

# WHEN CAN I GO HOME? THE IMPACT OF CONTINUANCES ON RATES AND TIMING OF REUNIFICATION IN VERMONT'S CHILD ABUSE AND NEGLECT DOCKETS

By Howard A. Kalfus\*

## ABSTRACT

*This Article 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. The court determines whether the delay is acceptable because of a better outcome, such as a greater assurance 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'*

---

\* Presiding Hearing Officer for the Vermont Judicial Bureau since 2011, the author hears juvenile, domestic, and criminal cases in the Superior Court at times for periods lasting up to nine months. He previously worked as a Public Defender in Chittenden County, where he handled criminal and juvenile cases. He also worked as an Assistant Attorney General representing the Vermont Department for Children and Families almost exclusively in termination of parental rights proceedings. As a staff attorney for the Vermont Department of Public Safety, he was the Commissioner's designee, pursuant to Act 198 of 2006, to the committee for the drafting of recommendations for the Juvenile Judicial Proceedings Act of 2007 (Act 185). The author completed the research and majority of this Article while completing his thesis at the National Judicial College and the University of Nevada, Reno. He thanks his wife, Tina, and children, Josh and Anna. He also thanks his thesis committee: Dr. Shawn Marsh, retired Vermont Superior Court Judge Walter Morris and Dr. Alicia Summers. Inspiration for doing the work of a juvenile court judge comes from appearing before Vermont Superior Court Judges Amy Davenport, Walter Morris, James Crucitti, Dean Pineles, and Tom Devine. The author also thanks Chief Superior Judge Brian Grearson, Vermont Court Administrator Pat Gabel, Esq., the clerks of the court, the court operations managers, and the juvenile docket clerks in each of the 14 counties for their instrumental help completing the research for this study.

*custody in Vermont.*<sup>1</sup> I randomly selected 100 cases for each of the five years weighted by county. The data I 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, I sought patterns comparing time in substitute care and factoring in the number of continuances, while mindful that the age of the child may have a confounding impact on trends. I also was mindful of the reason for the continuance and the type of hearing continued. I expected a correlation between the number of continuances and the length of time that a child remains in substitute care. Indeed, such a correlation exists, 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 guard against avoidable delays. Often a continuance believed to be necessary to advance a swifter reunification (such as parties working toward a settlement, which would obviate the need for a contentious hearing) simply postpones the hearing rather than eliminates it. In cases with no continuances, children in the study remained out of the home an average of 273.5 days.<sup>2</sup> In cases with one continuance, the average was 510 days.<sup>3</sup> 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 Article intends to show that delays in court proceedings correlate to significant additional time in substitute care to child welfare and court systems.

---

1. Howard Kalfus, Excel Data Sheet, [hereinafter Dataset] (on file with author).

2. *Id.*

3. *Id.*

ABSTRACT .....	1
INTRODUCTION.....	3
I. BACKGROUND.....	5
A. Explanation of Terms .....	5
1. CHINS .....	5
2. Continuance.....	6
3. Disposition .....	7
4. Permanency .....	7
5. Removal Order .....	8
B. Illustration of Vermont’s Juvenile Court Process.....	10
II. LITERATURE REVIEW .....	14
III. METHODOLOGY .....	18
A. Procedures.....	18
1. Sample Selection .....	18
2. File Review .....	20
VI. ANALYSIS .....	22
A. Correlation Between the Number of Continuances and the Length of Removal.....	22
B. Types of Hearings Continued .....	29
C. Reasons for Continuances.....	33
CONCLUSION .....	36
APPENDIX .....	39
Memorandum of Understanding (MOU).....	39
User Information Confidentiality Agreement.....	41

## 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 or her parents. The parties file a stipulated motion to continue because they are 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 is 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, the foster-care system serves well over 600,000 children every year.<sup>4</sup> The average (mean)<sup>5</sup> time in care for children nationwide in FY2017 was 20.1 months.<sup>6</sup> 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.<sup>7</sup>

In addition to the trauma child victims suffer 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.<sup>8</sup> The risk of leaving a child in an abusive or neglectful setting almost always outweighs, we assume, the risk of trauma from removal. This is the cornerstone of child-welfare systems and the justification for state interference with the fundamental right to parent.<sup>9</sup> Particularly for younger children, as the length of removal increases, so may the detrimental impact on the child's wellbeing.<sup>10</sup>

Passed by the United States Congress and effective on November 19, 1997, the Adoption and Safe Families Act of 1997 (ASFA)<sup>11</sup> mandates that, if a child is removed from his or her home for at least 15 of 22 consecutive months, the 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).<sup>12</sup> Prior to ASFA's enactment, it was common for a child to spend many years in foster care without much concern on the part of the child-welfare system, including the courts.<sup>13</sup> 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 result

---

4. U.S. DEP'T OF HEALTH & HUM. SERVS., ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM 1 (2018) [hereinafter AFCARS], <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>.

5. Whenever this Article uses the term "average," it refers to the mean.

6. AFCARS, *supra* note 4, at 2.

7. CHILD WELFARE LEAGUE OF AM., VERMONT'S CHILDREN AT A GLANCE REPORTS 1 (2019), <https://www.cwla.org/wp-content/uploads/2019/04/Vermont-2019.pdf>.

8. COMM. ON EARLY CHILDHOOD, ADOPTION, & DEPENDENT CARE, *Developmental Issues for Young Children in Foster Care*, 106 AM. ACAD. PEDIATRICS, 1145, 1145-46 (2000).

9. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Lassiter v. Dep't of Social Services*, 452 U.S. 18, 27 (1981) (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)).

10. COMM. ON EARLY CHILDHOOD, ADOPTION, & DEPENDENT CARE, *supra* note 8, at 1146.

11. Adoption and Safe Families Act of 1997, Pub. L. 105-89, 11 Stat. 2115.

12. 42 U.S.C. § 675(5)(E).

13. CONG. RSCH. SERVS., CHILD WELFARE: IMPLEMENTATION OF THE ADOPTION AND SAFE FAMILIES ACT (P.L. 105-89) 6 (2004).

in a delay in reunifying the child with his or her parents. At some point, the delays result in the child never returning home.

If a correlation exists 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.

## I. BACKGROUND

### A. *Explanation of Terms*

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

#### 1. CHINS

There are three broad categories of juvenile cases in Vermont: child in need of care or supervision (CHINS), delinquency, and youthful offender.<sup>14</sup> In each, a judge may remove a child from his or her parent(s) against the parent's wishes.<sup>15</sup> 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.<sup>16</sup> Delinquency is defined as “an act designated as a crime . . . .”<sup>17</sup> The Vermont Legislature created the youth-offender status where the “youth” (who could be as old as 21) are subject to the jurisdiction of both the juvenile and criminal divisions

---

14. VT. STAT. ANN. tit. 33, §§ 1502(3), 5210, 5280 (2020); *see generally* tit. 33, § 5300 (2020) (listing the statutes related to Children in Need of Care or Supervision (CHINS)).

