

1  
2      Introduced by Senators Ayer, Sears, Cummings, Flory, Kitchel, and Mullin  
3      Referred to Committee on  
4      Date:  
5      Subject: Crimes and criminal procedure; establishing a crime of failure to  
6                protect a child; municipal and county government; special  
7                investigative units; adoption act; postadoption contact agreements;  
8                human services; child welfare services; definitions; confidentiality;  
9                temporary care orders; children in need of care or supervision;  
10               establishing a Joint Legislative Child Protection Oversight  
11               Committee; establishing the Office of the Child Protection Advocate;  
12               Department for Children and Families; policies  
13      Statement of purpose of bill as introduced: This bill proposes to improve  
14               Vermont's system for protecting children from abuse and neglect by  
15               establishing a new crime of failure to protect a child; clarifying the jurisdiction  
16               of special investigative units and ensuring that these units investigate the most  
17               serious child abuse cases; allowing for postadoption contact agreements;  
18               amending definitions pertaining to child abuse and neglect; fostering better  
19               communication between all participants in the child protection system;  
20               ensuring that custody determinations are based on the best interests of a child;  
21               establishing a Joint Legislative Child Protection Oversight Committee, an

1       Office of the Child Protection Advocate, and a working group to improve  
2       CHINS proceedings; and requiring the Department for Children and Families  
3       to improve its policies and procedures.

4 An act relating to improving Vermont's system for protecting children from  
5 abuse and neglect

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

7 \* \* \* Legislative Findings \* \* \*

## Sec. 1. LEGISLATIVE FINDINGS

9           (a) In 2014, the tragic deaths of two children exposed glaring problems  
10          with Vermont's system intended to protect children from abuse and neglect.  
11          This act is intended to address these problems and implement the  
12          recommendations of the Joint Legislative Committee on Child Protection  
13          created by 2014 Acts and Resolves No. 179, Sec. C.109.

14           (b) To protect Vermont's children better from abuse and neglect, and to  
15           address the increasing burden of drug abuse and other factors that are ripping  
16           families apart, the General Assembly believes that our State's child protection  
17           system must be comprehensive, focused on the safety and best interests of  
18           children, and properly funded. This system must ensure that:

1                 (1) the dedicated frontline professionals who struggle to handle the  
2                 seemingly ever-increasing caseloads have the support, training, and resources  
3                 necessary to do their job;  
4                 (2) the most serious cases of abuse are thoroughly investigated and  
5                 prosecuted if appropriate;  
6                 (3) courts have the information and tools necessary to make the best  
7                 possible decisions;  
8                 (4) all participants in the child protection system, from the frontline  
9                 caseworker to the judge determining ultimate custody, work together to  
10                 prioritize the child's safety and best interests;  
11                 (5) an effective oversight structure is established; and  
12                 (6) children who have suffered abuse and neglect can find safe,  
13                 nurturing, and permanent homes, whether with their custodial parents,  
14                 relatives, or other caring families and individuals.  
15                 (c) This act is only the beginning of what must be an ongoing process in  
16                 which the House and Senate Committees on Judiciary, the Senate Committee  
17                 on Health and Welfare, the House Committee on Human Services, in  
18                 consultation with the Senate and House Committees on Appropriations,  
19                 continue to enhance the statewide approach to the prevention of child abuse  
20                 and neglect.

1           (d) In particular, the House and Senate Committees on Appropriations  
2           should seek to ensure that adequate resources are allocated to improve  
3           Vermont's ability to prevent and address child abuse and neglect, including  
4           providing adequate support for guardians ad litem who work with children.

5           (e) In 2014, the tragic deaths of two children exposed glaring problems  
6           with Vermont's child protection system. In 2015, the General Assembly  
7           believes that this act will begin to address these problems, improve our State's  
8           system for protecting our children, and help prevent future tragedies.

9                 \* \* \* Crimes and Criminal Procedure; Establishing New Crime  
10                 of Failure to Protect a Child \* \* \*

11                 Sec. 2. 13 V.S.A. § 1312 is added to read:

12                 § 1312. FAILURE TO PROTECT A CHILD

13                 (a) A person having the custody, charge, or care of a child commits the  
14                 crime of failure to prevent harm to a child if the person:

15                     (1) causes a child to suffer:

16                         (A) bodily injury or serious bodily injury as defined in section 1021  
17                         of this title;

18                         (B) from lewd and indecent conduct in violation of chapter 59,  
19                         subchapter 1 of this title;

20                         (C) from sexual exploitation of children in violation of chapter 64 of  
21                         this title;

1                   (D) from sexual assault in violation of chapter 72 of this title;  
2                   (E) from exposure to the unlawful possession, use, manufacture,  
3                   cultivation, or sale of the following regulated drugs, as defined in 18 V.S.A.  
4                   § 4201:

5                    (i) a narcotic drug;  
6                    (ii) a depressant or stimulant drug, other than methamphetamine;  
7                    (iii) a hallucinogenic drug;  
8                    (iv) Ecstasy;  
9                    (v) methamphetamine; or  
10                  (vi) marijuana or hashish in violation of the following subsections  
11                  and subdivisions of section 4230 of this title:

12                  (I) subdivisions (a)(2), (3), and (4);  
13                  (II) subdivisions (b)(2) and (3); and  
14                  (III) subsection (c).

15                  (2) knows, or reasonably should have known, that the child is in danger  
16                  of, and fails to act to prevent a child from, suffering:

17                  (A) bodily injury or serious bodily injury as defined in section 1021  
18                  of this title;  
19                  (B) from lewd and indecent conduct in violation of chapter 59,  
20                  subchapter 1 of this title;

1                   (C) from sexual exploitation of children in violation of chapter 64 of  
2                   this title;

3                   (D) from sexual assault in violation of chapter 72 of this title; or

4                   (E) from exposure to the unlawful possession, use, manufacture,  
5                   cultivation, or sale of the following regulated drugs, as defined in 18 V.S.A.

6                   § 4201:

7                   (i) a narcotic drug;

8                   (ii) a depressant or stimulant drug, other than methamphetamine;

9                   (iii) a hallucinogenic drug;

10                  (iv) Ecstasy;

11                  (v) methamphetamine; or

12                  (vi) marijuana or hashish in violation of the following subsections

13                  and subdivisions of section 4230 of this title:

14                  (I) subdivisions (a)(2), (3), and (4);

15                  (II) subdivisions (b)(2) and (3); and

16                  (III) subsection (c).

