

1 S.183

2 Introduced by Senators Kitchel, Flory, and Sears

3 Referred to Committee on

4 Date:

5 Subject: Human services; juvenile proceedings; termination of parental rights

6 Statement of purpose of bill as introduced: This bill proposes to expand access  
7 to post-adoption contact agreements, create a mechanism for reinstating  
8 parental rights, and narrow the time frame for conditional custody orders.

9 An act relating to permanency for children in the child welfare system

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

11 Sec. 1. 14 V.S.A. § 2664 is amended to read:

12 § 2664. CREATION OF PERMANENT GUARDIANSHIP

13 (a) The ~~family division of the superior court~~ Family Division of the  
14 Superior Court may establish a permanent guardianship at a permanency  
15 planning hearing or at any other hearing in which a permanent legal disposition  
16 of the child can be made, including a child protection proceeding pursuant to  
17 33 V.S.A. § 5318, or a delinquency proceeding pursuant to 33 V.S.A. § 5232.  
18 The court shall also issue an order permitting or denying visitation, contact or  
19 information with the parent at the same time the order of permanent

1 guardianship is issued. Before issuing an order for permanent guardianship,  
2 the court shall find by clear and convincing evidence all of the following:

3 (1) Neither parent is ~~capable or willing to provide adequate care to the~~  
4 ~~child, requiring that parental rights and responsibilities be awarded to a~~  
5 ~~permanent guardian~~ able to assume or resume parental duties within a  
6 reasonable time.

7 (2) ~~Neither returning the child to the parents nor adoption of the child is~~  
8 ~~likely within a reasonable period of time.~~

9 (3) ~~The child is at least 12 years old unless the proposed permanent~~  
10 ~~guardian is:~~

11 (A) ~~a relative; or~~

12 (B) ~~the permanent guardian of one of the child's siblings.~~

13 (4) The child has resided with the permanent guardian for ~~at least a year~~  
14 ~~or the permanent guardian is a relative with whom the child has a relationship~~  
15 ~~and with whom the child has resided for~~ at least six months.

16 (5)(3) A permanent guardianship is in the best interests of the child.

17 (6)(4) The proposed permanent guardian:

18 (A)(i) is emotionally, mentally, and physically suitable to become the  
19 permanent guardian; and

1                   (ii) is financially suitable, with kinship guardianship assistance  
2 provided for in 33 V.S.A. § 4903 if applicable, to become the permanent  
3 guardian;

4                   (B) has expressly committed to remain the permanent guardian for  
5 the duration of the child's minority; and

6                   (C) has expressly demonstrated a clear understanding of the financial  
7 implications of becoming a permanent guardian including an understanding of  
8 any resulting loss of ~~state~~ State or federal benefits or other assistance.

9                   (b) The parent voluntarily may ~~voluntarily~~ consent to the permanent  
10 guardianship, and shall demonstrate an understanding of the implications and  
11 obligations of the consent.

12                   (c) After the ~~family division of the superior court~~ Family Division of the  
13 Superior Court issues a final order establishing permanent guardianship, the  
14 case shall be transferred to the appropriate ~~probate division of the superior~~  
15 ~~court~~ Probate Division of the Superior Court in the district in which the  
16 permanent guardian resides. Jurisdiction shall continue to lie in the ~~probate~~  
17 ~~division~~ Probate Division. Appeal of any decision by the ~~probate division of~~  
18 ~~the superior court~~ Probate Division of the Superior Court shall be de novo to  
19 the ~~family division~~ Family Division.

1 Sec. 2. 14 V.S.A. § 2665 is amended to read:

2 § 2665. REPORTS

3 The permanent guardian shall file a written report on the status of the child  
4 to the ~~probate division of the superior court~~ Probate Division of the Superior  
5 Court annually pursuant to subdivision 2629(b)(6) of this title and at any other  
6 time the court may order. ~~The report shall include the following:~~

7 ~~(1) The location of the child.~~

8 ~~(2) The child's health and educational status.~~

9 ~~(3) A financial accounting of the income, expenditures and assets of the~~  
10 ~~child if the permanent guardian is receiving any state or federal government~~  
11 ~~benefits for the child.~~

12 ~~(4) Any other information regarding the child that the probate division~~  
13 ~~of the superior court may require.~~

