

1 TO THE HONORABLE SENATE:

2 The Senate Committee on Judiciary to which was referred Senate Bill No. 9
3 entitled “An act relating to relating to improving Vermont’s system for
4 protecting children from abuse and neglect” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 * * * Legislative Findings * * *

8 Sec. 1. LEGISLATIVE FINDINGS

9 (a) In 2014, the tragic deaths of two children exposed problems with
10 Vermont’s system intended to protect children from abuse and neglect. This
11 act is intended to address these problems and implement the recommendations
12 of the Joint Legislative Committee on Child Protection created by 2014 Acts
13 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:

19 (1) the dedicated frontline professionals who struggle to handle the
20 seemingly ever-increasing caseloads have the support, training, and resources
21 necessary to do their job;

1 (2) the most serious cases of abuse are thoroughly investigated and
2 prosecuted if appropriate;

3 (3) courts have the information and tools necessary to make the best
4 possible decisions;

5 (4) all participants in the child protection system, from the frontline
6 caseworker to the judge determining ultimate custody, work together to
7 prioritize the child’s safety and best interests;

8 (5) an effective oversight structure is established; and

9 (6) children who have suffered abuse and neglect can find safe,
10 nurturing, and permanent homes, whether with their custodial parents,
11 relatives, or other caring families and individuals.

12 (c) This act is only the beginning of what must be an ongoing process in
13 which the House and Senate Committees on Judiciary, the Senate Committee
14 on Health and Welfare, the House Committee on Human Services, in
15 consultation with the Senate and House Committees on Appropriations,
16 continue to enhance the statewide approach to the prevention of child abuse
17 and neglect.

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

1 (e) In 2014, the tragic deaths of two children exposed problems with
2 Vermont’s child protection system. The General Assembly believes that this
3 act will begin to address these problems, improve our State’s system for
4 protecting our children, and help prevent future tragedies.

5 * * * Crimes and Criminal Procedure; Cruelty to a Child; Establishing A New
6 Crime of Failure to Protect a Child; Enhancing Penalties for
7 Manufacturing Methamphetamine When a Child is Present * * *

8 Sec. 2. 13 V.S.A. § 1304 is amended to read:

9 § 1304. ~~CRUELTY TO CHILDREN UNDER 10 BY ONE OVER 16 A~~

10 CHILD

11 A person over ~~the age of~~ 16 years of age, having the custody, ~~charge~~ or care
12 of a child ~~under 10 years of age~~, who ~~wilfully~~ willfully assaults, ~~ill treats~~,
13 neglects, or abandons ~~or exposes such~~ the child, or causes ~~or procures such the~~
14 child to be assaulted, ~~ill treated~~, neglected, or abandoned ~~or exposed~~, in a
15 manner to cause ~~such the~~ child unnecessary suffering, or to endanger his or her
16 health, shall be imprisoned not more than two years or fined not more than
17 \$500.00, or both.

18 Sec. 3. 13 V.S.A. § 1304a is added to read:

19 § 1304a. FAILURE TO PROTECT A CHILD

20 (a) A person having the custody or care of a child commits the crime of
21 failure to protect a child if:

1 (1) the person knows, or reasonably should have known that the child is
2 in danger of:

3 (A) death;

4 (B) serious bodily injury as defined in section 1021 of this title;

5 (C) lewd or lascivious conduct with a child in violation of section
6 2602 of this title;

7 (D) sexual exploitation of children in violation of chapter 64 of this
8 title; or

9 (E) sexual assault in violation of chapter 72 of this title; and

10 (2) the person fails to act to prevent a child from suffering any of the
11 possible outcomes as set forth in subdivision (1) of this subsection; and

12 (3) the person's failure to act is a proximate cause of the child suffering
13 any of the possible outcomes as set forth in subdivision (1) of this subsection.

14 (b) It shall be an affirmative defense to this section, if proven by a
15 preponderance of the evidence, that:

16 (1) the defendant failed to act because of a reasonable fear that he or she
17 or another person would suffer death, bodily injury, or serious bodily injury as
18 defined in section 1021 of this title, or sexual assault in violation of chapter 72
19 of this title as a result of acting to prevent harm to the child; or

1 (2) where the child’s injury or death resulted from a lack of medical
2 treatment or care, the defendant made a reasonable decision to not seek
3 medical care or to withhold medical treatment.

