

(b) Effective October 1, 1998, all employers in the State of Vermont shall report all new hires to the Department of Labor, and reported information will be shared with the Office of Child Support for the purpose of expediting compliance with court ordered wage withholding orders, and location of payers or parents with an obligation to provide parental contact. The Department of Labor may use the information to assist with the administration of the Unemployment Insurance Program.

(1) Employers shall report new hires within 10 calendar days of the first date of employment for a new employee.

(2) Employers shall report the following data elements to the Department of Labor: newly hired employee's name, address, first date of employment, Social Security number, and the employer's name, address, and federal identification number.

(3) Employers shall report the required new hire data elements electronically, when practicable, or on a form supplied or approved by the Department of Labor. Forms may be transmitted by fax transmission, first class mail, magnetic tape, electronically, or inputting data elements via the telephone.

(4) If the failure to report is the result of collusion between employer and employee, the employer shall be liable to the obligee in the amount of the wages required to be withheld but not more than \$500.00.

(c) As used in this section:

(1) "Employee":

(A) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(B) does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given such term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(3) "First date of employment" is the first day services are performed for compensation as a new hire.

(4) "New hire" means an employee who:

(A) has not previously been employed by the employer; or

(B) was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

**Historical Citation.**

Added 1993, No. 231 (Adj. Sess.), § 6; amended 1995, No. 43, §§ 3, 4, eff. April 17, 1995; 1997, No. 63, § 28, eff. Sept. 1, 1997;

2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2009, No. 146 (Adj. Sess.), § C18; 2011, No. 162 (Adj. Sess.), § E.401.10.

**HISTORY**

**References in text.** Chapter 24 of the Internal Revenue Code of 1986, referred to in subdiv. (c)(1)(A), is codified as 26 U.S.C. § 3401 et seq.

**Revision note—2008.** In subdiv. (a)(6), substituted "subdivision 4100b(a)(3) of Title 8" for "subsection (a)(3) of section 4100b of Title 8" to conform reference to V.S.A. style.

This section, which was originally enacted as section 4109 of this title, was redesignated to avoid conflict with section 4109 of this title as previously added by 1993, No. 228 (Adj. Sess.), § 14.

**Amendments—2011 (Adj. Sess.).** Subsection (c): Amended generally.

—2009 (Adj. Sess.). Subsection (b): Added the last sentence in the introductory paragraph, substituted "10 calendar days" for "20 days" and "the first date of employment for" for "hiring" in subdiv. (1) and rewrote subdivs. (2) and (3).

Subsection (c): Added new subdiv. (3) and redesignated former subdiv. (3) as subdiv. (4).

—2005 (Adj. Sess.). Substituted "department of labor" for "department of employment and training" in subsec. (b), and subdivs. (b)(2) and (c)(3).

—1997. Designated the existing provisions of the section as subsec. (a) and added subsecs. (b) and (c).

—1995. Inserted "for a child, and the parent is eligible for dependent health coverage" preceding "which is" in the introductory paragraph, substituted "dependent" for "family" following "under" and inserted "or any seasonal restrictions on switching from one plan to another" preceding "upon application" in subdiv. (1), and substituted "dependent" for "family" following "eliminated" and added "if allowed by law" following "employees" in subdiv. (2)(C), and added subdiv. (6).

**Applicability—1995 amendment.** 1995, No. 43, § 5, eff. April 17, 1995, provided that the amendment to this section by sections 3 and 4 of the act shall apply to support orders entered or modified on or after July 1, 1994.

**CHAPTER 49**

**CHILD WELFARE SERVICES**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**SECTION.**

4901. Statement of purposes.

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**SUBCHAPTER 2. REPORTING ABUSE OF CHILDREN**

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## SECTION

- 4916e. Notice to minors.  
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 4918. Multidisciplinary teams; functions; guidelines.  
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## ANNOTATIONS

Cited. Cited in *State v. Searles* (1993) 159 Vt. 525, 621 A.2d 1281.

## SUBCHAPTER 1 GENERAL PROVISIONS

### § 4901. Statement of purposes

The Department may cooperate with the appropriate federal agency for the purpose of establishing, extending, and strengthening services which supplement or substitute for parental care and supervision including:

- (1) Preventing, remedying, or assisting in the solution of problems which may result in neglect, abuse, exploitation, or delinquency of children.
- (2) Protecting and caring for homeless, dependent, or neglected children.
- (3) Protecting and promoting the welfare of children of working parents.
- (4) Otherwise protecting and promoting the welfare of children, including the strengthening of their homes where possible or, where needed, providing adequate care away from their homes in child-care facilities.
- (5) Assisting youth in a successful transition to an independent adulthood, including the avoidance of homelessness, incarceration, and substance abuse.

#### Historical Citation.

Added 1967, No. 147, § 5; amended 2005, No. 174 (Adj. Sess.), § 117; 2007, No. 74, § 1, eff. June 6, 2007.

#### HISTORY

**Amendments—2007.** Subdivision (5): Added.

—2005 (Adj. Sess.). Subdivision (3): Substituted "parents" for "mothers".

Prior law. 33 V.S.A. § 2751.

### § 4902. Definitions

Unless otherwise specifically provided, the following words and phrases in this chapter mean:

- (1) Child: a person under the age of 18 years committed by the Juvenile Court to the Department for Children and Families prior to April 14, 1974 and to the Department for Children and Families thereafter, except that for the purpose of subchapter 1 of

chapter 35 of this title, a child is a person under the age of 16 years.

(2) Child care facility: any place or program operated as a business or service on a regular continuous basis, whether for compensation or not, whose primary function is protection, care, and supervision of children under 16 years of age outside their homes for periods of less than 24 hours a day by a person other than a child's own parent, guardian, or relative, as defined by rules adopted by the Department for Children and Families, but not including a kindergarten approved by the State Board of Education.

(3) A family child care home: is a child care facility which provides for care on a regular basis in the caregiver's own residence for not more than 10 children at any one time. Of this number, up to six children may be provided care on a full-time basis and the remainder on a part-time basis. For the purpose of this subdivision, care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except:

(A) these part-time school-age children may be cared for on a full-day basis during school closing days, snow days and vacation days which occur during the school year; and

(B) during the school summer vacation, up to 12 children may be cared for provided that at least six of these children are school age and a second staff person is present and on duty when the number of children in attendance exceeds six. These limits shall not include children who are required by law to attend school (age seven or older) and who reside in the residence of the caregiver.

(4) Foster care: care of a child, for a valuable consideration in a child-care institution or in a family other than that of the child's parent, guardian or relative.

(5) Commissioner: the Commissioner for Children and Families.

(6) Department: the Department for Children and Families.

#### Historical Citation.

Added 1967, No. 147, § 5; amended 1973, No. 152 (Adj. Sess.), §§ 22, 31, eff. April 14, 1974; 1981, No. 171 (Adj. Sess.), § 2, eff. April 20, 1982; 1983, No. 248 (Adj. Sess.), § 5; 1989, No. 42, eff. May 5, 1989; 1999, No. 147 (Adj. Sess.), § 4; 2005, No. 174 (Adj. Sess.), § 118.

#### HISTORY

**Revision note—**In subdiv. (1) substituted "April 14, 1974" for "the effective date of this act" for purposes of clarity.

Substituted "subchapter 1 of chapter 35 of this title" for "subchapter 3" in subdiv. (1), in view of the recodification of this title by 1989, No. 148 (Adj. Sess.), §§ 1, 3.

**Amendments—2005 (Adj. Sess.).** Amended section generally.  
 —1999 (Adj. Sess.). Subdivision (1): Substituted "department of prevention, assistance, transition, and health access" for "department of social welfare".

- 1989. Subdivision (3): Rewrote the fourth sentence.
- 1983 (Adj. Sess.). Subdivision (2): Added "but not including a kindergarten approved by the state board of education" following "relative".
- 1981 (Adj. Sess.). Subdivision (1): Added exception following "thereafter".
- Subdivision (3): Renumbered as subdiv. (4) and a new subdiv. (3) added.
- Subdivisions (4) and (5): Renumbered as subdivs. (5) and (6) respectively.
- Subdivision (6): Renumbered from subdiv. (5).
- 1973 (Adj. Sess.). Subdivision (1): Deleted "or the age of majority in the case of a person" preceding "committed" and added "prior to the effective date of this act and to the department of social and rehabilitation services thereafter" following "welfare".
- Subdivision (4) and (5): Added.
- Prior law. 33 V.S.A § 2752.

ANNOTATIONS

**1. Foster care payments.** For purposes of social security benefits, foster care payments to foster parents are to be considered property of the foster parents rather than support from state to child, where provision of this section defines foster care as "care of a child, for a valuable consideration," and department of social welfare regulations refer to foster care as "purchased," and foster parents are given near-total freedom in spending the payments. *Damon v. Secretary of Health, Education & Welfare*, 557 F.2d 81 (2d Cir. 1977).

**Cited.** Cited in *Shields v. Gerhart* (1990) 155 Vt. 141, 582 A.2d 153.

§ 4903. Responsibility of Department

The Department may expend, within amounts available for the purposes, what is necessary to protect and promote the welfare of children and adults in this State, including the strengthening of their homes whenever possible, by:

- (1) Investigating complaints of neglect, abuse, or abandonment of children.
- (2) Providing aid and services to the extent necessary for the purpose of permitting children to remain in their own homes.
- (3) Supervising and controlling children committed to it by a court.
- (4) Providing substitute parental care and custody for a child upon application of his or her parent, guardian, or any person acting in behalf of the child, when after investigation it is found that the care and custody will be in the best interest of the child. The acceptance of a child by the Department shall not abrogate parental rights or responsibilities, but the Department may accept from the parents temporary delegation of certain rights and responsibilities necessary to provide care and custody for a period of up to six months under conditions agreed upon by the parents and the Department. Upon a stipulation approved by the Juvenile Court, the period may be extended for additional periods of up to six months each, provided that each extension is first determined by the parties to be necessary, and that it is in the best interest of the child.
- (5) Providing financial aid to persons who were committed to the Department at the time they

attained the age of majority and who are completing an educational, vocational, or technical training program designed to equip them for gainful employment.

(6) Providing aid to certain adopted children who prior to their adoption were in the care and custody of the Department.

(7) Providing aid to a child in the permanent guardianship of a relative if the child was in the care and custody of the Department and was placed in the home of the relative for at least six months prior to the creation of the guardianship.

Historical Citation.

Added 1967, No. 147, § 5; amended 1971, No. 206 (Adj. Sess.); 1975, No. 19; 1981, No. 243 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), § 119; 2009, No. 97 (Adj. Sess.), § 2.

HISTORY

- Amendments—2009 (Adj. Sess.).** Subdivision (7): Added.
- 2005 (Adj. Sess.). Subdivision (4): Inserted "or her" following "his" in the first sentence.
- 1981 (Adj. Sess.). Subdivision (4): Amended generally.
- 1975. Subdivision (4): Substituted "period of up to one year" for "not more than one year and" preceding "under" and "department" for "commissioner" following "parents and the" in the second sentence and added the third sentence.
- 1971 (Adj. Sess.). In opening paragraph added "and adults" following "children".
- Subdivisions (5), (6): Added.
- Prior law. 33 V.S.A. § 2801.

ANNOTATIONS

**1. Petition by state's attorney.** There is no requirement that a voluntary petition by a parent, guardian or person acting in behalf of a child be the only means for the state to intervene and provide substitute parental care and custody for a child; the commissioner of social and rehabilitation services may request the state's attorney to file a petition, which gives a court full authority to make the determination of whether or not a child is in need of care and supervision. In re S.A.M. (1981) 140 Vt. 194, 436 A.2d 736.

§ 4904. Foster care; transitional youth services

(a) As used in this section, "youth" means a person between 18 and 22 years of age who either:

- (1) attained his or her 18th birthday while in the custody of the Commissioner for Children and Families; or
- (2) while he or she was between 10 and 18 years of age, spent at least five of those years in the custody of the Commissioner for Children and Families.

(b)(1) The Department shall provide foster care services as described in subsection (c) of this section to:

- (A) any youth who elects to continue receiving such services after attaining the age of 18.
- (B) any individual under the age of 22 who leaves state custody after the age of 16 and at or before the age of 18 or any youth provided he or she voluntarily requests additional support services.

(2) The Department shall require a youth receiving services under this section to be employed, to participate in a program to promote employment or remove barriers to employment, or to attend an educational or vocational program, and, if the youth is working, require that he or she contribute to the cost of services based on a sliding scale, unless the youth meets the criteria for an exception to the employment and educational or vocational program requirements of this section based on a disability or other good cause. The Department shall establish rules for the requirements and exceptions under this subdivision.

(c) The Commissioner shall establish by rule a program to provide a range of age-appropriate services for youth to ensure a successful transition to adulthood, including foster care and other services provided under this chapter to children as appropriate, housing assistance, transportation, case management services, assistance with obtaining and retaining health care coverage or employment, and other services. At least 12 months prior to a child attaining his or her 18th birthday, the Department shall assist the child in developing a transition plan. When developing the transition plan, the child shall be informed about the range of age-appropriate services and assistance available in applying for or obtaining these services.

(d) The Commissioner shall establish a method for measuring, evaluating, and reporting the outcomes of transitional services provided under this section to the House Committee on Human Services and the Senate Committee on Health and Welfare annually on January 15.

#### Historical Citation.

Added 2007, No. 74, § 2, eff. June 6, 2007; amended 2009, No. 97 (Adj. Sess.), §§ 3, 4.

#### HISTORY

**Revision note—2013.** In the introductory language for subsection (a), substituted "As used in" for "For purposes of" preceding "this chapter" to conform to V.S.A. style.

**Amendments—2009 (Adj. Sess.).** Subdivision (b)(2): Inserted "to participate in a program to promote employment or remove barriers to employment" following "to be employed" in the first sentence.

Subsection (c): Substituted "care coverage" for "insurance" following "health" in the first sentence and added the second and third sentences.

### SUBCHAPTER 2

## REPORTING ABUSE OF CHILDREN

#### HISTORY

**Agency of human services; child protection registry; vulnerable adult abuse, neglect, and exploitation registry.** 2009, No. 1, § 6a provides: "The agency of human services, the commissioner of the department for children and families, and the commissioner of the department of disabilities, aging, and independent living shall implement protocols for sharing and providing information from the child protection registry and from the vulnerable

adult abuse, neglect, and exploitation registry in a coordinated manner to those entities authorized by law to receive such information. Protocols shall focus on the most efficient and timely manner to provide such information to authorized requestors."

#### CROSS REFERENCES

Sexual exploitation of children, see § 2821 et seq. of Title 13.

#### § 4911. Purpose

The purpose of this subchapter is to:

(1) Protect children whose health and welfare may be adversely affected through abuse or neglect.

(2) Strengthen the family and make the home safe for children whenever possible by enhancing the parental capacity for good child care.

(3) Provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes require the reporting of suspected child abuse and neglect, an assessment or investigation of such reports and provision of services, when needed, to such child and family.

(4) Establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and which recognize that child offenders should be treated differently from adults.

(5) Establish a tiered child protection registry that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect.

#### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 1.

#### HISTORY

**Revision note—**Substituted "this subchapter" for "this chapter" in view of the recodification of this title by 1989, No. 148 (Adj. Sess.), §§ 1, 3.

Deleted "to" preceding "strengthen", "make", "provide" and "require" as repetitive.

**Amendments—2007 (Adj. Sess.).** Subdivision (1): Substituted "Protect" for "protect" preceding "children".

Subdivision (2): Substituted "Strengthen" for "strengthen" preceding "the family".

Subdivision (3): Substituted "Provide" for "provide" preceding "a temporary" and inserted "an assessment or" preceding "investigation".

Subdivisions (4) and (5): Added.

Prior law. 33 V.S.A. § 681.

#### ANNOTATIONS

**1. Duty.** It is beyond dispute that this section and 33 V.S.A. § 4915 create a duty on the part of the Department of Social and Rehabilitation Services to assist a particular class of persons to which plaintiffs belong (child abuse victims) and to prevent the type of harm suffered by plaintiffs (sexual abuse by their stepfather). *Sabia v. State* (1995) 164 Vt. 293, 669 A.2d 1187.

#### LAW REVIEW COMMENTARIES

For note, "Interstate Testimony By Child Protective Agency Workers in the Child Custody Context," see 21 Vt. L. Rev. 633 (1996).

## § 4912. Definitions

As used in this subchapter:

- (1) "Child" means an individual under the age of majority.
- (2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.
- (3) "Harm" can occur by:
  - (A) Physical injury or emotional maltreatment;
  - (B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under State law. Notwithstanding that a child might be found to be without proper parental care under chapter 55 of this title, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or
  - (C) Abandonment of the child.
- (4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.
- (5) "A person responsible for a child's welfare" includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.
- (6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.
- (7) "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development.
- (8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.
- (9) "Multidisciplinary team" means a group of professionals, paraprofessionals, and other appropriate individuals, empanelled by the Commissioner under this chapter, for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families, and promoting child abuse prevention.
- (10) "Substantiated report" means that the Commissioner or the Commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.
- (11) [Repealed.]
- (12) "Member of the clergy" means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.
- (13) "Redacted investigation file" means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in subsection 4913(d) of this title.
- (14) "Child Protection Registry" means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.
- (15) "Registry record" means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.
- (16) "Investigation" means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.
- (17) "Assessment" means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family, and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

**Historical Citation.**

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1985, No. 211 (Adj. Sess.), §§ 1, 2; 1989, No. 295 (Adj.

Sess.), §§ 1, 2; 1991, No. 141 (Adj. Sess.), § 1; 1995, No. 145 (Adj. Sess.), § 5; 2001, No. 135 (Adj. Sess.), § 15, eff. June 13, 2002; 2003, No. 43, § 2, eff. May 27, 2003; 2003, No. 66, § 136a; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 2; 2007, No. 172 (Adj. Sess.), § 18.

### HISTORY

**Codification.** Pursuant to 1989, No. 148 (Adj. Sess.), § 2(e), the amendments to former 33 V.S.A. § 682 by 1989, No. 295 (Adj. Sess.), §§ 1, 2, were incorporated in the text of this section.

**Revision note—2013.** In subdivision (8), deleted "but not limited to" following "including" in accordance with 2013, No. 5, § 4.

Substituted "this subchapter" for "this chapter" in the introductory clause and in subdiv. (3)(C) and substituted "chapter 55" for "chapter 12" in subdiv. (3)(C) in view of the recodification of this title by 1989, No. 148 (Adj. Sess.), §§ 1, 3.

**Amendments—2007 (Adj. Sess.).** Subdivision (5): Act No. 168 inserted "child's" preceding "home".

Act No. 172 substituted "child" for "day" preceding "care setting".

Subdivision (9): Act No. 168 deleted "of social and rehabilitation services" following "commissioner" and substituted "review" for "investigation" following "identification and".

Subdivision (14): Act No. 168 substituted "protection" for "abuse and neglect" preceding "registry".

Subdivision (15): Act No. 168 substituted "child protection agency" for "abuse and neglect" preceding "that".

Subdivisions (16) and (17): Added by Act No. 168.

—2007. Subdivisions (13)-(15): Added.

—2003. Subdivision (11): Repealed.

Subdivision (12): Added.

—2001 (Adj. Sess.). Subdivision (11): Added.

—1995 (Adj. Sess.). Subdivision (4): Amended generally.

—1991 (Adj. Sess.). Amended subdivs. (2)-(4) and (7) generally.

—1989 (Adj. Sess.). Subdivision (5): Amended generally.

Subdivision (9): Deleted "and" preceding "paraprofessionals", inserted "and other appropriate individuals" thereafter, deleted "and for managing and" preceding "coordinating" and added "and promoting child abuse prevention" following "families".

Subdivision (10): Added.

—1985 (Adj. Sess.). Subdivision (2): Added "or a child who is sexually abused by any person" following "person responsible for his welfare".

Subdivision (5): Inserted "education or day care" preceding "setting".

**Effective date of amendments—1991 (Adj. Sess.).** 1991, No. 141 (Adj. Sess.), § 3, eff. April 23, 1992, provided that the amendments to subdivs. (2)-(4) and (7) by section 1 of the act shall take effect upon completion of the protocols and procedures required by section 2 of the act, which is set out as a note below, but no later than July 1, 1992.

**Prior law.** 33 V.S.A. § 682.

**Implementation.** 1991, No. 141 (Adj. Sess.), § 21, eff. April 23, 1992, provided: "The commissioner of social and rehabilitation services shall develop protocols and procedures to implement the provisions of this act [which amended subdivs. (2)-(4) and (7) of this section]."

### ANNOTATIONS

**1. Registry.** Legal and policy standards governing the registry process are plain, and they do not require, nor contemplate, any inquiry into whether the Department for Children and Families (DCF) is also pursuing a child-in-need-of-care-or-supervision petition (CHINS) in family court; thus, the Human Services Board erred in concluding that the DCF could not list a mother in its child-abuse-and-neglect registry unless it also filed a CHINS petition. The registry law clearly addresses the acts or omissions of parents and other individuals, not DCF's response to these actions. In re M.E., 2010 VT 105, 189 Vt. 114, 15 A.3d 112.

Two statutory procedures of the child-abuse-and-neglect registry and a child-in-need-of-care-or-supervision (CHINS) proceeding are distinct and are in no way dependent on one another. Obviously, the initiation of a CHINS proceeding implicates fundamental interests

not at stake in the registry process. In re M.E., 2010 VT 105, 189 Vt. 114, 15 A.3d 112.

Department for Children and Families (DCF) looks to the degree of misconduct involved in the action of the parent or caretaker and reserves child protection registry inclusion in single incident cases for misconduct that is egregious—that is, outrageously bad or reprehensible. The DCF's approach is consistent with the statute which requires that the risk of harm to the child be "substantial" and create "significant" danger, and the Vermont Supreme Court adopts DCF's interpretation of the statute, finding no compelling indication of error in it. In re R.H., 2010 VT 95, 189 Vt. 15, 14 A.3d 267.

**2. Substantiation.** Decision to file a child-in-need-of-care-or-supervision (CHINS) petition simply does not prove or disprove that a child was in fact put at "risk of harm" by his or her parent. The Vermont Supreme Court rejects the conclusion that the Department for Children and Families' discretionary decision to file a petition to have a child declared as CHINS should determine whether a report of abuse or neglect has been "substantiated." In re M.E., 2010 VT 105, 189 Vt. 114, 15 A.3d 112.

**Cited.** Cited in LaShay v. Department of Social & Rehabilitation Services (1993) 160 Vt. 60, 625 A.2d 224; Wilkinson v. Russell, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000); In re G.T. (2000) 170 Vt. 507, 758 A.2d 301; K.G. v. Department of Social & Rehabilitation Services (2000) 171 Vt. 529, 758 A.2d 323 (mem.); State v. Baron, 2004 VT 20, 176 Vt. 314, 848 A.2d 275; Wood ex rel. Eddy v. Eddy, 2003 VT 67, 175 Vt. 608, 833 A.2d 1243 (mem.).

### § 4913. Reporting child abuse and neglect; remedial action

(a) Any physician, surgeon, osteopath, chiropractor, or physician assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A. § 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the Agency of Human Services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

(b) The Commissioner shall inform the person who made the report under subsection (a) of this section:

(1) whether the report was accepted as a valid allegation of abuse or neglect;

(2) whether an assessment was conducted and, if so, whether a need for services was found; and

(3) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(c) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 4914 of this title.

(d)(1) Any person other than a person suspected of child abuse, who in good faith makes a report to the Department shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.

(2) An employer or supervisor shall not discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

(e) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless:

(1) the person making the report specifically allows disclosure;

(2) a Human Services Board proceeding or a judicial proceeding results therefrom;

(3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the Department to make the name of the reporter available; or

(4) a review has been requested pursuant to section 4916a of this title, and the Department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

(f)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(g) Except as provided in subsection (h) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

(1) made to a member of the clergy acting in his or her capacity as spiritual advisor;

(2) intended by the parties to be confidential at the time the communication is made;

(3) intended by the communicant to be an act of contrition or a matter of conscience; and

(4) required to be confidential by religious law, doctrine, or tenet.

(i) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection (h) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection (h) of this section.

#### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1983, No. 169 (Adj. Sess.), § 1; 1985, No. 208 (Adj. Sess.), § 19, eff. June 30, 1986; 1989, No. 295 (Adj. Sess.), § 3; 1993, No. 156 (Adj. Sess.), § 1; 2003, No. 43, § 3, eff. May 27, 2003; 2005, No. 101 (Adj. Sess.), § 2; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 3, eff. Jan. 1, 2009; 2007, No. 172 (Adj. Sess.), § 19; 2009, No. 1, § 45; 2011, No. 156 (Adj. Sess.), § 28, eff. May 16, 2012; 2011, No. 159 (Adj. Sess.), § 7.

#### HISTORY

**Codification.** Pursuant to 1989, No. 148 (Adj. Sess.), § 2(e), the amendment to former 33 V.S.A. § 683(a) by 1989, No. 295 (Adj. Sess.), § 3, was incorporated in the text of this section.

**Revision note—2013.** Subsection (a): Substituted "physician assistant" for "physician's assistant" in the first sentence in accordance with 2013, No. 34, § 30a.

In subsec. (a), substituted "section 684 of this title" for "section 684" to conform reference to V.S.A. style.

In subsec. (a), substituted "section 4914 of this title" for "section 684 of this title" in view of the recodification of this title by 1989, No. 148 (Adj. Sess.), §§ 1, 3.

In subsec. (b), substituted "subsection (a) of this section" for "subsection (a)" to conform reference to V.S.A. style.

In subsec. (c), substituted "subsections (a) or (b) of this section" for "subsections (a) or (b)" to conform reference to V.S.A. style.

**Editor's note—**The text of subsec. (a) is based on a correlation of two amendments. During the 2011 Adjourned Session, subsec. (a) was amended twice, by Act Nos. 156 and 159, resulting in two versions of subsec. (a). In order to reflect all of the changes intended by the legislature during the 2011 adjourned session, the text of Act Nos. 156 and 159 were merged to arrive at a single version of subsec. (a). The changes which each of the amendments made are described in amendment notes set out below.

**Amendments—2011 (Adj. Sess.).** Subsection (a): Act No. 156 added "headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11", deleted "regularly" preceding "employed", twice added "or an approved or recognized independent school", and deleted "for five or more hours per week during the school year" preceding "mental health professional".

Act No. 159 inserted "student teacher" following "school teacher".

—2009. Subsection (a): Inserted ", any employee, contractor, and grantee of the agency of human services who have contact with clients" preceding "police officer".

—2007 (Adj. Sess.). Catchline: Act No. 168 inserted "Reporting" at the beginning.

Subsection (a): Act No. 168 inserted "emergency medical personnel as defined in subdivision 2651(6) of Title 24" preceding "dentist" and "child care worker" preceding "school"; deleted "child care worker" following "librarian" and inserted "and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year" preceding "mental health".

Subsection (a): Act No. 172 substituted "child care worker" for "day care worker" following "school librarian". Act 168 makes this change effective until January 1, 2009.

Subsection (b): Amended generally by Act No. 168.

Subsection (c): Added by Act No. 168.

Subsection (d): Act No. 168 redesignated former subsec. (c) as present (d), added the subdiv. (1) designation; deleted "enumerated in subsection (a) or (b) of this section" following "person" and "of social and rehabilitation services" following "department" and added subdiv. (2).

Subsection (e): Act No. 168 redesignated former subsec. (d) as present subsec. (e).

Subdivision (e)(1): Act No. 168 deleted "or unless" following "disclosure".

