

Sec. 11 of S.9 (temporary care orders) without deleted text from current law and comparing to Judiciary's and DCF's suggestions

33 V.S.A. § 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.

Note: S.9 eliminates the five factors from current law. J. Grearson and DCF keep 'best interests' standard, but suggest restoring these five factors.

(b) Upon a finding that 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, including:

Note: S.9 and J. Grearson both eliminate "in order of preference", and agree on 1-3 below (although in a different order). However, J. Grearson also suggests adding in: i) language concerning conditional custody orders, and ii) a requirement that courts shall consider orders and findings from other related proceedings. DCF also suggests language concerning conditional custody orders, although it is different than J. Grearson's.

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

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

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

(c) In considering 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 Commissioner, pending such investigation.

(d) 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 finding that remaining in the home is contrary to the best interests of the child and the facts upon which that finding is based.

(B) 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 in the best interests of the child, including:

(A) establishing parent-child contact and terms and conditions for that contact;

(B) requiring the Department to provide services for the child and the family, including a consideration of the needs of children and parents with disabilities;

Note: *DCF suggests removing "family" and only requiring DCF to provide services to the child if legal custody is transferred to DCF. DCF also suggests that an order could*

require: i) DCF to refer a parent for assessments and services, and ii) establish protective supervision and require DCF to refer for services if DCF does not have custody.

(C) requiring genetic testing if parentage of the child is at issue;

(D) requiring the Department to make diligent efforts to locate the noncustodial parent;

(E) requiring the custodial parent to provide the Department with names of all potential noncustodial parents and relatives of the child; and

(F) establishing protective supervision.

(3) In his or her discretion, the Commissioner may provide assistance and services to children and families to the extent that funds permit.