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

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

8 Sec. 4. 18 V.S.A. § 4236 is amended to read:

9 § 4236. MANUFACTURE OR CULTIVATION

10 (a)(1) A person knowingly and unlawfully manufacturing or cultivating a
11 regulated drug shall be imprisoned not more than 20 years or fined not more
12 than \$1,000,000.00, or both.

13 (2) A person who violates subdivision (1) of this subsection shall be
14 imprisoned for not more than 30 years or fined not more than \$1,500,000.00,
15 or both, if:

16 (A) the regulated drug is methamphetamine; and

17 (B) a child is actually present at the site of methamphetamine
18 manufacture or attempted manufacture.

19 (b) This section shall not apply to the cultivation of marijuana.

1 Sec. 5. JUDICIAL BRANCH REPORT ON PROSECUTIONS,
2 CONVICTIONS, AND SENTENCES PURSUANT TO 13 V.S.A.

3 § 1304a

4 The Judicial Branch shall track all prosecutions and convictions pursuant to
5 13 V.S.A. § 1304a, and, on January 15, 2018, shall report to the House and
6 Senate Committees on Judiciary concerning:

7 (1) the number of arrests, prosecutions, and convictions pursuant to
8 13 V.S.A. § 1304a;

9 (2) the disposition of all cases prosecuted pursuant to 13 V.S.A.
10 § 1304a;

11 (3) the sentence imposed for all convictions pursuant to 13 V.S.A.
12 § 1304a;

13 (4) the number of times an affirmative defense pursuant to 13 V.S.A.
14 § 1304a(b)(1) was alleged or raised;

15 (5) the disposition of all cases in which an affirmative defense pursuant
16 to 13 V.S.A. § 1304a(b)(1) was alleged or raised;

17 (6) a comparison of the sentence imposed on any defendant found guilty
18 after raising an affirmative defense pursuant to 13 V.S.A. § 1304a(b)(1) and
19 any sentence imposed on the person alleged to have caused the defendant to
20 fear death, injury, or sexual assault; and

1 (7) Any other data or information that the Judicial Branch deems
2 relevant.

3 * * * Municipal and County Government; Special Investigative
4 Units; Mission and Jurisdiction * * *

5 Sec. 6. 24 V.S.A. § 1940 is amended to read:

6 § 1940. ~~TASK FORCES; SPECIALIZED~~ SPECIAL INVESTIGATIVE
7 UNITS; BOARDS; GRANTS

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

17 (1) shall investigate:

18 (A) an incident in which a child suffers, by other than accidental
19 means, serious bodily injury as defined in 13 V.S.A. § 1021; and

20 (B) potential violations of:

21 (i) 13 V.S.A. § 2602;

1 (ii) 13 V.S.A. chapter 60;

2 (iii) 13 V.S.A. chapter 64; and

3 (iv) 13 V.S.A. chapter 72; and

4 (2) may investigate:

5 (A) an incident in which a child suffers:

6 (i) bodily injury, by other than accidental means, as defined in

7 13 V.S.A. § 1021; or

8 (ii) death; and

9 (B) potential violations of:

10 (i) 13 V.S.A. § 2601;

11 (ii) 13 V.S.A. § 2605;

12 (iii) 13 V.S.A. § 1304; and

13 (iv) 13 V.S.A. § 1304a.

14 (b) A ~~task force or specialized~~ special investigative unit organized and
15 operating under this section may accept, receive, and disburse in furtherance of
16 its duties and functions any funds, grants, and services made available by the
17 State of Vermont and its agencies, the federal government and its agencies, any
18 municipality or other unit of local government, or private or civic sources.

19 Any employee covered by an agreement establishing a special investigative
20 unit shall remain an employee of the donor agency.

