

1 S.189

2 Introduced by Senators Flory and Balint

3 Referred to Committee on Health and Welfare

4 Date: January 5, 2016

5 Subject: Human services; foster care; bill of rights; whistleblower protection

6 Statement of purpose of bill as introduced: This bill proposes to establish a  
7 foster parent bill of rights and to create a cause of action for foster parents  
8 engaging in whistleblowing conduct.

9 An act relating to foster parents' rights and protections

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

11 ~~Sec. 1. 33 V.S.A. § 4906 is added to read:~~

12 § 4906. FOSTER PARENT BILL OF RIGHTS

13 A parent licensed by the State to provide care for children in the custody of  
14 the Department for Children and Families shall have the following rights:

15 (1) The right to be treated with dignity, respect, value, and consideration  
16 as a primary provider of foster care and a member of the professional team  
17 caring for foster children. This includes the right to communicate with health  
18 care and education professionals who are providing services to a child in his or  
19 her care.

1 ~~(2) The right to be free from discrimination on the basis of religion,~~

2 race, color, creed, gender, sexual orientation, national origin, age, or physical  
3 impairment.

4 (3) The right to receive timely financial reimbursement according to the  
5 agreement between a foster parent and the Department and to be notified of  
6 any costs or expenses for which the foster parent may be eligible for  
7 reimbursement.

8 (4) The right to have access seven days a week, 24 hours a day, to a staff  
9 person representing the Department.

10 (5) The right to have his or her personal information exempt from public  
11 inspection and copying under the Public Records Act and kept confidential,  
12 including his or her telephone number, address, and e-mail address unless  
13 explicit permission is given to the contrary.

14 (6) The right to receive respite upon request. A foster parent shall  
15 provide reasonable notice of a request for planned respite.

16 (7) The right to be fully informed when a placement is terminated,  
17 including specification of the reason for termination and information about the  
18 appeals process.

19 (8) The right to read his or her foster child's records upon request; to  
20 receive information from the Department regarding the number of times a  
21 foster child has moved and the reasons why, including a foster child's

1 ~~dangerous behaviors, if any; and to receive the names and telephone numbers~~  
2 of a child's previous foster parents if the previous foster parents have  
3 authorized this release.

4 (9) The right, without threat of reprisal, to refuse placement within his  
5 or her home or to request with at least one week's notice to the Department the  
6 planned removal of a child from his or her home for good cause.

7 (10) The right to be included in all aspects of caring for a foster child in  
8 his or her home, including:

9 (A) ongoing case plan development and review;

10 (B) written receipt of two weeks' notice in advance of Department  
11 and court meetings; and

12 (C) written receipt of any changes that affect the legal, educational,  
13 or medical status of a child in his or her home.

14 (11) The right to have his or her schedule and that of a child in his or her  
15 care considered in arranging court-ordered visits with biological family  
16 members. Special consideration shall be given to dates and times, as well as  
17 details pertaining to pick-up and drop-off, snacks and gifts during visits,  
18 flexibility around last minute visitation changes, and expectations around  
19 interactions between biological and foster parents during and after each visit.

20 (12) The right to be notified and considered as:

1 ~~(A) a preferential placement option when a child who was formerly~~  
2 ~~placed with the foster parent has reentered the foster care system; and~~

3 ~~(B) the first-choice permanent placement option for a child who was~~  
4 ~~formerly placed with the foster parent and has been released for adoption.~~

5 ~~(13) The right to be informed in person and in writing of any allegations~~  
6 ~~of maltreatment of a child in the foster parent's home perpetrated by a member~~  
7 ~~of his or her household, including the process for disposition of the allegations~~  
8 ~~and any review process for reports of indicated child abuse and neglect. The~~  
9 ~~processing of allegations shall be conducted in a district other than the foster~~  
10 ~~family's home district to ensure that the foster family's home district continues~~  
11 ~~to support the foster family throughout the process.~~

12 ~~(14) The right to copies of all information pertaining to his or her family~~  
13 ~~and services contained in the personal foster home record.~~

14 ~~(15) The right to appeal without threat of reprisal the closing by the~~  
15 ~~Department of a foster home in accordance with any appeal procedure adopted~~  
16 ~~by the Department and the Vermont Foster and Adoptive Family Association~~  
17 ~~Board.~~

18 ~~(16) The right to request that one or more persons serve as a volunteer~~  
19 ~~advocate and be present at all meetings between the foster parent and the~~  
20 ~~Department, including individualized service planning, administrative~~  
21 ~~hearings, grievance and mediation processes, adoption processes, and~~

1 ~~allegation processes where the foster parent is present. The Department shall~~  
2 permit a volunteer advocate to be educated concerning the procedures relevant  
3 to investigations of alleged abuse and neglect and the rights of an accused  
4 foster parent. All communications received by the volunteer advocate shall be  
5 confidential.

6 Sec. 2. 33 V.S.A. § 4907 is added to read:

7 § 4907. FOSTER CARE; WHISTLEBLOWER PROTECTION

8 (a) As used in this section:

9 (1) "Law" means any law, rule, or regulation duly enacted or adopted by  
10 this State, a political subdivision of this State, or the United States.

