



Vermont Parent Representation Center, Inc.

January 23, 2015

MISSION:

To ensure through advocacy and support that children who can live safely with their parents are afforded a real opportunity to do so.

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Representative Ann Pugh
Representative Maxine Jo Grad

The State House
Montpelier, VT

By e-mail

Dear Senator Dick Sears, Claire Ayre, and Representatives Ann Pugh and Maxine Jo Grad,

The Vermont Parent Representation Center, Inc. (VPRC) is writing to express our concerns with S.9 as introduced. We respectfully offer our suggestions for strengthening Vermont's child protection laws. We would like to be heard on these issues and request to be placed on your witness list.

Sec. 11: TEMPORARY CARE ORDER

Title 33, Chapter 53, Children in Need of Care and Supervision, (CHINS) was very carefully crafted with each section connected to each other. Changing one, the Temporary Care Order, is likely to leave gaps in the law.

What are the system problems that we are trying to address?

From our experience with CHINS proceedings, and our review of the data, Vermont is not reticent to remove children from their parents when there is an identified safety concern. The rate of removing children from their parents' care has only increased since the tragic deaths of two children in 2014. In response to these tragedies, the Department for Children and Families has begun filing for custody of children at a much higher rate than previous years. The entry rate in Vermont compared to the rest of New England was high even before Vermont's entry rate substantially increased in the last 6 months. The increase in the rates went from 4.6 to 6.5 per 1,000 children. ¹

The data shows that Vermont has one of the highest rates of removal in New England AND that reunification is occurring at similar rates of other New

¹ See Chart 1.

England states.² The rate of reunification in Vermont has not increased in the last five years. Our two horrific child deaths occurred in part because the children were reunified without the court, DCF or the other parties having accurate information. That could be remedied, not by changing how kids come into custody but how kids leave custody. Vermont not only removes children at a high rate, but we terminate parental rights of young children at a higher rate than all the other New England states and most of the nation.³ Despite the fact that Vermont is rated as one of the highest child well-being states by Annie E. Casey Foundation's Kids Count, as is New Hampshire, we remove children and terminate parental rights at a much higher rate than New Hampshire.⁴

We must scrutinize, not what happens at Temporary Care hearings, but how our system is working to ensure safe reunifications. Too many of our children of poor and struggling families are removed from their parents and adopted. Vermont must find ways to support families through subsidized housing and more accessible substance abuse treatment, rather than removing children. Only when those efforts show not to work should we remove children permanently from their families.

More than anything our families need a robust system of supports that will enable them to weather difficult times and provide adequate care for their children. Vermont families, especially families in poverty, face enormous challenges. Untreated substance abuse, homelessness, lack of affordable housing and high quality day care, lack of job training and economic opportunity, and mental health challenges leave many children "on the margin of care." The vast majority of these children are not at risk of physical abuse but live in challenged families where the risk is neglect. Research from the Massachusetts Institute of Technology (MIT) provides powerful evidence that neglected children "on the margin of care" have better long-term outcomes if they are left in their families rather than removed.⁵ Vermont needs to direct significant resources towards supporting families prior to removal and provide remedial services if removal is necessary for the safety of the child. Vermont's child welfare history, and that of the Nation, show that we cannot adequately support the children we remove, and removing more will only exacerbate the problem.

Proposed solution to address unsafe reunifications

To address what has been identified with the "back end" of our child protection system, we propose three legislative fixes to address significant child safety concerns that exist in our current system. **First**, require court approval prior to returning a child to the custodial parent. The laws of most other states require this. The parties must submit a report to the court detailing the efforts they have made to correct the conditions which led to removal. **Second**, is to require court and DCF oversight of a family for a period of no less than six months when a child is returned to the custodial parent post disposition. **Third**, when a child is returning to the custody of a parent post disposition, require that DCF identify and perform background checks on all adults living in the home. Further, require that DCF identify any adults who may act as a caregiver to the child and assess them for services needed to ensure the safety of the child. This third proposal is included in

² See Chart 2.