15. *In re A.S. & K.S.*, 2016 VT 76, ¶ 9, 202 Vt. 415, 419–20, 150 A.3d 197, 199–200.

16. tit. 33, § 5102(3).

17. tit. 33, § 5102(9).

but treated as delinquent juveniles so long as they abide by probation conditions.<sup>18</sup>

It is uncommon for a child in a delinquency or youthful-offender case to be removed from the home absent a companion CHINS case.<sup>19</sup> 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.<sup>20</sup> Thus, delinquency and youthful-offender cases were not included in this study. Additionally, this study excluded unmanageable cases because, again, 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.<sup>21</sup> 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 Article refers to abuse, neglect, and truancy cases collectively as CHINS cases.

## 2. 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.<sup>22</sup> Written motions are easily tracked through the file review that was conducted here. Oral motions, on the other hand, may or may not be 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 Article, "continuance"

---

18. tit. 33, § 5280(b).

19. *See, e.g., In re J.M.*, 2005 VT 62, ¶ 2, 178 Vt. 591, 591 878 A.2d 293, 294 (stating Vermont held a CHINS case for a minor whose "behavior was beyond his parents' control.").

20. *See id.* (holding that the child needed to complete treatment services before reunifying with his parents).

21. 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. VT. JUDICIARY, ANNUAL STATISTICAL REPORT FOR FY 2015 5–6 (2015), [https://www.vermontjudiciary.org/sites/default/files/documents/FY15\\_Statistical\\_Report.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/FY15_Statistical_Report.pdf) [hereinafter 2015 STATISTICAL REPORT]. In more recent years, the percentages constituted by unmanageable cases have gone down to 6.6% and 4% respectively. VT. JUDICIARY, ANNUAL STATISTICAL REPORT FOR FY 18 7–8 (2018), <https://www.vermontjudiciary.org/sites/default/files/documents/FY18%20Annual%20Statistical%20Report%20010719.pdf>. This is due in large part to a surge in the number of youthful offender cases being filed. *Id.* at 8.

22. VT. R. CIV. P. 7(b)(1); VT. R. FAM. P. 2(a)(1).

refers to any incident of a hearing being scheduled for a given date and not concluding on that date. Two exceptions apply. First, 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. Second, 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. For example, when a pre-trial conference is scheduled to be held two weeks before the hearing on the merits and then 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.

### 3. Disposition

Once a child has found to be a CHINS, the court must issue a disposition order containing a permanency goal (see definition of “permanency” in Part I.A.4) and a case plan designed to achieve that goal.<sup>23</sup> The disposition is subject to an initial review after 60 days<sup>24</sup> and then periodic review thereafter until permanency is achieved.<sup>25</sup> Once the court approves the permanency goal and plan, they remain in effect 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.<sup>26</sup> This process is designed to achieve the paramount goals of “safety and timely permanency” for every child.<sup>27</sup>

### 4. Permanency

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

[S]hall be construed . . . (3) 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; (4) to ensure that safety and timely permanency for children are the paramount concerns in the administration and conduct of

---

23. VT. STAT. ANN. tit. 33, §§ 5316(b)(1), 5317(e), 5318 (2020).

24. tit. 33, § 5320.

25. tit. 33, § 5321(a); VT. STAT. ANN. tit. 14, §§ 2631(a), 2665 (2020).

26. tit. 33, §§ 5318(d), 5113(b), 5114(a)(1)–(4); *In re A.G.*, 2004 VT 125, ¶ 17, 178 Vt. 7, 13, 868 A.2d 692, 698 (citations omitted).

27. *In re A.W.*, 2013 VT 107, ¶ 10, 195 Vt. 226, 231–32, 87 A.3d 508, 512 (quoting tit. 33, § 5101(a)(4)).

proceedings under the juvenile judicial proceedings chapters; (5) 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 . . . .<sup>28</sup>

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;<sup>29</sup> (2) adoption;<sup>30</sup> (3) permanent guardianship (expected to continue for the duration of the child's minority);<sup>31</sup> (4) legal guardianship (not necessarily intended to be long-term);<sup>32</sup> 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 fit and willing relative or legal guardian."<sup>33</sup> "The optimal paths to permanency for a child are reunification or adoption."<sup>34</sup> As used in this Article, permanency refers to all five of the goals set out above.

## 5. Removal Order

Juvenile courts may issue several types of orders pursuant to which a child may be removed from his or her parents or guardians. An *ex parte* emergency care order (ECO) may be issued transferring custody to the Vermont Department for Children and Families (DCF).<sup>35</sup> 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

---

28. tit. 33, § 5101(a)(3)–(5).

29. tit. 33, § 5321(a)(1).

30. tit. 33, § 5321(a)(2).

31. tit. 33, § 5321(a)(3); VT. STAT. ANN. tit. 14, §§ 2661(4), 2662(a) (2020).

32. tit. 33, § 5321(a)(4); *see generally* VT. STAT. ANN. tit. 14 Chapter 111 (providing procedural information for guardianship).

33. tit. 33, § 5321(a)(5).

34. *In re J.M.*, 2015 VT 94, ¶ 19, 199 Vt. 627, 635, 127 A.3d 921, 925 (Skoglund, J., dissenting) (citing tit. 33, § 5321(a)).

35. tit. 33 § 5305(a).

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].<sup>36</sup>

Inherently, these orders “are designed to be short-term, stop-gap measures pending a CHINS or final disposition hearing.”<sup>37</sup> As used in this Article, “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. This includes TCO’s transferring custody to DCF 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 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.<sup>38</sup>

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.

---

36. tit. 33 § 5308(b)(1)–(4).

37. *In re I.B.*, 2016 VT 70, ¶ 7, 202 Vt. 311, 314–15, 149 A.3d 160, 162 (citing tit. 33, § 5309(a)).

38. tit. 33, § 5102(16)(A).

*B. Illustration of Vermont's Juvenile Court Process*

Juvenile cases in Vermont can be initiated either through an *ex parte* request for an ECO placing a child in state custody or through the filing of a juvenile petition and requesting a preliminary hearing to be set.<sup>39</sup> After the initial court appearance, cases generally take one track, as illustrated in Figure 1 below. Figure 1 does not show status conferences, which are often scheduled throughout the pendency of a case. It also does not depict motion hearings, which can be held at any point in the process.<sup>40</sup>

In almost all cases, a temporary care hearing will follow the issuance of an ECO or CCO that had been issued *ex parte*.<sup>41</sup> These orders temporarily remove or abridge a parent's custody of his or her child.<sup>42</sup> The "temporary care hearing [must] be held within 72 hours of the [order]."<sup>43</sup> This timeframe is "directory" and not mandatory.<sup>44</sup> At that hearing, the court determines if there is a reason why the child should not return to his or her parent's custody.<sup>45</sup> 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 often commences and continues 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.

---

39. tit. 33, §§ 5305, 5309.