1 (c) A ~~Specialized~~ Special Investigative Unit Grants Board is created which
2 shall ~~be comprised of~~ comprise the Attorney General, the Secretary of
3 Administration, the Executive Director of the Department of State’s Attorneys
4 and Sheriffs, the Commissioner of Public Safety, the Commissioner for
5 Children and Families, a representative of the Vermont Sheriffs’ Association, a
6 representative of the Vermont Association of Chiefs of Police, the Executive
7 Director of the Center for Crime Victim Services, and the Executive Director
8 of the Vermont League of Cities and Towns. ~~Specialized~~ Special investigative
9 units organized and operating under this section ~~for the investigation of sex~~
10 ~~crimes, child abuse, elder abuse, domestic violence, or crimes against those~~
11 ~~with physical or developmental disabilities~~ may apply to the Board for a grant
12 or grants covering the costs of salaries and employee benefits to be expended
13 during a given year for the performance of unit duties as well as unit operating
14 costs for rent, utilities, equipment, training, and supplies. Grants under this
15 section shall be approved by a majority of the entire Board and shall not
16 exceed 50 percent of the yearly salary and employee benefit costs of the unit.
17 Preference shall be given to grant applications which include the participation
18 of the Department of Public Safety, the Department for Children and Families,
19 sheriffs’ departments, community victims’ advocacy organizations, and
20 municipalities within the region. Preference shall also be given to grant
21 applications which promote policies and practices that are consistent across the

1 State, including policies and practices concerning the referral of complaints,
2 the investigation of cases, and the supervision and management of special
3 investigative units. However, a sheriff's department in a county with a
4 population of ~~less~~ fewer than 8,000 residents shall upon application receive a
5 grant of up to \$20,000.00 for 50 percent of the yearly salary and employee
6 benefits costs of a part-time ~~specialized~~ special investigative unit investigator
7 which shall be paid to the department as time is billed on a per hour rate as
8 agreed by contract up to the maximum amount of the grant.

9 (d) The Board may adopt rules relating to grant eligibility criteria,
10 processes for applications, awards, and reports related to grants authorized
11 pursuant to this section. The Attorney General shall be the adopting authority.

12 * * * Adoption Act; Postadoption Contact Agreements * * *

13 Sec. 7. 15A V.S.A. § 1-109 is amended to read:

14 § 1-109. TERMINATION OF ORDERS AND AGREEMENTS FOR
15 VISITATION OR COMMUNICATION UPON ADOPTION

16 When a decree of adoption becomes final, except as provided in Article 4 of
17 this title and 33 V.S.A. § 5323, any order or agreement for visitation or
18 communication with the minor shall be unenforceable.

1 Sec. 8. 33 V.S.A. § 5323 is added to read:

2 § 5323. POSTADOPTION CONTACT AGREEMENTS

3 (a) Either or both birth parents and each intended adoptive parent may enter
4 into a postadoption contact agreement regarding communication or contact
5 between either or both birth parents and the adopted child. Such an agreement
6 may be entered into if:

7 (1) the child is in the custody of the Department for Children and
8 Families;

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

10 (3) either or both birth parents agree to a voluntary termination of
11 parental rights, including an agreement in a case which began as an involuntary
12 termination of parental rights.

13 (b) The Court may order postadoption communication or contact
14 privileges if:

15 (1) it determines that the child's best interests will be served by
16 postadoption communication or contact with either or both birth parents;

17 (2) each intended adoptive parent consents to the granting of
18 communication or contact privileges;

19 (3) each intended adoptive parent and either or both birth parents
20 execute an agreement and file the agreement with the court;

21 (4) the postadoption contact agreement is approved by the court.

1 (c) A postadoption contact agreement shall contain:

2 (1) an acknowledgment by either or both birth parents that the finality of
3 the termination of parental rights and the adoption are not dependent upon the
4 adoptive parents abiding by the postadoption contact agreement; and

5 (2) an acknowledgment by each intended adoptive parent that the
6 agreement grants either or both birth parents the right to seek to enforce the
7 postadoption contact agreement.

8 (d) The order approving a postadoption contact agreement shall be made
9 part of the final order terminating parental rights. The finality of the
10 termination of parental rights and of the adoption shall not be affected by
11 implementation of the provisions of the postadoption contact agreement.

12 (e) The Probate Division of the Superior Court shall hear petitions brought
13 to enforce or modify agreements created under this section. A disagreement
14 between the parties or litigation brought to enforce or modify the agreement
15 shall not affect the validity of the termination of parental rights or the adoption.

16 The Probate Court shall not act on a petition to change or enforce the
17 agreement unless the petitioner had participated, or attempted to participate, in
18 good faith in mediation or other appropriate dispute resolution proceedings to
19 resolve the dispute.

