JUVENILE PROCEEDINGS: CHANGED CIRCUMSTANCES—THE PROCEDURAL OBSTACLE TO TERMINATION OF PARENTAL RIGHTS

On August 14, 1971, the Windsor County District Court ordered J. and J.W., children aged one and two and a half, removed from the care of their mother. The basis for the order was a finding that there had been parental neglect and abuse[1] and that the children were "in need of care or supervision"[2] as that phrase is used in title 33 V.S.A., chapter 12, an act to provide for judicial proceedings relating to juveniles (hereinafter the "Act"). The removal order transferred legal custody[3] of the children to the state.

Nearly four years later, the Windsor County State's Attorney petitioned the district court to hold a hearing to modify the original order of removal to an order terminating all parental rights. After the modification hearing, at which the mother was represented by counsel, the court concluded:

> The mother's capability to care for her children has not materially improved [since the date of the removal order] and the likelihood of improvement materially is not good. . . .
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1. *In re* J. and J.W., No. 80-71 WrJ (Vt. Dist. Ct., Windsor Cir., Aug. 24,1971) (findings no. 1 and 4).

2. VT. STAT. ANN. tit. 33, ch.12 (Cum. Supp. 1976), deals with children who are "in need of care or supervision." For children to be so classified, a juvenile court must determine that a child: (1) has either been abandoned or abused by his parents or other custodian; (2) is without proper care necessary for his well-being; or (3) is without or beyond the control of his parents or other custodian. VT. STAT. ANN. tit. 33, § 632(a)(12) (Cum. Supp. 1976). This statute has been unsuccessfully challenged as unconstitutionally vague. In *In re* Neglected Child, 130 Vt. 525, 296 A.2d 250 (1972), the Vermont Supreme Court rejected the challenge finding that due process requirements were inherent in the statute.

Children are referred to the court by Social and Rehabilitation Services (SRS). SRS identifies children in several ways, such as references from social workers or through reports of suspected child abuse. SRS is required to investigate these reports within 72 hours. VT. STAT. ANN. tit. 13, §§ 1353-1355 (Cum. Supp. 1976).

3. Legal custody means "the right to have the physical possession of a minor and to determine where and with whom he shall live . . . [it is] the right and duty . . . to provide him with food, shelter, education and ordinary medical care, . . . subject to any residual parental rights and responsibilities." VT. STAT. ANN. tit.33, § 632(a)(10) (Cum. Supp. 1976).

4. Parental rights and responsibilities include, but are not limited to, "the right to reasonable visitation, the responsibility for support, and . . . consent to adoption." VT. STAT. ANN. tit. 33, § 632(a)(16) (Cum. Supp. 1976).

> . . . The children are now older and the prospects of adoption are less as time goes by and the children's status now is unstable and the need is urgent that their status be stabilized for their best interests.[5]

The court ordered parental rights terminated, but stayed implementation pending an appeal by the mother to the Vermont Supreme Court. In reversing the district court, the supreme court, in *In re J. and J.W.*,[6] held that the state had not shown a need for the modification hearing and thus had failed to satisfy the statute which requires a preliminary determination that the family circumstances have changed in some way that would justify a new hearing to determine what action might be best for a child.[7] Under the supreme court's view, the state, in seeking termination, can meet the preliminary test of changed circumstances only by a showing of change in the parents' situation. In refusing to recognize that events in a child's life may result in changed circumstances, the supreme court, unlike the district court, neglected the statutory purpose of caring for and fostering the development of the child.[8]

In many cases involving children in need of care or supervision, as in *J. and J.W.*, the state first seeks the temporary removal of a child from his parents' custody.[9] Removal is authorized under the Act only upon a showing that "the child is in immediate danger from his surroundings, and that his removal is necessary for his protection."[10] If the court finds grounds for removal, the child is then placed in a foster home. Nationally, in as many as fifty to sixty per cent of removal cases, the children are eventually returned to their natural families.[11]

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5. *In re* J. and J.W., No. 80-71 WrJ (Vt. Dist. Ct., Windsor Cir., Sept. 5, 1975) (conclusions no. 6 and 12).

