

Pam Marsh suggestion Judge Grearson suggestion  
Cindy Walcott suggestion  
Marshall Pahl suggestion

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 183  
3 entitled “An act relating to permanency for children in the child welfare  
4 system” respectfully reports that it has considered the same and recommends  
5 that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

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

8 § 2664. CREATION OF PERMANENT GUARDIANSHIP

9 (a) The ~~family division of the superior court~~ Family Division of the  
10 Superior Court may establish a permanent guardianship at a permanency  
11 planning hearing or at any other hearing in which a permanent legal disposition  
12 of the child can be made, including a child protection proceeding pursuant to  
13 33 V.S.A. § 5318, or a delinquency proceeding pursuant to 33 V.S.A. § 5232.  
14 The court shall also issue an order permitting or denying visitation, contact or  
15 information with the parent at the same time the order of permanent  
16 guardianship is issued. Before issuing an order for permanent guardianship,  
17 the court shall find by clear and convincing evidence all of the following:

18 (1) Neither parent is ~~capable or willing to provide adequate care to the~~  
19 ~~child, requiring that parental rights and responsibilities be awarded to a~~

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1 ~~permanent guardian~~ able to assume or resume parental duties within a  
2 reasonable time.

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

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

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

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

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

12 ~~(5)~~(3) A permanent guardianship is in the best interests of the child.

13 ~~(6)~~(4) The proposed permanent guardian:

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

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

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

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

4 (b) The parent voluntarily may ~~voluntarily~~ consent to the permanent  
5 guardianship, and shall demonstrate an understanding of the implications and  
6 obligations of the consent.

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

15 (d) The Family Division of the Superior Court may name a successor  
16 permanent guardian in the initial permanent guardianship order. In the event  
17 that the permanent guardian dies or the guardianship is terminated by the  
18 Probate Division of the Superior Court, if a successor guardian is named in the  
19 initial order, custody of the child transfers to the successor guardian pursuant  
20 to subsection 2666(b) of this title.

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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. X. 14 V.S.A. § 2666(b) is amended to read:**

15 **(b) Where the permanent guardianship is terminated by the ~~probate division~~**  
16 **~~of the superior court~~ Probate Division of the Superior Court order or the death**  
17 **~~of the permanent guardian, the custody and guardianship of the child shall not~~**  
18 **~~revert to the parent, but to the ~~commissioner for children and families~~~~**  
19 **Commissioner for Children and Families as if the child had been abandoned.**  
20 **If a successor permanent guardian has been named in the initial permanent**

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1 guardianship order, custody shall transfer to the successor guardian, without  
2 reverting first to the Commissioner. The Probate Division of the Superior  
3 Court shall notify the Department when custody transfers to the Commissioner  
4 or the successor guardian.

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

6 § 5124. POSTADOPTION CONTACT AGREEMENTS

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

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

13 (A) the Department for Children and Families; or

14 (B) a nonparent pursuant to subdivision 5318(a)(2) or (a)(7), or

15 subdivision 5232(b)(2) or (b)(3) of this title;

16 (2) an order terminating parental rights has not yet been entered; and

17 (3) either or both parents agree to a voluntary termination of parental  
18 rights, including an agreement in a case which began as an involuntary  
19 termination of parental rights.

20 \* \* \*

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1 (c) A postadoption contact agreement must be in writing and signed by

2 each parent and each intended adoptive parent entering into the agreement.

3 There may be separate agreements for each parent. The agreement shall

4 specify:

5 \* \* \*

6 (9) an acknowledgment that once the adoption is finalized, the court

7 shall presume that the adoptive parent's judgment concerning the best interests

8 of the child is correct the adoptive parent's judgment regarding the child is in

9 the child's best interests;

10 \* \* \*

11 Sec. 4. 33 V.S.A. § 5318 is amended to read:

12 § 5318. DISPOSITION ORDER

13 (a) Custody. At disposition, the Court shall make such orders related to

14 legal custody for a child who has been found to be in need of care and

15 supervision as the Court determines are in the best interest of the child,

16 including:

17 (1) An order continuing or returning legal custody to the custodial

18 parent, guardian, or custodian. ~~Following disposition, the Court may issue a~~

19 ~~conditional custody order for a fixed period of time not to exceed two years.~~

20 ~~The Court shall schedule regular review hearings to determine whether the~~

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1 ~~conditions continue to be necessary~~ The order may be subject to conditions and  
2 limitations.

3 (2) When the goal is reunification with a custodial parent, guardian, or  
4 custodian an order transferring temporary custody to a noncustodial parent, a  
5 relative, or a person with a significant relationship with the child. The order  
6 may provide for parent-child contact. ~~Following disposition, the Court may~~  
7 ~~issue a conditional custody order for a fixed period of time not to exceed two~~  
8 ~~years. The Court shall schedule regular review hearings to evaluate progress~~  
9 ~~toward reunification and determine whether the conditions and continuing~~  
10 ~~jurisdiction of the Family Division of the Superior Court are necessary.~~

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

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

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

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

5 (7) An order transferring legal custody to a relative or another person  
6 with a significant relationship with the child. The order may be subject to  
7 conditions and limitations and may provide for parent-child contact with one or  
8 both parents. The order shall be subject to ~~periodic review as determined by~~  
9 ~~the Court~~ review pursuant to subdivision 5320a(b) of this title.

