

Topic: Getting Support for Your Child with Significant & Unmanageable Emotional Challenges.

Presented on August 25, 2021

(Note: This presentation is presented jointly by Vermont Family Network and the Vermont Parent Representation Center, Inc. What follows is not legal advice, rather it is information intended to assist parents in understanding services that may be available and in advocating for their family and themselves.)

I. Introduction

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II. This Presentation (both video and written) can be accessed on-line at:

- YouTube
- www.VTPRC.org

III. Act 264 (3 V.S.A. 31) a brief overview: <https://ifs.vermont.gov/docs/sit>

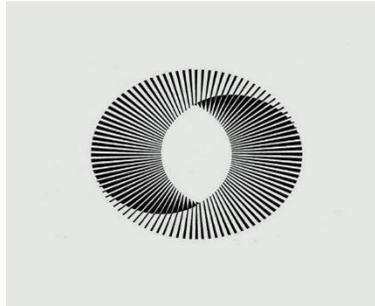
Passed in 1988, Act 264, requires that human services and public education work together, involve parents and coordinate services for better outcomes for children and families. The act develops a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families receive appropriate educational, mental health, child welfare, juvenile justice, residential, and other treatment services in accordance with an individual plan. In Vermont, eligibility includes all children with a disability who receive services from the Agency of Education and the Agency of Human Services. Inherent in the act is the ability for families to obtain a Coordinated Services Plan (CSP). Unfortunately, Act 264 is only as good as the service system it relies upon and that service system is only as good as the resources provided to it. Therein lies the problem confronting many families and the institutions designed to serve those families.

If you have not been told about Act 264, find out by contacting the agencies of Education and/or Human Services, Vermont Family Network, or the Vermont Federation of Families for Children's Mental Health (identified in Section VIII below).

IV. The current Vermont system within which families with significantly challenged children can find themselves:

- ✓ Multi-Agency Service Plan(s) >
- ✓ Service Delivery >
- ✓ Emergency Services >
- ✓ Law Enforcement >
- ✓ Hospital Emergency Department >
- ✓ Emergency Placement for Evaluation & Stabilization >
- ✓ Discharge back home within 15 – 30 days

Otherwise known as a Circle of Crisis



The primary problem in Vermont is that Vermont is under-resourced, with too few trained children’s mental health professionals and far too few residential placements available for those children who can no longer live at home due to their behaviors and/or their family’s ability to manage those behaviors. We are akin to an airport that can’t land arriving planes so we keep them circling in the sky while even more planes depart. The result is that we tell some of these planes that they need to keep circling long past what their fuel supply will support. This was not always the case in Vermont, when in the late 1970s and early 1980s, with the use of federal and state funding, Vermont had 250+ residential mental health placement opportunities in-state. With the reduction in federal funding, this system of residential mental health service withered away to its current inadequate state today. Work is currently being done to address this crisis, but that work will take time and until then, families must contend with what Vermont has to offer in the here and now.

V. Enter the Child Protection System:

In many cases, the only way for a family to access essential intensive residential services for children is through the Family Court, a place that has the authority to mandate residential placement. The down-side of this is that the Family Court process typically involves an allegation of abuse, neglect or unmanageability and an acknowledgment that these are attributable to parents or other custodians of a child. Thus, the gateway to services is the Department for Children and Families, and the belief that most problems experienced by children are the result of parental

mis-behavior. Unfortunately, this model frequently fails to acknowledge the fact that a child's severe mental health (or other medical) needs typically are not the result of caregiver mis-behavior. As a result, families seeking residential services frequently enter the child protection system due to:

- Conflict at home resulting from unmanageability, which leads to physical altercation and/or the child alleges abuse or neglect to Law Enforcement; or
- The parent refuses to pick the child up from the Retreat, hospital or other placement location following what the parent believes is too short a stay to ensure necessary care and safety at home; or
- The parent requests help from DCF and the child alleges abuse/neglect during some stage of an assessment or investigation.

Note that none of the above focus on the child's needs by the system, rather the focus is on what the caregiver/custodian may have done "wrong."