17                  (b) A person who violates this section shall be imprisoned not more than  
18                  ten years or fined not more than \$20,000.00, or both.

19                  (c) The provisions of this section shall not limit or restrict prosecutions for  
20                  any other offense arising out of the same incident or conduct.

1                           \* \* \* Municipal and County Government; Special Investigative

2                           Units; Mission and Jurisdiction \* \* \*

3                           Sec. 3. 24 V.S.A. § 1940 is amended to read

4                           § 1940. ~~TASK FORCES; SPECIALIZED~~ SPECIAL INVESTIGATIVE

5                           UNITS; BOARDS; GRANTS

6                           (a) Pursuant to the authority established under section 1938 of this title, and  
7                           in collaboration with law enforcement agencies, investigative agencies,  
8                           victims' advocates, and social service providers, the Department of State's  
9                           Attorneys and Sheriffs shall coordinate efforts to provide access in each region  
10                          of the state State to special investigative units ~~to investigate sex crimes, child~~  
11                          ~~abuse, domestic violence, or crimes against those with physical or~~  
12                          ~~developmental disabilities. The General Assembly intends that access to~~  
13                          ~~special investigative units be available to all Vermonters as soon as reasonably~~  
14                          ~~possible, but not later than July 1, 2009~~ which:

15                          (1) shall investigate:

16                          (A) an incident in which a child suffers serious bodily injury as  
17                          defined in 13 V.S.A. § 1021, and violations of:

18                          (B) 13 V.S.A. chapter 59, subchapter 1;

19                          (C) 13 V.S.A. chapter 60;

20                          (D) 13 V.S.A. chapter 64; and

21                          (E) 13 V.S.A. chapter 72; and

1               (2) may investigate an incident in which a child suffers bodily injury as  
2 defined in 13 V.S.A. § 1021.

3               (b) A ~~task force or specialized~~ special investigative unit organized and  
4 operating under this section may accept, receive, and disburse in furtherance of  
5 its duties and functions any funds, grants, and services made available by the  
6 State of Vermont and its agencies, the federal government and its agencies, any  
7 municipality or other unit of local government, or private or civic sources.  
8 Any employee covered by an agreement establishing a special investigative  
9 unit shall remain an employee of the donor agency.

10              (c) A ~~Specialized~~ Special Investigative Unit Grants Board is created which  
11 shall ~~be comprised of~~ comprise the Attorney General, the Secretary of  
12 Administration, the Executive Director of the Department of State's Attorneys  
13 and Sheriffs, the Commissioner of Public Safety, the Commissioner for  
14 Children and Families, a representative of the Vermont Sheriffs' Association, a  
15 representative of the Vermont Association of Chiefs of Police, the Executive  
16 Director of the Center for Crime Victim Services, and the Executive Director  
17 of the Vermont League of Cities and Towns. ~~Specialized~~ Special investigative  
18 units organized and operating under this section ~~for the investigation of sex~~  
19 ~~crimes, child abuse, elder abuse, domestic violence, or crimes against those~~  
20 ~~with physical or developmental disabilities~~ may apply to the Board for a grant  
21 or grants covering the costs of salaries and employee benefits to be expended

1       during a given year for the performance of unit duties as well as unit operating  
2       costs for rent, utilities, equipment, training, and supplies. Grants under this  
3       section shall be approved by a majority of the entire Board and shall not  
4       exceed 50 percent of the yearly salary and employee benefit costs of the unit.  
5       Preference shall be given to grant applications which include the participation  
6       of the Department of Public Safety, the Department for Children and Families,  
7       sheriffs' departments, community victims' advocacy organizations, and  
8       municipalities within the region. Preference shall also be given to grant  
9       applications which promote policies and practices that are consistent across the  
10      State, including policies and practices concerning the referral of complaints,  
11      the investigation of cases, and the supervision and management of special  
12      investigative units. However, a sheriff's department in a county with a  
13      population of less fewer than 8,000 residents shall upon application receive a  
14      grant of up to \$20,000.00 for 50 percent of the yearly salary and employee  
15      benefits costs of a part-time specialized special investigative unit investigator  
16      which shall be paid to the department as time is billed on a per hour rate as  
17      agreed by contract up to the maximum amount of the grant.  
18           (d) The Board may adopt rules relating to grant eligibility criteria,  
19       processes for applications, awards, and reports related to grants authorized  
20       pursuant to this section. The Attorney General shall be the adopting authority.

1                   \* \* \* Adoption Act; Postadoption Contact Agreements \* \* \*

2       Sec. 4. 15A V.S.A. § 1-109 is amended to read:

3       **§ 1-109. TERMINATION OF ORDERS AND AGREEMENTS FOR**  
4                   **VISITATION OR COMMUNICATION UPON ADOPTION**

5       When a decree of adoption becomes final, except as provided in Article 4  
6       and Article 9 of this title, any order or agreement for visitation or  
7       communication with the minor shall be unenforceable.

8       Sec. 5. 15A V.S.A. Article 9 is added to read:

9                   **Article 9. POSTADOPTION CONTACT AGREEMENTS**

10          **§ 9-101. POSTADOPTION CONTACT AGREEMENTS**

11          (a) Either or both birth parents and an intended adoptive parent may enter  
12       into a postadoption contact agreement regarding communication or contact  
13       between either or both birth parents and the adopted child. Such an agreement  
14       may be entered into if:

15              (1) the child is in the custody of the Department for Children and  
16       Families;

17              (2) an order terminating parental rights has not yet been entered; and  
18              (3) either or both birth parents agree to a voluntary termination of  
19       parental rights, including an agreement in a case which began as an involuntary  
20       termination of parental rights.