6. ___Vt. ___, 365 A.2d 521 (1976).

7. *Id.* at ___, 365 A.2d at 523-24. VT. STAT. ANN. tit. 33, § 659(a) (Cum. Supp. 1976) provides in part:

> An order of the court may also be amended, modified, set aside or terminated by that court at any time upon petition therefor by a party or on its own motion on the ground that *changed circumstances* so require in the best interests of the child. (emphasis added).

8. *See* VT. STAT. ANN. tit. 33, § 631(a)(1) (Cum. Supp. 1976).

9. Telephone interview with Judge Bristow, Vermont district court judge (Feb. 4, 1977).

10. VT. STAT. ANN. tit. 33, § 639(3) (Cum. Supp. 1976).

11. Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termi-*

The temporary placement of a child in foster care, although often detrimental to the child,[12] provides time for his parents to improve their circumstances so that, subject to the court's approval, they can regain custody. Because of the adverse effects of removal and placement in foster care, temporary placement is not intended to be an alternative to a permanent placement for the child, either in his natural home or in an adoptive home. The Act provides that upon a change in the family, for better or worse, a removal order can be modified on petition of the state, the parents, or the court.[13] If the court finds changed circumstances, it may then make a determination to return the child to his parents or to terminate all parental rights (thus clearing the way for adoption of a child) or to leave the existing removal order undisturbed.[14]

In *In re Certain Neglected Children,*[15] the Vermont Supreme Court, for the first time, adopted a test for determining the existence of changed circumstances. The test adopted is similar to that used for child-custody in divorce cases. In a custody case, as in a juvenile case, changed circumstances must be shown before a hear-

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nation of Parental Rights, 28 STAN. L. REV. 623, 662 n. 158 (1976). Wald states that:

> . . . one must be very cautious in using these data. However, because a number of methodologically reliable studies have found that children remain in care for substantial lengths of time, and that the chance of return declines the longer the child is in care, I believe that the estimates of 40-50% nonreturns are reasonable, perhaps conservative, at least for abused and neglected children.

Id. Statistics on the percentage of children in Vermont who are eventually returned home after removal are not available.

12. The harms from foster care are many, including: (1) a child has a painful experience when ties with the psychological parent, even if unfit, are severed; (2) a child views his placement in foster homes as punishment; (3) some foster homes are not very good and the adults know little more about child nuturing than the parents; (4) multiple placements are likely to occur, and (5) the impact on the children left in the home, if only one child is removed (frequently only one child may be abused), is often detrimental. *Id.* at 644-46.

The harms of temporary placement include: (1) a child suffers from insecurity and an inability to form future attachments when family attachments are broken; (2) temporary placement destroys continuity which is essential to child development; and (3) the child's uncertain status retards his socialization and cognitive development. *Id.* at 670-72. *See* J. GOLDSTEIN, A FREUD, & A. SOLNIT, BEYOND THE BEST INTEREST OF THE CHILD 32-34 (1973) for the ramifications of breaking attachments. *See generally* E. WEISTEIN, THE SELF-IMAGE OF THE FOSTER CHILD (1960).

13. *See* note 7 *supra.*

14. VT. STAT. ANN. tit. 33, § 656(a) (Cum. Supp. 1976).

15. 134 Vt. 74, 349 A.2d 228 (1975).

ing can be held to determine if a child should be removed from one parent and placed with the other parent. To satisfy the divorce custody test,[16] the court in *Neglected Children* stated that "the petitioner must first prove a 'substantial change in the material circumstances,' and next prove that under the new conditions a change [in the order] . . . is in the best interests of the child."[17] The court failed to explain, however, why a similar test for changed circumstances should be applied in juvenile proceedings. The court's statement that "a custody matter is equally applicable to a juvenile disposition proceeding"[18] was entirely unsupported and cannot be supported.

