

The Vermont Statutes Online

Title 33 : Human Services

Chapter 051 : General Provisions

(Cite as: 33 V.S.A. § 5102)

§ 5102. Definitions and provisions of general application

As used in the juvenile judicial proceedings chapters:

(1) "Care provider" means a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court.

(2) "Child" means any of the following:

(A) an individual who is under 18 years of age and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant);

(B)(i) an individual who is under 18 years of age, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and was under 16 years of age at the time the petition was filed; or

(ii) an individual who is between 16 and 17.5 years of age, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of this title; provided, however:

(i) that an individual who is alleged to have committed an act before attaining 10 years of age which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(ii) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

(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.

(4) "Commissioner" means the Commissioner for Children and Families or the Commissioner's designee.

(5) "Conditional custody order" means an order issued by the court in a juvenile proceeding conferring legal custody of a child to a parent, guardian, relative, or a person with a significant relationship with the child subject to such conditions and limitations as the court may deem necessary to provide for the safety and welfare of the child. Any conditions and limitations shall apply only to the individual to whom custody is granted.

(6) "Court" means the Family Division of the Superior Court.

(7) "Custodial parent" means a parent who, at the time of the commencement of the juvenile proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the Court-ordered right of the other parent to have contact with the child.

(8) "Custodian" means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont Superior Court or a similar court in another jurisdiction.

(9) "Delinquent act" means an act designated a crime under the laws of this State, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include a violation of 7 V.S.A. § 656; however, it shall not include:

(A) snowmobile offenses in 23 V.S.A. chapter 29, subchapter 1 and motorboat offenses in 23 V.S.A. chapter 29, subchapter 2, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323;

(B) pursuant to 4 V.S.A. § 33(b), felony motor vehicle offenses committed by an individual who is 16 years of age or older, except for violations of 23 V.S.A. chapter 13, subchapter 13 and of 23 V.S.A. § 1091.

(10) "Delinquent child" means a child who has been adjudicated to have committed a delinquent act.

(11) "Department" means the Department for Children and Families.

(12) "Guardian" means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont court or a court in another jurisdiction.

(13) "Judge" means a judge of the Family Division of the Superior Court.

(14) "Juvenile judicial proceedings chapters" means this chapter and chapters 52, 52A, and 53 of this title.

(15) "Juvenile proceeding" means a proceeding in the Family Division of the Superior Court under the authority of the juvenile judicial proceedings chapters.

(16)(A) "Legal custody" means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters which invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(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 responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care;

(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.

(B) If legal custody is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(17) "Listed crime" means the same as defined in 13 V.S.A. § 5301.

(18) "Noncustodial parent" means a parent who is not a custodial parent at the time of the commencement of the juvenile proceeding.

(19) "Officer" means a law enforcement officer, including a State Police officer, sheriff, deputy sheriff, municipal police officer, or constable who has been certified by the Criminal Justice Training Council pursuant to 20 V.S.A. § 2358.

(20) "Parent" means a child's biological or adoptive parent, including custodial parents, noncustodial parents, parents with legal or physical responsibilities or both, and parents whose rights have never been adjudicated.

(21) "Parent-child contact" means the right of a parent to have visitation with the child by court order.

(22) "Party" includes the following persons:

(A) the child with respect to whom the proceedings are brought;

(B) the custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition;

(C) the noncustodial parent for the purposes of custody, visitation, and such other issues that the court may determine are proper and necessary to the proceedings, provided that the noncustodial parent has entered an appearance;

(D) the State's Attorney;

(E) the Commissioner for Children and Families;

(F) such other persons as appear to the court to be proper and necessary to the proceedings; and

(G) in youthful offender cases brought under chapter 52A of this title, the Commissioner of Corrections.

(23) "Probation" means the legal status created by order of the Family Division of the Superior Court in proceedings involving a violation of law whereby a delinquent child is subject to supervision by the Department under conditions specified in the court's juvenile probation certificate and subject to return to and change of legal status by the Family Division of the Superior Court for violation of conditions of probation at any time during the period of probation.

(24) "Protective supervision" means the authority granted by the court to the Department in a juvenile proceeding to take reasonable steps to monitor compliance with the court's conditional custody order, including unannounced visits to the home in which the child currently resides.

(25) "Reasonable efforts" means the exercise of due diligence by the Department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the court may find that no services were appropriate or reasonable considering the circumstances. If the court makes written findings that aggravated circumstances are present, the court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

(A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;

(B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;

(C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or

(D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

(26) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody of the child, including the right to reasonable contact with the child, the responsibility for support, and the right to consent to adoption.

(27) "Shelter" means a shelter designated by the Commissioner where a child taken into custody pursuant to subdivision 5301(3) of this title may be held for a period not to exceed seven days.

(28) "Victim" shall have the same meaning as in 13 V.S.A. § 5301(4).

(29) "Youth" shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 3, § 12a, eff. Sept. 1, 2009; 2009, No. 154 (Adj. Sess.), §§ 223, 238; 2015, No. 153 (Adj. Sess.), § 20; 2017, No. 72, § 3; 2017, No. 83, § 160; 2019, No. 45, § 1, eff. May 30, 2019.)