Subdivision (e)(2): Act No. 168 inserted "a human services board proceeding or" preceding "a judicial" and deleted "or unless" following "therefrom".

Subdivision (e)(4): Added by Act No. 168.

Subsections (f) through (i): Act No. 168 redesignated former subsecs. (e), (f), (g) and (h) as present subsecs. (f), (g), (h) and (i), respectively.

Subsections (g) and (i): Act 168 substituted "(h)" for "(g)" following "subsection".

—2007. Subsection (a): Substituted "child care worker" for "day care worker".

Subsection (c): Substituted "subsection" for "subsections" following "enumerated in".

Subsection (d): Added "and any identifying information about either" following "The name of", substituted "allows" for "requests" following "specifically" and added "of the reporter" preceding "available".

—2005 (Adj. Sess.). Subsection (a): Inserted "pharmacist" following "psychologist".

—2003. Subsection (a): Inserted "or member of the clergy" following "camp counselor".

Subsection (e): Designated existing (a) as subdiv. (e), substituted "A person" for "Any person", added "of this section" and added subdvs. (2) and (3).

Subsections (f)-(h): Added.

—1993 (Adj. Sess.). Subsection (a): Inserted "school superintendent" preceding "school teacher" in the first sentence.

—1989 (Adj. Sess.). Subsection (a): Inserted "any other health care provider" preceding "school teacher", deleted "or" preceding "police officer", inserted "camp owner, camp administrator or camp counselor" thereafter and added "within 24 hours" following "this title" in the first sentence and added the second sentence.

—1985 (Adj. Sess.). Subsection (a): Inserted "certified" following "physician's assistant licensed".

—1983 (Adj. Sess.). Subsection (c): Inserted "other than a person suspected of child abuse" preceding "who", "to the department of social and rehabilitation services" preceding "shall", "any civil or criminal" preceding "liability" and deleted "for libel or slander" thereafter.

**Training in the reporting of suspected child abuse; agency of human services.** 2009, No. 1, § 46, provides: "The agency of human services shall develop protocols for determining which of its employees, contractors, and grantees are mandatory reporters for purposes of 33 V.S.A. § 4913. The agency of human services shall train its employees who are mandatory reporters pursuant to 33 V.S.A. § 4913 in the identification and reporting of suspected child abuse and neglect, including the assessment of risk of harm, and report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, and the house committee on corrections and institutions no later than September 15, 2009 regarding its efforts to ensure

that its employees are properly trained."

Prior law. 33 V.S.A. § 683.

## ANNOTATIONS

**1. Failure to report.** Employee of social and rehabilitation services was not entitled to immunity from suit as a matter of law from charge of breach of duty to report to commissioner that minor placed in foster home was threatened with substantial risk of physical or mental injury; issue of fact existed as to whether employee had been informed that owner of home had previously requested sex with another minor. *LaShay v. Department of Social & Rehabilitation Services* (1993) 160 Vt. 60, 625 A.2d 224.

**Cited.** Cited in *Peck v. Counseling Service of Addison County, Inc.* (1985) 146 Vt. 61, 499 A.2d 422; *Packard v. State* (1986) 147 Vt. 256, 514 A.2d 708; *In re F.E.F.* (1991) 156 Vt. 503, 594 A.2d 897; *State v. Duffy* (1992) 158 Vt. 170, 605 A.2d 533; *Wilkinson v. Russell*, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000); *In re G.T.* (2000) 170 Vt. 507, 758 A.2d 301.

## § 4914. Nature and content of report; to whom made

A report shall be made orally or in writing to the Commissioner or designee. The Commissioner or designee shall request the reporter to follow the oral report with a written report, unless the reporter is anonymous. Reports shall contain the name and address or other contact information of the reporter as well as the names and addresses of the child and the parents or other persons responsible for the child's care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or the child's siblings; and any other information that the reporter believes might be helpful in establishing the cause of the injuries or reasons for the neglect as well as in protecting the child and assisting the family. If a report of child abuse or neglect involves the acts or omissions of the Commissioner or employees of the Department, then the report shall be directed to the Secretary of Human Services who shall cause the report to be investigated by other appropriate Agency staff. If the report is substantiated, services shall be offered to the child and to his or her family or caretaker according to the requirements of section 4915b of this title.

### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1989, No. 187 (Adj. Sess.), § 5; 1989, No. 295 (Adj. Sess.), § 4; 1995, No. 174 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), § 120; 2007, No. 77, § 1, eff. June 1, 2007; 2007, No. 168 (Adj. Sess.), § 4.

## HISTORY

**Codification.** Pursuant to 1989, No. 148 (Adj. Sess.), § 2(e), the amendment to former 3 V.S.A. § 684 by 1989, No. 295 (Adj. Sess.), § 4, was incorporated in the text of this section.

**Amendments—2007 (Adj. Sess.).** Deleted "for children and families" following "commissioner" in the first and fourth sentences; substituted "the" for "that" preceding "department"; deleted "other than staff of the department for children and families" following "staff" in the fourth sentence; and substituted "4915b" for "4915" following "section" near the end of the fifth sentence.



—2007. Added “unless the reporter is anonymous” at the end of the second sentence; added “or other contact information” following “address” in the third sentence; deleted “staff of the department of disabilities, aging, and independent living or of corrections or” following “investigated” and added “agency” following “appropriate” in the fourth sentence; and added “to the child and to his or her family or caretaker” preceding “according” in the fifth sentence.

—2005 (Adj. Sess.). Substituted “for children and families” for “of social and rehabilitation services” following “commissioner” and “department”; “the report” for “such report” preceding “shall” and “department of disabilities, aging, and independent living” for “departments of developmental and mental health services”.

—1995 (Adj. Sess.). Substituted “developmental and mental health services” for “mental health and mental retardation”.

—1989 (Adj. Sess.). Act No. 187 inserted “and mental retardation” following “mental health” in the fourth sentence.

Act No. 295 deleted “his” preceding “designee” in the first and second sentences, substituted “the” for “his” preceding “parents” and “the child’s” for “his” following “responsible for” and preceding “siblings” in the third sentence, and added “of this title” at the end of the fifth sentence.

Prior law. 33 V.S.A. § 684.

#### ANNOTATIONS

**Cited.** Cited in *Peck v. Counseling Service of Addison County, Inc.* (1985) 146 Vt. 61, 499 A.2d 422; *LaShay v. Department of Social & Rehabilitation Services* (1993) 160 Vt. 60, 625 A.2d 224; *Wilkinson v. Russell*, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

#### § 4915. Assessment and investigation

(a) Upon receipt of a report of abuse or neglect, the Department shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 of this title. The Department shall respond to reports of alleged neglect or abuse that occurred in Vermont and to out-of-state conduct when the child is a resident of or is present in Vermont.

(b) If the report is accepted as a valid allegation of abuse or neglect, the Department shall determine whether to conduct an assessment as provided for in section 4915a of this title or to conduct an investigation as provided for in section 4915b of this title. The Department shall begin either an assessment or an investigation within 72 hours after the receipt of a report made pursuant to section 4914 of this title, provided that it has sufficient information to proceed. The Commissioner may waive the 72-hour requirement only when necessary to locate the child who is the subject of the allegation or to ensure the safety of the child or social worker.

(c) The decision to conduct an assessment shall include consideration of the following factors:

(1) the nature of the conduct and the extent of the child’s injury, if any;

(2) the accused person’s prior history of child abuse or neglect, or lack thereof; and

(3) the accused person’s willingness or lack thereof to accept responsibility for the conduct and cooperate in remediation.

(d) The Department shall conduct an investigation when an accepted report involves allegations

indicating substantial child endangerment. For purposes of this section, “substantial child endangerment” includes conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child’s welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury. The Department may conduct an investigation of any report.

(e) The Department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is appropriate.

(f) The Department may collaborate with child protection, law enforcement, and other departments and agencies in Vermont and other jurisdictions to evaluate risk to a child and to determine the service needs of the child and family. The Department may enter into reciprocal agreements with other jurisdictions to further the purposes of this subchapter.

#### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1995, No. 178 (Adj. Sess.), § 300; 1999, No. 78 (Adj. Sess.), § 1; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 5.

#### HISTORY

**Revision note—**In subsec. (a), substituted “section 4914 of this title” for “section 4914” to conform reference to V.S.A. style.

In subsec. (d), substituted “section 4913 of this title” for “section 4913” to conform reference to V.S.A. style.

**Amendments—2007 (Adj. Sess.).** Amended generally.

—2007. Amended generally.

—1999 (Adj. Sess.). Subsection (a): Substituted “72 hours” for “seventy-two hours” and added “of this title” at the end of the sentence.

Subsection (b): Added “all of the following” at the end of introductory paragraph.

Subdivisions (b)(1) and (b)(2): Made a minor change in punctuation.

Subdivision (b)(3): Substituted “Determination of the” for “The”, “any” for “the” preceding “abuse” and made a minor change in punctuation.

Subdivision (b)(4): Substituted “Determination of the” for “The”, inserted “alleged to be” following “the person” and made a minor change in punctuation.

Subdivision (b)(5): Amended generally.

Subdivision (b)(6): Made a minor change in punctuation.

Subdivision (b)(7): Substituted “Consideration of the” for “The”, inserted “alleged to be” following “the person”, and deleted “and” following “neglect”.

Subsection (d): Deleted “his” preceding “designee” in wherever it appeared.

—1995 (Adj. Sess.). Subsection (c): Substituted “may, to the extent that it is reasonable” for “shall” following “commissioner” and “the child’s family” for “his family” preceding “in accordance”.

**Effective date of 2007 (Adj. Sess.) amendments.** 2007, No. 168 (Adj. Sess.), § 21(b) provides: “In Sec. 5 of this act, the amendments in 33 V.S.A. § 4915(b), (c), (d), and (e) shall take effect upon adoption of final rules by the department for children and families.” Section 18 adds 32 V.S.A. § 4922 (detailing the rulemaking process) and provides in subsec. (c): “These rules shall be adopted no later than July 1, 2009”.

Prior law. 33 V.S.A. § 685.

#### ANNOTATIONS

1. **Duty.** Vermont law did not clearly require a more thorough investigation of abuse than was in fact conducted; social workers

thus had a reasonable basis to believe that their abuse investigation was consistent with family's rights under state law at the time, and social workers were therefore entitled to qualified immunity. *Wilkinson v. Russell*, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

Where evidence could not support a conclusion by the fact-finder that social worker defendants had not violated their statutory duties under this section, summary judgment for defendants, on ground that defendants were protected by qualified immunity as a matter of law, was inappropriate. *Sabia v. Neville* (1996) 165 Vt. 515, 687 A.2d 469.

It is beyond dispute that 33 V.S.A. § 4911 and this section create a duty on the part of the Department of Social and Rehabilitation Services to assist a particular class of persons to which plaintiffs belong (child abuse victims) and to prevent the type of harm suffered by plaintiffs (sexual abuse by their stepfather). *Sabia v. State* (1995) 164 Vt. 293, 669 A.2d 1187.

This section does not require the Department of Social and Rehabilitation Services (SRS) in all instances to remove abused or neglected children from their home, but it does require the Department to thoroughly investigate charges of abuse and to cause assistance to be provided pursuant to a written plan of treatment when an investigation produces evidence of abuse or neglect. *Sabia v. State* (1995) 164 Vt. 293, 669 A.2d 1187.

**2. Interview.** Social worker investigating a claim of child abuse is authorized to interview a possible victim outside presence of a disinterested adult only with approval of the child's parents, guardian or custodian. *Wilkinson v. Russell*, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

Qualified immunity shielded social workers from liability in connection with their alleged violation of this section, where it was not clearly established under Vermont law that they needed permission from both parents, as opposed to just one, in order to proceed with interviews of possible child abuse victim. *Wilkinson v. Russell*, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

This section requires the presence of a disinterested adult only when the interview of a child takes place without the approval of the child's parents, guardian, or custodian. Because the child's mother gave permission for the child to be interviewed, the father could not claim a violation of this section. *Wilkinson ex rel. Wilkinson v. Russell*, 973 F. Supp. 437 (D. Vt. 1997), aff'd, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

**Cited.** Cited in *In re M.C.P.* (1989) 153 Vt. 275, 571 A.2d 627; *Murray v. White* (1991) 155 Vt. 621, 587 A.2d 975; *In re F.E.F.* (1991) 156 Vt. 503, 594 A.2d 897; *State v. Duffy* (1992) 158 Vt. 170, 605 A.2d 533; *LaShay v. Department of Social & Rehabilitation Services* (1993) 160 Vt. 60, 625 A.2d 224; *Earle v. State*, 2006 VT 92, 180 Vt. 284, 910 A.2d 841.

#### § 4915a. Procedures for assessment

(a) An assessment, to the extent that is reasonable under the facts and circumstances presented by the particular valid allegation of child abuse or neglect, shall include the following:

(1) An interview with the child's parent, guardian, foster parent, or any other adult residing in the child's home who serves in a parental role. The interview shall focus on ensuring the immediate safety of the child and mitigating the future risk of harm to the child in the home environment.

(2) An evaluation of the safety of the subject child and any other children living in the same home environment. The evaluation may include an interview with or observation of the child or children.

Such interviews shall occur with the permission of the child's parent, guardian, or custodian.

(3) In collaboration with the family, identification of family strengths, resources, and service needs, and the development of a plan of services that reduces the risk of harm and improves or restores family well-being.

(b) The assessment shall be completed within 45 days. Upon written justification by the Department, the assessment may be extended, not to exceed a total of 60 days.

(c) Families have the option of declining the services offered as a result of the assessment. If the family declines the services, the case shall be closed unless the Department determines that sufficient cause exists to begin an investigation or to request the state's attorney to file a petition pursuant to chapter 55 of this title. In no instance shall a case be investigated solely because the family declines services.

(d) When an assessment case is closed, there shall be no finding of abuse or neglect and no indication of the intervention shall be placed in the Registry. However, the Department shall document the outcome of the assessment.

#### Historical Citation.

Added 2007, No. 168 (Adj. Sess.), § 6.

#### HISTORY

Effective date of 2007 (Adj. Sess.) amendments. 2007, No. 168 (Adj. Sess.), § 21(c) provides: "Sec. 6 [which enacted this section] of this act shall take effect upon adoption of final rules by the department for children and families." Section 18 adds 32 V.S.A. § 4922 (detailing the rulemaking process) and provides in subsec. (c): "These rules shall be adopted no later than July 1, 2009".

#### § 4915b. Procedures for investigation

(a) An investigation, to the extent that it is reasonable under the facts and circumstances presented by the particular allegation of child abuse, shall include all of the following:

(1) A visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect.

(2) An interview with or observation of the child reportedly having been abused or neglected. If the investigator elects to interview the child, that interview may take place without the approval of the child's parents, guardian, or custodian, provided that it takes place in the presence of a disinterested adult who may be, but shall not be limited to being, a teacher, a member of the clergy, a child care provider regulated by the Department, or a nurse.

(3) Determination of the nature, extent, and cause of any abuse or neglect.

(4) Determination of the identity of the person alleged to be responsible for such abuse or neglect.

(5)(A) The identity, by name, of any other children living in the same home environment as the

subject child. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse or neglect, in accordance with the provisions of subdivision (2) of this subsection.

(B) The identity, by name, of any other children who may be at risk if the abuse was alleged to have been committed by someone who is not a member of the subject child's household. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse or neglect, in accordance with the provisions of subdivision (2) of this subsection.

(6) A determination of the immediate and long-term risk to each child if that child remains in the existing home or other environment.

(7) Consideration of the environment and the relationship of any children therein to the person alleged to be responsible for the suspected abuse or neglect.

(8) All other data deemed pertinent.

(b) For cases investigated and substantiated by the Department, the Commissioner shall, to the extent that it is reasonable, provide assistance to the child and the child's family. For cases investigated but not substantiated by the Department, the Commissioner may, to the extent that it is reasonable, provide assistance to the child and the child's family. Nothing contained in this section or section 4915a of this title shall be deemed to create a private right of action.

(c) The Commissioner, designee, or any person required to report under section 4913 of this title or any other person performing an investigation may take or cause to be taken photographs of trauma visible on a child who is the subject of a report. The Commissioner or designee may seek consultation with a physician. If it is indicated appropriate by the physician, the Commissioner or designee may cause the child who is subject of a report to undergo a radiological examination without the consent of the child's parent or guardian.

(d) Services may be provided to the child's immediate family whether or not the child remains in the home.

(e) The Department shall report to and request assistance from law enforcement in the following circumstances:

(1) Investigations of child sexual abuse by an alleged perpetrator age 10 or older.

(2) Investigations of serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care.

(3) Situations potentially dangerous to the child or department worker.

(f) The Department shall not substantiate cases in which neglect is caused solely by the lack of financial resources of the parent or guardian.

**Historical Citation.**

Added 2007, No. 168 (Adj. Sess.), § 7.

**§ 4916. Child Protection Registry**

(a)(1) The Commissioner shall maintain a Child Protection Registry which shall contain a record of all investigations that have resulted in a substantiated report on or after January 1, 1992. Except as provided in subdivision (2) of this subsection, prior to placement of a substantiated report on the Registry, the Commissioner shall comply with the procedures set forth in section 4916a of this title.

(2) In cases involving sexual abuse or serious physical abuse of a child, the Commissioner in his or her sole judgment may list a substantiated report on the Registry pending any administrative review after:

(A) Reviewing the investigation file.

(B) Making written findings in consideration

of:

(i) the nature and seriousness of the alleged behavior; and

(ii) the person's continuing access to children.

(3) A person alleged to have abused or neglected a child and whose name has been placed on the Registry in accordance with subdivision (2) of this subsection shall be notified of the Registry entry, provided with the Commissioner's findings, and advised of the right to seek an administrative review in accordance with section 4916a of this title.

(4) If the name of a person has been placed on the Registry in accordance with subdivision (2) of this subsection, it shall be removed from the Registry if the substantiation is rejected after an administrative review.

(b) A Registry record means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(c) The Commissioner shall adopt rules to permit use of the Registry records as authorized by this subchapter while preserving confidentiality of the Registry and other Department records related to abuse and neglect.

(d) For all substantiated reports of child abuse or neglect made on or after the date the final rules are adopted, the Commissioner shall create a Registry record that reflects a designated child protection level related to the risk of future harm to children. This system of child protection levels shall be based upon an evaluation of the risk the person respon-

sible for the abuse or neglect poses to the safety of children. The risk evaluation shall include consideration of the following factors:

- (1) the nature of the conduct and the extent of the child's injury, if any;
- (2) the person's prior history of child abuse or neglect as either a victim or perpetrator;
- (3) the person's response to the investigation and willingness to engage in recommended services; and
- (4) the person's age and developmental maturity.

(e) The Commissioner shall develop rules for the implementation of a system of Child Protection Registry levels for substantiated cases. The rules shall address:

- (1) the length of time a person's name appears on the Registry;
  - (2) when and how names are expunged from the Registry;
  - (3) whether the person is a juvenile or an adult;
  - (4) whether the person was charged with or convicted of a criminal offense arising out of the incident of abuse or neglect; and
  - (5) whether a Family Division of the Superior Court has made any findings against the person.
- (f) [Repealed.]

#### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1989, No. 295 (Adj. Sess.), § 5; 1991, No. 159 (Adj. Sess.), § 3; 2007, No. 77, § 1, eff. Sept. 1, 2007; 2007, No. 168 (Adj. Sess.), § 8; 2007, No. 172 (Adj. Sess.), § 20; 2009, No. 154 (Adj. Sess.), § 238.

#### HISTORY

**Editor's note—2008.** Act No. 172 purported to amend subdivision (f)(1), however the subsection had been previously repealed by Act No. 168.

**Codification.** Pursuant to 1989, No. 148 (Adj. Sess.), § 2(e), the amendment to former 33 V.S.A. § 686 by 1989, No. 295 (Adj. Sess.), § 5, was incorporated in the text of this section.

**Amendments—2009 (Adj. Sess.).** Subdivision (e)(5): Substituted "family division of the superior court" for "family court".

—2007 (Adj. Sess.). Catchline: Act No. 168 substituted "protection" for "abuse and neglect" following "Child" and deleted "records of abuse and neglect" following "registry".

Subdivision (a)(1): Act No. 168 substituted "protection" for "abuse and neglect".

Subdivision (a)(3): Act No. 168 inserted "whose name has been" preceding "placed".

Subdivision (a)(4): Added by Act No. 168.

Subsection (b): Act No. 168 substituted "protection" for "abuse and neglect".

Subsections (d) and (e): Amended generally by Act No. 168.

Subsection (f): Deleted by Act No. 168.

—2007. Amended generally.

—1991 (Adj. Sess.). Subsection (d): Inserted "except as provided in section 4919 of this title" following "subsection" in the third sentence.

—1989 (Adj. Sess.). Amended section generally.

Prior law. 33 V.S.A. § 686.

#### CROSS REFERENCES

Procedure for adoption of administrative rules, see § 801 et seq. of Title 3.

#### ANNOTATIONS

- Case files, 7
- Construction, 1
- Effect of disclosure, 3
- Evidentiary privilege, 2
- Expungement of records, 4
- Extent of expungement, 5
- Findings of fact, 8
- Particular cases, 9
- Standard of proof, 6

**1. Construction.** Department for Children and Families (DCF) looks to the degree of misconduct involved in the action of the parent or caretaker and reserves child protection registry inclusion in single incident cases for misconduct that is egregious—that is, outrageously bad or reprehensible. The DCF's approach is consistent with the statute which requires that the risk of harm to the child be "substantial" and create "significant" danger, and the Vermont Supreme Court adopts DCF's interpretation of the statute, finding no compelling indication of error in it. In re R.H., 2010 VT 95, 189 Vt. 15, 14 A.3d 267.

Evidence required to support the listing of a substantiated child abuse investigation does not require proof that the act was committed to satisfy sexual desires of either the perpetrator or the victim as required by 13 V.S.A. § 2602, lewd or lascivious conduct with a child. *Passion v. Department of Social & Rehabilitation Services* (1997) 166 Vt. 596, 689 A.2d 459 (mem.).

That the sexual abuse registry statute was seemingly contradictory to other public policies of the state, evidenced in statutes like 33 V.S.A. § 5501 which seek to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior, was not sufficient to overcome the legislature's intent to treat child sexual abuse as a special area of concern warranting different treatment. In re Selivonik (1995) 164 Vt. 383, 670 A.2d 831.

**2. Evidentiary privilege.** This section does not exhibit an intent to create an evidentiary privilege as to information within the possession of the department of social and rehabilitation services. In re F.E.F. (1991) 156 Vt. 503, 594 A.2d 897.

**3. Effect of disclosure.** Since it was reasonable for social services director to perceive information request from Connecticut investigator as a court order, it was likewise reasonable for director to believe that her communications with investigator did not contravene clear requirements of subdivision (d) of this section. *Wilkinson v. Russell*, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

A child welfare director's remarks regarding alleged child sexual abuse to an out-of-state counterpart were privileged under the doctrines of judicial immunity and state qualified immunity. The director's remarks, although used in a closed court proceeding, were not published as required for an action in defamation. *Wilkinson ex rel. Wilkinson v. Russell*, 973 F. Supp. 437 (D. Vt. 1997), aff'd, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 120 S. Ct. 1160, 145 L. Ed. 2d 1072 (2000).

**4. Expungement of records.** Based on collateral estoppel, the Human Services Board properly denied a mother an evidentiary hearing to expunge her name from the child abuse registry. A family court's determination that a child was in need of care or supervision, based upon the mother's stipulation, precluded relitigation of whether the child had been nutritionally neglected. In re P.J., 2009 VT 5, 185 Vt. 606, 969 A.2d 133 (mem.).

Order of the Human Services Board expunging mother's name from the child-abuse registry was not reversed where the facts did not make out child abuse as a matter of law. *K.G. v. Department of Social & Rehabilitation Services* (2000) 171 Vt. 529, 758 A.2d 323 (mem.).

Father's name was required to be expunged from state child-abuse registry, where quality of hearsay evidence militated against assigning any accuracy or reliability to statements of child implicating her father. In re C.M. (1998) 168 Vt. 389, 721 A.2d 1176.

Plain language of hearsay exception contained in V.R.E. 804a indicated that Legislature intended it to apply to any civil, criminal or administrative proceeding in which statements concerning child sexual abuse are offered, and therefore this provision, rather than Human Services Board's more relaxed hearsay rule, governed admissibility of child hearsay statements in hearings for expungement of names from state child-abuse registry. In re C.M. (1998) 168 Vt. 389, 721 A.2d 1176.

Petitioner could not raise the issue of a violation of the provision of this section requiring the destruction of records, where he failed to object to testimony regarding an incident of prior sexual abuse on that basis at the hearing before the human services board. *Passion v. Department of Social & Rehabilitation Services* (1997) 166 Vt. 596, 689 A.2d 459 (mem.).

When conducting hearings regarding the expungement of investigation records held by the department of social and rehabilitation services, the human services board receives evidence and reviews the department's decision de novo. In re *Bushey-Combs* (1993) 160 Vt. 326, 628 A.2d 541.

Order by human services board to expunge report of sexual abuse within registry of department of social and rehabilitation services was not error where department failed to meet its burden to show why record of abuse should not be expunged. In re *Bushey-Combs* (1993) 160 Vt. 326, 628 A.2d 541.

**5. Extent of expungement.** The obvious purpose of subsection (g)'s concluding phrase, "and the name of the person about whom the report was made," which was added by the Legislature in 1990, was to prevent loss of the perpetrator's name when the abused child's name was expunged from the registry. In re *Selivonik* (1995) 164 Vt. 383, 670 A.2d 831.

Although petitioner argued that Legislature intended to allow expungement of child perpetrators when they became adults, in the context of a statute whose main purpose is the prevention of child abuse, the more persuasive interpretation is that the names of perpetrators were to be maintained regardless of age. In re *Selivonik* (1995) 164 Vt. 383, 670 A.2d 831.

**6. Standard of proof.** A person included in the sexual abuse registry has the right at any time to petition for expungement and is entitled to a fair hearing conducted under the preponderance standard; a higher standard at the investigatory stage is not necessary to meet due process concerns because of the availability of such a hearing at any time after inclusion in the registry. In re *Selivonik* (1995) 164 Vt. 383, 670 A.2d 831.

**7. Case files.** A court's order to the commissioner of social and rehabilitation services to disclose case files to the state's attorney was not an abuse of discretion insofar as the ruling applied to criminal cases before the court at the time. *State v. Ross* (1997) 166 Vt. 630, 699 A.2d 47 (mem.).

**8. Findings of fact.** In a child-abuse-and-neglect registry case, remand was required because the Human Services Board failed to meet its obligation to issue written findings of fact. The Board's mere recitation of the evidence did not suffice. In re *M.G.*, 2010 VT 101, 189 Vt. 72, 13 A.3d 1084.

**9. Particular cases.** In reversing a decision including a mother in the child protection registry on the ground that there had been a risk of harm to the child but that no purpose would be served by placing the mother's name in the registry, the Human Services Board failed to follow the plain language of the statute. It had no discretion to conflate the two distinct statutory procedures of substantiation and expungement, and it erred in considering whether the mother was likely to commit similar acts of negligence in the future. In re *R.H.*, 2010 VT 95, 189 Vt. 15, 14 A.3d 267.

**Cited.** Cited in In re *R.B.* (1989) 152 Vt. 415, 566 A.2d 1310, cert. denied, *Appleby v. Young*, 493 U.S. 1086, 110 S. Ct. 1151, 107 L. Ed. 2d 1055 (1990); *State v. Curtis* (1991) 157 Vt. 275, 597 A.2d 770.

