

1 TO THE HOUSE OF REPRESENTATIVES:

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

7 Sec. 1. 14 V.S.A. § 2660 is added to read:

8 § 2660. STATEMENT OF LEGISLATIVE INTENT

9 (a) The creation of a permanent guardianship for minors provides the
10 opportunity for a child, whose circumstances make returning to the care of the
11 parents not reasonably possible, to be placed in a stable and nurturing home for
12 the duration of the child’s minority. The creation of a permanent guardianship
13 offers the additional benefit of permitting continued contact between a child
14 and the child’s parents.

15 (b) The Family Division of the Superior Court is not required to address
16 and rule out each of the other potential disposition options once it has
17 concluded that termination of parental rights is in a child’s best interests.

18 Sec. 2. 14 V.S.A. § 2664 is amended to read:

19 § 2664. CREATION OF PERMANENT GUARDIANSHIP

20 (a) The ~~family division of the superior court~~ Family Division of the
21 Superior Court may establish a permanent guardianship at a permanency

1 planning hearing or at any other hearing in which a permanent legal disposition
2 of the child can be made, including a child protection proceeding pursuant to
3 33 V.S.A. § 5318, or a delinquency proceeding pursuant to 33 V.S.A. § 5232.

4 The court shall also issue an order permitting or denying visitation, contact or
5 information with the parent at the same time the order of permanent
6 guardianship is issued. Before issuing an order for permanent guardianship,
7 the court shall find by clear and convincing evidence all of the following:

8 (1) Neither parent is ~~capable or willing to provide adequate care to the~~
9 ~~child, requiring that parental rights and responsibilities be awarded to a~~
10 ~~permanent guardian~~ able to assume or resume parental duties within a
11 reasonable time.

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

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

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

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

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

21 (5)(3) A permanent guardianship is in the best interests of the child.

1 ~~(6)~~(4) The proposed permanent guardian:

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

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

7 (B) has expressly committed to remain the permanent guardian for
8 the duration of the child’s minority; and

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

12 (b) The parent voluntarily may ~~voluntarily~~ consent to the permanent
13 guardianship, and shall demonstrate an understanding of the implications and
14 obligations of the consent.

15 (c) After the ~~family division of the superior court~~ Family Division of the
16 Superior Court issues a final order establishing permanent guardianship, the
17 case shall be transferred to the appropriate ~~probate division of the superior~~
18 ~~court~~ Probate Division of the Superior Court in the district in which the
19 permanent guardian resides. Jurisdiction shall continue to lie in the ~~probate~~
20 ~~division~~ Probate Division. Appeal of any decision by the ~~probate division of~~

1 ~~the superior court~~ Probate Division of the Superior Court shall be de novo to
2 ~~the family division~~ Family Division.

3 (d) The Family Division of the Superior Court may name a successor
4 permanent guardian in the initial permanent guardianship order. In the event
5 that the permanent guardian dies or the guardianship is terminated by the
6 Probate Division of the Superior Court, if a successor guardian is named in the
7 initial order, custody of the child transfers to the successor guardian pursuant
8 to subsection 2666(b) of this title.

9 Sec. 3. 14 V.S.A. § 2665 is amended to read:

10 § 2665. REPORTS

11 The permanent guardian shall file a written report on the status of the child
12 to the ~~probate division of the superior court~~ Probate Division of the Superior
13 Court annually pursuant to subdivision 2629(b)(6) of this title and at any other
14 time the court may order. ~~The report shall include the following:~~

15 ~~(1) The location of the child.~~

16 ~~(2) The child's health and educational status.~~

17 ~~(3) A financial accounting of the income, expenditures and assets of the~~
18 ~~child if the permanent guardian is receiving any state or federal government~~
19 ~~benefits for the child.~~

20 ~~(4) Any other information regarding the child that the probate division~~
21 ~~of the superior court may require.~~

1 Sec. 4. 14 V.S.A. § 2666(b) is amended to read:

2 (b) Where the permanent guardianship is terminated by the ~~probate division~~
3 ~~of the superior court~~ Probate Division of the Superior Court order or the death
4 of the permanent guardian, the custody and guardianship of the child shall not
5 revert to the parent, but to the ~~commissioner for children and families~~
6 Commissioner for Children and Families as if the child had been abandoned.
7 If a successor permanent guardian has been named in the initial permanent
8 guardianship order, custody shall transfer to the successor guardian, without
9 reverting first to the Commissioner. The Probate Division of the Superior
10 Court shall notify the Department when custody transfers to the Commissioner
11 or the successor guardian.

