

University of Nevada, Reno

**When Can I Go Home? The Impact of Continuances
on Rates and Timing of Reunification in Vermont's
Child Abuse and Neglect Dockets**

A thesis submitted in partial fulfillment of the
requirements for the degree of Master of Judicial
Studies in Judicial Studies

by

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THE GRADUATE SCHOOL

We recommend that the thesis prepared under our
supervision by

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the degree of

MASTER OF JUDICIAL STUDIES

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ABSTRACT

This thesis explores whether continuances of juvenile court hearings unreasonably extend the time that children remain in substitute care before returning home, being adopted or achieving permanency otherwise. When children are removed from their home because they cannot safely remain there, the court process often dictates if, and when they will be reunified with their families or find new, permanent homes. Delays in court proceedings can, therefore, delay this resolution. Myriad causes of delays include overloaded dockets, lack of community resources, overburdened family services workers, attorney scheduling conflicts, inability to locate or even identify parents and many others. Some of these factors are beyond the control of the court system. Others are not.

In many cases, judges are called upon to exercise discretion in either granting or denying a request for a continuance. What may seem like a trivial decision, particularly considering the many other decisions being made every day, may very well have a profound impact on the life of a child. Some continuances are necessary; others are not. It must be determined whether the delay is acceptable because of a better outcome such as greater assurances that the child will remain safely in the home.

Each year between 2011 and 2015, there were, on average, approximately 720 children removed from their parents or guardians' custody in Vermont. I randomly selected 100 cases for each of the five years weighted by county. Data collected from these cases include the age of the child at the time of removal, the number of

continuances granted, the length of each continuance , the reasons for the continuances, the types of hearings continued, the disposition of the case and the length of time from removal to permanency. Using both quantitative and content analyses, patterns were sought in comparing time in substitute care and factoring in the number of continuances being mindful that the age of the child may have a confounding impact on trends and being mindful of the reason for the continuance and the type of hearing continued. It was expected that a correlation would be found between the number of continuances and the length of time that a child remains in substitute care. Indeed, such a correlation does exist although no patterns emerged to suggest that certain hearing types or reasons for continuances resulted in more time in substitute care than others.

The findings of the study indicate that there is room for improvement in avoiding delays in Vermont's juvenile court process. Even where all parties jointly request a continuance, judges must be vigilant in guarding against avoidable delays as often a continuance believed to be necessary to advance a more swift reunification (such as parties working toward a settlement which would obviate the need for a contentious hearing) simply postpones the hearing rather than eliminate it. Where there were no continuances, children in the study remained out of the home an average of 273.5 days. Where there was one continuance, the average was 510 days. Awareness of these statistics by attorneys, family services workers, guardians ad litem, court staff and, most especially, judges is critical to ensuring timely permanency for all children. This thesis is

intended to bring to the attention of the child-welfare and court systems that delays in court proceedings correlate to significant additional time in substitute care.

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I spent the first decade of my legal career working first for the Chittenden County Public Defender’s office, where I represented indigent criminal defendants as well as children and parents in juvenile cases, and then the Vermont Attorney General’s office, where I represented the Vermont Department for Children and Families in

juvenile cases. In those capacities, I had the extraordinary privilege to appear before some of Vermont's most compassionate, intelligent judges who have a passion for juvenile court. They include Amy Davenport, Walter Morris, James Crucitti, Dean Pineles and Tom Devine. They taught me the importance of treating everyone in the courtroom, especially children and parents, with patience, dignity and respect, always while staying true to the law. A special thank you to Judge Davenport. She was the first juvenile court judge I appeared before, emphasizing the critical nature of the work. She also provided me with the opportunity that I've enjoyed over the last eight years when she appointed me as the state's fifth-ever Judicial Bureau Hearing Officer.

Vermont's Chief Superior Judge, Brian Grearson, has supported my pursuit of the graduate degree in many ways. His reliance on me to cover juvenile and other Superior Court dockets has provided firsthand experience that informed the analyses and conclusions outlined in this thesis. He supported my absences from Vermont for one or two weeks at a time and, when funds were available, approved financial assistance toward the considerable expenses associated with taking classes 3,000 miles away.

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I. INTRODUCTION

This happens almost every week somewhere in Vermont: a child abuse/neglect case has a merits hearing coming up where the State will need to prove that the child's needs were not being met by his parents. The parties file a stipulated motion to continue because they're working toward a settlement which would avoid the need to present evidence and they need just a little more time to iron out details of the agreement. It's an easy decision. The parties have a little more time to get things in order and the judge has some time to work on findings in other cases (the pile on her desk is about to the ceiling). Everyone wins, right? Wrong.

Nationally, well over 600,000 children are served by the foster care system every year.¹ The average (mean)² time in care for children nation-wide in FY2017 was 20.1 months.³ Vermont typically has over 800 victims of child abuse or neglect and just over 1,000 children placed in out-of-home care each year.⁴

In addition to the trauma suffered by child victims at the hands of the abusive or neglectful parent, guardian or custodian, removal from parental figures, even those who are abusive or neglectful, often creates an additional trauma for the child.⁵ The risk of trauma from removal is almost always, we assume, outweighed by the risk of leaving a child in an abusive or neglectful setting. This is the cornerstone of child welfare systems

¹ The Children's Bureau, U.S. Department of Health and Human Services, Adoption and Foster Care Analysis and Reporting System (AFCARS) Fiscal Year 2017 Report.

² Whenever the term "average" is used in this thesis, it refers to the mean.

³ AFCARS Fiscal Year 2017 Report, *supra*.

⁴ Child Welfare League of America, 2011-2019 Vermont's Children at a Glance Reports.

⁵ American Academy of Pediatrics' Committee on Early Childhood, Adoption and Dependent Care (2000), Developmental Issues for Young Children in Foster Care, *Pediatrics*, Volume 106, Number 5.

and the justification for state interference with the fundamental right to parent.⁶

Particularly for younger children, as the length of removal increases, so may the detrimental impact on the child's wellbeing.⁷

Passed by the United States Congress and effective on November 19, 1997, the Adoption and Safe Families Act of 1997 (ASFA)⁸ mandates that if a child is removed from his or her home for at least 15 of 22 consecutive months, that child should be freed for adoption absent a compelling reason for continuing the child in substitute care (foster care or another non-permanent living arrangement).⁹ Prior to ASFA's enactment, it was not at all uncommon for a child to spend many years in foster care without much concern on the part of the child welfare system, including the courts. Although ASFA has led to significant improvements in reunification rates, children still spend more time out of the home prior to reunification than is desirable even where great progress is being made by the family. Delays in juvenile court proceedings contribute to this as do other factors such as addiction, incarceration and lack of treatment resources. Each continuance of a hearing in a juvenile case where a child has been removed from the home may well result in the reunification of that child with his or her parents being delayed. At some point, the delays will result in the child never returning home.

⁶ *Santosky v. Kramer*, 455 U.S. 745 (1982); *Lassiter v. Department of Social Services of Durham County, N. C.*, 452 U.S. 18 (1981).

⁷ Developmental Issues for Young Children in Foster Care, *supra*.

⁸ Pub. L. 105-89.

⁹ 42 U.S.C. 675(5)(E).

If there exists a correlation between the number of continuances and the rates/timing of reunification, then the juvenile court can theoretically reunify children and families more quickly by adjusting practices to reduce the number of continuances. This assumes, of course, that other delays do not result from the reduction of continuances and that other factors in a case are not negatively impacted by the reduction in continuances. Equally important, perhaps, to the number of continuances are the reasons for the continuances. Failure to timely file required reports, lack of clarity in expectations and lack of preparedness are quite common but also avoidable. Other reasons such as lack of community resources for mental health, substance abuse or sex offender assessments or treatment are often unavoidable and can cause significant delays in the progress of a case.

II. RESEARCH QUESTIONS

What impact do continuances in juvenile cases in Vermont have on the rates and timing of reunification (or other permanency disposition such as adoption)? Can we improve permanency rates/timing simply by reducing the number of continuances granted in cases where a child has been removed from the home? Does the basis for the continuance dictate that some continuances are beneficial?

This thesis explores the correlation between continuances and rates/timing of reunification or the achievement of some other form of permanency. The testing involved the review of almost six-hundred cases sampled from throughout the State of Vermont over a five-year period from the beginning of 2011 through the end of 2015.

The research hopes to inform case management techniques that may be improved as well as other strategies to combat causes of delay.

III. PRIMER

a. Explanation of Terms

The following terms are used throughout the thesis for the sake of clarity and efficiency. They generally encompass other terms found in statute although these terms do not necessarily appear in statute or have the same meaning in statute as they do in this thesis.

CHINS- There are three broad categories of juvenile cases in Vermont: child in need of care or supervision (CHINS), delinquency and youthful offender.¹⁰ In each, a judge may remove a child from his or her parent(s) against the parent's wishes. Within the CHINS category there are four designations: abandoned or abused; without proper parental care (neglected); beyond the parent/guardian's control (unmanageable); and truant.¹¹ Delinquency is defined as an act designated as a crime.¹² Youthful offender is a status created by the Vermont Legislature where the "youth" (could be as old as 21) is subject to the jurisdiction of both the juvenile and criminal divisions but treated as a delinquent juvenile so long as he or she abides by probation conditions.¹³

¹⁰ See, generally, Part 4 of Title 33 of the Vermont Statutes Annotated, consisting of Chapters 51, 52, 52A and 53.

¹¹ 33 V.S.A. § 5102(3).

¹² 33 V.S.A. § 5102(9).

¹³ See 33 V.S.A., Chapter 52A.

It is uncommon for a child in a delinquency or youthful offender case to be removed from the home absent a companion CHINS case. When that does happen, the circumstances are generally so extraordinary that the removal tends to be for a very long time because significant out-of-home treatments or other services are needed. Thus, delinquency and youthful offender cases were not included in this study. Additionally, unmanageable cases are excluded from this study, again, because unmanageable youth tend to require significant services that keep them removed from their parents' custody for much longer than other children in need of care or supervision.¹⁴ They often remain out of the home for years regardless of how efficient or inefficient the court process might be. Thus, the data from those cases would likely skew the analysis. The study consequently focuses on abuse, neglect and truancy cases. For ease of reading, the remainder of the thesis will refer to abuse, neglect and truancy cases collectively as CHINS cases.

