

S.9

An act relating to improving Vermont's system for protecting children from abuse and neglect

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

* * * Legislative Findings * * *

Sec. 1. LEGISLATIVE FINDINGS

(a) In 2014, the tragic deaths of two children exposed problems with Vermont's system intended to protect children from abuse and neglect. This act is intended to address these problems and implement the recommendations of the Joint Legislative Committee on Child Protection created by 2014 Acts and Resolves No. 179, Sec. C.109.

(b) To protect Vermont's children better from abuse and neglect, and to address the increasing burden of drug abuse and other factors that are ripping families apart, the General Assembly believes that our State's child protection system must be comprehensive, focused on the safety and best interests of children, and properly funded. This system must ensure that:

(1) the dedicated frontline professionals who struggle to handle the seemingly ever-increasing caseloads have the support, training, and resources necessary to do their job;

(2) the most serious cases of abuse are thoroughly investigated and prosecuted if appropriate;

(3) courts have the information and tools necessary to make the best possible decisions;

(4) all participants in the child protection system, from the frontline caseworker to the judge determining ultimate custody, work together to prioritize the child's safety and best interests;

(5) an effective oversight structure is established; and

(6) children who have suffered abuse and neglect can find safe, nurturing, and permanent homes, whether with their custodial parents, relatives, or other caring families and individuals.

(c) This act is only the beginning of what must be an ongoing process in which the House and Senate Committees on Judiciary, the Senate Committee on Health and Welfare, the House Committee on Human Services, in consultation with the Senate and House Committees on Appropriations, continue to enhance the statewide approach to the prevention of child abuse and neglect.

(d) In 2014, the tragic deaths of two children exposed problems with Vermont's child protection system. The General Assembly believes that this act will begin to address these problems, improve our State's system for protecting our children, and help prevent future tragedies.

* * * Crimes and Criminal Procedure; Cruelty to a Child; Establishing a New
Crime of Failure to Protect a Child; Enhancing Penalties for
Manufacturing Methamphetamine When a Child is Present * * *

Sec. 2. 13 V.S.A. § 1304 is amended to read:

§ 1304. ~~CRUELTY TO CHILDREN UNDER 10 BY ONE OVER 16~~ A
CHILD

A person over ~~the age of~~ 16 years of age, having the custody, ~~charge~~ or care
of a child ~~under 10 years of age~~, who ~~wilfully~~ willfully assaults, ~~ill treats~~,
neglects, or abandons ~~or exposes such~~ the child, or causes ~~or procures such~~ the
child to be assaulted, ~~ill treated~~, neglected, or abandoned ~~or exposed~~, in a
manner to cause ~~such~~ the child unnecessary suffering, or to endanger his or her
health, shall be imprisoned not more than two years or fined not more than
\$500.00, or both.

Sec. 3. 13 V.S.A. § 1304a is added to read:

§ 1304a. FAILURE TO PROTECT A CHILD

(a) A person having the custody or care of a child commits the crime of
failure to protect a child if:

(1) the person knows, or reasonably should have known that the child is
in danger of:

(A) death;

(B) serious bodily injury as defined in section 1021 of this title;

(C) lewd or lascivious conduct with a child in violation of section 2602 of this title;

(D) sexual exploitation of children in violation of chapter 64 of this title; or

(E) sexual assault in violation of chapter 72 of this title; and

(2) the person fails to act to prevent a child from suffering any of the possible outcomes as set forth in subdivision (1) of this subsection; and

(3) the person's failure to act is a proximate cause of the child suffering any of the possible outcomes as set forth in subdivision (1) of this subsection.

(b) It shall be an affirmative defense to this section, if proven by a preponderance of the evidence, that:

(1) the defendant failed to act because of a reasonable fear that he or she or another person would suffer death, bodily injury, or serious bodily injury as defined in section 1021 of this title, or sexual assault in violation of chapter 72 of this title as a result of acting to prevent harm to the child; or

(2) where the child's injury or death resulted from a lack of medical treatment or care, the defendant made a reasonable decision to not seek medical care or to withhold medical treatment.