### § 4916a. Challenging placement on the Registry

(a) If an investigation conducted in accordance with section 4915b of this title results in a determination that a report of child abuse or neglect should be substantiated, the Department shall notify the person alleged to have abused or neglected a child of the following:

(1) The nature of the substantiation decision, and that the Department intends to enter the record of the substantiation into the Registry.

(2) Who has access to Registry information and under what circumstances.

(3) The implications of having one's name placed on the Registry as it applies to employment, licensure, and registration.

(4) The right to request a review of the substantiation determination by an administrative reviewer, the time in which the request for review shall be made, and the consequences of not seeking a review.

(5) The right to receive a copy of the Commissioner's written findings made in accordance with subdivision 4916(a)(2) of this title if applicable.

(b) Under this section, notice by the Department to a person alleged to have abused or neglected a child shall be by first class mail sent to the person's last known address.

(c)(1) A person alleged to have abused or neglected a child may seek an administrative review of the Department's intention to place the person's name on the Registry by notifying the Department within 14 days of the date the Department mailed notice of the right to review in accordance with subsections (a) and (b) of this section. The Commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the Department has mailed notice of the right to review.

(2) The administrative review may be stayed upon request of the person alleged to have committed abuse or neglect if there is a related case pending in the Criminal or Family Division of the Superior Court which arose out of the same incident of abuse or neglect for which the person was substantiated. During the period the review is stayed, the person's name shall be placed on the Registry. Upon resolution of the Superior Court criminal or family case, the person may exercise his or her right to review under this section.

(d) The Department shall hold an administrative review conference within 35 days of receipt of the request for review. At least 10 days prior to the administrative review conference, the Department shall provide to the person requesting review a copy of the redacted investigation file, notice of time and

place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing testimony. The Department shall also provide to the person whose redacted investigation files that relate to prior investigations that the Department has relied upon to make its substantiation determination in the case in which a review has been requested.

(e) At the administrative review conference, the person who requested the review shall be provided with the opportunity to present documentary evidence or other information that supports his or her position and provides information to the reviewer in making the most accurate decision regarding the allegation. The Department shall have the burden of proving that it has accurately and reliably concluded that a reasonable person would believe that the child has been abused or neglected by that person. Upon the person's request, the conference may be held by teleconference.

(f) The Department shall establish an administrative case review unit within the Department and contract for the services of administrative reviewers. An administrative reviewer shall be a neutral and independent arbiter who has no prior involvement in the original investigation of the allegation.

(g) Within seven days of the conference, the administrative reviewer shall:

- (1) reject the Department's substantiation determination;
- (2) accept the Department's substantiation; or
- (3) place the substantiation determination on hold and direct the Department to further investigate the case based upon recommendations of the reviewer.

(h) If the administrative reviewer accepts the Department's substantiation determination, a Registry record shall be made immediately. If the reviewer rejects the Department's substantiation determination, no Registry record shall be made.

(i) Within seven days of the decision to reject or accept or to place the substantiation on hold in accordance with subsection (g) of this section, the administrative reviewer shall provide notice to the person of his or her decision. If the administrative reviewer accepts the Department's substantiation, the notice shall advise the person of the right to appeal the administrative reviewer's decision to the human services board in accordance with section 4916b of this title.

(j) Persons whose names were placed on the Registry on or after January 1, 1992 but prior to September 1, 2007 shall be entitled to an opportunity to seek an administrative review to challenge the substantiation.

(k) If no administrative review is requested, the Department's decision in the case shall be final, and the person shall have no further right of review under this section. The Commissioner may grant a

waiver and permit such a review upon good cause shown. Good cause may include an acquittal or dismissal of a criminal charge arising from the incident of abuse or neglect.

(l) In exceptional circumstances, the Commissioner, in his or her sole and nondelegable discretion, may reconsider any decision made by a reviewer. A Commissioner's decision that creates a Registry record may be appealed to the Human Services Board in accordance with section 4916b of this title.

#### Historical Citation.

Added 2007, No. 77, § 1, eff. Sept. 1, 2007; amended 2007, No. 168 (Adj. Sess.), § 9, eff. Sept. 1, 2008; 2009, No. 154 (Adj. Sess.), § 221.

#### HISTORY

**Amendments—2009 (Adj. Sess.).** Subdivision (c)(2): Deleted "criminal or family court" preceding "case pending in" and inserted "the criminal or family division of the superior" thereafter in the first sentence and inserted "superior court" preceding "criminal" and deleted "court" preceding "case" in the third sentence.

—2007 (Adj. Sess.). Subsection (a): Substituted "4915b" for "4915" following "section".

Subsection (c): Added the subdiv. (1) designation and added the second sentence in that subdivision and subdiv. (2).

Subsection (d): Substituted "35" for "14" preceding "days" in the first sentence and "ten" for "seven" preceding "days" in the second sentence.

Subsection (h): Added the second sentence.

Subsection (j): Substituted "September" for "July" following "prior to" and deleted "pursuant to this section" following "substantiation".

Subsection (k): Added the third sentence.

Subsection (l): Added.

#### ANNOTATIONS

Administrative review, 1  
Constitutionality, 2  
Disclosure of documents, 3  
Substantiation, 4

**1. Administrative review.** Human Services Board properly held that it lacked jurisdiction over an appeal from a substantiation of child abuse. The appeal, which was filed more than 10 months after notice of the substantiation, was untimely under the statute governing administrative review in such cases. In re Beer, 2010 VT 31, 187 Vt. 641, 996 A.2d 225 (mem.).

Deadlines listed in the statute dealing with challenging placement on the child abuse registry are solely procedural and therefore fall under a general exception to the statute that deals with an amendment's retroactive effects on substantive rights. Furthermore, the deadlines in the registry statute were not in fact being applied retroactively, since petitioner had no appellate rights in the case until the date the charge was substantiated at which point the amendment adding the deadlines was already in effect. In re Beer, 2010 VT 31, 187 Vt. 641, 996 A.2d 225 (mem.).

**2. Constitutionality.** When petitioner failed to take the steps necessary to secure a merits hearing on a substantiation of child abuse, there was no due process violation, since petitioner was plainly provided adequate notice of the agency's decision and informed of his right to appeal. There was no due process violation when a board simply enforced its properly noticed filing deadlines, as occurred here. In re Beer, 2010 VT 31, 187 Vt. 641, 996 A.2d 225 (mem.).

**3. Disclosure of documents.** Because petitioner failed to file a timely appeal of a substantiation of child abuse, the Human

Services Board properly found that it lacked jurisdiction to hold an administrative review conference regarding the merits of the case; thus, the Board was not required to disclose any documents to petitioner. The statute governing challenging placement on the child abuse registry required the disclosure of redacted documents only when an administrative review conference was going to take place. In re Beer, 2010 VT 31, 187 Vt. 641, 996 A.2d 225 (mem.).

4. **Substantiation.** Although the statutory scheme has changed since 1993, the burden remains with the Department for Children and Families (DCF) to justify its substantiation decision in the fair hearing before the Human Services Board. It remains true, therefore, that DCF's substantiation determinations are significantly different in nature from those of an adjudicative body. In re R.H., 2010 VT 95, 189 Vt. 15, 14 A.3d 267.

#### § 4916b. Human Services Board hearing

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the Registry, the person who is the subject of the substantiation may apply in writing to the Human Services Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the Registry record that the substantiation has been appealed to the Board.

(b)(1) The Board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to hearings held under this subsection only as follows:

(A) V.R.E. 804a(a)(1) and (4) shall apply.

(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.

(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.

(D) V.R.E. 804a(b) shall not apply.

(4) Convictions and adjudications which arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subsection.

(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in the Criminal or Family Division of the Superior Court which arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the Board is requested, the Department's decision in the case shall be final, and

the person shall have no further right for review under this section. The Board may grant a waiver and permit such a review upon good cause shown.

#### Historical Citation.

Added 2007, No. 77, § 1, eff. Sept. 1, 2007; amended 2007, No. 168 (Adj. Sess.), § 10; 2009, No. 1, § 29; 2009, No. 154 (Adj. Sess.), § 222.

#### HISTORY

**Amendments—2009 (Adj. Sess.).** Subsection (c): Deleted "criminal or family court" preceding "case pending in" and inserted "the criminal or family division of the superior" thereafter.

—2009. Subdivisions (b)(3) and (4): Added.

—2007 (Adj. Sess.). Subsection (c): Inserted "criminal or family court" following "related" and "which arose out of the same incident of abuse or neglect for which the person was substantiated" following "court".

#### ANNOTATIONS

1. **Hearing.** Human Services Board's statutory authority to hold a fair hearing has not changed, and the Board remains empowered to engage in de novo review. These powers would be meaningless if the Board were limited to determining only whether the Department for Children and Families (DCF) had sufficient evidence to support its conclusions; where the legislature intended that the Board's review of DCF's decisions be limited, moreover, it has stated so explicitly. In re R.H., 2010 VT 95, 189 Vt. 15, 14 A.3d 267.

#### § 4916c. Petition for expungement from the Registry

(a) A person whose name has been placed on the Registry prior to July 1, 2009 and has been listed on the Registry for at least three years may file a written request with the Commissioner, seeking a review for the purpose of expunging an individual Registry record. A person whose name has been placed on the Registry on or after July 1, 2009 and has been listed on the Registry for at least seven years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record. The Commissioner shall grant a review upon request.

(b) The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children. Factors to be considered by the Commissioner shall include:

(1) The nature of the substantiation that resulted in the person's name being placed on the Registry.

(2) The number of substantiations, if more than one.

(3) The amount of time that has elapsed since the substantiation.

(4) The circumstances of the substantiation that would indicate whether a similar incident would be likely to occur.

(5) Any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment, or education.

(6) References that attest to the person's good moral character.

(c) At the review, the person who requested the review shall be provided with the opportunity to present any evidence or other information, including witnesses, that supports his or her request for expungement. Upon the person's request, the review may be held by teleconference.

(d) A person may seek a review under this section no more than once every 36 months.

(e) Within 30 days of the date on which the Commissioner mailed notice of the decision pursuant to this section, a person may appeal the decision to the Human Services Board. The person shall be prohibited from challenging his or her substantiation at such hearing, and the sole issue before the board shall be whether the Commissioner abused his or her discretion in denial of the petition for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the Commissioner shall be given deference by the Board.

(f) The Department shall take steps to provide reasonable notice to persons on the Registry of their right to seek an expungement under this section. Actual notice is not required. Reasonable steps may include activities such as the production of an informative fact sheet about the expungement process, posting of such information on the Department website, and other approaches typically taken by the Department to inform the public about the Department's activities and policies. The Department shall send notice of the expungement process to any person listed on the Registry for whom a Registry check has been requested.

**Historical Citation.**  
Added 2007, No. 77, § 1, eff. June 7, 2007; amended 2007, No. 168 (Adj. Sess.), § 11.

**HISTORY**

**Amendments—2007 (Adj. Sess.).** Subsection (a): Inserted "has been placed on the registry prior to July 1, 2009 and" following "name"; substituted "three" for "seven" preceding "years" and added the present second sentence.

**ANNOTATIONS**

**1. Particular cases.** In reversing a decision including a mother in the child protection registry on the ground that there had been a risk of harm to the child but that no purpose would be served by placing the mother's name in the registry, the Human Services Board failed to follow the plain language of the statute. It had no discretion to conflate the two distinct statutory procedures of substantiation and expungement, and it erred in considering whether the mother was likely to commit similar acts of negligence in the future. In re R.H., 2010 VT 95, 189 Vt. 15, 14 A.3d 267.

**§ 4916d. Automatic expungement of Registry records**

Registry entries concerning a person who was substantiated for behavior occurring before the per-

son reached 10 years of age shall be expunged when the person reaches the age of 18, provided that the person has had no additional substantiated Registry entries. A person substantiated for behavior occurring before the person reached 18 years of age and whose name has been listed on the Registry for at least three years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record in accordance with section 4916c of this title.

**Historical Citation.**  
Added 2007, No. 77, § 1, eff. June 7, 2007; amended 2007, No. 168 (Adj. Sess.), § 12.

**HISTORY**

**Amendments—2007 (Adj. Sess.).** Added the present second sentence.

**§ 4916e. Notice to minors**

If the person alleged to have abused or neglected a child is a minor, any notice required pursuant to this subchapter shall be sent:

- (1) to the minor's parents or guardian; or
- (2) if the child is in the custody of the Commissioner, to the social worker assigned to the child by the Department and the child's counsel of record.

**Historical Citation.**  
Added 2007, No. 77, § 1, eff. June 7, 2007.

**§ 4917. Multidisciplinary teams; empaneling**

(a) The Commissioner or his or her designee may empanel a multidisciplinary team or a special investigative multitask force team or both wherever in the state there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services. These teams shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415.

(b) The Commissioner or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multidisciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, child care, education, law, or law enforcement. The teams shall include a representative of the Department of Corrections. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

(c) The empaneling of a multidisciplinary or special investigative multi-task force team shall be authorized in writing and shall specifically list the members of the team. This list may be amended from time to time as needed as determined by the Commissioner or his or her designee.

**Historical Citation.**  
Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 13; 2007, No. 172 (Adj.

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Sess.), § 21; 2007, No. 174 (Adj. Sess.), § 17; 2009, No. 1, § 18, eff. March 4, 2009.

### HISTORY

**Amendments—2009.** Subsection (a): Added the second sentence.

Subsection (b): Added the second sentence.

—2007 (Adj. Sess.). Subsection (a): Act No. 168 deleted “of social and rehabilitation services” following “commissioner” and inserted “or a special investigative multi-task force team or both” following “multidisciplinary team”.

Subsection (a): Act No. 174 deleted “of social and rehabilitation services” following “commissioner”.

Subsection (b): Act No. 168 deleted “of social and rehabilitation services” following “commissioner” and substituted “child” for “day” preceding “care”.

Subsection (b): Act No. 172 substituted “for children and families” for “of social and rehabilitation services” following “department”.

Subsection (b): Act No. 174 deleted “of social and rehabilitation services” following “department”.

Subsection (c): Act No. 174 inserted “or special investigative multi-task force” following “multidisciplinary”.

Prior law. 33 V.S.A. § 687.

### § 4918. Multidisciplinary teams; functions; guidelines

(a) Multidisciplinary teams shall assist local district offices of the Department in identifying and treating child abuse or neglect cases. With respect to any case referred to it, the team may assist the district office by providing:

- (1) case diagnosis or identification;
- (2) a comprehensive treatment plan; and
- (3) coordination of services pursuant to the treatment plan.

(b) Multidisciplinary teams may also provide public informational and educational services to the community about identification, treatment, and prevention of child abuse and neglect. It shall also foster communication and cooperation among professionals and organizations in its community, and provide such recommendations or changes in service delivery as it deems necessary.

#### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 14.

### HISTORY

**Amendments—2007 (Adj. Sess.).** Subsection (a): Deleted “of social and rehabilitation services” following “department” and substituted “or” for “and” preceding “neglect” and “may” for “shall” preceding “assist”.

Prior law. 33 V.S.A. § 688.

### § 4919. Disclosure of Registry records

(a) The Commissioner may disclose a Registry record only as follows:

- (1) To the state’s attorney or the Attorney General.
- (2) To the owner or operator of a facility regulated by the Department for the purpose of informing the owner or operator that employment of a

specific individual may result in loss of license, registration, certification, or authorization as set forth in section 309 of this title.

(3) To an employer if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, transportation, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, grantee, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, grantee, or contractor. If that individual has a record of a substantiated report, the Commissioner shall provide the Registry record to the employer. The employer shall not disclose the information contained in the Registry report.

(4) To the Commissioners of Disabilities, Aging, and Independent Living, and of Mental Health, or their designees, for purposes related to the licensing or registration of facilities regulated by those departments.

(5) To the Commissioners of Health, of Disabilities, Aging, and Independent Living, and of Mental Health, or their designees, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by those Departments, including persons to whom a conditional offer of employment has been made.

(6) Upon request or when relevant to other states’ adult protective services offices.

(7) Upon request or when relevant to other states’ child protection agencies.

(8) To the person substantiated for child abuse and neglect who is the subject of the record.

(9) To the Commissioner of Corrections in accordance with the provisions of 28 V.S.A. § 204a(b)(3).

(10) To the Board of Medical Practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

(b) An employer providing transportation services to children or vulnerable adults may disclose Registry records obtained pursuant to subdivision (a)(3) of this section to the Agency of Human Services or its designee for the sole purpose of auditing the records to ensure compliance with this subchapter. An employer shall provide such records at the request of the Agency or its designee. Only Registry records regarding individuals who provide direct transportation services or otherwise have direct contact with children or vulnerable adults may be disclosed.

(c) Volunteers shall be considered employees for purposes of this section.

(d) Disclosure of Registry records or information or other records used or obtained in the course of

providing services to prevent child abuse or neglect or to treat abused or neglected children and their families by one member of a multidisciplinary team to another member of that team shall not subject either member of the multidisciplinary team, individually, or the team as a whole, to any civil or criminal liability notwithstanding any other provision of law.

(e) "Employer," as used in this section, means a person or organization who employs or contracts with one or more individuals to care for or provide transportation services to children or vulnerable adults, on either a paid or volunteer basis.

(f) In no event shall Registry records be made available for employment purposes other than as set forth in this subsection, or for credit purposes. Any person who violates this subsection shall be fined not more than \$500.00.

(g) Nothing in this subsection shall limit the Department's right to use and disclose information from its records as provided in section 4921 of this chapter.

#### Historical Citation.

Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1983, No. 169 (Adj. Sess.), § 2; 1991, No. 159 (Adj. Sess.), § 4; 1993, No. 100, § 7; 2001, No. 135 (Adj. Sess.), § 16, eff. June 13, 2002; 2003, No. 66, § 136b; 2005, No. 174 (Adj. Sess.), § 121; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 15; 2009, No. 1, § 37; 2011, No. 61, § 7, eff. June 2, 2011.

#### HISTORY

**Amendments—2011.** Subdivision (a)(10): Added.

—2009. Subdivision (a)(9): Added.

—2007 (Adj. Sess.). Catchline: Substituted "registry records" for "information".

Subsection (a): Deleted "or the commissioner's designee" following "commissioner"; substituted "record" for "information" following "registry" and deleted "set forth in section 4916 of this title or as preceding follows".

Subdivision (a)(2): Deleted "or" preceding "registration" and inserted "certification, or authorization" following "registration".

Subdivision (a)(3): Added the present fifth sentence.

Subdivisions (a)(4), (a)(5): Substituted "commissioners" for "commissioner"; inserted "and of mental health" following "independent living"; substituted "their designees" for "the commissioner's designee" and "those departments" for "the department of disabilities, aging, and independent living".

Subdivision (a)(8): Added.

Subsections (f), (g): Added.

—2007. Amended generally.

—2005 (Adj. Sess.). Subdivision (b)(4): Inserted "disabilities" preceding "aging" in two places and substituted "independent living" for "disabilities" in two places.

Subdivision (b)(5): Deleted "developmental and mental" preceding "health" in two places; substituted "or of disabilities, aging, and independent living" for "services", "departments of" for "department" and "and of disabilities, aging, and independent living" for "services".

—2003. Rewrote the section.

—2001 (Adj. Sess.). Added "or abuse, neglect, or exploitation of a vulnerable adult" in subsection (a) and added subsections (d) and (e).

—1993. Subsection (c): Added.

—1991 (Adj. Sess.). Designated the existing provisions of the section as subsec. (b) and added subsec. (a).

—1983 (Adj. Sess.). Substituted "or" for "and" preceding "to treat".

Prior law. 33 V.S.A. § 689.

§ 4920. Repealed. 2007, No. 168 (Adj. Sess.), § 16.

#### HISTORY

Former § 4920, relating to prohibition of retaliatory action by employer, was derived from 1991, No. 159 (Adj. Sess.), § 5.

§ 4921. Department's records of abuse and neglect

(a) The Commissioner shall maintain all records of all investigations, assessments, reviews, and responses initiated under this subchapter. The Department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child's family, or for other legal purposes.

(b) The Commissioner shall promptly inform the parents, if known, or guardian of the child that a report has been accepted as a valid allegation pursuant to subsection 4915(b) of this title and the Department's response to the report. The Department shall inform the parent or guardian of his or her ability to request records pursuant to subsection (c) of this section. This section shall not apply if the parent or guardian is the subject of the investigation.

(c) Upon request, the redacted investigation file shall be disclosed to:

(1) the child's parents, foster parent, or guardian, absent good cause shown by the Department, provided that the child's parent, foster parent, or guardian is not the subject of the investigation; and

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title.

(d) Upon request, Department records created under this subchapter shall be disclosed to:

(1) the court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the Commissioner;

(2) the Commissioner or person designated by the Commissioner to receive such records;

(3) persons assigned by the Commissioner to conduct investigations;

(4) law enforcement officers engaged in a joint investigation with the Department, an assistant attorney general, or a state's attorney;

(5) other State agencies conducting related inquiries or proceedings; and

(6) a Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment,

and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of the respondent.

(e)(1) Upon request, relevant Department records created under this subchapter may be disclosed to:

(A) service providers working with a person or child who is the subject of the report; and

(B) other governmental entities for purposes of child protection.

(2) Determinations of relevancy shall be made by the Department.

**Historical Citation.**

Added 2007, No. 168 (Adj. Sess.), § 17; amended 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.

**HISTORY**

**Amendments—2009** (Adj. Sess.). Subdivision (d)(6): Substituted "a probate division of the superior court" for "probate courts".

**§ 4922. Rulemaking**

(a) The Commissioner shall develop rules to implement this subchapter. These shall include:

(1) rules setting forth criteria for determining whether to conduct an assessment or an investigation;

(2) rules setting out procedures for assessment and service delivery;

(3) rules outlining procedures for investigations;

(4) rules for conducting the administrative review conference;

(5) rules regarding access to and maintenance of Department records of investigations, assessments, reviews, and responses; and

(6) rules regarding the tiered Registry as required by section 4916 of this title.

(b) The rules shall strike an appropriate balance between protecting children and respecting the rights of a parent or guardian, including a parent or guardian with disabilities, and shall recognize that persons with a disability can be successful parents. The rules shall include the possible use of adaptive equipment and supports.

(c) These rules shall be adopted no later than July 1, 2009.

**Historical Citation.**

Added 2007, No. 168 (Adj. Sess.), § 18.

**§ 4923. Reporting**

The Commissioner shall publish an annual report regarding reports of child abuse and neglect no later than June 30, for the previous year. The report shall include:

(1) The number of reports accepted as valid allegations of child abuse or neglect.

(2) The number of reports that resulted in an investigative response; particularly:

(A) the number of investigations which resulted in a substantiation;

(B) the types of maltreatment substantiated;

(C) the relationship of the perpetrator to the victim, by category; and

(D) the gender and age group of the substantiated victims.

(3) The number of reports that resulted in an assessment response; particularly:

(A) the general types of maltreatment alleged in cases which received an assessment response; and

(B) the number of assessments that resulted in the recommendation of services.

(4) Trend information over a five-year period. Beginning with the adoption of the assessment response and continuing over the next five years, the report shall explain the impact of the assessment response on statistical reporting.

**Historical Citation.**

Added 2007, No. 168 (Adj. Sess.), § 19.

**PART 4**

**JUVENILE PROCEEDINGS**

**CHAPTER 51**

**GENERAL PROVISIONS**

**SECTION**

- 5101. Purposes.
- 5102. Definitions and provisions of general application.
- 5103. Jurisdiction.
- 5104. Retention of jurisdiction over youthful offenders.
- 5105. Venue and change of venue.
- 5106. Powers and duties of Commissioner.
- 5107. Contempt power.
- 5108. Authority to issue warrants.
- 5109. Subpoena.
- 5110. Conduct of hearings.
- 5111. Noncustodial parents.
- 5112. Attorney and guardian ad litem for child.
- 5113. Modification or vacation of orders.
- 5114. Best interests of the child.
- 5115. Protective order.
- 5116. Costs and expenses for care of child.
- 5117. Records of juvenile judicial proceedings.
- 5118. Limited exception to confidentiality of records of juveniles maintained by the Family Division of the Superior Court.
- 5119. Sealing of records.
- 5120. Indian Child Welfare Act.
- 5121. Case planning process.
- 5122. Misconduct during court proceedings.

## SECTION

## 5123. Transportation of a child.

## HISTORY

Effective date; applicability. 2007, No. 185 (Adj. Sess.), § 14 provides: "This act [which enacted this chapter] shall take effect January 1, 2009 and shall apply to any petition filed after the effective date or any permanency review hearing held after the effective date."

## § 5101. Purposes

(a) The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes:

(1) To provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters.

(2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which assure:

(A) balanced attention to the protection of the community;

(B) accountability to victims and the community for offenses; and

(C) the development of competencies to enable children to become responsible and productive members of the community.

(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 assure that safety and timely permanency for children are the paramount concerns in the administration and conduct of 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.

(6) To provide judicial proceedings through which the provisions of the juvenile judicial proceedings chapters are executed and enforced and in which the parties are assured a fair hearing, and that their constitutional and other legal rights are recognized and enforced.

(b) The provisions of the juvenile judicial proceedings chapters shall be construed as superseding the provisions of the criminal law of this State to the extent the same are inconsistent with this chapter.

## Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

## ANNOTATIONS

**1. Prosecution of adults for crimes committed when juvenile.** Legislative policy expressly seeks to rehabilitate juvenile offenders while removing the taint of criminality and the consequences of criminal behavior. That policy necessarily takes into

account that a child who commits an offense between the ages of ten and fourteen is still a child and that his or her culpability must be viewed in light of his or her age; thus, the policy is not furthered by automatically subjecting to criminal prosecution adult defendants who committed delinquent acts when they were children under the age of fourteen. In re D.K., 2012 VT 23, 191 Vt. 328, 47 A.3d 347.

## ANNOTATIONS FROM FORMER § 5501

Compelling parental rights, 4  
Compelling state interest, 3  
Constitutional requirements, 1  
Rehabilitation, 7  
Separation of child from parents, 5  
Termination of parental rights, 6  
Welfare of child, 2

**1. Constitutional requirements.** The freedom of children and parents to relate to one another in the context of the family, free of governmental interference, is a basic liberty long established in constitutional law, thus in order to insure that this fundamental liberty will not be unduly tampered with the legislature has expressly provide that a child be separated from its parents only when necessary for his welfare or in the interests of public safety. In re N.H. (1977) 135 Vt. 230, 373 A.2d 851.

**2. Welfare of child.** When a juvenile defendant charged with the second-degree murder of a man who came to his home to have sex with his mentally ill mother sought transfer of his case to juvenile court, his case had to be considered in the context of defendant's increasing frustration at his inability to control the escalating events at home—events of the most humiliating and degrading nature for a child. That these events might have combined to overwhelm his youthful judgment was to inform the district court's discretion in light of the special status accorded juvenile cases by the legislature. Chase v. State, 2008 VT 107, 184 Vt. 430, 966 A.2d 139.

Ability of the public to follow a case through the judicial system was not a proper consideration in denying defendant's motion to transfer his case to juvenile court, and was not entitled to independent weight as a matter of law. A primary purpose of the juvenile court system is to protect juveniles from the taint of criminality that inevitably results from the publicity and permanence of convictions in the district court; the other provisions of the chapter regarding judicial proceedings in juvenile cases, including the discretionary transfer provisions, are to be construed to give effect to the purposes announced for the chapter. State v. Dixon, 2008 VT 112, 185 Vt. 92, 967 A.2d 1114.