Continuance- A party may request a continuance of any type of hearing for any number of reasons. If granted, the hearing will not be held at the originally scheduled date and time but will be rescheduled. These requests must be made in writing unless made orally during a hearing.¹⁵ Written motions are easily tracked through the file review that was conducted here. Oral motions, on the other hand, may or may not be

¹⁴ Unmanageable cases constitute only 9.7% of all CHINS cases and only 5.2% of all juvenile cases filed around the time of this sample. Statistics from the Vermont Court Administrator's Office for Fiscal Years 2011 through 2015. In more recent years, the percentages constituted by unmanageable cases have gone down to 6.6% and 4% respectively. This is due in large part to a surge in the number of youthful offender cases being filed. Statistics from the Vermont Court Administrator's Office for Fiscal Years 2014 through 2018.

¹⁵ V.R.C.P. 7(b)(1) made applicable through V.R.F.P. 2(a)(1).

noted in the file. The court may also reschedule a hearing on its own initiative to resolve a scheduling conflict, because of illness or foul weather. Additionally, hearings may commence on the date scheduled but run out of time to conclude testimony and need to be scheduled for additional hearing time. As used in this thesis, “continuance” refers to any incident of a hearing being scheduled for a given date and not concluding on that date. There are exceptions as follow. Where a hearing is scheduled to take place over several days, whether or not those dates are consecutive, a continuance was not noted unless the hearing went beyond the last, originally scheduled date. Furthermore, there are circumstances where a continuance will unquestionably have no impact on the length of time that the case is pending or that a child remains away from his or her parents. An example of this is where there is a pre-trial conference scheduled to be held two weeks before the hearing on the merits and the pre-trial is continued for two days. This did not cause a delay in the merits hearing so it was not tracked as a continuance.

Disposition- Once a child has found to be CHINS, the court must issue a disposition order containing a permanency goal (see definition of permanency below) and a case plan designed to achieve that goal.¹⁶ The disposition is subject to an initial review after 60 days¹⁷ and then periodic review thereafter until permanency is achieved.¹⁸ Once approved by the court, the permanency goal and plan remain in effect

¹⁶ 33 V.S.A. §§ 5316-5318.

¹⁷ 33 V.S.A. § 5320.

¹⁸ 33 V.S.A. § 5321; 14 V.S.A. §§ 2631 and 2665.

until either the permanency goal is achieved or a party demonstrates a change in circumstances that requires a modification of that order to meet the child's best interests.¹⁹

Permanency- The Vermont Legislature has provided, in part, that the statutes setting out the juvenile court process:

shall be construed...to preserve the family and to separate a child from his or her parents only when necessary to protect the child from serious harm or in the interests of public safety; to ensure that safety and timely permanency for children are the paramount concerns in the administration and conduct of proceedings under the juvenile judicial proceedings chapters; to achieve the foregoing purposes, whenever possible, in a family environment, recognizing the importance of positive parent-child relationships to the well-being and development of children...²⁰

The Legislature has gone on to establish five distinct permanency goals for children who have been removed from their parents' custody. Those forms of permanency are: 1) unification/reunification with a parent, guardian or custodian;²¹ 2) adoption;²² 3) permanent guardianship (expected to continue for the duration of the child's minority);²³ 4) legal guardianship (not necessarily intended to be long-term);²⁴ and 5) another planned permanent living arrangement (APPLA) where the court finds "a compelling reason that it is not in the child's best interests to: (A) return home; (B) have residual parental rights terminated and be released for adoption; or (C) be placed with a

¹⁹ 33 V.S.A. §§ 5318(d), 5113 and 5114.

²⁰ 33 V.S.A. § 5101(a)(3)-(5).

²¹ 33 V.S.A. § 5321(a)(1).

²² 33 V.S.A. § 5321(a)(2).

²³ 33 V.S.A. § 5321(a)(3); 14 V.S.A. §§ 2661(4) and 2662.

²⁴ 33 V.S.A. § 5321(a)(4); 14 V.S.A., Chapter 111 generally.

fit and willing relative or legal guardian.”²⁵ As used in this thesis, “permanency” refers to all five of the goals set out above.

Removal order- There are several types of orders pursuant to which a child may be removed from his or her parents or guardians by the juvenile court. An *ex parte* emergency care order (ECO) may be issued transferring custody to the Vermont Department for Children and Families (DCF).²⁶ After a hearing with notice, the court may issue a temporary care order (TCO) in the form of

(1) a conditional custody order [(CCO)] returning or granting legal custody of the child to the custodial parent, guardian, custodian, noncustodial parent, relative, or a person with a significant relationship with the child, subject to such conditions and limitations as the court may deem necessary and sufficient; (2) an order transferring temporary legal custody of the child to a noncustodial parent or to a relative; (3) an order transferring temporary legal custody of the child to a person with a significant relationship with the child; or (4) an order transferring temporary legal custody of the child to [DCF].²⁷

As used in this thesis, “removal order” refers to any of the aforementioned orders, except for a conditional custody order to the child’s parent, whether that person was the custodial parent or a noncustodial parent at the time the petition was filed. It includes TCO’s transferring custody to DCF even if the child is placed with the parent for two reasons. First, because the TCO itself divests the parent of significant rights including:

(i) the right to routine daily care and control of the child and to determine where and with whom the child shall live; (ii) the authority to consent to major medical, psychiatric, and surgical treatment for a child; (iii) the

²⁵ 33 V.S.A. § 5321(a)(5).

²⁶ 33 V.S.A. § 5305(a).

²⁷ 33 V.S.A. § 5308(b).

responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care; [and] (iv) the authority to make decisions which concern the child and are of substantial legal significance, including the authority to consent to civil marriage and enlistment in the U.S. Armed Forces, and the authority to represent the child in legal actions.²⁸

Second, on a more practical level, it is impossible to determine when a child was placed with or removed from his or her parent using solely the review of court files. Such moves can and sometimes do occur daily.

The analysis does not distinguish between TCO's to DCF and CCO's to a family member. This is because the research conducted could not reasonably determine whether the nature of the custodial relationship fostered or inhibited reunification. While it may seem intuitive that placing a child with kin is more likely to lead to a faster and more successful reunification, that is hardly true all of the time and perhaps not even most of the time.

b. Illustration of Vermont's Juvenile Court Process

Juvenile cases in Vermont can be initiated either through an *ex parte* request for an emergency care order placing a child in state custody or through the filing of a juvenile petition and requesting a preliminary hearing to be set. After the initial court appearance, cases generally take one track as illustrated in Figure 1 below. The figure does not show status conferences which are often scheduled through the pendency of a

²⁸ 33 V.S.A. § 5102(16)(A).

case. It also does not depict motion hearings which can be held at any point in the process.

In almost all cases, a temporary care hearing will follow the issuance of an emergency care order or conditional care order that had been issued *ex parte*. These orders temporarily remove or abridge a parent's custody of his or her child.²⁹ The temporary care hearing must be held within 72 hours of that order.³⁰ At that hearing, the court determines if there is a reason why the child should not return to his parents' custody.³¹ Most of the time, the parties can reach an agreement as to custody at the temporary care hearing. Because of already burgeoning juvenile dockets and the fact that there is usually very little notice of a temporary care hearing, the court rarely schedules adequate time at the temporary care hearing for presenting evidence. Thus, the hearing is often commenced and continued where evidence is needed. This means that the child remains subject to the removal order for more than 72 hours without any party having an opportunity to present evidence. Given the lack of court time available, this delay is usually for many days or even weeks.

²⁹ See 33 V.S.A. § 5305.

³⁰ 33 V.S.A. § 5307(a).

³¹ See 33 V.S.A. § 5308.

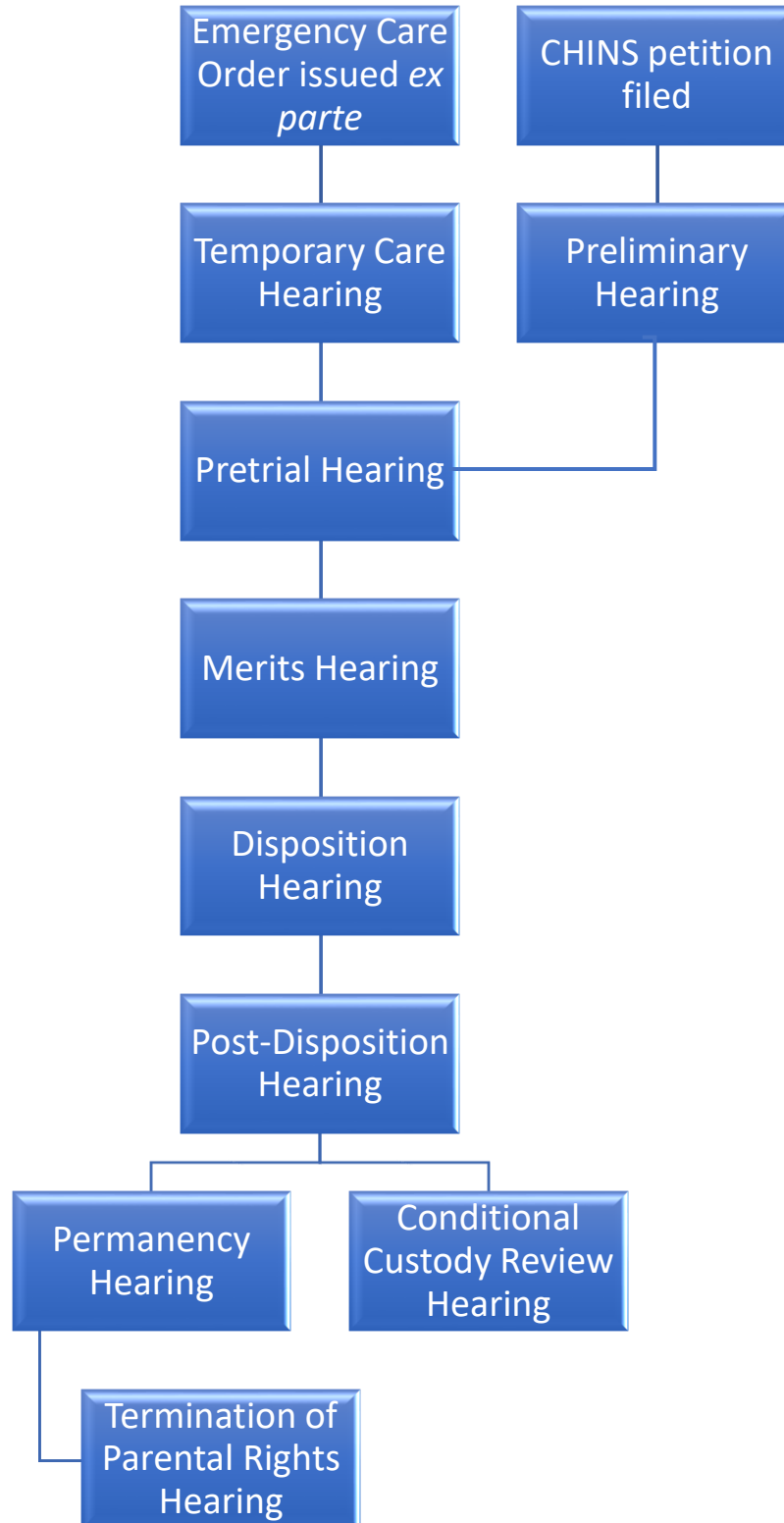


Fig. 1 Juvenile Court Process

If a child is removed from her parent's custody, the hearing on the merits is to be held within 60 days of the temporary custody order absent good cause for extending that time.³² If, after a merits hearing, the court determines that the State has not proven that the child is in need of care or supervision, the court must dismiss the petition and vacate any temporary custody orders.³³ The child returns home immediately.