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

13 § 5124. POSTADOPTION CONTACT AGREEMENTS

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

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

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

1 (B) a nonparent pursuant to subdivision 5318(a)(2) or (a)(7), or
2 subdivision 5232(b)(2) or (b)(3) of this title;

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

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

7 * * *

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

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

12 * * *

13 (9) an acknowledgment that ~~once the adoption is finalized, the court~~
14 ~~shall presume that the adoptive parent’s judgment concerning the best interests~~
15 ~~of the child is correct~~ the adoptive parent’s judgment regarding the child is in
16 the child’s best interests;

17 * * *

18 Sec. 6. 33 V.S.A. § 5318 is amended to read:

19 § 5318. DISPOSITION ORDER

20 (a) Custody. At disposition, the Court shall make such orders related to
21 legal custody for a child who has been found to be in need of care and

1 supervision as the Court determines are in the best interest of the child,
2 including:

3 (1) An order continuing or returning legal custody to the custodial
4 parent, guardian, or custodian. ~~Following disposition, the Court may issue a~~
5 ~~conditional custody order for a fixed period of time not to exceed two years.~~
6 ~~The Court shall schedule regular review hearings to determine whether the~~
7 ~~conditions continue to be necessary~~ The order may be subject to conditions
8 and limitations.

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

17 (3) An order transferring legal custody to a noncustodial parent and
18 closing the juvenile proceeding. The order may provide for parent-child
19 contact with the other parent. Any orders transferring legal custody to a
20 noncustodial parent issued under this section shall not be confidential and shall
21 be made a part of the record in any existing parentage or divorce proceeding

1 involving the child. On the motion of a party or on the Court's own motion,
2 the Court may order that a sealed copy of the disposition case plan be made
3 part of the record in a divorce or parentage proceeding involving the child.

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

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

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

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

14 * * *

15 (f) Conditions. Conditions shall include protective supervision with the
16 Department if such a condition is not in place under the terms of an existing
17 temporary care or conditional custody order. Protective supervision shall
18 remain in effect for the duration of the order to allow the Department to take
19 reasonable steps to monitor compliance with the terms of the conditional
20 custody order.

1 Sec. 7. 33 V.S.A. § 5320 is amended to read:

2 § 5320. POSTDISPOSITION REVIEW HEARING

3 ~~If the permanency goal of the disposition case plan is reunification with a~~
4 ~~parent, guardian, or custodian, the~~ The Court shall hold a review hearing
5 within 60 days of the date of the disposition order for the purpose of
6 monitoring progress under the disposition case plan and reviewing parent-child
7 contact. Notice of the review shall be provided to all parties. A foster parent,
8 preadoptive parent, ~~or~~ relative caregiver, or any custodian of the child shall be
9 provided with notice of any post disposition review hearings and an
10 opportunity to be heard at the hearings. Nothing in this section shall be
11 construed as affording such person party status in the proceeding. This section
12 shall not apply to cases where full custody has been returned to one or both
13 parents unconditionally at disposition, or cases where the court has created a
14 permanent guardianship at disposition. The Department shall, and any other
15 party or caregiver may prepare a written report to the Court regarding progress
16 under the plan of services specified in the disposition case plan.

17 **Sec. 8. 33 V.S.A. § 5232 is amended to read:**

18 § 5232. DISPOSITION ORDER

19 * * *

20 (b) In carrying out the purposes outlined in subsection (a) of this section,
21 the Court may:

1 (1) Place the child on probation subject to the supervision of the
2 Commissioner, upon such conditions as the Court may prescribe. The length
3 of probation shall be as prescribed by the Court or until further order of the
4 Court.

5 (2) Order custody of the child be given to the custodial parent, guardian,
6 or custodian. For a fixed period of time following disposition, the Court may
7 order that custody be subject to such conditions and limitations as the Court
8 may deem necessary and sufficient to provide for the safety of the child and
9 the community. Conditions may include protective supervision for up to ~~one~~
10 ~~year~~ six months following the disposition order unless further extended by
11 court order. The Court shall ~~schedule regular~~ hold review hearings pursuant to
12 section 5320 of this title to determine whether the conditions continue to be
13 necessary.

14 (3) Transfer custody of the child to a noncustodial parent, relative, or
15 person with a significant connection to the child. The Court may order that
16 custody be subject to such conditions and limitations as the Court may deem
17 necessary and sufficient to provide for the safety of the child and community,
18 including protective supervision, for up to six months unless further extended
19 by court order. The Court shall hold review hearings pursuant to section 5320
20 of this title to determine whether the conditions continue to be necessary.

21 (4) Transfer custody of the child to the Commissioner.

1 (5) Terminate parental rights and transfer custody and guardianship to
2 the Department without limitation as to adoption.

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

5 (7) Refer a child directly to a youth-appropriate community-based
6 provider that has been approved by the Department, which may include a
7 community justice center or a balanced and restorative justice program.
8 Referral to a community-based provider pursuant to this subdivision shall not
9 require the Court to place the child on probation. If the community-based
10 provider does not accept the case or if the child fails to complete the program
11 in a manner deemed satisfactory and timely by the provider, the child shall
12 return to the Court for disposition.