The "substantial change in the material circumstances" test, first adapted to a juvenile proceeding in *Neglected Children,* was further refined by the supreme court in *J. and J. W.* Justice Billings, writing for the court, stated:

> To establish a substantial change in material circumstances, petitions to modify an order and terminate parental rights proceed on the theory that natural parents have an obligation to correct their living circumstances for the better . . . and that there has been deterioration or that there exists stagnation coupled with a prospective inability for improvement.[19]

The court thus established that the changed circumstances test has two elements, either of which must be shown to be present before the district court can reach the merits of the question of the child's future. Unless the district court judge finds either deterioration or stagnation coupled with a prospective inability for improvement, no modification is possible.[20]

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16. Gokey v. Gokey, 127 Vt. 334, 335, 248 A.2d 738, 739 (1968) articulated the test for changed circumstances in divorce custody cases.

17. 134 Vt. at 76, 349 A.2d at 229 (quoting Gokey v. Gokey, 127 Vt. 334, 335, 248 A.2d 738, 739 (1968)).

18. 134 Vt. at 76, 349 A.2d at 229.

19. ___ Vt. at ___, 365 A.2d at 524 (1976).

20. Until recently, the substantial change in material circumstances test had been applied only in situations in which the state had sought termination of parental rights in a modification proceeding. Although the Vermont Supreme Court had not ruled on the issue of whether the same test applied when parents seek to regain custody, the practice of the district courts was to require the parents to show only that *some* circumstances had changed in order to justify a hearing. However, in *In re* R.F., No. 299-76 (Vt. Sup. Ct., June 7, 1977) the Vermont Supreme Court applied the substantial change in material circumstances test to a case in which a parent sought to regain custody of his child.

In *In re Neglected Child,*[21] the first juvenile case which dealt with changed circumstances, a child "had become a year older without a whisper of promise of proper care from either parent."[22] The mother had made no effort to establish a home, had visited the child only three times, had been unable to support herself or to hold down a job, had "continued her rather nomadic way of life by associating with other men and contracting a venereal disease,"[23] and had generally failed to improve her behavior. In this case the parent's situation had worsened and the court could find no redeeming qualities which would justify preserving parental rights. Thus the court found the sort of deterioration of the family which justified a modification hearing to terminate parental rights.

The meaning of stagnation, the second element of the changed circumstances test, was illustrated by the court in *Neglected Children.* Stagnation was found when, after three years, "in spite of all the services provided the mother, she had not been able to effect changes in her living habits and style."[24] As in *Neglected Child,* the court in *Neglected Children* found that the mother was "deficient in the necessary abilities"[25] to care for her children.

In neither of these cases did the court feel compelled to consider, in its determination of changed circumstances, that the children had been in foster care for a period of one to three years, suffering the consequences of temporary placement.[26] The court undoubtedly thought it was acting in the child's interests in finding this parental deficiency. However, an inquiry which ignores the child's circumstances and particular needs, and instead focuses exclusively on the mother's behavior, does not best serve the child's interests. Although parental abilities are important, the child's circumstances and his response to foster care should also be given considerable weight by any court which seeks to determine whether circumstances have changed.

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21. 130 Vt. 525, 296 A.2d 250 (1972).
22. *Id.* at 535, 296 A.2d at 256.
23. *Id.*
24. 134 Vt. at 77, 349 A.2d at 230.
25. *Id.*
26. *See* note 12 *supra.*