A disposition hearing is scheduled after there is a finding that a child is in need of care or supervision. At least seven business days prior to the hearing, the Department for Children and Families (DCF) prepares a disposition case plan.³⁴ The plan sets out the basis of the CHINS finding, the family's history, its strengths and risk factors, a custody recommendation, a long-term goal for achieving permanency and a plan of services for achieving that goal.³⁵ The long-term goal options established by the Vermont Legislature are: "reunification with a custodial parent, guardian, or custodian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal."³⁶ At the disposition hearing, the court makes a custody determination and will either approve or reject the case plan goal and plan of services.³⁷ The court may not adopt a case plan that is neither proposed nor agreed upon by DCF. Rather, it "may reject the plan

³² 33 V.S.A. § 5313(b).

³³ 33 V.S.A. § 5315(f).

³⁴ 33 V.S.A. § 5316(a).

³⁵ See 33 V.S.A. § 5316(a).

³⁶ 33 V.S.A. § 5316(b)(1).

³⁷ See 33 V.S.A. § 5318.

proposed by the Department and order the Department to prepare and submit a revised plan for court approval.”³⁸ Up to this point, an order placing the child in the custody of DCF or another individual was temporary.³⁹ A disposition custody order, however, is considered long-term and the likelihood of reunification will depend upon the parents’ abilities to comply with the plans of service. While the merits hearing was a very narrowly focused, straight-forward proceeding, the disposition hearing involves a considerable breadth of issues and history.

Post-disposition, permanency and conditional custody review hearings are designed to be a check on the system. The post-disposition hearing is held within 60 days after the issuance of a disposition order expressly “for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact.”⁴⁰ When custody of a child is transferred to DCF through a disposition order, that transfer is indefinite but is subject to periodic court review vis-à-vis permanency hearings.⁴¹ As noted above, the court, in its disposition order, determines the permanency goal and adopts a case plan intended to achieve that goal. At permanency hearings, the court reviews the case plan and determines whether it continues to advance the goal.⁴² Conditional custody orders presumptively extend only to six months after their issuance or six months after the issuance of a disposition order, whichever occurs later.⁴³

³⁸ 33 V.S.A. § 5318(b).

³⁹ See 33 V.S.A. § 5308.

⁴⁰ 33 V.S.A. § 5320.

⁴¹ 33 V.S.A. § 5321.

⁴² *Id.*

⁴³ 33 V.S.A. § 5320a.

However, a conditional custody review hearing may be held on motion of a party or on the court's own motion to determine whether a six-month extension is warranted.⁴⁴ Regardless of the type of review hearing, these are essential opportunities for the court to see how a child is doing and to determine whether all parties (especially the parents and DCF) are doing what is expected to advance the established goal. The review hearing is almost always the only time that all parties will be assembled with counsel after the disposition order is issued. It is at these hearings where parties are formally put on notice whether progress toward the case plan goal is sufficient or insufficient and what other deficits may need to be overcome before reunification may occur. At this juncture, case plans may be modified to account for successes and challenges. Such reviews and adjustments are vital to addressing those issues that caused the removal in the first place.

Termination of parental rights (TPR) may be considered at the initial disposition stage or after a disposition order has been issued.⁴⁵ Like with any other case at disposition, the court has the authority to either grant the TPR petition, thereby approving the recommended case plan goal, or deny the petition, thereby rejecting the plan.⁴⁶ Most TPR petitions are ultimately granted either after a hearing or, more often, through a voluntary relinquishment of parental rights.⁴⁷

⁴⁴ Id.

⁴⁵ 33 V.S.A. § 5317(d).

⁴⁶ See 33 V.S.A. § 5318.

⁴⁷ For fiscal years 2011 through 2015, 90.6% of TPR petitions were granted either after an evidentiary hearing or a voluntary relinquishment. Statistics from the Vermont Court Administrator's Office for Fiscal Years 2011 through 2015.

Status conferences are important because they allow for court oversight and, practically speaking, because they provide the rare opportunity for all parties to communicate together and even for attorneys to meet with their clients.⁴⁸ Presumably, decisions are not being made at status conferences that change the custody status of the child, although sometimes parties will agree to such a change that the court is willing to order and in extraordinary circumstances the court may transfer custody at a status conference pending an evidentiary hearing to be scheduled for a later date.⁴⁹

IV. LITERATURE REVIEW

A number of studies have been conducted that examine the length of time that children are in substitute care, particularly in foster care. The reports resulting from those studies, many of which were undertaken by the Children's Bureau (Bureau), a division of the Administration for Children & Families under the U.S. Department of Health and Human Services, compare states to one another and track trends in each state over time. In a 2017 report to Congress,⁵⁰ summary data track changes over time for achieving what has been determined to be timely reunification under ASFA. In its

⁴⁸ Almost all parents and children in CHINS cases in Vermont are represented by public defenders or private attorneys who contract with the State to provide representation in CHINS cases where either there is no public defenders' office or where the public defender has a conflict of interest (perhaps because the public defender represents another party to the CHINS case). Many of these contract attorneys handle CHINS and criminal cases in multiple counties and are in court almost all day every day. This leaves little or no time for the attorneys to meet with these clients outside of court. Many of these attorneys do not have investigators or paralegals who are able to meet with the clients instead of the attorneys. While this is not an ideal practice, it is the reality of these types of cases not just in Vermont but nation-wide.

⁴⁹ 33 V.S.A. § 5305.

⁵⁰ Child Welfare Outcomes 2010–2014: Report to Congress.

June, 2011 issue brief, "Family Reunification: What the Evidence Shows," the Bureau instructs that much of the research ties successful reunification to four dimensions of family engagement: the relationship between the caseworker and the family, parent-child visitation, the involvement of foster parents and the involvement of a parent mentor or advocate.⁵¹ These and other studies and reports examine many external factors impacting on the length of removal.

Only a few studies have addressed the questions raised in this thesis. One such study was conducted by the Washington State Institute for Public Policy. It examined court cases where children had been removed from the home over a five-year period following the enactment of ASFA.⁵² The Institute looked at the number of days that children remained in substitute care, the number of hearings held in each case, the number of continuances and the timing of those continuances relative to the merits determination in the case. The study revealed that, between July 1, 1997 and December 31, 2002, the average dependency case lasted 608 days. The study also indicated that, on average, each continuance increased the length of a case by 31.8 days. That number increased to 36 days where a continuance occurred prior to a merits determination (fact-finding) and decreased to 28 days where the continuance post-dated merits. Each continuance also saw a correlation with an extension of the child's removal from his or her parents by 15.8 days. The study also distinguished

⁵¹ Child Welfare Information Gateway, June 2011 Issue Brief, Page 6.

⁵² How Do Court Continuances Influence the Time Children Spend in Foster Care? Washington State Institute for Public Policy, March 2004.

reunification-delay statistics by the number of hearings held in a case. Interestingly, the study concluded that where fewer than 3 hearings or more than 6 hearings were held in a case, no additional time in foster care was observed.⁵³

The Washington study does not distinguish between the various bases for continuances. While, at the end of the discussion, those bases may not factor into the steps necessary to reduce the length of time that children remain in substitute care, it is important to be mindful of those causes for continuances that are within and outside of the court's control. In addition, some continuances may benefit a child and, therefore, should not be avoided. For example, where a hearing is scheduled that requires the presence of the mother in order to give testimony, it should probably be continued if it conflicts with an intake appointment for necessary drug treatment for the mother and if the next available appointment is weeks or months away. Also, the presence of a key service provider may lead to a sounder resolution of the case, including an earlier achievement of permanency.

Another problem with relying solely upon the Washington study is that, given the significant difference in geographic and population sizes, there are likely differences that would make conclusions inapplicable. Examples of these differences are the sizes of the courts and the community resources and supports available in that jurisdiction as compared to Vermont.

⁵³ Id.

In contrast to the findings in the Washington study, a 2007 study of cases in the Juvenile Division of the Circuit Court for Baltimore City, Maryland concluded that continuances did not, in fact, delay permanency.⁵⁴ 89 cases were studied to determine if a “one-family, one-judge” (OFOJ) system⁵⁵ reduces the number of continuances and then if a reduction of continuances reduces the time to permanency.⁵⁶ The conclusion was that for every two additional judges involved in a case, the number of continuances increased by one.⁵⁷ Next, the study found that reducing the number of continuances reduced the time from case filing to adjudication.⁵⁸ However, the study also concluded that the number of continuances had no significant impact on the time to permanency.⁵⁹

A 2018 study for the State of Nevada analyzed a number of hearing quality factors that impact case outcomes including time to permanency.⁶⁰ This study, which included 128 hearings in 10 of Nevada’s 11 judicial districts, focused largely on the content of hearings themselves but also on overall case outcomes. Among the factors considered was the number of continuances. The study concluded that as the number of continuances increases, so does the time that it takes for children to achieve

⁵⁴ “One Family, One Judge, No Continuances,” Alicia Summers and Corey Shdaimah (2013).

⁵⁵ Summers and Shdaimah conclude that there are benefits to OFOJ even if it doesn’t reduce the time to permanency. I agree. In practice, 13 of the 14 counties in Vermont have a single judge assigned to the juvenile docket. The 14th (the largest in the state containing approximately one-quarter of the state’s residents), has two judges assigned to the juvenile docket but they divide the docket so that one primarily hears CHINS cases while the other hears primarily delinquency cases.

⁵⁶ Summers and Shdaimah, Pages 37-38.