20 (f) An adoptive parent may, at any time, petition the Probate Division of
21 the Superior Court for review of communication or contact ordered pursuant to

1 subsection (b) of this section if the adoptive parent believes that the best
2 interests of the child are being compromised. The Probate Court may order the
3 communication or contact be terminated or altered as the Court deems to be in
4 the best interest of the adopted child.

5 * * * Human Services; Child Welfare Services; Definitions;

6 Investigations; Referral to Law Enforcement* * *

7 Sec. 9. 33 V.S.A. § 4912 is amended to read

8 § 4912. DEFINITIONS

9 As used in this subchapter:

10 * * *

11 (6) “Harm” can occur by:

12 (A) Physical injury or emotional maltreatment.

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

21 (C) Abandonment of the child.

1 ~~sexual conduct, sexual excitement, or sadomasochistic abuse involving a child~~

2 means:

3 (A) lewdness and prostitution in violation of 13 V.S.A. chapter 59;

4 (B) human trafficking in violation of 13 V.S.A. chapter 60;

5 (C) obscenity in violation of 13 V.S.A. chapter 63;

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

7 chapter 64; or

8 (E) sexual assault in violation of 13 V.S.A. chapter 72.

9 * * *

10 Sec. 10. 33 V.S.A. § 4915 is amended to read:

11 § 4915. ASSESSMENT AND INVESTIGATION

12 * * *

13 (d) The Department shall conduct an investigation when an accepted report
14 involves allegations indicating substantial child endangerment. For purposes
15 of this section, “substantial child endangerment” includes conduct by an adult
16 involving or resulting in sexual abuse, and conduct by a person responsible for
17 a child’s welfare involving or resulting in abandonment, child fatality,
18 malicious punishment, or abuse or neglect that causes serious ~~physical~~ bodily
19 injury as defined in 13 V.S.A. § 1021. The Department may conduct an
20 investigation of any report.

21 * * *

1 Sec. 11. 33 V.S.A. § 4915b(e) is amended to read:

2 (e) The Department:

3 (1) shall report to and request assistance from law enforcement in the
4 following circumstances:

5 ~~(1) investigations of child sexual abuse by an alleged perpetrator age 10~~
6 ~~or older;~~

7 ~~(2) investigations of serious physical abuse or neglect likely to result in~~
8 ~~criminal charges or requiring emergency medical care~~

9 (A) an incident in which a child suffers, by other than accidental
10 means, serious bodily injury as defined in 13 V.S.A. § 1021; and

11 (B) potential violations of:

12 (i) 13 V.S.A. § 2602;

13 (ii) 13 V.S.A. chapter 60;

14 (iii) 13 V.S.A. chapter 64; and

15 (iv) 13 V.S.A. chapter 72; and

16 (C) situations potentially dangerous to the child or Department
17 worker; and

18 (2) may report to and request assistance from law enforcement in the
19 following circumstances:

20 (A) an incident in which a child suffers:

1 (b) The Commissioner shall promptly inform the parents, if known, or
2 guardian of the child that a report has been accepted as a valid allegation
3 pursuant to subsection 4915(b) of this title and the Department's response to
4 the report. The Department shall inform the parent or guardian of his or her
5 ability to request records pursuant to subsection (c) of this section. This
6 section shall not apply if the parent or guardian is the subject of the
7 investigation.

8 (c) Upon request, the redacted investigation file shall be disclosed to:

9 (1) the child's parents, foster parent, or guardian, absent good cause
10 shown by the Department, provided that the child's parent, foster parent, or
11 guardian is not the subject of the investigation; and

12 (2) the person alleged to have abused or neglected the child, as provided
13 for in subsection 4916a(d) of this title.

