

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 183  
3 entitled “An act relating to permanency for children in the child welfare  
4 system” respectfully reports that it has considered the same and recommends  
5 that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

7 Sec. 1. 14 V.S.A. § 2664 is amended to read:

8 § 2664. CREATION OF PERMANENT GUARDIANSHIP

9 (a) ~~The family division of the superior court~~ Family Division of the  
10 Superior Court may establish a permanent guardianship at a permanency  
11 planning hearing or at any other hearing in which a permanent legal disposition  
12 of the child can be made, including a child protection proceeding pursuant to  
13 33 V.S.A. § 5318, or a delinquency proceeding pursuant to 33 V.S.A. § 5232.  
14 The court shall also issue an order permitting or denying visitation, contact or  
15 information with the parent at the same time the order of permanent  
16 guardianship is issued. Before issuing an order for permanent guardianship,  
17 the court shall find by clear and convincing evidence all of the following:

18 (1) Neither parent is ~~capable or willing to provide adequate care to the~~  
19 ~~child, requiring that parental rights and responsibilities be awarded to a~~  
20 permanent guardian able to assume or resume parental duties within a  
21 reasonable time.

1           (2) ~~Neither returning the child to the parents nor adoption of the child is~~  
2 ~~likely within a reasonable period of time.~~

3           (3) ~~The child is at least 12 years old unless the proposed permanent~~  
4 ~~guardian is:~~

5                 (A) ~~a relative; or~~

6                 (B) ~~the permanent guardian of one of the child's siblings.~~

7           (4) ~~The child has resided with the permanent guardian for at least a year~~  
8 ~~or the permanent guardian is a relative with whom the child has a relationship~~  
9 ~~and with whom the child has resided for at least six months.~~

10           (5)(3) A permanent guardianship is in the best interests of the child.

11           (6)(4) The proposed permanent guardian:

12                 (A)(i) is emotionally, mentally, and physically suitable to become the  
13 permanent guardian; and

14                 (ii) is financially suitable, with kinship guardianship assistance  
15 provided for in 33 V.S.A. § 4903 if applicable, to become the permanent  
16 guardian;

17                 (B) has expressly committed to remain the permanent guardian for  
18 the duration of the child's minority; and

19                 (C) has expressly demonstrated a clear understanding of the financial  
20 implications of becoming a permanent guardian including an understanding of  
21 any resulting loss of ~~state~~ State or federal benefits or other assistance.

1 (b) The parent voluntarily may ~~voluntarily~~ consent to the permanent  
2 guardianship, and shall demonstrate an understanding of the implications and  
3 obligations of the consent.

4 (c) After the ~~family division of the superior court~~ Family Division of the  
5 Superior Court issues a final order establishing permanent guardianship, the  
6 case shall be transferred to the appropriate ~~probate division of the superior~~  
7 ~~court~~ Probate Division of the Superior Court in the district in which the  
8 permanent guardian resides. Jurisdiction shall continue to lie in the ~~probate~~  
9 ~~division~~ Probate Division. Appeal of any decision by the ~~probate division of~~  
10 ~~the superior court~~ Probate Division of the Superior Court shall be de novo to  
11 the ~~family division~~ Family Division.

12 (d) The Family Division of the Superior Court may name a successor  
13 permanent guardian in the initial permanent guardianship order. In the event  
14 that the permanent guardian dies or the guardianship is terminated by the  
15 Probate Division of the Superior Court, if a successor guardian is named in the  
16 initial order, custody of the child transfers to the successor guardian pursuant  
17 to subsection 2666(b) of this title.

18 Sec. 2. 14 V.S.A. § 2665 is amended to read:

19 § 2665. REPORTS

20 The permanent guardian shall file a written report on the status of the child  
21 to the ~~probate division of the superior court~~ Probate Division of the Superior

1 Court annually pursuant to subdivision 2629(b)(6) of this title and at any other  
2 time the court may order. ~~The report shall include the following:~~

3 ~~(1) The location of the child.~~

4 ~~(2) The child's health and educational status.~~

5 ~~(3) A financial accounting of the income, expenditures and assets of the~~  
6 ~~child if the permanent guardian is receiving any state or federal government~~  
7 ~~benefits for the child.~~

8 ~~(4) Any other information regarding the child that the probate division~~  
9 ~~of the superior court may require.~~

10 Sec. 3. 14 V.S.A. § 2666(b) is amended to read:

11 (b) Where the permanent guardianship is terminated by the ~~probate division~~  
12 ~~of the superior court~~ Probate Division of the Superior Court order or the death  
13 of the permanent guardian, the custody and guardianship of the child shall not  
14 revert to the parent, but to the ~~commissioner for children and families~~  
15 Commissioner for Children and Families as if the child had been abandoned.  
16 If a successor permanent guardian has been named in the initial permanent  
17 guardianship order, custody shall transfer to the successor guardian, without  
18 reverting first to the Commissioner. The Probate Division of the Superior  
19 Court shall notify the Department when custody transfers to the Commissioner  
20 or the successor guardian.