13 * * *

14 Sec. 9. 33 V.S.A. § 5258 is amended to read:

15 § 5258. POSTDISPOSITION REVIEW AND PERMANENCY REVIEW
16 FOR DELINQUENTS IN CUSTODY

17 Whenever custody of a delinquent child is transferred to the Commissioner
18 or the Court orders conditional custody of a child, the custody order of the
19 Court shall be subject to a postdisposition review hearing pursuant to section
20 5320 of this title and permanency reviews pursuant to section 5321 of this title.
21 At the permanency review, the Court shall review the permanency plan and

1 determine whether the plan advances the permanency goal recommended by
2 the Department. The Court may accept or reject the plan, but may not
3 designate a particular placement for a child in the Department's legal custody.

4 Any conditional custody order shall be subject to review pursuant to section
5 5258a of this title.

6 Sec. 10. 33 V.S.A. § 5258a is added to read:

7 § 5258a. DURATION OF CONDITIONAL CUSTODY ORDERS

8 POSTDISPOSITION

9 (a) Conditional custody orders to parents. Whenever the court issues a
10 conditional custody order transferring custody to a parent either at or following
11 disposition, the presumptive duration of the order shall be no more than six
12 months from the date of the disposition order or the conditional custody order,
13 whichever occurs later, unless otherwise extended by the court after hearing.
14 At least 14 days prior to the termination of the order, any party may file a
15 request to extend the order pursuant to subsection 5113(b) of this title. Upon
16 such motion, the Court may extend the order for an additional period of time
17 not to exceed six months. Prior to vacating the conditional custody order, the
18 court may schedule a hearing on its own motion to review the case prior to
19 discharging the conditions. If a motion to extend is not filed, the court shall
20 issue an order vacating the conditions and transferring full custody to the
21 parent without conditions.

1 (b) Custody orders to nonparents.

2 (1) When the court at disposition issues an order continuing or
3 transferring legal custody with a nonparent pursuant to subdivision 5232(b)(3)
4 of this title, the court shall set the matter for a hearing six months from the date
5 of disposition or custody order whichever occurs later. At the hearing, the
6 court shall determine whether it is in the best interests of the child to:

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

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

10 (C) terminate residual parental rights and release the child for
11 adoption.

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

17 Sec. 11. 33 V.S.A. § 5320a is added to read:

18 § 5320a. DURATION OF CONDITIONAL CUSTODY ORDERS

19 POSTDISPOSITION

20 (a) Conditional custody orders to parents. Whenever the Court issues a
21 conditional custody order transferring custody to a parent either at or following

1 disposition, the presumptive duration of the order shall be no more than six
2 months from the date of the disposition order or the conditional custody order,
3 whichever occurs later, unless otherwise extended by the court after hearing.
4 At least 14 days prior to the termination of the order, any party may file a
5 request to extend the order pursuant to subsection 5113(b) of this title. Upon
6 such motion, the Court may extend the order for an additional period of time
7 not to exceed six months. Prior to vacating the conditional custody order, the
8 Court may schedule a hearing on its own motion to review the case prior to
9 discharging the conditions. If a motion to extend is not filed, the court shall
10 issue an order vacating the conditions and transferring full custody to the
11 parent without conditions.

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

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

19 (B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664

20 with the nonparent who has had custody of the child as the guardian; or

1 (C) terminate residual parental rights and release the child for
2 adoption.

3 (2) If, after hearing, the court determines that reasonable progress has
4 been made toward reunification and that reunification is in the best interests of
5 the child but will require additional time, the court may extend the current
6 order for a period not to exceed six months and set the matter for further
7 hearing.

8 Sec. 12. 33 V.S.A. § 5125 is added to read:

9 § 5125. REINSTATEMENT OF PARENTAL RIGHTS

10 (a) Petition for reinstatement.

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

14 (A) the child's adoption has been dissolved; or

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

17 (2) The child, if 14 years of age or older, may also file a petition to
18 reinstate parental rights if the adoption has been dissolved, or if parental rights
19 have been terminated and the child has not been adopted after three years from
20 the date of the court order terminating parental rights. This section shall not

1 apply to children who have been placed under permanent guardianship
2 pursuant to 14 V.S.A. § 2664.

3 (b) Permanency plan. The Department shall file an updated permanency
4 plan with the petition for reinstatement. The updated plan shall address the
5 material change in circumstances since the termination of parental rights, the
6 Department's efforts to achieve permanency, the reasons for the parent's desire
7 to have rights reinstated, any statements by the child expressing the child's
8 opinions about reinstatement, and the parent's present ability and willingness
9 to resume or assume parental duties.

10 (c) Hearing.

