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S.9

Introduced by Senators Ayer, Sears, Cummings, Flory, Kitchel, and Mullin

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; establishing a crime of failure to protect a child; municipal and county government; special investigative units; adoption act; postadoption contact agreements; human services; child welfare services; definitions; confidentiality; temporary care orders; children in need of care or supervision; establishing a Joint Legislative Child Protection Oversight Committee; establishing the Office of the Child Protection Advocate; Department for Children and Families; policies

Statement of purpose of bill as introduced: This bill proposes to improve Vermont's system for protecting children from abuse and neglect by establishing a new crime of failure to protect a child; clarifying the jurisdiction of special investigative units and ensuring that these units investigate the most serious child abuse cases; allowing for postadoption contact agreements; amending definitions pertaining to child abuse and neglect; fostering better communication between all participants in the child protection system; ensuring that custody determinations are based on the best interests of a child; 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 * * *

8 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 § 1312. FAILURE TO PROTECT A CHILD

2 (a) A person having the custody or care of a child commits the crime of
3 failure to protect a child if the person knows, or reasonably should have
4 known, that the child is in danger of, and fails to act to prevent a child from,
5 suffering:

6 (1) serious bodily injury as defined in section 1021 of this title;

7 (2) from lewd or lascivious conduct with a child in violation of section
8 2602 of this title;

9 (3) from sexual exploitation of children in violation of chapter 64 of this
10 title; or

11 (4) from sexual assault in violation of chapter 72 of this title.

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

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

18 (2) where the child's injury resulted from a lack of medical treatment or
19 care, the defendant made a reasonable decision to not seek medical care or to
20 withhold medical treatment.

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

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

5 * * * Municipal and County Government; Special Investigative
6 Units; Mission and Jurisdiction * * *

7 Sec. 4. 24 V.S.A. § 1940 is amended to read:

8 § 1940. ~~TASK FORCES; SPECIALIZED~~ SPECIAL INVESTIGATIVE
9 UNITS; BOARDS; GRANTS

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

19 (1) shall investigate:

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

1 (B) potential violations of:

2 (i) 13 V.S.A. § 2602;

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

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

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

6 (2) may investigate:

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

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

9 13 V.S.A. § 1021; or

10 (ii) death; and

11 (B) potential violations of:

12 (i) 13 V.S.A. § 2601; and

13 (ii) 13 V.S.A. § 2605.

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. 5. 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.

19 Sec. 6. 33 V.S.A. § 5323 is added to read:

20 § 5323. POSTADOPTION CONTACT AGREEMENTS

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

5 (1) the child is in the custody of the Department for Children and
6 Families;

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

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

11 (b) The Court may order postadoption communication or contact
12 privileges if:

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

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

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

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

20 (c) A postadoption contact agreement shall contain:

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

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

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

11 (e) The Probate Division of the Superior Court shall hear petitions brought
12 to enforce or modify agreements created under this section. A disagreement
13 between the parties or litigation brought to enforce or modify the agreement
14 shall not affect the validity of the termination of parental rights or the adoption.
15 The Probate Court shall not act on a petition to change or enforce the
16 agreement unless the petitioner had participated, or attempted to participate, in
17 good faith in mediation or other appropriate dispute resolution proceedings to
18 resolve the dispute.

19 (f) An adoptive parent may, at any time, petition the Probate Division of
20 the Superior Court for review of communication or contact ordered pursuant to
21 subsection (b) of this section if the adoptive parent believes that the best

1 interests of the child are being compromised. The Probate Court may order the
2 communication or contact be terminated or altered as the Court deems to be in
3 the best interest of the adopted child.

4 * * * Human Services; Child Welfare Services; Definitions;

5 Harm, Injury, and Abuse * * *

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

7 § 4912. DEFINITIONS

8 As used in this subchapter:

9 * * *

10 (6) "Harm" can occur by:

11 (A) Physical injury or emotional maltreatment.

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

20 (C) Abandonment of the child.

1 (D) Exposure to the unlawful possession, use, manufacture,
2 cultivation, or sale of the following regulated drugs, as defined in 18 V.S.A.
3 § 4201:

4 (i) a narcotic drug;

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

6 (iii) a hallucinogenic drug;

7 (iv) Ecstasy;

8 (v) methamphetamine; or

9 (vi) marijuana or hashish in violation of the following subsections
10 and subdivisions of 18 V.S.A. § 4230:

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

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

13 (III) subsection (c).

