred to noncustodial parent, relative, or person with significant connection to child
 - Subject to same conditions and limitations noted above
 - Custody transferred to DCF
 - Terminate parental rights and transfer custody and guardianship to DCF permitting adoption
 - Issue permanent guardianship order
 - Referral to community-based provider, like CJC or BARJ
 - Child returned for disposition hearing if provider declines referral or child fails programming

Juvenile Probation

- Purpose of juvenile probation is to ensure to the greatest extent reasonably possible that the juvenile be provided with a program of treatment, training, and rehabilitation consistent with the protection of the public interest
- Court issues juvenile probation certificate containing probation conditions and must be signed by juvenile and custodial parent, guardian, or custodian after it is fully explained and consequences of probation violation outlined
 - Not invalidated if juvenile fails to sign
- Probation conditions may include:
 - Community service
 - Restitution or reparation to the victim
 - Competency programming
 - Prohibit purchase or possession of weapons or ammo
 - Report to probation officer, visits by probation officer, inquiries by probation officer
 - Reside at home or other court-specified location
 - Attend/reside at facilities designed for educational or vocational facility or a juvenile facility
 - Faithfully work or pursue vocational training
 - Medical, psychiatric, mental health, or substance abuse treatment or counseling
 - Any other conditions reasonably related to rehabilitation

Probation Violations

- Court, State's Attorney, or DCF probation officer have discretion to enforce violation of probation
- Formal violation established when juvenile is found by court to have violated probation, another delinquency is adjudicated, or is convicted of a crime
- Probation violation procedure (similar to emergency care order/temporary care hearing)
 - Court may issue summons to appear or order apprehension and placement in a facility
 - Probation officer may apprehend probationer or authorize law enforcement to do so by providing a written statement setting forth violation
 - Previolation hearing conducted the next business day (probable cause hearing)
 - May present evidence and witnesses
 - Violation hearing (evidentiary hearing)
 - held at earliest possible time if juvenile is in DCF custody
 - Notice sent to juvenile and adult signatory of probation certificate
 - Right to counsel
 - Violation must be established by preponderance of the evidence
- Probation violation disposition
 - Modify probation conditions or order any disposition alternatives pursuant to 33 V.S.A. § 5232

Youthful Offender Differences

Similar to delinquency procedure with some key differences:

- Risk and needs screening is required to be considered for youthful offender status prior to status hearing and within 15 days of screening being offered
- Any bail conditions set by criminal court stay in effect unless family court takes jurisdiction
- Youthful offender status hearing held within 60 days of transfer from criminal division
- Any custody transfer orders terminate at youth's 18th birthday
- Both DCF and DOC are responsible for disposition case plan supervision but youthful offender placed in juvenile probation
- Probation violations can lead to modification or revocation of youthful offender status and may be joined with a violation of probation hearing
 - DCF or DOC may detain a youthful offender in an adult facility if 18 years of age or older for probation violations
 - Supervision can be transferred to DOC and include electronic monitoring
 - If YO status revoked, Criminal Division must enter a guilty conviction, hold a sentencing hearing, and impose a sentence
- If youth is on probation as a YO prior to age 18, the Family Division must review the case to determine if the court should retain jurisdiction upon attaining 18 years of age
 - Can extend jurisdiction to 22 or terminate the disposition order, discharge the youth, and dismiss case

Questions?