1 Sec. 4. 33 V.S.A. § 5124 is amended to read:

2 § 5124. POSTADOPTION CONTACT AGREEMENTS

3 (a) Either or both parents and each intended adoptive parent may enter into  
4 a postadoption contact agreement regarding communication or contact between  
5 either or both parents and the child after the finalization of an adoption by the  
6 intended adoptive parent or parents who are parties to the agreement. Such an  
7 agreement may be entered into if:

8 (1) the child is in the custody of:

9 (A) the Department for Children and Families; or

10 (B) a nonparent pursuant to subdivision 5318(a)(2) or (a)(7), or  
11 subdivision 5232(b)(2) or (b)(3) of this title;

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

13 (3) either or both parents agree to a voluntary termination of parental  
14 rights, including an agreement in a case which began as an involuntary  
15 termination of parental rights.

16 \* \* \*

17 (c) A postadoption contact agreement must be in writing and signed by  
18 each parent and each intended adoptive parent entering into the agreement.

19 There may be separate agreements for each parent. The agreement shall  
20 specify:

21 \* \* \*



1 ~~years. The Court shall schedule regular review hearings to evaluate progress~~  
2 ~~toward reunification and determine whether the conditions and continuing~~  
3 ~~jurisdiction of the Family Division of the Superior Court are necessary.~~

4 (3) An order transferring legal custody to a noncustodial parent and  
5 closing the juvenile proceeding. The order may provide for parent-child  
6 contact with the other parent. Any orders transferring legal custody to a  
7 noncustodial parent issued under this section shall not be confidential and shall  
8 be made a part of the record in any existing parentage or divorce proceeding  
9 involving the child. On the motion of a party or on the Court's own motion,  
10 the Court may order that a sealed copy of the disposition case plan be made  
11 part of the record in a divorce or parentage proceeding involving the child.

12 (4) An order transferring legal custody to the Commissioner.

13 (5) An order terminating all rights and responsibilities of a parent by  
14 transferring legal custody and all residual parental rights to the Commissioner  
15 without limitation as to adoption.

16 (6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

17 (7) An order transferring legal custody to a relative or another person  
18 with a significant relationship with the child. The order may be subject to  
19 conditions and limitations and may provide for parent-child contact with one or  
20 both parents. The order shall be subject to ~~periodic review as determined by~~  
21 ~~the Court~~ review pursuant to subdivision 5320a(b) of this title.

22 \* \* \*

1        (f) Conditions. Conditions shall include protective supervision with the  
2        Department if such a condition is not in place under the terms of an existing  
3        temporary care or conditional custody order. Protective supervision shall  
4        remain in effect for the duration of the order to allow the Department to take  
5        reasonable steps to monitor compliance with the terms of the conditional  
6        custody order.

7        Sec. 6. 33 V.S.A. § 5320 is amended to read:

8        § 5320. POSTDISPOSITION REVIEW HEARING

9        ~~If the permanency goal of the disposition case plan is reunification with a~~  
10       ~~parent, guardian, or custodian, the~~ The Court shall hold a review hearing  
11       within 60 days of the date of the disposition order for the purpose of  
12       monitoring progress under the disposition case plan and reviewing parent-child  
13       contact. Notice of the review shall be provided to all parties. A foster parent,  
14       preadoptive parent, ~~or~~ relative caregiver, or any custodian of the child shall be  
15       provided with notice of any post disposition review hearings and an  
16       opportunity to be heard at the hearings. Nothing in this section shall be  
17       construed as affording such person party status in the proceeding. This section  
18       shall not apply to cases where full custody has been returned to one or both  
19       parents unconditionally at disposition, or cases where the court has created a  
20       permanent guardianship at disposition. The Department shall, and any other  
21       party or caregiver may prepare a written report to the Court regarding progress  
22       under the plan of services from the disposition case plan.

1 Sec. 7. 33 V.S.A. § 5320a is added to read:

2 § 5320a. DURATION OF CONDITIONAL CUSTODY ORDERS

3 POSTDISPOSITION

4 (a) Conditional custody orders to parents. Whenever the court issues a  
5 conditional custody order transferring custody to a parent either at or following  
6 disposition, the presumptive duration of the order shall be no more than six  
7 months from the date of the disposition order or the conditional custody order,  
8 whichever occurs later, unless otherwise extended by the court after hearing.

9 Prior to the termination of the order, any party may file a request to extend the  
10 order pursuant to subsection 5113(b) of this title. Upon such motion, the Court  
11 may extend the order for an additional period of time not to exceed six months.

12 Prior to vacating the conditional custody order, the court may schedule a  
13 hearing on its own motion to review the case prior to discharging the  
14 conditions. If a motion to extend is not filed, the court shall issue an order  
15 vacating the conditions and transferring full custody to the parent without  
16 conditions.

