

1 H.565

2 Introduced by Representative Willhoit of St. Johnsbury

3 Referred to Committee on

4 Date:

5 Subject: Family Division; CHINS; best interests of the child

6 Statement of purpose of bill as introduced: This bill proposes to require the

7 Family Division of the Superior Court to base temporary custody

8 determinations in a CHINS proceeding on the best interests of the child.

9 An act relating to temporary care orders

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

11 Sec. 1. 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 because any one of the following exists:

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 custodian 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 a return home would be contrary to the best
20 interests of the child, the court may issue such temporary orders related to the
21 legal custody of the child as it deems necessary and sufficient to protect the

1 welfare and safety of the child and as it determines are in the best interests of
2 the child, including:

3 (1) a conditional custody order returning or granting legal custody of the
4 child to the custodial parent, guardian, custodian, noncustodial parent, relative,
5 or a person with a significant relationship with the child, subject to such
6 conditions and limitations as the court may deem necessary and sufficient;

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

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

11 (4) an order transferring temporary legal custody of the child to the
12 Commissioner.

13 (c) The court shall consider orders and findings from other proceedings
14 relating to the custody of the child, the child's siblings, or children of any adult
15 in the same household as the child.

16 (d) In considering an order under subsection (b) of this section, the court
17 may order the Department to conduct an investigation of a person seeking
18 custody of the child, and the suitability of that person's home, and file a
19 written report of its findings with the court. The court may place the child in
20 the temporary custody of the Commissioner, pending such investigation.

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

3 (1) The order shall include:

4 (A) A finding that remaining in the home is contrary to the best
5 interests of the child and the facts upon which that finding is based.

6 (B) A finding as to whether reasonable efforts were made to prevent
7 unnecessary removal of the child from the home. If the court lacks sufficient
8 evidence to make findings on whether reasonable efforts were made to prevent
9 the removal of the child from the home, that determination shall be made at the
10 next scheduled hearing in the case but, in any event, ~~no~~ not later than 60 days
11 after the issuance of the initial order removing a child from the home.

12 (C) A finding that the temporary custody determination is in the best
13 interests of the child.

14 (2) The order may include other provisions as may be in the best
15 interests of the child, including:

16 (A) establishing parent-child contact and terms and conditions for
17 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) requiring the Department to refer a parent for appropriate
21 assessments and services, including a consideration of the needs of children

1 and parents with disabilities, provided that the child's needs are given primary
2 consideration;

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

4 (E) requiring the Department to make diligent efforts to locate the
5 noncustodial parent;

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

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

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

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on passage.