40. VT. R. FAM. P. 2(d)(4).

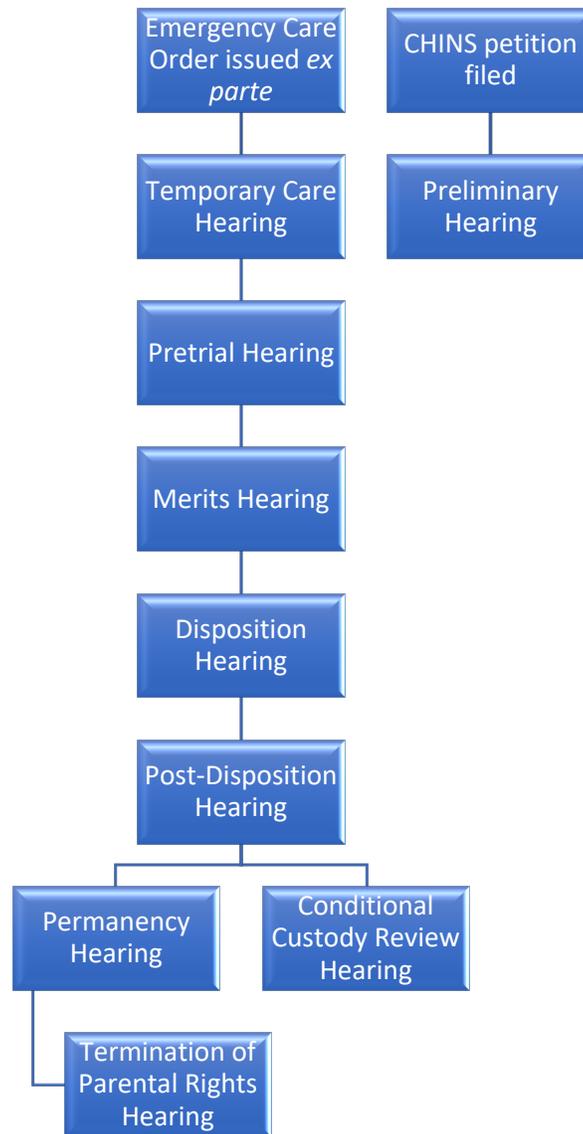
41. tit. 33, § 5307.

42. See tit. 33, § 5305(a) (explaining how the court may temporarily transfer parental custody).

43. tit. 33 § 5307(a).

44. *In re H.T.*, 2020 VT 3, ¶ 28, 227 A.3d 504, 512 (citations and quotations omitted).

45. See tit. 33, § 5308(a)(1)–(5) (outlining the circumstances in which a court may grant a temporary care order).

*Fig. 1 Juvenile Court Process*

If a child is removed from his or her parent's custody, the hearing on the merits is to be held within 60 days of the TCO absent good cause for extending that time.<sup>46</sup> 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

---

46. tit. 33, § 5313(b).

must dismiss the petition and vacate any TCOs.<sup>47</sup> The child returns home immediately.

A disposition hearing is scheduled to be held within 35 days after there is a finding that a child is in need of care or supervision.<sup>48</sup> At least seven business days prior to the hearing, DCF prepares a disposition case plan.<sup>49</sup> 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.<sup>50</sup> The Vermont Legislature established the long-term goals of: "[R]eunification 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."<sup>51</sup> At the disposition hearing, the court makes a custody determination and will either approve or reject the case plan goal and plan of services.<sup>52</sup> The court may not adopt a case plan that is neither proposed nor agreed upon by DCF. Rather, it "may reject the plan proposed by [DCF] and order [DCF] to prepare and submit a revised plan for court approval."<sup>53</sup> Up to this point, an order placing the child in the custody of DCF or another individual was temporary.<sup>54</sup> A disposition custody order, however, is considered long-term and the likelihood of reunification will depend upon the parent's abilities to comply with the plans of service. The merits hearing was a very narrowly focused, straightforward proceeding, addressing exclusively whether the child is in need of care or supervision. The disposition hearing involves a considerable breadth of issues and history as it requires the court to determine the outcome that is in the child's best interests.<sup>55</sup>

Post-disposition, permanency, and conditional custody review hearings are designed to be a check on the system.<sup>56</sup> The post-disposition hearing occurs within 60 days after the issuance of a disposition order expressly "for

---

47. tit. 33, § 5315(f).

48. *In re* D.C., 2012 VT 108, ¶ 25, 193 Vt. 101, 112, 71 A.3d 1191, 1198 (citing tit. 33, § 5315(a)–(b)).

49. tit. 33, § 5316(a).

50. *Id.*; see also *In re* D.S., 2016 VT 130, ¶ 7, 204 Vt. 44, 163 A.3d 1254 (listing factors that convinced the trial court that a mother would correct issues that brought about DCF intervention).

51. tit. 33, § 5316(b)(1).

52. See tit. 33, § 5318(b) (explaining the potential outcomes for a disposition hearing).

53. tit. 33, § 5318(b); see *In re* D.F., 2018 VT 132, ¶ 1, 209 Vt. 272, 276, 204 A.3d 641, 645 n.1 (noting that the court itself imposed a new case plan goal).

54. See tit. 33, § 5308(a) (outlining the circumstances in which a temporary care order may be granted).

55. See *In re* B.R., 2014 VT 37, ¶ 14, 196 Vt. 304, 97 A.3d 867 (explaining the issues the court uses to determine a hearings outcome).

56. tit. 33, §§ 5320, 5321(5), 5320a.

the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact.”<sup>57</sup> 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.<sup>58</sup> As noted above, the court in its disposition order determines the permanency goal and adopts a case plan intended to achieve that goal.<sup>59</sup> At permanency hearings, the court reviews the case plan and determines whether it continues to advance the goal.<sup>60</sup> 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.<sup>61</sup> However, a conditional custody review hearing may be held by a motion from a party or on the court’s own motion to determine whether a six-month extension is warranted.<sup>62</sup>

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. At these hearings, parties are formally put on notice whether progress towards the case-plan goal is either sufficient or insufficient and what other deficits may need to be overcome before reunification may occur.<sup>63</sup> At this juncture, case plans may be modified to account for successes and challenges.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> Most TPR petitions are ultimately

---

57. tit. 33, § 5320.

58. tit. 33, § 5321(a).

59. tit. 33, § 5318.

60. *Id.*

61. tit. 33, § 5320a(a).

62. *Id.*

63. tit. 33, § 5321(a)–(b).

64. *See In re* A.G., 2004 VT 125, ¶ 17, 178 Vt. 7, 13, 868 A.2d 692, 698 (citations omitted) (describing a statutory mechanism for courts to modify case plans based on a required periodic review of a child’s circumstances).

65. tit. 33, § 5317(d).