The Vermont Supreme Court's decision in *J. and J.W.* dramatically illustrates the consequences of the failure to consider the *child's* circumstances, his particular needs, and his response to foster care. Based upon the determination by a court-appointed psychiatrist that the mother would not likely be capable of resuming parental duties,[27] the district court judge found that: "[T]he mother's capability to care for her children has not materially improved and the likelihood of improvement is not good."[28] Yet, the supreme court failed to find changed circumstances, noting a number of improvements in the mother's living circumstances.[29] It is unclear from the court's opinion whether these improvements were used to refute a claim of deterioration, or of stagnation, or of a prospective inability for improvement. The result of the court's opinion, however, is clear: "stagnation . . . in the parental capability to care for the children"[30] is in and of itself insufficient to meet the test of changed circumstances. The court completely ignored the fact that the children had already been placed in three different foster homes—the third time separating the two children—and the psychiatric evaluation which stressed the adverse consequences of their early childhood experiences and the critical importance of stability in their home life.[31] Given the circumstances of the children,

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27. Report by Dr. Krell to Vermont district court (April 23, 1975), recommendation no. 2. The district court in its findings of fact stated:

> 6. The mother has a history of mental illness and treatment for mental illness. . . .
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> 7. The mother's mental illness is diagnosed as "schizophrenia - chronic, undifferentiated type in remission". She receives medication for this mental illness regularly. . . .
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> 8. The mother, with the aid of medication and counselling, is able to cope with her life which includes non-strenuous, non-stress, non-demanding work with only a husband in the home. She functions adequately in a non-stress environment.

In re J. and J.W., No. 80-71 WrJ (Vt. Dist. Ct., Windsor Cir. Sept. 5, 1975) (findings of fact no. 6-8).

28. *In re* J. and J.W., No. 80-71 WrJ (Vt. Dist. Ct., Windsor Cir. Sept. 5, 1975) (conclusion no. 6).

29. ___ Vt. at ___, 365 A.2d at 524. The court considered that the mother had established a stable marital situation, had continued a regular medical treatment program for her mental problems, and had been employed temporarily in a part-time position which involved supervision of children.

30. *Id.*

31. In the report to the Vermont district court (April 23, 1975), Dr. Krell stated that

improvement in a parent's living situation should not have foreclosed the district court from considering termination.

In addition to the inappropriate exclusive focus on the parents, the court's adoption of the "substantial change in a material circumstance" test from divorce custody law has increased the state's burden of showing changed circumstances. In *J. and J. W.*, for example, to satisfy the stagnation test, the state would have had to show that the mother's mental problems had not improved and were not likely to improve or, in the alternative, to show that the mother's condition had deteriorated—perhaps to the point where she had been confined to the state hospital. On either theory, the court apparently would require a showing that circumstances have changed to the point where little, if any, possibility remains that the children might return to the parent. In *J. and J. W.*, the improvement in the mother's situation indicated that, although she was still unfit to regain custody of her children, she might in the future be able to do so. In the court's view, the state will not be granted a modification hearing so long as custody might be restored at some point during the children's minority.

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foster care and the emotional trauma which occurred when living with their parents has

> . . . led to a great deal of confusion in their minds as to who their real parents are. This leads to anxiety and immature behavior and language. The actual physical switch from mother to foster mother and back adds further confusion. The unstable relationship with the original parents and many separations from parental figures since placement with the Department of Social and Rehabilitation Service has also contributed to their anxiety and immaturity.
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> Most significant for these children is the lack for most of their lives of a consistent, warm, loving relationship with the same stable parent or set of parents. This is most important to a child's emotional development and for the development of a child's concept of himself. If a child has a stable good relationship with a significant other, he or she develops a sense of self, a realistic view of the world and eventually an ability to relate to others and the external world in a stable, healthy manner. If this relationship is missing or defective, the children may be confused about their own self-image and may have little ability to relate realistically to others. They are often anxious and withdrawn or hyperactive with immature and inappropriate language and behavior. The longer this lack of a stable relationship exists the less likely are the chances for the child to grow into a healthy, mature adult. The sooner this cycle is interrupted and the child is placed in a stable permanent home situation with loving, consistent parental care, the better are the chances of normal, healthy development.