³ See Chart 3 and 4

⁴ See Chart 5

⁵ Doyle, Joseph J. Jr "Child Protection and Child Outcomes: Measuring the Effects of Foster Care." *American Economic Review*, 97(5): 1583-1610 (2007).

S.9, but only as a policy to be developed by DCF. *See Appendix 1. attached hereto for the full text of the proposed legislation.*

Proposals Regarding the Temporary Care Order

Only last year the Vermont Legislature, in Act No.170 relating to guardianship of minors, Section 2621, identified the following purpose and policy: “(1) It is presumed that the interests of minor children are best promoted in the child’s own home. . . .” Vermont has also long recognized that a parent’s right to care for his/her children is a fundamental liberty interest protected by both the United States and the Vermont Constitutions.⁶ The current language of 33 V.S.A. §5308, Sec. 11, was carefully crafted by a high level work group after years of consideration and study. It adequately prioritizes the safety of children and protects the constitutional liberty interests of parents to care for their children. Removing a child based solely on a judicial determination of the best interests of the child—without first requiring the state to demonstrate that the parent is unfit and the child is substantially at risk—denies the natural parent or caregiver due process of law. Proving a parent to be “unsuitable” requires showing that “the child has been abandoned or abused by the parent, or that the child is without proper parental care or subsistence, education, medical, or other care necessary for his well-being.” Rutherford v. Best, 139 Vt. 56, 61, 421 A.2d 1303, 1306 (1980). This standard is the same for CHINS proceedings when the state is the third party.

The Temporary Care Hearing is the first substantial hearing after a child has been removed where the parties can provide evidence. The current language preserves the constitutional presumption by requiring that the child be returned home unless it is contrary to the child’s welfare including substantial danger or safety of the child. Changing the language to “contrary to the child’s best interests,” without either defining best interests or determining that the child’s safety is at risk would violate the constitutional requirements for removal.

If “best interests” of the child prevails, it must be defined. One of the difficulties with a “best interests” standard is there is no consensus on what that standard means. A nationwide review of the use of “best interests” found no standard definition across all states,⁷ but some frequent guiding principles in determinations are:

- The importance of family and integrity and preference for avoiding removal. RI, NH NY and Maine include this principle along with 24 others.
- The health, safety, and/or protection of child can be found in 19 states including NH and MA.
- The importance of timely permanency decisions is considered by Maine and VT and 17 others.

⁶ See Boisvert v. Harrington, 173 Vt. 285, 796 A.2d 1102 (2002), see Troxel v. Granville, 530 U.S. 57, 65 (2000) (“The liberty interest . . . of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court.”); see also Santosky v. Kramer, 455 U.S. 745, 753 (1982)

⁷ See https://www.childwelfare.gov/pubPDFs/best_interest.pdf for data source.

33 V.S.A. §5114 lists the best interests of child criteria, but current law limits its use to the permanency review under 33 V.S.A. §5321 and thus would be inappropriate for the Temporary Care Hearing.

If best interests of the child standards will be used, VPRC would propose the following language for 33 V.S.A. §5308 (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.*

Parental rights are fundamental and protected by due process, therefore, in order to make a determination of the best interests of a child, the Court shall make findings that: 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.

Finally, the new Temporary Care Order language in S.9 removes (b)(1) of §5308 which gives the court the power to issue a conditional custody order, returning legal custody of the child to the custodial parent, guardian, or custodian, subject to such conditions and limitation as the court may deem necessary and sufficient to protect the child. This is a child safety tool which is used successfully in hundreds of cases in order to prevent the trauma of removal while creating conditions that address the safety concerns and enable the child to remain in parental or relative care. We now have hundreds of children in conditional custody.

Most of our children who are removed have been neglected rather than physically or sexually abused. From 2013 to 2014 75% of children removed were for neglect and substance abuse by caregiver.⁸ The two children who died had both been physically abused. Maybe the proposed language would be appropriate for abused children, but for the other 75%, conditions can keep the child safely in the home. Why remove a tool which can keep children in their families' care with the oversight of the court? The conditional custody tool should not be removed.