66. tit. 33, § 5318(b); *In re* D.F., 2018 VT 132, ¶ 1, 209 Vt. 272, 275, 204 A.3d 641, 645 n.1.

granted either after a hearing or, more often, through a voluntary relinquishment of parental rights.<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup>

## II. 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 Children’s Bureau (Bureau), a division of the Administration for Children & Families under the U.S. Department of Health and Human Services, undertakes many of these reports, comparing states to one another and tracking trends in each state over time. In a 2017 report to Congress,<sup>70</sup> summary data tracks changes over time for achieving what has been determined to be timely reunification under ASFA.<sup>71</sup> As stated in its 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: [t]he relationship between the caseworker and the family[,] [p]arent-child visitation[,] [t]he involvement of foster parents[,] and the involvement of a parent mentor or advocate . . . .”<sup>72</sup> These

---

67. For fiscal years 2011 through 2015, 90.6% of TPR petitions were granted either after an evidentiary hearing or a voluntary relinquishment. 2015 STATISTICAL REPORT, *supra* note 21, at 10.

68. 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). See VT. STAT. ANN. tit. 33, §§ 5112, 5306 (2020) (explaining how court may appoint attorney to represent interests of minor in respect to parental rights); VT. STAT. ANN. tit. 13, § 5232(3) (2020). 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.

69. tit. 33, § 5305(b)(2).

70. CHILDREN’S BUREAU, CHILD WELFARE OUTCOMES 2010–2014: REPORT TO CONGRESS I (2015).

71. *Id.*

72. CHILD WELFARE INFO. GATEWAY, FAMILY REUNIFICATION: WHAT THE EVIDENCE SHOWS 6 (2011).

and other studies and reports examine many external factors impacting the length of removal.

Only a few studies have addressed the questions raised in this Article. The Washington State Institute for Public Policy conducted one of these studies.<sup>73</sup> It examined court cases where children had been removed from the home over a five-year period following the enactment of ASFA.<sup>74</sup> 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.<sup>75</sup> The study revealed that, between July 1, 1997 and December 31, 2002, the average dependency case lasted 608 days.<sup>76</sup> The study also indicated that, on average, each continuance increased the length of a case by 31.8 days.<sup>77</sup> That number increased to 36 days where a continuance occurred prior to a merits determination (factfinding) and decreased to 28 days where the continuance post-dated merits.<sup>78</sup> Each continuance also saw a correlation with an extension of the child's removal from his or her parents by 15.8 days.<sup>79</sup> The study also distinguished reunification-delay statistics by the number of hearings held in a case. Interestingly, the study concluded that where fewer than three hearings or more than six hearings were held in a case, a child spent no additional time in foster care.<sup>80</sup>

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 to give testimony, the hearing 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.

---

73. WASH. STATE INST. FOR PUB. POL'Y, *HOW DO COURT CONTINUANCES INFLUENCE THE TIME CHILDREN SPEND IN FOSTER CARE?* 1-3 (2004).

74. *Id.* at 2-3.

75. *Id.* at 2.

76. *Id.* at 3.

77. *Id.* at 4.

78. *Id.*

79. *Id.* at 5.

80. *Id.*

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 support available in that jurisdiction as compared to Vermont.

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.<sup>81</sup> This study focused on 89 cases to determine if a “one[-]family, one[-]judge (OFOJ) model”<sup>82</sup> reduces the number of continuances and then a reduction of continuances reduces the time to permanency.<sup>83</sup> The conclusion was that, for every two additional judges involved in a case, the number of continuances increased by one.<sup>84</sup> Next, the study found that reducing the number of continuances reduced the time from case filing to adjudication.<sup>85</sup> However, the study also concluded that the number of continuances had no significant impact on the time to permanency.<sup>86</sup>

A 2018 study for the State of Nevada analyzed a number of hearing quality factors that impact case outcomes, including time to permanency.<sup>87</sup> 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.<sup>88</sup> The study considered the number of continuances, among other factors.<sup>89</sup> The study concluded that as the number of continuances increases, so does the time that it takes for children to achieve permanency.<sup>90</sup> 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.<sup>91</sup> That definition differs slightly from the length of removal

---

81. Alicia Summers & Corey Shdaimah, *One Family, One Judge, No Continuances*, 64 *Juv. & Fam. Ct. J.* 35, 42 (2013).

82. *Id.* at 37. Summers and Shdaimah conclude that there are benefits to OFOJ even if it doesn’t reduce the time to permanency. *Id.* at 39. 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.

83. *Id.* at 37–38.

84. *Id.* at 41.

85. *Id.* at 42.

86. *Id.*

87. ALICIA SUMMERS & SOPHIA GATOWSKI, *NEVADA HEARING QUALITY STUDY: EXAMINING THE QUALITY OF CHILD WELFARE COURT HEARING PRACTICE IN NEVADA I* (2018).

88. *Id.* at 4.

89. *Id.* at 15.

90. *Id.* at 16.

91. *Id.* at 14.

discussed in this Article 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 predicted that each continuance increases the time to permanency by 120 days.<sup>92</sup> 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.<sup>93</sup>

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.<sup>94</sup> It is noteworthy that the Baltimore study is limited to one county.<sup>95</sup> 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.<sup>96</sup> The Nevada and New York studies examined some but not all jurisdictional districts in those states.<sup>97</sup> These studies also define time to permanency slightly differently than is considered in Vermont.<sup>98</sup>

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."<sup>99</sup> The National Council of Juvenile and Family Court Judges (NCJFCJ) advocates that courts adopt a no-continuance

---

92. ALICIA SUMMERS, EXPLORING THE RELATIONSHIP BETWEEN HEARING QUALITY AND CASE OUTCOMES IN NEW YORK 10 (2017).

93. *Id.* at 1, 7.

94. Summers & Shdaimah, *supra* note 81, at 42.

95. *See id.* at 38–39 (stating the study was restricted to Baltimore City, Maryland).

96. WASH. STATE INST. FOR PUB. POL'Y, *supra* note 73, at 3.

97. *See* SUMMERS & GATOWSKI, *supra* note 87, at 15 (explaining the number of jurisdictions participating in the study); SUMMERS, *supra* note 92, at 1 (explaining the various jurisdictions the study examined).

98. *See* SUMMERS & GATOWSKI, *supra* note 87, at 14 (defining time to permanency); SUMMERS, *supra* note 92, at 3 (defining time to permanency); Dataset, *supra* note 1.

99. Summers & Shdaimah, *supra* note 81, at 36 (citations omitted).

policy granting continuances only in extraordinary circumstances.<sup>100</sup> This is so, according to the NCJFCJ, even when the parties stipulate to a continuance.<sup>101</sup> Vermont courts have not adopted a no-continuance policy, and this Article 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 questions asked here. The gap in available research leaves us unable to determine what steps, if any, need to be taken in Vermont vis-à-vis continuances to achieve timely permanency for every child who has been removed from his or her home. Here, I examine the correlations between continuance practices in Vermont, delays in reunification, and permanency outcomes other than reunification.