Regardless of how the court might seek to justify adoption of the custody standard in juvenile proceedings, the fact remains that custody orders in divorce, and removal orders in juvenile proceedings, serve very different purposes and involve very different policy considerations. On the one hand, except in extraordinary situations, custody orders should remain undisturbed for a number of reasons. First, in a custody proceeding both parents come before the court as equals and of their own volition; second, the fitness of a parent is generally not at issue; and third, regardless of the outcome of the custody proceeding, the child will be placed with a parent, and there will therefore be something less than a total uprooting of the child from his environment. Stability in a child's environment, crucial to his psychological growth and development, can be achieved only if custody orders have the status of final judgments. Insulating a custody order against attack therefore coincides with the best interests of the child. The desirability of leaving a child's placement undisturbed adequately explains the court's insistence that custody orders should be subject to modification only upon a showing of a substantial change in a material circumstance.

On the other hand, a removal order is designed to be temporary,[32] to protect a child from harm caused by his parents pending final resolution of the problem. At the same time, the temporary nature of the order protects parental rights, giving parents time to resolve their difficulties and regain custody. Moreover, removal almost inevitably has adverse consequences for children[33] who are deprived of a permanent home and may be frequently uprooted, as were J. and J.W. When the court in a juvenile proceeding obstructs consideration of termination by placing upon the state a heavy burden of showing changed circumstances, focusing solely on the parent's situation and ignoring the impact of foster care on a child and

32. *See* text accompanying note 12 *supra*.

33. *See* note 12 *supra*. Because of the state's responsibility of protecting society from antisocial behavior, the psychological impact of adverse circumstances on children is important, for typically such behavior results from adults who were psychologically underdeveloped children. Such children are "prone to become aggressive and commit antisocial acts, some of which are dramatically brutal." N. POLANSKY, C. HALLY, & N. POLANSKY, PROFILE OF NEGLECT: A SURVEY OF THE STATE OF KNOWLEDGE OF CHILD NEGLECT 32 (1975).

the changes which might be occurring in the child's life,[34] the court is not acting in the best interests of the child. The analogy to a custody matter and the adoption of a custody standard for modification would therefore seem to be inconsistent with the basic policy of the Act.

Adoption of the custody standard of course does have the effect of preserving family ties,[35] and in theory this will often be in the best interest of the child. The Act indicates a strong statutory preference for keeping a child in his home, directing the state to protect and care for a child, "whenever possible, in a family environment, separating the child from his parents only when necessary for his welfare."[36] But in removal situations, a child has already been removed from his home, separated from his parents, and placed in foster care, precisely because the court has determined that the child is in immediate danger from his familial surroundings. After removal, the child and the family cannot be considered as a single unit. Although the parent's potential for regaining custody of the child represents an important consideration, it should not blind the court to the possibility that the child's interests might be better served by termination. The remote possibility of restoring family ties is less important to the child than a stable environment. Although one may feel sympathy for parents whose children are removed,[37] "[i]n

34. To expedite evaluation of a child's psychological development, the courts should take judicial notice of many well accepted psychological principles, including the fact that the first three years, the most critical period of a child's life, establishes a psychological foundation upon which the child must build. During this formative period, the child must learn to trust others to satisfy his need for food, warmth, and security. Additionally, he begins to trust his own abilities to express and satisfy his needs. The child also must learn that he can "let go" and gain a sense of self control and self esteem. The child who fails to establish a basic sense of trust and autonomy, as a result of having his basic needs neglected, is severely handicapped and delayed in later stages of his development. *See generally* B. BETTELHEIM, THE EMPTY FORTRESS (1967); J. BOWLBY, ATTACHMENT (1969); J. BOWLBY, SEPARATION (1973); E. ERIKSON, CHILDHOOD AND SOCIETY (2d ed. 1963); J. LOEVINGER, EGO DEVELOPMENT (1976).

35. "The . . . [Supreme Court of the United States] has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' . . . 'basic civil rights of man,' . . . and '[r]ights far more precious . . . than property rights'. . . ." Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citations omitted).