(c) A person who violates this section shall be imprisoned not more than ten years or fined not more than \$20,000.00, or both.

(d) The provisions of this section shall not limit or restrict prosecutions for any other offense arising out of the same incident or conduct.

Sec. 4. 18 V.S.A. § 4236 is amended to read:

§ 4236. MANUFACTURE OR CULTIVATION

(a)(1) A person knowingly and unlawfully manufacturing or cultivating a regulated drug shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not more than 30 years or fined not more than \$1,500,000.00, or both, if:

(A) the regulated drug is methamphetamine; and

(B) a child is actually present at the site of methamphetamine manufacture or attempted manufacture.

(b) This section shall not apply to the cultivation of marijuana.

Sec. 5. JUDICIAL BRANCH REPORT ON PROSECUTIONS,

CONVICTIONS, AND SENTENCES PURSUANT TO 13 V.S.A.

§ 1304a

The Judicial Branch shall track all prosecutions and convictions pursuant to 13 V.S.A. § 1304a, and, on January 15, 2018, shall report to the House and Senate Committees on Judiciary concerning:

(1) the number of arrests, prosecutions, and convictions pursuant to 13 V.S.A. § 1304a;

(2) the disposition of all cases prosecuted pursuant to 13 V.S.A. § 1304a;

(3) the sentence imposed for all convictions pursuant to 13 V.S.A. § 1304a; and

(4) Any other data or information that the Judicial Branch deems relevant.

* * * Municipal and County Government; Special Investigative
Units; Mission and Jurisdiction * * *

Sec. 6. 24 V.S.A. § 1940 is amended to read:

§ 1940. ~~TASK FORCES; SPECIALIZED~~ SPECIAL INVESTIGATIVE
UNITS; BOARDS; GRANTS

(a) Pursuant to the authority established under section 1938 of this title, and in collaboration with law enforcement agencies, investigative agencies, victims' advocates, and social service providers, the Department of State's Attorneys and Sheriffs shall coordinate efforts to provide access in each region of the ~~state~~ State to special investigative units ~~to investigate sex crimes, child abuse, domestic violence, or crimes against those with physical or developmental disabilities.~~ ~~The General Assembly intends that access to~~

~~special investigative units be available to all Vermonters as soon as reasonably possible, but not later than July 1, 2009~~ which:

(1) shall investigate:

(A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and

(B) potential violations of:

(i) 13 V.S.A. § 2602;

(ii) 13 V.S.A. chapter 60;

(iii) 13 V.S.A. chapter 64; and

(iv) 13 V.S.A. chapter 72; and

(2) may investigate:

(A) an incident in which a child suffers:

(i) bodily injury, by other than accidental means, as defined in 13 V.S.A. § 1021; or

(ii) death; and

(B) potential violations of:

(i) 13 V.S.A. § 2601;

(ii) 13 V.S.A. § 2605;

(iii) 13 V.S.A. § 1304; and

(iv) 13 V.S.A. § 1304a.

(b) A ~~task force or specialized~~ special investigative unit organized and operating under this section may accept, receive, and disburse in furtherance of its duties and functions any funds, grants, and services made available by the State of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civic sources. Any employee covered by an agreement establishing a special investigative unit shall remain an employee of the donor agency.

(c) A ~~Specialized~~ Special Investigative Unit Grants Board is created which shall ~~be comprised of~~ comprise the Attorney General, the Secretary of Administration, the Executive Director of the Department of State's Attorneys and Sheriffs, the Commissioner of Public Safety, the Commissioner for Children and Families, a representative of the Vermont Sheriffs' Association, a representative of the Vermont Association of Chiefs of Police, the Executive Director of the Center for Crime Victim Services, and the Executive Director of the Vermont League of Cities and Towns. ~~Specialized~~ Special investigative units organized and operating under this section ~~for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities~~ may apply to the Board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this

section shall be approved by a majority of the entire Board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the Department of Public Safety, the Department for Children and Families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region. Preference shall also be given to grant applications which promote policies and practices that are consistent across the State, including policies and practices concerning the referral of complaints, the investigation of cases, and the supervision and management of special investigative units. However, a sheriff's department in a county with a population of ~~less~~ fewer than 8,000 residents shall upon application receive a grant of up to \$20,000.00 for 50 percent of the yearly salary and employee benefits costs of a part-time ~~specialized~~ special investigative unit investigator which shall be paid to the department as time is billed on a per hour rate as agreed by contract up to the maximum amount of the grant.