### III. METHODOLOGY

The methodology used for this research includes 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.<sup>102</sup> Children are removed from their homes, on average, in approximately 720 of those cases.<sup>103</sup> Therefore, I review 100 cases per year stratified by county. An expert in the area of this study suggested this same size.

#### A. Procedures

##### 1. 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 indicates that some form of permanency has been achieved.<sup>104</sup> This sample size also avoids

---

100. MARI KAY BICKETT ET AL., ENHANCED RESOURCE GUIDELINES IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 181 (2016).

101. *Id.* at 39.

102. Dataset, *supra* note 1.

103. *Id.*

104. *Id.*

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.<sup>105</sup> This mined for (1) CHINS cases with (2) removal. Removal is indicated in the database by the issuance of a TCO. Juvenile cases in Vermont are confidential.<sup>106</sup> 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.<sup>107</sup> The MOU set out the parameters of the study and confirmed that I would not disclose any confidential information. This list of cases meeting the criteria was sent in an Excel spreadsheet. The docket number easily determined the year and county of filing.<sup>108</sup>

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  $b_5$ );
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; and

---

105. *Id.*

106. VT. STAT. ANN. tit. 33, § 5110(a) (2020).

107. *See infra* Appendix *Memorandum of Understanding (MOU)*.

108. 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.

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  $a_{70}$ ).

## 2. 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, I discarded 25 because either the child was not, in fact, removed from his or her parent's 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 or 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. 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 coded, 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. 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.<sup>109</sup> 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.<sup>110</sup> A nominal measurement was used for this variable.

The content analysis left some gaps such as the reasons for continuances in certain cases. While interviews or other types of surveys with attorneys could, theoretically, fill such gaps, 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 the court closed the cases. Second, their notes are

---

109. 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 census date of December 31, 2018 was used to calculate lengths of removal.

110. See *infra* Appendix User Information Confidentiality Agreement.

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 county's State's Attorney<sup>111</sup> or the Attorney General's office (who represents DCF),<sup>112</sup> represents the State in CHINS cases. 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.

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 recollection may not be 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 may not. Interviews with social workers would probably not be productive again because of the number of cases that they will have handled since the court granted the continuance. The same is likely true for guardian's *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 I gathered the data, I determined 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. I used ratio measurements here. As there is a correlation between the number of continuances and the length of removal, I next used a ratio measurement to examine whether the types of hearings continued or the reasons for the continuances impact the disposition.

## VI. ANALYSIS

### *A. Correlation Between the Number of Continuances and the Length of Removal*

This 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

---

111. tit. 33, § 5309(a).

112. VT. STAT. ANN. tit. 3, § 152 (2020).

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.<sup>113</sup> 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, I divided children into age groups based upon their age at the time of the first removal order. The age groups are: under 1 years old; 1–2 years old; 3–5 years old; 6–10 years old; 11–14 years old; and 15–17 years old. These age groups were based on 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 15 years. Perhaps coincidentally, the early stages identified track loosely with Sigmund Freud's psychosexual stages of child development<sup>114</sup> and Jean Piaget's cognitive stages of child development.<sup>115</sup> The later stages are divided more by differences in levels of independence as children approach adulthood.<sup>116</sup> Experts in the area of juvenile courts, including the committee that reviewed this work and several Vermont juvenile court judges, have opined that these age groups are appropriate for this study.<sup>117</sup> Figure 2, below, breaks down the number of cases falling into each age group of the study.

---

113. *See generally* Summers & Shdaimah, *supra* note 81.

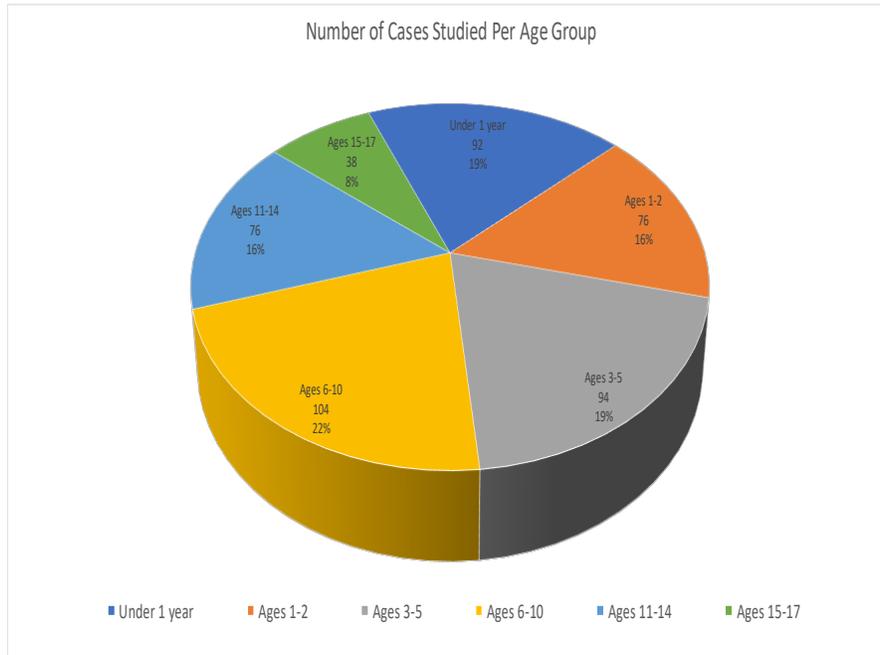
114. *See generally* PSYCHOLOGY BASICS (Frank N. Magill ed., 2nd ed.1998).

115. *See generally* P.G. RICHMOND, AN INTRODUCTION TO PIAGET (1st ed. 1971).

116. *See* Dataset, *supra* note 1.

117. *See id.*

Fig. 2 Number of Cases Studied Per Age Group<sup>118</sup>



The average length of time that a child will be removed from his or her parent's custody where there are no continuances is 273.5 days.<sup>119</sup> CHINS cases averaged 2.53 continuances per case.<sup>120</sup> On average, each continuance correlates with 94.5 days added to the average length of the removal.<sup>121</sup> That increase is more indicative for children up to six years of age.<sup>122</sup> The average for children under 1 year old is 86.7 days per continuance.<sup>123</sup> For children 1–2 years of age, the average is 99.3 days per continuance.<sup>124</sup> For children ages 3–5, the average is 87.8 days per continuance.<sup>125</sup> Continuances correlate with

118. *See id.*

119. *See infra* Figures 3 and 4.

120. *See id.*

121. 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. WASH. STATE INST. FOR PUB. POL'Y, *supra* note 73, at 5.

122. *See infra* Figures 3 and 4.