Primary concern of court construing this section must be with the welfare of the child. In re R.B. (1989) 152 Vt. 415, 566 A.2d 1310, cert. denied, Appleby v. Young, 493 U.S. 1086, 110 S. Ct. 1151, 107 L. Ed. 2d 1055 (1990).

Laws adopted by state for protection, care, custody and support of children are designed to establish protective procedures, primarily concerned with welfare of the child. In re N.H. (1977) 135 Vt. 230, 373 A.2d 851.

Juvenile proceedings in Vermont are protective proceedings entirely concerned with the welfare of the child, and are not punitive; the inquiry relates to proper custody for the child, not his guilt or innocence as a criminal offender. In re Rich (1965) 125 Vt. 373, 216 A.2d 266.

**3. Compelling state interest.** The purpose sought to be effected by this chapter, as stated in this section, provide the compelling state interest required before the state may involve itself with the problem of child neglect. In re Neglected Child (1972) 130 Vt. 525, 296 A.2d 250.

**4. Compelling parental rights.** Juvenile court is not free to weigh and compare the merits of various possible solutions free of any regard for compelling parental rights. In re N.H. (1977) 135 Vt. 230, 373 A.2d 851; In re H.A. (1987) 148 Vt. 106, 528 A.2d 756.

**5. Separation of child from parents.** Provision of this section that a child be separated from its parents only when necessary for his welfare or in the interests of public safety does not allow for intervention simply because a child might be better off somewhere else. In re N.H. (1977) 135 Vt. 230, 373 A.2d 851.

Where child who had been abused by mother was in need of care or supervision, and father, despite existence of questions concerning his ability to assume active, responsible parental role, stood willing and able, with support of his parents, to provide child with a family environment, disposition order transferring custody to the department would be vacated in absence of any convincing proof that father was an unfit parent, demonstrably incapable of providing appropriate home for child. In re N.H. (1977) 135 Vt. 230, 373 A.2d 851.

**6. Termination of parental rights.** Parental rights cannot be terminated simply because a child may be better off in another home. In re E.B. (1992) 158 Vt. 8, 603 A.2d 373.

There is a legislative policy of permitting adoption without parental consent only when the best interests of the child cannot be achieved by temporary removal and placement outside the home, and that total termination of parental rights will not be ordered in the first instance if there is a reasonable possibility that the situation can be remedied and the family reunited within a reasonable time. In re D.R. (1978) 136 Vt. 478, 392 A.2d 951.

Though juvenile court has the power to sever all parental rights upon a finding that a minor is in need of care or supervision, such power should be used with extreme care and only as a last resort in carrying out the legislative purpose of providing for the care, protection and wholesome development of children, and this purpose is to be achieved, when possible, in a family environment, with separation of child and parents only when necessary for the child's welfare or in the interests of public safety. In re D.R. (1978) 136 Vt. 478, 392 A.2d 951.

Order completely severing all parental rights and allowing adoption of six-year-old girl would be vacated where it was entered after initial finding of inability of parents to properly care for the child without leaving open the possibility in the future that the situation could be remedied and the family reunited. In re D.R. (1978) 136 Vt. 478, 392 A.2d 951.

**7. Rehabilitation.** State owed plaintiffs no duty of care based on failure to control actions of juvenile who was in State custody but who had been temporarily placed with his mother during weekend of assault, since imposing negligence against State would erode public policy of rehabilitation of juveniles through reunification with their families and the public. *Sorge v. State* (2000) 171 Vt. 171, 762 A.2d 816.

**Cited.** Cited in In re G.F. (1982) 142 Vt. 273, 455 A.2d 805; In re Y.B. (1983) 143 Vt. 344, 466 A.2d 1167; In re T.S. (1984) 144 Vt. 592, 481 A.2d 21; In re T.L.S. (1984) 144 Vt. 536, 481 A.2d 1037; In re L.S. (1986) 147 Vt. 36, 509 A.2d 1017; In re B.J.C. (1988) 149 Vt. 196, 540 A.2d 1047; In re L.T. (1988) 149 Vt. 473, 545 A.2d 522; In re C.L. (1989) 151 Vt. 480, 563 A.2d 241; In re J.H. (1991) 156 Vt. 66, 587 A.2d 1009; In re P.M. (1991) 156 Vt. 303, 592 A.2d 862; In re Selivonik (1995) 164 Vt. 383, 670 A.2d 831; In re J.M., 2005 VT 62, 178 Vt. 591, 878 A.2d 293 (mem.); In re J.F., 2006 VT 45, 180 Vt. 583, 904 A.2d 1209 (mem.).

#### LAW REVIEW COMMENTARIES

For note, "Interstate Testimony By Child Protective Agency Workers in the Child Custody Context," see 21 Vt. L. Rev. 633 (1996).

#### § 5102. Definitions and provisions of general application

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

(1) "Care provider" means a person other than a parent, guardian, or custodian who is providing

the child with routine daily care but to whom custody rights have not been transferred by a court.

(2) "Child" means any of the following:

(A) An individual who is under the age of 18 and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant).

(B)(i) An individual who is under the age of 18, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and was under the age of 16 at the time the petition was filed; or

(ii) an individual who is between the ages of 16 to 17.5, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 18 years of age; provided, however:

(i) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 10 but not the age of 14 may be treated as an adult as provided therein;

(ii) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14 but not the age of 16 shall be subject to criminal proceedings as in cases commenced against adults, unless transferred to the court in accordance with the juvenile judicial proceedings chapters;

(iii) that an individual who is alleged to have committed an act before attaining the age of 10 which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(iv) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

(3) "Child in need of care or supervision (CHINS)" means a child who:

(A) has been abandoned or abused by the child's parent, guardian, or custodian. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are

unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

(4) "Commissioner" means the Commissioner for Children and Families or the Commissioner's designee.

(5) "Conditional custody order" means an order issued by the court in a juvenile proceeding conferring legal custody of a child to a parent, guardian, relative, or a person with a significant relationship with the child subject to such conditions and limitations as the court may deem necessary to provide for the safety and welfare of the child. Any conditions and limitations shall apply only to the individual to whom custody is granted.

(6) "Court" means the Family Division of the Superior Court.

(7) "Custodial parent" means a parent who, at the time of the commencement of the juvenile proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child.

(8) "Custodian" means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont Superior Court or a similar court in another jurisdiction.

(9) "Delinquent act" means an act designated a crime under the laws of this State, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include 7 V.S.A. §§ 656 and 657; however, it shall not include:

(A) Snowmobile offenses in subchapter 1 and motorboat offenses in 23 V.S.A. chapter 29, subchapter 2, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323.

(B) Motor vehicle offenses committed by an individual who is at least 16 years of age, except for violations of 23 V.S.A. chapter 13, subchapter 13 and of 23 V.S.A. § 1091.

(10) "Delinquent child" means a child who has been adjudicated to have committed a delinquent act.

(11) "Department" means the Department for Children and Families.

(12) "Guardian" means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont court or a court in another jurisdiction.

(13) "Judge" means a judge of the Family Division of the Superior Court.

(14) "Juvenile judicial proceedings chapters" means this chapter and chapters 52 and 53 of this title.

(15) "Juvenile proceeding" means a proceeding in the Family Division of the Superior Court under the authority of the juvenile judicial proceedings chapters.

(16)(A) "Legal custody" means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters which invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(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.

(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 Armed Forces of the United States, and the authority to represent the child in legal actions.

(B) If legal custody is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(17) "Listed crime" means the same as defined in 13 V.S.A. § 5301.

(18) "Noncustodial parent" means a parent who is not a custodial parent at the time of the commencement of the juvenile proceeding.

(19) "Officer" means a law enforcement officer, including a State Police officer, sheriff, deputy sheriff, municipal police officer, or constable who has been certified by the Criminal Justice Training Council pursuant to 20 V.S.A. § 2358.

(20) "Parent" means a child's biological or adoptive parent, including custodial parents, noncustodial parents, parents with legal or physical responsibilities or both and parents whose rights have never been adjudicated.

(21) "Parent-child contact" means the right of a parent to have visitation with the child by court order.

(22) "Party" includes the following persons:

(A) The child with respect to whom the proceedings are brought.

(B) The custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition.

(C) The noncustodial parent for the purposes of custody, visitation, and such other issues which the court may determine are proper and necessary to the proceedings, provided that the noncustodial parent has entered an appearance.

(D) The state's attorney.

(E) The Commissioner.

(F) Such other persons as appear to the court to be proper and necessary to the proceedings.

(23) "Probation" means the legal status created by order of the Family Division of the Superior Court in proceedings involving a violation of law whereby a delinquent child is subject to supervision by the Department under conditions specified in the court's juvenile probation certificate and subject to return to and change of legal status by the Family Division of the Superior Court for violation of conditions of probation at any time during the period of probation.

(24) "Protective supervision" means the authority granted by the court to the Department in a juvenile proceeding to take reasonable steps to monitor compliance with the Court's conditional custody order, including unannounced visits to the home in which the child currently resides.

(25) "Reasonable efforts" means the exercise of due diligence by the department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the court may find that no services were appropriate or reasonable considering the circumstances. If the Court makes written findings that aggravated circumstances are present, the Court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

(A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;

(B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;

(C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or

(D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

(26) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody of the child, including the right to reasonable contact with the child, the responsibility for support, and the right to consent to adoption.

(27) "Shelter" means a shelter designated by the Commissioner where a child taken into custody

pursuant to subdivision 5301(3) of this title may be held for a period not to exceed seven days.

(28) "Youth" shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 3, § 12a, eff. Sept. 1, 2009; 2009, No. 154 (Adj. Sess.), §§ 223, 238.

#### HISTORY

**Amendments—2009 (Adj. Sess.).** Substituted "superior" for "family or probate" in subdiv. (8), "Vermont court or a court" for "Vermont probate court or a similar court" in subdiv. (12), and "the family division of the superior court" for "family court" in subdivs. (6), (13), (15) and (23).

**2009 statutory revision.** 2009, No. 3, § 12a provides: "The staff of the legislative council, in its statutory revision capacity, is authorized and directed to make such amendments to the Vermont Statutes Annotated as are necessary to effect the purpose of this act, including, where applicable, substituting the words 'civil marriage' for the word 'marriage.' Such changes shall be made when new legislation is proposed, or there is a republication of a volume of the Vermont Statutes Annotated."

#### ANNOTATIONS

"Child", 2  
Child in need of care or supervision, 1  
Truancy, 3

**1. Child in need of care or supervision.** Findings that a child's allegations of abuse by the father were the product of the mother's coaching, that this had caused psychological harm to the child, and that this posed a continuing risk of harm were sufficient to support the judgment that the child was a child in need of care or supervision. In re M.A., 2012 VT 103, — Vt. —, 60 A.3d 732.

Court was not persuaded that the court held the State to a heightened standard of proof in a child-in-need-of-care-or-supervision (CHINS) proceeding when the case turned on the trial court's assessment of the weight of the evidence. While the State may have satisfied its prima facie burden, the family court was ultimately not persuaded by its evidence; in other words, although there was evidence tending to support the State's position, the court reasoned that such evidence, in its judgment, did not preponderate, and so, in a legal sense, it was unable to find that the children were CHINS. In re M.L. & Z.L., 2010 VT 5, 187 Vt. 291, 993 A.2d 400.

In a child-in-need-of-care-or-supervision case, the State failed to show that the trial court committed reversible error by citing certain medical articles, the thrust of the trial court's statements about which was that there were exceptions or possible explanations for certain injuries similar to those suffered by the child. The trial court found the State's medical case more probable than parents' theories, despite its observations about these articles. In re M.L. & Z.L., 2010 VT 5, 187 Vt. 291, 993 A.2d 400.

**2. "Child".** Juvenile proceedings act generally defines "child" to include "an individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 18 years of age." Hence, whether an individual is deemed to be a child subject to the jurisdiction of the family division depends on the offender's age at the time the delinquent act was committed, not at the time that the offender was charged with the delinquent act. In re D.K., 2012 VT 23, 191 Vt. 328, 47 A.3d 347.

**3. Truancy.** "Without justification" is an element of a child-in-need-of-care-and-supervision determination based on truancy which the State must prove by a preponderance of the evidence. The State may meet this burden through properly admitted school

records showing the child's unexcused absence. In re J.H., 2013 VT 31, — Vt. —, — A.3d —.

Record evidence was fundamentally insufficient to establish that a minor, who was adjudicated a child in need of care and supervision based on truancy, was truant on the days alleged. The State called no witnesses from the minor's school to testify as to its policies and procedures governing whether, when, and how it reported a student truant, and adduced no school records to show that the minor was actually absent without justification on the days in question. In re J.H., 2013 VT 31, — Vt. —, — A.3d —.

### § 5103. Jurisdiction

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.

(B) In no case shall custody of a child aged 18 years or older be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.

(d) The Court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the Court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the Commissioner.

(2) Upon an order of the Court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 224; 2011, No. 159 (Adj. Sess.), § 1.

#### HISTORY

**Amendments—2011 (Adj. Sess.).** Subsection (c): Amended generally.

—2009 (Adj. Sess.). Subsection (a): Inserted "division of the superior" preceding "court".

Subsection (b): Substituted "division" for "court" preceding "proceedings" in the first sentence.

#### ANNOTATIONS

When defendant, an adult, was charged with offenses alleged to have occurred when he was a juvenile between the ages of ten and fourteen years, the family division's exclusive original jurisdiction terminated upon defendant having reached eighteen years of age, and the family division properly dismissed the State's delinquency petition for lack of subject matter jurisdiction. There was no support for the State's position that even assuming the family division properly dismissed the delinquency petition under the applicable law, the criminal division retained jurisdiction in this case by virtue of its general jurisdiction over criminal offenses such as sexual assault. In re D.K., 2012 VT 23, 191 Vt. 328, 47 A.3d 347.

1. **Particular cases.** Child-in-need-of-care-or-supervision (CHINS) merits decision was final and not void pursuant to a belated collateral attack. The family court had jurisdiction over the child-neglect proceeding and also had the ability to issue a CHINS decision pursuant to Uniform Child Custody Jurisdiction Act emergency jurisdiction; thus, even if the exercise of emergency jurisdiction was "ill-advised," in the context of this collateral attack, the underlying order was not void as a matter of law on subject-matter-jurisdiction grounds. In re C.P., 2012 VT 100, — Vt. —, — A.3d —.

Statutory scheme in place when defendant was charged in 2010 for crimes he allegedly committed when he was a juvenile provided the family division with exclusive original jurisdiction to adjudicate charges alleging delinquent acts committed by defendants under the age of fourteen. The family division's jurisdiction over juvenile delinquency proceedings is exclusive and takes precedence over any inconsistent criminal law provisions, but normally ends when the juvenile reaches eighteen years of age. In re D.K., 2012 VT 23, 191 Vt. 328, 47 A.3d 347.

### § 5104. Retention of jurisdiction over youthful offenders

(a) The Family Division of the Superior Court may retain jurisdiction over a youthful offender up to the age of 22.

(b) In relation to the retention of jurisdiction provision of subsection (a) of this section, any party may request, or the court on its own motion may schedule, a hearing to determine the propriety of extending the jurisdictional time period. This hearing shall be held within the three-month time period immediately preceding the child's 18th birthday, and the order of continued jurisdiction shall be executed by the court on or before that birthday. In determining the need for continued jurisdiction, the court shall consider the following factors:



(1) the extent and nature of the child's record of delinquency;

(2) the nature of past and current treatment efforts and the nature of the child's response to them;

(3) the prospects for reasonable rehabilitation of the child by use of procedures, services, and facilities currently available to the court; and

(4) whether the safety of the community will best be served by a continuation of jurisdiction.

(c) A hearing under subsection (b) of this section shall be held in accordance with the procedures provided in section 5113 of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 225.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Subsection (a): Inserted "division of the superior" preceding "court".

**§ 5105. Venue and change of venue**

(a) Proceedings under the juvenile judicial proceedings chapters may be commenced in the county where:

(1) the child is domiciled;

(2) the acts constituting the alleged delinquency occurred; or

(3) the child is present when the proceedings commenced, if it is alleged that a child is in need of care or supervision.

(b) If a child or a parent, guardian, or custodian changes domicile during the course of a proceeding under the juvenile judicial proceedings chapters or if the petition is not brought in the county in which the child is domiciled, the Court may change venue upon the motion of a party or its own motion, taking into consideration the domicile of the child and the convenience of the parties and witnesses.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5106. Powers and duties of Commissioner**

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the Court, and in addition to any other powers granted to the Commissioner under the laws of this State, the Commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

(1) To undertake assessments and make reports and recommendations to the Court as authorized by the juvenile judicial proceedings chapters.

(2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of pro-

ceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the Commissioner's supervision or in the Commissioner's legal custody by order of the court.

(4) To place a child who is in the Commissioner's legal custody in a family home or a treatment, rehabilitative, detention, or educational facility or institution subject to the provisions of sections 5292 and 5293 of this title. To the extent that it is appropriate and possible siblings in the Commissioner's custody shall be placed together.

(5) To make appropriate referrals to private or public agencies.

(6) To perform such other functions as are designated by the juvenile judicial proceedings chapters.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5107. Contempt power**

Subject to the laws relating to the procedures therefor and the limitations thereon, the Court has the power to punish any person for contempt of court for disobeying an order of the Court or for obstructing or interfering with the proceedings of the Court or the enforcement of its orders.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5108. Authority to issue warrants**

(a) The Court may order a parent, guardian, or custodian to appear at any hearing or to appear at the hearing with the child who is the subject of a petition.

(b) If, after being summoned, cited, or otherwise notified to appear, a party fails to do so, the Court may issue a warrant for the person's appearance.

(c) If the child is with the parent, guardian, or custodian, the Court may issue a warrant for the person to appear in Court with the child or, in the alternative, the Court may issue an order for an officer to pick up the child and bring the child to Court.

(d) If a summons cannot be served or the welfare of the child requires that the child be brought forthwith to the Court, the Court may issue a warrant for the parent, guardian, or custodian to appear in Court with the child. In the alternative, the Court may issue an order for an officer to pick up the child and bring the child to Court during Court hours.

(e) A person summoned who fails to appear without reasonable cause may be found in contempt of court.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5109. Subpoena**

Upon application of a party or on the Court's own motion, the clerk of the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under the juvenile judicial proceedings chapters.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5110. Conduct of hearings**

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the Court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the Court finds to have a proper interest in the case or in the work of the Court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the Court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5233 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**HISTORY**

**Revision note—2011.** Substituted "5233" for "5333" in subsection (b) to correct an erroneous cross-reference.

**§ 5111. Noncustodial parents**

(a) If a child is placed in the legal custody of the Department and the identity of a parent has not been legally established at the time the petition is filed, the Court may order that the mother, the child, and the alleged father submit to genetic testing and may issue an order establishing parentage pursuant to 15 V.S.A. chapter 5, subchapter 3A. A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

(b) If a child is placed in the legal custody of the Department, the Department shall make reasonably diligent efforts to locate a noncustodial parent as early in the proceedings as possible, and notify the Court of the noncustodial parent's address. A hearing shall not be delayed by reason of the inability of

the Department to locate or serve a noncustodial parent.

(c) The Court may order a custodial parent to provide the Department with information regarding the identity and location of a noncustodial parent.

(d) As soon as his or her address is known, a noncustodial parent shall be served with the petition and a copy of the summons. Thereafter, the Court shall mail notices of the hearing to the noncustodial parent. The noncustodial parent shall be responsible for providing the Court with information regarding any changes in address.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**HISTORY**

**Revision note—2008.** In subsec. (a), substituted "subchapter 3A of chapter 5 of Title 15" for "subchapter 3A of Title 15" for purposes of clarity and to conform reference to V.S.A. style.

**§ 5112. Attorney and guardian ad litem for child**

(a) The Court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters.

(b) The Court shall appoint a guardian ad litem for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters. In a delinquency proceeding, a parent, guardian, or custodian of the child may serve as a guardian ad litem for the child, providing his or her interests do not conflict with the interests of the child. The guardian ad litem appointed under this section shall not be a party to that proceeding or an employee or representative of such party.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5113. Modification or vacation of orders**

(a) An order of the Court may be set aside in accordance with Rule 60 of the Vermont Rules of Civil Procedure.

(b) Upon motion of a party or the Court's own motion, the Court may amend, modify, set aside, or vacate an order on the grounds that a change in circumstances requires such action to serve the best interests of the child. The motion shall set forth in concise language the grounds upon which the relief is requested.

(c) Any order under this section shall be made after notice and hearing; however, the Court may waive the hearing upon stipulation of the parties. All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value, even though not competent in a hearing on the petition.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

### § 5114. Best interests of the child

(a) At the time of a permanency review under section 5321 of this title, a modification hearing under section 5113 of this title, or at any time a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the Commissioner or the attorney for the child, the Court shall consider the best interests of the child in accordance with the following:

(1) The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests.

(2) The child's adjustment to his or her home, school, and community.

(3) The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time.

(4) Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare.

(b) Except in cases where a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the Commissioner or the attorney for the child, the Court shall also consider whether the parent is capable of playing a constructive role, including demonstrating emotional support and affection, in the child's welfare.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

### § 5115. Protective order

(a) On motion of a party or on the Court's own motion, the Court may make an order restraining or otherwise controlling the conduct of a person if the Court finds that such conduct is or may be detrimental or harmful to a child.

(b) The person against whom the order is directed shall be served with notice of the motion and the grounds therefor and be given an opportunity to be heard.

(c) Upon a showing that there is a risk of immediate harm to a child, the Court may issue a protective order ex parte. A hearing on the motion shall be held no more than 10 days after the issuance of the order.

(d) The Court may review any protective order at a subsequent hearing to determine whether the order should remain in effect.

(e) A person who is the subject of an order issued pursuant to this section and who intentionally violates a provision of the order that concerns contact between the child and that person shall be punished in accordance with 13 V.S.A. § 1030.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

### § 5116. Costs and expenses for care of child

(a) The Commissioner may incur such expenses for the proper care, maintenance, and education of a child, including the expenses of medical, surgical, or psychiatric examination or treatment, as the Commissioner considers necessary in connection with proceedings under the juvenile judicial proceedings chapters.

(b) The costs of any proceeding under the juvenile judicial proceedings chapters incurred under the provisions of this title shall be borne by the Court.

(c) The Court may, in any order of disposition under the juvenile judicial proceedings chapters, make and enforce by levy and execution an order of child support to be paid by the parent of the child.

(d) The Court may delegate to the office of magistrate its authority to make and enforce an order of child support to be paid by the parent of a child.

(e) A child support order shall only remain in effect as long as the child who is the subject of the support order is in the legal custody of the Commissioner and placed with someone other than the parent or parents responsible for support.

(f) Except as otherwise provided in section 5119 of this title, orders issued pursuant to this section shall not be confidential.

(g) Notwithstanding subsection 5103(b) of this title, an order terminating a parent's residual parental rights ends that parent's obligation to pay child support. However, in no event shall an order terminating residual parental rights terminate an obligation for child support arrearages accrued by the parent prior to the date of the termination of parental rights order.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

#### HISTORY

**Revision note—2013.** In subsection (a), deleted "without limitation," following "including" in accordance with 2013, No. 5, § 4.

In subsec. (b), substituted "this title" for "Title 33" to conform reference to V.S.A. style.

### § 5117. Records of juvenile judicial proceedings

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the Court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the Court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act which would have been a felony if committed by an adult, the Court,

upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

(b)(1) Notwithstanding the foregoing, inspection of such records and files by the following is not prohibited:

(A) A court having the child before it in any juvenile judicial proceeding.

(B) The officers of public institutions or agencies to whom the child is committed as a delinquent child.

(C) A court in which a person is convicted of a criminal offense for the purpose of imposing sentence upon or supervising the person, or by officials of penal institutions and other penal facilities to which the person is committed, or by a parole board in considering the person's parole or discharge or in exercising supervision over the person.

(D) Court personnel, the state's attorney or other prosecutor authorized to prosecute criminal or juvenile cases under State law, the child's guardian ad litem, the attorneys for the parties, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child.

(E) The child who is the subject of the proceeding, the child's parents, guardian, custodian, and guardian ad litem may inspect such records and files upon approval of the family court judge.

(F) Any other person who has a need to know may be designated by order of the Family Division of the Superior Court.

(G) The Commissioner of Corrections if the information would be helpful in preparing a presentence report, in determining placement, or in developing a treatment plan for a person convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3.

(2) Files inspected under this subsection shall be marked: **UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00.**

(c) Upon motion of a party in a divorce or parentage proceeding related to parental rights and responsibilities for a child or parent-child contact, the Court may order that Court records in a juvenile proceeding involving the same child or children be released to the parties in the divorce proceeding. Files inspected under this subsection shall be marked: **UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2,000.00.** The public shall not have access to records from a juvenile proceeding that are filed with the Court or admitted into evidence in the divorce or parentage proceeding.

(d) Such records and files shall be available to state's attorneys and all other law enforcement officers in connection with record checks and other legal purposes.

(e) Any records or reports relating to a matter within the jurisdiction of the Court prepared by or released by the Court or the Department for Children and Families, any portion of those records or reports, and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section.

(f) This section does not provide access to records sealed in accordance with section 5119 of this title unless otherwise provided in section 5119.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 1, § 33a; 2009, No. 154 (Adj. Sess.), § 238.

#### HISTORY

**Amendments—2009 (Adj. Sess.).** Subdivision (b)(1)(F): Substituted "division of the superior" preceding "court".

—2009. Subdivision (b)(1)(G): Added.

#### § 5118. Limited exception to confidentiality of records of juveniles maintained by the Family Division of the Superior Court

(a) As used in this section:

(1) "Delinquent act requiring notice" means conduct resulting in a delinquency adjudication related to a listed crime as defined in 13 V.S.A. § 5301(7).

(2) "Independent school" means an approved or recognized independent school under 16 V.S.A. § 166.

(b) While records of juveniles maintained by the Family Division of the Superior Court should be kept confidential, it is the policy of the General Assembly to establish a limited exception for the overriding public purposes of rehabilitating juveniles and protecting students and staff within Vermont's public and independent schools.

(c) Notwithstanding any law to the contrary, a Court finding that a child has committed a delinquent act requiring notice shall, within seven days of such finding, provide written notice to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster.

(d) The written notice shall contain only a description of the delinquent act found by the Court to have been committed by the child and shall be marked: **"UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00."** The envelope in which the

notice is sent by the Court shall be marked: "CONFIDENTIAL: TO BE OPENED BY THE SUPERINTENDENT OR HEADMASTER ONLY."

(e) The superintendent or headmaster, upon receipt of the notice, shall inform only those persons within the child's school with a legitimate need to know of the delinquent act, and only after first evaluating rehabilitation and protection measures that do not involve informing staff or students. Persons with a legitimate need to know are strictly limited to only those for whom the information is necessary for the rehabilitation program of the child or for the protection of staff or students. "Need to know" shall be narrowly and strictly interpreted. Persons receiving information from the superintendent or headmaster shall not, under any circumstances, discuss such information with any other person except the child, the child's parent, guardian, or custodian, others who have been similarly informed by the superintendent or headmaster, law enforcement personnel, or the juvenile's probation officer.

(f) The superintendent and headmaster annually shall provide training to school staff about the need for confidentiality of such information and the penalties for violation of this section.

(g) The written notice shall be maintained by the superintendent or headmaster in a file separate from the child's education record. If the child transfers to another public or independent school, the superintendent or headmaster shall forward the written notice in the original marked envelope to the superintendent or headmaster for the school to which the child transferred. If the child either graduates or turns 18 years of age, the superintendent or headmaster then possessing the written notice shall destroy such notice.