VI The Law:

33 V.S.A. Sec. 4912

Vermont law defines child abuse and neglect: *"Abused or neglected child" means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare.*

Further, the law defines *emotional maltreatment, harm, physical injury, failure to supply a child with basic needs, including health care, abandonment, physical injury, risk of harm, sexual abuse, serious physical injury and strangulation.*

Note: nowhere in the statutes does it say that a child is abused or neglected simply because that child has a severe mental health need, and nowhere does it say that parents are guilty of abuse or neglect simply because it is beyond the parent's ability to successfully manage a child's significant mental health need, yet the child protection system operates on the mistaken belief that "someone must be at fault."

33 V.S.A. Sec. 5102

(3) "Child in need of care or supervision (CHINS)" means a child who:

(A) has been abandoned or abused by the child's parent, guardian, or custodian. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the

whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

Therein lies the conflict in the law, because 33 V.S.A. Sec. 5102 states that if a parent is unable to control their child, is unable to care for the child (regardless of how disturbed a child may be), or refuses to pick up a child from a care facility (regardless of whether the child is appropriate for return home), the parent has abused or neglected the child. When a child's behaviors are so far beyond the normal parent's abilities and resources, this places the parent in an untenable position because bringing the child home in order to avoid being charged with abandonment and then having that child injure themselves or others can result in the parent being charged with failure to protect other family members. It becomes a damned if you do, damned if you don't, and neither option results in the child with severe mental health needs receiving any more care/assistance than they had before they entered residential treatment. This, is the Gordian Knot of Vermont children's mental health, or the lack thereof. This isn't a secret, people at all levels recognize that the current system does not have the wherewithal to adequately address an increasing need. People at multiple levels are "working on it", but working on it does not help families that need help now.

VII. Scenario:

You child experiences significant emotional disturbance, or other issue, that has created an environment in which the child, you, or other siblings are at significant risk. You have sought services from a variety of agencies, but the situation has not gotten better. Now, you are faced with a decision that no parent wishes to face, either the child must be removed from the home or someone will be hurt.

- You call the police, they remove the child to the local Emergency Department, which holds the child for observation and then has the child transferred to the Brattleboro Retreat or other facility.
- The child is at the facility for 7-15 days, or possibly a little longer.
- The facility calls you and says that the child is being discharged and you are to pick them up on a specific date because the child has reached the maximum number of days at the facility.

- You have seen this picture before, and you know that the child is not ready to come home because there is no adequate service plan in place, few services to back-up the plan, the child won't take the necessary medication upon return, and the process is only going to repeat itself, as it has several times before. You fear for your child, your other children and yourself.
- The program tells you that if you don't pick your child up you will be charged with Abandonment and a CHINS case will be opened in Family Court, and you can be substantiated for neglecting your child.

What do you do?

VIII. Breaking the Crisis Cycle and advocating for services that are available, necessary and/or mandated by the law and court:

A. Three essential ingredients needed to be successful:

1. Peer Support:

- ✓ Vermont Family Network: <https://www.vermontfamilynetwork.org/>
- ✓ Vermont Federation of Families for Children's Mental Health: <https://www.vffcmh.org/>

2. Understanding your right to Coordinated / Integrated Planning Services (Act 264):
<https://ifs.vermont.gov/docs/sit>

3. Understanding how the Family Court / Child Protection System works.

B. When working with service agencies, utilize whatever support you might have access to in obtaining an integrated service plan and point(s) of contact. Identify a peer advocate or other support person who will assist you in an on-going fashion. Identify a primary case manager within the myriad of agencies and then request that your case manager is present at every meeting possible to advocate for you and your child, as well as educate you as to how the system works and does not work.

C. Document, document, document.

Keep records of the services you have attempted to receive and/or are receiving. When there are meetings, request the notes. When there are deliverables ensure that due dates are in place. Most children in this scenario have been involved with services for years beforehand. Keep records of what services you have attempted to access, what services received and what the outcome has been. These records can be very useful in the future.