14 Sec. 3. 33 V.S.A. § 5124 is amended to read:

15 § 5124. POSTADOPTION CONTACT AGREEMENTS

16 (a) Either or both parents and each intended adoptive parent may enter into  
17 a postadoption contact agreement regarding communication or contact between  
18 either or both parents and the child after the finalization of an adoption by the  
19 intended adoptive parent or parents who are parties to the agreement. Such an  
20 agreement may be entered into if:

21 (1) the child is in the custody of:



1 relative, or a person with a significant relationship with the child. The order  
2 may provide for parent-child contact. ~~Following disposition, the Court may~~  
3 ~~issue a conditional custody order for a fixed period of time not to exceed two~~  
4 ~~years. The Court shall schedule regular review hearings to evaluate progress~~  
5 ~~toward reunification and determine whether the conditions and continuing~~  
6 ~~jurisdiction of the Family Division of the Superior Court are necessary.~~

7 (3) An order transferring legal custody to a noncustodial parent and  
8 closing the juvenile proceeding. The order may provide for parent-child  
9 contact with the other parent. Any orders transferring legal custody to a  
10 noncustodial parent issued under this section shall not be confidential and shall  
11 be made a part of the record in any existing parentage or divorce proceeding  
12 involving the child. On the motion of a party or on the Court's own motion,  
13 the Court may order that a sealed copy of the disposition case plan be made  
14 part of the record in a divorce or parentage proceeding involving the child.

15 (4) An order transferring legal custody to the Commissioner.

16 (5) An order terminating all rights and responsibilities of a parent by  
17 transferring legal custody and all residual parental rights to the Commissioner  
18 without limitation as to adoption.

19 (6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

20 (7) An order transferring legal custody to a relative or another person  
21 with a significant relationship with the child. The order may be subject to

1 conditions and limitations and may provide for parent-child contact with one or  
2 both parents. The order shall be subject to ~~periodic review as determined by~~  
3 ~~the Court~~ review pursuant to subdivision 5320a(b) of this title.

4 \* \* \*

5 Sec. 5. 33 V.S.A. § 5320 is amended to read:

6 § 5320. POSTDISPOSITION REVIEW HEARING

7 ~~If the permanency goal of the disposition case plan is reunification with a~~  
8 ~~parent, guardian, or custodian, the~~ The Court shall hold a review hearing  
9 within 60 days of the date of the disposition order for the purpose of  
10 monitoring progress under the disposition case plan and reviewing parent-child  
11 contact. Notice of the review shall be provided to all parties. A foster parent,  
12 preadoptive parent, or relative caregiver shall be provided with notice of any  
13 post disposition review hearings and an opportunity to be heard at the hearings.  
14 Nothing in this section shall be construed as affording such person party status  
15 in the proceeding. This section shall not apply to cases where full custody has  
16 been returned to one or both parents unconditionally at disposition, or cases  
17 where the court has created a permanent guardianship at disposition.

1 Sec. 6. 33 V.S.A. § 5320a is added to read:

2 § 5320a. DURATION OF CONDITIONAL CUSTODY ORDERS

3 POSTDISPOSITION

4 (a) Conditional custody orders to parents. Whenever the court issues a  
5 conditional custody order transferring custody to a parent either at or following  
6 disposition, the presumptive duration of the order shall be no more than six  
7 months from the date of the disposition order or the conditional custody order,  
8 whichever occurs later, unless otherwise extended by the court after hearing.  
9 Prior to the termination of the order, any party may file a request to extend the  
10 order. The party requesting the extension shall have the burden of showing  
11 that good cause exists to extend the order for an additional period of time not  
12 to exceed six months. Prior to issuing the final order, the court may schedule a  
13 hearing on its own motion to review the case prior to discharging the  
14 conditions. If a motion to extend is not filed, the court shall issue a final order  
15 transferring full custody to the parent without conditions.

16 (b)(1) Custody orders to nonparents. When the court at disposition issues  
17 an order continuing or transferring legal custody with a nonparent pursuant to  
18 subdivision 5318(a)(2) or (a)(7) of this title, the court shall set the matter for a  
19 hearing six months from the date of disposition or custody order whichever  
20 occurs later. At the hearing, the court shall determine whether it is in the best  
21 interests of the child to:

1           (A) transfer either full or conditional custody of the child to a parent;

2           (B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664

3 with the nonparent who has had custody of the child as the guardian; or

4           (C) terminate residual parental rights and release the child for

5 adoption.