(h) If legal custody of the child is transferred to the Commissioner, or if the Commissioner is supervising the child's probation, upon the request by a superintendent or headmaster, the Commissioner shall provide to the superintendent or headmaster information concerning the child which the Commissioner determines is necessary for the child's rehabilitation or for the protection of the staff or students in the school in which the child is enrolled.

(i) A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(j) Except as provided in subsection (i) of this section, no liability shall attach to any person who transmits, or fails to transmit, the written notice required under this section.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.

#### HISTORY

Revision note—2013. In subsection (a), substituted "As used in" for "For the purposes of" preceding "this section" to conform to V.S.A. style.

—2008. In subdiv. (a)(1), substituted "subdivision 5301(7) of Title 13" for "13 V.S.A." for purposes of clarity, to conform reference to V.S.A. style and to correct an apparent error.

Amendments—2009 (Adj. Sess.). Substituted "family division of the superior court" for "family court" in the section catchline and in subsec. (b).

#### § 5119. Sealing of records

(a)(1) In matters relating to a child who has been adjudicated delinquent on or after July 1, 1996, the Court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the state's attorney, the Court finds:

(A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or

(B) rehabilitation of the person has not been attained to the satisfaction of the Court.

(2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the Court shall provide such person's name and other identifying information to the state's attorney in the county in which the person was adjudicated delinquent. The state's attorney may object, and a hearing may be held to address the state's attorney's objection.

(3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the Court may limit the order to the court files and records only upon good cause shown by the state's attorney.

(4) The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 1996, but before July 1, 2001 shall be completed by January 1, 2010. The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 2001 but before July 1, 2004 shall be completed by January 1, 2008.

(b) In matters relating to a child who has been adjudicated delinquent prior to July 1, 1996, on application of the child or on the Court's own motion and after notice to all parties of record and hearing, the Court shall order the sealing of all files and records related to the proceeding if it finds:

(1) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after such initial adjudication, and no new proceeding is pending seeking such conviction or adjudication; and

(2) the person's rehabilitation has been attained to the satisfaction of the Court.

(c) On application of a person who, while a child, was found to be in need of care or supervision or, on

the Court's own motion, after notice to all parties of record and hearing, the Court may order the sealing of all files and records related to the proceeding if it finds:

(1) the person has reached the age of majority; and

(2) sealing the person's record is in the interest of justice.

(d) Except as provided in subdivision (a)(3) and subsection (h) of this section or otherwise provided, orders issued in accordance with this section shall include the files and records of the Court, law enforcement, prosecution, and the Department for Children and Families related to the specific court proceeding that is the subject of the sealing.

(e)(1) Except as provided in subdivision (2) of this subsection, upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this act shall be considered never to have occurred, all general index references thereto shall be deleted, and the person, the Court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in any matter. Copies of the order shall be sent to each agency or official named in the order.

(2)(A) Any court, agency, or department that seals a record pursuant to an order under this section may keep a special index of files and records that have been sealed. This index shall only list the name and date of birth of the subject of the sealed files and records and the docket number of the proceeding which was the subject of the sealing. The special index shall be confidential and may be accessed only for purposes for which a department or agency may request to unseal a file or record pursuant to subsection (f) of this section.

(B) Access to the special index shall be restricted to the following persons:

(i) the Commissioner and general counsel of any administrative department;

(ii) the Secretary and general counsel of any administrative agency;

(iii) a sheriff;

(iv) a police chief;

(v) a state's attorney;

(vi) the Attorney General;

(vii) the director of the Vermont Crime Information Center; and

(viii) a designated clerical staff person in each office identified in subdivisions (i)-(vii) of this subdivision (B) who is necessary for establishing and maintaining the indices for persons who are permitted access.

(C) Persons authorized to access an index pursuant to subdivision (B) of this subdivision (2) may access only the index of their own department or agency.

(f)(1) Except as provided in subdivisions (2), (3), (4), and (5) of this subsection, inspection of the files and records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records, and only to those persons named in the record.

(2) Upon a confidential motion of any department or agency that was required to seal files and records pursuant to subsection (d) of this section, the Court may permit the department or agency to inspect its own files and records if it finds circumstances in which the department or agency requires access to such files and records to respond to a legal action, a legal claim, or an administrative action filed against the department or agency in relation to incidents or persons that are the subject of such files and records. The files and records shall be unsealed only for the minimum time necessary to address the circumstances enumerated in this subdivision, at which time the records and files shall be resealed.

(3) Upon a confidential motion of the Department for Children and Families, the Court may permit the Department to inspect its own files and records if the Court finds extraordinary circumstances in which the State's interest in the protection of a child clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the State's interest. The motion may be heard ex parte if the Court, based upon an affidavit, finds a compelling purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the Court shall send notice of the unsealing to the subject of the files and records within 20 days unless the Department provides a compelling reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(4) Upon a confidential motion of a law enforcement officer or prosecuting attorney, the Court may permit the department or agency to inspect its own files and records if the Court finds extraordinary circumstances in which the state's interest in public safety clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the State's interest. The motion may be heard ex parte if the Court, based upon an affidavit, finds a compelling public safety purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the Court shall send notice of the unsealing to the subject of the files and records within 20 days unless the law enforcement officer or

prosecuting attorney provides a compelling public safety reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(5) The order unsealing a record pursuant to subdivisions (2), (3), and (4) of this subsection must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the Court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(6) If a person is convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3, the Court in which the person was convicted:

(A) may inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense; and

(B) shall examine Court indices developed pursuant to subdivision (e)(2)(A) of this section. If the offender appears on any of the Court indices, the Court shall unseal any Court files and records relating to the juvenile adjudication and shall make them available to the Commissioner of Corrections for the purposes of preparing a presentence investigation, determining placement, or developing a treatment plan. The Commissioner shall use only information relating to adjudications relevant to a sex offense conviction.

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime under the laws of this State which the person committed prior to attaining the age of 21, or on the motion of the Court having jurisdiction over such a person, after notice to all parties of record and hearing, the Court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the Court.

(h)(1) In matters relating to a person who was charged with a criminal offense on or after July 1, 2006 and prior to the person attaining the age of majority, the files and records of the Court applicable to the proceeding shall be sealed immediately if the case is dismissed.

(2) In matters relating to a person who was charged with a criminal offense prior to July 1, 2006

and prior to the person attaining the age of majority, the person may apply to seal the files and records of the Court applicable to the proceeding. The Court shall order the sealing, provided that two years have elapsed since the dismissal of the charge.

(i) Upon receipt of a Court order to seal a record relating to an offense for which there is an identifiable victim, a state's attorney shall record the name and date of birth of the victim, the offense, and the date of the offense. The name and any identifying information regarding the defendant shall not be recorded. Victim information retained by a state's attorney pursuant to this subsection shall be available only to victims' advocates, the Victims' Compensation Program, and the victim and shall otherwise be confidential.

(j) For purposes of this section, to "seal" a file or record means to physically and electronically segregate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by law or court order to view the record. A "sealed" file or record is retained and shall not be destroyed unless a Court issues an order to expunge the record.

(k) The Court shall provide assistance to persons who seek to file an application for sealing under this section.

(l) Any entities subject to sealing orders pursuant to this section shall establish policies for implementing this section and shall provide a copy of such policies to the House and Senate Committees on Judiciary no later than January 15, 2007. State's attorneys, sheriffs, municipal police, and the Judiciary are encouraged to adopt a consistent policy that may apply to each of their independent offices and may submit one policy to the General Assembly.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 1, § 34; 2011, No. 16, § 3, eff. May 9, 2011.

#### HISTORY

**Amendments—2011.** Subsection (g): Deleted "committed" following "crime"; inserted "which the person committed" preceding "prior" and substituted "21" for "majority" following "age of".

—2009, Subdivision (f)(1): Deleted "and" preceding "(4)" and inserted "and (5)" following "(4)".

Subdivision (f)(5): Inserted "pursuant to subdivisions (2), (3), and (4) of this subsection" following "record".

Subdivision (f)(6): Added.

#### § 5120. Indian Child Welfare Act

The federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., governs any proceeding under this title that pertains to an Indian child, as defined by the Indian Child Welfare Act, and prevails over any inconsistent provision of this title.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5121. Case planning process**

The Department shall actively engage families, and solicit and integrate into the case plan the input of the child, the child's family, relatives, and other persons with a significant relationship to the child. Whenever possible, parents, guardians, and custodians shall participate in the development of the case plan.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5122. Misconduct during court proceedings**

A person who engages in misconduct while participating in a court proceeding under the juvenile judicial proceedings chapters may be subject to appropriate sanctions, including criminal charges, as provided by relevant law, regulation, rule, or employment policy. The confidentiality requirements of subsection 5110(c) of this title shall not apply to the extent necessary to report and respond to allegations of misconduct under the juvenile judicial proceedings chapters. This section shall not be construed to create a private right of action or a waiver of sovereign immunity.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.

**§ 5123. Transportation of a child**

(a) The Commissioner for Children and Families shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a child subject to this chapter in a manner that:

- (1) reasonably avoids physical and psychological trauma;
- (2) respects the privacy of the child; and
- (3) represents the least restrictive means necessary for the safety of the child.

(b) The Commissioner for Children and Families shall have the authority to select the person or persons who may transport a child under the Commissioner's care and custody.

(c) The Commissioner shall assure supervisory review of every decision to transport a child using mechanical restraints. When transportation with restraints for a particular child is approved, the reasons for the approval shall be documented in writing.

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on children subject to this chapter unless circumstances dictate that such methods are necessary.

**Historical Citation.**

Added 2009, No. 28, § 2, eff. May 21, 2009.

**CHAPTER 52****DELINQUENCY PROCEEDINGS****SUBCHAPTER 1. COMMENCEMENT OF PROCEEDINGS.****SECTION**

- 5201. Commencement of delinquency proceedings.
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- 5203. Transfer from other courts.
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**SUBCHAPTER 2. PETITION, MERITS, AND DISPOSITION**

- 5221. Citation and notice to appear at preliminary hearing.
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- 5234. Rights of victims in delinquency proceedings involving a listed crime.
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- 5251. Taking into custody.
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- 5261. Powers and responsibilities of the Commissioner regarding juvenile probation.



SECTION

- 5262. Conditions of probation.
- 5263. Juvenile probation certificate.
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- 5266. Summons, apprehension, and prehearing placement of juvenile probationer.
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- 5270. Final judgment.
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SUBCHAPTER 5. YOUTHFUL OFFENDERS

- 5281. Motion in Criminal Division of Superior Court.
- 5282. Report from the Department.
- 5283. Hearing in Family Division.
- 5284. Determination and order.
- 5285. Modification or revocation of disposition.
- 5286. Review prior to the age of 18.
- 5287. Termination or continuance of probation.
- 5288. Rights of victims in youthful offender proceedings.

SUBCHAPTER 6. PLACEMENT OF MINORS IN SECURE FACILITIES

- 5291. Detention or treatment of minors charged as delinquents in secure facilities for the detention or treatment of delinquent children.
- 5292. Detention in adult facilities of minors charged or adjudicated as delinquents.
- 5293. Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults.

HISTORY

Effective date; applicability. 2007, No. 185 (Adj. Sess.), § 14 provides: "This act [which enacted this chapter] shall take effect January 1, 2009 and shall apply to any petition filed after the effective date or any permanency review hearing held after the effective date."

SUBCHAPTER 1 COMMENCEMENT OF PROCEEDINGS.

§ 5201. Commencement of delinquency proceedings

- (a) Proceedings under this chapter shall be commenced by:
  - (1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a state's attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the state's attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) Consistent with applicable provisions of Title 4, any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14, but not the age of 18, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.

(e) A petition may be withdrawn by the state's attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 159 (Adj. Sess.), § 2.

HISTORY

Amendments—2011 (Adj. Sess.). Subsection (c): Substituted "originate in the criminal division of the superior court" for "originate in district or superior court".

§ 5202. Order of adjudication; noncriminal

(a)(1) An order of the Family Division of the Superior Court in proceedings under this chapter shall not:

- (A) be deemed a conviction of crime;
- (B) impose any civil disabilities sanctions ordinarily resulting from a conviction; or
- (C) operate to disqualify the child in any civil service application or appointment.

(2) Notwithstanding subdivision (1) of this subsection, an order of delinquency in proceedings transferred under subsection 5203(b) of this title, where the offense charged in the initial criminal proceedings was a violation of those sections of Title 23 specified in subdivision 801(a)(1), shall be an event in addition to those specified therein, enabling the Commissioner of Motor Vehicles to require proof of financial responsibility under 23 V.S.A. chapter 11.

(b) The disposition of a child and evidence given in a hearing in a juvenile proceeding shall not be admissible as evidence against the child in any case

or proceeding in any other court except after a subsequent conviction of a felony in proceedings to determine the sentence.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**HISTORY**

**Revision note—2013.** In subdivision (a)(1), substituted "Family Division of the Superior Court" for "juvenile court."

**§ 5203. Transfer from other courts**

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged is not one of those specified in subsection 5204(a) of this title, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the state's attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in subsection 5204(a) of this title, the state's attorney may file charges in the Family or Criminal Division of the Superior Court. If charges in such a matter are filed in the Criminal Division of the Superior Court, the Criminal Division of the Superior Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(d) Any such transfer shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time

designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court for youthful offender treatment shall be made under section 5281 of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), §§ 226, 238; 2011, No. 159 (Adj. Sess.), § 3.

**HISTORY**

**Amendments—2011 (Adj. Sess.).** Substituted "family division of the superior court" for "juvenile court" throughout the section; and substituted "file charges in the family or criminal division" for "file charges in a juvenile court or the criminal division" in subsec. (c).

—2009 (Adj. Sess.). Subsections (a)-(c): Substituted "criminal division of the superior court" for "district court".

Subsection (e): Inserted "the" preceding "family" and inserted "division of the superior" thereafter.

**§ 5204. Transfer from Family Division of the Superior Court**

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivisions (1)-(12) of this subsection or if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The state's attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the Court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(e) A transfer under this section shall terminate the jurisdiction of the Family Division of the Superior Court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The Family Division, following completion of the transfer hearing, shall make findings and, if

the Court orders transfer of jurisdiction from the Family Division, shall state the reasons for that order. If the Family Division orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the Family Division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The Court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the Court shall transfer the proceedings to the Criminal Division and the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the Court shall order the sealing of all applicable files and records of the Court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238; 2011, No. 159 (Adj. Sess.), § 4.

#### HISTORY

Revision note—2013. Substituted "Family Division of the Superior Court" for "juvenile court" throughout the section.

Amendments—2011 (Adj. Sess.). Amended the section generally.

—2009 (Adj. Sess.). Substituted "criminal division of the superior court" for "district court" in the introductory paragraph of subsec. (a) and in subdiv. (d)(7).

**§ 5204a. Jurisdiction over adult defendant for crime committed when defendant was under age 18**

(a) A proceeding may be commenced in the Family Division against a defendant who has attained the age of 18 if:

(1) the petition alleges that the defendant, before attaining the age of 18, violated a crime listed in subsection 5204(a) of this title;

(2) a juvenile petition was never filed based upon the alleged conduct; and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) The Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the Court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the Court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) In making the determination required by subdivision (1)(D) of this subsection, the Court may consider, among other matters:

(A) The maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community.

(B) The extent and nature of the defendant's prior criminal record and record of delinquency.

(C) The nature of past treatment efforts and the nature of the defendant's response to them.

(D) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(E) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(F) Whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(c) If the Family Division does not transfer the case to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

**Historical Citation.**

Added 2011, No. 16, § 2, eff. May 9, 2011.

**ANNOTATIONS**

**1. Construction.** Legislature's attempt to clarify the law in 2011 after defendant was charged created an entirely new jurisdictional statute providing procedures for adjudicating delinquency petitions involving adult defendants where none existed before. The new statute was plainly inconsistent with the prior law and could not be considered merely a clarification of what a previous legislature had intended the statute to mean. In re D.K., 2012 VT 23, 191 Vt. 328, 47 A.3d 347.

**§ 5205. Fingerprints; photographs**

(a) Fingerprint files of a child under the jurisdiction of the Court shall be kept separate from those of other persons under special security measures limited to inspection by law enforcement officers only on a need-to-know basis unless otherwise authorized by the Court in individual cases.

(b) Copies of fingerprints shall be maintained on a local basis only and not sent to central state or federal depositories except in national security cases.

(c) Fingerprints of persons under the jurisdiction of the Court shall be removed and destroyed when:

(1) the petition alleging delinquency with respect to which such fingerprints were taken does not result in an adjudication of delinquency; or

(2) jurisdiction of the Court is terminated, provided that there has been no record of a criminal offense by the child after reaching 16 years of age.

(d) If latent prints are found at the scene of an offense and there is reason to believe that a particular child was involved, the child may be fingerprinted for purposes of immediate comparison, and, if the result is negative, the fingerprint card shall be immediately destroyed.

(e) No photograph shall be taken of any child when taken into custody without the consent of the judge unless the case is transferred for criminal proceeding.

(f) A person who violates this section shall be imprisoned not more than six months or fined not more than \$500.00, or both.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

## SUBCHAPTER 2

### PETITION, MERITS, AND DISPOSITION

#### § 5221. Citation and notice to appear at preliminary hearing

(a) **Citation.** If an officer has probable cause to believe that a child has committed or is committing a delinquent act and the circumstances do not warrant taking the child into custody pursuant to subchapter 3 of this chapter, the officer may issue a citation to appear before a judicial officer in lieu of arrest.

(b) **Appearance in court.** A child who receives a citation described in this section shall appear at the Court designated in the citation at the time and date specified in the citation unless otherwise notified by the Court.

(c) **Notice to parent.** The officer who issues the citation shall also issue or cause to be issued a notice to the child's custodial parent, guardian, or custodian. The notice shall indicate the date, time, and place of the preliminary hearing and shall direct the responsible adult to appear at the hearing with the child.

(d) **Form.** The citation to appear shall be dated and signed by the issuing officer and shall direct the child to appear before a judicial officer at a stated time and place. The citation shall state the name of the child to whom it is addressed, the delinquent act that the child is alleged to have committed, and a notice that the child is entitled to be represented by an attorney at the hearing and that an attorney will be appointed for the child if the parent or guardian is indigent and cannot afford an attorney.

(e) **Filing of citation.** The issuing officer shall sign the citation and file the citation and an affidavit as to probable cause with the state's attorney.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

#### § 5222. Petition; contents

(a) The petition shall be supported by an affidavit as to probable cause. The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child has committed a delinquent act, together with a statement that it is in the best interests of the child that the proceedings be brought.

(2) The name, date of birth, telephone number, and residence address, if known, of the child and the custodial and noncustodial parents or the guardian or custodian of the child, if other than parent. If a parent is a participant in the Safe At Home Program pursuant to 15 V.S.A. § 1152, the petition shall so specify.

(b) If a temporary care order has been issued or the State is requesting that custody be transferred to the Commissioner, the petition shall contain jurisdictional information as required by the Uniform Child Custody Jurisdiction Act, 15 V.S.A. § 1032 et seq.

(c) A petition alleging a delinquent act may not be amended to allege that a child is in need of care or supervision, and a child who has been adjudged a delinquent child as a result of a delinquency petition may not be subsequently adjudged a child in need of care or supervision, unless a separate petition alleging that the child is in need of care or supervision is filed.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

#### § 5223. Filing of petition

(a) When notice to the child is provided by citation, the state's attorney shall file the petition and supporting affidavit at least 10 days prior to the date for the preliminary hearing specified in the citation.

(b) The Court shall send or deliver a copy of the petition and affidavit to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

#### § 5224. Failure to appear at preliminary hearing

If a child or custodial parent, guardian or custodian fails to appear at the preliminary hearing as directed by a citation, the Court may issue a summons to appear, an order to have the child brought to Court, or a warrant as provided in section 5108 of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5225. Preliminary hearing; risk assessment**

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the Court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening to the state's attorney. If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the Court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

(d) At the preliminary hearing, the Court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the Court may appoint a guardian ad litem other than a parent, guardian or custodian.

(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the Court may proceed directly to disposition, provided that the juvenile, the custodial parent, the state's attorney, the guardian ad litem, and the Department agree.

(f) The Court may order the child to abide by conditions of release pending a merits or disposition hearing.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 159 (Adj. Sess.), § 6.

**HISTORY**

**Amendments—2011 (Adj. Sess.).** Amended the section generally.

**§ 5226. Notification of conditions of release to victim in delinquency proceedings**

A victim in a delinquency proceeding based on a listed crime shall be notified promptly by the prosecutor's office when conditions of release are initially ordered or modified by the Court and of the identity

of the child when the conditions of release relate to the victim or a member of the victim's family or current household. A victim in a delinquency proceeding based on an act that is not a listed crime shall be notified promptly by the Court when conditions of release are initially ordered or modified by the Court and shall be notified promptly of the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. Victims are entitled only to information contained in the conditions of release that pertain to the victim or a member of the victim's family or current household.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5227. Timelines for pretrial and merits hearing**

(a) **Pre-trial hearing.** At the preliminary hearing, the Court shall set a date for a pretrial hearing on the petition. The pretrial hearing shall be held within 15 days of the preliminary hearing. In the event there is no admission or dismissal at the pretrial hearing, the Court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) **Merits hearing.** Except for good cause shown, a merits hearing shall be held and merits adjudicated no later than 60 days from the date of the preliminary hearing.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5228. Constitutional protections for a child in delinquency proceedings**

A child charged with a delinquent act need not be a witness against, nor otherwise incriminate, himself or herself. Any extrajudicial statement, if constitutionally inadmissible in a criminal proceeding, shall not be used against the child. Evidence illegally seized or obtained shall not be used over objection to establish the charge against the child. A confession out of court is insufficient to support an adjudication of delinquency unless corroborated in whole or in part by other substantial evidence.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5229. Merits adjudication**

(a) The parties at a merits hearing in a delinquency proceeding shall be limited to the state's attorney and the child who is the subject of the petition. A merits adjudication hearing shall not proceed forward unless the child who is the subject of the delinquency petition is present in court.

(b) The State shall have the burden of establishing beyond a reasonable doubt that the child has committed a delinquent act.

(c) If the child who is the subject of the delinquency petition enters an admission to the petition, the Court shall not accept the admission without first addressing the child personally in open court and determining that:

- (1) the plea is voluntary;
- (2) the child understands the nature of the delinquent act charged, the right to contest the charge, and the rights which will be waived if the admission is accepted by the court; and
- (3) there is a factual basis for the delinquent act charged in the petition.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence.

(e) If the merits are contested, the Court, after hearing the evidence, shall make its findings on the record.

(f) If the Court finds that the allegations made in the petition have not been established beyond a reasonable doubt, the Court shall dismiss the petition and vacate any orders transferring custody to the State or other person or any conditional custody orders.

(g) If, based on the child's admission or the evidence presented, the Court finds beyond a reasonable doubt that the child has committed a delinquent act, the Court shall order the Department to prepare a disposition case plan within 28 days of the merits adjudication and shall set the matter for a disposition hearing. In no event, shall a disposition hearing be held later than 35 days after a finding that a child is delinquent.

(h) The Court may proceed directly to disposition providing that the child, the custodial parent, the state's attorney, and the Department agree.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

### § 5230. Disposition case plan

(a) **Filing of case plan.** The Department shall file a disposition case plan no later than 28 days from the date of the finding by the Court that a child is delinquent. The disposition case plan shall not be used or referred to as evidence prior to a finding that a child is delinquent.

(b) **Content of case plan.** A disposition case plan shall include, as appropriate:

- (1) An assessment of the child's medical, psychological, social, educational, and vocational needs.
- (2) An assessment of the impact of the delinquent act on the victim and the community, including, whenever possible, a statement from the victim.
- (3) A description of the child's home, school, community, and current living situation.
- (4) An assessment of the child's and family's strengths and risk factors.
- (5) Proposed conditions of probation which address the identified risks and provide for, to the

extent possible, repair of the harm to victims and the community. Proposed conditions may include a recommendation as to the term of probation.

(6) The plan of services shall describe the responsibilities of the child, the parent, guardian or custodian, the Department, other family members, and treatment providers, including a description of the services required to achieve successful completion of the goals of probation and, if the child has been placed in the custody of the Department, the permanency goal.

(c) **Case plan for child in custody.** If a child is in the custody of the Commissioner at the time of disposition or if a transfer of custody is requested, the case plan shall include the following additional information:

(1) A permanency goal if the child is in custody. The long-term goal for a child found to be delinquent and placed in the custody of the Department is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification with a parent, custodian, or guardian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

(2) A recommendation with respect to custody for the child and a recommendation for parent-child contact if appropriate.

(3) A request for child support if the child has been placed in the custody of the Department or the Department recommends a transfer of custody.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

### § 5231. Disposition hearing

(a) **Timeline.** A disposition hearing shall be held no later than 35 days after a finding that a child is delinquent.

(b) **Hearing procedure.** If disposition is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(c) **Standard of proof.** If the Court terminates the parental rights of one or both parents, the standard of proof on the issue of such termination shall be clear and convincing evidence. On all other issues, the standard of proof shall be a preponderance of the evidence.

(d) **Termination of parental rights.** If the Commissioner or the attorney for the child seeks an order terminating parental rights of one or both

parents and transfer of custody to the Commissioner without limitation as to adoption, the Court shall consider the best interests of the child in accordance with section 5114 of this title.

(e) **Further hearing.** On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. The Court shall make an appropriate order for the temporary care of the child pending a final disposition order. The Court shall give scheduling priority to cases in which the child has been removed from the home.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5232. Disposition order**

(a) If a child is found to be a delinquent child, the Court shall make such orders at disposition as may provide for:

- (1) the child's supervision, care, and rehabilitation;
- (2) the protection of the community;
- (3) accountability to victims and the community for offenses committed; and
- (4) the development of competencies to enable the child to become a responsible and productive member of the community.

(b) In carrying out the purposes outlined in subsection (a) of this section, the Court may:

- (1) Place the child on probation subject to the supervision of the commissioner, upon such conditions as the Court may prescribe. The length of probation shall be as prescribed by the Court or until further order of the Court.
- (2) Order custody of the child be given to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the Court may order that custody be subject to such conditions and limitations as the Court may deem necessary and sufficient to provide for the safety of the child and the community. Conditions may include protective supervision for up to one year following the disposition order unless further extended by court order. The Court shall schedule regular review hearings to determine whether the conditions continue to be necessary.
- (3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child.
- (4) Transfer custody of the child to the Commissioner.
- (5) Terminate parental rights and transfer custody and guardianship to the Department without limitation as to adoption.
- (6) Issue an order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the Court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the Court for disposition.

(c) If the Court orders the transfer of custody of the child pursuant to subdivisions (b)(4) and (5) of this section, the Court shall establish a permanency goal for the child and adopt a case plan prepared by the Department designed to achieve the permanency goal. If the Court determines that the plan proposed by the Department does not adequately support the permanency goal for the child, the Court may reject the plan proposed by the Department and order the Department to prepare and submit a revised plan for Court approval.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 28, § 3, eff. May 21, 2009; 2011, No. 159 (Adj. Sess.), § 5.

**HISTORY**

**Amendments—2011 (Adj. Sess.).** Subdivision (b)(7): Added.  
—2009. Subdivision (b)(6): Added.

**§ 5233. Victim's statement at disposition proceeding; victim notification**

(a) Upon the filing of a delinquency petition, the Court shall notify a victim of his or her rights as provided by law and his or her responsibilities regarding the confidential nature of juvenile proceedings.

