TESTIMONY OF PAMELA A. MARSH, ESQ.

I hope you have had an opportunity to read my resume, and to understand my commitment to Child Welfare and Juvenile Justice. I am the Chair of the Juvenile Law Section of the Vermont Bar Association, although I am not speaking today on their behalf. I am one of two certified Child Welfare Law Specialists in Vermont (along with Leslie Hanafin). I have been practicing juvenile law in Addison County since 1985, and as the primary juvenile contractor since 1992. In Addison County, the public defender's office handles only adult cases, and my firm handles the juvenile caseload. I served on the Chapter 55 Committee that recommended revisions to the previous Juvenile Procedures Act, most of which were adopted by the legislature and became effective in 2009. I currently serve on the Justice for Children Task Force, which focuses on child welfare cases, as well as the Juvenile Justice Workgroup, which focuses on delinquency cases.

S. 183 is the outgrowth of work that the Best Practices Subcommittee of the Justice for Children Task Force did in November and December 2015. In S. 183, we hoped to address some issues not reached in S. 9 (Act 60) last year, as well as to address some inadvertent omissions that have made some of the provisions of S.9 less useful than they might be. Finally, we are hoping to curtail the length of time that children remain subject to conditional custody orders post-disposition.

In my testimony, references to "we" means this is the position of the Best Practices Subcommittee of the Justice for Children Task Force. References to "I" express my personal recommendations.

I will walk through the bill in the order that it is currently written.

<u>Permanent Guardianships</u>

With respect to the creation of permanent guardianships, we wanted to make permanent guardianships a better option for relatives or other persons having custody under conditional custody orders pursuant to 33 V.S.A. § 5318 . We also wanted to focus on the best interests of the child and make it easier to establish permanent guardianships in appropriate cases with children under age 12. However, by no means do we want permanent guardianship to be a preferred option over adoption, especially of young children.

The change to § 2664(a)(1) puts the focus on what the Supreme Court has held in modification and termination cases to be the most important factor in the best interest analysis: the ability of the parent to assume or resume parental duties within a reasonable time. See 33 V.S.A. § 5114 for the definition of "Best Interests of the Child" for all juvenile proceedings. [Query whether the Definitions section of 14 V.S.A. § 2661 should be changed to the same language as in 33 V.S.A. § 5114? This was not discussed by our committee, but may be something that would make sense to do.]

Current § 2664 (a)(2) and (3) are eliminated. Limiting the age of the child to 12 if the permanent guardian is not a relative delays permanency for some children who have fictive kin or custodians that do not meet the definition of a relative.

The change in former § 2664(4) reduces the residence requirement from one year to 6 months for non-relative permanent guardians. This is consistent with residency requirements for adoptions. 15A V.S.A. § 3-703(a)(1).

With respect to § 2664(a)(4)(C), it must be understood that under federal law, subsidized permanent guardianships can only go to relative caretakers.

It may be wise to consider adding a § 2664(a)(4)(D) that expressly permits a successor permanent guardian to be named in the permanent guardianship order. Under recent amendments to federal regulations for subsidized permanent guardianships, if a successor permanent guardian is named in a permanent guardianship order, the child can move from the permanent guardian to the successor guardian without losing the guardianship subsidy, or needing to return to DCF custody under § 2666(b).

If you may wonder why that can be an issue, presently if the permanent guardian should die or become otherwise unsuitable to continuing to care for the minor, even if there is another relative who is ready, willing and able to care for the minor, the minor must come back into DCF custody. In order to be eligible for the subsidized guardianship, the minor must be in DCF custody, placed with the relative, for at least 6 months. If at the time of the creation of the permanent guardianship, DCF has approved a successor guardian, this in-and-out-of-custody for the purpose of eligibility for a permanent guardianship with or without subsidy, would not be required. It might also be wise to amend § 2666(b) to add: <u>When a successor permanent guardian has been named in the initial permanent guardianship order, custody shall transfer to the successor guardian, without a return to DCF custody. Notice shall be given by the Probate Division of the Superior Court to DCF upon the occurrence of this event.</u>

Section 2665 Reports is amended to make the reporting requirement consistent with the reports required under minor guardianships in general pursuant to § 2929(b)(6).

<u>Post Adoption Contact Agreements</u>

When S.9 (Act 60) created enforceable post-adoption contact agreements, it inadvertently left out the possibility of post-adoption contact agreements for children in conditional custody, rather than DCF custody. As a result, a parent whose child was placed with a relative or other person upon removal from the parent would not be entitled to the benefits of an enforceable post-adoption contract. This was an unintended result. I personally have had two cases where the child was placed with grandparents upon removal, and enforceable post-adoption agreements may have been beneficial. Since the implementation of this provision in July 2015, only twelve post-adoption contracts have been entered into by relinquishing parents and prospective

adoptive parents statewide. More would have been eligible if this law included children in the conditional custody of others.

We recommend that the Committee amend the language in proposed § 5124(a)(1)(B) …, or subsection 5232(b)(2) or (b)(3) of this title. This would make the language in delinquency cases parallel the language in CHINS cases.