⁵⁷ *Id.* at 41.

⁵⁸ *Id.* at 42.

⁵⁹ *Id.*

⁶⁰ “Nevada Hearing Quality Study: Examining the Quality of Child Welfare Court Hearing Practice in Nevada,” Alicia Summers and Sophia Gatowski (2018).

permanency.⁶¹ Time to achieve permanency was defined in that study as the time from when the child entered alternative care until the time that the case was closed.⁶² That definition differs slightly from the length of removal discussed in this thesis as cases in Vermont can remain open for months after a child has been reunified with his or her family.

A 2017 study for New York's Child Welfare Court Improvement Project predicts that each continuance increases the time to permanency by 120 days.⁶³ That study, which included observations of 238 court hearings and reviews of 232 cases, defined time to permanency as the time from when the petition was filed to when the court case was closed.⁶⁴

The studies discussed above do little to indicate what impact continuances have on rates and timing of reunification in Vermont. While the Washington, Nevada and New York studies reach the conclusion that one would expect, that continuances delay permanency, the Baltimore County study reaches the opposite conclusion. It is noteworthy that the Baltimore study is limited to one county. It can be assumed that the limited scope means that all cases were subject to a single set of policies and practices. By contrast, the Washington study involved every county in the state and, presumably, multiple sets of policies and a broad range of practices. The Nevada and

⁶¹ Id at 16.

⁶² Id at 15.

⁶³ Exploring the Relationship Between Hearing Quality and Case Outcomes in New York, Page 10, Alicia Summers (2017).

⁶⁴ Id at 7.

New York studies examined some but not all jurisdictional districts in those states. These studies also define time to permanency slightly differently than it is considered in Vermont.

Without knowing the extent of the impact that continuances in Vermont CHINS cases have on rates of reunification and lengths of removal, it is difficult to say whether efforts to avoid continuances will have a meaningful outcome in terms of child welfare or will simply help to promote judicial efficiency. If the impact is significant, then we need to know why continuances are granted before we can conclude that a reduction in the number of continuances will benefit children.

Summers and Shdaimah observed that many courts have only informal continuance policies often allowing for attorneys to control by agreement and the extending of “common courtesy.”⁶⁵ The National Council of Juvenile and Family Court Judges (NCJFCJ) advocates that courts adopt a no-continuance policy granting continuances only in extraordinary circumstances.⁶⁶ This is so, according to the NCJFCJ, even when the parties stipulate to a continuance.⁶⁷ Vermont courts have not adopted a no-continuance policy and this thesis does not urge the courts to do so.

As noted above, the previous studies of the impact that continuances have on removal lengths were limited in scope to three specific states and one county. It does not appear that a nationwide or regional study has been undertaken to answer the

⁶⁵ Summers and Shdaimah at 36 (citing (Knepper & Barton, 1996).

⁶⁶ Enhanced Resource Guidelines, Improving Court Practice in Child Abuse and Neglect Cases, 2016.

⁶⁷ Id. at 39.

questions asked here. The gap in the available research leaves us unable to determine what steps, if any, need to be taken in Vermont vis-à-vis continuances in order to achieve timely permanency for every child who has been removed from his or her home. I undertake here to examine the correlations between continuance practices in Vermont, delays in reunification and permanency outcomes other than reunification.

V. METHODOLOGY

a. Methodology

The methodology used for this research included both content analysis and quantitative analysis. The sample consists of CHINS cases in each of Vermont's fourteen counties, over a five-year time period, where a child has been removed from the home.

Vermont has recently tended to average approximately 800 abuse, neglect and truancy cases per year. Children are removed from their homes, on average, in approximately 720 of those cases. I therefore set out to review 100 cases per year stratified by county. This sample size was suggested by an expert in the area of this study.

b. Procedures

Sample Selection: The first step in the process was to identify all the CHINS cases opened during a defined time period where a child was removed. A five-year period from January 1, 2011 through December 31, 2015 yields an appropriate sample due to the number of cases (approximately 3,600 cases) and the fact that approximately 95% of those cases are now closed, indicating that some form of permanency has been

achieved. This sample size also avoids skewed data resulting from certain family services workers, attorneys, judges and differences in courts such as those that hear juvenile cases five days per week versus only two days per month. The identification of the total population of cases was done with a simple, two-question query of the statewide database. This mined for 1) CHINS cases with 2) removal. Removal is indicated in the database by the issuance of a Temporary Care Order. Juvenile cases in Vermont are confidential.⁶⁸ Thus, in order for me to be able to review cases, I entered into a Memorandum of Understanding (MOU) with the Chief Superior Judge and Court Administrator.⁶⁹ The MOU set out the parameters of the study and confirmed that no confidential information would be disclosed. This list of cases meeting the criteria was sent in an Excel spreadsheet. The year and county of filing were easily determined by the docket number.⁷⁰

From the total population culled with the two-query filter, I randomly selected 100 cases (n_1) per year. The process for selecting sample cases was as follows:

1. Determine the number of cases filed for each of the 14 counties for each of the five years (a_1 through a_{70});
2. Determine the number of cases statewide for each of the five years (b_1 through b_5);

⁶⁸ 33 V.S.A. § 5110.

⁶⁹ See Appendix I.

⁷⁰ In Vermont, docket numbers appear in the following format: 54-2-14 Cajv. The "Ca" indicates that the case was filed in Caledonia County. The "jv" indicates that it is a juvenile case. The "2-14" indicates that the case was filed in February of 2014. The "54" indicates that it was the 54th juvenile case filed in Caledonia County in 2014.

3. Divide 100 by b_1 , b_2 , b_3 , b_4 and b_5 to give multipliers c_1 through c_5 to have a sample size of approximately 100 cases per year weighted by county;
4. Multiply the number of cases per county by the appropriate multiplier. For example, a_1 through a_{14} are multiplied by c_1 while a_{15} through a_{28} are multiplied by c_2 . This determines the sample size for each county for each of the five years (d_1 through d_{70} with each set of 14 (d_1 through d_{14} , d_{15} through d_{28} , etc.) adding up to approximately 100). There is at least one sample case from each county;
5. Assign a sequential number to every case contained in the Excel file beginning with number 1;
6. Use an online random number generator to select the sample cases by county and year (d_1 through d_{70}) from the total pool (a_1 through a_{70}).

File Review: As I wanted to include at least one case from every county in every year, the random sample selected was 505 cases. Of those, twenty-five were discarded because either the child was not, in fact, removed from her parents' custody, the case was transferred to or from another state making it impossible to determine how long the child remained in substitute care or the same child was the subject of more than one randomly-selected case. I personally reviewed these cases for the independent and dependent variables set out below. In Vermont, each child is assigned his/her own case. In many instances, children were subject to multiple CHINS cases either within one county or through transfers between counties (e.g., if the family moved). My study

tracked the children across these multiple cases. The unit of observation was the individual court case and the unit of analysis was the individual child.

There are a number of independent variables and the hypothesis is that one of them, the number of continuances, has a significant impact on the two dependent variables, length of removal and whether the child is reunified with his or her parent(s), taking into consideration another independent variable, the reasons for those continuances, and possibly a third independent variable, the type of hearing continued. The independent variables are 1) the age of the child at the time of removal (IV1); 2) the number of continuances (IV2); 3) the types of hearings continued (IV3); and 4) reasons for the continuances (IV4). The dependent variables are 1) the amount of time from removal of the child to the achievement of permanency (DV1); and 2) the ultimate disposition of the case (child reunified, freed for adoption, etc.) (DV2).

Operationalizing the variables was done as follows:

1) The age of the child at the time of removal (IV1)- The docket sheet for each case was examined and the age (in months) noted. A ratio measurement was used for this variable. I include this independent variable as it is something that we must control for in analyzing the impact that continuances have on cases. For example, in my experience, older children with significant disabilities tend to spend much more time in substitute care (often many years), usually in long-term residential programs. Generally, the number of continuances will have little to no impact on that length of removal, particularly if the continuance is for a permanency hearing and not a hearing to determine whether the child will, for example, be leaving that residential program.

2) The number of continuances (IV2)- The docket sheet for each case was examined and the number of continuances granted was counted. A ratio measurement was used for this variable.

3) The types of hearings continued (IV3)- The docket sheet for each case was examined and the types of hearings were noted. The data was coded⁷¹ and a nominal measurement was used for this variable.

4) Reasons for the continuances (IV4)- The docket sheet for each case was examined and, where necessary, I looked at written motions to continue and at judges' hearing notes where the motion to continue was made orally. This data was also coded.⁷² A nominal measurement was used for this variable.

5) The time for achieving permanency (DV1)- The docket sheet for each case was examined and the number of days from removal until the achievement of permanency was counted.⁷³ A ratio measurement was used for this variable.

6) The disposition of the case (child reunified, freed for adoption or other) (DV2)- The docket sheet for each case was examined and the disposition was noted. This data was coded as well.⁷⁴ A nominal measurement was used for this variable.

The content analysis left some gaps such as the reasons for continuances in certain cases. While theoretically such gaps could be filled through interviews or other

⁷¹ See Appendix II.

⁷² Id.

⁷³ Twenty-six cases were still open with children still in the custody of someone other than a parent at the time of review. For those cases, a censure date of December 31, 2018 was used to calculate lengths of removal.

⁷⁴ See Appendix II.

types of surveys with attorneys, DCF's family services workers, court staff, judges or guardians ad litem, those participants are highly unlikely to remember even the more recent events given their respective caseloads and the passage of as much as seven years. Of those individuals, the only stakeholders that are likely to have maintained good notes about the reasons for continuances are the judges, whose notes are already being reviewed, and the attorneys.

Gaining access to the notes of attorneys for the parents and children is problematic for two reasons. First, they may well not have retained their files after such a long time since cases were closed. Second, their notes are subject to attorney-work-product and probably attorney-client privilege. Obtaining waivers of the privilege from those clients may prove impossible due to transiency and/or a general reluctance.

The State is represented in CHINS cases by either the county's State's Attorney⁷⁵ or by the Attorney General's office as that office represents DCF.⁷⁶ While the records of those attorneys might be helpful, there are the same retention issues as with the other attorneys and even potentially the same issues around attorney-work-product and attorney-client privilege, particularly for the Attorney General's office as they represent DCF.

The parents and children are another potential source of information to fill in the gaps left by the content analysis. However, given both the passage of time and the nature of the cases (as well as the age of the children at the time of the case), their

⁷⁵ 33 V.S.A. § 5309.