- 1           (b) The court may order postadoption communication or contact  
2           privileges if:  
3           (1) it determines that the child's best interests will be served by  
4           postadoption communication or contact with either or both birth parents;  
5           (2) each intended adoptive parent consents to the granting of  
6           communication or contact privileges;  
7           (3) the intended adoptive parent and either or both birth parents execute  
8           an agreement and file the agreement with the court;  
9           (4) the postadoption contact agreement is approved by the court.  
10          (c) A postadoption contact agreement shall contain:  
11           (1) an acknowledgment by either or both birth parents that the  
12           termination of parental rights and the adoption are irrevocable, even if the  
13           adoptive parents do not abide by the postadoption contact agreement; and  
14           (2) an acknowledgment by the adoptive parents that the agreement  
15           grants either or both birth parents the right to seek to enforce the postadoption  
16           contact agreement.  
17          (d) The order approving a postadoption contact agreement shall be made  
18           part of the final order terminating parental rights. The finality of the  
19           termination of parental rights and of the adoption shall not be affected by  
20           implementation of the provisions of the postadoption contact agreement.

1        (e) A disagreement between the parties or litigation brought to enforce or  
2        modify the agreement shall not affect the validity of the termination of parental  
3        rights or the adoption. The court shall not act on a petition to change or  
4        enforce the agreement unless the petitioner had participated, or attempted to  
5        participate, in good faith in mediation or other appropriate dispute resolution  
6        proceedings to resolve the dispute.

7        (f) An adoptive parent, guardian ad litem for the child, or the court on its  
8        own motion may, at any time, petition for review of communication or contact  
9        ordered pursuant to subsection (b) of this section if the adoptive parent  
10      believes that the best interests of the child are being compromised. The court  
11      may order the communication or contact be terminated or altered as the court  
12      deems to be in the best interest of the adopted child.

13                          \* \* \* Human Services; Child Welfare Services; Definitions;

14                          Harm, Injury, and Abuse \* \* \*

15      Sec. 6. 33 V.S.A. § 4912 is amended to read

16      § 4912. DEFINITIONS

17      As used in this subchapter:

18                          \* \* \*

19      (6) “Harm” can occur by:

20      (A) Physical injury or emotional maltreatment.

1                             (B) Failure to supply the child with adequate food, clothing, shelter,  
2 or health care. As used in this subchapter, “adequate health care” includes any  
3 medical or nonmedical remedial health care permitted or authorized under ~~state~~  
4 State law. Notwithstanding that a child might be found to be without proper  
5 parental care under chapters 51 and 53 of this title, a parent or other person  
6 responsible for a child’s care legitimately practicing his or her religious beliefs  
7 who thereby does not provide specified medical treatment for a child shall not  
8 be considered neglectful for that reason alone.

9                             (C) Abandonment of the child.

10                             (D) Exposure to the unlawful possession, use, manufacture,  
11 cultivation, or sale of the following regulated drugs, as defined in 18 V.S.A.  
12 § 4201:

13                             (i) a narcotic drug;  
14                             (ii) a depressant or stimulant drug, other than methamphetamine;  
15                             (iii) a hallucinogenic drug;  
16                             (iv) Ecstasy;  
17                             (v) methamphetamine; or  
18                             (vi) marijuana or hashish in violation of the following subsections  
19 and subdivisions of section 4230 of this title:  
20                             (I) subdivisions (a)(2), (3), and (4);  
21                             (II) subdivisions (b)(2) and (3); and

1                   (III) subsection (c).

2                   \* \* \*

3                   (11) “Physical injury” means ~~death or permanent or temporary~~  
4                   ~~disfigurement or impairment of any bodily organ or function by other than~~  
5                   ~~accidental means~~ bodily injury or serious bodily injury as defined in 13 V.S.A.  
6                   § 1021.

7                   \* \* \*

8                   (14) “Risk of harm” means a ~~significant~~ danger that a child will suffer  
9                   ~~serious harm other than by accidental means, which harm would be likely to~~  
10                  cause physical injury, neglect, emotional maltreatment, or sexual abuse.

11                  (15) “Sexual abuse” ~~e~~onsists of any act or acts by any person involving  
12                  sexual molestation or exploitation of a child, including incest, prostitution,  
13                  rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual  
14                  abuse also includes the aiding, abetting, counseling, hiring, or procuring of a  
15                  child to perform or participate in any photograph, motion picture, exhibition,  
16                  show, representation, or other presentation which, in whole or in part, depicts  
17                  sexual conduct, sexual excitement, or sadomasochistic abuse involving a child  
18                  means:

19                  (A) lewdness and prostitution in violation of 13 V.S.A. chapter 59;  
20                  (B) human trafficking in violation of 13 V.S.A. chapter 60;  
21                  (C) obscenity in violation of 13 V.S.A. chapter 63;

1                   (D) sexual exploitation of children in violation of 13 V.S.A.

2 chapter 64; or

4 \* \* \*

5 \* \* \* Confidentiality \* \* \*

6 Sec. 7. 33 V.S.A. § 4913 is amended to read:

**§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL**

## ACTION

9 \* \* \*

10           (b)(1) The Commissioner shall inform the person who made the report  
11           under subsection (a) of this section:

12           **(4)(A)** whether the report was accepted as a valid allegation of abuse or  
13           neglect:

14                   **(2)(B)** whether an assessment was conducted and, if so, whether a need  
15                   for services was found; and

16                   **(3)(C)** whether an investigation was conducted and, if so, whether it  
17                   led to any administrative action.

18                   (2) Upon request, the Commissioner shall provide the person who made  
19                   the report under subsection (a) of this section with access to information  
20                   contained in the case records concerning the person's report.

21 \* \* \*

1 Sec. 8. 33 V.S.A. § 4921 is amended to read:

2 § 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

3 (a) The Commissioner shall maintain all records of all investigations,  
4 assessments, reviews, and responses initiated under this subchapter. The  
5 Department may use and disclose information from such records in the usual  
6 course of its business, including to assess future risk to children, to provide  
7 appropriate services to the child or members of the child's family, or for other  
8 legal purposes.

9 (b) The Commissioner shall promptly inform the parents, if known, or  
10 guardian of the child that a report has been accepted as a valid allegation  
11 pursuant to subsection 4915(b) of this title and the Department's response to  
12 the report. The Department shall inform the parent or guardian of his or her  
13 ability to request records pursuant to subsection (c) of this section. This  
14 section shall not apply if the parent or guardian is the subject of the  
15 investigation.

16 (c) Upon request, the The redacted investigation file shall be disclosed to:  
17 (1) the child's parents, foster parent, or guardian, absent good cause  
18 shown by the Department, provided that the child's parent, foster parent, or  
19 guardian is not the subject of the investigation; and  
20 (2) the person alleged to have abused or neglected the child, as provided  
21 for in subsection 4916a(d) of this title.