36. VT. STAT. ANN. tit. 33, § 631(a)(3) (Cum. Supp. 1976).

37. "The atmosphere of finality and the sentimental instincts of parenthood which pervade . . . [a custody and a termination of parental rights proceeding] understandably inflate the significance of parental rights as against the interests of the child." Note, *Natural vs. Adoptive Parents: Divided Children and the Wisdom of Solomon*, 57 IOWA L. REV. 171, 181 (1971).

the final analysis it may even be necessary to conclude that natural parents can adjust to heartbreak more readily than small children."[38]

The original purposes of the changed circumstances requirement in the Act were to insure that a dispositional order would not be judicially reviewed unless something had changed, and to preserve a disposition order,[39] which had been determined to be "most suited" for the well-being of the child.[40] The drafters, however, desired flexibility within the juvenile system in order that the courts might be free to respond to a child's changing best interests.[41] The changed circumstances prerequisite was intended only to insure a minimal threshold inquiry; once the court satisfied itself that circumstances had in fact changed, it was to have jurisdiction to decide, on the basis of new facts, what would be in the best interest of a child, regardless of whether the parents were seeking to regain custody of the child or the state was seeking termination.[42] The intent of the drafters clearly indicates that the prerequisite for a modification proceeding should be the same whether a parent or the state is the moving party. This is not the case, however, for the stringent requirements of the substantial change in material circumstances test has only been applied when the state has sought termination of parental rights.[43]

The Vermont Supreme Court has never articulated a termination test but appears instead to have used the changed circumstances test as a substitute. In other words, the court has taken a procedural prerequisite and has changed it into a substantive test for termination. To illustrate, if a district court judge determines that the parents' situation has deteriorated or stagnated and that there is little hope for improvement, there would seem to be a clear case for termination, as nothing but a chance biological link remains of the normal parent-child relationship. But, are these the only circumstances under which termination is appropriate? Apparently the legislature did not think so because it recently enacted the Best

38. *Id.* at 198.

39. Interview with Jonathan Brownell in Sharon, Vt. (Dec. 17, 1976). Mr. Brownell was one of the drafters of the Juvenile Proceedings Act.

40. VT. STAT. ANN. tit. 33, § 656(a) (Cum. Supp. 1976).

41. *See* note 38 *supra.*

42. *Id.*

43. *See* note 20 *supra.*

Interest of the Child Statute[44] to govern termination proceedings. This statute directs a court to determine the best interest of the child in accordance with a number of factors relating to the child's situation.[45] Yet in all the cases challenging a district court's grant of termination, the Vermont Supreme Court has upheld the termination order only if it has found changed circumstances as that requirement has been narrowly defined. In place of the separate evaluations envisioned by the drafters of the Act, one looking to changed circumstances, merely for the purpose of deciding whether a modification hearing should be held, and the other looking to the merits of termination, the court has said in effect that there shall be one inquiry into the circumstances of the parents which shall be dispositive of all issues. The termination hearing thus becomes little more than a formality.

Because of the obstacle to termination after removal created by the supreme court's interpretation, the lower courts may be tempted to consider termination instead of removal when a child is first found to be in need of care or supervision. While this approach would avoid the changed circumstances obstacle, it would deny parents the opportunity to improve their circumstances and may prematurely sever the natural parent-child relationship. This approach might often not be in the best interest of the child, and there is little to recommend it as a response to the supreme court's approach which gives too much weight to the biological relationship. A balanced approach is needed.

To reestablish flexibility in the scheme for dealing with young, abused, and neglected children, the stringent changed circum-

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44. VT. STAT. ANN. tit. 33, § 667 (Cum. Supp. 1976) states:

> . . . [T]he court shall consider the best interests of the child in accordance with the following:
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> (1) The interaction and interrelationship of the child with his natural parents, his foster parents if any, his siblings, and any other person who may significantly affect the child's best interests;
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> (2) The child's adjustment to his home, school, and community;
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> (3) The likelihood that the natural parent will be able to resume his parental duties within a reasonable period of time; and
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> (4) Whether the natural parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.

