

1 H.663

2 Introduced by Representatives Wizowaty of Burlington and Krowinski of

3 Burlington

4 Referred to Committee on

5 Date:

6 Subject: Human services; children in need of care or supervision (CHINS);

7 temporary care hearing; temporary care order

8 Statement of purpose of bill as introduced: This bill proposes to: (1) require
9 that a temporary care hearing in a CHINS case be held within three business
10 days of the issuance of an emergency care order or conditional custody order;
11 and (2) permit the Court to suspend the custodial preference set forth for
12 temporary care orders if there are compelling circumstances and it is in the best
13 interests of the child.

14 An act relating to the temporary care of a child in need of care or
15 supervision

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. 33 V.S.A. § 5307 is amended to read:

18 § 5307. TEMPORARY CARE HEARING

19 (a) A temporary care hearing shall be held within ~~72 hours~~ three business
20 days of the issuance of an emergency care order or conditional custody order

1 under section 5305 of this title. State holidays shall be excluded from the
2 computation of ~~72 hours~~ three business days. If the custodial parent, guardian,
3 or custodian has not been notified in accordance with section 5306 of this title
4 and does not appear or waive appearance at the temporary care hearing and
5 files thereafter with the Court an affidavit so showing, the Court shall hold
6 another temporary care hearing within one business day of the filing of the
7 affidavit as if no temporary care hearing had theretofore been held.

8 * * *

9 Sec. 2. 33 V.S.A. § 5308 is amended to read:

10 § 5308. TEMPORARY CARE ORDER

11 (a) The Court shall order that legal custody be returned to the child's
12 custodial parent, guardian, or custodian unless the Court finds by a
13 preponderance of the evidence that a return home would be contrary to the
14 child's welfare because any one of the following exists:

15 (1) A return of legal custody could result in substantial danger to the
16 physical health, mental health, welfare, or safety of the child.

17 (2) The child or another child residing in the same household has been
18 physically or sexually abused by a custodial parent, guardian, or custodian, or
19 by a member of the child's household, or another person known to the
20 custodial parent, guardian, or custodian.

1 (3) The child or another child residing in the same household is at
2 substantial risk of physical or sexual abuse by a custodial parent, guardian, or
3 custodian, or by a member of the child's household, or another person known
4 to the custodial parent, guardian, or custodian. It shall constitute prima facie
5 evidence that a child is at substantial risk of being physically or sexually
6 abused if:

7 (A) a custodial parent, guardian, or custodian receives actual notice
8 that a person has committed or is alleged to have committed physical or sexual
9 abuse against a child; and

10 (B) a custodial parent, guardian, or custodian knowingly or recklessly
11 allows the child to be in the physical presence of the alleged abuser after
12 receiving such notice.

13 (4) The custodial parent, guardian, or guardian has abandoned the child.

14 (5) The child or another child in the same household has been neglected
15 and there is substantial risk of harm to the child who is the subject of the
16 petition.

17 (b) Upon a finding that any of the conditions set forth in subsection (a) of
18 this section exists, the Court may issue such temporary orders related to the
19 legal custody of the child as it deems necessary and sufficient to protect the
20 welfare and safety of the child, ~~including~~. Except as provided in subsection
21 (c) of this section, orders shall include, in order of preference:

1 (1) A conditional custody order returning legal custody of the child to
2 the custodial parent, guardian, or custodian, subject to such conditions and
3 limitations as the Court may deem necessary and sufficient to protect the child.

4 (2)(A) An order transferring temporary legal custody to a noncustodial
5 parent. Provided that parentage is not contested, upon a request by a
6 noncustodial parent for temporary legal custody and a personal appearance of
7 the noncustodial parent, the noncustodial parent shall present to the Court a
8 care plan that describes the history of the noncustodial parent's contact with
9 the child, including any reasons why contact did not occur, and that addresses:

- 10 (i) the child's need for a safe, secure, and stable home;
11 (ii) the child's need for proper and effective care and control; and
12 (iii) the child's need for a continuing relationship with the
13 custodial parent, if appropriate.

14 (B) The Court shall consider court orders and findings from other
15 proceedings related to the custody of the child.

16 (C) The Court shall transfer legal custody to the noncustodial parent
17 unless the Court finds by a preponderance of the evidence that the transfer
18 would be contrary to the child's welfare because any of the following exists:

- 19 (i) The care plan fails to meet the criteria set forth in subdivision
20 (2)(A) of this subsection (b).

1 (ii) Transferring temporary legal custody of the child to the
2 noncustodial parent could result in substantial danger to the physical health,
3 mental health, welfare, or safety of the child.

4 (iii) The child or another child residing in the same household as
5 the noncustodial parent has been physically or sexually abused by the
6 noncustodial parent or a member of the noncustodial parent's household, or
7 another person known to the noncustodial parent.