⁷⁶ 3 V.S.A. § 152.

recollection may not be at all reliable. This is not to say that their perspective is not important; it is. But this hypothesis requires a more objective perspective than parents or children will be able to provide.

Files of DCF's family services workers might contain information regarding the basis for a continuance request, but probably would not. Interviews with social workers would probably not be productive again because of the number of cases that they will have handled since the continuance was granted. The same is likely true for guardians ad litem.

In the few cases where it was not explicit, the surrounding events as noted in the docket sheets and files were able to provide enough context to make an educated guess as to the reason for the continuance.

Once the data was gathered, I could determine averages of how long children are removed for certain age ranges and numbers of continuances. I was also able to break this down by the reasons for the continuances, the types of hearings continued and the ultimate outcome of the case. Ratio measurements were used here. As there is a correlation between the number of continuances and the length of removal, I next examined, using a ratio measurement, whether the types of hearings continued or the reasons for the continuances impact the disposition.

VI. DISCUSSION

- a. Correlation Between the Number of Continuances and the Length of Removal

The study revealed that the more continuances granted in a juvenile case in Vermont, the longer the subject child will remain out of the home and at some point the child will never return home. This may seem intuitive, but at least one other study, the Baltimore study conducted by Summers and Shdaimah, reached a different conclusion. The question for juvenile court practitioners in Vermont is what, if anything, can be done to mitigate the problem. First, we must look to the actual impact. In other words, how much time in the custody of another does each continuance add and does it vary by age group? If the impact is significant, we must next look to the reasons for the continuances to determine if they are avoidable.

For the purposes of this study, children were divided into age groups based upon their age at the time of the first removal order. The age groups are: under one year of age; one through two-years old; three through five-years old; six through ten-years old; eleven through fourteen-years old; and fifteen through seventeen-years old. These age groups were determined based upon child development and the needs of children as they grow, bond with caregivers, enter school etc. The division of the groups was informed by my having worked in the juvenile court as an attorney and judge for more than fifteen years. Perhaps coincidentally, the early stages identified track loosely with Sigmund Freud's psychosexual stages of child development⁷⁷ and Jean Piaget's cognitive stages of child development.⁷⁸ The later stages are divided more by differences in levels of independence as children approach adulthood. Experts in the area of juvenile courts,

⁷⁷ Magill, F.N., 1998, *Psychology Basics, Volume 2*, Englewood Cliffs, NJ: Salem Press, Inc.

⁷⁸ Richmond, P.G., 1971, *An Introduction to Piaget*, New York, Basic Books, Inc.

including the thesis committee reviewing this work and several Vermont juvenile court judges, have opined that these age groups are appropriate for this study. See Figure 2 for a breakdown in the number of cases falling into each age group of the study.

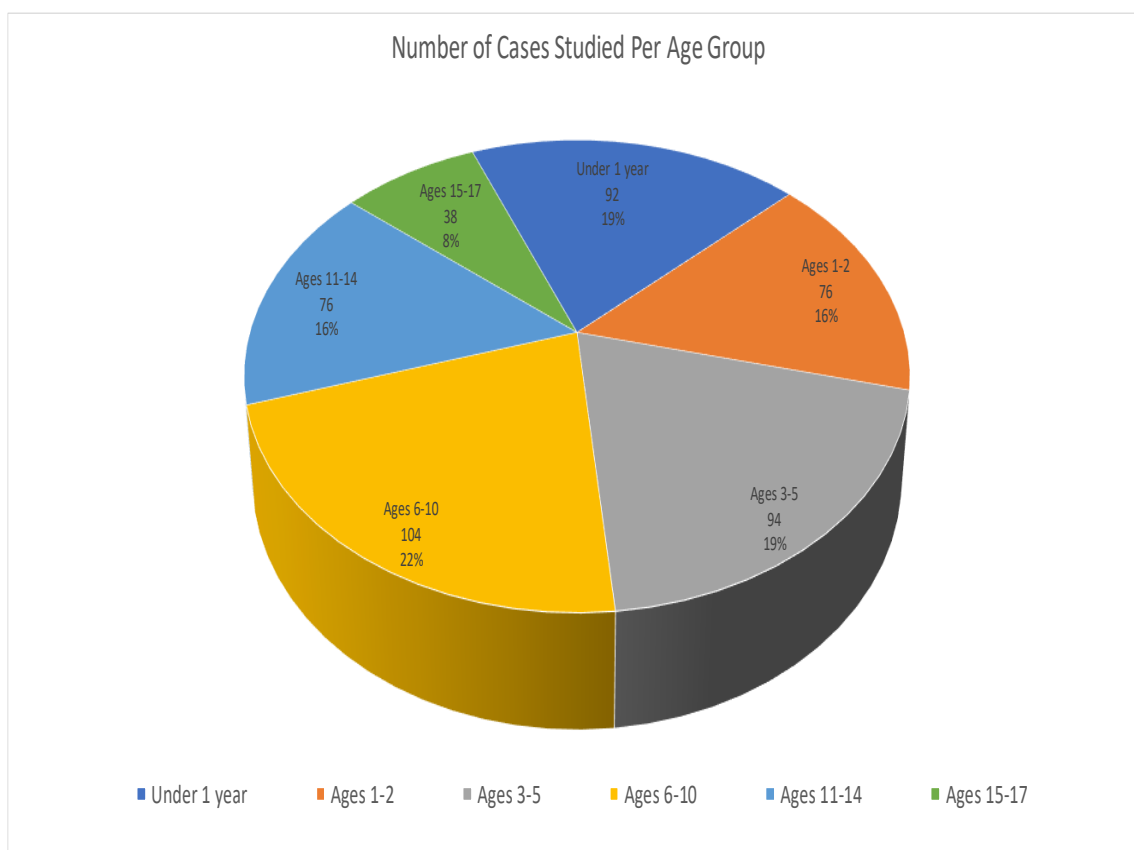


Fig. 2 Number of Cases Studied Per Age Group

The average length of time that a child will be removed from her parents' custody where there are no continuances is 273.5 days. CHINS cases averaged 2.53 continuances per case. On average, each continuance correlates with 94.5 days added

to the average length of the removal.⁷⁹ That increase is more indicative for children up to six years of age. The average for children under one year old is 86.7 days per continuance. For children one and two years of age, the average is 99.3 days per continuance. For children ages three through five, the average is 87.8 days per continuance. Continuances correlate with the greatest increase for children ages six through ten with an average of 215.4 days of removal added for each continuance.^{80,81}



Fig. 3 Average Removal Lengths Per Number of Continuances (through 8) by Age Group⁸²

⁷⁹ Compare this to the 2004 Washington study that concluded that each continuance in that state increased the length of time in foster care by only 15.8 days. “How Do Court Continuances Influence the Time Children Spend in Foster Care?” Washington State Institute for Public Policy, Page 5.

⁸⁰ It is noteworthy that of the 56 cases where six or more continuances were granted, 19 were for children ages six through ten. These figures suggest that there may be other factors to consider for this age group.

⁸¹ It is also important to note that there were two cases involving children in the six through ten age group who were removed from the home for seven years or more at the time of the study. This undoubtedly impacted the averages for that age group.

⁸² Where there was only one case in a given category (i.e., particular number of continuances for a particular age group), the case was not used if it seemed to be an aberration.

Additional continuances seem to have a lesser impact on the length of removal for older children with each continuance adding an average of 25.4 days for 11- through 14-year-olds and an average of 52.5 days for children ages fifteen through seventeen. See Figures 3 and 4. Thus, for children up to eleven years old, each continuance will mean that she will likely remain out of her parents' custody for an additional three to seven months.

AVERAGE REMOVAL LENGTHS (IN DAYS) BY AGE GROUP AND NUMBER OF CONTINUANCES						
Number of Continuances	Under 1	1-2 years	3-5 years	6-10 years	11-14 years	15-17 years
0	294	299	343	222	303	180
1	534	472	418	735	449	456
2	609	772	786	600	708	559
3	534	773	784	483	931	448
4	602	751	581	1057	715	526
5	743	838	1050	315	599	249*
6	814	720*	757	951	1003	495
7	1129*	1134*	1012	1094	481	
8		1093	1067*	1451		
9			1133			805*
10	977*			1119*		
11		1528*		2591	1812*	
12				1114*		
15				2716*		

Fig. 4 Average Removal Lengths Per Number of Continuances by Age Group (*denotes only one case in the sample).

The problem is even worse, however, than the statistics above may suggest. Those numbers assume a consistent increase with each continuance. That is not the case. In reality, the first two continuances correlate with an alarming increase in the length of a child's removal. As indicated above, the average length of removal without a continuance is 273.5 days. Where there was one continuance, the average length of removal increased by 237 days to a total of 510 days. Where there were two continuances, the average removal was 672 day, almost two years. After that, there is little change in the average length of removal until the sixth and subsequent continuances where the upward trend resumes at a significant degree: 224 days per continuance. Where there are eleven continuances, the average length of removal is 1977 days, almost five and half years. It is safe to say that where a child is removed for five years, the continuances are not a significant factor in the length of removal. Arguably, the challenges in those cases are so severe that continuances may have no impact at all on the length of removal.

After analyzing the data, we now know that children removed from their parents' custody remain in the custody of another for an average of nine months without any continuances, for seventeen months with one continuance and for twenty-two months with two continuances. ASFA mandates that a child removed from his parents' custody for fifteen of twenty-two consecutive months should presumably be freed for adoption. That means that we should expect that in most cases where at least one continuance is granted, there will be a TPR petition filed. Of the 480 cases subject to this study, 366 had at least one continuance. This means that, in theory, just over

75% of juvenile cases should see a TPR petition being filed. That is not the case nor would we reasonably expect for that to be the case. In fact, only about 26% of CHINS cases in Vermont result in a TPR petition being filed.⁸³

As indicated above, there is an expectation of TPR where a child has been removed for fifteen of twenty-two consecutive months. Not surprisingly, as the number of continuances increases, so does the likelihood that the child will not be reunified with his parents. See Figure 5. Of the cases studied, ten had eight or more continuances and had been disposed of at the time of review. Of those ten cases, only one child was reunified with parents. Seven cases resulted in TPR, one in a permanent guardianship and one child turned 18 before any other form of permanency could be achieved. See Figure 6.