- D. If you are told that residential services cannot be accessed unless there is abuse/neglect:** Document who told you this, when and how the information was conveyed and why this must be the case. If you have an advocate, request that your advocate attends any conferences or calls with these agencies.
- E. The Cycle starts:**
Make sure that you keep a careful record each time there is an episode with your child that indicates that remaining at home is not safe for your family. Document what steps you take each time.
- F. Document threats and any dangerous behavior.**
- G. Relief from Abuse Order (RFA):**
If you truly fear for the safety of those in your household, seek a Relief from Abuse (RFA) Order, and then notify the local police that such an order is in place.
- H. When you are told that you must pick up your child from a residential program:**
When told that you must pick up your child and you know that this is the wrong solution to your child's issues, tell the Facility that your child is there due to threats to self or others and unless there is a comprehensive discharge plan in place that ensures everyone's safety, and services have been identified and are in place to commence immediately, you cannot pick the child up because there is a Relief from Abuse Order in place and you can not violate it.
- I. If the residential program persists in threatening you with abandonment or neglect:**
Call the county State's Attorney's Office and the local police and inform them that you have a Relief from Abuse Order regarding a child who is a danger to others and you are being told that unless you bring the child home a residential facility or state agency is threatening charging you with abandonment. Then, ask the State's Attorney and the Police what they are going to do to protect you, and your family, and enforce the Order?
- J. The Relief from Abuse Order controls both you and your child:**
Remember that if you do have a Relief from Abuse Order, you must follow the order exactly as it states and you cannot alter what is in the Order unless you go back to Court and have the Court amend the order. State that you are willing to seek an amendment to the Order once you are assured that adequate services are committed as part of a Discharge Plan and the service providers associated with that Plan are willing to state that they believe they can provide the necessary services. If they cannot, or will not, make this commitment, then you cannot seek a change to the Order.

This is likely to bring the “abandonment” issue to a halt, as the system will now have to address the child’s needs while also honoring the families need for safety.

K. If the Department for Children & Families becomes involved:

If DCF is involved, work with the DCF worker in a calm and open manner. Explain the overall situation and have your peer advocate, case manager or other advocate present. Ask what DCF is going to do to assist your child in receiving the services that they need while ensuring that your family is safe and that the RFA is honored.

IX. If A CHINS case is opened in Family Court:

If you cannot hire your own attorney, an attorney will be appointed to represent you throughout the CHINS process. Attorneys will also be appointed to represent your child, and any other custodial parent.

X. Working with your attorney:

- Write a 1 page, bulleted, document identifying the problem in an easy-to-read way. If you have to go into Family Court, this may be the only thing your attorney sees before you appear in court.
- Make sure that your attorney understands the state’s obligations under Act 264 and what your family has, and has not, received in the way of mandated services. Use your peer support and/ case manager to clarify this information with the attorney. Most attorneys have little time to spend on any one case and are not paid enough to allow them to devote the amount of time Family Court cases demand, so don’t expect them to do a great deal of research and evidence identification, you are better off if you can do this yourself and provide the initial information to your attorney.
- However, your attorney is paid to **effectively** represent you and you have a right to meet with your attorney (for more than a few minutes before court), understand the strategy your attorney is going to use, discuss witnesses and evidence, explain your case and file motions on your behalf.
- If your attorney does not return calls or emails, does not meet with you in a meaningful way (10 minutes before court is not “meaningful”), you have the right to terminate that attorney and have a new attorney appointed. Yes, your attorney knows more about the law than you do, but that knowledge does them (or you) little good if your attorney does not know about you, your child and your family.

- If your attorney says that you should Plead to the Merits you need to think carefully about this and understand what you are being asked to do before you agree and what the ramifications may be.

X. Pleading to the Merits:

- This means that you are saying that you did whatever DCF and the State's Attorney is alleging that you did. Essentially, you are pleading guilty to abuse or neglect.
- If your attorney says that by Pleading to the Merits the case will go quicker and if you do what DCF says, you will get your child back sooner. This is NOT necessarily true. If you did not abuse or neglect your child, you do not have to plead guilty just to get services.
- ***You can agree that your child is in Need of Services without admitting guilt.*** It is not a parent's fault that their child has a severe mental health issue and has become dangerous or unmanageable. Your attorney can develop language that says that you agree that the child needs help but that this is not the fault of anyone. If your attorney tells you that this can't be done, demand a new attorney. Also, be very careful that the language offered to you actually says what you are being told it says. As the saying goes, "trust, but verify."
- If you are told that pleading to the merits, or stipulating to the merits or facts, will result in you getting services faster and/or your child back sooner, but you have not done anything wrong, be very wary as there is no guarantee that the process will be quickened, and no guarantee of anything unless you obtain a statement from DCF, signed by your attorney, acknowledging that you will not be substantiated for child abuse or neglect as a result of your plea, since a plea in this instance can result in loss of employment and professional licensure if you are placed on the Child Abuse Registry. It is unlikely that you will obtain such a document and any agreement that is verbal is unlikely to protect you in the future.