For all the reasons stated above, VPRC does not support the proposed changes to the Temporary Care Order. The problems in our system identified in the reports regarding the two tragic child deaths will not be addressed by changing the way we remove children or issue temporary care orders. The two children were physically abused, not neglected, and the issues were with reunification, not with the process of taking kids into custody.

Sec. 2: VPRC joins the concerns expressed by Commissioner of DCF and many others that this provision is too broad and is likely to discourage families from seeking treatment by fearing prosecution. We leave the details of addressing this to others.

Sec. 4: VPRC supports creating Post-Adoption Contact Agreements. However, parents need to have access to their publicly provided attorney for Enforcements of such agreements.

Sec. 6: DEFINITIONS: As has been testified to by many others, the proposed changes in section (6), (11), and (14) are so broad that every family in Vermont would be involved in the child welfare system at some point. These definitions will be subject to enormous litigation and clog up the courts even more.

Sec. 7 and Sec 8: If confidential records are provided to any of the named persons or entities, the family members about whom these records provide information must be provided the same information and to whom it was provided. Information is power and we must empower our families so that they are better able to address the issues involved.

Sec. 14: VPRC does support the establishment of an Office of the Child Protection Advocate. Such an office would perform critical oversight and protect children and families from harmful action or inaction by the child protection system. We agree with the legislative findings that the system "must ensure that....courts have the information and tools necessary to make the best possible decisions." A system similar to the State of Washington with the key features of Independence, Impartiality, Confidentiality and Access to Confidential Information is very much needed in our system.

Sec. 16: Working Group to Recommend Improvements to CHINS proceedings: The group membership should be expanded to include DCF, and a kinship and a parent advocate organization.

Again, we would like to be heard on these issues and request to be placed on your witness list.

⁸ Data Source: http://fosteringcourtimprovement.org/vt/County/removals_summary.html

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Trine Bech". The signature is written over a horizontal line.

Vermont Parent Representation Center, Inc.

Trine Bech, Esq.
Executive Director

Encl. Appendix and attached Data Charts

§5323 REUNIFICATION REQUIREMENTS (APPENDIX 1)

(1)(a) A child shall not be returned home at a post disposition review hearing unless the court finds that a reason for removal as set forth in the court's findings under V.S.A. §5315 no longer exists. The parents, guardian, or Commissioner shall report to the court the efforts they have made to correct the conditions which led to removal. **If a child is reunified with the parent from whom the child was removed, casework supervision by the Department shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.**

(b) Prior to the child returning home, the Department must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the proceeding. The Department may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the Department promptly notify the court; and