(b) A victim of a delinquent act has the right in a disposition proceeding to file with the Court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution. A victim of a delinquent act involving a listed crime also has the right to be present at the disposition hearing for the sole purpose of presenting to the Court the impact of the delinquent act on the victim and the need for restitution. A victim of a delinquent act that is not a listed crime may be present at the disposition hearing for the sole purpose of presenting to the Court the impact of the delinquent act on the victim and the need for restitution if the Court finds that the victim's presence at the disposition hearing is in the best interests of the child and the victim. The Court shall take a victim's views into consideration in the court's disposition order. A victim shall not be allowed to be personally present at any portion of the disposition hearing except to present the impact statement unless authorized by the Court.



(c) After an adjudication of delinquency has been made involving an act that is not a listed crime, the Court shall inform the victim of the disposition of the case. Upon request of the victim, the Court may release to the victim the identity of the child if the Court finds that release of the child's identity to the victim is in the best interests of both the child and the victim.

(d) After an adjudication of delinquency has been made involving an act that is a listed crime, the state's attorney's office shall inform the victim of the disposition in the case. Upon request of the victim, the state's attorney's office shall release to the victim the identity of the child.

(e) For the purposes of this section, disposition in the case shall include whether the child was placed on probation and information regarding conditions of probation relevant to the victim.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5234. Rights of victims in delinquency proceedings involving a listed crime**

The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled.

(2) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including any conditions or restitution relevant to the victim.

(3) To present a victim's impact statement at the disposition hearing in accordance with subsection 5233(b) of this title and to be notified as to the disposition pursuant to subsection 5233(d) of this title.

(4) Upon request, to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title.

(6) To be notified by the Court of the victim's rights under this section.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5235. Juvenile restitution**

(a) Restitution shall be considered in every case in which a victim of a delinquent act has suffered a material loss. For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(b) When ordered, restitution may include:

(1) return of property wrongfully taken from the victim;

(2) cash, credit card, or installment payments paid to the Restitution Unit; and

(3) payments in kind, if acceptable to the victim.

(c) In awarding restitution, the Court shall make findings in accordance with subdivision 5262(b)(2) of this title.

(d) If restitution is ordered, the victim shall be entitled to payment from the Crime Victims' Restitution Fund, pursuant to 13 V.S.A. § 5363. An order of restitution shall establish the amount of material loss incurred by the victim, which shall be the restitution judgment order. Every order of restitution shall include:

(1) the juvenile's name and address;

(2) the name of the victim;

(3) the amount ordered; and

(4) any co-defendant names if applicable.

(e) In the event the juvenile is unable to pay the restitution judgment order at the time of disposition, the Court shall fix the amount thereof, which shall not exceed an amount the juvenile can or will be able to pay, and shall fix the manner of performance or refer to a restorative justice program that will address how loss resulting from the delinquency will be addressed, subject to modification under section 5264 of this title.

(f) The Court shall transmit a copy of a restitution order to the Restitution Unit, which shall make payment to the victim in accordance with 13 V.S.A. § 5363.

(g) To the extent that the Victims' Compensation Board has made payment to or on behalf of the victim in accordance with 13 V.S.A. chapter 167, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Crime Victims' Compensation Fund.

(h) When restitution is requested but not ordered, the Court shall set forth on the record its reasons for not ordering restitution.

(i) Any information concerning restitution payments made by a juvenile shall be available to the Vermont Restitution Unit for purposes of determining restitution obligations of adult and juvenile co-defendants.

(j) In accordance with 13 V.S.A. § 5363, the Restitution Unit is authorized to make payments to victims of delinquent acts where restitution was

ordered by a court prior to July 1, 2008, and the order was first entered on or after July 1, 2004.

(k)(1) The Restitution Unit may bring an action to enforce a restitution order issued under this section in the Superior or Small Claims Court of the county where the offender resides or in the county where the order was issued. In an action under this subsection, a restitution order issued in a juvenile proceeding shall be enforceable in Superior or Small Claims Court in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

(2) An action under this subsection may be brought only after the offender reaches 18 years of age, and shall not be subject to any limitations period.

(3) For purposes of this subsection, a restitution order issued in a juvenile proceeding shall not be confidential.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

### SUBCHAPTER 3 CHILDREN IN CUSTODY

#### § 5251. Taking into custody

A child may be taken into custody by an officer:

(1) pursuant to the laws of arrest of this State;  
(2) pursuant to an order of the Court under the provisions of this chapter and chapters 51 and 53 of this title; or

(3) when the officer has reasonable grounds to believe that the child has committed a delinquent act; and that the child's immediate welfare or the protection of the community, or both, require the child's removal from the child's current home.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

#### § 5252. Request for emergency care order

(a) If an officer takes a child who is alleged to be delinquent into custody, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare or the protection of the community, or both, require the child's continued removal from the home.

(b) If the officer determines that the child's immediate welfare, the protection of the community, or both, require the child's continued removal from the home, the officer shall:

(1) Take the child into custody pending either issuance of an emergency care order or direction from the state's attorney to release the child.

(2) Prepare an affidavit in support of a request for an emergency care order. The affidavit shall include the reasons for taking the child into custody and, if known, placements with which the child is familiar, the names, addresses, and telephone numbers of the child's parents, guardians, or custodians, and the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer shall contact the Department, and, if the Department has knowledge of the reasons for the removal of the child, the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer.

(3) Provide the affidavit to the state's attorney.

(c) If the child is taken into custody during regular court hours, the state's attorney shall immediately file a request for an emergency care order accompanied by the supporting affidavit or direct the immediate return of the child to the child's custodial parent, guardian, or custodian. If the child is taken into custody after regular court hours or on a weekend or holiday, the state's attorney or officer shall contact a judge to request an emergency care order or return the child to the child's custodial parent, guardian, or custodian. If an order is granted, the state's attorney shall file the supporting affidavit with the Family Division of the Superior Court on the next day that the Court is open.

(d) If the judge denies a request for an emergency care order, the state's attorney shall direct the immediate return of the child to the child's custodial parent, guardian, or custodian.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.

#### HISTORY

**Amendments—2009 (Adj. Sess.).** Substituted "family division of the superior court" for "family court" in subsec. (c).

#### § 5253. Emergency care order; conditional custody order

(a)(1) **Transfer of temporary custody.** The Court may issue an emergency care order transferring temporary custody of the child to the Department pending a temporary care hearing if the Court determines that:

(A) there is probable cause that the child has committed a delinquent act; and

(B) continued residence in the home is contrary to the child's welfare because:

(i) the child cannot be controlled at home and is at risk of harm to self or others; or

(ii) continued residence in the home will not safeguard the well-being of the child and the safety of the community because of the serious and dangerous nature of the act the juvenile is alleged to have committed.

(2) The determination may be made ex parte, provided that it is reasonably supported by the affidavit prepared in accordance with subsection 5152(b) of this title.

(b) **Contents of emergency care order.** The emergency care order shall contain:

(1) A written finding that the child's continued residence in the home is contrary to the child's welfare and the factual allegations that support that finding.

(2) The date, hour, and place of the temporary care hearing to be held pursuant to section 5255 of this title.

(3) Notice of a parent's right to counsel at the temporary care hearing.

(c) **Conditional custody order.** If the Court determines that the child may safely remain in the custody of the custodial parent, guardian, or custodian, the Court may deny the request for an emergency care order and issue an emergency conditional custody order. The order shall contain:

(1) Conditions and limitations necessary to protect the child, the community, or both.

(2) The date, hour, and place of the temporary care hearing to be held pursuant to section 5255 of this title.

(3) Notice of a parent's right to counsel at the hearing.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5254. Notice of emergency care order and temporary care hearing**

(a) **Notice to custodial parent.** An officer shall deliver a copy of the emergency care order or conditional custody order to the custodial parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify or cause to be notified the custodial parent, guardian, or custodian of the order, the date, time, and place of the temporary care hearing, and the right to counsel. If the custodial parent, guardian, or custodian cannot be located, the officer shall so certify to the Court in an affidavit describing the efforts made to locate the custodial parent, guardian, or custodian.

(b) **Notice to noncustodial parent.** The Department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with the emergency care or conditional custody order, notice of the date, hour, and place of the temporary care hearing and of the right to counsel. If the noncustodial parent cannot be located, the Department shall provide to the Court a summary of the efforts made to locate the noncustodial parent.

(c) **Notice to other parties.** The Court shall notify the following persons of the date and time of the temporary care hearing:

(1) The state's attorney.

(2) The Department.

(3) An attorney to represent the child.

(4) A guardian ad litem for the child.

(5) An attorney to represent each parent. The attorney may be court-appointed in the event a parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5255. Temporary care hearing**

(a) A temporary care hearing shall be held within 72 hours of the issuance of an emergency care order or conditional custody order under section 5253 of this title. State holidays shall be excluded from the computation of 72 hours. If the custodial parent, guardian, or custodian has not been notified in accordance with section 5254 of this title and does not appear or waive appearance at the temporary care hearing and files thereafter with the Court an affidavit so showing, the Court shall hold another temporary care hearing within one business day of the filing of the affidavit as if no temporary care hearing had theretofore been held.

(b) If the state's attorney is seeking a temporary care order, the state's attorney shall file a petition on or before the temporary care hearing. If the state's attorney elects not to file a petition, the state's attorney shall so notify the Court, and the Court shall vacate any temporary orders.

(c) The following persons shall be present at the temporary care hearing:

(1) The child.

(2) The child's custodial parent, guardian, or custodian, unless he or she cannot be located or fails to appear in response to notice.

(3) The child's guardian ad litem.

(4) An attorney for the child.

(5) An attorney for the custodial parent, if requested.

(6) A representative of the Department.

(7) The state's attorney.

(d) A noncustodial parent and his or her attorney shall have the right to be present at the hearing. The hearing shall not be delayed by reason of the inability of the Department to locate the noncustodial parent.

(e) The Department shall provide the following information to the Court at the hearing:

(1) Any reasons for the child's removal which are not set forth in the affidavit required pursuant to section 5252 of this title.

(2) Services, if any, provided to the child and the family in an effort to prevent removal.

(3) The need, if any, for continued custody of the child with the Department pending a hearing to adjudicate the merits of the petition.

(4) Services which could facilitate the return of the child to the custody of the parent or guardian.

(5)(A) The identity of a noncustodial parent and any relatives known to the Department who may be suitable, willing, and available to assume temporary custody of the child.

(B) With respect to any person whom the Department identifies pursuant to this subdivision, the Department shall conduct an assessment of the suitability of the person to care for the child. The assessment shall include consideration of the person's ability to care for the child's needs, a criminal history record as defined in 20 V.S.A. § 2056a(a)(1) in accordance with subdivision (5)(C) of this subsection, and a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home. The Court may continue the hearing if necessary to permit the Department to complete the assessment.

(C) The Department shall request from the Vermont Criminal Information Center criminal history record information for any person being considered to assume temporary legal custody of the child pursuant to this subdivision. The request shall be in writing and shall be accompanied by a release signed by the person. The Department through the Vermont Criminal Information Center shall request criminal history record information from the appropriate state criminal repositories in all states in which it has reason to believe the person has resided or been employed. If no disqualifying record is identified at the state level, the Department through the Vermont Criminal Information Center shall request from the Federal Bureau of Investigation a National Criminal History Record Check of the person's criminal history. The request to the FBI shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Criminal Information Center. The Vermont Criminal Information Center shall send the Department the criminal history record from any state repository and the FBI of a person about whom a request is made under this subdivision or inform the Department that no record exists. The Department shall promptly provide a copy of the criminal history record, if any, to the person and shall inform the person that he or she has the right to appeal the accuracy and completeness of the record through the Vermont Criminal Information Center. Upon completion of the process under this subdivision, the person's fingerprint card shall be destroyed.

(6) Additional information as required by the Uniform Child Custody Jurisdiction Act pursuant to 15 V.S.A. § 1037 and the Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq.

(f) All parties shall have the right to present evidence on their own behalf and examine witnesses. Hearsay, to the extent it is deemed relevant

and reliable by the Court, shall be admissible. The Court may in its discretion limit testimony and evidence to only that which goes to the issues of removal, custody, and the child's welfare.

(g) The temporary care hearing shall also be a preliminary hearing on the petition.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**HISTORY**

**References in text.** The Federal Bureau of Information, referred to in subdiv. (e)(5)(B), is codified as 28 U.S.C. § 531 et seq.

**Revision note—2008.** In subdiv. (e)(5)(B), substituted "subdivision 2056a(a)(1) of Title 20" for "20 V.S.A. § 2056a(a)(1)" to conform reference to V.S.A. style.

**§ 5256. Temporary care order**

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

(1) The child cannot be controlled at home and is at risk of harm to self or others.

(2) Continued residence in the home will not protect the community because of the serious and dangerous nature of the act the child is alleged to have committed.

(3) The child's welfare is otherwise endangered.

(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the Court may issue such temporary orders related to the custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child, and the safety of the community, including:

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

(2) An order transferring temporary custody of the child to a noncustodial parent or a relative.

(3) A temporary care order transferring temporary custody of the child to the Commissioner.

(c)(1) If the Court transfers custody of the child to the Commissioner, the Court shall issue a written temporary care order. The order shall include:

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

(B) a finding as to whether reasonable efforts were made to prevent the unnecessary removal of the child from the home.

(2) If at the conclusion of the hearing the Court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in

the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

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

(A) Conditions of release.

(B) An order for parent-child contact under such terms and conditions as are necessary for the protection of the child.

(C) An order that the department provide the child with services if legal custody of the child has been transferred to the Commissioner.

(D) An order that the department refer a parent to services:

(E) A genetic testing order if parentage of the child is at issue.

(F) An order that the department make diligent efforts to locate the noncustodial parent.

(G) An order that the custodial parent provide the department with names of all potential noncustodial parents and relatives of the child.

(H) An order establishing protective supervision and requiring the department to make appropriate service referrals for the child and the family if legal custody is transferred to an individual other than the Commissioner.

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

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5257. Filing of initial case plan**

(a) If a temporary care order is issued granting custody to the Commissioner, the Department shall prepare and file with the Court an initial case plan for the child and the family within 60 days of the child's removal from the home. The Department shall provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem.

(b) The initial case plan shall not be used or referred to as evidence prior to a finding that the child has committed a delinquent act.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5258. Postdisposition review and permanency review for delinquents in custody**

Whenever custody of a delinquent child is transferred to the Commissioner, the custody order of the Court shall be subject to a postdisposition review hearing pursuant to section 5320 of this title and permanency reviews pursuant to section 5321 of this title. At the permanency review, the Court shall review the permanency plan and determine whether

the plan advances the permanency goal recommended by the Department. The Court may accept or reject the plan, but may not designate a particular placement for a child in the Department's legal custody.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**SUBCHAPTER 4  
PROBATION**

**§ 5261. Powers and responsibilities of the Commissioner regarding juvenile probation**

The Commissioner shall be charged with the following powers and responsibilities regarding the administration of juvenile probation:

(1) To maintain supervision of juveniles placed on probation.

(2) To supervise the administration of juvenile probation services, including the authority to enter into contracts with community-based agencies to provide probation services which may include restitution and community service programs and to establish policies and standards and adopt rules regarding juvenile probation investigation, supervision, casework and caseloads, record-keeping, and the qualification of juvenile probation officers.

(3) To prescribe rules, consistent with any orders of the Court, governing the conduct of juveniles on probation.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5262. Conditions of probation**

(a) The conditions of probation shall be such as the Court in its discretion deems necessary to ensure to the greatest extent reasonably possible that the juvenile will be provided a program of treatment, training, and rehabilitation consistent with the protection of the public interest. The Court shall provide as an explicit condition of every juvenile probation certificate that if the juvenile is adjudicated a delinquent or is convicted of an adult crime while on probation, then the Court may find the juvenile in violation of the conditions of probation.

(b) The Court may, as a condition of probation, require that the juvenile:

(1) Work faithfully for a prescribed number of hours at a community service activity acceptable to the Court or, if so ordered by the Court, at a community service activity acceptable to a probation officer.

(2) Make restitution or reparation to the victim of the juvenile's conduct for the damage or injury which was sustained. When restitution or repara-

tion is a condition of probation, the Court shall fix the amount thereof. The Court shall further determine the amount the juvenile can or will be able to pay and fix the manner of performance. In the alternative, the Court may refer the determination of the amount, the ability to pay, and the manner of performance to a restorative justice panel.

(3) Participate in programs designed to develop competencies to enable the child to become a responsible and productive member of the community.

(4) Refrain from purchasing or possessing a firearm or ammunition, any destructive device, or any dangerous weapon unless granted written permission by the Court or juvenile probation officer.

(5) Report to a juvenile probation officer at reasonable times as directed by the Court or the probation officer.

(6) Permit the juvenile probation officer to visit the juvenile at reasonable times at home or elsewhere.

(7) Remain within the jurisdiction of the Court unless granted permission to leave by the Court or the probation officer.

(8) Answer all reasonable inquiries by the juvenile probation officer and promptly notify the probation officer of any change in address or employment.

(9) Satisfy any other conditions reasonably related to the juvenile's rehabilitation.

(10) Reside at home or other location specified by the Court.

(11) Attend or reside at an educational or vocational facility or a facility established for the instruction, recreation, or residence of persons on probation.

(12) Work faithfully at suitable employment or faithfully pursue a course of study or of vocational training that will equip the juvenile for suitable employment.

(13) Undergo available medical treatment, participate in psychiatric treatment or mental health counseling, and participate in alcohol or drug abuse assessment or treatment on an outpatient or inpatient basis.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5263. Juvenile probation certificate**

(a) When a juvenile is placed on probation, the Court shall issue a written juvenile probation certificate setting forth:

- (1) the name of the juvenile;
- (2) the nature of the delinquent act committed by the juvenile;
- (3) the date and place of the juvenile delinquency hearing;
- (4) the order of the Court placing the juvenile on probation; and
- (5) the conditions of the juvenile's probation.

(b) The juvenile probation certificate shall be furnished to and signed by the juvenile and a custodial parent, guardian or custodian of the child, if other than parent. It shall be fully explained to them, and they shall be informed about the consequences of violating the conditions of probation, including the possibility of revocation of probation. A copy of the juvenile probation certificate shall also be furnished to the Commissioner. The probation certificate is not invalidated if it is not signed as required by this subsection.

(c) The signature of a custodial parent, guardian, or custodian on a probation certificate shall constitute verification that the parent, guardian, or custodian understands the terms of juvenile probation and agrees to facilitate and support the child's compliance with such terms and to attend treatment programs with the child as recommended by the treatment provider.

(d) The juvenile probation certificate shall be full authority for the exercise by the Commissioner of all the rights and powers over and in relation to the juvenile prescribed by law and by the order of the Court.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5264. Modification of conditions**

(a) During the period of probation, the Court, on application of a juvenile probation officer, the state's attorney, the juvenile, or on its own motion may modify the requirements imposed upon the juvenile or add further requirements authorized by section 5262 of this title. A juvenile may request modification of a restitution issue determined by a restorative panel.

(b) Whenever the Court proposes any modification of the conditions of probation, the juvenile probationer shall have a reasonable opportunity to contest the modification prior to its imposition.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5265. Violation of conditions of probation**

(a) If the juvenile fails to comply with conditions of probation, the state's attorney, a juvenile probation officer, or the Court on its own motion may initiate a proceeding to establish that the juvenile is in violation of probation conditions.

(b) A juvenile probationer shall not be found in violation of conditions of probation unless the juvenile probationer is found to have violated a condition of probation, is again adjudicated a delinquent, or is convicted of a crime.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

§ 5266. Summons, apprehension, and prehearing placement of juvenile probationer

At any time before the discharge of a juvenile probationer or the termination of the period of probation:

(1) The Court may summon the juvenile to appear before it or may issue an order for the juvenile's apprehension and placement in a detention or treatment facility.

(2) Any juvenile probation officer may apprehend a juvenile probationer or may authorize any officer to do so by giving the officer a written statement setting forth that the juvenile has, in the judgment of the juvenile probation officer, violated a condition of probation. The written statement delivered with the juvenile by the apprehending officer to the supervisor of the juvenile detention or treatment facility or residential program to which the juvenile is brought for prehearing placement shall be sufficient authority for maintaining the juvenile in the facility or residential program.

(3) Any juvenile probationer apprehended or placed in accordance with the provisions of this chapter shall have no right of action against the juvenile probation officer or any other person because of such apprehension or placement.

Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 3, § 94, eff. Feb. 17, 2011.

HISTORY

Amendments—2011. Catchline: Substituted "prehearing placement" for "detention".

Subdivision (1): Substituted "apprehension and placement in a detention or treatment facility" for "detention" following "juvenile's".

Subdivision (2): Substituted "apprehend" and "apprehending" for "detain" and "detaining" in the first and second sentences respectively; inserted "detention or treatment" preceding "facility"; the first time it appears; substituted "prehearing placement" for "detention" and "maintaining" for "detaining" and inserted "in the facility or residential program" following "juvenile" in the second sentence.

Subdivision (3): Substituted "placed" for "detained" and "placement" for "detention".

§ 5267. Previolation hearing

(a) Whenever a juvenile probationer is apprehended and placed on the grounds that the juvenile has violated a condition of probation, the juvenile shall be given a hearing before a judicial officer prior to the close of business on the next court business day in order to determine whether there is probable cause to hold the juvenile for a violation hearing. The juvenile and the adult who signed the probation certificate shall be given:

(1) notice of the previolation hearing and its purpose and the allegations of violations of conditions of probation; and

(2) notice of the juvenile's right to be represented by counsel and right to be assigned counsel if the juvenile is unable to obtain counsel.

(b) At the previolation hearing the juvenile shall be given:

(1) an opportunity to appear at the hearing and present evidence on his or her own behalf; and

(2) upon request, the opportunity to question witnesses against him or her unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness.

(c) If probable cause is found to exist, the juvenile shall be held for a hearing to determine if the juvenile violated the conditions of probation. If probable cause is not found to exist, the proceedings shall be dismissed.

(d) A juvenile held under this section pursuant to a request to find the juvenile in violation of probation may be released by a judicial officer pending hearing or appeal.

Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 3, § 95, eff. Feb. 17, 2011.

HISTORY

Amendments—2011. Catchline: Substituted "Previolation" for "Detention".

Subsection (a): Substituted "apprehended and placed" for "detained" in the first sentence.

Subdivision (a)(1): Substituted "previolation" for "detention" preceding "hearing".

Subsection (b): Substituted "previolation" for "detention" preceding "hearing".

Subsection (d): Substituted "under this section" for "in detention" preceding "pursuant".

§ 5268. Notice; violation hearing

(a) The Court shall not find a juvenile in violation of the juvenile's probation without a hearing, which shall be held promptly in the Court in which the probation was imposed. If the juvenile is held in detention prior to the hearing, the hearing shall take place at the earliest possible time. Prior to the hearing, the juvenile and the adult who signed the probation certificate shall receive a written notice of the hearing at his or her last known address stating that the juvenile has allegedly violated one or more conditions of probation and which condition or conditions have been violated. At the hearing, the juvenile shall have:

(1) The right to legal counsel if requested by the juvenile probationer or the adult who signed the probation certificate to be assigned by the Court in the same manner as in criminal cases.

(2) The right to disclosure of evidence against the juvenile.

(3) The opportunity to appear and to present evidence on the juvenile's behalf.

(4) The opportunity to question witnesses against the juvenile.

(b) The state's attorney having jurisdiction or the Commissioner shall establish the alleged violation by a preponderance of the evidence, if the juvenile probationer contests the allegation.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5269. Disposition alternatives upon violation of conditions of probation**

If a violation of conditions of probation is established, the Court may, in its discretion, modify the conditions of probation or order any of the disposition alternatives provided for in section 5232 of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5270. Final judgment**

An order placing a juvenile on probation and a finding that a juvenile violated a condition of probation shall constitute a final judgment.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5271. Discharge from probation**

(a) The Court placing a juvenile on probation may terminate probation and discharge the juvenile at any time.

(b) Upon the termination of the period of probation, the juvenile probationer shall be discharged from probation.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5272. Juvenile Justice Unit; Juvenile Justice Director**

(a) A Juvenile Justice Unit is created in the Family Services Division of the Department. The Unit shall be headed by a Juvenile Justice Director.

(b) The Juvenile Justice Director shall have the responsibility and authority to monitor and coordinate all State and participating regional and local programs that deal with juvenile justice issues, including prevention, education, enforcement, adjudication, and rehabilitation.

(c) The Juvenile Justice Director shall ensure that the following occur:

(1) Development of a comprehensive plan for a coordinated and sustained statewide program to reduce the number of juvenile offenders, involving State, regional, and local officials in the areas of health, education, prevention, law enforcement, corrections, teen activities, and community wellness.

(2) Cooperation among State, regional, and local officials, court personnel, service providers, and

law enforcement agencies in the formulation and execution of a coordinated statewide juvenile justice program.

(3) Cooperation among appropriate departments, including the Department; the Agency of Education; the Departments of Corrections, Labor, Mental Health, Public Safety, and Disabilities, Aging, and Independent Living; and the Offices of Alcohol and Drug Abuse Programs.

(4) A study of issues relating to juvenile justice and development of recommendations regarding changes in law and rules, as deemed advisable.

(5) Compilation of data on issues relating to juvenile justice and analysis, study, and organization of such data for use by educators, researchers, policy advocates, administrators, legislators, and the Governor.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**HISTORY**

**Revision note—2013.** In subdivision (c)(3), substituted "the Department; the Agency of Education; the Departments of Corrections, Labor, Mental Health, Public Safety, and Disabilities, Aging, and Independent Living;" for "the department and the departments of education, corrections, employment and training, developmental and mental health services, and public safety," to reflect current departmental names and organization.

**SUBCHAPTER 5  
YOUTHFUL OFFENDERS**

**§ 5281. Motion in Criminal Division of Superior Court**

(a) A motion may be filed in the Criminal Division of the Superior Court requesting that a defendant under 18 years of age in a criminal proceeding who had attained the age of 10 but not the age of 18 at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the state's attorney, the defendant, or the Court on its own motion.

(b) Upon the filing of a motion under this section and the entering of a conditional plea of guilty by the youth, the Criminal Division shall enter an order deferring the sentence and transferring the case to the Family Division for a hearing on the motion. Copies of all records relating to the case shall be forwarded to the Family Division. Conditions of release and any Department of Corrections supervision or custody shall remain in effect until the Family Division approves the motion for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title.

(c) A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional

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upon the Family Division granting the motion for youthful offender status.

(d)(1) If the Family Division denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the Criminal Division, and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the Criminal Division shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment had not been made.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent Criminal Division proceeding.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 227.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Catchline: Substituted "criminal division of superior" for "district".

Subsection (a): Substituted "criminal division of the superior" for "district" in the first sentence.

Subsection (b): Substituted "criminal division" for "district court" in the first sentence and "division" for "court" in three places.

Subsection (c): Substituted "division" for "court".

Subsection (d): Substituted "division" for "court", "division's" for "court's" and "criminal division" for "district court" in subd. (1), and deleted "in the district court" following "proceeding" in subd. (2).

**§ 5282. Report from the Department**

(a) Within 30 days after the case is transferred to the Family Division, unless the Court extends the period for good cause shown, the Department shall file a report with the Family Division of the Superior Court.

(b) A report filed pursuant to this section shall include the following elements:

(1) A recommendation as to whether youthful offender status is appropriate for the youth.

(2) A disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved.

(3) A description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the Department, the Court, the state's attorney, the youth, the youth's attorney, the youth's guardian ad litem, the Department of Corrections, or any other person when the Court determines that

the best interests of the youth would make such a disclosure desirable or helpful.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 228.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Subsection (a): Substituted "to the family division" for "to family court" and inserted "division of the superior".