XI. Replacing your attorney –

Typically, we are taught to believe that when an attorney is provided to us that the attorney is required to represent us to the best of their ability. However, in a system wherein appointed attorneys are paid far less than the actual cost of effective representation, this belief can be misplaced. If your attorney does not consult with you, fails to take reasonable steps that you believe they should take such as filing motions, challenging evidence and ensuring DCF services are delivered, you have a right to discharge your attorney and request a new attorney. This is a simple process and all you have to do is notify the Clerk of Court that you want a new attorney and state why you are asking for a new attorney. Give at least 3 reasons (does not return calls, does not meet outside of court, pressures you to plead to the merits when you have told them that you did not do what is alleged etc....). Remember, this attorney

may be paid by the state, but they work for you and ethically they are required to effectively represent you or step aside.

XII. Meeting your new attorney:

Have the one-pager ready so this attorney knows what the case is about. Schedule an appointment of at least 30 minutes and NOT outside the court room.

XIII. Key things to observe:

- **Attend all case conferences**, tell DCF that you want to see Case Plans before they are finalized and make sure the case plan is accurate in what it says. If DCF does not agree to let you see the plan or offer changes, have your attorney object to the plan beforehand as well as in court.

- **Visit your child at every opportunity allowed:** If your child is in a facility, visit your child at every opportunity and document what happens during the visits. Advocate for your child and the services that he/she needs at every point. If transportation is a barrier, request agency support from those agencies with which you are working.

- **Insist on a realistic Case Plan before discharge.** When your child is returned, ensure that there is a case plan and that adequate services are in place BEFORE the child returns. Use your advocates!

- **Single point of contact:** If more than one agency is involved, insist on a central point of contact for the group; someone who will be responsible for facilitating the group and producing notes that reflect group actions/decisions.

XIV. Strategies and tools for families who might not be at the level of care described in the aforementioned:

Families know their child the best. They are the experts and often can sense when their child is struggling. Early interventions might be able to change the trajectory for a child.

You notice your child is not wanting to go to school, they may be complaining about a stomachache, or expressing anxiety about a test, or worrying about not having friends. They are sleeping too much or too little, they have lost interest in activities or friends, you are starting to notice sensory issues: aversion to loud noise or exhaustion after being with a lot of people, outbursts at home or school, or extreme withdrawal. These could be early signs that your child might be struggling.

What can you do? Reach out to your supports. Connect with your pediatrician. Ask for a school meeting to discuss what you are seeing at home, and ask how your child is acting at school. How are they doing academically? Is your child holding it together at school and struggling at home, or the opposite?

1) Start to build a support team, which includes home, school and community. Successful teams have good communication and collaboration. They focus on what is needed to move your child forward. Example: School guidance counselors, social groups, mental health providers, coaches, mentors. Ask your pediatrician if they have a social worker, who might be able to offer support.

2) Perhaps your child would benefit from an evaluation to identify or rule out any learning disabilities or mental health challenges

3) If behaviors are intensifying and you anticipate needing more intense supports, have you utilized the ACT 264 process to identify your child's strengths and needs? And to identify services that could benefit your family? It's just as important to identify barriers that might impact getting those supports (waitlist, Medicaid requirements) and make a plan.

4) Do you have a written home crisis plan?

It's helpful to know your community resources: emergency crisis numbers from your designated Mental Health agencies, if your town have a Community Outreach Program and 911 for health and safety. A list of some of these local agencies can be found at:

<https://www.vffcmh.org/help/local-support-lines/>

5) Do you know: what to do if you're in the Emergency Department; how to keep notes and documentation that might be needed in the future? VFN website has a link to the emergency brochure and other mental health and educational resources.

https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Services/ES/Emergency_Brochure_REV5.pdf

6) Team collaboration after a crisis is important to identify any gaps or disconnects within the current plan and identify next steps.

If you have questions on how to navigate these systems, you can reach out to:

- **Vermont Family Network Family Support helpline: 1-800-800-4005, or**

- **Vermont Federation of Families for Children's Mental Health: 1-800-639-6071**