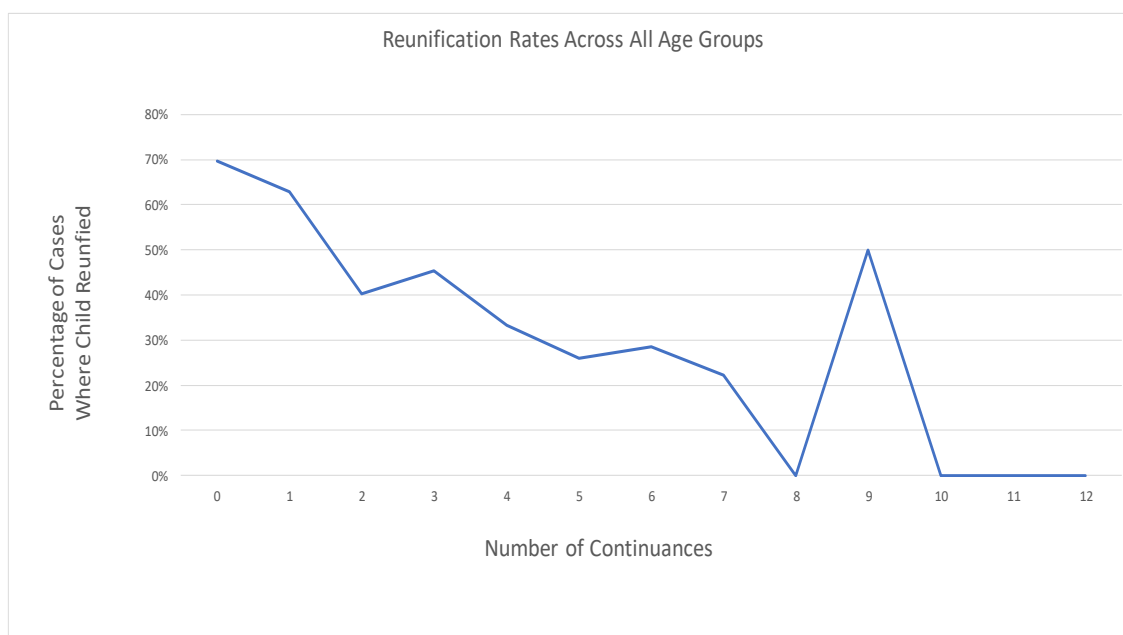


Fig. 5 Reunification Rates Across All Age Groups

⁸³ Statistics from the Vermont Court Administrator's Office for Fiscal Years 2011 through 2015.

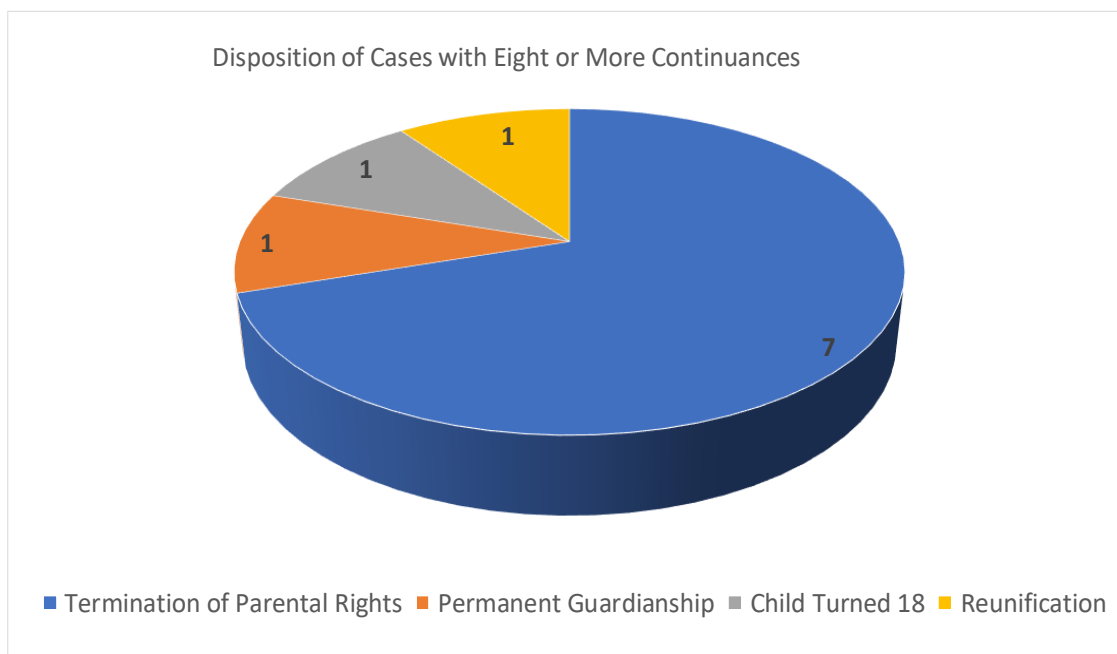


Fig. 6 Disposition of Cases with Eight or More Continuances

Even when a case does not result in a TPR, we know that children experience emotional harm when removed from their parents' custody.⁸⁴ While we assume that this harm is outweighed by the harm or risk of harm if left in the home, we also know that additional time out of the home takes its toll on children's emotional and psychological wellbeing particularly for younger children.⁸⁵ This leads to the next

⁸⁴ Studies have shown that "children with a history of maltreatment, such as neglect, who additionally endure the trauma of being separated from parents and experience feelings, for example of fear and confusion, are vulnerable and susceptible to posttraumatic stress disorders (PTSD)." "Children in Foster Care: A Vulnerable Population at Risk," Delilah Bruskas (2008) (citing Dubner & Motta, 1999; Racusin, Maerlender, Sengupta, Isquith & Straus, 2005).

⁸⁵ American Academy of Pediatrics' Committee on Early Childhood, Adoption and Dependent Care (2000), Developmental Issues for Young Children in Foster Care, *Pediatrics*, Volume 106, Number 5.

question: are some of the continuances, and, consequently, delays in reunification avoidable?

b. Types of Hearings Continued

For the 480 cases studied, a total of 1,221 continuances were granted. Before we can determine whether they were avoidable, we need to know what types of hearings were continued and the reasons for the continuances. Following is a list of hearings continued and the percentage of the total continuances constituted by each hearing type:

<u>Type of Hearing</u>	<u>Total Number of Continuances</u>	<u>Percentage</u>
Status Conference	314	26%
Disposition ⁸⁶	289	24%
Permanency ⁸⁷	147	12%
Merits ⁸⁸	108	9%
Temporary Care ⁸⁹	101	8%
Post-Disposition ⁹⁰	95	8%
Termination of Parental Rights	94	8%
Motion	65	5%
Conditional Custody Review ⁹¹	4	<1%
Permanent Guardianship ⁹²	4	<1%

Average lengths of removal were determined for all cases where a specific type of hearing was continued. See Figure 7. Most cases, of course, had multiple types of

⁸⁶ See 33 V.S.A. § 5317.

⁸⁷ See 33 V.S.A. § 5321.

⁸⁸ See 33 V.S.A. § 5315.

⁸⁹ See 33 V.S.A. § 5307.

⁹⁰ See 33 V.S.A. § 5320.

⁹¹ See 33 V.S.A. § 5320a.

⁹² See 14 V.S.A. § 2664; 33 V.S.A. § 5318.

hearings continued. It is difficult to determine therefore, which continuance had a greater impact. However, the data does show that, in cases where permanency hearings and termination of parental rights hearings are continued, the average length of removal is greater than the overall average regardless of how many continuances were granted.

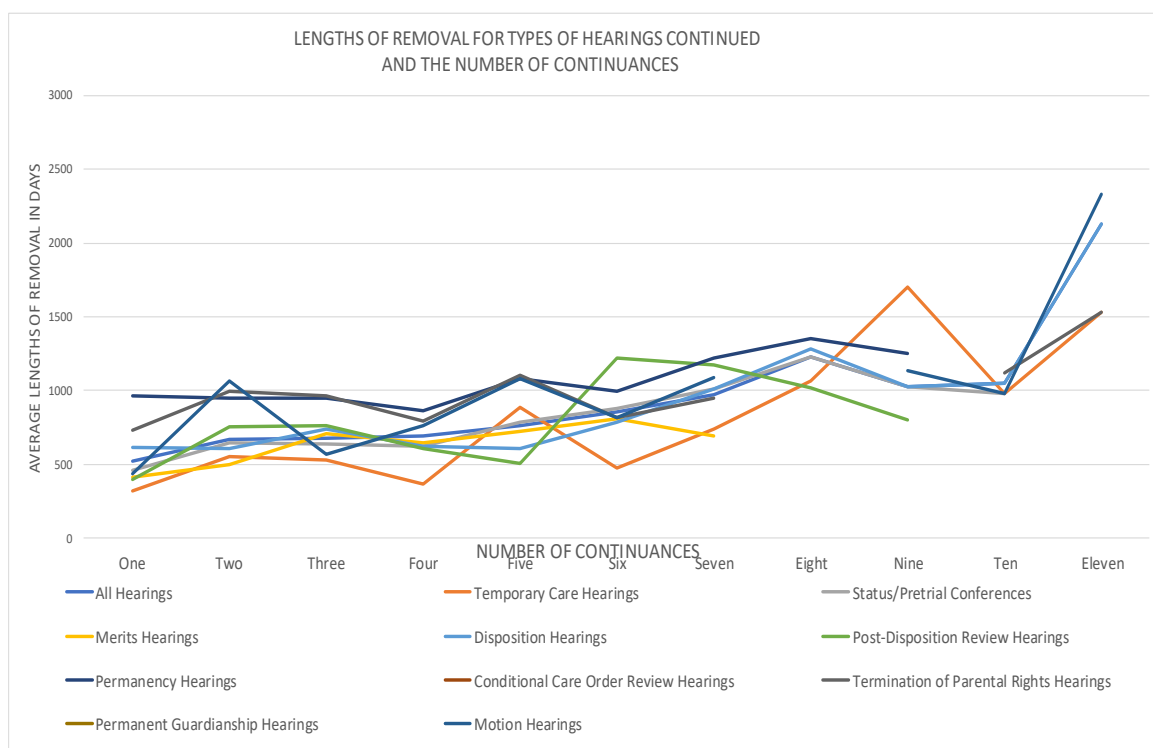


Fig. 7 Average Removal Lengths for Types of Hearings

There were some cases where all continuances were for the same type of hearing. Logically, this was the situation for all cases with only one continuance, but there were cases with two, three and four continuances all for the same type of hearing. See Figure 8. Interestingly, among cases where only one type of hearing was continued, where two or more continuances of temporary care, merits, disposition, post-

disposition review hearings and status conferences were granted, the average length of removal was less than the overall average for the same number of continuances. Only motion hearings and termination of parental rights saw greater removal lengths where only that one type of hearing was continued.