(d) The Board may adopt rules relating to grant eligibility criteria, processes for applications, awards, and reports related to grants authorized pursuant to this section. The Attorney General shall be the adopting authority.

* * * Adoption Act; Postadoption Contact Agreements * * *

Sec. 7. 15A V.S.A. § 1-109 is amended to read:

§ 1-109. TERMINATION OF ORDERS AND AGREEMENTS FOR
VISITATION OR COMMUNICATION UPON ADOPTION

When a decree of adoption becomes final, except as provided in Article 4 of this title and 33 V.S.A. § 5124, any order or agreement for visitation or communication with the minor shall be unenforceable.

Sec. 8. 33 V.S.A. § 5124 is added to read:

§ 5124. POSTADOPTION CONTACT AGREEMENTS

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

(1) the child is in the custody of the Department for Children and Families;

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

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

(b) The Court may approve the postadoption contact agreement if it determines that the child's best interests will be served by postadoption communication or contact with either or both parents. In making a best interests determination, the Court may look to:

(1) the length of time that the child has been under the actual care, custody, and control of a person other than a parent;

(2) the desires of the child, the child's parents; and the child's intended adoptive parents;

(3) the child's relationship with and the interrelationships between the child's parents, the child's intended adoptive parents, the child's siblings, and any other person with a significant relationship with the child;

(4) the willingness of the parents to respect the bond between the child and the child's intended adoptive parents;

(5) the willingness of the intended adoptive parents to respect the bond between the child and the parents;

(6) the adjustment to the child's home, school, and community;

(7) any evidence of abuse or neglect of the child; and

(8) the recommendations of any guardian ad litem involved in the proceeding and the Department.

(c) Before the Court orders postadoption communication or contact, the Court must review all of the following, which will be made a part of the Court record:

(1) a sworn affidavit by the parties to the agreement which affirmatively states that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress and that the parties have not relied on any representations other than those contained in the agreement;

(2) a written acknowledgment by each parent that the termination of parental rights is irrevocable, even if the intended adoption is not finalized, the adoptive parents do not abide by the postadoption contact agreement, or the adoption is later dissolved;

(3) an agreement to the postadoption contact or communication from the child to be adopted, if he or she is 14 years of age or older; and

(4) an agreement to the postadoption contact or communication in writing from the Department, the guardian ad litem, and the attorney for the child.

(d) A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement.

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

(1) the form of communication or contact to take place;

(2) the frequency of the communication or contact;

(3) if visits are agreed to, whether supervision shall be required, and if supervision is required, what type of supervision shall be required;

(4) if written communication or exchange of information is agreed upon, whether that will occur directly or through the Vermont Adoption Registry, set forth in 15A V.S.A. § 6-103;

(5) if the Adoption Registry shall act as an intermediary for written communication, that the signing parties will keep their addresses updated with the Adoption Registry;

(6) that failure to provide contact due to the child's illness or other good cause shall not constitute grounds for an enforcement proceeding;

(7) that the right of the signing parties to change their residence is not impaired by the agreement;

(8) an acknowledgment by the intended adoptive parents that the agreement grants either or both parents the right to seek to enforce the postadoption contact agreement;

(9) an acknowledgment that once the adoption is finalized, the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct;

(10) the finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption contact agreement; and

(11) a disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

(e) A copy of the order approving the postadoption contact agreement and the postadoption contact agreement shall be filed with the Probate Division of the Superior Court with the petition to adopt filed under 15A V.S.A. Article 3, and, if the agreement specifies a role for the Adoption Registry, with the Registry.