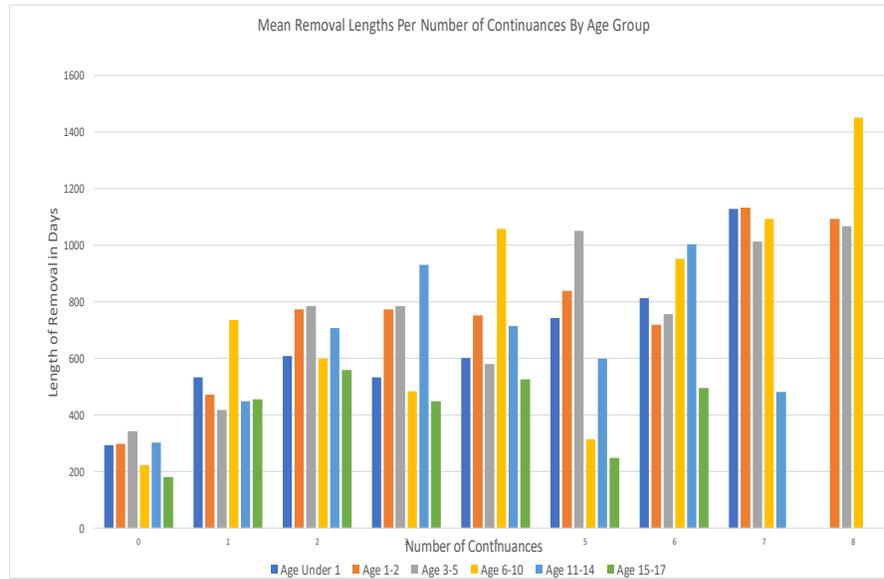
123. *See id.*

124. *See id.*

125. *See id.*

the greatest increase for children ages 6–10 with an average of 215.4 days of removal added for each continuance.<sup>126</sup>

*Fig. 3 Average Removal Lengths Per Number of Continuances (through 8) by Age Group<sup>127</sup>*



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 15 through 17.<sup>128</sup> Thus, for children up to 11 years old, each continuance will mean that he or she will likely remain out of his or her parent's custody for an additional three to seven months.<sup>129</sup>

126. 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. 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.

127. 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.

128. *See infra* Figures 3 and 4.

129. *See id.*

Fig. 4 Average Removal Lengths Per Number of Continuances by Age Group<sup>130</sup>

\*denotes only one case in the sample

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*		

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.<sup>131</sup> Where there was one continuance, the average length of removal increased by 237

130. See Dataset, *supra* note 1.

131. See *supra* Figures 3 and 4.

days to a total of 511 days.<sup>132</sup> Where there were two continuances, the average removal was 672 days, almost two years.<sup>133</sup> 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.<sup>134</sup> Where there are eleven continuances, the average length of removal is 2,131 days, almost five and half years.<sup>135</sup> 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 parent's custody remain in the custody of another for an average of nine months without any continuances, for 17 months with one continuance, and for 22 months with two continuances. In order to avoid children lingering in foster care longer than is necessary, ASFA mandates that a child removed from his or her parent's custody for 15 of 22 consecutive months should presumably be freed for adoption.<sup>136</sup> 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.<sup>137</sup> 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 25.5% of CHINS cases in Vermont result in a TPR petition being filed.<sup>138</sup>

As indicated above, there is an expectation of TPR where a child has been removed for 15 of 22 consecutive months. Not surprisingly, as the number of continuances increases so does the likelihood that the child will not be reunified with his or her parents.<sup>139</sup> Of the cases studied, ten cases had eight or more continuances and had been disposed of at the time of review.<sup>140</sup> Of those ten cases, only one child was reunified with his or her parents.<sup>141</sup> Seven cases resulted in TPR, one in a permanent guardianship, and one child turned 18 before any other form of permanency could be achieved.<sup>142</sup>

---

132. *See id.*

133. *See id.*

134. *See id.*

135. *See id.*

136. *See In re A.G.*, 2004 VT 125, ¶ 47, 178 Vt. 7, 28, 868 A.2d 692, 708 (explaining the goals of ASFA to avoid "foster-care drift"); 42 U.S.C. § 675(5)(E).

137. Dataset, *supra* note 1.

138. 2015 STATISTICAL REPORT, *supra* note 21, at 8–9.

139. *See infra* Figure 5.

140. *See infra* Figure 6.

141. *Id.*

142. *Id.*

Fig. 5 Reunification Rates Across All Age Groups<sup>143</sup>

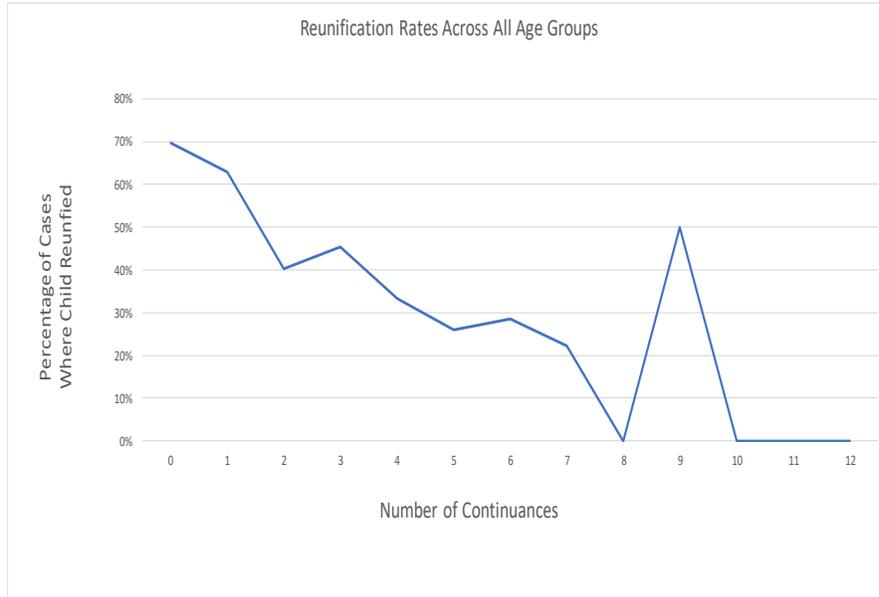
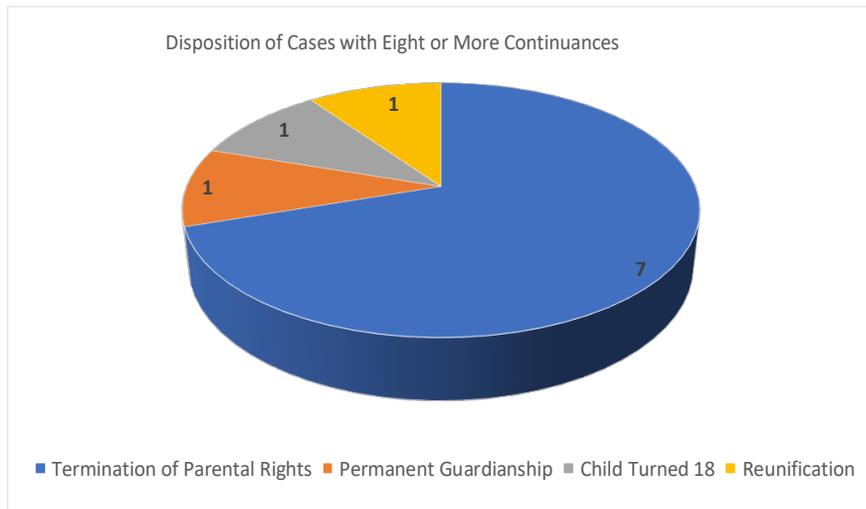