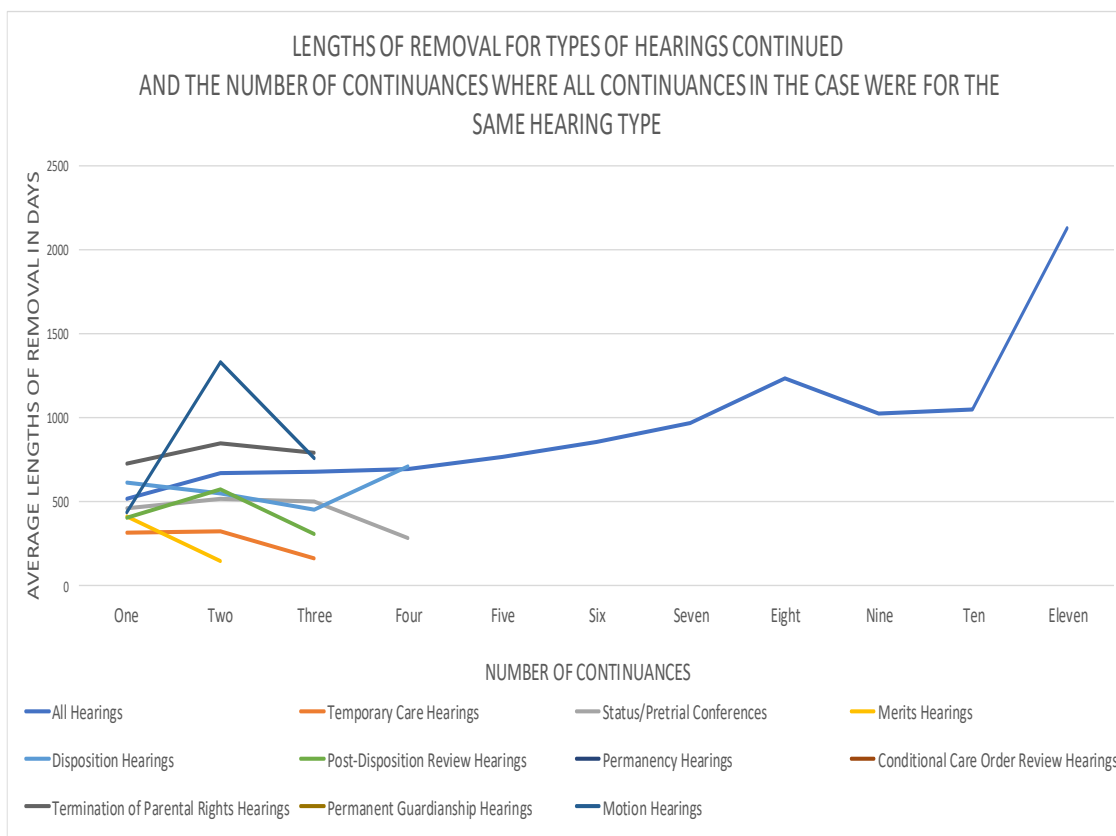


Fig. 8 Average Removal Lengths Where All Continuances Were for One Type of Hearing

c. Reasons for Continuances

We now turn to the reasons for continuances. 30 reasons for continuances were identified. The number of occurrences for each reason is as follows:

<u>Reason for Continuances</u>	<u>Total Number of Continuances</u>	<u>Percentage</u>
More time needed for the taking of evidence	258	21%
Parties negotiating	218	18%
Court schedule conflict	144	12%
Attorney/social worker unavailability	108	9%
No/late report from DCF or custodian	82	7%
Parent(s) failed to appear	46	4%
New counsel	38	3%
Attorney scheduling conflict ⁹³	36	3%
Test/assessment not complete	33	3%
Discovery	32	3%
Updated plan needed	32	3%
Illness/death	25	2%
Lack of notice	24	2%
Parent/child scheduling conflict	20	2%
Witness unavailability	17	1%
Interpreter or communication specialist needed	17	1%
Parent incarcerated or involuntarily hospitalized	14	1%
Parent/child in treatment	11	1%
Weather	8	1%
Issues with placement	7	1%
Issues regarding proposed guardian	6	<1%
DCF scheduling conflict ⁹⁴	6	<1%
New information or allegations	6	<1%
No attorney or GAL assigned ⁹⁵	5	<1%
ICWA ⁹⁶ notification or issues	4	<1%
GAL scheduling conflict	4	<1%
Case transferred	3	<1%
Cases or hearings bifurcated or consolidated	3	<1%
Recusal of judge	2	<1%
ICPC ⁹⁷ referral	2	<1%

⁹³ This refers to a conflict with another court hearing as opposed to such conflicts as vacations, conferences, etc.

⁹⁴ Like with attorneys, this refers to a conflict with another court hearing rather than such conflicts as vacations, conferences, etc.

⁹⁵ Juveniles subject to CHINS and other juvenile proceedings are entitled to be represented by both an attorney and a Guardian ad Litem. 33 V.S.A. § 5112. Parents are entitled to be represented by an attorney if the court deems it to be in the interests of justice. 13 V.S.A. § 5232. However, courts routinely appoint counsel if parents are unable to afford to hire their own. This presumption of representation is seen in 33 V.S.A. § 5306(d)(5) which requires notice of temporary care hearings to be sent to "an attorney to represent each parent."

⁹⁶ Indian Child Welfare Act 33 V.S.A. § 5120; 25 U.S.C. § 1901 et seq.

⁹⁷ Interstate Compact on the Placement of Children 33 V.S.A. § 5901 et seq.

Some continuances are beneficial to the child. An example of this is a continuance of a disposition, post-disposition, permanency or conditional custody review hearing so that a parent can complete a substance abuse assessment so DCF can include treatment recommendations in a case plan. Ideally, the assessment would be done as early in the case as possible, but limited number of licensed substance abuse assessors and scarce funding often delay assessments. Going forward with one of these hearings without that information is likely to be counterproductive as substance abuse is often the central issue in CHINS cases.

Four reasons for continuance were identified as being presumably beneficial: completion of treatment by a parent or child; the completion of an assessment or test; parties negotiating a settlement;⁹⁸ and the need to provide updated information because of recent, unanticipated changes in circumstances. I initially thought that continuing hearings for these reasons would, in fact, shorten the time to permanency. Having tracked the reason for every continuance, I compared the lengths of time that children were removed from their parents' custody in a) cases where hearings were continued for these four reasons to b) all cases with the same number of continuances. For example, there were three cases that had six continuances, at least one of which was for the completion of a test or assessment. I compared the average length of time

⁹⁸ I assert that settlement is beneficial because a contested, evidentiary hearing will almost always involve the testimony of the DCF worker or other service provider who must work with the family for as long as the case remains open. Necessarily-negative statements about the family tend to corrode the working relationship between the DCF worker and/or other service provider and the parents and even, in some cases, the child.

that these three children were removed with the average length of removal for all twenty-one children whose cases contained six continuances.

There were ten cases in which at least one hearing was continued because a parent (nine cases) or child (one case) was in residential treatment. There were twenty-six cases in which at least one hearing was continued because a test or assessment needed to be completed. In twenty-eight cases, at least one hearing was continued because updated information was needed. Finally, there were one-hundred, forty-seven cases in which at least one hearing was continued to allow the parties to continue negotiating an agreement.

There were a few outliers because only one case fell into a given category. For example, there was only one case where a hearing was continued because a parent was in treatment and the case was continued a total of six times. That child was removed from the home for a total of 1,944 days. The average length of removal for all children whose cases were continued six times was 728 days. Disregarding those outliers, the trends in lengths of continuances for each of the four bases for continuances identified was virtually identical to the trends for the larger sample of cases for each category of cases distinguished by the number of continuances. See Figure 9. Thus, it appears that the assumption that those four bases of continuances lead to faster reunifications is disproved by the data analysis. It is also worthy of note that for all instances where an evidentiary hearing was continued because the parties were negotiating an agreement, approximately 70 percent still required the evidentiary hearing because the parties failed to reach an agreement on at least one issue.

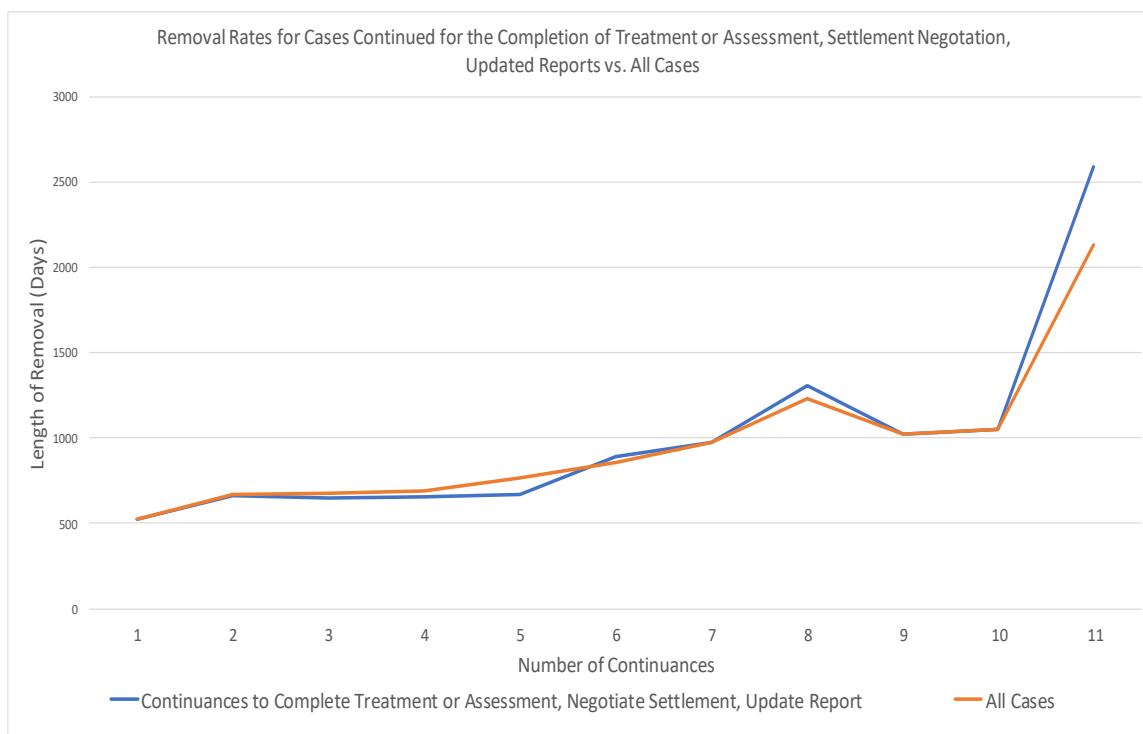


Fig. 9 Comparison of Removal Lengths

VII. CONCLUSION

Children who are alleged to be without proper parental care often need to be removed from their parents' custody. Such removal is a necessary evil; the harm that we know to be created by the removal is, we believe, outweighed by the benefit of protecting the children from whatever abuse or neglect they were suffering at the hands of those parents. State and federal laws as well as common sense mandate that the removal be as short as possible and that children removed should achieve some form of permanency as quickly as possible.