(f) The order approving a postadoption contact agreement shall be a separate order from the final order terminating parental rights.

(g) The executed postadoption contact agreement shall become final upon legal finalization of an adoption under 15A V.S.A. Article 3.

Sec. 9. 15A V.S.A. Article 9 is added to read:

ARTICLE 9. ENFORCEMENT, MODIFICATION, AND TERMINATION
OF POSTADOPTION CONTACT AGREEMENTS

§ 9-101. ENFORCEMENT, MODIFICATION, AND TERMINATION OF
POSTADOPTION CONTACT AGREEMENTS

(a) A postadoption contact agreement may be modified or terminated by agreement of the parties. The parties shall file the modified postadoption contact agreement with the Court that finalized the adoption. The Court shall review the modified agreement pursuant to the requirements of 33 V.S.A. § 5124(b), and, if approved, shall issue an order modifying the agreement.

(b) An adoptive parent may petition for review of a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent believes the best interests of the child are being compromised by the terms of the agreement.

(c) A former parent may petition for enforcement of a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent is not in compliance with the terms of the agreement.

(d) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

(e) The Court shall not act on a petition to modify or enforce the agreement unless the petitioner had in good faith participated or attempted to participate in mediation or alternative dispute resolution proceedings to resolve the dispute prior to bringing the petition for enforcement.

(f) Parties to the proceeding shall be the individuals who signed the original agreement created under 33 V.S.A. § 5124. The adopted child, if 14 years of age or older, may also participate. The Department for Children and Families shall not be required to be a party to the proceeding and the Court shall not order further investigation or evaluation by the Department.

(g) The Court may order the communication or contact be terminated or modified if the Court deems such termination or modification to be in the best interests of the child. In making a best interests determination, the Court may consider:

(1) the protection of the physical safety of the adopted child or other members of the adoptive family, or the emotional well-being of the adopted child;

(2) whether enforcement of the agreement undermines the adoptive parent's parental authority; and

(3) whether, due to a change in circumstances, continued compliance with the agreement would be unduly burdensome to one or more of the parties.

(h) A Court-imposed modification of a previously approved agreement may limit, restrict, condition, or decrease contact between the former parents and the child, but in no event shall a Court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parents and the child or place new obligations on the adoptive parents.

(i) No testimony or evidentiary hearing shall be required, although the Court may, in its discretion, hold a hearing. A hearing held to review an agreement for postadoption contact will be confidential. Documentary evidence or offers of proof may serve as the basis for the Court's decision regarding enforcement or modification of an agreement.

(j) In an action to enforce the agreement, the burden of proof shall be on the former parent to show by a preponderance of the evidence that enforcement of the agreement is in the best interests of the child.

(k) In an action to modify or terminate the agreement, the burden of proof shall be on the adoptive parent to show by clear and convincing evidence that the modification or termination of the agreement is in the best interests of the child.

(l) Failure to comply with the agreement or petitioning the Court to enforce, modify, or terminate an agreement shall not form the basis for an award of monetary damages.

(m) An agreement for postadoption contact or communication under 33 V.S.A. § 5124 shall cease to be enforceable on the date the adopted child turns 18 years of age, or upon dissolution of the adoption.

* * * Human Services; Child Welfare Services; Definitions;
Investigations; Referral to Law Enforcement * * *

Sec. 10. 33 V.S.A. § 4912 is amended to read:

§ 4912. DEFINITIONS

As used in this subchapter:

(1) “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 and a child who has died as a result of abuse or neglect.

* * *

(11) “Physical injury” means ~~death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means~~ any impairment of physical condition by other than accidental means.