6           (2) If, after hearing, the court determines that reasonable progress has

7 been made towards reunification and that reunification is in the best interests

8 of the child but will require additional time, the court may extend the current

9 order for a period not to exceed six months and set the matter for further

10 hearing.

11 Sec. 7. 33 V.S.A. § 5125 is added to read:

12 § 5125. REINSTATEMENT OF PARENTAL RIGHTS

13           (a) Petition for reinstatement.

14           (1) A petition for reinstatement of parental rights may be filed by the

15 Department for Children and Families on behalf of a child in the custody of the

16 Department under the following conditions:

17           (A) the child's adoption from the child welfare system has been

18 dissolved; or

19           (B) the child has not been adopted after at least three years from the

20 date of the court order terminating parental rights.

1           (2) The child, if 14 years of age or older, may also file a petition to  
2           reinstate parental rights if the adoption has been dissolved, or if parental rights  
3           have been terminated and the child has not been adopted after three years from  
4           the date of the court order terminating parental rights. This section shall not  
5           apply to children who have been placed under permanent guardianship  
6           pursuant to 14 V.S.A. § 2664.

7           (b) Permanency plan. The Department shall file an updated permanency  
8           plan with the petition for reinstatement. The updated plan shall address the  
9           material change in circumstances since the termination of parental rights, the  
10           Department's efforts to achieve permanency, the reasons for the parent's desire  
11           to have rights reinstated, any statements by the child expressing the child's  
12           opinions about reinstatement, and parent's present ability and willingness to  
13           resume or assume parental duties.

14           (c) Hearing.

15           (1) The court shall hold a hearing to consider whether reinstatement is in  
16           the child's best interest. The court shall conditionally grant the petition if it  
17           finds by clear and convincing evidence that:

18           (A) the parent is presently willing and has the ability to provide for  
19           the child's present and future safety, care, protection, education, and healthy  
20           mental, physical, and social development;

21           (B) reinstatement is the child's express preference;

1           (C) if the child is 14 years of age or older and has filed the petition,  
2           that the child is of sufficient maturity to understand the nature of this decision;

3           (D) the child has not been adopted, or the adoption has been  
4           dissolved;

5           (E) the child is not likely to be adopted; and

6           (F) reinstatement of parental rights is in the best interests of the child.

7           (2) Upon a finding by clear and convincing evidence that all conditions  
8           set forth in subdivision (c)(1) exist and that reinstatement of parental rights is  
9           in the child's best interest, the court shall issue a conditional custody order for  
10           up to six months transferring temporary legal custody of the child to the parent,  
11           subject to conditions as the court may deem necessary and sufficient to ensure  
12           the child's safety and well-being. The court may order the Department to  
13           provide transition services to the family as appropriate. If during this time  
14           period the child is removed from the parent's temporary conditional custody  
15           due to allegations of abuse or neglect, the court shall dismiss the petition for  
16           reinstatement of parental rights if the court finds the allegations have been  
17           proven by a preponderance of the evidence.

18           (d) Final order. After the child is placed with the parent for up to six  
19           months pursuant to subsection (c) of this section, the court shall hold a hearing  
20           to determine if the placement has been successful. The court shall enter a final

1 order of reinstatement of parental rights upon a finding by preponderance of  
2 the evidence that placement continues to be in the child's best interest.

3 (e) Effect of reinstatement. Reinstatement of parental rights does not  
4 vacate or otherwise affect the validity of the original order terminating parental  
5 rights. Reinstatement restores a parent's legal rights to his or her child,  
6 including all rights, powers, privileges, immunities, duties, and obligations that  
7 were terminated by the court in the termination of parental rights order. Such  
8 reinstatement shall be a recognition that the parent's and child's situation have  
9 changed since the time of the termination of parental rights, and reunification  
10 is appropriate. An order reinstating the legal parent and child relationship as to  
11 one parent of the child has no effect on the legal rights of any other parent  
12 whose rights to the child have been terminated by the court; or the legal sibling  
13 relationship between the child and any other children of the parent. A parent  
14 whose rights are reinstated pursuant to this section is not liable for child  
15 support owed to the Department during the period from termination of parental  
16 rights to reinstatement. The Department and its employees are not liable for  
17 civil damages resulting from any act or omission in providing services under  
18 this section unless the act or omission constitutes gross negligence. This  
19 section does not create any duty and shall not be construed to create a duty  
20 where none exists.

1 Sec. 8. EFFECTIVE DATE

2 This act shall take effect on passage.