There are many obstacles to permanency in CHINS cases. Those include addiction, incarceration and lack of treatment resources. However, delays in the court process also impede timely permanency. Crowded dockets and attorneys whose presence are required in multiple courts at the same time are significant contributors to that delay. There is little if anything that can reasonably be done about that. But continuances of scheduled hearings are another significant source of that delay and I argue that there is opportunity for improvement here.

We have learned from this study that, in Vermont, neither the reason for the continuance nor the type of hearing continued impacts the length of time that a child is removed from his or her parents' custody. At the same time, we need to be aware that each continuance correlates with, on average, about three months added to a child's removal. Some continuances are unavoidable. Others are not. Practitioners including attorneys, DCF family services workers, guardians ad litem and court staff need to be mindful that continuances delay permanency and to be mindful of the impact that delays in permanency have on children. Judges, however, bear the greatest responsibility for ensuring that only those continuances that are unavoidable are granted. A change in the juvenile court culture is needed as this study shows an appalling trend. That change must start with judges being willing to make difficult, unpopular decisions on continuance requests even if the decision is contrary to the wishes of all parties.

The Vermont Supreme Court has adopted a rule indicating that, in CHINS cases, merits hearings and disposition hearings "shall be continued only for good cause shown

and found by the court.”⁹⁹ Whether there is good cause is left to individual judges to decide. That term is not defined in the rule and the Court has not established criteria for the determination elsewhere. Beyond that rule, which does not establish an objective standard and, as to continuances, is limited to merits and disposition hearings, neither the Vermont Supreme Court nor the Vermont Legislature has adopted a policy regarding continuances. One might argue that setting the bar as high as a “no-continuance” policy is appropriate and perhaps even necessary. Many more would argue that the CHINS docket is the least appropriate venue for the tying of judges’ hands. Even if such a policy were enacted as an advisory directive, it creates an unrealistic expectation likely to lead to mistrust or at least skepticism.

The Vermont Supreme Court could, however, develop guidelines for continuances in juvenile cases if not all cases. The guidelines could address specific stages in CHINS proceedings with or without taking into consideration such factors as the age of the child and the length of time that child has been removed from the home. The struggle, of course, is that the decision to grant or deny a continuance is not made in a vacuum. Judges need to be mindful of other cases that will necessarily be impacted by scheduling decisions in the case at bar. As CHINS dockets increase, so too does the effect that a single continuance has on all pending cases. Guidelines will only be as effective as the crushing impact of the docket’s volume allows. This is a dilemma that is

⁹⁹ Vermont Rules for Family Proceedings 2(b)(3).

not unique to the CHINS docket and is not unique to Vermont. But at stake here is the welfare of the state's most vulnerable population and its future.

APPENDIX I

MEMORANDUM OF UNDERSTANDING

Between

THE OFFICE OF THE COURT ADMINISTRATOR

THE CHIEF SUPERIOR JUDGE

And

HON. HOWARD KALFUS

I. PARTIES

The parties entering into this agreement are the Office of the Court Administrator (CAO), the Chief Superior Judge, and the Hon. Howard Kalfus, Hearing Officer, Vermont Judicial Bureau (Judge Kalfus).

II. AUTHORITY

This agreement is entered into as a data dissemination contract under the authority of Rule 6 of the Rules Governing Dissemination of Electronic Case Records and Rule 2(b) of the Rules for Public Access to Court Records.

III. PURPOSE

The purpose of this agreement is to provide Judge Kalfus with access to case file data in juvenile court records in the Family Division of the Superior Court. The data is composed of electronic and paper case files that are otherwise considered confidential and not available to the general public. Access is limited to juvenile cases filed between January 1, 2011 and December 31, 2015, and is provided to facilitate a research study by Judge Kalfus on the effects of continuances on reunification rates in juvenile cases.

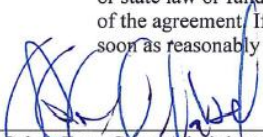


IV. CONDITIONS

- A. No confidential information obtained through this study will be disclosed in any written report or by any other means other than through aggregate statistical information reflecting the results of the study.
- B. Judge Kalfus will be responsible for maintaining the absolute confidentiality and security of all information contained in the records accessed pursuant to this agreement. Any changes to the project must be provided to, and approved by, the CAO.
- C. Judge Kalfus shall maintain confidentiality as required by law.

- D. Judge Kalfus shall execute a User Confidentiality Agreement, attached to this Memorandum of Understanding, as a condition to access to the records in question, and shall file a copy of the Agreement with the CAO.
- E. The CAO has sole authority to modify the manner in which it obtains records, organizes, stores, and/or archives the court data that is the subject of this agreement.

V. EFFECTIVE DATE AND LIFE OF AGREEMENT

- A. This agreement shall be effective upon signing and shall remain in effect until terminated by either party, or until September 1, 2020, whichever comes first. This agreement may be terminated by either party upon 90 days' notice in writing delivered by certified mail or in person.
- B. The terms of this agreement may not be waived, altered, modified, amended or supplemented, except by written agreement of both parties.
- C. In addition, this agreement may be rendered null and void by changes in federal or state law or funding that prevents either or both parties from fulfilling the terms of the agreement. If this case should arise, each party agrees to notify the other as soon as reasonably possible.

 _____ Pat Gabel, Esq., Court Administrator	8/29/18 _____ Date
 _____ Hon. Brian Grearson, Chief Superior Judge	8/29/18 _____ Date
 _____ Hon. Howard Kalfus, Vermont Judicial Bureau	August 24, 2018 _____ Date

USER INFORMATION CONFIDENTIALITY AGREEMENT

In connection with the use of the Judiciary's data, I agree to be bound by the following agreement:

I acknowledge that through access to juvenile case files in the Vermont Superior Court, I will acquire or have access to information about litigants and other participants in confidential court cases. I agree to use this information only for the purpose of meeting the objectives described in the Memorandum of Understanding between the Office of the Court Administrator, the Chief Superior Judge, and the Hon. Howard Kalfus, Hearing Officer, Vermont Judicial Bureau.

I understand the restrictions on improper access and use of any information obtained. I will ensure that any and all printed materials will be destroyed or stored in a secure place.

I understand that I may face penalties under law for violation of the confidentiality provisions of state statutes.

Signature:

 _____

Type or Print Name:

Howard A. Kalfus _____

Date:

August 24, 2018 _____

Department:

Vermont Judicial Bureau _____

Phone No.:

802-598-8881 _____

E-mail Address:

howard.kalfus@vermont.gov _____

Access Requested:

PUBLIC ONLY _____ CONFIDENTIAL

APPENDIX II

Codes for Thesis Data Collection

<u>Data</u>	<u>Variables</u>	<u>Codes</u>
Case Type:	Abuse/neglect	A
	Truancy	T
	Unmanageable	U
Type of Custody Order:	Emergency care order	ECO
	Temporary care order	TCO
	Conditional custody order	CCO
Custodian:	Foster parent	1
	Relative	2
	Fictive kin	3
	Friend/other	4
	DCF	5
Reason for Continuance:	Attorney scheduling conflict	11
	GAL scheduling conflict	12
	DCF scheduling conflict	13
	Parent/child scheduling conflict	14
	Cases/hearings bifurcated or consolidated	15
	Witness unavailability	16
	Parent incarcerated/involuntarily hospitalized	17
	Parent/child in treatment	18
	More information/financial issues for guardian	19
	Lack of notice	20
	Test/assessment not complete	21
	No/late report from DCF or custodian	22
	Parties negotiating	23
	New counsel	24
	Attorney/social worker unavailability	25
	Court schedule conflict	26
	More time needed for evidence	27
	Discovery	28
	ICWA	29
	New information/allegations	30
	Parent(s) failed to appear	31
	Interpreter or communication specialist needed	32

	Updated plan needed	33
	Weather	34
	Illness/death	35
	Issues with placement	36
	No attorney or GAL assigned	37
	Case transferred	38
	Recusal of judge	39
	ICPC	40
Type of Hearing:	Temporary Care	61
	Pre-trial/status conference	62
	Merits	63
	Disposition	64
	Motion	65
	Post-Disposition Review	66
	Permanency	67
	Conditional Custody Review	68
	Termination of Parental Rights	69
	Permanent Guardianship	70
Disposition:	Reunification	41
	Adoption	42
	Permanent guardianship	43
	APPLA	44
	Child turned 18	45
	Other	50

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3 V.S.A. § 152

13 V.S.A. § 5232

14 V.S.A. § 2631

14 V.S.A. § 2661(4)

14 V.S.A. § 2662

14 V.S.A. § 2664

14 V.S.A. § 2665

14 V.S.A., Chapter 111

33 V.S.A., Chapter 51

33 V.S.A. § 5101(a)(3)-(5)

33 V.S.A. § 5102(3)

33 V.S.A. § 5102(5)

33 V.S.A. § 5102(9)

33 V.S.A. § 5102(16)(A)

33 V.S.A. § 5110

33 V.S.A. § 5112

33 V.S.A. § 5113

33 V.S.A. § 5114

33 V.S.A. § 5120

33 V.S.A., Chapter 52

33 V.S.A., Chapter 52A

33 V.S.A., Chapter 53

33 V.S.A. § 5305

33 V.S.A. § 5306(d)(5)

33 V.S.A. § 5307

33 V.S.A. § 5308

33 V.S.A. § 5309

33 V.S.A. § 5313(b)

33 V.S.A. § 5315

33 V.S.A. § 5316

33 V.S.A. § 5317

33 V.S.A. § 5318

33 V.S.A. § 5320

33 V.S.A. § 5320a

33 V.S.A. § 5321

42 U.S.C. 675(5)(E)

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