14 * * *

15 (11) “Physical injury” means ~~death or permanent or temporary~~
16 ~~disfigurement or impairment of any bodily organ or function by other than~~
17 ~~accidental means~~ bodily injury or serious bodily injury as defined in 13 V.S.A.
18 § 1021.

19 * * *

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

4 (15) “Sexual abuse” ~~consists of any act or acts by any person involving~~
5 ~~sexual molestation or exploitation of a child, including incest, prostitution,~~
6 ~~rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual~~
7 ~~abuse also includes the aiding, abetting, counseling, hiring, or procuring of a~~
8 ~~child to perform or participate in any photograph, motion picture, exhibition,~~
9 ~~show, representation, or other presentation which, in whole or in part, depicts~~
10 ~~sexual conduct, sexual excitement, or sadomasochistic abuse involving a child~~
11 means:

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

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

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

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

16 chapter 64; or

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

18 * * *

1 * * * Confidentiality * * *

2 Sec. 8. 33 V.S.A. § 4913 is amended to read:

3 § 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL
4 ACTION

5 * * *

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

8 ~~(1)(A)~~ whether the report was accepted as a valid allegation of abuse or
9 neglect;

10 ~~(2)(B)~~ whether an assessment was conducted and, if so, whether a need
11 for services was found; and

12 ~~(3)(C)~~ whether an investigation was conducted and, if so, whether it
13 resulted in a substantiation.

14 (2) Upon request, the Commissioner shall provide information contained
15 in the case records concerning a person's report to a person who:

16 (A) made the report under subsection (a) of this section; and

17 (B) is engaged in an ongoing working relationship with the child or
18 family who is the subject of the report.

19 (3) Any information disclosed under this section shall not be
20 disseminated by the mandated reporter requesting the information. A person

1 who intentionally violates the confidentiality provisions of this section shall be
2 fined not more than \$2,000.00.

3 * * *

4 Sec. 9. 33 V.S.A. § 4921 is amended to read:

5 § 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

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

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

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

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

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

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

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

12 (2) the Commissioner or person designated by the Commissioner to
13 receive such records;

14 (3) persons assigned by the Commissioner to conduct
15 investigations; and

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

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

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

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

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

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

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

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

17 (G) The Child Protection Advocate appointed under section 8001 of
18 this title.

19 (H) A Probate Division of the Superior Court involved in
20 guardianship proceedings. The Probate Division of the Superior Court shall
21 provide a copy of the record to the respondent, the respondent's attorney, the

1 petitioner, the guardian upon appointment, and any other individual, including
2 the proposed guardian, determined by the Court to have a strong interest in the
3 welfare of the respondent.

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

5 (2) ~~Determinations of relevancy shall be made by the Department~~ In
6 providing records under this subsection (e), the Department may withhold
7 information that could compromise the safety of the reporter or the child or
8 family who is the subject of the report.

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

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

17 Sec. 10. 33 V.S.A. § 5110 is amended to read:

18 § 5110. CONDUCT OF HEARINGS

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

1 (b) The general public shall be excluded from hearings under the juvenile
2 judicial proceedings chapters, and only the parties, their counsel, witnesses,
3 persons accompanying a party for his or her assistance, and such other persons
4 as the Court finds to have a proper interest in the case or in the work of the
5 Court, including a foster parent or a representative of a residential program
6 where the child resides, may be admitted by the Court. An individual without
7 party status seeking inclusion in the hearing may petition the Court for
8 admittance by filing a request with the clerk of the Court. This subsection
9 shall not prohibit a victim's exercise of his or her rights under sections 5233
10 and 5234 of this title, and as otherwise provided by law.