14 (d) ~~Upon request,~~ Department records created under this subchapter shall
15 be disclosed to:

16 (1) the court, parties to the juvenile proceeding, and the child's guardian
17 ad litem if there is a pending juvenile proceeding or if the child is in the
18 custody of the Commissioner;

19 (2) the Commissioner or person designated by the Commissioner to
20 receive such records;

1 (3) persons assigned by the Commissioner to conduct
2 investigations; and

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

6 ~~(5) other State agencies conducting related inquiries or proceedings; and~~

7 ~~(6) a Probate Division of the Superior Court involved in guardianship~~
8 ~~proceedings. The Probate Division of the Superior Court shall provide a copy~~
9 ~~of the record to the respondent, the respondent's attorney, the petitioner, the~~
10 ~~guardian upon appointment, and any other individual, including the proposed~~
11 ~~guardian, determined by the Court to have a strong interest in the welfare of~~
12 ~~the respondent.~~

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

15 (A) ~~service providers working with a person or child who is the~~
16 ~~subject of the report; and~~ A person, agency, or organization, including a
17 multidisciplinary team empaneled under section 4917 of this title, authorized to
18 diagnose, care for, treat, or supervise a child or family who is the subject of a
19 report or record created under this subchapter, or who is responsible for the
20 child's health or welfare.

1 (B) Health and mental health care providers working directly with the
2 child or family who is the subject of the report or record.

3 (C) Educators working directly with the child or family who is the
4 subject of the report or record.

5 (D) Licensed or approved foster care givers for the child.

6 (E) Mandated reporters as defined by section 4913 of this subchapter,
7 making a report in accordance with the provisions of section 4914 of this
8 subchapter and engaging in an ongoing working relationship with the child or
9 family who is the subject of the report.

10 (F) Other State agencies conducting related inquiries or proceedings.

11 (G) The Child Protection Advocate appointed under section 8001 of
12 this title.

13 (H) A Probate Division of the Superior Court involved in
14 guardianship proceedings. The Probate Division of the Superior Court shall
15 provide a copy of the record to the respondent, the respondent's attorney, the
16 petitioner, the guardian upon appointment, and any other individual, including
17 the proposed guardian, determined by the Court to have a strong interest in the
18 welfare of the respondent.

19 (I) ~~other~~ Other governmental entities for purposes of child protection.

20 (2) Determinations of relevancy shall be made by the Department. In
21 providing records under this subsection (e), the Department may withhold

1 information that could compromise the safety of the reporter or the child or
2 family who is the subject of the report.

3 (3) In providing information under this section, the Department may
4 also provide other records related to its child protection activities for the child.

5 (f) Any records or reports disclosed under this section and information
6 relating to the contents of those records or reports shall not be disseminated by
7 the receiving persons or agencies to any persons or agencies, other than to
8 those persons or agencies authorized to receive information pursuant to this
9 section. A person who intentionally violates the confidentiality provisions of
10 this section shall be fined not more than \$2,000.00.

11 Sec. 14. 33 V.S.A. § 5110 is amended to read:

12 § 5110. CONDUCT OF HEARINGS

13 (a) Hearings under the juvenile judicial proceedings chapters shall be
14 conducted by the Court without a jury and shall be confidential.

15 (b) The general public shall be excluded from hearings under the juvenile
16 judicial proceedings chapters, and only the parties, their counsel, witnesses,
17 persons accompanying a party for his or her assistance, and such other persons
18 as the Court finds to have a proper interest in the case or in the work of the
19 Court, including a foster parent or a representative of a residential program
20 where the child resides, may be admitted by the Court. An individual without
21 party status seeking inclusion in the hearing may petition the Court for

1 admittance by filing a request with the clerk of the Court. This subsection
2 shall not prohibit a victim's exercise of his or her rights under sections 5233
3 and 5234 of this title, and as otherwise provided by law.

4 (c) There shall be no publicity given by any person to any proceedings
5 under the authority of the juvenile judicial proceedings chapters except with
6 the consent of the child, the child's guardian ad litem, and the child's parent,
7 guardian, or custodian. A person who violates this provision may be subject to
8 contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family
9 Proceedings.

10 * * * Juvenile Proceedings; General Provisions; Children in Need of Care or
11 Supervision; Request for an emergency care order * * *

12 Sec. 15. 33 V.S.A. § 5302 is amended to read:

13 § 5302. REQUEST FOR EMERGENCY CARE ORDER

14 (a) If an officer takes a child into custody pursuant to ~~subdivision~~ section
15 5301(1) or (2) of this title, the officer shall immediately notify the child's
16 custodial parent, guardian, or custodian and release the child to the care of the
17 child's custodial parent, guardian, or custodian unless the officer determines
18 that the child's immediate welfare requires the child's continued absence from
19 the home.