* * *

(14) “Risk of harm” means a significant danger that a child will suffer ~~serious harm by other than by accidental means, which harm would be likely to cause~~ serious physical injury, neglect, emotional maltreatment, or sexual abuse, including as the result of:

(A) the production or preproduction of methamphetamines when a child is actually present;

(B) leaving a child without developmentally appropriate supervision;

(C) not providing developmentally appropriate supervision or care for a child due to use of illegal substances, or misuse of prescription drugs or alcohol;

(D) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and

(E) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

~~(15)(A) "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 sexual conduct, sexual excitement, or sadomasochistic abuse involving a child~~ means any conduct involving a child that constitutes a potential violation of:

(i) lewdness and prostitution in violation of 13 V.S.A. chapter 59;

(ii) human trafficking in violation of 13 V.S.A. chapter 60;

(iii) obscenity in violation of 13 V.S.A. chapter 63, except for violations of 13 V.S.A. § 2802b;

(iv) sexual exploitation of children in violation of 13 V.S.A. chapter 64; or

(v) sexual assault in violation of 13 V.S.A. chapter 72.

(B) In determining whether to accept a report as a valid allegation of sexual abuse pursuant to section 4915 of this title, or to take any other action, the Department need not establish every element of the crimes listed in subdivision (A), and need only establish that there is a valid allegation that the conduct described in the crimes listed in subdivision (A) is alleged to have occurred and that conduct involved a child.

* * *

(17) “Serious physical injury” means, by other than accidental means:

(A) physical injury which creates any of the following:

(i) a substantial risk of death;

(ii) a substantial loss or impairment of the function of any bodily member or organ;

(iii) a substantial impairment of health; or

(iv) substantial disfigurement; or

(B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

Sec. 11. 33 V.S.A. § 4915b(e) is amended to read:

(e) The Department:

(1) 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~~

(A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and

(B) potential violations of:

(i) 13 V.S.A. § 2602;

(ii) 13 V.S.A. chapter 60;

(iii) 13 V.S.A. chapter 64; and

(iv) 13 V.S.A. chapter 72; and

(3) may report to and request assistance from law enforcement when appropriate, including:

(A) an incident in which a child suffers:

(i) bodily injury, by other than accidental means, as defined in

13 V.S.A. § 1021; or

(ii) death; and

(B) potential violations of:

(i) 13 V.S.A. § 2601;

(ii) 13 V.S.A. § 2605;

(iii) 13 V.S.A. § 1304; and

(iv) 13 V.S.A. § 1304a.

~~(C)~~ situations potentially dangerous to the child or Department
worker.

* * *

* * * Confidentiality * * *

Sec. 12. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL
ACTION

* * *

(b)(1) The Commissioner shall inform the person who made the report
under subsection (a) of this section:

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

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

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

(2) Upon request, the Commissioner shall provide relevant information contained in the case records concerning a person's report to a person who:

(A) made the report under subsection (a) of this section; and

(B) is engaged in an ongoing working relationship with the child or family who is the subject of the report.

(3) Any information disclosed under this subsection (2) shall not be disseminated by the mandated reporter requesting the information. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(4) In providing records under this subsection (2), the Department may withhold information that could compromise the safety of the reporter or the child or family who is the subject of the report.

* * *

Sec. 13. 33 V.S.A. § 4921 is amended to read:

§ 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; and

(3) the parents of a child residing in a home with a person alleged to have abused or neglected a child.

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

(1) the ~~court~~ 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; and

(4) law enforcement officers engaged in a joint investigation with the Department, an ~~assistant attorney general~~ Assistant Attorney General, or a ~~state's attorney~~; 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~~ shall be disclosed to:

(A) ~~service providers working with a person or child who is the subject of the report; and~~ A person, agency, or organization, including a

multidisciplinary team empaneled under section 4917 of this title, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record created under this subchapter, or who is responsible for the child's health or welfare.

(B) Health and mental health care providers working directly with the child or family who is the subject of the report or record.

(C) Educators working directly with the child or family who is the subject of the report or record.

(D) Licensed or approved foster care givers for the child.

(E) Mandated reporters as defined by section 4913 of this subchapter, making a report in accordance with the provisions of section 4914 of this subchapter and engaging in an ongoing working relationship with the child or family who is the subject of the report.

(F) Other State agencies conducting related inquiries or proceedings.