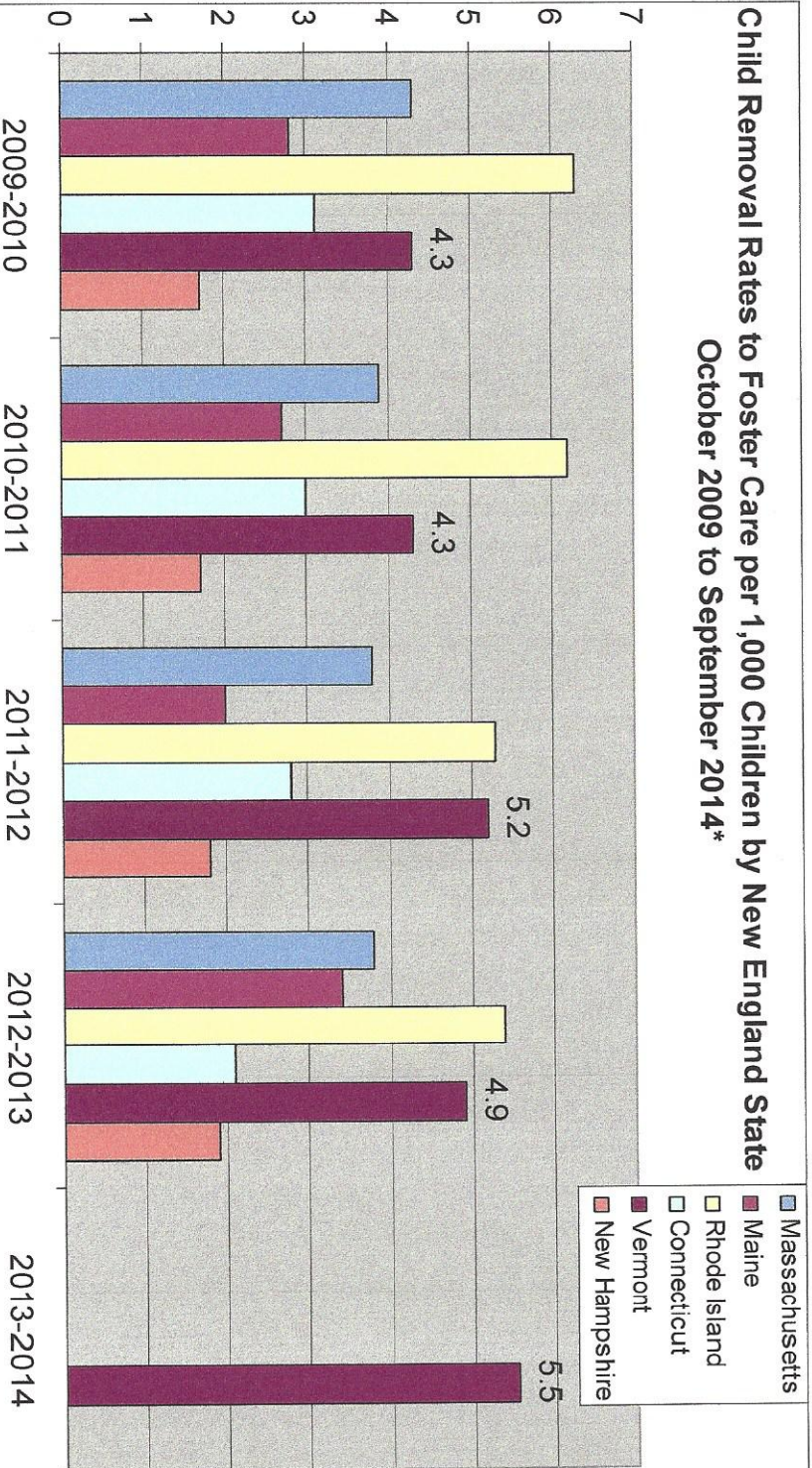
(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the Department of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the proceeding or the Department is providing or monitoring either remedial services to the parent or services to ensure the safety of

the child to any caregivers.

(iv) Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court.

CHART 1.

Child Removal Rates to Foster Care per 1,000 Children by New England State October 2009 to September 2014*



*Rates 2009 to 2013 from AFCARS, rates for 2014 from DCF

CHART 2.

How do children exit from foster care? Do too many children exit to reunification?