Fig. 6 Disposition of Cases with Eight or More Continuances<sup>144</sup>



143. Dataset, *supra* note 1.

144. *Id.*

Even when a case does not result in a TPR, we know that children experience emotional harm when removed from their parent's custody.<sup>145</sup> While we assume the harm or risk of harm if left in the home outweighs this harm, we also know that additional time out of the home takes its toll on children's emotional and psychological wellbeing particularly for younger children.<sup>146</sup> This leads to the next 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 1,214 continuances were granted.<sup>147</sup> 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:<sup>148</sup>

---

145. Delilah Bruskas, *Children in Foster Care: A Vulnerable Population at Risk*, 21 J. CHILD & ADOLESCENT PSYCHIATRIC NURSING 70, 70 (citations omitted) (explaining that studies have shown “[c]hildren 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).”).

146. COMM. ON EARLY CHILDHOOD, ADOPTION, & DEPENDENT CARE, *supra* note 8, at 1146.

147. Dataset, *supra* note 1.

148. See VT. STAT. ANN. tit. 33, § 5103 (2020) (establishing the court's jurisdiction for juvenile proceedings); tit. 33, § 5317 (defining disposition at hearings); tit. 33, § 5321(a) (outlining the procedures for permanency hearings); tit. 33, § 5315(a) (referencing proceedings for deciding merits of adjudication); tit. 33, § 5307(a) (describing the procedures for temporary care hearings); tit. 33, § 5320 (explaining the procedures for a post-disposition review hearings); 2015 STATISTICAL REPORT, *supra* note 21, at 5 (defining termination of parental cases as when reunification with parents fail, the State asks “the court to terminate parental rights so that the child can be adopted.”); tit. 33, § 5320a(a) (limiting the duration of conditional custody orders); VT. STAT. ANN. tit. 14, § 2664(a) (2020) (referencing generally the Family Division of the Superior Courts ability to give permanent guardianship); VT. STAT. ANN. tit. 33, § 5318 (2020).

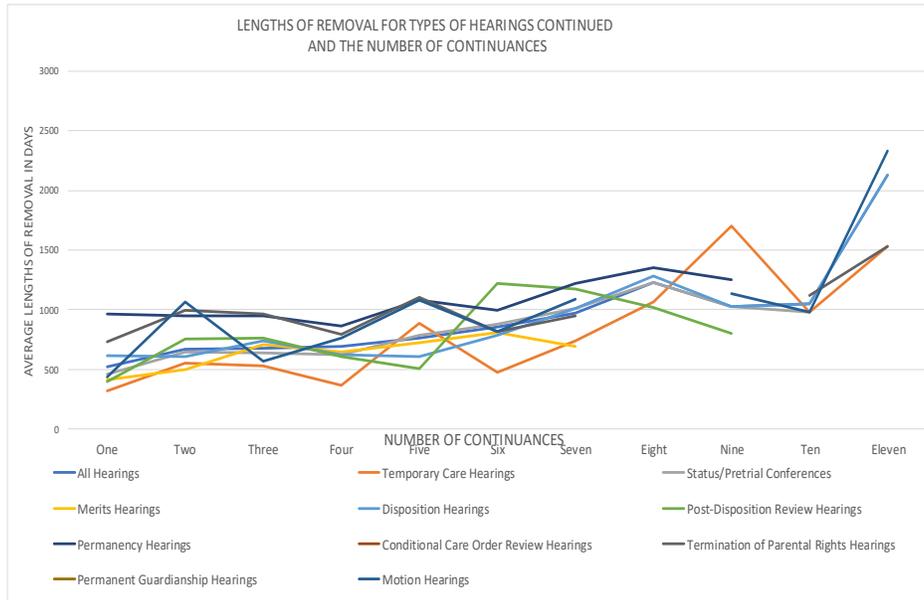
Type of Hearing	Total Number of Continuances	Percentage
Status Conference	314	26%
Disposition	289	24%
Permanency	147	12%
Merits	108	9%
Temporary Care	101	8%
Post-Disposition	95	8%
Termination of Parental Rights	94	8%
Motion	65	5%
Conditional Custody Review	4	<1%
Permanent Guardianship	4	<1%

Average lengths of removal were determined for all cases where a specific type of hearing was continued.<sup>149</sup> Most cases, of course, had multiple types of hearings continued.<sup>150</sup> 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.

---

149. See *infra* Figure 7.

150. Dataset, *supra* note 1.

Fig. 7 Average Removal Lengths for Types of Hearings<sup>151</sup>

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.<sup>152</sup> 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.<sup>153</sup> Only motion hearings and termination of parental rights saw greater removal lengths where only that one type of hearing was continued.<sup>154</sup>

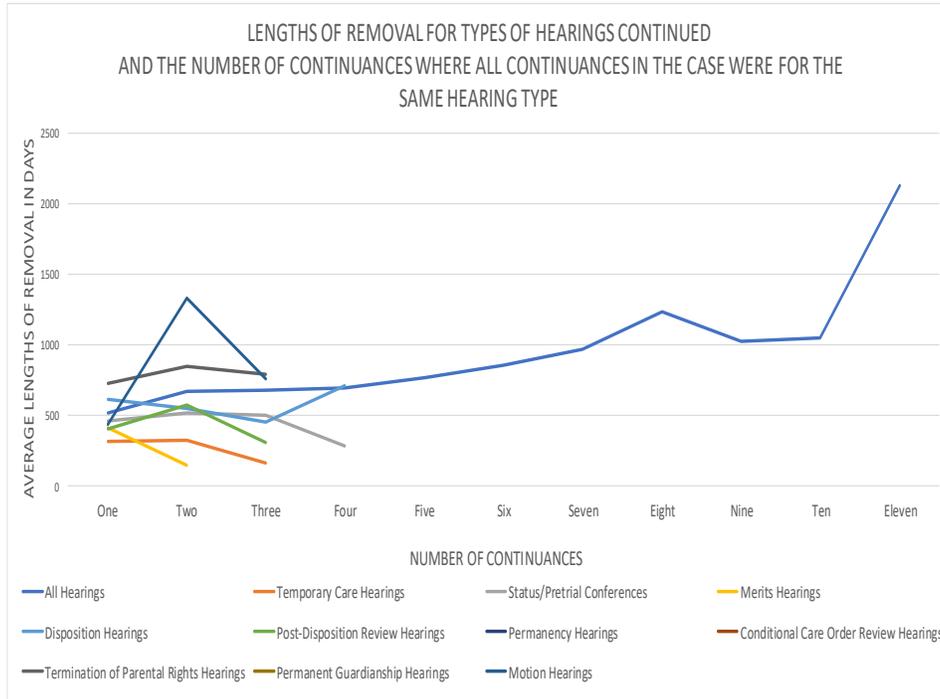
151. *Id.*

152. *See infra* Figure 8.