17 (b)(1) Custody orders to nonparents. When the court at disposition issues  
18 an order continuing or transferring legal custody with a nonparent pursuant to  
19 subdivision 5318(a)(2) or (a)(7) of this title, the court shall set the matter for a  
20 hearing six months from the date of disposition or custody order whichever  
21 occurs later. At the hearing, the court shall determine whether it is in the best  
22 interests of the child to:

1           (A) transfer either full or conditional custody of the child to a parent;

2           (B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664

3 with the nonparent who has had custody of the child as the guardian; or

4           (C) terminate residual parental rights and release the child for

5 adoption.

6           (2) If, after hearing, the court determines that reasonable progress has

7 been made towards reunification and that reunification is in the best interests

8 of the child but will require additional time, the court may extend the current

9 order for a period not to exceed six months and set the matter for further

10 hearing.

11 Sec. 8. 33 V.S.A. § 5125 is added to read:

12 § 5125. REINSTATEMENT OF PARENTAL RIGHTS

13           (a) Petition for reinstatement.

14           (1) A petition for reinstatement of parental rights may be filed by the

15 Department for Children and Families on behalf of a child in the custody of the

16 Department under the following conditions:

17           (A) the child’s adoption has been dissolved; or

18           (B) the child has not been adopted after at least three years from the

19 date of the court order terminating parental rights.

20           (2) The child, if 14 years of age or older, may also file a petition to

21 reinstate parental rights if the adoption has been dissolved, or if parental rights

22 have been terminated and the child has not been adopted after three years from

1 the date of the court order terminating parental rights. This section shall not  
2 apply to children who have been placed under permanent guardianship  
3 pursuant to 14 V.S.A. § 2664.

4 (b) Permanency plan. The Department shall file an updated permanency  
5 plan with the petition for reinstatement. The updated plan shall address the  
6 material change in circumstances since the termination of parental rights, the  
7 Department’s efforts to achieve permanency, the reasons for the parent’s desire  
8 to have rights reinstated, any statements by the child expressing the child’s  
9 opinions about reinstatement, and parent’s present ability and willingness to  
10 resume or assume parental duties.

11 (c) Hearing.

12 (1) The court shall hold a hearing to consider whether reinstatement is in  
13 the child’s best interest. The court shall conditionally grant the petition if it  
14 finds by clear and convincing evidence that:

15 (A) the parent is presently willing and has the ability to provide for  
16 the child’s present and future safety, care, protection, education, and healthy  
17 mental, physical, and social development;

18 (B) reinstatement is the child’s express preference;

19 (C) if the child is 14 years of age or older and has filed the petition,  
20 that the child is of sufficient maturity to understand the nature of this decision;

21 (D) the child has not been adopted, or the adoption has been  
22 dissolved;

1           (E) the child is not likely to be adopted; and

2           (F) reinstatement of parental rights is in the best interests of the child.

3           (2) Upon a finding by clear and convincing evidence that all conditions  
4 set forth in subdivision (c)(1) exist and that reinstatement of parental rights is  
5 in the child’s best interest, the court shall issue a conditional custody order for  
6 up to six months transferring temporary legal custody of the child to the parent,  
7 subject to conditions as the court may deem necessary and sufficient to ensure  
8 the child’s safety and well-being. The court may order the Department to  
9 provide transition services to the family as appropriate. If during this time  
10 period the child is removed from the parent’s temporary conditional custody  
11 due to allegations of abuse or neglect, the court shall dismiss the petition for  
12 reinstatement of parental rights if the court finds the allegations have been  
13 proven by a preponderance of the evidence.

14           (d) Final order. After the child is placed with the parent for up to six  
15 months pursuant to subsection (c) of this section, the court shall hold a hearing  
16 to determine if the placement has been successful. The court shall enter a final  
17 order of reinstatement of parental rights upon a finding by preponderance of  
18 the evidence that placement continues to be in the child’s best interest.

19           (e) Effect of reinstatement. Reinstatement of parental rights does not  
20 vacate or otherwise affect the validity of the original order terminating parental  
21 rights. Reinstatement restores a parent’s legal rights to his or her child,  
22 including all rights, powers, privileges, immunities, duties, and obligations that

1 were terminated by the court in the termination of parental rights order. Such  
2 reinstatement shall be a recognition that the parent’s and child’s situation have  
3 changed since the time of the termination of parental rights, and reunification  
4 is appropriate. An order reinstating the legal parent and child relationship as to  
5 one parent of the child has no effect on the legal rights of any other parent  
6 whose rights to the child have been terminated by the court; or the legal sibling  
7 relationship between the child and any other children of the parent. A parent  
8 whose rights are reinstated pursuant to this section is not liable for child  
9 support owed to the Department during the period from termination of parental  
10 rights to reinstatement. The Department and its employees are not liable for  
11 civil damages resulting from any act or omission in providing services under  
12 this section unless the act or omission constitutes gross negligence.

13 Sec. 9. EFFECTIVE DATES

14 This act shall take effect on September 1, 2016, except for this section and  
15 Sec. 4 (postadoption contact agreements), which shall take effect on July 1,  
16 2016.

17  
18 (Committee vote: \_\_\_\_\_)

19 \_\_\_\_\_

20 Senator \_\_\_\_\_

21 FOR THE COMMITTEE