(G) A Family Division of the Superior Court involved in custody proceedings for a child who is the subject of a CHINS proceeding. The Family Division of the Superior Court shall, absent good cause shown by the Court, provide a copy of the record to the parties to the custody proceeding.

(H) A Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall, absent good cause shown by the Court, 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.

(I) ~~other~~ Other governmental entities for purposes of child protection.

(2) Determinations of relevancy shall be made by the Department. In providing records under this subsection (e), the Department may withhold information that could compromise the safety of the reporter or the child or family who is the subject of the report.

(3) In providing information under this section, the Department may also provide other records related to its child protection activities for the child.

(f) Any records or reports disclosed under this section 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 to those persons or agencies authorized to receive information pursuant to this section. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

Sec. 14. 33 V.S.A. § 5110 is amended to read:

§ 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. An individual without party status seeking inclusion in the hearing may petition the Court for admittance by filing a request with the clerk of 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.

* * * Juvenile Proceedings; General Provisions; Children in Need of Care or
Supervision; Request for an Emergency Care Order * * *

Sec. 15. 33 V.S.A. § 5302 is amended to read:

§ 5302. REQUEST FOR EMERGENCY CARE ORDER

(a) If an officer takes a child into custody pursuant to ~~subdivision~~ section 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 officer shall 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~~ The officer or a social worker employed by the Department for Children and Families shall 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 or social worker shall contact the Department and the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer or social worker if the Department has additional information with respect to the child or the family.

* * *

* * * Temporary Care Order; Custody * * *

Sec. 16. 33 V.S.A. § 5308 is amended to read:

§ 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 best interests of the child 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~~ a return home would be contrary to the best interests of the child, 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~~ a conditional custody order returning legal custody of the child to the custodial parent, guardian, or custodian, noncustodial parent, relative, or a person with a significant relationship with the child, 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~~

~~(H) 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.~~

(2) an order transferring temporary legal custody of the child to a noncustodial parent or to a relative;

(3) an order transferring temporary legal custody of the child to a person with a significant relationship with the child; or

(4) an order transferring temporary legal custody of the child to the Commissioner.

~~(c)~~ The Court shall consider orders and findings from other proceedings relating to the custody of the child, the child's siblings, or children of any adult in the same household as the child.

(d) In considering the suitability of a relative under this subdivision (3) an order under subsection (b) of this section, the Court may order the Department to conduct an investigation of a person seeking custody of the child, and the suitability of that person's home, and file a written report of its findings with the Court. The Court may place the child in the temporary custody of the Department Commissioner, 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.~~

~~(e)~~(e) 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 A finding that remaining in the home is contrary to the ~~child's welfare~~ best interests of the child and the facts upon which that finding is based; ~~and~~ and

(B) a 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~~ in the best interests of the child, ~~such as including:~~

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

(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 noncustodial parents and relatives of the child; and

(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.~~

* * * Legislature; Establishing a Joint Legislative Child
Protection Oversight Committee * * *

Sec. 17. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT
COMMITTEE

(a) Creation. There is created a Joint Legislative Child Protection Oversight Committee.

(b) Membership. The Committee shall be composed of the following 8 members, who shall be appointed each biennial session of the General Assembly:

(1) Four current members of the House of Representatives, not all from the same political party, who shall be appointed by the Speaker of the House; and

(2) Four current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

(3) In addition to one member-at-large appointed from each chamber,
one appointment shall be made from the following committees:

- (A) House Committee on Education;
- (B) Senate Committee on Education;
- (C) House Committee on Judiciary;
- (D) Senate Committee on Judiciary;
- (E) House Committee on Human Services; and
- (F) Senate Committee on Health and Welfare.

(c) Powers and duties.

(1) The Committee shall:

(A) Exercise oversight over Vermont's system for protecting children
from abuse and neglect, including:

(i) evaluating whether the branches, departments, agencies, and
persons that are responsible for protecting children from abuse and neglect are
effective;

(ii) determining if there are deficiencies in the system and the
causes of those deficiencies;

(iii) evaluating which programs are the most cost-effective;

(iv) determining whether there is variation in policies, procedures,
practices, and outcomes between different areas of the State and the causes and
results of any such variation; and

(v) evaluating the measures recommended by the Working Group to Recommend Improvements to CHINS Proceedings established in Sec. 23 of this Act to ensure that once a child is returned to his or her family, the court or the Department for Children and Families may continue to monitor the child and family where appropriate.