153. Dataset, *supra* note 1.

154. *Id.*

*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. I identified 30 reasons for continuances. 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 <sup>155</sup>	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 <sup>156</sup>	6	<1%
New information or allegations	6	<1%

---

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

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

No attorney or GAL assigned <sup>157</sup>	5	<1%
ICWA <sup>158</sup> 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 <sup>159</sup> referral	2	<1%

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 the limited number of licensed substance-abuse assessors and scarce funding often delay assessments.<sup>160</sup> 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,<sup>161</sup> 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 parent's 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,

---

157. Juveniles subject to CHINS and other juvenile proceedings are entitled to be represented by both an attorney and a guardian *ad litem*. VT. STAT. ANN. tit. 33, § 5112(a)(b) (2020). Parents are entitled to be represented by an attorney if the court deems it to be in the interests of justice. VT. STAT. ANN. tit. 13, § 5232 (3) (2020). However, courts routinely appoint counsel if parents are unable to afford to hire their own. This presumption of representation is seen in Section 5306(d)(5) which requires notice of temporary care hearings to be sent to "an attorney to represent each parent." tit. 33, § 5306(d)(5).

158. Indian Child Welfare Act, 25 U.S.C. §1901 et seq.; tit. 33, § 5120.

159. See tit. 33, § 5901 (Interstate Compact on the Placement of Children).

160. VT. JUDICIAL COMM'N ON FAMILY TREATMENT DOCKETS, FINAL REPORT 6–8 (2018).

161. 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; the parents; and even, in some cases, the child.

at least one of which was for the completion of a test or assessment. I compared the average length of time 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.<sup>162</sup> There were 26 cases in which at least one hearing was continued because a test or assessment needed to be completed.<sup>163</sup> In 28 cases, at least one hearing was continued because updated information was needed.<sup>164</sup> Finally, there were 147 cases in which at least one hearing was continued to allow the parties to continue negotiating an agreement.<sup>165</sup>

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.<sup>166</sup> That child was removed from the home for a total of 1,944 days.<sup>167</sup> The average length of removal for all children whose cases were continued six times was 728 days.<sup>168</sup> 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.<sup>169</sup> Thus, it appears the data analysis disproves the assumption that those four bases of continuances lead to faster reunifications. It is also worthy to note that for all instances where an evidentiary hearing was continued because the parties were negotiating an agreement, approximately 70% still required the evidentiary hearing because the parties failed to reach an agreement on at least one issue.<sup>170</sup>

---

162. Dataset, *supra* note 1.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

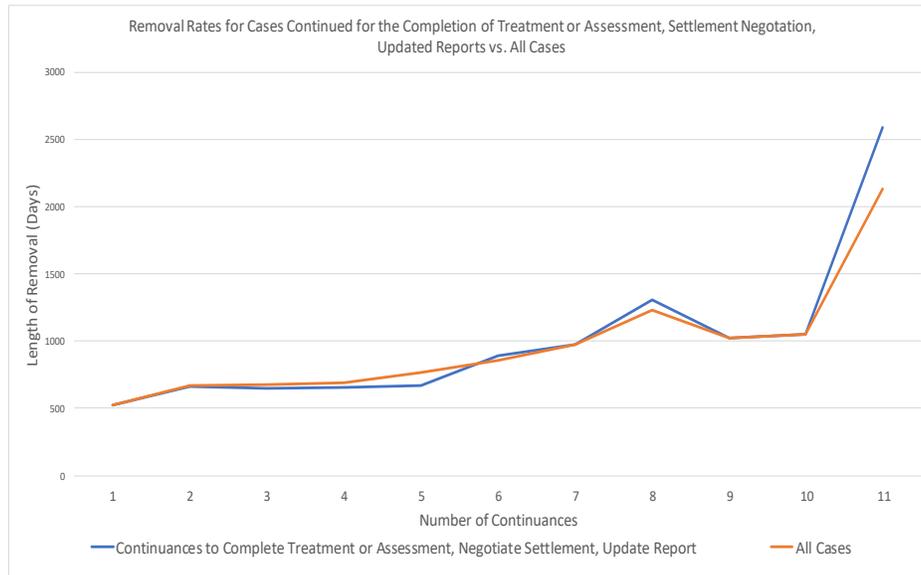
167. *Id.*

168. *Id.*

169. *See infra* Figure 9.

170. Dataset, *supra* note 1.

Fig. 9 Comparison of Removal Lengths<sup>171</sup>



## CONCLUSION

Children who are alleged to be without proper parental care often need to be removed from their parent’s custody. Such removal is a necessary evil; we believe the harm of protecting the children from whatever abuse or neglect the child was suffering at the hands of his or her parents outweighs the harm of removal.<sup>172</sup> State and federal laws as well as common sense mandate that the removal be as short as possible, and children removed should achieve some form of permanency as quick as possible.<sup>173</sup>

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.<sup>174</sup> 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

171. *Id.*

172. See *supra* text accompanying notes 9–10; but see SHANTA TRIVEDI, THE HARM OF CHILD REMOVAL, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 527 (2019) (noting that, empirically, evidence suggests it is better for the child to remain in an abusive home because of the strong bond between a parent and child).

173. See *In re* A.G., 2004 VT 125, ¶ 17, 178 Vt. 7, 13, 868 A.2d 692, 698 (citations omitted) (explaining that safety and permanency are the primary concerns of CHINS proceedings).

174. See *In re* H.T., 2020 VT 3, ¶ 23, , 227 A.3d 504, 512 n.4 (citing VT. R. FAM. P. 2(b)(3)).

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 parent's 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, guardian's *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."<sup>175</sup> Whether there is good cause is left to individual judges to decide. That rule does not define the term, 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 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

---

175. VT. R. FAM. P. 2(b)(3); *see also In re L.S.*, 509 A.2d 1017, 1020 (Vt. 1986) (citing *In re R.S.*, 469 A.2d 751, 754 (Vt. 1983)) ("The important policies supporting the speedy resolution of juvenile proceedings.").

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 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

*Memorandum of Understanding (MOU)*

## 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(h) 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

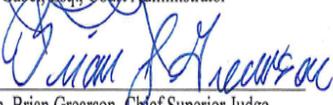
A. This agreement shall be effective upon signing and shall remain in effect until terminated by either party, or until September 1, 2020, whichever comes first. This agreement may be terminated by either party upon 90 days' notice in writing delivered by certified mail or in person.

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*

## USER INFORMATION CONFIDENTIALITY AGREEMENT

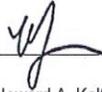
In connection with the use of the Judiciary's data, I agree to be bound by the following agreement:

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