**§ 5283. Hearing in Family Division**

(a) **Timeline.** A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from the Criminal Division.

(b) **Notice.** Notice of the hearing shall be provided to the state's attorney; the youth; the youth's parent, guardian, or custodian; the Department; and the Department of Corrections.

(c) **Hearing procedure.**

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the Court makes the motion, the burden shall be on the youth.

(e) **Further hearing.** On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 229.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Substituted "division" for "court" in the section catchline, and "the criminal division" for "district court" in subsec. (a).

**§ 5284. Determination and order**

(a) In a hearing on a motion for youthful offender status, the Court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the Court finds that public safety will not be protected by treating the youth as a youthful offender, the Court shall deny the motion and return the case to the Family Division of the

Superior Court pursuant to subsection 5281(d) of this title. If the Court finds that public safety will be protected by treating the youth as a youthful offender, the Court shall proceed to make a determination under subsection (b) of this section.

(b)(1) The Court shall deny the motion if the Court finds that:

(A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or

(B) there are insufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(2) The Court shall grant the motion if the Court finds that:

(A) the youth is amenable to treatment or rehabilitation as a youthful offender; and

(B) there are sufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(c) If the Court approves the motion for youthful offender treatment, the Court:

(1) shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

(2) may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's eighteenth birthday.

(d) The Department shall be responsible for supervision of and providing services to the youth until he or she reaches the age of 18. A lead case manager shall be designated who shall have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by the Department.

(e) The youth shall not be permitted to withdraw his or her plea of guilty after youthful offender status is approved except to correct manifest injustice pursuant to Rule 32(d) of the Vermont Rules of Criminal Procedure.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

**§ 5285. Modification or revocation of disposition**

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the Family Division of the Superior Court. The Court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful of-

fender who has attained the age of 18 for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the Court finds after the hearing that the youth has violated the terms of his or her probation, the Court may:

(1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the Court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the Criminal Division for sentencing; or

(3) transfer supervision of the youth to the Department of Corrections.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the Criminal Division under subdivision (c)(2) of this section, the Court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the Court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 230.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Subsection (a): Substituted "filed in the family division of the superior" preceding "family" in the first sentence.

Subdivision (c)(2): Substituted "criminal division" for "district court".

Subsection (d): Substituted "criminal division" for "district court" in the first and last sentences, deleted "district" preceding "court" in the first and second sentences, and substituted "division" for "court" in the last sentence.

**§ 5286. Review prior to the age of 18**

(a) The Family Division shall review the youth's case before he or she reaches the age of 18 and set a hearing to determine whether the Court's jurisdiction over the youth should be continued past the age of 18. The hearing may be joined with a motion to terminate youthful offender status under section 5285 of this title. The Court shall provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, the Department, and the Department of Corrections.

(b) After receiving a notice of review under this section, the state may file a motion to modify or revoke pursuant to section 5285 of this title. If such a motion is filed, it shall be consolidated with the review under this section and all options provided for under section 5285 of this title shall be available to the Court.

(c) The following reports shall be filed with the Court prior to the hearing:

(1) The Department shall report its recommendations, with supporting justifications, as to whether the Family Division should continue jurisdiction over the youth past the age of 18 and, if continued jurisdiction is recommended, whether the Department or the Department of Corrections should be responsible for supervision of the youth.

(2) If the Department recommends that the Department of Corrections be responsible for supervision of the youthful offender past the age of 18, the Department shall notify the Department of Corrections, which shall report on the services which would be available for the youth in the event supervision over him or her is transferred to the Department of Corrections.

(d) If the Court finds that it is in the best interest of the youth and consistent with community safety to continue the case past the age of 18, it shall make an order continuing the Court's jurisdiction up to the age of 22. The order shall specify whether the youth will be supervised by the Department or the Department of Corrections. Irrespective of which department is specified in the order, the Department and the Department of Corrections shall jointly develop a case plan for the youth and coordinate services and share information to ensure compliance with and completion of the juvenile disposition.

(e) If the Court finds that it is not in the best interest of the youth to continue the case past the age of 18, it shall terminate the disposition order, discharge the youth, and dismiss the case in accordance with subsection 5287(c) of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 231.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Substituted "division" for "court" in the first sentence of subsec. (a), and in subdiv. (c)(1).

**§ 5287. Termination or continuance of probation**

(a) A motion may be filed at any time in the Family Division requesting that the Court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the state's attorney, the youth, the Department, or the Court on its own motion. The Court shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, and the Department.

(b) In determining whether a youth has successfully completed the terms of probation, the Court shall consider:

- (1) the degree to which the youth fulfilled the terms of the case plan and the probation order;
- (2) the youth's performance during treatment;

(3) reports of treatment personnel; and

(4) any other relevant facts associated with the youth's behavior.

(c) If the Court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the Family Division case. The Family Division shall provide notice of the dismissal to the criminal division, which shall dismiss the criminal case.

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the District Court shall be expunged, and all records relating to the case in the Family Court shall be sealed pursuant to section 5119 of this title.

(e) If the Court denies the motion to discharge the youth from probation, the Court may extend or amend the probation order as it deems necessary.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 232.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Substituted "division" for "court" in the first sentence of subsec. (a) and in two places in subsec. (c), "criminal division" for "district court" and "criminal case" for "district court case" in the last sentence of subsec. (c).

**§ 5288. Rights of victims in youthful offender proceedings**

(a) The victim in a proceeding involving a youthful offender shall have the following rights:

(1) To be notified by the prosecutor in a timely manner when a court proceeding is scheduled to take place and when a court proceeding to which he or she has been notified will not take place as scheduled.

(2) To be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence and to express reasonably his or her views concerning the offense and the youth.

(3) To request notification by the agency having custody of the youth before the youth is released from a residential facility.

(4) To be notified by the prosecutor as to the final disposition of the case.

(5) To be notified by the prosecutor of the victim's rights under this section.

(b) In accordance with court rules, at a hearing on a motion for youthful offender treatment, the Court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding disposition. In ordering disposition, the Court shall consider any views offered at the hearing by the victim. If the victim is not present, the Court shall ask whether the victim has expressed, either orally or in writing, views regarding disposition and shall take

those views into consideration in ordering disposition.

(c) No youthful offender proceeding shall be delayed or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.

(d) For purposes of this section, "victim" shall have the same meaning as in 13 V.S.A. § 5301(4).

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

## SUBCHAPTER 6

### PLACEMENT OF MINORS IN SECURE FACILITIES

#### § 5291. Detention or treatment of minors charged as delinquents in secure facilities for the detention or treatment of delinquent children

(a) Unless ordered otherwise at or after a temporary care hearing, the Commissioner shall have sole authority to place the child who is in the custody of the Department in a secure facility for the detention or treatment of minors.

(b) Upon a finding at the temporary care hearing that no other suitable placement is available and the child presents a risk of injury to him- or herself, to others, or to property, the Court may order that the child be placed in a secure facility used for the detention or treatment of delinquent children until the Commissioner determines that a suitable placement is available for the child. Alternatively, the Court may order that the child be placed in a secure facility used for the detention or treatment of delinquent children for up to seven days. Any order for placement at a secure facility shall expire at the end of the seventh day following its issuance unless, after hearing, the Court extends the order for a time period not to exceed seven days.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 3, § 96, eff. Feb. 17, 2011.

#### HISTORY

**Amendments—2011.** Catchline: Inserted "or treatment" preceding "of minors" and "of delinquent", deleted "a" preceding "secure" and substituted "facilities" for "facility".

Subsections (a), (b): Inserted "or treatment" following "detention" throughout.

#### § 5292. Detention in adult facilities of minors charged or adjudicated as delinquents

(a) A minor charged with a delinquent act shall not be detained under this chapter in a jail or other facility intended or used for the detention of adults unless the child is alleged to have committed a crime

punishable by life imprisonment and it appears to the satisfaction of the Court that public safety and protection reasonably require such detention.

(b) A minor who has been adjudicated as a delinquent child shall not by virtue of such adjudication be committed or transferred to an institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

(c) The official in charge of a jail or other facility intended or used for the detention of adult offenders or persons charged with crime shall inform the Court immediately when a minor who is or appears to be under the age of 18 years is received at the facility other than pursuant to subsection (a) of this section or section 5293 of this title and shall deliver the minor to the Court upon request of the Court or transfer the minor to the detention facility designated by the Court by order.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.

#### § 5293. Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults

##### (a) Pretrial detention.

(1) A minor who is under the age of 18 who has been arrested shall not be placed in a facility for adult offenders unless a felony charge has been filed in the Criminal Division of the Superior Court or the Criminal Division of the Superior Court has exercised jurisdiction over the matter and the state's attorney has determined that a felony charge will be filed without delay. A minor who is eligible for release under 13 V.S.A. chapter 229 shall be released.

(2)(A) A minor who is under the age of 18 who has been arrested for a misdemeanor shall immediately and without first being taken elsewhere:

(i) be released to his or her custodial parent, guardian, or custodian; or

(ii) be delivered to the Criminal Division of the Superior Court.

(B) If the minor is delivered to the Criminal Division of the Superior Court, the arresting officer shall immediately file written notice thereof with the Court together with a statement of the reason for taking the minor into custody. A minor who is eligible for release under chapter 229 of Title 13 shall be released. In the event that the minor is not released:

(i) the minor shall not be detained in a facility for adult offenders; and

(ii) The court shall defer to the Commissioner of Corrections concerning the facility in which the minor shall be detained.

(b) **Sentencing of minor.** If a minor is convicted of an offense in a court of criminal jurisdiction as an

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adult, the court shall sentence the minor as an adult.

(c) **Placement of minors under 16.** The Commissioner of Corrections shall not place a minor under the age of 16 who has been sentenced to a term of imprisonment in a correctional facility used to house adult offenders.

(d) **Placement of minors over 16 convicted of felony.** The Commissioner of Corrections may place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a felony and who has been sentenced to a term of imprisonment.

(e) **Placement of minor over 16 convicted of misdemeanor.** The Commissioner of Corrections shall not place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a misdemeanor.

(f) **Transfer of minor at 18th birthday.** At the 18th birthday of a minor convicted of a misdemeanor, the Commissioner may transfer the minor to a facility for adult offenders.

(g) **Applicability.** The provisions of this section shall apply to the commitment of minors to institutions within or outside the State of Vermont.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Substituted "criminal division of the superior court" for "district court" in subdvs. (a)(1), (a)(2)(A)(ii) and (a)(2)(B).

**CHAPTER 53**

**CHILDREN IN NEED OF CARE OR SUPERVISION**

**SECTION**

- 5301. Taking into custody.
- 5302. Request for emergency care order.
- 5303. Procedure for runaway children.
- 5304. Designated shelters for runaway children.
- 5305. Emergency care order; conditional custody order.
- 5306. Notice of emergency care order and temporary care hearing.
- 5307. Temporary care hearing.
- 5308. Temporary care order.
- 5309. Filing of a petition.
- 5310. Petition, contents.
- 5311. Service of summons and petition; no request for temporary care order.
- 5312. Failure to appear at preliminary hearing.
- 5313. Timelines for pretrial and merits hearing.
- 5314. Filing of initial case plan.
- 5315. Merits adjudication.

**SECTION**

- 5316. Disposition case plan.
- 5317. Disposition hearing.
- 5318. Disposition order.
- 5319. Parent-child contact and contact with siblings and relatives.
- 5320. Postdisposition review hearing.
- 5321. Permanency hearing.
- 5322. Placement of a child in a facility used for treatment of delinquent children.

**HISTORY**

**Effective date; applicability.** 2007, No. 185 (Adj. Sess.), § 14 provides: "This act [which enacted this chapter] shall take effect January 1, 2009 and shall apply to any petition filed after the effective date or any permanency review hearing held after the effective date."

**§ 5301. Taking into custody**

A child may be taken into custody:

(1) Pursuant to an order of the Family Division of the Superior Court under the provisions of this chapter.

(2) By an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal from the child's current home is necessary for the child's protection.

(3) By an officer when the officer has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.

**HISTORY**

**Amendments—2009 (Adj. Sess.).** Substituted "family division of the superior court" for "family court" in subdiv. (1).

**§ 5302. Request for emergency care order**

(a) If an officer takes a child into custody pursuant to subdivision 5301(1) or (2) of this title, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home.

(b) If the officer determines that the child's immediate welfare requires the child's continued absence from the home, the officer shall:

(1) Remove the child from the child's surroundings, contact the Department, and deliver the child to a location designated by the Department. The Department shall have the authority to make reasonable decisions concerning the child's immediate

placement, safety and welfare pending the issuance of an emergency care order.

(2) Prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the state's attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, potential placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer shall contact the Department and the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer if the Department has additional information with respect to the child or the family.

(c) If the child is taken into custody during regular court hours, the state's attorney shall immediately file a request for an emergency care order accompanied by the supporting affidavit or direct the immediate return of the child to the child's custodial parent, guardian, or custodian. If the child is taken into custody after regular court hours or on a weekend or holiday, the state's attorney or officer shall contact a judge to request an emergency care order or return the child to the child's custodial parent, guardian, or custodian. If an order is granted, the state's attorney shall file the supporting affidavit with the Court on the next day that the court is open.

(d) If the judge denies a request for an emergency care order, the state's attorney shall direct the immediate return of the child to the child's custodial parent, guardian, or custodian.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5303. Procedure for runaway children**

(a) If an officer takes a child into custody pursuant to subdivision 5301(3) of this title, the officer shall deliver the child to:

(1) the child's custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) a shelter designated by the Department pursuant to section 5304 of this title as qualified to assist children who have run away for the purpose of reuniting them with their parents, guardian, or legal custodian.

(b) Upon delivery of a child to a shelter, the shelter program director or his or her designee, shall notify the child's parents, guardian, or custodian that the child has been taken into custody and make reasonable efforts to mediate the differences between the parties.

(c) A child may remain at a designated shelter for a period not to exceed seven days.

(d) Upon expiration of the seven-day period or sooner at the request of the child or the custodial parent:

(1) the child shall be released to his or her custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) an officer shall seek an emergency care order pursuant to section 5302 of this title.

(e) Unless otherwise ordered by the Court, the custody status of the child shall remain the same during the period of time the child is at the shelter.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5304. Designated shelters for runaway children**

The Commissioner shall designate shelters throughout the State where a child taken into custody pursuant to subdivision 5301(3) of this title may be housed for a period not to exceed seven days.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5305. Emergency care order; conditional custody order**

(a) **Transfer of temporary custody.** If the Court determines that the child's continued residence in the home is contrary to the child's welfare, the Court may issue an emergency care order transferring temporary custody of the child to the Department pending a temporary care hearing. The determination may be made ex parte, provided that it is reasonably supported by the affidavit prepared in accordance with section 5302 of this title.

(b) **Contents of emergency care order.** The emergency care order shall contain:

(1) a written finding that the child's continued residence in the home is contrary to the child's welfare and the factual allegations that support that finding;

(2) the date, hour, and place of the temporary care hearing to be held pursuant to section 5307 of this title; and

(3) notice of a parent's right to counsel at the temporary care hearing.

(c) **Conditional custody order.** If the Court determines that the child may safely remain in the custody of the custodial parent, guardian, or custodian subject to such conditions and limitations necessary and sufficient to protect the child pending a temporary care hearing, the Court may deny the request for an emergency care order and issue an emergency conditional custody order. An emergency conditional custody order shall contain the date, hour, and place of the temporary care hearing and notice of a parent's right to counsel at the hearing.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5306. Notice of emergency care order and temporary care hearing**

(a) **Notice to custodial parent.** An officer shall deliver a copy of the emergency care order or conditional custody order to the custodial parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify or cause to be notified the custodial parent of the order, the date, the time and place of the temporary care hearing, and the parent's right to counsel. If the custodial parent, guardian, or custodian cannot be located, the officer shall so certify to the Court in an affidavit describing the efforts made to locate such persons.

(b) **Notice to noncustodial parent.** The Department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with the emergency care order or conditional custody order, notice of the date, hour, and place of the temporary care hearing, and right to counsel. If the noncustodial parent cannot be located, the Department shall provide to the Court a summary of the efforts made to locate the parent.

(c) **Failure to locate.** The hearing shall not be delayed by reason of not being able to locate either the custodial or noncustodial parent.

(d) **Notice to other parties.** The Court shall notify the following persons of the date and time of the temporary care hearing:

- (1) The state's attorney.
- (2) A representative of the Department.
- (3) An attorney to represent the child.
- (4) A guardian ad litem for the child.
- (5) An attorney to represent each parent. The attorney may be court-appointed in the event the parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5307. Temporary care hearing**

(a) A temporary care hearing shall be held within 72 hours of the issuance of an emergency care order or conditional custody order under section 5305 of this title. State holidays shall be excluded from the computation of 72 hours. If the custodial parent, guardian, or custodian has not been notified in accordance with section 5306 of this title and does not appear or waive appearance at the temporary care hearing and files thereafter with the Court an affidavit so showing, the Court shall hold another temporary care hearing within one business day of the filing of the affidavit as if no temporary care hearing had theretofore been held.

(b) If the state's attorney is seeking a temporary care order, he or she shall file a petition in accordance with section 5308 of this title prior to the temporary care hearing. If the state's attorney elects not to file a petition, he or she shall so notify the Court, and the Court shall vacate any temporary order and order the return of the child to the custodial parent, guardian, or custodian.

(c) The following persons shall be present at the temporary care hearing:

(1) The child, unless the child is under 10 years of age and the presence of the child is waived by the child's attorney. For good cause shown, the Court may waive the presence of a child who is 10 years of age or older.

(2) The child's custodial parent, guardian, or custodian, unless the custodial parent, guardian, or custodian cannot be located or fails to appear in response to notice.

(3) The child's guardian ad litem.

(4) An attorney for the child.

(5) An attorney for the custodial parent, if requested.

(6) The Department.

(7) The state's attorney.

(d) A noncustodial parent and his or her attorney shall have the right to be present at the hearing; however, the hearing shall not be delayed by reason of the inability of the Department to locate the noncustodial parent.

(e) The Department shall provide the following information to the Court at the hearing:

(1) Any reasons for the child's removal which are not set forth in the affidavit required pursuant to subsection 5302(b) of this title.

(2) Services, if any, provided to the child and the family in an effort to prevent removal.

(3) The need, if any, for continued custody of the child with the Department, pending a hearing to adjudicate the merits of the petition.

(4) Services which could facilitate the return of the child to the custodial parent, guardian, or custodian.

(5)(A) The identity and location of a noncustodial parent, a relative, or person with a significant relationship with the child known to the Department who may be appropriate, capable, willing, and available to assume temporary legal custody of the child. If the noncustodial parent cannot be located, the Department shall provide to the Court a summary of the efforts made to locate the parent.

(B) With respect to any person whom the Department identifies pursuant to this subdivision, the Department shall conduct an assessment of the suitability of the person to care for the child. The assessment shall include consideration of the person's ability to care for the child's needs, a criminal history record as defined in 20 V.S.A.

§ 2056a(a)(1) in accordance with subdivision (5)(C) of this subsection, and a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home. The Court may continue the hearing if necessary to permit the Department to complete the assessment.

(C) The Department shall request from the Vermont Criminal Information Center criminal history record information for any person being considered to assume temporary legal custody of the child pursuant to this subdivision. The request shall be in writing and shall be accompanied by a release signed by the person. The Department through the Vermont Criminal Information Center shall request criminal history record information from the appropriate state criminal repositories in all states in which it has reason to believe the person has resided or been employed. If no disqualifying record is identified at the state level, the department through the Vermont Criminal Information Center shall request from the Federal Bureau of Investigation a national criminal history record check of the person's criminal history. The request to the FBI shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Criminal Information Center. The Vermont Criminal Information Center shall send the Department the criminal history record from any state repository and the FBI of a person about whom a request is made under this subdivision or inform the Department that no record exists. The Department shall promptly provide a copy of the criminal history record, if any, to the person and shall inform the person that he or she has the right to appeal the accuracy and completeness of the record through the Vermont Criminal Information Center. Upon completion of the process under this subdivision, the person's fingerprint card shall be destroyed.

(6) Additional information as required by the Uniform Child Custody Jurisdiction and Enforcement Act pursuant to 15 V.S.A. chapter 20 and the Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq.

(f) All parties shall have the right to present evidence on their own behalf and examine witnesses. Hearsay, to the extent it is deemed relevant and reliable by the Court, shall be admissible. The Court may, in its discretion, limit testimony and evidence to only that which goes to the issues of removal of the child from the home and the child's temporary legal custody.

(g) The temporary care hearing shall also be a preliminary hearing on the petition.

(h) The Department shall provide information to relatives and others with a significant relationship with the child about options to take custody or participate in the care and placement of the child, about the advantages and disadvantages of the

options, and about the range of available services and supports.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2009, No. 97 (Adj. Sess.), § 8; 2011, No. 29, § 4.

#### HISTORY

**References in text.** The Federal Bureau of Investigation, referred to in subdiv. (e)(5)(C), is codified as 28 U.S.C. § 531 et seq.

**Revision note—2008.** In subdiv. (c)(5)(B), substituted "subdivision 2056a(a)(1) of Title 20" for "20 V.S.A. § 2056a(a)(1)" to conform reference to V.S.A. style.

**Amendments—2011.** Subdivision (e)(6): Inserted "and Enforcement" preceding "Act" and substituted "chapter 20 of Title 15" for "15 V.S.A. § 1037".

—2009 (Adj. Sess.). Subsection (h): Added.

#### § 5308. Temporary care order

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

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

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

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

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

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

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

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

(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the Court may issue such temporary orders related to the legal custody of the child as it deems necessary



and sufficient to protect the welfare and safety of the child, including, in order of preference:

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

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

(i) the child's need for a safe, secure, and stable home;

(ii) the child's need for proper and effective care and control; and

(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.

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

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

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

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

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

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

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

(II) the noncustodial parent knowingly or recklessly allows the child to be in the

physical presence of the alleged abuser after receiving such notice.

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

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

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

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

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

(i) Provide a safe, secure, and stable environment.

(ii) Exercise proper and effective care and control of the child.

(iii) Protect the child from the custodial parent to the degree the Court deems such protection necessary.

(iv) Support reunification efforts, if any, with the custodial parent.

(v) Consider providing legal permanence if reunification fails.

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

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

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

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

(1) The order shall include:

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

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

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

(A) Establishing parent-child contact under such terms and conditions as are necessary for the protection of the child.

(B) Requiring the Department to provide the child with services, if legal custody of the child has been transferred to the Commissioner.

(C) Requiring the Department to refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration.

(D) Requiring genetic testing if parentage of the child is at issue.

(E) Requiring the Department to make diligent efforts to locate the noncustodial parent.

(F) Requiring the custodial parent to provide the Department with names of all potential non-custodial parents and relatives of the child.

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

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

(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the Commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the Commissioner.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**ANNOTATIONS**

**1. Efforts to prevent removal.** Mother could not now challenge a termination of parental rights order through a belated claim that the Department for Children and Families (DCF) failed to make reasonable efforts to prevent the child's removal from his home. During the lengthy period when the mother played a limited role in the child's life and agreed to other family members assuming custody of the child, she made no progress in reaching a point

where she could care for the child. In re D.C., 2012 VT 108, — Vt. —, — A.3d —.

Whether the Department for Children and Families made reasonable efforts to prevent a child's removal from his home is a separate question from, and not a prerequisite to, the issue of whether termination of parental rights is warranted under the statutory criteria regarding the best interests of the child. In re D.C., 2012 VT 108, — Vt. —, — A.3d —.

**§ 5309. Filing of a petition**

(a) The state's attorney having jurisdiction shall prepare and file a petition alleging that a child is in need of care or supervision upon the request of the Commissioner or, in the event the child is truant from school, upon the request of the superintendent of the school district in which the child is enrolled or resides. If the state's attorney fails to file a petition within a reasonable amount of time, the Department or the superintendent of the school district may request that the Attorney General file a petition on behalf of the Department.

(b) If the Court has issued an emergency care order placing the child who is the subject of the petition in the temporary legal custody of the Department or has issued a conditional custody order, the state's attorney shall file the petition on or before the date of the temporary care hearing.

(c) A petition may be withdrawn by the state's attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

(d) Upon the request of the Secretary of Human Services, the state's attorney may file a petition pursuant to subsection (a) of this section alleging that a 16- to 17.5-year-old youth who is not in the custody of the State is a child in need of care or supervision under subdivision 5102(2)(B)(ii) of this title when the child meets the criteria set forth in subdivision 5102(2)(B)(ii) of this title. The petition shall be accompanied by a report from the Department which sets forth facts supporting the specific criteria of subdivision 5102(2)(B)(ii) of this title and that it is in the best interests of the child to be considered as a child in need of care or supervision.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5310. Petition, contents**

(a) The petition shall be supported by an affidavit of an officer or the Department.

(b) The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child is a child in need of care or supervision together with a statement that it is in the best interests of the child that the proceedings be brought.

(2) The name, date of birth, telephone number, and residence address, if known, of the child, the custodial and noncustodial parents, the guardian or custodian of the child if other than parent. If a parent is a participant in the Safe At Home Program pursuant to 15 V.S.A. § 1152, the petition shall so specify.

(3) Jurisdictional information required pursuant to the Uniform Child Custody Jurisdiction Act, 15 V.S.A. § 1032 et seq.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5311. Service of summons and petition; no request for temporary care order**

(a) When the state's attorney files a petition but does not request a temporary care order, the Court shall set a date for a preliminary hearing on the petition no later than 15 days from the date the petition is filed and issue a judicial summons addressed to the custodial parent, guardian, custodian, or care provider. A copy of the petition shall be attached to the summons. The Court shall make reasonably diligent efforts to serve a noncustodial parent with a copy of the summons and petition.

(b) The summons shall contain:

(1) The name and address of the person to whom the notice is directed.

(2) The date, time, and place for the preliminary hearing on the petition.

(3) The name of the minor on whose behalf the petition has been brought.

(4) Notice of a parent's right to counsel.

(5) A statement that the parent, guardian or custodian may be liable for the cost of the support of a child if the child is placed in the legal custody of the Department.

(6) An order directing the parent, guardian, custodian, or care provider to appear at the hearing with the child.

(c) The summons and petition may be served by mailing a copy by certified mail return receipt requested to the child and to the child's parent, guardian, custodian, or care provider. Service of the summons and petition may also be made by any sheriff, deputy, or constable. The Court shall provide a copy of the summons to the state's attorney and a copy of the summons and petition to the Department and the attorney for the child.

(d) Notice and a copy of the petition shall be served on all persons required to receive notice as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

(e) A party may waive service of the petition and notice by written stipulation or by voluntary appearance at the hearing.

(f) Once a parent, guardian, or custodian has been served, the Court shall provide notice of hearing either directly or by mail. The parent shall be responsible for providing the court with information regarding any changes in address.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5312. Failure to appear at preliminary hearing**

(a) If a parent, guardian, or custodian has been served by certified mail with the petition and notice of hearing and fails to appear at the preliminary hearing, the Court may order that the parent, guardian, or custodian be served with a judicial summons ordering the person to appear in court with the child at a specified date and time.