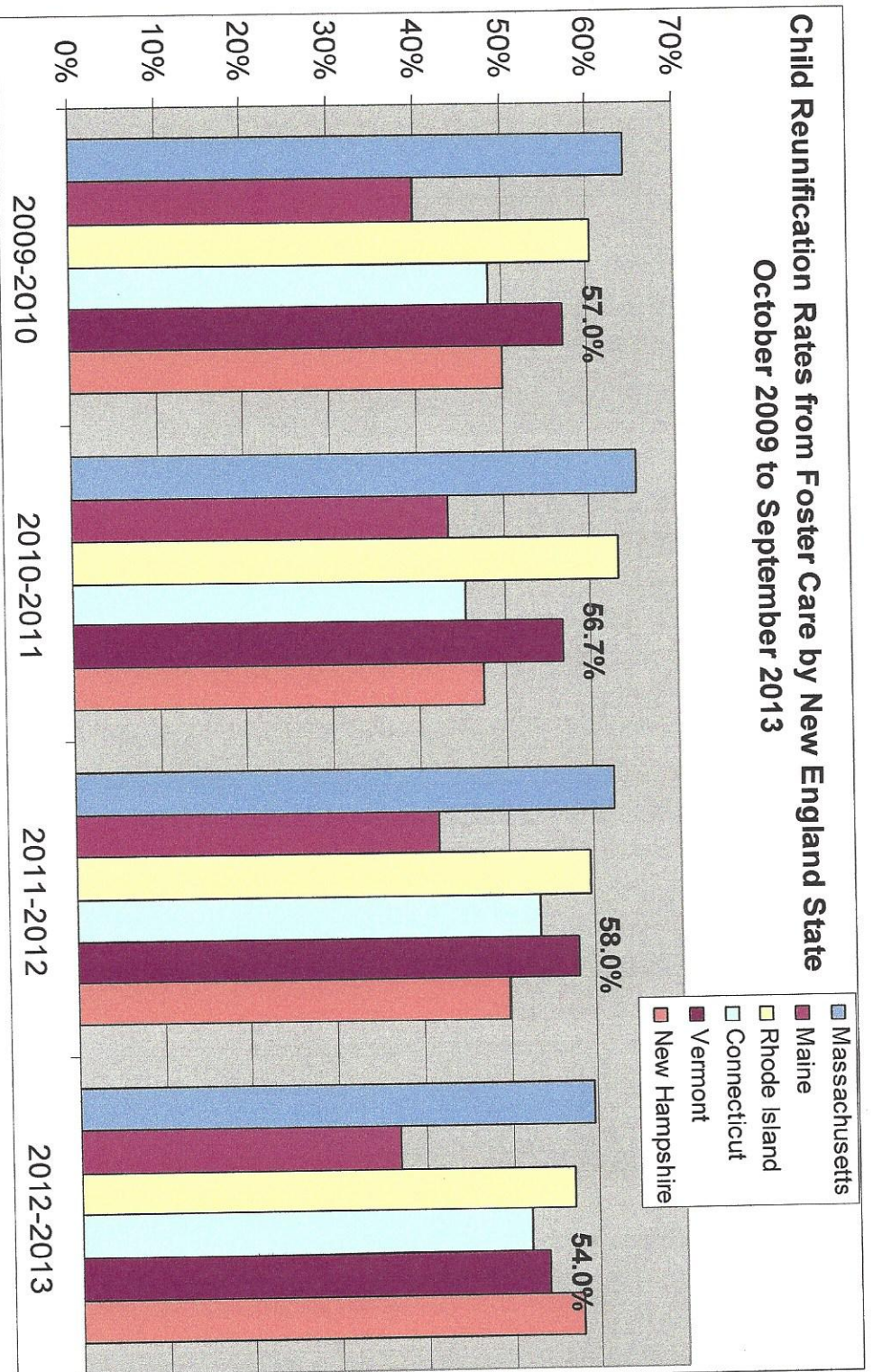


CHART 3.