20 (b) If the officer determines that the child's immediate welfare requires the
21 child's continued absence from the home, ~~the officer shall:~~

1 (1) ~~Remove~~ The officer shall remove the child from the child's
2 surroundings, contact the Department, and deliver the child to a location
3 designated by the Department. The Department shall have the authority to
4 make reasonable decisions concerning the child's immediate placement, safety,
5 and welfare pending the issuance of an emergency care order.

6 (2) ~~Prepare~~ The officer or a social worker employed by the Department
7 for Children and Families shall prepare an affidavit in support of a request for
8 an emergency care order and provide the affidavit to the State's Attorney. The
9 affidavit shall include: the reasons for taking the child into custody; and to the
10 degree known, potential placements with which the child is familiar; the
11 names, addresses, and telephone number of the child's parents, guardian,
12 custodian, or care provider; the name, address, and telephone number of any
13 relative who has indicated an interest in taking temporary custody of the child.
14 ~~The officer~~ or social worker shall contact the Department and the Department
15 may prepare an affidavit as a supplement to the affidavit of the law
16 enforcement officer or social worker if the Department has additional
17 information with respect to the child or the family.

18 * * *

1 * * * Temporary Care Order; Custody * * *

2 Sec. 16. 33 V.S.A. § 5308 is amended to read:

3 § 5308. TEMPORARY CARE ORDER

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

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

10 (2) The child or another child residing in the same household has been
11 physically or sexually abused by a custodial parent, guardian, or custodian, or
12 by a member of the child's household, or another person known to the
13 custodial parent, guardian, or custodian.

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

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

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

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

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

11 (b) Upon a finding that ~~any of the conditions set forth in subsection (a) of~~
12 ~~this section exists~~ a return home would be contrary to the best interests of the
13 child, the Court may issue such temporary orders related to the legal custody of
14 the child as it deems necessary and sufficient ~~to protect the welfare and safety~~
15 ~~of the child, including, in order of preference:~~

16 (1) ~~A~~ a conditional custody order returning legal custody of the child to
17 the custodial parent, guardian, or custodian, noncustodial parent, relative, or a
18 person with a significant relationship with the child, subject to such conditions
19 and limitations as the Court may deem necessary and sufficient ~~to protect the~~
20 ~~child;~~

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

7 ~~(i) the child's need for a safe, secure, and stable home;~~

8 ~~(ii) the child's need for proper and effective care and control; and~~

9 ~~(iii) the child's need for a continuing relationship with the~~
10 ~~custodial parent, if appropriate.~~

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

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

16 ~~(i) The care plan fails to meet the criteria set forth in subdivision~~
17 ~~(2)(A) of this subsection.~~

18 ~~(ii) Transferring temporary legal custody of the child to the~~
19 ~~noncustodial parent could result in substantial danger to the physical health,~~
20 ~~mental health, welfare, or safety of the child.~~

1 ~~(iii) The child or another child residing in the same household as~~
2 ~~the noncustodial parent has been physically or sexually abused by the~~
3 ~~noncustodial parent or a member of the noncustodial parent's household, or~~
4 ~~another person known to the noncustodial parent.~~

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

11 ~~(I) a noncustodial parent receives actual notice that a person~~
12 ~~has committed or is alleged to have committed physical or sexual abuse against~~
13 ~~a child; and~~

14 ~~(II) the noncustodial parent knowingly or recklessly allows the~~
15 ~~child to be in the physical presence of the alleged abuser after receiving such~~
16 ~~notice.~~

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

20 ~~(D) If the noncustodial parent's request for temporary custody is~~
21 ~~contested, the Court may continue the hearing and place the child in the~~

1 ~~temporary custody of the Department, pending further hearing and resolution~~
2 ~~of the custody issue. Absent good cause shown, the Court shall hold a further~~
3 ~~hearing on the issue within 30 days.~~

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

6 ~~(A) The relative seeking legal custody is a grandparent, great-~~
7 ~~grandparent, aunt, great aunt, uncle, great uncle, stepparent, sibling, or~~
8 ~~step sibling of the child.~~

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

12 ~~(i) Provide a safe, secure, and stable environment.~~

13 ~~(ii) Exercise proper and effective care and control of the child.~~

14 ~~(iii) Protect the child from the custodial parent to the degree the~~
15 ~~Court deems such protection necessary.~~

16 ~~(iv) Support reunification efforts, if any, with the custodial parent.~~

17 ~~(v) Consider providing legal permanence if reunification fails.~~

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

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

1 (4) an order transferring temporary legal custody of the child to the
2 Commissioner.