1                   (d) ~~Upon request~~, Department records created under this subchapter shall

2                   be disclosed to:

3                   (1) ~~the~~ The court, parties to the juvenile proceeding, and the child's  
4                   guardian ad litem if there is a pending juvenile proceeding or if the child is in  
5                   the custody of the Commissioner;.

6                   (2) ~~the~~ The Commissioner or person designated by the Commissioner to  
7                   receive such records;.

8                   (3) ~~persons~~ Persons assigned by the Commissioner to conduct  
9                   investigations;.

10                  (4) ~~law~~ Law enforcement officers engaged in a joint investigation with  
11                  the Department, an ~~assistant attorney general~~ Assistant Attorney General, or a  
12                  state's attorney; State's Attorney.

13                  (5) ~~other~~ Other State agencies conducting related inquiries or  
14                  proceedings; and.

15                  (6) The Child Protection Advocate appointed under section 8001 of  
16                  this title.

17                  (7) ~~a~~ A Probate Division of the Superior Court involved in guardianship  
18                  proceedings. The Probate Division of the Superior Court shall provide a copy  
19                  of the record to the respondent, the respondent's attorney, the petitioner, the  
20                  guardian upon appointment, and any other individual, including the proposed

1 guardian, determined by the Court to have a strong interest in the welfare of  
2 the respondent.

3 (e)(1) Upon request, ~~relevant~~ Department records created under this  
4 subchapter ~~may shall~~ be disclosed to:

5 (A) ~~service providers working with a person or child who is the~~  
6 ~~subject of the report; and a person, agency, or organization, including a~~  
7 ~~multidisciplinary team empaneled under section 4917 of this title, authorized to~~  
8 ~~diagnose, care for, treat, or supervise a child or family who is the subject of a~~  
9 ~~report or record created under this subchapter, or who is responsible for the~~  
10 ~~child's health or welfare;~~

11 (B) health and mental health care providers working directly with the  
12 child or family who is the subject of the report or record;

13 (C) educators working directly with the child or family who is the  
14 subject of the report or record;

15 (D) licensed or approved foster care givers;

16 (E) mandated reporters as defined by section 4913 of this subchapter,  
17 making a report in accordance with the provisions of section 4914 of this  
18 subchapter; and

19 (F) other governmental entities for purposes of child protection.

20 (2) Determinations of relevancy shall be made by the Department Any  
21 records or reports disclosed under this section and information relating to the

1       contents of those records or reports shall not be disseminated by the receiving

2       persons or agencies to any persons or agencies, other than those persons or

3       agencies authorized to receive information pursuant to this section. A person

4       who intentionally violates the confidentiality provisions of this section shall be

5       fined not more than \$2,000.00.

6 \* \* \*

7 \* \* \* Children in Need of Care or Supervision; Removal of a  
8 Child From the Home \* \* \*

9 Sec. 9. 33 V.S.A. § 5301 is amended to read:

10       § 5301. TAKING INTO CUSTODY

11 A child may be taken into custody:

12                   (1) Pursuant pursuant to an order of the Family Division of the Superior  
13                   Court under the provisions of this chapter:-;

14                   (2) By by an officer or a social worker employed by the Department for  
15                   Children and Families when the officer or social worker has reasonable  
16                   grounds to believe that the child is in immediate danger from his or her  
17                   surroundings and that removal from the child's current home is necessary for  
18                   the child's protection:-;

19 (3) By by an officer or a social worker employed by the Department for  
20 Children and Families when the officer or social worker has reasonable  
21 grounds to believe that the child has run away from a custodial parent, a foster

1 parent, a guardian, a custodian, a noncustodial parent lawfully exercising  
2 parent-child contact, or care provider.

3 Sec. 10. 33 V.S.A. § 5302 is amended to read:

4 § 5302. REQUEST FOR EMERGENCY CARE ORDER

5 (a) If an officer or a social worker employed by the Department for  
6 Children and Families takes a child into custody pursuant to ~~subdivision~~  
7 ~~section 5301(1) or (2)~~ of this title, the officer or social worker shall  
8 immediately notify the child's custodial parent, guardian, or custodian and  
9 release the child to the care of the child's custodial parent, guardian, or  
10 custodian unless the officer determines that the child's immediate welfare  
11 requires the child's continued absence from the home.

12 (b) If the officer or social worker determines that the child's immediate  
13 welfare requires the child's continued absence from the home, the officer shall:

14 (1) Remove the child from the child's surroundings, contact the  
15 Department, and deliver the child to a location designated by the Department.  
16 The Department shall have the authority to make reasonable decisions  
17 concerning the child's immediate placement, safety, and welfare pending the  
18 issuance of an emergency care order.

19 (2) Prepare an affidavit in support of a request for an emergency care  
20 order and provide the affidavit to the State's Attorney. The affidavit shall  
21 include: the reasons for taking the child into custody; and to the degree known,

1 potential placements with which the child is familiar; the names, addresses,  
2 and telephone number of the child's parents, guardian, custodian, or care  
3 provider; the name, address, and telephone number of any relative who has  
4 indicated an interest in taking temporary custody of the child. The officer or  
5 social worker shall contact the Department and the Department may prepare an  
6 affidavit as a supplement to the affidavit of the law enforcement officer or  
7 social worker if the Department has additional information with respect to the  
8 child or the family.

9 \* \* \*

10 \* \* \* Temporary Care Order; Custody \* \* \*

11 Sec. 11. 33 V.S.A. § 5308 is amended to read:

12 § 5308. TEMPORARY CARE ORDER

13 (a) The Court shall order that legal custody be returned to the child's  
14 custodial parent, guardian, or custodian unless the Court finds by a  
15 preponderance of the evidence that a return home would be contrary to the best  
16 interests of the child's welfare because any one of the following exists: child.

17 (1) ~~A return of legal custody could result in substantial danger to the~~  
18 ~~physical health, mental health, welfare, or safety of the child.~~

19 (2) ~~The child or another child residing in the same household has been~~  
20 ~~physically or sexually abused by a custodial parent, guardian, or custodian, or~~

1 by a member of the child's household, or another person known to the  
2 custodial parent, guardian, or custodian.