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

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

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

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

20 (D) the child has not been adopted, or the adoption has been
21 dissolved;

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

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

3 (2) Upon a finding by clear and convincing evidence that all conditions
4 set forth in subdivision (1) of this subsection exist and that reinstatement of
5 parental rights is in the child’s best interest, the court shall issue a conditional
6 custody order for up to six months transferring temporary legal custody of the
7 child to the parent, subject to conditions as the court may deem necessary and
8 sufficient to ensure the child’s safety and well-being. The court may order the
9 Department to provide transition services to the family as appropriate. If
10 during this time period the child is removed from the parent’s temporary
11 conditional custody due to allegations of abuse or neglect, the court shall
12 dismiss the petition for reinstatement of parental rights if the court finds the
13 allegations have been proven by a preponderance of the evidence.

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

19 (e) Effect of reinstatement. Reinstatement of parental rights does not
20 vacate or otherwise affect the validity of the original order terminating parental
21 rights. Reinstatement restores a parent’s legal rights to his or her child,

1 including all rights, powers, privileges, immunities, duties, and obligations that
2 were terminated by the court in the termination of parental rights order. Such
3 reinstatement shall be a recognition that the parent’s and child’s situations have
4 changed since the time of the termination of parental rights, and reunification
5 is appropriate. An order reinstating the legal parent and child relationship as to
6 one parent of the child has no effect on the legal rights of any other parent
7 whose rights to the child have been terminated by the court; or the legal sibling
8 relationship between the child and any other children of the parent. A parent
9 whose rights are reinstated pursuant to this section is not liable for child
10 support owed to the Department during the period from termination of parental
11 rights to reinstatement.

12 Sec. 13. JUDICIARY COMMISSION ON CHILD ABUSE AND NEGLECT

13 (a) The General Assembly recognizes that the increasing burden of
14 substance abuse in Vermont has deteriorated families, resulting in a
15 tremendous increase in children in need of supervision (CHINS) and
16 termination of parental rights (TPR) filings in courts throughout the State. The
17 General Assembly also recognizes that the allocation of resources in judicial
18 proceedings devoted to CHINS and TPR cases, including attorney time,
19 Department for Children and Families staff time, judge time, court staff time,
20 and operating expenses are controlled to a great degree by statute and do not
21 always allow flexibility to meet Vermont’s constitutional responsibilities to

1 children and families in an efficient and effective manner. The General
2 Assembly also recognizes that technology and other resources provide
3 opportunities to increase efficiency in processing cases, while improving
4 timely access to judicial proceedings for families and children in need. The
5 General Assembly also recognizes that an effort to evaluate reform measures
6 with input from all interested parties involved in the processing of these cases
7 will improve access to justice.

8 (b) In order to develop specific proposals for consideration by the General
9 Assembly, the General Assembly requests the Supreme Court, subject to the
10 availability of funding to provide dedicated staff and research support, to
11 appoint and convene a Commission on Judicial Operations in CHINS and TPR
12 cases to consist of members representing Judicial, Legislative, and Executive
13 Branches of government and persons representing the citizens of Vermont in a
14 number to be determined by the Court. The Chief Justice shall appoint the
15 Chair of the Commission, who shall be independent of the Vermont Judicial
16 System. The Commission shall expire on June 30, 2017. The Commission
17 shall from time to time make recommendations by report to the Senate and
18 House Committees on Judiciary and on Appropriations, the House Committee
19 on Human Services, and the Senate Committee on Health and Welfare. On or
20 before January 15, 2017, the Commission shall submit an interim report to
21 those committees with specific proposals regarding subdivisions (1)–(6) of this

1 subsection with accompanying draft legislation to implement those proposals
2 and a final report on or before May 1, 2017, which shall address all the
3 following areas:

4 (1) achieving adequate dedicated court staff, attorney, Department,
5 guardian ad litem, and judge resources;

6 (2) business reprocessing of child protection and parental rights
7 procedures, laws and rules to minimize extra operational steps involved in
8 processing CHINS and TPR cases;

9 (3) the use of technology such as video to increase litigant access and
10 reduce unnecessary expense to litigants, including transportation, lost work
11 time, lost school time, and any other measure suitable in the judgment of the
12 Commission, while improving access and maintaining quality adjudication;

13 (4) alternative hearing space recommendations, including Saturday and
14 weekday evening hearings and mobile courtrooms;

15 (5) flexibility in the use of resources to respond to the elastic,
16 changeable demands for judicial and legal services in CHINS cases; and

17 (6) any other ideas for the efficient and effective delivery of judicial
18 services in CHINS cases.

1 Sec. 14. EFFECTIVE DATES

2 This act shall take effect on September 1, 2016, except for this section
3 and Sec. 5 (postadoption contact agreements), which shall take effect on
4 July 1, 2016.

5

6

7 (Committee vote: _____)

8

9

Representative _____

10

FOR THE COMMITTEE