(B) At least annually, report on the Committee's activities and recommendations to the General Assembly.

(2) The Committee may review and make recommendations to the House and Senate Committees on Appropriations regarding budget proposals and appropriations relating to protecting children from abuse and neglect.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council.

(e) Retaliation. No person who is an employee of the State of Vermont, or of any State, local, county, or municipal department, agency, or person involved in child protection, and who testifies before, supplies information to, or cooperates with the Committee shall be subject to retaliation by his or her employer. Retaliation shall include job termination, demotion in rank, reduction in pay, alteration in duties and responsibilities, transfer, or a negative job performance evaluation based on the person's having testified before, supplied information to, or cooperated with the Committee.

(f) Meetings.

(1) The member appointed from the Senate Committee on Health and Welfare shall call the first meeting of the Committee.

(2) The Committee shall select a Chair, Vice Chair, and Clerk from among its members and may adopt rules of procedure. The Chair shall rotate biennially between the House and the Senate members. A quorum shall consist of six members.

(3) When the General Assembly is in session, the Committee shall meet at the call of the Chair. The Committee may meet six times during adjournment, and may meet more often subject to approval of the Speaker of the House and the President Pro Tempore of the Senate.

(g) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Sunset. On December 30, 2017 this section (creating the Joint Legislative Child Protection Oversight Committee) is repealed and the Committee shall cease to exist.

* * * Department for Children and Families; Policies * * *

Sec. 18. THE DEPARTMENT FOR CHILDREN AND FAMILIES;

POLICIES, PROCEDURES, AND PRACTICES

(a) The Commissioner for Children and Families shall:

(1) ensure that policies, procedures, and practices are consistent, and are applied in a consistent manner, in all Department offices and in all regions of the State;

(2) ensure that policies, procedures, and practices are consistent with statute;

(3) develop metrics as to the appropriate case load for social workers in the Family Services Division that take into account the experience and training of a social worker, the number of families and the total number of children a social worker is responsible for, and the acuity or difficulty of cases;

(4) ensure that all employees assigned to carry out investigations have training or experience in conducting investigations and have a Master's degree in social work or an equivalent degree, or relevant experience;

(5) determine how to improve data sharing between the Department, courts, treatment providers, the Agency of Education, and other branches, departments, agencies, and persons involved in protecting children from abuse and neglect, including:

(A) determine the data that should be shared between parties;

(B) investigate regulatory requirements and security parameters;

(C) investigate the potential costs of creating a platform to share data; and

(D) make recommendations to address these issues and to improve the system for protecting children from abuse and neglect.

(6) develop policies, procedures, and practices to:

(A) ensure the consistent sharing of information, in a manner that complies with statute, with law enforcement, treatment providers, courts, State's Attorneys, guardians ad litem, and other relevant parties;

(B) encourage law enforcement, treatment providers, and all agencies, departments, and other persons that support recovery to provide regular treatment progress updates to the Commissioner;

(C) ensure that courts have all relevant information in a timely fashion, and that Department employees file paperwork and reports in a timely manner;

(D) require increased monitoring of a child's safety if:

(i) other children have been removed from the same home or the parent or guardian's parental rights as to another child have been terminated; or

(ii) the child is returned to a home from which other children have been removed;

(E) require that all persons living in a household, or that will have child care responsibilities, will be assessed for criminal history and potential

safety risks whenever a child who has been removed from a home is returned to that home;

(F) increase the number of required face-to-face meetings between social workers and children;

(G) increase the number of required home visits and require unannounced home visits;

(H) improve information sharing with mandatory reporters who have an ongoing relationship with a child;

(I) ensure that mandatory reporters are informed that any confidential information they may receive cannot be disclosed to a person who is not authorized to receive that information;

(J) ensure all parties authorized to receive confidential information are aware of their right to receive that information; and

(K) apply results-based accountability or other data-based quality measures to determine if children in different areas of the State have different outcomes and the reasons for those differences.