11 (2) "Public body" means:

12 (A) the U.S. Congress, any state legislature, or any popularly elected  
13 local government body, or member or employee thereof;

14 (B) any federal, state, or local judiciary, or any member or employee  
15 thereof, or any jury;

16 (C) any federal, state, or local regulatory, administrative, or public  
17 agency or authority, or instrumentality thereof;

18 (D) any federal, state, or local law enforcement agency, prosecutorial  
19 office, or police or peace officer; or

20 (E) any division, board, bureau, office, committee, or commission of  
21 any public body described in this subdivision (2).

1 ~~(3) "Retaliatory action" means discrimination, threat, suspension, or~~  
2 termination of a foster parent's duties, or any other adverse action regarding  
3 the foster parent's responsibilities, rights, compensation, conditions, or  
4 privileges.

5 (b) Neither the Agency of Human Services nor any of its departments,  
6 divisions, employees, agents, or representatives shall take retaliatory action  
7 against a foster parent because the foster parent engages in, or the Agency  
8 believes that the foster parent has engaged in or is about to engage in, any of  
9 the following conduct:

10 (1) discloses or threatens to disclose to a person, public body, or entity  
11 any activity, policy, practice, procedure, action, or failure to act pertaining to  
12 the treatment of a foster child that the foster parent reasonably believes is a  
13 violation of the law or otherwise constitutes unethical treatment of a foster  
14 child;

15 (2) provides information to or testifies before any public body  
16 conducting an investigation, hearing, or inquiry that involves allegations that  
17 the Agency or participant of the foster care system has violated the law or  
18 otherwise caused or enabled unethical treatment of a foster child; or

19 (3) objects to or refuses to participate in any activity, policy, or practice  
20 of the Agency or foster care system that the foster parent believes is a violation  
21 of law or constitutes unethical treatment of a foster child.

1 ~~(e) Subsection (b) of this section shall apply only if a foster parent first~~  
2 ~~reports the alleged violation of law or unethical treatment of a foster child to~~  
3 ~~the Agency, and the Agency or an entity designated by the Agency has had a~~  
4 ~~reasonable opportunity to address the alleged violation or unethical treatment.~~

5 (d)(1) A foster parent aggrieved by a violation of this section may bring an  
6 action in the Superior Court of the county in which the violation is alleged to  
7 have occurred.

8 (2) If the court finds that the Agency or its entities violated subsection  
9 (b) of this section, the court shall order, as appropriate:

10 (A) reinstatement of the same duties and responsibilities that the  
11 foster parent had prior to the retaliatory action;

12 (B) payment of lost compensation;

13 (C) any appropriate injunctive relief;

14 (D) actual, compensatory, and punitive damages;

15 (E) costs and reasonable attorney's fees; or

16 (F) any other appropriate relief.

17 Sec. 3. EFFECTIVE DATE

18 ~~This act shall take effect on July 1, 2016.~~

*Sec. 1. FOSTER PARENT WORKING GROUP; REPORT*

*(a) Creation. There is created a Foster Parent Working Group to recommend legislation, rules, or policies, or any combination thereof, pertaining to rights and protections for foster parents in Vermont.*

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

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

(2) the Deputy Commissioner for Children and Families' Family Services Division;

(3) the System of Care Manager in the Department for Children and Families' Family Services Division or designee;

(4) a representative of the Vermont Foster and Adoptive Family Association;

(5) a representative of Voices for Vermont's Children;

(6) a person previously in foster care in Vermont, appointed by the Governor;

~~(6)~~ (7) the Chief Superior Judge or designee; and

~~(7)~~ (8) two fosters parents from different regions of the State, appointed by the Governor.

(c) Powers and duties. The Working Group shall examine the relationship between foster parents, the Department for Children and Families, and the court system to assess whether any laws, rules, or policies should be amended or implemented to better support the work of foster parents, including the following:

(1) access to the Department for Children and Families on evenings and weekends;

(2) access to the Department for Children and Families' records about a particular foster child or foster family;

(3) scheduling court-ordered visits and appointments with the Department for Children and Families;

(4) fear of reprisal for refusal of a placement or raising concerns about the Department for Children and Families or the foster care system; and

(5) any regional differences identified in the State's foster care system.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department for Children and Families.

(e) Report. On or before January 15, 2017, the Working Group shall submit a written report to the House Committee on Human Services and the Senate Committee on Health and Welfare with its findings and any proposed changes to law, rule, or policy.

(f) Meetings.

(1) The Commissioner shall call the first meeting of the Working Group to occur on or before September 1, 2016.

(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 January 31, 2017.

(g) Reimbursement. Members of the Working Group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to both per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for no more than three meetings.

~~(h) Appropriation. The sum of \$1,080.00 is appropriated to the Department for Children and Families from the General Fund in fiscal year 2017 for per diem compensation and reimbursement of expenses for members of the Working Group.~~

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2016.