3 ~~(C)(c)~~ The Court shall consider orders and findings from other proceedings
4 relating to the custody of the child, the child’s siblings, or children of any adult
5 in the same household as the child.

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

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

18 ~~(5) A temporary care order transferring temporary legal custody of the~~
19 ~~child to the Commissioner.~~

20 ~~(e)(e)~~ If the Court transfers legal custody of the child, the Court shall issue
21 a written temporary care order.

1 (1) The order shall include:

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

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

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

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

16 (B) requiring the Department to provide the child with services, if
17 legal custody of the child has been transferred to the Commissioner;

18 (C) requiring the Department to refer a parent for appropriate
19 assessments and services, including a consideration of the needs of children
20 and parents with disabilities, provided that the child's needs are given primary
21 consideration;

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

2 (E) requiring the Department to make diligent efforts to locate the
3 noncustodial parent;

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

6 (G) establishing protective supervision and requiring the Department
7 to make appropriate service referrals for the child and the family, if legal
8 custody is transferred to an individual other than the Commissioner.

9 (3) In his or her discretion, the Commissioner may provide assistance
10 and services to children and families to the extent that funds permit,
11 notwithstanding subdivision (2)(B) of this subsection.

12 ~~(d) If a party seeks to modify a temporary care order in order to transfer~~
13 ~~legal custody of a child from the Commissioner to a relative or a person with a~~
14 ~~significant relationship with the child, the relative shall be entitled to~~
15 ~~preferential consideration under subdivision (b)(3) of this section, provided~~
16 ~~that a disposition order has not been issued and the motion is filed within~~
17 ~~90 days of the date that legal custody was initially transferred to the~~
18 ~~Commissioner.~~

1 * * * Legislature; Establishing a Joint Legislative Child
2 Protection Oversight Committee * * *

3 Sec. 17. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT
4 COMMITTEE

5 (a) Creation. There is created a Joint Legislative Child Protection
6 Oversight Committee.

7 (b) Membership. The Committee shall be composed of the following
8 10 members, who shall be appointed each biennial session of the General
9 Assembly:

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

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

15 (3) In addition to two members-at-large appointed from each chamber,
16 one appointment shall be made from the following committees:

17 (A) House Committee on Appropriations;

18 (B) Senate Committee on Appropriations;

19 (C) House Committee on Judiciary;

20 (D) Senate Committee on Judiciary;

21 (E) House Committee on Human Services; and

1 (F) Senate Committee on Health and Welfare.

2 (c) Powers and duties.

3 (1) The Committee shall:

4 (A) Exercise oversight over Vermont’s system for protecting children
5 from abuse and neglect, including:

6 (i) evaluating whether the branches, departments, agencies, and
7 persons that are responsible for protecting children from abuse and neglect are
8 effective;

9 (ii) determining if there are deficiencies in the system and the
10 causes of those deficiencies;

11 (iii) evaluating which programs are the most cost-effective;

12 (iv) determining whether there is variation in policies, procedures,
13 practices, and outcomes between different areas of the State and the causes and
14 results of any such variation;

15 (v) determining how to improve data sharing between the courts,
16 treatment providers, Agency of Education, Department for Children and
17 Families, and other branches, departments, agencies, and persons involved in
18 protecting children from abuse and neglect, including:

19 (I) determining the data that should be shared between parties;

20 (II) investigating regulatory requirements and security
21 parameters;

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

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

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

8 (i) strategic and operating plans;

9 (ii) policies, procedures, and practices;

10 (iii) staffing and employee issues, including hiring, training, and
11 retention;

12 (iv) organization; and

13 (v) budget.

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

16 (2) The Committee may:

17 (A) review and make recommendations to the House and Senate
18 Committees on Appropriations regarding:

19 (i) the Department for Children and Families' budget proposal and
20 appropriations; and

1 (ii) other budget proposals and appropriations relating to
2 protecting children from abuse and neglect; and

3 (B) review specific reports and cases concerning child abuse and
4 neglect as necessary to fulfill the Committee’s powers and duties.