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

17 * * * Juvenile Proceedings; General Provisions; Children in Need of Care or

18 Supervision; Request for an emergency care order * * *

19 Sec. 11. 33 V.S.A. § 5101 is amended to read: [Note: new section Comm. did
20 not discuss]

21 § 5101. PURPOSES

1 (a) The juvenile judicial proceedings chapters shall be construed in
2 accordance with the following purposes:

3 (1) to provide for the care, protection, education, and healthy mental,
4 physical, and social development of children coming within the provisions of
5 the juvenile judicial proceedings chapters;

6 (2) to remove from children committing delinquent acts the taint of
7 criminality and the consequences of criminal behavior and to provide
8 supervision, care, and rehabilitation which ensure:

9 (A) balanced attention to the protection of the community;

10 (B) accountability to victims and the community for offenses; and

11 (C) the development of competencies to enable children to become
12 responsible and productive members of the community;

13 (3) to preserve the family and to separate a child from his or her parents
14 only when necessary to protect the child from ~~serious~~ serious harm, when in the best
15 interests of the child, or in the interests of public safety;

16 (4) to ensure that safety and timely permanency for children are the
17 paramount concerns in the administration and conduct of proceedings under
18 the juvenile judicial proceedings chapters;

19 (5) to achieve the foregoing purposes, whenever possible, in a family
20 environment, recognizing the importance of positive parent-child relationships
21 to the well-being and development of children;

1 (6) to provide judicial proceedings through which the provisions of the
2 juvenile judicial proceedings chapters are executed and enforced and in which
3 the parties are ensured a fair hearing, and that their constitutional and other
4 legal rights are recognized and enforced.

5 (b) The provisions of the juvenile judicial proceedings chapters shall be
6 construed as superseding the provisions of the criminal law of this State to the
7 extent the same are inconsistent with this chapter.

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

9 § 5302. REQUEST FOR EMERGENCY CARE ORDER

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

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

20 (1) Remove the child from the child's surroundings, contact the
21 Department, and deliver the child to a location designated by the Department.

1 The Department shall have the authority to make reasonable decisions
2 concerning the child's immediate placement, safety, and welfare pending the
3 issuance of an emergency care order.

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

15 * * *

16 * * * Temporary Care Order; Custody * * *

17 Sec. 13. 33 V.S.A. § 5308 is amended to read:

18 § 5308. TEMPORARY CARE ORDER

19 (a) The Court shall order that legal custody be returned to the child's
20 custodial parent, guardian, or custodian unless the Court finds by a

1 preponderance of the evidence that a return home would be contrary to the best
2 interests of the ~~child's welfare~~ child because any one of the following exists:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 ~~(iv) The child or another child residing in the same household as~~
18 ~~the noncustodial parent is at substantial risk of physical or sexual abuse by the~~
19 ~~noncustodial parent or a member of the noncustodial parent's household, or~~
20 ~~another person known to the noncustodial parent. It shall constitute prima facie~~

1 ~~evidence that a child is at substantial risk of being physically or sexually~~
2 ~~abused if:~~

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

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

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

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

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

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

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

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

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

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

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

9 ~~(v) Consider providing legal permanency if reunification fails.~~

10 ~~(2) an order transferring temporary legal custody of the child to a~~
11 ~~noncustodial parent or to a relative;~~

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

14 ~~(4) an order transferring temporary legal custody of the child to the~~
15 ~~Commissioner.~~

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

19 ~~(d) In considering the suitability of a relative under this subdivision (3) an~~
20 ~~order under subsection (b) of this section,~~ the Court may order the Department
21 to conduct an investigation ~~of a person seeking custody of the child, and the~~

1 suitability of that person's home, and file a written report of its findings with
2 the Court. The Court may place the child in the temporary custody of the
3 ~~Department~~ Commissioner, pending such investigation.

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

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

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

14 (1) The order shall include:

15 (A) a A finding that remaining in the home is contrary to the ~~child's~~
16 ~~welfare~~ best interests of the child and the facts upon which that finding is
17 based; ~~and~~ and

18 (B) a A finding as to whether reasonable efforts were made to
19 prevent unnecessary removal of the child from the home. If the Court lacks
20 sufficient evidence to make findings on whether reasonable efforts were made
21 to prevent the removal of the child from the home, that determination shall be

1 made at the next scheduled hearing in the case but, in any event, no later than
2 60 days after the issuance of the initial order removing a child from the home.