3 (3) The child or another child residing in the same household is at  
4 substantial risk of physical or sexual abuse by a custodial parent, guardian, or  
5 custodian, or by a member of the child's household, or another person known  
6 to the custodial parent, guardian, or custodian. It shall constitute prima facie  
7 evidence that a child is at substantial risk of being physically or sexually  
8 abused if:

9 (A) a custodial parent, guardian, or custodian receives actual notice  
10 that a person has committed or is alleged to have committed physical or sexual  
11 abuse against a child; and

12 (B) a custodial parent, guardian, or custodian knowingly or recklessly  
13 allows the child to be in the physical presence of the alleged abuser after  
14 receiving such notice.

15 (4) The custodial parent, guardian, or guardian has abandoned the child.

16 (5) The child or another child in the same household has been neglected  
17 and there is substantial risk of harm to the child who is the subject of the  
18 petition.

19 (b) Upon a finding that any of the conditions set forth in subsection (a) of  
20 this section exists a return home would be contrary to the best interests of the  
21 child, the Court may issue such temporary orders related to the legal custody of

1 the child as it deems necessary ~~and sufficient to protect the welfare and safety~~  
2 ~~of the child, including, in order of preference:~~

3 ~~(1) A conditional custody order returning legal custody of the child to~~  
4 ~~the custodial parent, guardian, or custodian, subject to such conditions and~~  
5 ~~limitations as the Court may deem necessary and sufficient to protect the child.~~

6 ~~(2)(A) An order transferring temporary legal custody to a noncustodial~~  
7 ~~parent. Provided that parentage is not contested, upon a request by a~~  
8 ~~noncustodial parent for temporary legal custody and a personal appearance of~~  
9 ~~the noncustodial parent, the noncustodial parent shall present to the Court a~~  
10 ~~care plan that describes the history of the noncustodial parent's contact with~~  
11 ~~the child, including any reasons why contact did not occur, and that addresses:~~

12 ~~(i) the child's need for a safe, secure, and stable home;~~  
13 ~~(ii) the child's need for proper and effective care and control; and~~  
14 ~~(iii) the child's need for a continuing relationship with the~~  
15 ~~custodial parent, if appropriate.~~

16 ~~(B) The Court shall consider court orders and findings from other~~  
17 ~~proceedings related to the custody of the child.~~

18 ~~(C) The Court shall transfer legal custody to the noncustodial parent~~  
19 ~~unless the Court finds by a preponderance of the evidence that the transfer~~  
20 ~~would be contrary to the child's welfare because any of the following exists:~~

1                             (i) The care plan fails to meet the criteria set forth in subdivision  
2                             (2)(A) of this subsection.  
3                             (ii) Transferring temporary legal custody of the child to the  
4                             noncustodial parent could result in substantial danger to the physical health,  
5                             mental health, welfare, or safety of the child.  
6                             (iii) The child or another child residing in the same household as  
7                             the noncustodial parent has been physically or sexually abused by the  
8                             noncustodial parent or a member of the noncustodial parent's household, or  
9                             another person known to the noncustodial parent.  
10                           (iv) The child or another child residing in the same household as  
11                             the noncustodial parent is at substantial risk of physical or sexual abuse by the  
12                             noncustodial parent or a member of the noncustodial parent's household, or  
13                             another person known to the noncustodial parent. It shall constitute *prima facie*  
14                             evidence that a child is at substantial risk of being physically or sexually  
15                             abused if:  
16                                 (I) a noncustodial parent receives actual notice that a person  
17                             has committed or is alleged to have committed physical or sexual abuse against  
18                             a child; and  
19                                 (II) the noncustodial parent knowingly or recklessly allows the  
20                             child to be in the physical presence of the alleged abuser after receiving such  
21                             notice.

1                     (v) ~~The child or another child in the noncustodial parent's~~  
2 ~~household has been neglected, and there is substantial risk of harm to the child~~  
3 ~~who is the subject of the petition.~~

4                     (D) ~~If the noncustodial parent's request for temporary custody is~~  
5 ~~contested, the Court may continue the hearing and place the child in the~~  
6 ~~temporary custody of the Department, pending further hearing and resolution~~  
7 ~~of the custody issue. Absent good cause shown, the Court shall hold a further~~  
8 ~~hearing on the issue within 30 days.~~

9                     (3) ~~An order transferring temporary legal custody of the child to a~~  
10 ~~relative, provided:~~

11                     (A) ~~The relative seeking legal custody is a grandparent, great~~  
12 ~~grandparent, aunt, great aunt, uncle, great uncle, stepparent, sibling, or~~  
13 ~~step sibling of the child.~~

14                     (B) ~~The relative is suitable to care for the child. In determining~~  
15 ~~suitability, the Court shall consider the relationship of the child and the relative~~  
16 ~~and the relative's ability to:~~

- 17                         (i) ~~Provide a safe, secure, and stable environment.~~
- 18                         (ii) ~~Exercise proper and effective care and control of the child.~~
- 19                         (iii) ~~Protect the child from the custodial parent to the degree the~~  
20 ~~Court deems such protection necessary.~~
- 21                         (iv) ~~Support reunification efforts, if any, with the custodial parent.~~

1                     (v) Consider providing legal permanence if reunification fails.

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

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

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

8                     (C)(c) In considering the suitability of a relative under this  
9                     subdivision (3) an order under subsection (b) of this section, the Court may  
10                   order the Department to conduct an investigation of a person seeking custody  
11                   of the child, and the suitability of that person's home, and file a written report  
12                   of its findings with the Court. The Court may place the child in the temporary  
13                   custody of the Department Commissioner, pending such investigation.

14                     (4) A temporary care order transferring temporary legal custody of the  
15                   child to a relative who is not listed in subdivision (3)(A) of this subsection or a  
16                   person with a significant relationship with the child, provided that the criteria  
17                   in subdivision (3)(B) of this subsection are met. The Court may make such  
18                   orders as provided in subdivision (3)(C) of this subsection to determine  
19                   suitability under this subdivision.

20                     (5) A temporary care order transferring temporary legal custody of the  
21                   child to the Commissioner.

1           (e)(d) If the Court transfers legal custody of the child, the Court shall issue  
2       a written temporary care order.

3           (1) The order shall include:

4           (A) a A finding that remaining in the home is contrary to the ~~child's~~  
5       welfare best interests of the child and the facts upon which that finding is  
6       based; ~~and~~.