8 (iv) The child or another child residing in the same household as
9 the noncustodial parent is at substantial risk of physical or sexual abuse by the
10 noncustodial parent or a member of the noncustodial parent's household, or
11 another person known to the noncustodial parent. It shall constitute prima
12 facie evidence that a child is at substantial risk of being physically or sexually
13 abused if:

14 (I) a noncustodial parent receives actual notice that a person
15 has committed or is alleged to have committed physical or sexual abuse against
16 a child; and

17 (II) the noncustodial parent knowingly or recklessly allows the
18 child to be in the physical presence of the alleged abuser after receiving such
19 notice.

1 (v) The child or another child in the noncustodial parent's
2 household has been neglected, and there is substantial risk of harm to the child
3 who is the subject of the petition.

4 (D) If the noncustodial parent's request for temporary custody is
5 contested, the Court may continue the hearing and place the child in the
6 temporary custody of the Department, pending further hearing and resolution
7 of the custody issue. Absent good cause shown, the Court shall hold a further
8 hearing on the issue within 30 days.

9 (3) An order transferring temporary legal custody of the child to a
10 relative, provided:

11 (A) The relative seeking legal custody is a grandparent,
12 great-grandparent, aunt, great-aunt, uncle, great-uncle, stepparent, sibling, or
13 step-sibling of the child.

14 (B) The relative is suitable to care for the child. In determining
15 suitability, the Court shall consider the relationship of the child and the relative
16 and the relative's ability to:

17 (i) ~~Provide~~ provide a safe, secure, and stable environment;

18 (ii) ~~Exercise~~ exercise proper and effective care and control of the
19 child;

20 (iii) ~~Protect~~ protect the child from the custodial parent to the
21 degree the Court deems such protection necessary;

1 (iv) ~~Support~~ support reunification efforts, if any, with the custodial
2 parent; and

3 (v) ~~Consider~~ consider providing legal permanence if reunification
4 fails.

5 (C) In considering the suitability of a relative under this subdivision
6 (3), the Court may order the Department to conduct an investigation and file a
7 written report of its findings with the Court. The Court may place the child in
8 the temporary custody of the ~~department~~ Department, pending such
9 investigation.

10 (4) A temporary care order transferring temporary legal custody of the
11 child to a relative who is not listed in subdivision (3)(A) of this subsection (b)
12 or a person with a significant relationship with the child, provided that the
13 criteria in subdivision (3)(B) of this subsection are met. The Court may make
14 such orders as provided in subdivision (3)(C) of this subsection to determine
15 suitability under this subdivision.

16 (5) A temporary care order transferring temporary legal custody of the
17 child to the Commissioner.

18 (c) In compelling circumstances and in the best interests of the child, the
19 Court may suspend the custodial preference set forth in subsection (b) of this
20 section.

1 (d) If the Court transfers legal custody of the child, the Court shall issue a
2 written temporary care order.

3 (1) The order shall include:

4 (A) a finding that remaining in the home is contrary to the child's
5 welfare and the facts upon which that finding is based; and

6 (B) a finding as to whether reasonable efforts were made to prevent
7 unnecessary removal of the child from the home. If the Court lacks sufficient
8 evidence to make findings on whether reasonable efforts were made to prevent
9 the removal of the child from the home, that determination shall be made at the
10 next scheduled hearing in the case but, in any event, no later than 60 days after
11 the issuance of the initial order removing a child from the home.

12 (2) The order may include other provisions as may be necessary for the
13 protection and welfare of the child, such as:

14 (A) ~~Establishing~~ establishing parent-child contact under such terms
15 and conditions as are necessary for the protection of the child;

16 (B) ~~Requiring~~ requiring the Department to provide the child with
17 services, if legal custody of the child has been transferred to the
18 Commissioner;

19 (C) ~~Requiring~~ requiring the Department to refer a parent for
20 appropriate assessments and services, including a consideration of the needs of

1 children and parents with disabilities, provided that the child's needs are given
2 primary consideration;

3 (D) ~~Requiring~~ requiring genetic testing if parentage of the child is at
4 issue;

5 (E) ~~Requiring~~ requiring the Department to make diligent efforts to
6 locate the noncustodial parent;

7 (F) ~~Requiring~~ requiring the custodial parent to provide the
8 Department with names of all potential noncustodial parents and relatives of
9 the child; or

10 (G) ~~Establishing~~ establishing protective supervision and requiring the
11 Department to make appropriate service referrals for the child and the family,
12 if legal custody is transferred to an individual other than the Commissioner.

13 (3) In his or her discretion, the Commissioner may provide assistance
14 and services to children and families to the extent that funds permit,
15 notwithstanding subdivision (2)(B) of this subsection.

16 ~~(d)~~(e) If a party seeks to modify a temporary care order in order to transfer
17 legal custody of a child from the Commissioner to a relative or a person with a
18 significant relationship with the child, the relative shall be entitled to
19 preferential consideration under subdivision (b)(3) of this section, provided
20 that a disposition order has not been issued and the motion is filed within

1 90 days of the date that legal custody was initially transferred to the
2 Commissioner.

3 Sec. 3. EFFECTIVE DATE

4 This act shall take effect on July 1, 2014.