(b) If, after being summoned to appear, the parent, guardian, or custodian fails to appear or fails to bring the child to court as ordered, the Court may issue a pick-up order or warrant pursuant to section 5108 of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5313. Timelines for pretrial and merits hearing**

(a) **Pretrial hearing.** At the time of the temporary care hearing or at the preliminary hearing on the petition if there is no request for temporary legal custody, the Court shall set a pretrial hearing on the petition. The hearing shall be held within 15 days of the temporary care hearing or the preliminary hearing. In the event that there is no admission or dismissal at or before the pretrial hearing, the Court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) **Merits hearing.** If the child who is the subject of the petition has been removed from the legal custody of the custodial parent, guardian, or custodian pursuant to a temporary care order, a merits hearing shall be held and merits adjudicated no later than 60 days from the date the temporary care order is issued, except for good cause shown. In all other cases, merits shall be adjudicated in a timely manner in the best interests of the child.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5314. Filing of initial case plan**

(a) If a temporary care order is issued transferring legal custody of the child to the Commissioner, the Department shall prepare and file with the Court an initial case plan for the child and the family within 60 days of removal of a child from home. The Department shall provide a copy of the

case plan to the parties, their attorneys, and the guardian ad litem.

(b) The initial case plan shall not be used or referred to as evidence prior to a finding that a child is in need of care or supervision.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5315. Merits adjudication**

(a) At a hearing on the merits of a petition, the State shall have the burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. In its discretion, the Court may make findings by clear and convincing evidence.

(b) The parties may stipulate to the merits of the petition. Such stipulation shall include a stipulation as to the facts that support a finding that the child is in need of care and supervision.

(c) If the merits are contested, all parties shall have the right to present evidence on their own behalf and to examine witnesses.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence. A finding of fact made after a contested temporary care hearing based on nonhearsay evidence may be adopted by the Court as a finding of fact at a contested merits hearing provided that a witness who testified at the temporary care hearing may be recalled by any party at a contested merits hearing to supplement his or her testimony.

(e) If the merits are contested, the Court after hearing the evidence shall make its findings on the record.

(f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding.

(g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a disposition hearing.

(h) The Court in its discretion and with the agreement of the parties may waive the preparation of a disposition case plan and proceed directly to disposition based on the initial case plan filed with the Court pursuant to section 5314 of this title.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**ANNOTATIONS**

**1. Adjudication supported.** Findings that a child's allegations of abuse by the father were the product of the mother's coaching, that this had caused psychological harm to the child, and that this posed a continuing risk of harm were sufficient to support the

judgment that the child was a child in need of care or supervision. In re M.A., 2012 VT 103, — Vt. —, 60 A.3d 732.

**§ 5316. Disposition case plan**

(a) The Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title no later than 28 days from the date of the finding by the Court that a child is in need of care or supervision.

(b) A disposition case plan shall include, as appropriate:

(1) A permanency goal. The long-term goal for a child found to be in need of care and supervision is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification 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.

(2) An assessment of the child's medical, psychological, social, educational, and vocational needs.

(3) A description of the child's home, school, community, and current living situation.

(4) An assessment of the family's strengths and risk factors, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration.

(5) A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing the change.

(6) A recommendation with respect to legal custody for the child and a recommendation for parent-child contact and sibling contact, if appropriate.

(7) A plan of services that shall describe the responsibilities of the child, the parents, guardian, or custodian, the Department, other family members, and treatment providers, including a description of the services required to achieve the permanency goal. The plan shall also address the minimum frequency of contact between the social worker assigned to the case and the family.

(8) A request for child support.

(9) Notice to the parents that failure to accomplish substantially the objectives stated in the plan within the time frames established may result in termination of parental rights.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5317. Disposition hearing**

(a) **Timeline.** A disposition hearing shall be held no later than 35 days after a finding that a child is in need of care and supervision.

(b) **Hearing procedure.** If disposition is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those making the reports, but sources of confidential information need not be disclosed.

(c) **Standard of proof.** If the Court terminates the parental rights of one or both parents, the standard of proof on the issue of termination shall be clear and convincing evidence. On all other issues, the standard of proof shall be a preponderance of the evidence.

(d) **Termination of parental rights.** If the Commissioner or the attorney for the child seeks an order at disposition terminating the parental rights of one or both parents and transfer of legal custody to the Commissioner without limitation as to adoption, the Court shall consider the best interests of the child in accordance with section 5114 of this title.

(e) **Further hearing.** On its own motion or on the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. The Court shall make an appropriate order for the temporary care of the child pending a final disposition order. The Court shall give scheduling priority to cases in which the child has been removed from home.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**ANNOTATIONS**

**1. Disposition.** In its decision *In re B.C.*, the Vermont Supreme Court noted that a termination petition starts a new proceeding if it is not part of the initial disposition process, but to the extent that that language can be taken as a ruling that disposition generally, and termination of parental rights at disposition specifically, does not start a new proceeding, this interpretation is erroneous. In view of the Court's conclusion that a child in need of care or supervision merits adjudication is a final appealable order, disposition is necessarily a separate proceeding, irrespective of whether termination is sought at that time; it is separately defined by statute and requires separate procedures. *In re C.P.*, 2012 VT 100, — Vt. —, — A.3d —.

**§ 5318. Disposition order**

(a) **Custody.** At disposition, the Court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the Court determines are in the best interest of the child, including:

(1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. The Court shall schedule regular

review hearings to determine whether the conditions continue to be necessary.

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

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

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

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

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

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to periodic review as determined by the Court.

(b) **Case plan.** If the Court orders the transfer of custody pursuant to subdivision (a)(2), (4), or (5) of this section, the Court shall establish a permanency goal for the minor child and adopt a case plan prepared by the Department which is designed to achieve the permanency goal. If the Court determines that the plan proposed by the Department does not adequately support the permanency goal for the child, the Court may reject the plan proposed by the Department and order the Department to prepare and submit a revised plan for court approval.

(c) **Sixteen- to 17.5-year-olds.** In the event that custody of a 16- to 17.5-year-old is transferred to the Department pursuant to a petition filed under subsection 5309(d) of this title services to the child and to his or her family shall be provided through a

coordinated effort by the Agencies of Human Services, and community-based interagency teams.

(d) **Modification.** A disposition order is a final order which may only be modified based on the stipulation of the parties or pursuant to a motion to modify brought under section 5113 of this title.

(e) **Findings.** Whenever the Court orders the transfer of legal custody to a noncustodial parent, a relative, or a person with a significant relationship with the child, such orders shall be supported by findings regarding the suitability of that person to assume legal custody of the child and the safety and appropriateness of the placement.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**ANNOTATIONS**

**1. Termination of Parental Rights.** In terminating a father's parental rights, the trial court had properly found the requisite change of circumstances for modifying its earlier order denying the State's termination petition. The evidence here amply supported the finding that the father's ability to care for the child had stagnated; the fact that the child had been receiving love and stability from his stepmother during the same period did not mean that the father's inaction in obtaining counseling had not negatively affected the child. In re J.G., 2010 VT 61, 188 Vt. 562, 2 A.3d 817 (mem.).

**2. Custody.** Even if it were reasonable to assume that the legislature intended the courts in post-disposition proceedings to utilize the options set forth in the statute governing children-in-need-of-care-and-supervision disposition orders, nothing in the statutory language suggests that the list of custodial options is exclusive. On the contrary, the statute provides that the court shall make such orders relating to legal custody as are in the best interests of the child, "including" the seven enumerated. In re J.G., 2010 VT 61, 188 Vt. 562, 2 A.3d 817 (mem.).

Statute governing children-in-need-of-care-and-supervision disposition orders may address the typical case where a termination of parental rights leaves no custodial option other than the Department for Children and Families, but this is hardly the only possible scenario. As the legislature's intentional use of the term "including" implies, therefore, the more reasoned and likely purpose of the provision allowing an "order terminating all rights and responsibilities of a parent by transferring legal custody and residual parental rights to the commissioner without limitation as to adoption" was to provide one termination option, but not the only one. In re J.G., 2010 VT 61, 188 Vt. 562, 2 A.3d 817 (mem.).

Trial court did not lack authority to terminate a father's parental rights and award custody to a stepmother instead of to the Department for Children and Families. Even if the legislature intended courts in post-disposition proceedings to use the options in the statute governing children-in-need-of-care-and-supervision disposition orders, nothing suggested that the list of custodial options was exclusive. In re J.G., 2010 VT 61, 188 Vt. 562, 2 A.3d 817 (mem.).

**§ 5319. Parent-child contact and contact with siblings and relatives**

(a) The Court shall order parent-child contact unless the Court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires. Except for good cause shown, the order shall be consistent with any existing parent-child contact order.

(b) The Court may determine the reasonable frequency and duration of parent-child contact and may set such conditions for parent-child contact as are in the child's best interests including whether parent-child contact should be unsupervised or supervised. The Court may allocate the costs of supervised visitation.

(c) Parent-child contact may be modified by stipulation or upon motion of a party or upon the Court's own motion pursuant to section 5113 of this title.

(d) The Court may terminate a parent-child contact order in a juvenile proceeding upon a finding that:

(1) a parent has without good cause failed to maintain a regular schedule of contact with the child and that the parent's failure to exercise regular contact has had a detrimental impact on the emotional well-being of the child; or

(2) continued parent-child contact in accordance with the terms of the prior order will have a detrimental impact on the physical or emotional well-being of the child.

(e) Upon motion of the child's attorney, the Court may also order contact between the child and the child's siblings, an adult relative with whom the child has a significant relationship, or an adult friend with whom the child has a significant relationship.

(f) Failure to provide parent-child contact due to the child's illness or other good cause shall not constitute grounds for a contempt or enforcement proceeding against the Department.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5320. Postdisposition review hearing**

If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the Court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, or relative caregiver shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**§ 5321. Permanency hearing**

(a) **Purpose.** Unless otherwise specified therein, an order under the authority of this chapter transferring legal custody or residual parental rights and responsibilities of a child to the Department pursu-

ant to subdivision 5318(a)(4) or (5) of this title shall be for an indeterminate period and shall be subject to periodic review at a permanency hearing. At the permanency hearing, the Court shall determine the permanency goal for the child and an estimated time for achieving that goal. The goal shall specify when:

- (1) legal custody of the child will be transferred to the parent, guardian, or custodian;
- (2) the child will be released for adoption;
- (3) a permanent guardianship will be established for the child;
- (4) a legal guardianship will be established for the child pursuant to an order under 14 V.S.A. chapter 111; or

(5) the child will remain in the same living arrangement or be placed in another planned permanent living arrangement because the Commissioner has demonstrated to the satisfaction of the Court 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.

(b) The Court shall adopt a case plan designed to achieve the permanency goal. At the permanency review, the Court shall review the permanency plan and determine whether the plan advances the permanency goal recommended by the Department. The Court may accept or reject the plan, but may not designate a particular placement for a child in the Department's legal custody.

(c) A permanency review hearing shall be held no less than every 12 months with the first hearing to be held 12 months after the date the legal custody of the child was transferred, subject to the following exceptions:

- (1) If the child was three years of age or younger at the time of the initial transfer of legal custody, the Court may order that permanency review hearings be held as frequently as every three months.
- (2) If the child is between the ages of three and six at the time of the initial transfer of legal custody, the Court may order that permanency review hearings be held as frequently as every six months.

(d) If the Court shortens the time for the permanency review hearing for a younger sibling, that shortened review interval shall be applied to all siblings in the family who are in the legal custody of the Department.

(e)(1) The Department shall file with the Court a notice of permanency review together with a case plan and recommendation for a permanency goal. The Department shall provide notice to the state's attorney having jurisdiction and to all parties to the proceeding in accordance with the rules for family proceedings. The Court shall hold a permanency

review hearing within 30 days of the filing of notice by the Department. Failure to give such notice or to review an order shall not terminate the original order or limit the Court's jurisdiction.

(2) A foster parent, preadoptive parent, or relative caregiver for the child shall be provided notice of and an opportunity to be heard at any permanency hearing held with respect to the child. Nothing in this subsection shall be construed as affording such person party status in the proceeding.

(f) All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value even though not competent at an adjudication hearing.

(g) The permanency hearing may be held by an administrative body appointed or approved by the Court. The administrative body may consist of one but not more than three persons. No person employed by the Department shall be a member of the administrative body. In the event that the administrative body determines that the existing order should be altered, it shall submit its recommendation to the Court for its consideration. In the event that the administrative body determines that the existing order should not be altered, its determination shall be binding unless any party requests review by the court within 10 days of receipt of the determination. A copy of the determination shall be sent to each party and to the Court. The Court, on its own motion or on the request of any party, shall conduct a review de novo within 30 days of receipt of such request.

(h) Upon the filing of a petition for a finding of reasonable efforts and a report or affidavit by the Department for Children and Families with notice to all parties, the Court shall hold a hearing within 30 days of the filing of the petition to determine, by a preponderance of the evidence, whether the Department for Children and Families has made reasonable efforts to finalize the permanency plan for the child that is in effect at the time of the hearing. The hearing may be consolidated with or separate from a permanency hearing. Reasonable efforts to finalize a permanency plan may consist of:

- (1) reasonable efforts to reunify the child and family following the child's removal from the home, where the permanency plan for the child is reunification; or
- (2) reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification.

**Historical Citation.**

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

**ANNOTATIONS**

1. **Generally.** In a termination of parental rights case, the level of assistance provided to parents is relevant in determining

whether a parent is unlikely to be able to resume parental duties within a reasonable period of time. But whether the Department for Children and Families made reasonable efforts to achieve permanency is a separate question from whether termination is in the child's best interests, and the former is not a prerequisite to the latter. In re C.P., 2012 VT 100, — Vt. —, — A.3d —.

### § 5322. Placement of a child in a facility used for treatment of delinquent children

A child found by the Court to be a child in need of care and supervision shall not be placed in or transferred to an institution used solely for the treatment or rehabilitation of delinquent children unless the child has been charged with or adjudicated as having committed a delinquent act.

#### Historical Citation.

Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.

## CHAPTER 55 JUDICIAL PROCEEDINGS

#### SECTION

5501-5562. [Repealed.]

§§ 5501-5562. Repealed. 2007, No. 185 (Adj. Sess.), § 13, eff. Jan. 1, 2009.

#### HISTORY

Former § 5501, relating to purposes, was derived from 1967, No. 304 (Adj. Sess.), § 1 and amended by amended 1997, No. 139 (Adj. Sess.), § 1. For present provisions, see § 5501 of this title.

Former § 5502, relating to definitions and provisions of general application, was derived from 1967, No. 304 (Adj. Sess.), § 2 and amended by 1969, No. 16, § 9; 1969, No. 289 (Adj. Sess.), § 2; 1971, No. 90, § 16; 1973, No. 152 (Adj. Sess.), § 9; No. 246 (Adj. Sess.), §§ 2, 3, 21; 1981, No. 1 (Sp. Sess.), § 1; 1991, No. 125, (Adj. Sess.), § 1; 1993, No. 178 (Adj. Sess.), § 1; No. 234 (Adj. Sess.), § 20; 1995, No. 178 (Adj. Sess.), § 302; 1997, No. 116 (Adj. Sess.), § 2; and 2003, No. 73 (Adj. Sess.), § 2.

Former § 5503, relating to jurisdiction, was derived from 1967, No. 304 (Adj. Sess.), § 3 and amended by 1981, No. 1 (Sp. Sess.), § 2 and 1989, No. 220 (Adj. Sess.), § 27.

Former § 5504, relating to retention of jurisdiction, was derived from 1967, No. 304 (Adj. Sess.), § 4; and amended by 1971, No. 90, § 17; 1981, No. 1 (Sp. Sess.), § 3; 1995, No. 178 (Adj. Sess.), § 303; and 1997, No. 116 (Adj. Sess.), § 3.

Former § 5505, relating to transfer from other courts, was derived from 1967, No. 304 (Adj. Sess.), § 5; and amended by 1981, No. 1 (Sp. Sess.), § 4; 1997, No. 116 (Adj. Sess.), § 4; 1999, No. 137 (Adj. Sess.), § 1; 2001, No. 142 (Adj. Sess.), § 118d; and 2003, No. 145 (Adj. Sess.), § 4.

Former § 5506, relating to transfer from juvenile court, was derived from 1981, No. 1 (Sp. Sess.), § 5 and amended by 1997, No. 116 (Adj. Sess.), § 6.

Former § 5507, relating to transfer to another juvenile court within the state, was derived from 1967, No. 304 (Adj. Sess.), § 6 and amended by 1973, No. 246 (Adj. Sess.), § 4.

Former § 5508, relating to venue, was derived from 1967, No. 304 (Adj. Sess.), § 7 and amended by 1973, No. 246 (Adj. Sess.), § 5.

Former § 5509, relating to powers and duties of officers, was derived from 1967, No. 304 (Adj. Sess.), § 8 and amended by 1973, No. 152 (Adj. Sess.), § 9 and No. 246 (Adj. Sess.), § 6.

Former § 5510, relating to taking into custody, was derived from 1967, No. 304 (Adj. Sess.), § 9 and amended by 2001, No. 41, § 5.

Former § 5511, relating to release, shelter or delivery to court, was derived from 1967, No. 304 (Adj. Sess.), § 10 and amended by 1981, No. 1 (Sp. Sess.), § 6; 1985, No. 141 (Adj. Sess.), § 1 and 2001, No. 41, § 6.

Former § 5512, relating to designated shelter, was derived from 1985, No. 141 (Adj. Sess.), § 2.

Former § 5513, relating to criteria for detaining children; order of detention, was derived from 1967, No. 304 (Adj. Sess.), § 11 and amended by 1973, No. 152 (Adj. Sess.), § 9; No. 246 (Adj. Sess.), § 7 and 2005, No. 21, § 1.

Former § 5514, relating to detention; temporary care pending hearing, was derived from 1967, No. 304 (Adj. Sess.), § 12 and amended by 1973, No. 152 (Adj. Sess.), § 9; 1995, No. 178 (Adj. Sess.), § 8; 1985, No. 141 (Adj. Sess.), § 3; 1987, No. 182 (Adj. Sess.), § 3 and 2005, No. 198 (Adj. Sess.).

Former § 5515, relating to release from temporary care; detention hearing, was derived from 1967, No. 304 (Adj. Sess.), § 13 and amended by 2005, No. 21, § 2 and 2005, No. 198 (Adj. Sess.), §§ 6, 7.

Former § 5516, relating to commencement of proceedings, was derived from 1967, No. 304 (Adj. Sess.), § 14 and amended by 1981, No. 1 (Sp. Sess.), § 7.

Former § 5517, relating to filing of a petition, was derived from 1967, No. 304 (Adj. Sess.), § 15 and amended by 1973, No. 152 (Adj. Sess.), § 9 No. 246 (Adj. Sess.), § 9; 1995, No. 178 (Adj. Sess.), §§ 301, 304 and 2003, No. 122 (Adj. Sess.), § 105a.

Former § 5518, relating to petition, contents, was derived from 1967, No. 304 (Adj. Sess.), § 16 and amended by 2001, No. 142 (Adj. Sess.), § 118e.

Former § 5519, relating to date of hearing on the petition; summons, was derived from 1967, No. 304 (Adj. Sess.), § 17 and amended by 1973, No. 152 (Adj. Sess.), § 9 and No. 246 (Adj. Sess.), § 10.

Former § 5519a, relating to notice of hearing; noncustodial parents, was derived from 2001, No. 142 (Adj. Sess.), § 118f.

Former § 5520, relating to service of summons, was derived from 1967, No. 304 (Adj. Sess.), § 18.

Former § 5521, relating to failure to answer summons; warrants, was derived from 1967, No. 304 (Adj. Sess.), § 19 and amended by 1973, No. 246 (Adj. Sess.), § 11.

Former § 5522, relating to subpoena, was derived from 1967, No. 304 (Adj. Sess.), § 20.

Former § 5523, relating to conduct of hearings, was derived from 1967, No. 304 (Adj. Sess.), § 21 and amended by 1995, No. 147 (Adj. Sess.), § 3 and 2003, No. 73 (Adj. Sess.), § 3.

Former § 5524, relating to juvenile proceedings, was derived from 1967, No. 304 (Adj. Sess.), § 22.

Former § 5525, relating to guardian ad litem, counsel, was derived from 1967, No. 304 (Adj. Sess.), § 23.

Former § 5526, relating to hearing; findings; dismissal, was derived from 1967, No. 304 (Adj. Sess.), § 24 and amended 1973, No. 246 (Adj. Sess.), § 12.

Former § 5527, relating to continuation of hearing; disposition report, was derived from 1967, No. 304 (Adj. Sess.), § 25 and amended by 1969, No. 289 (Adj. Sess.), § 3; 1973, No. 152 (Adj. Sess.), § 9; No. 246 (Adj. Sess.), § 13 and 1995, No. 147 (Adj. Sess.), § 4.

Former § 5528, relating to disposition of child in need of care or supervision, was derived from 1967, No. 304 (Adj. Sess.), § 26 and amended by 1971, No. 246 (Adj. Sess.); 1973, No. 152 (Adj. Sess.), § 9; No. 246 (Adj. Sess.), § 14; 1991, No. 169 (Adj. Sess.), § 2; and 1995, No. 147 (Adj. Sess.), § 5.

Former § 5529, relating to disposition of delinquent child, was derived from 1967, No. 304 (Adj. Sess.), § 27 and amended by 1973, No. 246 (Adj. Sess.), § 15; 1985, No. 10; and 1991, No. 169 (Adj. Sess.), § 3.

Former § 5529a, relating to victim's statement at disposition proceeding; victim notification, was derived from 1995, No. 170 (Adj. Sess.), § 17 and amended by 2003, No. 73 (Adj. Sess.), § 4.

Former § 5529b, relating to disposition of youthful offenders, was derived from 1997, No. 116 (Adj. Sess.), § 5 and amended by 2001, No. 142 (Adj. Sess.), § 118g.



Former § 5529c, relating to modification or revocation of disposition, was derived from 1997, No. 116 (Adj. Sess.), § 5.

Former § 5529d, relating to review prior to the age of 18, was derived from 1997, No. 116 (Adj. Sess.), § 5 and amended by 2001, No. 63, § 280a.

Former § 5529e, relating to termination or continuance of disposition, was derived from 1997, No. 116 (Adj. Sess.), § 5 and amended by 1999, No. 137 (Adj. Sess.), § 2.

Former § 5529f, relating to rights of victims in youthful offender proceedings, was derived from 1997, No. 116 (Adj. Sess.), § 5.

Former § 5529g, relating to rights of victims in delinquency proceedings involving a listed crime, was derived from 2003, No. 73 (Adj. Sess.), § 5.

Former § 5530, relating to disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults, was derived from 1981, No. 1 (Sp. Sess.), § 8 and amended by 1987, No. 182 (Adj. Sess.), § 4; 1991, No. 39; and 2003, No. 145 (Adj. Sess.), § 2.

Former § 5531, relating to permanency hearing, was derived from 1967, No. 304, (Adj. Sess.), § 28 and amended by 1969, No. 289 (Adj. Sess.), § 4; 1973, No. 57; 1981, No. 1 (Sp. Sess.), § 9; 1981, No. 243 (Adj. Sess.), § 1; 1991, No. 169 (Adj. Sess.), § 4; 1995, No. 145 (Adj. Sess.), § 6; 1997, No. 139 (Adj. Sess.), § 2; and 2005, No. 21, § 3.

Former § 5532, relating to modification or vacation of orders, was derived from 1967, No. 304 (Adj. Sess.), § 29 and amended by 1969, No. 289 (Adj. Sess.), § 5; 1973, No. 246 (Adj. Sess.), § 16; 1981, No. 1 (Sp. Sess.), § 10.

Former § 5533, relating to costs and expenses for care of child, was derived from 1967, No. 304 (Adj. Sess.), § 30 and amended by 1973, No. 152 (Adj. Sess.), § 9; No. 246 (Adj. Sess.), § 17; and 1995, No. 63, § 139d.

Former § 5534, relating to protective orders, was derived from 1967, No. 304 (Adj. Sess.), § 31 and amended by 1973, No. 246 (Adj. Sess.), § 18.

Former § 5535, relating to order of adjudication, noncriminal, was derived from 1967, No. 304 (Adj. Sess.), § 32 and amended by 1973, No. 246 (Adj. Sess.), § 19.

Former § 5536, relating to juvenile court records, was derived from 1967, No. 304 (Adj. Sess.), § 33 and amended by 1969, No. 289 (Adj. Sess.), § 6; 1981, No. 1 (Sp. Sess.), § 11; and 1997, No. 153 (Adj. Sess.), § 6.

Former § 5536a, relating to limited exception to confidentiality of records of juveniles maintained by the family court, was derived from 1997, No. 153 (Adj. Sess.), § 7 and amended by 1999, No. 4, § 6.

Former § 5537, relating to fingerprints, photographs, was derived from 1967, No. 304 (Adj. Sess.) § 34 and amended by 1971, No. 90, § 18; 1981, No. 1 (Sp. Sess.), § 12.

Former § 5538, relating to sealing of records, was derived from 1967, No. 304 (Adj. Sess.), § 35 and amended by 1969, No. 16, § 10; 1971, No. 90, § 19; 1973, No. 246 (Adj. Sess.), § 20; 1991, No. 169 (Adj. Sess.), § 1; and 2005, No. 198 (Adj. Sess.), § 2.

Former § 5539, relating to contempt power, was derived from 1967, No. 304 (Adj. Sess.), § 36.

Former § 5540, relating to best interests of the child, was derived from 1975, No. 233 (Adj. Sess.), § 2 and amended by 1981, No. 243 (Adj. Sess.), § 2.

Former § 5541, relating to transportation of a child, was derived from 2005, No. 180 (Adj. Sess.), § 1.

Former § 5550, relating to probation, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5551, relating to powers and responsibilities of the commissioner regarding juvenile probation, was derived from 1993, No. 178 (Adj. Sess.), § 2; and amended by 1997, No. 33, § 2.

Former § 5552, relating to conditions of probation, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5553, relating to juvenile probation certificate, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5554, relating to modification of conditions, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5555, relating to violation of conditions of probation, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5556, relating to summons, apprehension and detention of juvenile probationer, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5557, relating to detention hearing, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5558, relating to notice; violation hearing, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5559, relating to disposition alternatives upon violation of conditions of probation, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5560, relating to final judgment, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5561, relating to discharge from probation, was derived from 1993, No. 178 (Adj. Sess.), § 2.

Former § 5562, relating to juvenile justice unit; juvenile justice director, was derived from 2003, No. 122 (Adj. Sess.), § 105b and amended by 2005, No. 45, § 5; 2005, No. 174 (Adj. Sess.), § 122.

## CHAPTER 57

### INTERSTATE COMPACT ON JUVENILES

#### SUBCHAPTER 1. COMPACT

##### SECTION

5701-5703. [Repealed.]

#### SUBCHAPTER 2. PROVISIONS RELATING TO COMPACT

5711-5715. [Repealed.]

#### HISTORY

**Repeal and recodification of chapter.** Former chapter 57 of this title, consisting of §§ 5701-5715, was repealed and recodified pursuant to 2009, No. 108 (Adj. Sess.), § 12. For present provisions see §§ 5721-5733 of this title.

#### CROSS REFERENCES

Interstate compact on the placement of children, see § 5901 et seq. of this title.

#### ANNOTATIONS

Cited. Cited in In re A.L.H. (1993) 160 Vt. 410, 630 A.2d 1288.

### SUBCHAPTER 1 COMPACT

#### HISTORY

**Recodification.** Former subchapter 1 of this chapter, consisting of §§ 5701-5703, was recodified pursuant to 2009, No. 108 (Adj. Sess.), § 12.

§§ 5701-5703. Repealed. 2009, No. 108 (Adj. Sess.), § 12.

#### HISTORY

Former § 5701, relating to execution of compact, was derived from 1967, No. 285 (Adj. Sess.), § 2.

Former § 5702, relating to execution of additional article, was derived from 1967, No. 285 (Adj. Sess.), § 2A.

Former § 5703, relating to execution of amendment, was derived from 1967, No. 285 (Adj. Sess.), § 2B.

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