7           (B) a A finding as to whether reasonable efforts were made to  
8       prevent unnecessary removal of the child from the home. If the Court lacks  
9       sufficient evidence to make findings on whether reasonable efforts were made  
10      to prevent the removal of the child from the home, that determination shall be  
11      made at the next scheduled hearing in the case but, in any event, no later than  
12      60 days after the issuance of the initial order removing a child from the home.

13           (2) The order may include other provisions as may be ~~necessary for the~~  
14       protection and welfare in the best interests of the child, ~~such as including:~~

15           (A) ~~Establishing for establishing~~ parent-child contact ~~under such and~~  
16       ~~terms and conditions as are necessary for the protection of the child.~~ and terms  
17       and conditions for that contact;

18           (B) ~~Requiring the Department to provide the child with services, if~~  
19       ~~legal custody of the child has been transferred to the Commissioner.~~

20           (C)(B) ~~Requiring requiring~~ the Department to ~~refer a parent for~~  
21       appropriate assessments and services provide services for the child and the

1       family, including a consideration of the needs of children and parents with  
2       disabilities; ~~provided that the child's needs are given primary consideration.~~;

3           (D)(C) ~~Requiring~~ requiring genetic testing if parentage of the child is  
4       at issue.;

5           (E)(D) ~~Requiring~~ requiring the Department to make diligent efforts to  
6       locate the noncustodial parent.;

7           (F)(E) ~~Requiring~~ requiring the custodial parent to provide the  
8       Department with names of all potential noncustodial parents and relatives of  
9       the child.;

10          (G)(F) ~~Establishing~~ establishing protective supervision and ~~requiring~~  
11       the Department to make appropriate service referrals for the child and the  
12       family, ~~if legal custody is transferred to an individual other than the~~  
13       Commissioner.

14           (3) In his or her discretion, the Commissioner may provide assistance  
15       and services to children and families to the extent that funds permit;  
16       ~~notwithstanding subdivision (2)(B) of this subsection.~~

17           (d) ~~If a party seeks to modify a temporary care order in order to transfer~~  
18       ~~legal custody of a child from the Commissioner to a relative or a person with a~~  
19       ~~significant relationship with the child, the relative shall be entitled to~~  
20       ~~preferential consideration under subdivision (b)(3) of this section, provided~~  
21       ~~that a disposition order has not been issued and the motion is filed within~~

1       90 days of the date that legal custody was initially transferred to the  
2       Commissioner.

3 \* \* \* Legislature; Establishing a Joint Legislative Child  
4 Protection Oversight Committee \* \* \*

5 Sec. 12. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT  
6 COMMITTEE

7                   (a) Creation. There is created a Joint Legislative Child Protection  
8                   Oversight Committee.

9           **(b) Membership.** The Committee shall be composed of the following  
10          10 members, who shall be appointed each biennial session of the General  
11          Assembly:

12                   (1) Five current members of the House of Representatives, not all  
13                   from the same political party, who shall be appointed by the Speaker of  
14                   the House; and

(2) Five current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

17           (3) In addition to two members-at-large appointed from each Chamber,  
18           one appointment shall be made from the:

19                   (A) House Committee on Appropriations;

20                   (B) Senate Committee on Appropriations;

21                   (C) House Committee on Judiciary;

1                   (D) Senate Committee on Judiciary;  
2                   (E) House Committee on Human Services; and  
3                   (F) Senate Committee on Health and Welfare.  
4                   (c) Powers and duties.  
5                   (1) The Committee shall:  
6                   (A) Exercise oversight over Vermont's system for protecting children  
7                   from abuse and neglect, including:  
8                   (i) evaluating whether the branches, departments, agencies, and  
9                   persons that are responsible for protecting children from abuse and neglect are  
10                  effective;  
11                  (ii) determining if there are deficiencies in the system and the  
12                  causes of those deficiencies;  
13                  (iii) evaluating which programs are the most cost-effective;  
14                  (iv) determining whether there is variation in policies, procedures,  
15                  practices, and outcomes between different areas of the State and the causes and  
16                  results of any such variation;  
17                  (v) determining how to improve data sharing between the courts,  
18                  treatment providers, Department of Education, Department for Children and  
19                  Families, and other branches, departments, agencies, and persons involved in  
20                  protecting children from abuse and neglect, including:  
21                  (I) determining the data that should be shared between parties;

1                   (II) investigating regulatory requirements and security

2                   parameters;

3                   (III) investigating the potential costs of creating a platform to  
4                   share data; and

5                   (vi) making recommendations to address these issues and to  
6                   improve the system for protecting children from abuse and neglect.

7                   (B) Exercise oversight over the Department for Children and  
8                   Families, including reviewing and making recommendations concerning the  
9                   Department's:

10                  (i) strategic and operating plans;

11                  (ii) policies, procedures, and practices;

12                  (iii) staffing and employee issues, including hiring, training, and  
13                  retention;

14                  (iv) organization; and

15                  (v) budget.

16                  (C) At least annually, report on the Committee's activities and  
17                  recommendations to the General Assembly.

18                  (2) The Committee may:

19                  (A) Review and made recommendations to the House and Senate  
20                  Committees on Appropriations regarding:

1                   (i) the Department for Children and Families' budget proposal and  
2                   appropriations; and

3                   (ii) other budget proposals and appropriations relating to  
4                   protecting children from abuse and neglect.

5                   (B) Review specific reports and cases concerning child abuse and  
6                   neglect as necessary to fulfill the Committee's powers and duties.

7                   (d) Assistance. The Committee shall have the administrative, technical,  
8                   and legal assistance of the Office of Legislative Council.

9                   (e) Data and records. All State agencies and departments shall provide data  
10                  and records to the Committee upon request. Notwithstanding any other  
11                  provision of law to the contrary, the Committee may receive records that are  
12                  confidential, privileged, or the release of which is restricted under law. All  
13                  State agencies and departments shall provide such records to the Committee  
14                  upon request. Any such records obtained by the Committee shall be exempt  
15                  from public inspection and copying, shall be kept confidential by the  
16                  Committee, and shall not be disclosed.