I also recommend a change in the wording of § 5124(c)(9) to say:

(9) an acknowledgment the adoptive parent's judgment regarding the child is in the child's best interests.

The Committee did not achieve consensus on whether the language in (9) should be changed, but all agreed that the current language is very awkward. This change removes the presumption language, but still would result in the adoptive parent's decisions regarding modification of a post-adoption agreement being given great weight (unless deemed by the Probate Division to be unreasonable).

Conditional Custody Orders

The amendment for Conditional Custody Orders is proposed because although the law currently limits conditional custody orders under § 5318(a)(1) and (a)(2) to two years, no one is really tracking that, and conditional custody orders often continue without regular review for years. Further, direct transfer orders under § 5318(a)(7) are supposed to be set for yearly reviews, but often are not. They can extend for years, and really do not achieve permanency for a child.

Under proposed § 5318(a)(1), we propose to add This order may be subject to conditions and limitations. We do not want to end the use of conditional custody orders to parents

With respect to § 5320, we want to expand the use of post-disposition review hearings so that the parties have the 60 day check in on how the Disposition Plan is working. The changes to these sections ensure that post-disposition review hearings are held in conditional custody cases and in any case where the child is directly placed with a relative or other person, which is not currently the case. I would suggest a slight wording change in proposed § 5320 with regard to noticing caregivers of their right to attend and give input at such hearings: A foster parent, preadoptive parent, [or] relative caretaker, or any custodian of the child, shall be provided with notice …

I am not convinced that the last sentence in proposed § 5320 is necessary, since when custody is returned to a parent unconditionally at disposition, the case ends. However, I would add a sentence: DCF shall, and any other party or caregiver may, prepare a short written report to the court regarding progress under the Plan of Services from the Disposition Care Plan. I am speaking for myself in this recommendation, not for the Best Practices Committee, as we did not reach consensus on this issue.

New section 5320a. Duration of Conditional Custody Orders Post Disposition – sets forth the mechanism by which CCOs are to be monitored and to ensure they do not get lost in the system and inadvertently continue for years. The idea is that the presumptive duration of such orders is 6 months, and then they terminate unless someone petitions to extend the order. We propose two minor changes in language to proposed § 5320a(a): Prior to vacating the conditional custody order, the court… And in the final sentence: If a motion to extend is not filed, the court shall issue an order.

The reason for these proposed changes is to avoid the words "final order", since the Vermont Supreme Court often construes such words as triggering the right to appeal. We would not want to change a party's right to appeal from the disposition order accidentally by making the Court think that disposition orders are not final orders.

We note that similar language should be added for delinquency cases where children are placed in custody. This would probably require a simple amendment to section 5258 to refer also to new section 5320a. However, I do not claim to have done a thorough review of the delinquency provisions to make sure other changes are not needed to make it consistent with the CHINS proceedings.

Reinstatement of Parental Rights

This is something than never made it into S.9 (Act 60) last year, although it is something that the Best Practices Subcommittee has discussed and supported under the limited conditions set forth in this bill. Reinstatement is only intended to be available if an adoption disrupts, or if the child has not been adopted for at least three years after termination. Reinstatement is not automatic – the child must be in DCF custody, and the parent must show that the conditions that led to termination no longer exist.

Why consider reinstatement? We know a number of adoptions disrupt, often when children are teenagers. This may be years after a termination, and the parent or parents may have grown and changed in positive ways that would allow them to resume care for their children. There are at least fourteen states with reinstatement laws of various sorts. In fact, it is occasionally done now in Vermont without explicit legislative authority. (For example, the adoption disrupts, the child comes into DCF custody, and the parent requests placement. DCF places the child with the parent, and then permits the parent to go to probate court and file for adoption of the child.)

This reinstatement law does not allow parents to initiate reinstatement. DCF can initiate it or the child if at least fourteen years can initiate reinstatement. (This latter is consistent with the permanent guardianship statute – a child of at least fourteen years may petition for termination of permanent guardianship.) The court then holds a hearing to determine whether conditional reinstatement is in the best interests of the child. If so, the child is conditionally placed with the parent, and a review hearing is held approximately six months later to make a final determination as to whether the parental rights should be reinstated. This provision would provide hope to parents who end up following through with addressing their addiction issues, for example, and provides a

backup plan for children who lose their adoptive parent due to death or any other reason.

The Best Practices Subcommittee feels that the last sentence on page 12, lines 16-20, is unnecessary and should be deleted.

Effective Date

We feel the effective date should be no earlier than July 1, 2016, consistent with other statutes, and possibly as late as October 1, 2016. The reason for this is that new forms and procedures need to be created especially for the conditional custody order changes and the reinstatement of parental rights, and the attorneys and judges involved need to be trained on the new law. Judicial, prosecutor and juvenile defense training usually occurs in early June. The Court Administrator's Office will need to develop or update current forms, and that process takes some time.

Thank you for the opportunity to share my views and that of the Best Practices Subcommittee with you.