Termination of Parental Rights Children Age 0 to 3 FY 2012 by New England State

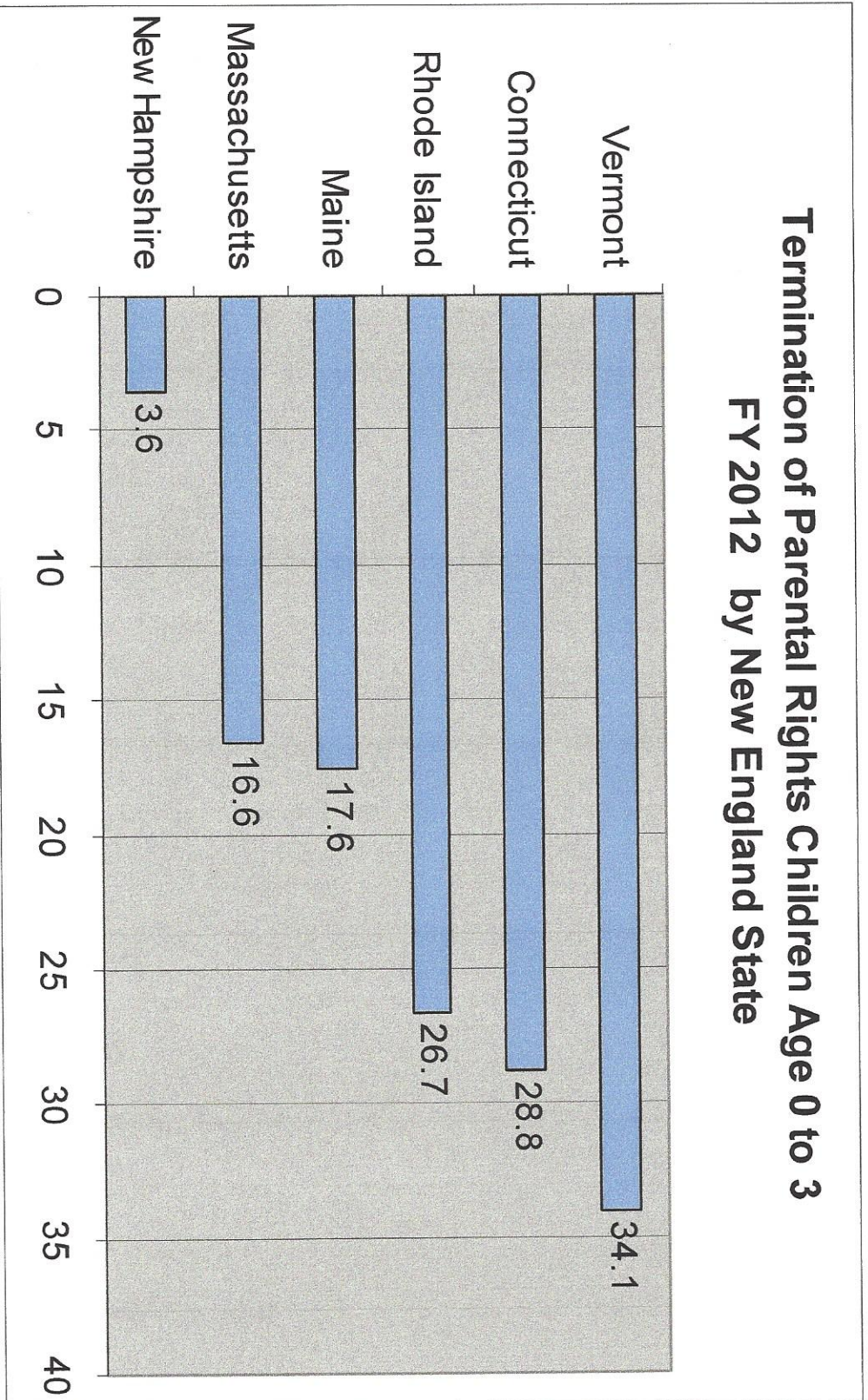
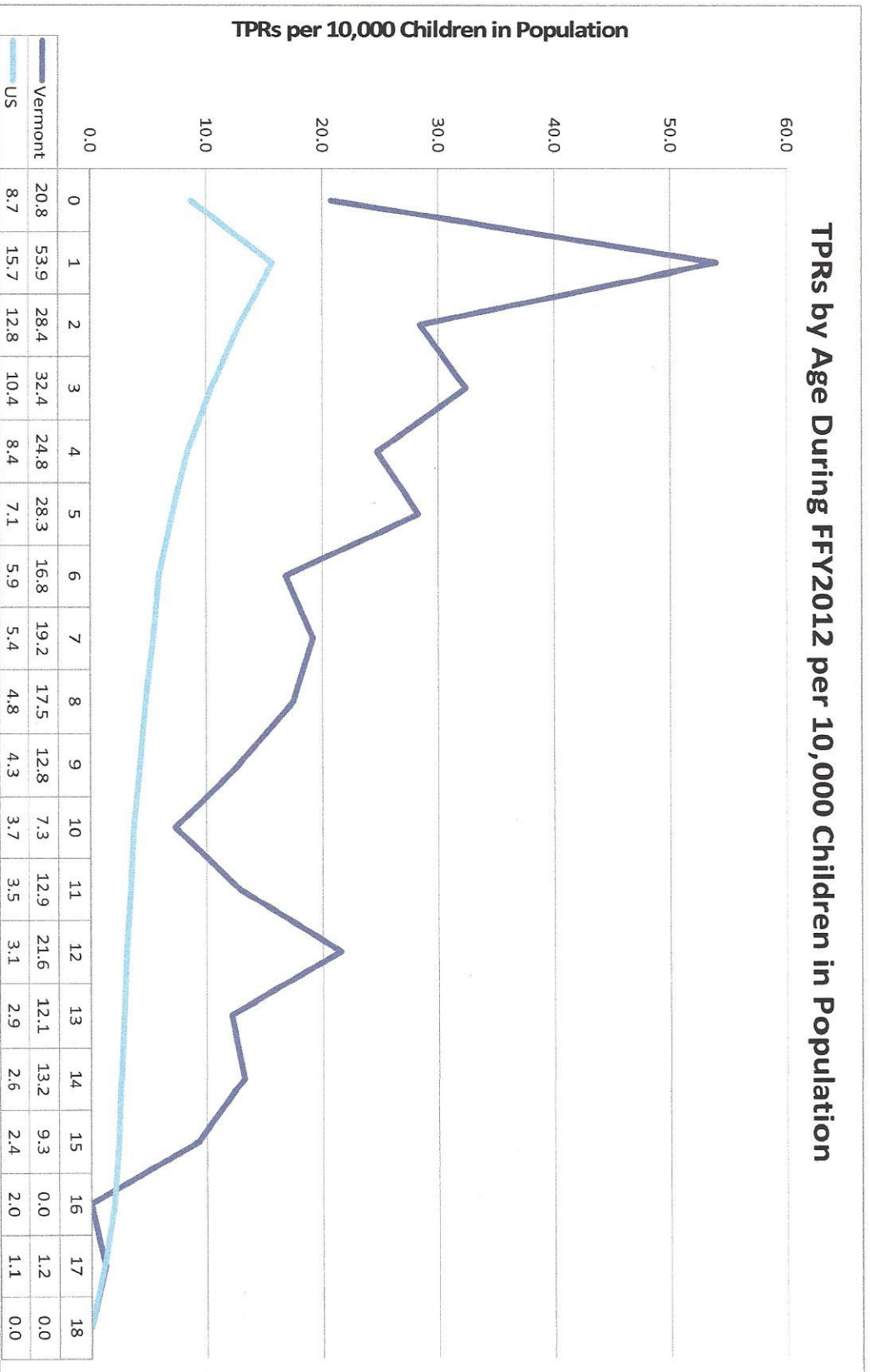


CHART 4.



A Tale of Two States

More alike than we might think

	NH	VT
Kids Count Ranking (Annie E. Casey)	4	2
Percent Children in Poverty	16%	15%
Percent Cocaine use (18-25)	6.4	6.9
Percent use non prescription Opiates (18-25)	10.5	9.1
Percent Women Reported Sexual Violence	51.2	43.3

And yet...

	NH	VT
Removal rates per 1000 children	1.9	4.9
TPR Rates Age 0 to 3	4%	34%
Reunification Rates	58%	54%
Repeated abuse within 6 months	6.2	4.1
Fatalities 2009 to 2013	5	9

By all measures of child well-being, Vermont and New Hampshire are very similar. If anything Vermont is slightly better than New Hampshire, and yet when it comes to Removals from home, Vermont is far more likely to take a child in Custody (358%) and much more likely to terminate parental rights in young children (947%). This despite the fact that there is relative little difference in reunification rates (Vermont 4% lower) in repeated abuse rates within 6 months (New Hampshire 2% higher) and child welfare related fatalities (1 extra per year).