17                  (f) Retaliation. No person who is an employee of the State of Vermont, or  
18                  of any State, local, county, or municipal department, agency, or person  
19                  involved in child protection, and who testifies before, supplies information to,  
20                  or cooperates with the Committee shall be subject to retaliation by his or her  
21                  employer. Retaliation shall include job termination, demotion in rank,

1       reduction in pay, alteration in duties and responsibilities, transfer, or a negative  
2       job performance evaluation based on the person's having testified before,  
3       supplied information to, or cooperated with the Committee.

4       (g) Meetings.

5           (1) The member appointed from the Senate Committee on Health and  
6       Welfare shall call the first meeting of the Committee.

7           (2) The Committee shall select a Chair, Vice Chair, and Clerk from  
8       among its members and may adopt rules of procedure. The Chair shall rotate  
9       biennially between the House and the Senate members. A quorum shall consist  
10      of six members.

11          (3) When the General Assembly is in session, the Committee shall meet  
12      at the call of the Chair. The Committee may meet six times during  
13      adjournment, and may meet more often subject to approval of the Speaker of  
14      the House and the President Pro Tempore of the Senate.

15          (h) Reimbursement. For attendance at meetings during adjournment of the  
16      General Assembly, members of the Committee shall be entitled to per diem  
17      compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

18          (i) Sunset. On December 30, 2020, this section (creating the Joint  
19      Legislative Child Protection Oversight Committee) is repealed and the  
20      Committee shall cease to exist.

1                   \* \* \* Establishing the Office of the Child Protection Advocate \* \* \*

2       Sec. 13. 3 V.S.A. chapter 45, subchapter 4 is redesignated to read:

3                   Subchapter 4. Departments, Divisions, Offices, and Boards

4       Sec. 14. 3 V.S.A. § 2284 is added to read:

5       § 2284. OFFICE OF THE CHILD PROTECTION ADVOCATE

6                   (a) The Office of the Child Protection Advocate is created in the Agency of  
7                   Administration.

8                   (b) The Office shall be headed by the Child Protection Advocate, who shall  
9                   be an individual with expertise and experience relevant to protecting children  
10                  from abuse and neglect. The Vermont Child Protection Advocate shall be  
11                  appointed:

12                  (1) by the Governor subject to the advice and consent of the Senate; and  
13                  (2) for a term of four years and until his or her successor is appointed  
14                  and qualified.

15                  (c) The Child Protection Advocate shall:

16                  (1) investigate and resolve complaints on behalf of persons involved in  
17                  the child protection system;  
18                  (2) analyze and monitor the development and implementation of federal,  
19                  State, and local laws, and of regulations and policies relating to child  
20                  protection and to the Department for Children and Families, and make  
21                  recommendations as he or she deems appropriate;

1                 (3) provide information to the public, agencies, legislators, and others  
2                 regarding problems and concerns of persons involved in the child protection  
3                 system, including recommendations relating to such problems and concerns;  
4                 (4) promote the development and involvement of citizen organizations  
5                 in the work of the Office and in protecting children from abuse and neglect;  
6                 (5) train persons and organizations in advocating for the interests of  
7                 children and persons involved in the protecting children from abuse and  
8                 neglect;  
9                 (6) develop and implement a reporting system to collect and analyze  
10                 information relating to complaints by persons involved in the child protection  
11                 system; and  
12                 (7) submit to the General Assembly and the Governor on or before  
13                 January 15 of each year a report on the Office's activities and  
14                 recommendations.  
15                 (d) The Child Protection Advocate may:  
16                 (1) hire or contract with persons to fulfill the purposes of this chapter;  
17                 (2) have appropriate access to review the records of State agencies;  
18                 (3) pursue administrative, judicial, or other remedies on behalf of  
19                 persons involved in the child protection system;  
20                 (4) delegate to employees of the Office any part of his or her authority;

1           (5) adopt rules, policies, and procedures necessary to carry out the  
2       provisions of this chapter, including prohibiting any employee or immediate  
3       family member of any employee from having any interest which creates a  
4       conflict of interest in carrying out the Advocate's responsibilities under this  
5       chapter;

6           (6) take any other action necessary to fulfill the purposes of this chapter.

7           (e) All State agencies shall comply with reasonable requests of the Child  
8       Protection Advocate for records, information, and assistance.

9           (f) No civil liability shall attach to the Child Protection Advocate or any  
10      employee of the Office of the Child Protection Advocate for good faith  
11      performance of the duties imposed by this chapter.

12          (g) A person who intentionally hinders the Child Protection Advocate or a  
13      representative of the Office of the Child Protection Advocate acting pursuant  
14      to this chapter shall be imprisoned not more than one year or fined not more  
15      than \$5,000.00, or both.

16          (h) A person who takes discriminatory, disciplinary, or retaliatory action  
17      against any person for any communication made, or information disclosed, to  
18      the Child Protection Advocate or to a representative of the Office of the Child  
19      Protection Advocate to aid the Advocate in carrying out his or her duties,  
20      unless the communication or disclosure was done maliciously or without good

1      faith, shall be imprisoned not more than one year or fined not more than

2      \$5,000.00, or both.

3 \* \* \* Department for Children and Families; Policies \* \* \*

4 Sec. 15. THE DEPARTMENT FOR CHILDREN AND FAMILIES;

## 5 POLICIES, PROCEDURES, AND PRACTICES

6           (a) The Commissioner for Children and Families shall:

7           (1) ensure that policies, procedures, and practices are consistent, and are  
8           applied in a consistent manner, by all Department offices and in all regions of  
9           the State;

10           (2) ensure that policies, procedures, and practices are consistent with  
11           statute;

12                   (3) develop metrics as to the appropriate case load for social workers in  
13                   the Family Services Division that take into account the experience and training  
14                   of a social worker, the number of families and the total number of children a  
15                   social worker is responsible for, and the acuity or difficulty of cases;

16           (4) ensure that all employees assigned to carry out investigations have  
17           training or experience in conducting investigations and have a Master's of  
18           Social Work or an equivalent degree, or relevant experience;

- 1                   (5) develop policies and procedures to:
- 2                    (A) improve the sharing of information with law enforcement,
- 3                   treatment providers, courts, State's Attorneys, guardians ad litem, and other
- 4                   relevant parties;
- 5                    (B) encourage law enforcement, treatment providers, and all
- 6                   agencies, departments, and other persons that administer drug or alcohol tests
- 7                   to parents or other care-givers to provide test results to the Commissioner;
- 8                    (C) ensure that courts have all relevant information in a timely
- 9                   fashion, and that Department employees file paperwork and reports in a timely
- 10                  manner;
- 11                  (D) require increased monitoring of a child's safety if:
- 12                  (i) other children have been removed from the same home or the
- 13                  parent or guardian's parental rights as to another child have been
- 14                  terminated; or
- 15                  (ii) the child is returned to a home from which other children have
- 16                  been removed;
- 17                  (E) require that all persons living in a household, or that will have
- 18                  child care responsibilities, will be assessed for criminal history and potential
- 19                  safety risks whenever a child who has been removed from a home is returned
- 20                  to that home;

1           (F) increase the number of required face-to-face meetings between  
2           social workers and children; and

3           (G) increase the number of required home visits and require  
4           unannounced home visits.

