

Draft revision for S.9, Sections 4 and 5 –
Provided at request of Senate Judiciary Committee

Summary document used to inform this draft:
<https://www.childwelfare.gov/pubPDFs/cooperative.pdf>

DRAFT 2/2/2015, revised 2/5/15

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

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

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

33 V.S.A. § 5124 is added to read:

§ 5124 POSTADOPTION CONTACT AGREEMENTS

(a) Either or both parents and each intended adoptive parent may enter into a written postadoption contact agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent who enters into the agreement. Such an agreement may be entered into if:

- (1) the child is in the custody of the Department for Children and Families;
- (2) an order terminating parental rights has not yet been entered; and
- (3) either or both parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights.

(b) The court may appoint an attorney for the intended adoptive parents for the sole purpose of deciding whether to enter into a postadoption contact agreement and, if so, negotiating that agreement.

(c) The court may approve the voluntarily mediated agreement if the court determines that it would be in the child's best interests and poses no threat to the safety of the child or integrity of the adoptive placement. In making this determination, the court may consider:

- (1) The length of time that the child has been under the actual care, custody, and control of any person other than a parent;
- (2) The desires of the child's parents and the child;
- (3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;
- (4) The adjustment to the child's home, school, and community;

- (5) The willingness and ability of the parents to respect and appreciate the bond between the child and the adoptive parents;
- (6) The willingness and ability of the adoptive parents to respect and appreciate the bond between the child and the parents;
- (7) Any evidence of abuse or neglect of the child;
- (8) The recommendations of any guardian ad litem and the department.

(d) Before the court orders postadoption communication or contact, the court must review all of the following, which will be made a part of the court record:

- (1) A sworn affidavit by the parties to the agreement which affirmatively states that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress and that the parties have not relied on any representations other than those contained in the agreement;
- (2) A written acknowledgement by each parent that the termination of parental rights is irrevocable, even if the intended adoption is not finalized, the adoptive parents do not abide by the postadoption contact agreement, or the adoption is later dissolved;
- (3) the child to be adopted, if age 14 or older, has agreed; and
- (4) the department, the guardian ad litem, and the attorney for the child agree in writing.

(e) A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement. There may be separate agreements for each parent. The post-adoption agreement shall address the following issues:

- (1) the form of communication or contact to take place;
- (2) the frequency of the communication or contact;
- (3) the information, if any, that shall be provided to the parent and how often that information shall be provided;
- (4) if visits are agreed to, the degree of supervision if any that shall be required;
- (5) if written communication or exchange of information is agreed to, whether that will occur directly or through the Vermont Adoption Registry, established by 15A V. S. A. § 6-103;
- (6) if the Adoption Registry will act as an intermediary for written communication, that the signing parties will keep their address updated with the Adoption Registry;
- (7) that failure to provide contact due to the child's illness or other good cause shall not constitute grounds for an enforcement proceeding;
- (8) that the right of the signing parties to change their residence is not impaired by the agreement;
- (9) an acknowledgment by the intended adoptive parents that the agreement grants either or both parents the right to seek to enforce the postadoption contact agreement;
- (10) an acknowledgment that following the adoption, the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct in any action seeking to enforce, modify, or terminate the agreement.

(f) The order approving a postadoption contact agreement shall be a separate order made concurrent to the final order terminating parental rights.

(g) The executed agreement shall be filed with the court and will become final upon legal finalization of an adoption under 15A V.S.A. Article 3.

(h) The finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption contact agreement.

(i) A copy of the order and agreement shall be filed with the Probate Division concurrent with the petition to adopt filed under 15A V.S.A., Article 3, Part 3, and if the agreement specifies a role for the Adoption Registry, with the Registry.

(j) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

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

Article 9. MODIFICATION AND ENFORCEMENT OF POSTADOPTION CONTACT AGREEMENTS

(a) A postadoption contact agreement may be modified or terminated by agreement of the parties. A modified postadoption contact agreement shall be filed with the court that finalized the adoption.

(b) An adoptive parent may, at any time, petition for review of a postadoption contact agreement entered into under the provisions of 33 V.S.A. § 5124 if the adoptive parent believes protection of the physical safety of the child or other members of the adoptive family, or emotional well-being of the child so requires.

(c) A former parent may, at any time, petition for enforcement of a postadoption contact agreement entered into under the provisions of 33 V.S.A. § 5124 if they believe that the adoptive parents are not in compliance with the terms of the agreement.

(d) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

(e) The court shall not act on a petition to modify or enforce the agreement unless the petitioner had participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) The parties shall be the individuals who signed the original agreement. The adopted child who is age 14 or older may participate.

- (g) The court may order the communication or contact be terminated or modified if the court deems:
 - a. the protection of the physical safety of the adopted child or other members of the adoptive family, or emotional well-being of the adopted child so requires;
 - b. enforcement undermines the adoptive parent's parental authority; or
 - c. due to a change in circumstances, compliance with the agreement would be unduly burdensome to one or more of the parties.

- (h) A court-imposed modification of a previously approved agreement may limit, restrict, condition, or decrease contact between the former parents and the child, but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parents and the child or place new obligations on adoptive parents.

- (i) Any hearing held to review an agreement for postadoption contact will be confidential.

- (j) Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required, although the court may, in its discretion, hold a hearing. The burden of proof shall be on the parent whose rights were terminated in any enforcement action, and on the adoptive parent in any action to limit, decrease, or terminate contact. The standard of proof for enforcement shall be a preponderance of the evidence. For limitation, decrease or termination of a post-adoption agreement, the proof shall be by clear and convincing evidence that the change is in the best interests of the child.

- (k) The department shall not be required to be a party to the review and the court shall not order further investigation or evaluation by the department.

- (l) Failure to comply with, or petitioning to enforce or modify an agreement shall not form the basis for an award of money damages.

- (m) An agreement for postadoption contact or communication shall cease to be enforceable on the date the adopted child turns age 18, or if the adoption dissolves before the adopted child turns age 18.