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

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

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

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

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

15 (E) requiring the Department to make diligent efforts to locate the
16 noncustodial parent;

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

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

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

4 ~~(d) If a party seeks to modify a temporary care order in order to transfer~~
5 ~~legal custody of a child from the Commissioner to a relative or a person with a~~
6 ~~significant relationship with the child, the relative shall be entitled to~~
7 ~~preferential consideration under subdivision (b)(3) of this section, provided~~
8 ~~that a disposition order has not been issued and the motion is filed within~~
9 ~~90 days of the date that legal custody was initially transferred to the~~
10 ~~Commissioner.~~

11 * * * Legislature; Establishing a Joint Legislative Child
12 Protection Oversight Committee * * *

13 Sec. 14. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT
14 COMMITTEE

15 (a) Creation. There is created a Joint Legislative Child Protection
16 Oversight Committee.

17 (b) Membership. The Committee shall be composed of the following
18 10 members, who shall be appointed each biennial session of the General
19 Assembly:

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

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

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

8 (A) House Committee on Appropriations;

9 (B) Senate Committee on Appropriations;

10 (C) House Committee on Judiciary;

11 (D) Senate Committee on Judiciary;

12 (E) House Committee on Human Services; and

13 (F) Senate Committee on Health and Welfare.

14 (c) Powers and duties.

15 (1) The Committee shall:

16 (A) Exercise oversight over Vermont's system for protecting children
17 from abuse and neglect, including:

18 (i) evaluating whether the branches, departments, agencies, and
19 persons that are responsible for protecting children from abuse and neglect are
20 effective;

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

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

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

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

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

12 (II) investigating regulatory requirements and security
13 parameters;

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

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

18 (B) Exercise oversight over the Department for Children and
19 Families, including reviewing and making recommendations concerning the
20 Department's:

21 (i) strategic and operating plans;

1 (ii) policies, procedures, and practices;

2 (iii) staffing and employee issues, including hiring, training, and
3 retention;

4 (iv) organization; and

5 (v) budget.

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

8 (2) The Committee may:

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

11 (i) the Department for Children and Families' budget proposal and
12 appropriations; and

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

15 (B) review specific reports and cases concerning child abuse and
16 neglect as necessary to fulfill the Committee's powers and duties.

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

19 (e) Data and records. All State agencies and departments shall provide data
20 and records to the Committee upon request. Notwithstanding any other
21 provision of law to the contrary, the Committee may receive records that are

1 confidential, privileged, or the release of which is restricted under law. All
2 State agencies and departments shall provide such records to the Committee
3 upon request. Any such records obtained by the Committee shall be exempt
4 from public inspection and copying, shall be kept confidential by the
5 Committee, and shall not be disclosed.

6 (f) Retaliation. No person who is an employee of the State of Vermont, or
7 of any State, local, county, or municipal department, agency, or person
8 involved in child protection, and who testifies before, supplies information to,
9 or cooperates with the Committee shall be subject to retaliation by his or her
10 employer. Retaliation shall include job termination, demotion in rank,
11 reduction in pay, alteration in duties and responsibilities, transfer, or a negative
12 job performance evaluation based on the person's having testified before,
13 supplied information to, or cooperated with the Committee.

14 (g) Meetings.

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

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

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

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

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

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

12 Sec. 15. 3 V.S.A. chapter 45, subchapter 4 is redesignated to read:

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

14 Sec. 16. 3 V.S.A. § 2284 is added to read:

15 § 2284. OFFICE OF THE CHILD PROTECTION ADVOCATE

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

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

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

4 (c) The Child Protection Advocate shall:

5 (1) investigate and resolve complaints on behalf of persons involved in
6 the child protection system;

7 (2) analyze and monitor the development and implementation of federal,
8 State, and local laws, and of regulations and policies relating to child
9 protection and to the Department for Children and Families, and make
10 recommendations as he or she deems appropriate;

11 (3) provide information to the public, agencies, legislators, and others
12 regarding problems and concerns of persons involved in the child protection
13 system, including recommendations relating to such problems and concerns;

14 (4) promote the development and involvement of citizen organizations
15 in the work of the Office and in protecting children from abuse and neglect;

16 (5) train persons and organizations in advocating for the interests of
17 children and persons involved in the protecting children from abuse and
18 neglect;

19 (6) develop and implement a reporting system to collect and analyze
20 information relating to complaints by persons involved in the child protection
21 system; and

1 (7) submit to the General Assembly and the Governor on or before
2 January 15 of each year a report on the Office's activities and
3 recommendations.