10 \* \* \*

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

12 § 5320. POSTDISPOSITION REVIEW HEARING

13 ~~If the permanency goal of the disposition case plan is reunification with a~~  
14 ~~parent, guardian, or custodian, the~~ The Court shall hold a review hearing  
15 within 60 days of the date of the disposition order for the purpose of  
16 monitoring progress under the disposition case plan and reviewing parent-child  
17 contact. Notice of the review shall be provided to all parties. A foster parent,  
18 preadoptive parent, ~~or~~ relative caregiver, or any custodian of the child shall be  
19 provided with notice of any post disposition review hearings and an  
20 opportunity to be heard at the hearings. Nothing in this section shall be

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1 construed as affording such person party status in the proceeding. This section  
2 shall not apply to cases where full custody has been returned to one or both  
3 parents unconditionally at disposition, or cases where the court has created a  
4 permanent guardianship at disposition. The Department shall, and any other  
5 party or caregiver may prepare a written report to the Court regarding progress  
6 under the plan of services from the disposition case plan.

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

8 § 5320a. DURATION OF CONDITIONAL CUSTODY ORDERS

9 POSTDISPOSITION

10 (a) Conditional custody orders to parents. Whenever the court issues a  
11 conditional custody order transferring custody to a parent either at or following  
12 disposition, the presumptive duration of the order shall be no more than six  
13 months from the date of the disposition order or the conditional custody order,  
14 whichever occurs later, unless otherwise extended by the court after hearing.  
15 Prior to the termination of the order, any party may file a request to extend the  
16 order pursuant to subsection 5113(b) of this title. Upon such motion, the Court  
17 may extend the order for an additional period of time not to exceed six months.  
18 Prior to vacating the conditional custody order, the court may schedule a  
19 hearing on its own motion to review the case prior to discharging the  
20 conditions. If a motion to extend is not filed, the court shall issue an order

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1 vacating the conditions and transferring full custody to the parent without  
2 conditions.

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

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

10 (B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664  
11 with the nonparent who has had custody of the child as the guardian; or

12 (C) terminate residual parental rights and release the child for  
13 adoption.

14 (2) If, after hearing, the court determines that reasonable progress has  
15 been made towards reunification and that reunification is in the best interests  
16 of the child but will require additional time, the court may extend the current  
17 order for a period not to exceed six months and set the matter for further  
18 hearing.

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

2 § 5125. REINSTATEMENT OF PARENTAL RIGHTS

3 (a) Petition for reinstatement.

4 (1) A petition for reinstatement of parental rights may be filed by the  
5 Department for Children and Families on behalf of a child in the custody of the  
6 Department under the following conditions:

7 (A) the child’s adoption ~~from the child welfare system~~ has been  
8 dissolved; or

9 (B) the child has not been adopted after at least three years from the  
10 date of the court order terminating parental rights.

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

17 (b) Permanency plan. The Department shall file an updated permanency  
18 plan with the petition for reinstatement. The updated plan shall address the  
19 material change in circumstances since the termination of parental rights, the  
20 Department’s efforts to achieve permanency, the reasons for the parent’s desire

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1 to have rights reinstated, any statements by the child expressing the child's  
2 opinions about reinstatement, and parent's present ability and willingness to  
3 resume or assume parental duties.

4 (c) Hearing.

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

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

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

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

14 (D) the child has not been adopted, or the adoption has been  
15 dissolved;

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

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

18 (2) Upon a finding by clear and convincing evidence that all conditions  
19 set forth in subdivision (c)(1) exist and that reinstatement of parental rights is  
20 in the child's best interest, the court shall issue a conditional custody order for

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1 up to six months transferring temporary legal custody of the child to the parent,  
2 subject to conditions as the court may deem necessary and sufficient to ensure  
3 the child’s safety and well-being. The court may order the Department to  
4 provide transition services to the family as appropriate. If during this time  
5 period the child is removed from the parent’s temporary conditional custody  
6 due to allegations of abuse or neglect, the court shall dismiss the petition for  
7 reinstatement of parental rights if the court finds the allegations have been  
8 proven by a preponderance of the evidence.

9 (d) Final order. After the child is placed with the parent for up to six  
10 months pursuant to subsection (c) of this section, the court shall hold a hearing  
11 to determine if the placement has been successful. The court shall enter a final  
12 order of reinstatement of parental rights upon a finding by preponderance of  
13 the evidence that placement continues to be in the child’s best interest.

14 (e) Effect of reinstatement. Reinstatement of parental rights does not  
15 vacate or otherwise affect the validity of the original order terminating parental  
16 rights. Reinstatement restores a parent’s legal rights to his or her child,  
17 including all rights, powers, privileges, immunities, duties, and obligations that  
18 were terminated by the court in the termination of parental rights order. Such  
19 reinstatement shall be a recognition that the parent’s and child’s situation have  
20 changed since the time of the termination of parental rights, and reunification

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1 is appropriate. An order reinstating the legal parent and child relationship as to  
2 one parent of the child has no effect on the legal rights of any other parent  
3 whose rights to the child have been terminated by the court; or the legal sibling  
4 relationship between the child and any other children of the parent. A parent  
5 whose rights are reinstated pursuant to this section is not liable for child  
6 support owed to the Department during the period from termination of parental  
7 rights to reinstatement. The Department and its employees are not liable for  
8 civil damages resulting from any act or omission in providing services under  
9 this section unless the act or omission constitutes gross negligence. This  
10 section does not create any duty and shall not be construed to create a duty  
11 where none exists.

12 Sec. 8. EFFECTIVE DATES

13 This act shall take effect on September 1, 2016, except for this section and  
14 Sec. 3 (postadoption contact agreements), which shall take effect on July 1,  
15 2016.

17 (Committee vote: \_\_\_\_\_)

18 \_\_\_\_\_

19 Senator \_\_\_\_\_

20 FOR THE COMMITTEE