(b) On or before September 1, 2015, the Commissioner shall submit a written report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary on:

(1) The Commissioner's response to the Vermont Citizen's Advisory Board (VCAB) Child Death Review Report dated November 7, 2014, and to the Casey Family Programs report dated December, 2014, including:

(A) the Commissioner's response to every recommendation in the reports and:

(i) if the Commissioner agrees with a recommendation, an explanation of any changes made in response to the recommendation;

(ii) if the Commissioner does not agree with a recommendation, an explanation of why; and

(iii) any suggestions concerning other options to implement a recommendation; and

(B) a description of any changes to the Department's policies, procedures, and practices made in response to the reports, including the language of any new or amended policies and procedures.

(2) The Commissioner's response to the issues in subsection (a) of this section, including the language of any new or amended policies and procedures.

* * * Agency of Human Services; Evidence-Informed Models * * *

Sec. 19. AGENCY OF HUMAN SERVICES; EVIDENCE-INFORMED
MODELS

The Secretary of Human Services shall identify and utilize evidence-informed models of serving families that prioritize safety and prevention through early interventions with high risk families. The Secretary shall make recommendations in the FY2017 budget that reflect the utilization of these models.

* * * Improvements to CHINS Proceedings * * *

Sec. 20. WORKING GROUP TO RECOMMEND IMPROVEMENTS TO
CHINS PROCEEDINGS

(a) Creation. There is created a working group to recommend ways to improve the efficiency, timeliness, and process of Children in Need of Care or Supervision (CHINS) proceedings.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Chief Administrative Judge or designee;

(2) the Defender General or designee;

(3) the Attorney General or designee;

(4) the Commissioner for Children and Families or designee;

(5) the Executive Director of State's Attorneys and Sheriffs or designee; and

(6) a guardian ad litem who shall be appointed jointly by the President Pro Tempore of the Senate and the Speaker of the House.

(c) Powers and duties. The Working Group shall study and make recommendations concerning:

(1) the reasons that statutory time frames are not met and how to ensure that statutory time frames are met in 90 percent of proceedings;

(2) how to ensure that attorneys, judges, and guardians ad litem appear on time and are prepared;

(3) how to monitor and improve the performance and work quality of attorneys, judges, and guardians ad litem;

(4) how to ensure that there is a sufficient number of attorneys available to handle all CHINS cases, in all regions of the State, in a timely manner;

(5) the role of guardians as litem, and how to ensure their information is presented to, and considered by, the court;

(6) how to ensure that once a child is returned to his or her family, the court or the Department for Children and Families, may continue to monitor the child and family where appropriate, and how to expedite a new proceeding that concerns a family with repeated contacts with the child protection system;

(7) whether the adoption of American Bar Association standards for attorneys who work in the area of child abuse and neglect would be appropriate;

(8) how and whether to provide financial assistance to individuals seeking to mediate a dispute over a postadoption contact agreement; and

(9) any other issue the Working Group determines is relevant to improve the efficiency, timeliness, process, and results of CHINS proceedings.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Office of the Attorney General. The Working Group may consult with any persons necessary in fulfilling its powers and duties.

(e) Report. On or before November 1, 2015, the Working Group shall report its findings and recommendations to the Joint Legislative Child Protection Oversight Committee, the House Committees on Human Services and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary.

(f) Meetings and sunset.

(1) The Attorney General or designee shall call the first meeting of the Working Group.

(2) The Working Group shall select a chair from among its members at the first meeting.

(3) The Working Group shall cease to exist on November 2, 2015.

* * * Effective Dates * * *

Sec. 21. EFFECTIVE DATES

This act shall take effect on July 1, 2015, except for this section, Sec. 17
(Joint Legislative Child Protection Oversight Committee) and Sec. 18
(Department for Children and Families; policies, procedures, and practices)
which shall take effect on passage.