

1 H.782

2 Introduced by Representative Burke of Brattleboro

3 Referred to Committee on

4 Date:

5 Subject: Human services; CHINS; termination of parental rights

6 Statement of purpose of bill as introduced: This bill proposes to establish
7 good-cause exemptions to termination of parental rights at permanency
8 hearings.

9 An act relating to permanency hearings

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

11 Sec. 1. 33 V.S.A. § 5321 is amended to read:

12 § 5321. PERMANENCY HEARING

13 (a) Purpose. Unless otherwise specified therein, an order under the
14 authority of this chapter transferring legal custody or residual parental rights
15 and responsibilities of a child to the Department pursuant to subdivision
16 5318(a)(4) or (5) of this title shall be for an indeterminate period and shall be
17 subject to periodic review at a permanency hearing. At the permanency
18 hearing, the Court shall determine the permanency goal for the child and an
19 estimated time for achieving that goal. The goal shall specify when:

1 (1) legal custody of the child will be transferred to the parent, guardian,
2 or custodian;

3 (2) the child will be released for adoption;

4 (3) a permanent guardianship will be established for the child;

5 (4) a legal guardianship will be established for the child pursuant to an
6 order under 14 V.S.A. chapter 111; or

7 (5) the child will remain in the same living arrangement or be placed in
8 another planned permanent living arrangement because the Commissioner has
9 demonstrated to the satisfaction of the Court a compelling reason that it is not
10 in the child's best interests to:

11 (A) return home;

12 (B) have residual parental rights terminated and be released for
13 adoption; or

14 (C) be placed with a fit and willing relative or legal guardian.

15 (b) The Court shall adopt a case plan designed to achieve the permanency
16 goal. At the permanency review, the Court shall review the permanency plan
17 and determine whether the plan advances the permanency goal recommended
18 by the Department. The Court may accept or reject the plan, but may not
19 designate a particular placement for a child in the Department's legal custody.

1 (c) A permanency review hearing shall be held no less than every
2 12 months with the first hearing to be held 12 months after the date the legal
3 custody of the child was transferred, subject to the following exceptions:

4 (1) If the child was three years of age or younger at the time of the
5 initial transfer of legal custody, the Court may order that permanency review
6 hearings be held as frequently as every three months.

7 (2) If the child is between the ages of three and six at the time of the
8 initial transfer of legal custody, the Court may order that permanency review
9 hearings be held as frequently as every six months.

10 (d) If the Court shortens the time for the permanency review hearing for a
11 younger sibling, that shortened review interval shall be applied to all siblings
12 in the family who are in the legal custody of the Department.

13 (e)(1) The Department shall file with the Court a notice of permanency
14 review together with a case plan and recommendation for a permanency goal.
15 The Department shall provide notice to the State's Attorney having jurisdiction
16 and to all parties to the proceeding in accordance with the rules for family
17 proceedings. The Court shall hold a permanency review hearing within 30
18 days of the filing of notice by the Department. Failure to give such notice or to
19 review an order shall not terminate the original order or limit the Court's
20 jurisdiction.

1 (2) A foster parent, preadoptive parent, or relative caregiver for the child
2 shall be provided notice of and an opportunity to be heard at any permanency
3 hearing held with respect to the child. Nothing in this subsection shall be
4 construed as affording such person party status in the proceeding.

5 (f) All evidence helpful in determining the questions presented, including
6 hearsay, may be admitted and relied upon to the extent of its probative value
7 even though not competent at an adjudication hearing.

8 (g) The permanency hearing may be held by an administrative body
9 appointed or approved by the Court. The administrative body may consist of
10 one but not more than three persons. No person employed by the Department
11 shall be a member of the administrative body. In the event that the
12 administrative body determines that the existing order should be altered, it
13 shall submit its recommendation to the Court for its consideration. In the event
14 that the administrative body determines that the existing order should not be
15 altered, its determination shall be binding unless any party requests review by
16 the Court within 10 days of receipt of the determination. A copy of the
17 determination shall be sent to each party and to the Court. The Court, on its
18 own motion or on the request of any party, shall conduct a review de novo
19 within 30 days of receipt of such request.

20 (h) Upon the filing of a petition for a finding of reasonable efforts and a
21 report or affidavit by the Department for Children and Families with notice to

1 all parties, the Court shall hold a hearing within 30 days of the filing of the
2 petition to determine, by a preponderance of the evidence, whether the
3 Department for Children and Families has made reasonable efforts to finalize
4 the permanency plan for the child that is in effect at the time of the hearing.
5 The hearing may be consolidated with or separate from a permanency hearing.

6 Reasonable efforts to finalize a permanency plan may consist of:

7 (1) reasonable efforts to reunify the child and family following the
8 child's removal from the home, where the permanency plan for the child is
9 reunification; or

10 (2) reasonable efforts to arrange and finalize an alternate permanent
11 living arrangement for the child, in cases where the permanency plan for the
12 child does not include reunification.

13 (i) The court shall order the Department to file a petition seeking
14 termination of parental rights if the child has been in out-of-home care for
15 15 of the last 22 months since the date the petition was filed unless the court
16 makes a good-cause exemption as to why the filing of a termination of parental
17 rights petition is not appropriate. Any good-cause finding shall be reviewed at
18 all subsequent hearings pertaining to the child.

19 (1) As used in this subsection, "good-cause exemption" includes the
20 following:

21 (A) the child is being cared for by a relative;

1 (B) the Department has not provided to the child's family such
2 services as the court and the Department have deemed necessary for the child's
3 safe return home;

4 (C) the Department has documented in the case plan a compelling
5 reason for determining that filing a petition to terminate parental rights would
6 not be in the child's best interests;

7 (D) the parent is incarcerated, or the parent's prior incarceration is a
8 significant factor in why the child has been in foster care for 15 of the last
9 22 months, the parent maintains a meaningful role in the child's life, and the
10 Department has not documented another reason why it would be otherwise
11 appropriate to file a petition pursuant to this section;

12 (E) a parent has been accepted into a dependency treatment court
13 program or long-term substance abuse or dual diagnoses treatment program
14 and is demonstrating compliance with treatment goals; or

15 (F) a parent who has been court ordered to complete services
16 necessary for the child's safe return home files a declaration under penalty of
17 perjury stating the parent's financial inability to pay for the same court-ordered
18 services, and also declares the Department was unwilling or unable to pay for
19 the same services necessary for the child's safe return home.

1 (2) The court's assessment of whether a parent who is incarcerated
2 maintains a meaningful role in the child's life may include consideration of the
3 following:

4 (A) the parent's expressions or acts of manifesting concern for the
5 child, such as letters, telephone calls, visits, and other forms of communication
6 with the child;

7 (B) the parent's efforts to communicate and work with the
8 Department or other individuals for the purpose of complying with the service
9 plan and repairing, maintaining, or building the parent-child relationship;

10 (C) a positive response by the parent to the reasonable efforts of the
11 Department;

12 (D) information provided by individuals or agencies in a reasonable
13 position to assist the court in making this assessment, including the parent's
14 attorney, correctional and mental health personnel, or other individuals
15 providing services to the parent;

16 (E) limitations in the parent's access to family support programs,
17 therapeutic services, and visiting opportunities, restrictions to telephone and
18 mail services, inability to participate in foster care planning meetings, and
19 difficulty accessing lawyers and participating meaningfully in court
20 proceedings; and

1 (F) whether the continued involvement of the parent in the child's
2 life is in the child's best interest.

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on July 1, 2016.