5           (b) On or before April 3, 2015, the Commissioner shall submit a written  
6           report to the House Committees on Human Services and on Judiciary, and to  
7           the Senate Committees on Health and Welfare and on Judiciary, on:

8           (1) The Commissioner's response to the Vermont Citizen's Advisory  
9           Board (VCAB) Child Death Review Report dated November 7, 2014, and to  
10          the Casey Family Programs report dated December, 2014, including:

11          (A) The Commissioner's response to every recommendation in the  
12          reports and:

13          (i) if the Commissioner agrees with a recommendation, an  
14          explanation of any changes made in response to the recommendation;  
15          (ii) if the Commissioner does not agree with a recommendation,  
16          an explanation of why; and  
17          (iii) any suggestions concerning other options to implement a  
18          recommendation.

19          (B) A description of any changes to the Department's policies,  
20          procedures, and practices made in response to the reports, including the  
21          language of any new or amended policies and procedures.

1                   (2) The Commissioner's response to the issues in subsection (a) of this  
2                   section, including the language of any new or amended policies and  
3                   procedures.

## \* \* \* Improvements to CHINS Proceedings \* \* \*

5 Sec. 16. WORKING GROUP TO RECOMMEND IMPROVEMENTS TO  
6 CHINS PROCEEDINGS

7           (a) Creation. There is created a working group to recommend ways to  
8           improve the efficiency, timeliness, process, and results of Children in Need of  
9           Care or Supervision (CHINS) proceedings.

10        (b) Membership. The Working Group shall be composed of the following  
11        members:

12 (1) the Chief Administrative Judge or designee;

13 (2) the Defender General or designee;

14 (3) the Attorney General or designee;

15                   (4) the Executive Director of the Department of State's Attorneys and  
16                   Sheriffs Association or designee; and

17                   (5) a guardian ad litem who shall be appointed jointly by the President  
18                   Pro Tempore of the Senate and the Speaker of the House

19           (c) Powers and duties. The Working Group shall study and make  
20 recommendations concerning:

1                 (1) the reasons that statutory time frames are not met and how to ensure  
2                 that statutory time frames are met in 90 percent of proceedings;  
3                 (2) how to ensure that attorneys, judges, and guardians ad litem appear  
4                 on time and are prepared;  
5                 (3) how to monitor and improve the performance and work quality of  
6                 attorneys, judges, and guardians ad litem;  
7                 (4) how to ensure that there is a sufficient number of attorneys available  
8                 to handle all CHINS cases, in all regions of the State, in a timely manner;  
9                 (5) the role of guardians as litem, and how to ensure their information is  
10                 presented to, and considered by, the court;  
11                 (6) how to ensure that once a child is returned to his or her family courts  
12                 and the Department for Children and Families can continue to monitor the  
13                 child and family where appropriate, and how to expedite a new proceeding that  
14                 concerns a family with repeated contacts with the child protection system; and  
15                 (7) any other issue the Working Group determines is relevant to improve  
16                 the efficiency, timeliness, process, and results of CHINS proceedings.  
17                 (d) Assistance. The Working Group shall have the administrative,  
18                 technical, and legal assistance of the Office of the Attorney General. The  
19                 Working Group may consult with any persons necessary in fulfilling its powers  
20                 and duties.

1       (e) Report. On or before November 1, 2015, the Working Group shall  
2       report its findings and recommendations to the Joint Legislative Child  
3       Protection Oversight Committee, the House Committees on Human Services  
4       and on Judiciary, and the Senate Committees on Health and Welfare and on  
5       Judiciary.

6       (f) Meetings and sunset.

7           (1) The Attorney General or designee shall call the first meeting of the  
8       Working Group.

9           (2) The Working Group shall select a chair from among its members at  
10      the first meeting.

11          (3) The Working Group shall cease to exist on November 2, 2015.

12 Sec. 17. PILOT PROGRAM; CASE MANAGERS

13          (a) The Judicial Branch shall develop and administer a pilot program to use  
14      case managers in proceedings pursuant to 33 V.S.A. chapter 53 in two  
15      counties. The goal of the pilot project will be to determine if case managers  
16      can improve the efficiency and timeliness of the proceedings.

17          (b) The pilot program shall be in effect from July 1, 2015, through June 30,  
18      2017.

19          (c) On or before September 30, 2017, the Chief Administrative Judge shall  
20      report to the Joint Legislative Child Protection Oversight Committee, the  
21      House Committees on Human Services and on Judiciary, and the Senate

Committees on Health and Welfare and on Judiciary evaluating the pilot

2 program. The report shall include:

(1) findings concerning the cost and effectiveness of the program;

(2) data comparing the counties involved in the pilot project to other

5 counties during the period from July 1, 2015, through June 30, 2017; and the

6 counties involved in the pilot project between July 1, 2013, through June 30,

7       2015, and those same counties between July 1, 2015, through June 30, 2017,

8        including:

(A) average time to disposition of CHINS cases;

(B) average time involved in each stage of CHINS cases;

11 (C) number of adjournments and the length of adjournments;

**(D) reasons for adjournments;**

14 guardians ad litem, and judges, failed to appear or were late; and

(3) a finding as to whether the use of case managers result in savings,

17 and a comparison of any savings and the cost of the pilot project; and

18 (4) a recommendation as to whether the program should be continued.

19 \* \* \* Effective Date \* \* \*

20 Sec. 18. EFFECTIVE DATE

21 This act shall take effect on passage.