45. *Id.*

stances test which looks only to the parents' situation must be eliminated, either by judicial decision or by statutory amendment. The supreme court could shift the focus of the changed circumstances inquiry from the parent to the child and could acknowledge that maintaining a child in foster care must at some point constitute changed circumstances in an of itself. Whether the court will do so in light of its recent decisions is doubtful, at best.

The following proposed amendment to Title 33, section 659(a) would provide an alternative solution to the problem. Section 659(a) would be amended to read as follows, with the amending language appearing in italics:

> [A]n order of the court may also be amended, modified, set aside or terminated by that court at any time upon petition therefor by a party or on its own motion on the ground that changed circumstances so require in the best interest of the child. *However, when the custody of a child has been transferred to the State, pursuant to 33 V.S.A. §656, a party or the court may initiate a proceeding, including termination of parental rights, at any time after one year from the date of the court order transferring custody without a showing of changed circumstances.*

The merits of the petition for termination would then be evaluated according to the criteria set forth in the Best Interest of the Child Statute.

The elimination of the changed circumstances requirement after one year is not arbitrary line drawing. Approximately seventy to eighty per cent of all children removed in this country, who are returned to their parents, are returned within one year.[46] The one year period would protect the rights of the majority of parents who

46. *See* Wald, *supra* note 12, at 662 n. 158. The studies of Fanshel and Jenkins are cited. Jenkins' study considered 891 children from the date of their removal from home. He found that of the entire group of children studied 54% returned within three months, 68% within one year, and 75% within two years. Jenkins, *Duration of Foster Care: Some Relevant Antecedent Variables,* 46 CHILD WELFARE 450, 451 (1967). Fanshel, on the other hand, studied 624 children who had been removed at least 90 days. Fanshel reported that 75% of those who returned home did so within 18 months. Fanshel, *The Exit of Children from Foster Care: An Interim Report,* 50 CHILD WELFARE 65, 68 (1971).

would normally regain custody of their children and would provide adequate protection for family relationships. Requiring the state to wait longer than one year would overemphasize the importance of parental rights to the detriment of large numbers of children. Moreover, the parents would be given notice that unless they were able to regain custody within one year, the state would have the right to seek termination. Under current law a parent receives notice of impending termination only when the state actually moves for termination. The proposed amendment would therefore create an incentive for parents to eliminate the home environmental problems relied on by the court in initially removing the child from his home. This proposed amendment would not change the criteria to be applied in the termination proceeding,[47] which are designed to protect parental rights to the extent that they are not inconsistent with the best interests of the child. The amendment is procedural, not substantive.

The resolution of the problem, whether judicial or legislative, should be prompt. Children now waiting in foster care[48] may find a permanent home if they are made eligible. As one writer has pointed out, "perhaps the time is also coming when it will be recognized that a child has a moral and legal right to a parent who will support him and provide him with the love and affection that a settled home life brings."[49] Only when this recognition occurs in Montpelier will the

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The 70-80% approximation is calculated by taking the percentage of children who are returned to their parents within one year and then dividing that number by the total percentage of children who are ever returned to their parents.

47. VT. STAT. ANN. tit. 33, § 667 (Cum. Supp. 1976).

48. In practice, once a child is placed outside her original home, the link with her parents often is largely severed, since many parents visit infrequently and have no role in supervising the kind of care the child receives. There is no meaningful review of the status of children in care and little effort to return them home. The result is that the majority of children in placement remain in foster care for lengthy periods of time, without ties to their parents and without being provided with a permanent home.

Wald, *supra* note 12, at 632-33.

49. Note, *Dispensing with Parental Consent in Indiana Adoption Proceedings*, 40 IND. L. J. 378, 401 (1965).

phrase "best interests of the child" acquire genuine meaning for the abused and neglected children of Vermont.

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