4 (d) The Child Protection Advocate may:

5 (1) hire or contract with persons to fulfill the purposes of this chapter;

6 (2) have appropriate access to review the records of State agencies;

7 (3) pursue administrative, judicial, or other remedies on behalf of
8 persons involved in the child protection system;

9 (4) delegate to employees of the Office any part of his or her authority;

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

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

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

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

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

5 (h) A person who takes discriminatory, disciplinary, or retaliatory action
6 against any person for any communication made, or information disclosed, to
7 the Child Protection Advocate or to a representative of the Office of the Child
8 Protection Advocate to aid the Advocate in carrying out his or her duties,
9 unless the communication or disclosure was done maliciously or without good
10 faith, shall be imprisoned not more than one year or fined not more than
11 \$5,000.00, or both.

12 * * * Department for Children and Families; Policies * * *

13 Sec. 17. THE DEPARTMENT FOR CHILDREN AND FAMILIES;

14 POLICIES, PROCEDURES, AND PRACTICES

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

16 (1) ensure that policies, procedures, and practices are consistent, and are
17 applied in a consistent manner, in all Department offices and in all regions of
18 the State;

19 (2) ensure that policies, procedures, and practices are consistent with
20 statute;

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

5 (4) ensure that all employees assigned to carry out investigations have
6 training or experience in conducting investigations and have a Master's in
7 social work or an equivalent degree, or relevant experience;

8 (5) develop policies and procedures to:

9 (A) improve the sharing of information with law enforcement,
10 treatment providers, courts, State's Attorneys, guardians ad litem, and other
11 relevant parties;

12 (B) encourage law enforcement, treatment providers, and all
13 agencies, departments, and other persons that administer drug or alcohol tests
14 to parents or other caregivers to provide test results to the Commissioner;

15 (C) ensure that courts have all relevant information in a timely
16 fashion, and that Department employees file paperwork and reports in a timely
17 manner;

18 (D) require increased monitoring of a child's safety if:

19 (i) other children have been removed from the same home or the
20 parent or guardian's parental rights as to another child have been
21 terminated; or

1 (ii) the child is returned to a home from which other children have
2 been removed;

3 (E) require that all persons living in a household, or that will have
4 child care responsibilities, will be assessed for criminal history and potential
5 safety risks whenever a child who has been removed from a home is returned
6 to that home;

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

9 (G) increase the number of required home visits and require
10 unannounced home visits;

11 (H) improve information sharing with mandatory reporters with an
12 ongoing relationship with a child;

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

16 (J) apply results-based accounting or other data-based quality
17 measures to measure if children in different areas of the State have different
18 outcomes and the reasons for those differences.

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

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

4 (A) the Commissioner's response to every recommendation in the
5 reports and:

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

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

10 (iii) any suggestions concerning other options to implement a
11 recommendation; and

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

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

18 * * * Improvements to CHINS Proceedings * * *

19 Sec. 18. WORKING GROUP TO RECOMMEND IMPROVEMENTS TO
20 CHINS PROCEEDINGS

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

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

6 (1) the Chief Administrative Judge or designee;

7 (2) the Defender General or designee;

8 (3) the Attorney General or designee;

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

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

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

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

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

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

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

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

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

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

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

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

14 (d) Assistance. The Working Group shall have the administrative,
15 technical, and legal assistance of the Office of the Attorney General. The
16 Working Group may consult with any persons necessary in fulfilling its powers
17 and duties.

18 (e) Report. On or before November 1, 2015, the Working Group shall
19 report its findings and recommendations to the Joint Legislative Child
20 Protection Oversight Committee, the House Committees on Human Services

1 and on Judiciary, and the Senate Committees on Health and Welfare and on
2 Judiciary.

3 (f) Meetings and sunset.

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

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

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

9 * * * Effective Date * * *

10 Sec. 19. EFFECTIVE DATE

11 This act shall take effect on passage.

12 Or This act shall take effect on July 1, 2015, except for Sec. 17

13 (Department for Children and Families: policies, procedures, and practices)

14 which shall take effect on passage.