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

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

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

1 job performance evaluation based on the person's having testified before,
2 supplied information to, or cooperated with the Committee.

3 (g) Meetings.

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

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

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

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

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

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

2 Sec. 18. 3 V.S.A. chapter 45, subchapter 4 is redesignated to read:

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

4 Sec. 19. 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. 20. 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, in 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 degree
18 in social work or an equivalent degree, or relevant experience;

1 (5) develop policies, procedures, and practices to:

2 (A) ensure the consistent sharing of information, in a manner that
3 complies with statute, with law enforcement, treatment providers, courts,
4 State’s Attorneys, guardians ad litem, and other relevant parties;

5 (B) encourage law enforcement, treatment providers, and all
6 agencies, departments, and other persons that support recovery to provide
7 regular treatment progress updates 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;

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

5 (H) improve information sharing with mandatory reporters who have
6 an ongoing relationship with a child;

7 (I) ensure that mandatory reporters are informed that any confidential
8 information they may receive cannot be disclosed to a person who is not
9 authorized to receive that information; and

10 (J) apply results-based accountability or other data-based quality
11 measures to determine if children in different areas of the State have different
12 outcomes and the reasons for those differences.

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

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

19 (A) the Commissioner's response to every recommendation in the
20 reports and:

1 (i) if the Commissioner agrees with a recommendation, an
2 explanation of any changes made in response to the recommendation;

3 (ii) if the Commissioner does not agree with a recommendation,
4 an explanation of why; and

5 (iii) any suggestions concerning other options to implement a
6 recommendation; and

7 (B) a description of any changes to the Department's policies,
8 procedures, and practices made in response to the reports, including the
9 language of any new or amended policies and procedures.

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

13 * * * Agency of Human Services; Evidence-Informed Models * * *

14 Sec. 21. AGENCY OF HUMAN SERVICES; EVIDENCE-INFORMED
15 MODELS

16 The Secretary of Human Services shall identify and utilize
17 evidence-informed models of serving families that prioritize safety and
18 prevention through early interventions with high risk families. The Secretary
19 shall make recommendations in the FY2017 budget that reflect the utilization
20 of these models.

1 * * * Improvements to CHINS Proceedings * * *

2 Sec. 22. WORKING GROUP TO RECOMMEND IMPROVEMENTS TO
3 CHINS PROCEEDINGS

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

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

9 (1) the Chief Administrative Judge or designee;

10 (2) the Defender General or designee;

11 (3) the Attorney General or designee;

12 (4) the Commissioner for Children and Families or designee;

13 (5) the Executive Director of State's Attorneys and Sheriffs or
14 designee; and

15 (6) a guardian ad litem who shall be appointed jointly by the President
16 Pro Tempore of the Senate and the Speaker of the House.

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

19 (1) the reasons that statutory time frames are not met and how to ensure
20 that statutory time frames are met in 90 percent of proceedings;

1 (2) how to ensure that attorneys, judges, and guardians ad litem appear
2 on time and are prepared;

3 (3) how to monitor and improve the performance and work quality of
4 attorneys, judges, and guardians ad litem;

5 (4) how to ensure that there is a sufficient number of attorneys available
6 to handle all CHINS cases, in all regions of the State, in a timely manner;

7 (5) the role of guardians as litem, and how to ensure their information is
8 presented to, and considered by, the court;

9 (6) how to ensure that once a child is returned to his or her family, the
10 court or the Department for Children and Families, may continue to monitor
11 the child and family where appropriate, and how to expedite a new proceeding
12 that concerns a family with repeated contacts with the child protection system;

13 (7) whether the adoption of American Bar Association standards for
14 attorneys who work in the area of child abuse and neglect would be
15 appropriate; and

16 (8) any other issue the Working Group determines is relevant to improve
17 the efficiency, timeliness, process, and results of CHINS proceedings.

18 (d) Assistance. The Working Group shall have the administrative,
19 technical, and legal assistance of the Office of the Attorney General. The
20 Working Group may consult with any persons necessary in fulfilling its powers
21 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 * * * Effective Dates * * *

13 Sec. 23. EFFECTIVE DATES

14 This act shall take effect on July 1, 2015, except for this section and Sec. 19
15 (Department for Children and Families; policies, procedures, and practices)
16 which shall take effect on passage.

17
18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE