

# VERMONT JUVENILE PROCEEDINGS

## STATUTE & RULES

(AS OF NOVEMBER 10, 2015)

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# **Title 33: Human Services**

## **Chapter 49: CHILD WELFARE SERVICES**

### **§ 4901. Statement of purposes**

The Department may cooperate with the appropriate federal agency for the purpose of establishing, extending, and strengthening services which supplement or substitute for parental care and supervision including:

- (1) preventing, remedying, or assisting in the solution of problems which may result in neglect, abuse, exploitation, or delinquency of children;
- (2) protecting and caring for homeless, dependent, or neglected children;
- (3) protecting and promoting the welfare of children of working parents;
- (4) otherwise protecting and promoting the welfare of children, including the strengthening of their homes where possible or, where needed, providing adequate care away from their homes in child-care facilities; and
- (5) assisting youth in a successful transition to an independent adulthood, including the avoidance of homelessness, incarceration, and substance abuse. (Added 1967, No. 147, § 5; amended 2005, No. 174 (Adj. Sess.), § 117; 2007, No. 74, § 1, eff. June 6, 2007.)

### **§ 4902. Definitions**

Unless otherwise specifically provided, as used in this chapter:

- (1) “Child” means a person under 18 years of age committed by the Juvenile Court to the Department for Children and Families.
- (2) “Commissioner” means the Commissioner for Children and Families.
- (3) “Department” means the Department for Children and Families.
- (4) “Foster care” means care of a child, for a valuable consideration, in a child care institution or in a family other than that of the child’s parent, guardian, or relative. (Added 1967, No. 147, § 5; amended 1973, No. 152 (Adj. Sess.), §§ 22, 31, eff. April 14, 1974; 1981, No. 171 (Adj. Sess.), § 2, eff. April 20, 1982; 1983, No. 248 (Adj. Sess.), § 5; 1989, No. 42, eff. May 5, 1989; 1999, No. 147 (Adj. Sess.), § 4; 2005, No. 174 (Adj. Sess.), § 118; 2013, No. 131 (Adj. Sess.), § 74, eff. May 20, 2014.)

### **§ 4903. Responsibility of Department**

The Department may expend, within amounts available for the purposes, what is necessary to protect and promote the welfare of children and adults in this State, including the strengthening of their homes whenever possible, by:

- (1) Investigating complaints of neglect, abuse, or abandonment of children.
- (2) Providing aid and services to the extent necessary for the purpose of permitting children to remain in their own homes.
- (3) Supervising and controlling children committed to it by a court.

(4) Providing substitute parental care and custody for a child upon application of his or her parent, guardian, or any person acting in behalf of the child, when after investigation it is found that the care and custody will be in the best interest of the child. The acceptance of a child by the Department shall not abrogate parental rights or responsibilities, but the Department may accept from the parents temporary delegation of certain rights and responsibilities necessary to provide care and custody for a period of up to six months under conditions agreed upon by the parents and the Department. Upon a stipulation approved by the Juvenile Court, the period may be extended for additional periods of up to six months each, provided that each extension is first determined by the parties to be necessary, and that it is in the best interest of the child.

(5) Providing financial aid to persons who were committed to the Department at the time they attained the age of majority and who are completing an educational, vocational, or technical training program designed to equip them for gainful employment.

(6) Providing aid to certain adopted children who prior to their adoption were in the care and custody of the Department.

(7) Providing aid to a child in the permanent guardianship of a relative if the child was in the care and custody of the Department and was placed in the home of the relative for at least six months prior to the creation of the guardianship. (Added 1967, No. 147, § 5; amended 1971, No. 206 (Adj. Sess.); 1975, No. 19; 1981, No. 243 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), § 119; 2009, No. 97 (Adj. Sess.), § 2.)

#### **§ 4904. Foster care; transitional youth services**

(a) As used in this section, “youth” means a person between 18 and 22 years of age who either:

(1) attained his or her 18th birthday while in the custody of the Commissioner for Children and Families; or

(2) while he or she was between 10 and 18 years of age, spent at least five of those years in the custody of the Commissioner for Children and Families.

(b)(1) The Department shall provide foster care services as described in subsection (c) of this section to:

(A) any youth who elects to continue receiving such services after attaining the age of 18;

(B) any individual under the age of 22 who leaves State custody after the age of 16 and at or before the age of 18 or any youth provided he or she voluntarily requests additional support services.

(2) The Department shall require a youth receiving services under this section to be employed, to participate in a program to promote employment or remove barriers to employment, or to attend an educational or vocational program, and, if the youth is working, require that he or she contribute to the cost of services based on a sliding scale, unless the youth meets the criteria for an exception to the employment and educational or vocational program requirements of this section based on a disability or other good cause. The Department shall establish rules for the requirements and exceptions under this subdivision.

(c) The Commissioner shall establish by rule a program to provide a range of age-appropriate services for youth to ensure a successful transition to adulthood, including foster care and other services provided under this chapter to children as appropriate, housing assistance, transportation, case management services, assistance with obtaining and retaining health care coverage or employment, and other services. At least 12 months prior to a child attaining his or her 18th birthday, the Department shall assist the child in developing a transition plan. When developing the transition

plan, the child shall be informed about the range of age-appropriate services and assistance available in applying for or obtaining these services.

(d) [Repealed.] (Added 2007, No. 74, § 2, eff. June 6, 2007; amended 2009, No. 97 (Adj. Sess.), §§ 3, 4; 2013, No. 142 (Adj. Sess.), § 102.)

### **§ 4905. Foster care and placement licensing**

(a) A person other than an employee of a department within the Agency of Human Services shall not place any child in foster care for more than 15 consecutive days unless the person has a license from the Department to do so or is an employee of a child-placing agency licensed by that Department.

(b) A person shall not receive, board, or keep any child in foster care for more than 15 consecutive days unless he or she has a license from the Department to do so. This subsection shall not apply to foster homes approved by a department within the Agency of Human Services or by a licensed child-placing agency, nor shall it apply to those facilities where educational or vocational training is the primary service and foster care is a supportive service only.

(c) This section shall not restrict the right of a court, parent, guardian, or relative to place a child, nor the right of a person not in the business of providing foster care or child care to receive, board, and keep a child when a valuable consideration is not demanded or received for the child's care and maintenance. (Added 2013, No. 131 (Adj. Sess.), § 75.)

## **Subchapter 2. Reporting Abuse of Children**

### **§ 4911. Purpose**

The purpose of this subchapter is to:

- (1) protect children whose health and welfare may be adversely affected through abuse or neglect;
- (2) strengthen the family and make the home safe for children whenever possible by enhancing the parental capacity for good child care;
- (3) provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes require the reporting of suspected child abuse and neglect, an assessment or investigation of such reports and provision of services, when needed, to such child and family;
- (4) establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and which recognize that child offenders should be treated differently from adults; and
- (5) establish a tiered child protection registry that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 1.)

### **§ 4912. Definitions**

As used in this subchapter:

- (1) "Abused or neglected child" means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child"

also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.

(2) “Assessment” means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

(3) “Child” means an individual under the age of majority.

(4) “Child Protection Registry” means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(5) “Emotional maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development.

(6) “Harm” can occur by:

(A) Physical injury or emotional maltreatment.

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

(C) Abandonment of the child.

(7) “Investigation” means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(8) “Member of the clergy” means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(9) “Multidisciplinary team” means a group of professionals, paraprofessionals, and other appropriate individuals impaneled by the Commissioner under this chapter for the purpose of assisting in the identification and review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families, and promoting child abuse prevention.

(10) “Person responsible for a child’s welfare” includes the child’s parent, guardian, foster parent, any other adult residing in the child’s home who serves in a parental role, an employee of a public or private residential home, institution, or agency, or other person responsible for the child’s welfare while in a residential, educational, or child care setting, including any staff person.

(11) “Physical injury” means death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(12) “Redacted investigation file” means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in section 4913 of this title.

(13) “Registry record” means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(14) “Risk of harm” means a significant danger that a child will suffer serious harm by other than accidental means, which harm would be likely to cause physical injury, or sexual abuse, including as the result of:

(A) a single, egregious act that has caused the child to be at significant risk of serious physical injury;

(B) the production or preproduction of methamphetamines when a child is actually present;

(C) failing to provide supervision or care appropriate for the child’s age or development and, as a result, the child is at significant risk of serious physical injury;

(D) failing to provide supervision or care appropriate for the child’s age or development due to use of illegal substances, or misuse of prescription drugs or alcohol;

(E) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and

(F) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

(15) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including:

(A) incest;

(B) prostitution;

(C) rape;

(D) sodomy;

(E) lewd and lascivious conduct involving a child;

(F) aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child;

(G) viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged;

(H) human trafficking;

(I) sexual assault;

(J) voyeurism;

(K) luring a child; or

(L) obscenity.

(16) “Substantiated report” means that the Commissioner or the Commissioner’s designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

(17) “Serious physical injury” means, by other than accidental means:

(A) physical injury that creates any of the following:

- (i) a substantial risk of death;
  - (ii) a substantial loss or impairment of the function of any bodily member or organ;
  - (iii) a substantial impairment of health; or
  - (iv) substantial disfigurement; or
- (B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1985, No. 211 (Adj. Sess.), §§ 1, 2; 1989, No. 295 (Adj. Sess.), §§ 1, 2; 1991, No. 141 (Adj. Sess.), § 1; 1995, No. 145 (Adj. Sess.), § 5; 2001, No. 135 (Adj. Sess.), § 15, eff. June 13, 2002; 2003, No. 43, § 2, eff. May 27, 2003; 2003, No. 66, § 136a; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 2; 2007, No. 172 (Adj. Sess.), § 18; 2013, No. 131 (Adj. Sess.), § 76, eff. May 20, 2014; 2015, No. 60, § 3.)

**§ 4913. Reporting child abuse and neglect; remedial action**

(a) A mandated reporter is any:

(1) health care provider, including any:

- (A) physician, surgeon, osteopath, chiropractor, or physician assistant licensed, certified, or registered under the provisions of Title 26;
- (B) resident physician;
- (C) intern;
- (D) hospital administrator in any hospital in this State;
- (E) registered nurse;
- (F) licensed practical nurse;
- (G) medical examiner;
- (H) emergency medical personnel as defined in 24 V.S.A. § 2651(6);
- (I) dentist;
- (J) psychologist; and
- (K) pharmacist;

(2) individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services, including any:

- (A) school superintendent;
- (B) headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11;
- (C) school teacher;
- (D) student teacher;
- (E) school librarian;
- (F) school principal; and
- (G) school guidance counselor;

(3) child care worker;

- (4) mental health professional;
- (5) social worker;
- (6) probation officer;
- (7) employee, contractor, and grantee of the Agency of Human Services who have contact with clients;
- (8) police officer;
- (9) camp owner;
- (10) camp administrator;
- (11) camp counselor; or
- (12) member of the clergy.

(b) As used in subsection (a) of this section, “camp” includes any residential or nonresidential recreational program.

(c) Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of section 4914 of this title within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed.

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

- (A) whether the report was accepted as a valid allegation of abuse or neglect;
- (B) whether an assessment was conducted and, if so, whether a need for services was found; and
- (C) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

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

- (A) made the report under subsection (a) of this section; and
- (B) is engaged in an ongoing working relationship with the child or family who is the subject of the report.

(3) Any information disclosed under subdivision (2) of this subsection shall not be disseminated by the mandated reporter requesting the information. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(4) In providing information under subdivision (2) of this subsection, the Department may withhold:

- (A) information that could compromise the safety of the reporter or the child or family who is the subject of the report; or
- (B) specific details that could cause the child to experience significant mental or emotional stress.

(e) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 4914 of this title.

(f)(1) Any person other than a person suspected of child abuse, who in good faith makes a report to the Department shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.

(2) An employer or supervisor shall not discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

(g) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless:

- (1) the person making the report specifically allows disclosure;
- (2) a Human Services Board proceeding or a judicial proceeding results therefrom;
- (3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the Department to make the name of the reporter available; or
- (4) a review has been requested pursuant to section 4916a of this title, and the Department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

(h)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(i) Except as provided in subsection (h) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(j) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

- (1) made to a member of the clergy acting in his or her capacity as spiritual advisor;
- (2) intended by the parties to be confidential at the time the communication is made;
- (3) intended by the communicant to be an act of contrition or a matter of conscience; and
- (4) required to be confidential by religious law, doctrine, or tenet.

(k) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection (h) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection (h) of this section. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1983, No. 169 (Adj. Sess.), § 1; 1985, No. 208 (Adj. Sess.), § 19, eff. June 30, 1986; 1989, No. 295 (Adj. Sess.), § 3; 1993, No. 156 (Adj. Sess.), § 1; 2003, No. 43, § 3, eff. May 27, 2003; 2005, No. 101 (Adj. Sess.), § 2; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 3, eff. Jan. 1, 2009; 2007, No. 172 (Adj. Sess.), § 19; 2009, No. 1, § 45; 2011, No. 156 (Adj. Sess.), § 28, eff. May 16, 2012; 2011, No. 159 (Adj. Sess.), § 7; 2015, No. 60, § 4.)

#### **§ 4914. Nature and content of report; to whom made**

A report shall be made orally or in writing to the Commissioner or designee. The Commissioner or designee shall request the reporter to follow the oral report with a written report, unless the reporter is anonymous. Reports shall contain the name and address or other contact information of the reporter as

well as the names and addresses of the child and the parents or other persons responsible for the child's care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or the child's siblings; and any other information that might be helpful in establishing the cause of the injuries or reasons for the neglect as well as in protecting the child and assisting the family. If a report of child abuse or neglect involves the acts or omissions of the Commissioner or employees of the Department, then the report shall be directed to the Secretary of Human Services who shall cause the report to be investigated by other appropriate Agency staff. If the report is substantiated, services shall be offered to the child and to his or her family or caretaker according to the requirements of section 4915b of this title. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1989, No. 187 (Adj. Sess.), § 5; 1989, No. 295 (Adj. Sess.), § 4; 1995, No. 174 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), § 120; 2007, No. 77, § 1, eff. June 1, 2007; 2007, No. 168 (Adj. Sess.), § 4; 2015, No. 60, § 4a.)

### **§ 4915. Assessment and investigation**

(a) Upon receipt of a report of abuse or neglect, the Department shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 of this title. The Department shall respond to reports of alleged neglect or abuse that occurred in Vermont and to out-of-state conduct when the child is a resident of or is present in Vermont.

(b) If the report is accepted as a valid allegation of abuse or neglect, the Department shall determine whether to conduct an assessment as provided for in section 4915a of this title or to conduct an investigation as provided for in section 4915b of this title. The Department shall begin either an assessment or an investigation within 72 hours after the receipt of a report made pursuant to section 4914 of this title, provided that it has sufficient information to proceed. The Commissioner may waive the 72-hour requirement only when necessary to locate the child who is the subject of the allegation or to ensure the safety of the child or social worker.

(c) The decision to conduct an assessment shall include consideration of the following factors:

- (1) the nature of the conduct and the extent of the child's injury, if any;
- (2) the accused person's prior history of child abuse or neglect, or lack thereof; and
- (3) the accused person's willingness or lack thereof to accept responsibility for the conduct and cooperate in remediation.

(d) The Department shall conduct an investigation when an accepted report involves allegations indicating substantial child endangerment. For purposes of this section, "substantial child endangerment" includes conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury. The Department may conduct an investigation of any report.

(e) The Department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is appropriate.

(f) The Department may collaborate with child protection, law enforcement, and other departments and agencies in Vermont and other jurisdictions to evaluate risk to a child and to determine the service needs of the child and family. The Department may enter into reciprocal agreements with other jurisdictions to further the purposes of this subchapter.

(g) The Department shall report to and receive assistance from appropriate law enforcement in the following circumstances:

- (1) investigations of child sexual abuse by an alleged perpetrator 10 years of age or older;

- (2) investigations of serious physical abuse or neglect requiring emergency medical care, resulting in death, or likely to result in criminal charges;
- (3) situations potentially dangerous to the child or Department worker; and
- (4) an incident in which a child suffers:
  - (A) serious bodily injury as defined in 13 V.S.A. § 1021, by other than accidental means; and
  - (B) potential violations of:
    - (i) 13 V.S.A. § 2602 (lewd or lascivious conduct with child);
    - (ii) 13 V.S.A. chapter 60 (human trafficking);
    - (iii) 13 V.S.A. chapter 64 (sexual exploitation of children); and
    - (iv) 13 V.S.A. chapter 72 (sexual assault). (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1995, No. 178 (Adj. Sess.), § 300; 1999, No. 78 (Adj. Sess.), § 1; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 5; 2015, No. 60, § 17.)

#### **§ 4915a. Procedures for assessment**

- (a) An assessment, to the extent that is reasonable under the facts and circumstances presented by the particular valid allegation of child abuse or neglect, shall include the following:
  - (1) An interview with the child's parent, guardian, foster parent, or any other adult residing in the child's home who serves in a parental role. The interview shall focus on ensuring the immediate safety of the child and mitigating the future risk of harm to the child in the home environment.
  - (2) An evaluation of the safety of the subject child and any other children living in the same home environment. The evaluation may include an interview with or observation of the child or children. Such interviews shall occur with the permission of the child's parent, guardian, or custodian.
  - (3) In collaboration with the family, identification of family strengths, resources, and service needs, and the development of a plan of services that reduces the risk of harm and improves or restores family well-being.
- (b) The assessment shall be completed within 45 days. Upon written justification by the Department, the assessment may be extended, not to exceed a total of 60 days.
- (c) Families have the option of declining the services offered as a result of the assessment. If the family declines the services, the case shall be closed unless the Department determines that sufficient cause exists to begin an investigation or to request the State's Attorney to file a petition pursuant to chapters 51 and 53 of this title. In no instance shall a case be investigated solely because the family declines services.
- (d) When an assessment case is closed, there shall be no finding of abuse or neglect and no indication of the intervention shall be placed in the Registry. However, the Department shall document the outcome of the assessment. (Added 2007, No. 168 (Adj. Sess.), § 6; amended 2013, No. 131 (Adj. Sess.), § 77, eff. May 20, 2014.)

#### **§ 4915b. Procedures for investigation**

- (a) An investigation, to the extent that it is reasonable under the facts and circumstances presented by the particular allegation of child abuse, shall include all of the following:
  - (1) A visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect.

(2) An interview with or observation of the child reportedly having been abused or neglected. If the investigator elects to interview the child, that interview may take place without the approval of the child's parents, guardian, or custodian, provided that it takes place in the presence of a disinterested adult who may be, but shall not be limited to being, a teacher, a member of the clergy, a child care provider regulated by the Department, or a nurse.

(3) Determination of the nature, extent, and cause of any abuse or neglect.

(4) Determination of the identity of the person alleged to be responsible for such abuse or neglect.

(5)(A) The identity, by name, of any other children living in the same home environment as the subject child. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse or neglect, in accordance with the provisions of subdivision (2) of this subsection.

(B) The identity, by name, of any other children who may be at risk if the abuse was alleged to have been committed by someone who is not a member of the subject child's household. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse or neglect, in accordance with the provisions of subdivision (2) of this subsection.

(6) A determination of the immediate and long-term risk to each child if that child remains in the existing home or other environment.

(7) Consideration of the environment and the relationship of any children therein to the person alleged to be responsible for the suspected abuse or neglect.

(8) All other data deemed pertinent.

(b) For cases investigated and substantiated by the Department, the Commissioner shall, to the extent that it is reasonable, provide assistance to the child and the child's family. For cases investigated but not substantiated by the Department, the Commissioner may, to the extent that it is reasonable, provide assistance to the child and the child's family. Nothing contained in this section or section 4915a of this title shall be deemed to create a private right of action.

(c) The Commissioner, designee, or any person required to report under section 4913 of this title or any other person performing an investigation may take or cause to be taken photographs of trauma visible on a child who is the subject of a report. The Commissioner or designee may seek consultation with a physician. If it is indicated appropriate by the physician, the Commissioner or designee may cause the child who is subject of a report to undergo a radiological examination without the consent of the child's parent or guardian.

(d) Services may be provided to the child's immediate family whether or not the child remains in the home.

(e) Repealed.]

financial resources of the parent or guardian. (Added 2007, No. 168 (Adj. Sess.), § 7; amended 2015, No. 60, § 16.)

## **§ 4916. Child Protection Registry**

(a)(1) The Commissioner shall maintain a Child Protection Registry which shall contain a record of all investigations that have resulted in a substantiated report on or after January 1, 1992. Except as provided in subdivision (2) of this subsection, prior to placement of a substantiated report on the Registry, the Commissioner shall comply with the procedures set forth in section 4916a of this title.

(2) In cases involving sexual abuse or serious physical abuse of a child, the Commissioner in his or her sole judgment may list a substantiated report on the Registry pending any administrative review after:

- (A) reviewing the investigation file; and
- (B) making written findings in consideration of:
  - (i) the nature and seriousness of the alleged behavior; and
  - (ii) the person's continuing access to children.

(3) A person alleged to have abused or neglected a child and whose name has been placed on the Registry in accordance with subdivision (2) of this subsection shall be notified of the Registry entry, provided with the Commissioner's findings, and advised of the right to seek an administrative review in accordance with section 4916a of this title.

(4) If the name of a person has been placed on the Registry in accordance with subdivision (2) of this subsection, it shall be removed from the Registry if the substantiation is rejected after an administrative review.

(b) A Registry record means an entry in the Child Protection Registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(c) The Commissioner shall adopt rules to permit use of the Registry records as authorized by this subchapter while preserving confidentiality of the Registry and other Department records related to abuse and neglect.

(d) For all substantiated reports of child abuse or neglect made on or after the date the final rules are adopted, the Commissioner shall create a Registry record that reflects a designated child protection level related to the risk of future harm to children. This system of child protection levels shall be based upon an evaluation of the risk the person responsible for the abuse or neglect poses to the safety of children. The risk evaluation shall include consideration of the following factors:

- (1) the nature of the conduct and the extent of the child's injury, if any;
- (2) the person's prior history of child abuse or neglect as either a victim or perpetrator;
- (3) the person's response to the investigation and willingness to engage in recommended services; and
- (4) the person's age and developmental maturity.

(e) The Commissioner shall develop rules for the implementation of a system of Child Protection Registry levels for substantiated cases. The rules shall address:

- (1) the length of time a person's name appears on the Registry;
- (2) when and how names are expunged from the Registry;
- (3) whether the person is a juvenile or an adult;
- (4) whether the person was charged with or convicted of a criminal offense arising out of the incident of abuse or neglect; and
- (5) whether a Family Division of the Superior Court has made any findings against the person.

(f) Repealed.] (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1989, No. 295 (Adj. Sess.), § 5; 1991, No. 159 (Adj. Sess.), § 3; 2007, No. 77, § 1, eff. Sept. 1, 2007; 2007, No. 168 (Adj. Sess.), § 8; 2007, No. 172 (Adj. Sess.), § 20; 2009, No. 154 (Adj. Sess.), § 238.)

## § 4916a. Challenging placement on the Registry

- (a) If an investigation conducted in accordance with section 4915b of this title results in a determination that a report of child abuse or neglect should be substantiated, the Department shall notify the person alleged to have abused or neglected a child of the following:
- (1) the nature of the substantiation decision, and that the Department intends to enter the record of the substantiation into the Registry;
  - (2) who has access to Registry information and under what circumstances;
  - (3) the implications of having one's name placed on the Registry as it applies to employment, licensure, and registration;
  - (4) the right to request a review of the substantiation determination by an administrative reviewer, the time in which the request for review shall be made, and the consequences of not seeking a review; and
  - (5) the right to receive a copy of the Commissioner's written findings made in accordance with subdivision 4916(a)(2) of this title if applicable.
- (b) Under this section, notice by the Department to a person alleged to have abused or neglected a child shall be by first class mail sent to the person's last known address.
- (c)(1) A person alleged to have abused or neglected a child may seek an administrative review of the Department's intention to place the person's name on the Registry by notifying the Department within 14 days of the date the Department mailed notice of the right to review in accordance with subsections (a) and (b) of this section. The Commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the Department has mailed notice of the right to review.
- (2) The administrative review may be stayed upon request of the person alleged to have committed abuse or neglect if there is a related case pending in the Criminal or Family Division of the Superior Court which arose out of the same incident of abuse or neglect for which the person was substantiated. During the period the review is stayed, the person's name shall be placed on the Registry. Upon resolution of the Superior Court criminal or family case, the person may exercise his or her right to review under this section.
- (d) The Department shall hold an administrative review conference within 35 days of receipt of the request for review. At least 10 days prior to the administrative review conference, the Department shall provide to the person requesting review a copy of the redacted investigation file, notice of time and place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing testimony. The Department shall also provide to the person those redacted investigation files that relate to prior investigations that the Department has relied upon to make its substantiation determination in the case in which a review has been requested.
- (e) At the administrative review conference, the person who requested the review shall be provided with the opportunity to present documentary evidence or other information that supports his or her position and provides information to the reviewer in making the most accurate decision regarding the allegation. The Department shall have the burden of proving that it has accurately and reliably concluded that a reasonable person would believe that the child has been abused or neglected by that person. Upon the person's request, the conference may be held by teleconference.
- (f) The Department shall establish an administrative case review unit within the Department and contract for the services of administrative reviewers. An administrative reviewer shall be a neutral and independent arbiter who has no prior involvement in the original investigation of the allegation.
- (g) Within seven days of the conference, the administrative reviewer shall:
- (1) reject the Department's substantiation determination;

(2) accept the Department's substantiation; or

(3) place the substantiation determination on hold and direct the Department to further investigate the case based upon recommendations of the reviewer.

(h) If the administrative reviewer accepts the Department's substantiation determination, a Registry record shall be made immediately. If the reviewer rejects the Department's substantiation determination, no Registry record shall be made.

(i) Within seven days of the decision to reject or accept or to place the substantiation on hold in accordance with subsection (g) of this section, the administrative reviewer shall provide notice to the person of his or her decision. If the administrative reviewer accepts the Department's substantiation, the notice shall advise the person of the right to appeal the administrative reviewer's decision to the human services board in accordance with section 4916b of this title.

(j) Persons whose names were placed on the Registry on or after January 1, 1992 but prior to September 1, 2007 shall be entitled to an opportunity to seek an administrative review to challenge the substantiation.

(k) If no administrative review is requested, the Department's decision in the case shall be final, and the person shall have no further right of review under this section. The Commissioner may grant a waiver and permit such a review upon good cause shown. Good cause may include an acquittal or dismissal of a criminal charge arising from the incident of abuse or neglect.

(l) In exceptional circumstances, the Commissioner, in his or her sole and nondelegable discretion, may reconsider any decision made by a reviewer. A Commissioner's decision that creates a Registry record may be appealed to the Human Services Board in accordance with section 4916b of this title. (Added 2007, No. 77, § 1, eff. Sept. 1, 2007; amended 2007, No. 168 (Adj. Sess.), § 9, eff. Sept. 1, 2008; 2009, No. 154 (Adj. Sess.), § 221.)

#### **§ 4916b. Human Services Board hearing**

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the Registry, the person who is the subject of the substantiation may apply in writing to the Human Services Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the Department receives notice of the appeal, it shall make note in the Registry record that the substantiation has been appealed to the Board.

(b)(1) The Board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to hearings held under this subsection only as follows:

(A) V.R.E. 804a(a)(1) and (4) shall apply.

(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.

(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.

(D) V.R.E. 804a(b) shall not apply.

(4) Convictions and adjudications which arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in the Criminal or Family Division of the Superior Court which arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the Board is requested, the Department's decision in the case shall be final, and the person shall have no further right for review under this section. The Board may grant a waiver and permit such a review upon good cause shown. (Added 2007, No. 77, § 1, eff. Sept. 1, 2007; amended 2007, No. 168 (Adj. Sess.), § 10; 2009, No. 1, § 29; 2009, No. 154 (Adj. Sess.), § 222.)

### **§ 4916c. Petition for expungement from the Registry**

(a) A person whose name has been placed on the Registry prior to July 1, 2009 and has been listed on the Registry for at least three years may file a written request with the Commissioner, seeking a review for the purpose of expunging an individual Registry record. A person whose name has been placed on the Registry on or after July 1, 2009 and has been listed on the Registry for at least seven years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record. The Commissioner shall grant a review upon request.

(b) The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children. Factors to be considered by the Commissioner shall include:

- (1) the nature of the substantiation that resulted in the person's name being placed on the Registry;
- (2) the number of substantiations, if more than one;
- (3) the amount of time that has elapsed since the substantiation;
- (4) the circumstances of the substantiation that would indicate whether a similar incident would be likely to occur;
- (5) any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment, or education; and
- (6) references that attest to the person's good moral character.

(c) At the review, the person who requested the review shall be provided with the opportunity to present any evidence or other information, including witnesses, that supports his or her request for expungement. Upon the person's request, the review may be held by teleconference.

(d) A person may seek a review under this section no more than once every 36 months.

(e) Within 30 days of the date on which the Commissioner mailed notice of the decision pursuant to this section, a person may appeal the decision to the Human Services Board. The person shall be prohibited from challenging his or her substantiation at such hearing, and the sole issue before the Board shall be whether the Commissioner abused his or her discretion in denial of the petition for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the Commissioner shall be given deference by the Board.

(f) The Department shall take steps to provide reasonable notice to persons on the Registry of their right to seek an expungement under this section. Actual notice is not required. Reasonable steps may include activities such as the production of an informative fact sheet about the expungement process, posting of such information on the Department website, and other approaches typically taken by the Department to inform the public about the Department's activities and policies. The Department shall

send notice of the expungement process to any person listed on the Registry for whom a Registry check has been requested. (Added 2007, No. 77, § 1, eff. June 7, 2007; amended 2007, No. 168 (Adj. Sess.), § 11.)

#### **§ 4916d. Automatic expungement of Registry records**

Registry entries concerning a person who was substantiated for behavior occurring before the person reached 10 years of age shall be expunged when the person reaches the age of 18, provided that the person has had no additional substantiated Registry entries. A person substantiated for behavior occurring before the person reached 18 years of age and whose name has been listed on the Registry for at least three years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record in accordance with section 4916c of this title. (Added 2007, No. 77, § 1, eff. June 7, 2007; amended 2007, No. 168 (Adj. Sess.), § 12.)

#### **§ 4916e. Notice to minors**

If the person alleged to have abused or neglected a child is a minor, any notice required pursuant to this subchapter shall be sent:

- (1) to the minor's parents or guardian; or
- (2) if the child is in the custody of the Commissioner, to the social worker assigned to the child by the Department and the child's counsel of record. (Added 2007, No. 77, § 1, eff. June 7, 2007.)

#### **§ 4917. Multidisciplinary teams; empaneling**

(a) The Commissioner or his or her designee may impanel a multidisciplinary team or a special investigative multitask force team or both wherever in the State there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services. These teams shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415.

(b) The Commissioner or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multidisciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, child care, education, law, or law enforcement. The teams shall include a representative of the Department of Corrections. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

(c) The empaneling of a multidisciplinary or special investigative multi-task force team shall be authorized in writing and shall specifically list the members of the team. This list may be amended from time to time as needed as determined by the Commissioner or his or her designee. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 13; 2007, No. 172 (Adj. Sess.), § 21; 2007, No. 174 (Adj. Sess.), § 17; 2009, No. 1, § 18, eff. March 4, 2009.)

#### **§ 4918. Multidisciplinary teams; functions; guidelines**

(a) Multidisciplinary teams shall assist local district offices of the Department in identifying and treating child abuse or neglect cases. With respect to any case referred to it, the team may assist the district office by providing:

- (1) case diagnosis or identification;
- (2) a comprehensive treatment plan; and

(3) coordination of services pursuant to the treatment plan.

(b) Multidisciplinary teams may also provide public informational and educational services to the community about identification, treatment, and prevention of child abuse and neglect. It shall also foster communication and cooperation among professionals and organizations in its community, and provide such recommendations or changes in service delivery as it deems necessary. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 2007, No. 168 (Adj. Sess.), § 14.)

#### **§ 4919. Disclosure of Registry records**

(a) The Commissioner may disclose a Registry record only as follows:

(1) To the State's Attorney or the Attorney General.

(2) To the owner or operator of a facility regulated by the Department for the purpose of informing the owner or operator that employment of a specific individual may result in loss of license, registration, certification, or authorization as set forth in section 152 of this title.

(3) To an employer if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, transportation, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, grantee, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, grantee, or contractor. If that individual has a record of a substantiated report, the Commissioner shall provide the Registry record to the employer. The employer shall not disclose the information contained in the Registry report.

(4) To the Commissioners of Disabilities, Aging, and Independent Living and of Mental Health or their designees, for purposes related to the licensing or registration of facilities regulated by those Departments.

(5) To the Commissioners of Health, of Disabilities, Aging, and Independent Living and of Mental Health or their designees for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by those Departments, including persons to whom a conditional offer of employment has been made.

(6) Upon request or when relevant to other states' adult protective services offices.

(7) Upon request or when relevant to other states' child protection agencies.

(8) To the person substantiated for child abuse and neglect who is the subject of the record.

(9) To the Commissioner of Corrections in accordance with the provisions of 28 V.S.A. § 204a(b)(3).

(10) To the Board of Medical Practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

(b) An employer providing transportation services to children or vulnerable adults may disclose Registry records obtained pursuant to subdivision (a)(3) of this section to the Agency of Human Services or its designee for the sole purpose of auditing the records to ensure compliance with this subchapter. An employer shall provide such records at the request of the Agency or its designee. Only Registry records regarding individuals who provide direct transportation services or otherwise have direct contact with children or vulnerable adults may be disclosed.

(c) Volunteers shall be considered employees for purposes of this section.

(d) Disclosure of Registry records or information or other records used or obtained in the course of providing services to prevent child abuse or neglect or to treat abused or neglected children and their

families by one member of a multidisciplinary team to another member of that team shall not subject either member of the multidisciplinary team, individually, or the team as a whole, to any civil or criminal liability notwithstanding any other provision of law.

(e) “Employer,” as used in this section, means a person or organization who employs or contracts with one or more individuals to care for or provide transportation services to children or vulnerable adults, on either a paid or volunteer basis.

(f) In no event shall Registry records be made available for employment purposes other than as set forth in this subsection, or for credit purposes. Any person who violates this subsection shall be fined not more than \$500.00.

(g) Nothing in this subsection shall limit the Department’s right to use and disclose information from its records as provided in section 4921 of this chapter. (Added 1981, No. 207 (Adj. Sess.), § 1, eff. April 25, 1982; amended 1983, No. 169 (Adj. Sess.), § 2; 1991, No. 159 (Adj. Sess.), § 4; 1993, No. 100, § 7; 2001, No. 135 (Adj. Sess.), § 16, eff. June 13, 2002; 2003, No. 66, § 136b; 2005, No. 174 (Adj. Sess.), § 121; 2007, No. 77, § 1, eff. June 7, 2007; 2007, No. 168 (Adj. Sess.), § 15; 2009, No. 1, § 37; 2011, No. 61, § 7, eff. June 2, 2011.)

**§ 4920. Repealed. 2007, No. 168 (Adj. Sess.), § 16.**

**§ 4921. Department’s records of abuse and neglect**

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

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

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

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

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

(3) the attorney representing the child in a child custody proceeding in the Family Division of the Superior Court.

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

(1) the Court, parties to the juvenile proceeding, and the child’s guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the Commissioner;

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

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

(4) law enforcement officers engaged in a joint investigation with the Department, an Assistant Attorney General, or a State’s Attorney; and

(5) other State agencies conducting related inquiries or proceedings.

(6) [Repealed.]

(e)(1) Upon request, relevant Department records or information created under this subchapter shall be disclosed to:

- (A) a person, agency, or organization, including a multidisciplinary team empaneled under section 4917 of this title, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record created under this subchapter, or who is responsible for the child's health or welfare;
- (B) health and mental health care providers working directly with the child or family who is the subject of the report or record;
- (C) educators working directly with the child or family who is the subject of the report or record;
- (D) licensed or approved foster caregivers for the child;
- (E) mandated reporters as defined by section 4913 of this subchapter, making a report in accordance with the provisions of section 4914 of this subchapter and engaging in an ongoing working relationship with the child or family who is the subject of the report;
- (F) a Family Division of the Superior Court involved in any proceeding in which custody of a child or parent-child contact is at issue;
- (G) a Probate Division of the Superior Court involved in guardianship proceedings;
- (H) other governmental entities for purposes of child protection.

(2) Determinations of relevancy shall be made by the Department.

(3) In providing records or information under this subsection (e), the Department may withhold:

- (A) information that could compromise the safety of the reporter or the child or family who is the subject of the report; or
- (B) specific details that could cause the child to experience significant mental or emotional stress.

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

(5) Any persons or agencies authorized to receive confidential information under this section may share such information with other persons or agencies authorized to receive confidential information under this section for the purposes of providing services and benefits to the children and families those persons or agencies mutually serve.

(f) Upon request, relevant Department information created under this subchapter may be disclosed to a parent with a reasonable concern that an individual who is residing at least part time with the parent requestor's child presents a risk of abuse or neglect to the requestor's child. As it is used in this subsection, "relevant Department information" shall mean information regarding the individual that the Department determines could avert the risk of harm presented by the individual to the requestor's child. If the Department denies the request for information, the requestor may petition the Family Division of the Superior Court, which may, after weighing the privacy concerns of the individuals involved with the parent's right to protect his or her child, order the release of the information.

(g) Any records or information disclosed under this section and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than to those persons or agencies authorized to receive information pursuant to this section. A person who intentionally violates the confidentiality provisions of this section shall be

fined not more than \$2,000.00. (Added 2007, No. 168 (Adj. Sess.), § 17; amended 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011; 2015, No. 60, § 5.)

#### **§ 4922. Rulemaking**

- (a) The Commissioner shall develop rules to implement this subchapter. These shall include:
- (1) rules setting forth criteria for determining whether to conduct an assessment or an investigation;
  - (2) rules setting out procedures for assessment and service delivery;
  - (3) rules outlining procedures for investigations;
  - (4) rules for conducting the administrative review conference;
  - (5) rules regarding access to and maintenance of Department records of investigations, assessments, reviews, and responses; and
  - (6) rules regarding the tiered Registry as required by section 4916 of this title.
- (b) The rules shall strike an appropriate balance between protecting children and respecting the rights of a parent or guardian, including a parent or guardian with disabilities, and shall recognize that persons with a disability can be successful parents. The rules shall include the possible use of adaptive equipment and supports.
- (c) These rules shall be adopted no later than July 1, 2009. (Added 2007, No. 168 (Adj. Sess.), § 18.)

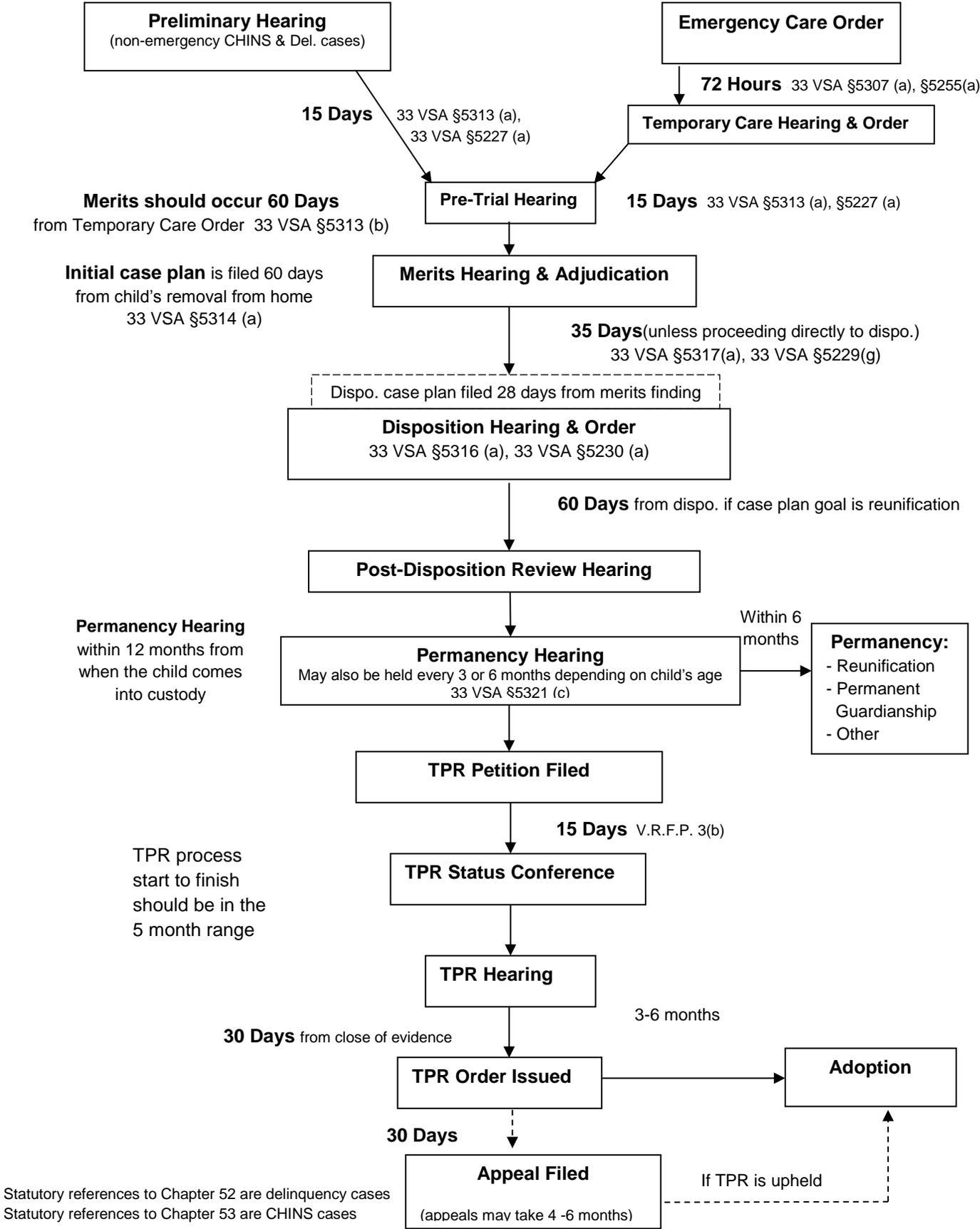
#### **§ 4923. Reporting**

The Commissioner shall publish an annual report regarding reports of child abuse and neglect no later than June 30, for the previous year. The report shall include:

- (1) The number of reports accepted as valid allegations of child abuse or neglect.
- (2) The number of reports that resulted in an investigative response; particularly:
  - (A) the number of investigations which resulted in a substantiation;
  - (B) the types of maltreatment substantiated;
  - (C) the relationship of the perpetrator to the victim, by category; and
  - (D) the gender and age group of the substantiated victims.
- (3) The number of reports that resulted in an assessment response; particularly:
  - (A) the general types of maltreatment alleged in cases which received an assessment response; and
  - (B) the number of assessments that resulted in the recommendation of services.
- (4) Trend information over a five-year period. Beginning with the adoption of the assessment response and continuing over the next five years, the report shall explain the impact of the assessment response on statistical reporting. (Added 2007, No. 168 (Adj. Sess.), § 19.)

# JUVENILE PROCEEDINGS FLOWCHART

NOT ALL CASES FOLLOW THIS PROGRESSION





# **Title 33, Chapters 51-53: Juvenile Proceedings**

## **CHAPTER 51: GENERAL PROVISIONS**

### **§ 5101. Purposes**

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

- (1) to provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters;
- (2) to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which ensure:
  - (A) balanced attention to the protection of the community;
  - (B) accountability to victims and the community for offenses; and
  - (C) the development of competencies to enable children to become responsible and productive members of the community;
- (3) to preserve the family and to separate a child from his or her parents only when necessary to protect the child from serious harm or in the interests of public safety;
- (4) to ensure that safety and timely permanency for children are the paramount concerns in the administration and conduct of proceedings under the juvenile judicial proceedings chapters;
- (5) to achieve the foregoing purposes, whenever possible, in a family environment, recognizing the importance of positive parent-child relationships to the well-being and development of children;
- (6) to provide judicial proceedings through which the provisions of the juvenile judicial proceedings chapters are executed and enforced and in which the parties are ensured a fair hearing, and that their constitutional and other legal rights are recognized and enforced.

(b) The provisions of the juvenile judicial proceedings chapters shall be construed as superseding the provisions of the criminal law of this State to the extent the same are inconsistent with this chapter. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5102. Definitions and provisions of general application**

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

- (1) “Care provider” means a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court.
- (2) “Child” means any of the following:
  - (A) an individual who is under the age of 18 and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant);

(B)(i) an individual who is under the age of 18, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and was under the age of 16 at the time the petition was filed; or

(ii) an individual who is between the ages of 16 to 17.5, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 18 years of age; provided, however:

(i) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 10 but not the age of 14 may be treated as an adult as provided therein;

(ii) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14 but not the age of 16 shall be subject to criminal proceedings as in cases commenced against adults, unless transferred to the Court in accordance with the juvenile judicial proceedings chapters;

(iii) that an individual who is alleged to have committed an act before attaining the age of 10 which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(iv) that an individual may be considered a child for the period of time the Court retains jurisdiction under section 5104 of this title.

(3) “Child in need of care or supervision (CHINS)” means a child who:

(A) has been abandoned or abused by the child’s parent, guardian, or custodian. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child’s care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

(4) “Commissioner” means the Commissioner for Children and Families or the Commissioner’s designee.

(5) “Conditional custody order” means an order issued by the Court in a juvenile proceeding conferring legal custody of a child to a parent, guardian, relative, or a person with a significant relationship with the child subject to such conditions and limitations as the Court may deem necessary to provide for the safety and welfare of the child. Any conditions and limitations shall apply only to the individual to whom custody is granted.

(6) “Court” means the Family Division of the Superior Court.

(7) “Custodial parent” means a parent who, at the time of the commencement of the juvenile proceeding, has the right and responsibility to provide the routine daily care and control of the

child. The rights of the custodial parent may be held solely or shared and may be subject to the Court-ordered right of the other parent to have contact with the child.

(8) “Custodian” means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont Superior Court or a similar court in another jurisdiction.

(9) “Delinquent act” means an act designated a crime under the laws of this State, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include 7 V.S.A. §§ 656 and 657; however, it shall not include:

(A) snowmobile offenses in 23 V.S.A. chapter 29, subchapter 1 and motorboat offenses in 23 V.S.A. chapter 29, subchapter 2, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323;

(B) motor vehicle offenses committed by an individual who is at least 16 years of age, except for violations of 23 V.S.A. chapter 13, subchapter 13 and of 23 V.S.A. § 1091.

(10) “Delinquent child” means a child who has been adjudicated to have committed a delinquent act.

(11) “Department” means the Department for Children and Families.

(12) “Guardian” means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont court or a court in another jurisdiction.

(13) “Judge” means a judge of the Family Division of the Superior Court.

(14) “Juvenile judicial proceedings chapters” means this chapter and chapters 52 and 53 of this title.

(15) “Juvenile proceeding” means a proceeding in the Family Division of the Superior Court under the authority of the juvenile judicial proceedings chapters.

(16)(A) “Legal custody” means the legal status created by order of the Court under the authority of the juvenile judicial proceedings chapters which invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(i) the right to routine daily care and control of the child and to determine where and with whom the child shall live;

(ii) the authority to consent to major medical, psychiatric, and surgical treatment for a child;

(iii) the responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care;

(iv) the authority to make decisions which concern the child and are of substantial legal significance, including the authority to consent to civil marriage and enlistment in the U.S. Armed Forces, and the authority to represent the child in legal actions.

(B) If legal custody is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(17) “Listed crime” means the same as defined in 13 V.S.A. § 5301.

(18) “Noncustodial parent” means a parent who is not a custodial parent at the time of the commencement of the juvenile proceeding.

(19) “Officer” means a law enforcement officer, including a State Police officer, sheriff, deputy sheriff, municipal police officer, or constable who has been certified by the Criminal Justice Training Council pursuant to 20 V.S.A. § 2358.

(20) “Parent” means a child’s biological or adoptive parent, including custodial parents, noncustodial parents, parents with legal or physical responsibilities or both, and parents whose rights have never been adjudicated.

(21) “Parent-child contact” means the right of a parent to have visitation with the child by Court order.

(22) “Party” includes the following persons:

(A) the child with respect to whom the proceedings are brought.;

(B) the custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition;

(C) the noncustodial parent for the purposes of custody, visitation, and such other issues which the Court may determine are proper and necessary to the proceedings, provided that the noncustodial parent has entered an appearance;

(D) the State’s Attorney;

(E) the Commissioner;

(F) such other persons as appear to the Court to be proper and necessary to the proceedings.

(23) “Probation” means the legal status created by order of the Family Division of the Superior Court in proceedings involving a violation of law whereby a delinquent child is subject to supervision by the Department under conditions specified in the Court’s juvenile probation certificate and subject to return to and change of legal status by the Family Division of the Superior Court for violation of conditions of probation at any time during the period of probation.

(24) “Protective supervision” means the authority granted by the Court to the Department in a juvenile proceeding to take reasonable steps to monitor compliance with the Court’s conditional custody order, including unannounced visits to the home in which the child currently resides.

(25) “Reasonable efforts” means the exercise of due diligence by the Department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the Court may find that no services were appropriate or reasonable considering the circumstances. If the Court makes written findings that aggravated circumstances are present, the Court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

(A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;

(B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;

(C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or

(D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

(26) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody of the child, including the right to reasonable contact with the child, the responsibility for support, and the right to consent to adoption.

(27) “Shelter” means a shelter designated by the Commissioner where a child taken into custody pursuant to subdivision 5301(3) of this title may be held for a period not to exceed seven days.

(28) “Youth” shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 3, § 12a, eff. Sept. 1, 2009; 2009, No. 154 (Adj. Sess.), §§ 223, 238.)

### **§ 5103. Jurisdiction**

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child’s 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child’s 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.

(B) In no case shall custody of a child aged 18 years or older be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child’s 18th birthday.

(D) As used in this subdivision, “nonviolent misdemeanor” means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.

(d) The Court may terminate its jurisdiction over a child prior to the child’s 18th birthday by order of the Court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the Commissioner;

(2) upon an order of the Court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision;

(3) upon the adoption of a child following a termination of parental rights proceeding. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 224; 2011, No. 159 (Adj. Sess.), § 1.)

#### **§ 5104. Retention of jurisdiction over youthful offenders**

(a) The Family Division of the Superior Court may retain jurisdiction over a youthful offender up to the age of 22.

(b) In relation to the retention of jurisdiction provision of subsection (a) of this section, any party may request, or the Court on its own motion may schedule, a hearing to determine the propriety of extending the jurisdictional time period. This hearing shall be held within the three-month time period immediately preceding the child's 18th birthday, and the order of continued jurisdiction shall be executed by the Court on or before that birthday. In determining the need for continued jurisdiction, the Court shall consider the following factors:

- (1) the extent and nature of the child's record of delinquency;
- (2) the nature of past and current treatment efforts and the nature of the child's response to them;
- (3) the prospects for reasonable rehabilitation of the child by use of procedures, services, and facilities currently available to the Court; and
- (4) whether the safety of the community will best be served by a continuation of jurisdiction.

(c) A hearing under subsection (b) of this section shall be held in accordance with the procedures provided in section 5113 of this title. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 225.)

#### **§ 5105. Venue and change of venue**

(a) Proceedings under the juvenile judicial proceedings chapters may be commenced in the county where:

- (1) the child is domiciled;
- (2) the acts constituting the alleged delinquency occurred; or
- (3) the child is present when the proceedings commenced, if it is alleged that a child is in need of care or supervision.

(b) If a child or a parent, guardian, or custodian changes domicile during the course of a proceeding under the juvenile judicial proceedings chapters or if the petition is not brought in the county in which the child is domiciled, the Court may change venue upon the motion of a party or its own motion, taking into consideration the domicile of the child and the convenience of the parties and witnesses. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

#### **§ 5106. Powers and duties of Commissioner**

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the Court, and in addition to any other powers granted to the Commissioner under the laws of this State, the Commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

- (1) To undertake assessments and make reports and recommendations to the Court as authorized by the juvenile judicial proceedings chapters.
- (2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of proceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the Commissioner's supervision or in the Commissioner's legal custody by order of the Court.

(4) To place a child who is in the Commissioner's legal custody in a family home or a treatment, rehabilitative, detention, or educational facility or institution subject to the provisions of sections 5292 and 5293 of this title. To the extent that it is appropriate and possible, siblings in the Commissioner's custody shall be placed together.

(5) To make appropriate referrals to private or public agencies.

(6) To perform such other functions as are designated by the juvenile judicial proceedings chapters. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5107. Contempt power**

Subject to the laws relating to the procedures therefor and the limitations thereon, the Court has the power to punish any person for contempt of court for disobeying an order of the Court or for obstructing or interfering with the proceedings of the Court or the enforcement of its orders. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5108. Authority to issue warrants**

(a) The Court may order a parent, guardian, or custodian to appear at any hearing or to appear at the hearing with the child who is the subject of a petition.

(b) If, after being summoned, cited, or otherwise notified to appear, a party fails to do so, the Court may issue a warrant for the person's appearance.

(c) If the child is with the parent, guardian, or custodian, the Court may issue a warrant for the person to appear in Court with the child or, in the alternative, the Court may issue an order for an officer to pick up the child and bring the child to Court.

(d) If a summons cannot be served or the welfare of the child requires that the child be brought forthwith to the Court, the Court may issue a warrant for the parent, guardian, or custodian to appear in Court with the child. In the alternative, the Court may issue an order for an officer to pick up the child and bring the child to Court during Court hours.

(e) A person summoned who fails to appear without reasonable cause may be found in contempt of court. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5109. Subpoena**

Upon application of a party or on the Court's own motion, the clerk of the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under the juvenile judicial proceedings chapters. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5110. Conduct of hearings**

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

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her

assistance, and such other persons as the Court finds to have a proper interest in the case or in the work of the Court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the Court. An individual without party status seeking inclusion in the hearing in accordance with this subsection may petition the Court for admittance by filing a request with the clerk of the Court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5233 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2015, No. 60, § 6.)

### **§ 5111. Noncustodial parents**

(a) If a child is placed in the legal custody of the Department and the identity of a parent has not been legally established at the time the petition is filed, the Court may order that the mother, the child, and the alleged father submit to genetic testing and may issue an order establishing parentage pursuant to 15 V.S.A. chapter 5, subchapter 3A. A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

(b) If a child is placed in the legal custody of the Department, the Department shall make reasonably diligent efforts to locate a noncustodial parent as early in the proceedings as possible, and notify the Court of the noncustodial parent's address. A hearing shall not be delayed by reason of the inability of the Department to locate or serve a noncustodial parent.

(c) The Court may order a custodial parent to provide the Department with information regarding the identity and location of a noncustodial parent.

(d) As soon as his or her address is known, a noncustodial parent shall be served with the petition and a copy of the summons. Thereafter, the Court shall mail notices of the hearing to the noncustodial parent. The noncustodial parent shall be responsible for providing the Court with information regarding any changes in address. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5112. Attorney and guardian ad litem for child**

(a) The Court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters.

(b) The Court shall appoint a guardian ad litem for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters. In a delinquency proceeding, a parent, guardian, or custodian of the child may serve as a guardian ad litem for the child, providing his or her interests do not conflict with the interests of the child. The guardian ad litem appointed under this section shall not be a party to that proceeding or an employee or representative of such party. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

### **§ 5113. Modification or vacation of orders**

(a) An order of the Court may be set aside in accordance with Rule 60 of the Vermont Rules of Civil Procedure.

(b) Upon motion of a party or the Court's own motion, the Court may amend, modify, set aside, or vacate an order on the grounds that a change in circumstances requires such action to serve the best

interests of the child. The motion shall set forth in concise language the grounds upon which the relief is requested.

(c) Any order under this section shall be made after notice and hearing; however, the Court may waive the hearing upon stipulation of the parties. All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value, even though not competent in a hearing on the petition. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

#### **§ 5114. Best interests of the child**

(a) At the time of a permanency review under section 5321 of this title, a modification hearing under section 5113 of this title, or at any time a petition or request to terminate all residual parental rights of a parent as to adoption is filed by the Commissioner or the attorney for the child, without limitation the Court shall consider the best interests of the child in accordance with the following:

- (1) the interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests;
- (2) the child's adjustment to his or her home, school, and community;
- (3) the likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time;
- (4) whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare.

(b) Except in cases where a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the Commissioner or the attorney for the child, the Court shall also consider whether the parent is capable of playing a constructive role, including demonstrating emotional support and affection, in the child's welfare. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

#### **§ 5115. Protective order**

(a) On motion of a party or on the Court's own motion, the Court may make an order restraining or otherwise controlling the conduct of a person if the Court finds that such conduct is or may be detrimental or harmful to a child.

(b) The person against whom the order is directed shall be served with notice of the motion and the grounds therefor and be given an opportunity to be heard.

(c) Upon a showing that there is a risk of immediate harm to a child, the Court may issue a protective order ex parte. A hearing on the motion shall be held no more than 10 days after the issuance of the order.

(d) The Court may review any protective order at a subsequent hearing to determine whether the order should remain in effect.

(e) A person who is the subject of an order issued pursuant to this section and who intentionally violates a provision of the order that concerns contact between the child and that person shall be punished in accordance with 13 V.S.A. § 1030. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

## **§ 5116. Costs and expenses for care of child**

- (a) The Commissioner may incur such expenses for the proper care, maintenance, and education of a child, including the expenses of medical, surgical, or psychiatric examination or treatment, as the Commissioner considers necessary in connection with proceedings under the juvenile judicial proceedings chapters.
- (b) The costs of any proceeding under the juvenile judicial proceedings chapters incurred under the provisions of this title shall be borne by the Court.
- (c) The Court may, in any order of disposition under the juvenile judicial proceedings chapters, make and enforce by levy and execution an order of child support to be paid by the parent of the child.
- (d) The Court may delegate to the office of magistrate its authority to make and enforce an order of child support to be paid by the parent of a child.
- (e) A child support order shall only remain in effect as long as the child who is the subject of the support order is in the legal custody of the Commissioner and placed with someone other than the parent or parents responsible for support.
- (f) Except as otherwise provided in section 5119 of this title, orders issued pursuant to this section shall not be confidential.
- (g) Notwithstanding subsection 5103(b) of this title, an order terminating a parent's residual parental rights ends that parent's obligation to pay child support. However, in no event shall an order terminating residual parental rights terminate an obligation for child support arrearages accrued by the parent prior to the date of the termination of parental rights order. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

## **§ 5117. Records of juvenile judicial proceedings**

- (a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the Court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the Court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act which would have been a felony if committed by an adult, the Court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.
- (b)(1) Notwithstanding the foregoing, inspection of such records and files by the following is not prohibited:
  - (A) a court having the child before it in any juvenile judicial proceeding;
  - (B) the officers of public institutions or agencies to whom the child is committed as a delinquent child;
  - (C) a court in which a person is convicted of a criminal offense for the purpose of imposing sentence upon or supervising the person, or by officials of penal institutions and other penal facilities to which the person is committed, or by a parole board in considering the person's parole or discharge or in exercising supervision over the person;
  - (D) court personnel, the State's Attorney or other prosecutor authorized to prosecute criminal or juvenile cases under State law, the child's guardian ad litem, the attorneys for the parties,

probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child;

(E) the child who is the subject of the proceeding, the child's parents, guardian, custodian, and guardian ad litem may inspect such records and files upon approval of the Family Court judge;

(F) any other person who has a need to know may be designated by order of the Family Division of the Superior Court;

(G) the Commissioner of Corrections if the information would be helpful in preparing a presentence report, in determining placement, or in developing a treatment plan for a person convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3.

(2) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00.

(c) Upon motion of a party in a divorce or parentage proceeding related to parental rights and responsibilities for a child or parent-child contact, the Court may order that Court records in a juvenile proceeding involving the same child or children be released to the parties in the divorce proceeding. Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2,000.00. The public shall not have access to records from a juvenile proceeding that are filed with the Court or admitted into evidence in the divorce or parentage proceeding.

(d) Such records and files shall be available to State's Attorneys and all other law enforcement officers in connection with record checks and other legal purposes.

(e) Any records or reports relating to a matter within the jurisdiction of the Court prepared by or released by the Court or the Department for Children and Families, any portion of those records or reports, and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section.

(f) This section does not provide access to records sealed in accordance with section 5119 of this title unless otherwise provided in section 5119. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 1, § 33a; 2009, No. 154 (Adj. Sess.), § 238.)

**§ 5118. Limited exception to confidentiality of records of juveniles maintained by the Family Division of the Superior Court**

(a) As used in this section:

(1) "Delinquent act requiring notice" means conduct resulting in a delinquency adjudication related to a listed crime as defined in 13 V.S.A. § 5301(7).

(2) "Independent school" means an approved or recognized independent school under 16 V.S.A. § 166.

(b) While records of juveniles maintained by the Family Division of the Superior Court should be kept confidential, it is the policy of the General Assembly to establish a limited exception for the overriding public purposes of rehabilitating juveniles and protecting students and staff within Vermont's public and independent schools.

(c) Notwithstanding any law to the contrary, a court finding that a child has committed a delinquent act requiring notice shall, within seven days of such finding, provide written notice to the

superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster.

(d) The written notice shall contain only a description of the delinquent act found by the Court to have been committed by the child and shall be marked: "UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00." The envelope in which the notice is sent by the Court shall be marked: "CONFIDENTIAL: TO BE OPENED BY THE SUPERINTENDENT OR HEADMASTER ONLY."

(e) The superintendent or headmaster, upon receipt of the notice, shall inform only those persons within the child's school with a legitimate need to know of the delinquent act, and only after first evaluating rehabilitation and protection measures that do not involve informing staff or students. Persons with a legitimate need to know are strictly limited to only those for whom the information is necessary for the rehabilitation program of the child or for the protection of staff or students. "Need to know" shall be narrowly and strictly interpreted. Persons receiving information from the superintendent or headmaster shall not, under any circumstances, discuss such information with any other person except the child, the child's parent, guardian, or custodian, others who have been similarly informed by the superintendent or headmaster, law enforcement personnel, or the juvenile's probation officer.

(f) The superintendent and headmaster annually shall provide training to school staff about the need for confidentiality of such information and the penalties for violation of this section.

(g) The written notice shall be maintained by the superintendent or headmaster in a file separate from the child's education record. If the child transfers to another public or independent school, the superintendent or headmaster shall forward the written notice in the original marked envelope to the superintendent or headmaster for the school to which the child transferred. If the child either graduates or turns 18 years of age, the superintendent or headmaster then possessing the written notice shall destroy such notice.

(h) If legal custody of the child is transferred to the Commissioner, or if the Commissioner is supervising the child's probation, upon the request by a superintendent or headmaster, the Commissioner shall provide to the superintendent or headmaster information concerning the child which the Commissioner determines is necessary for the child's rehabilitation or for the protection of the staff or students in the school in which the child is enrolled.

(i) A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(j) Except as provided in subsection (i) of this section, no liability shall attach to any person who transmits, or fails to transmit, the written notice required under this section. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.)

### **§ 5119. Sealing of records**

(a)(1) In matters relating to a child who has been adjudicated delinquent on or after July 1, 1996, the Court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the State's Attorney, the Court finds:

(A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or

(B) rehabilitation of the person has not been attained to the satisfaction of the Court.

(2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the Court shall provide such person's name and other identifying information to the State's Attorney in the county in which the person was adjudicated delinquent. The State's Attorney may object, and a hearing may be held to address the State's Attorney's objection.

(3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the Court may limit the order to the Court files and records only upon good cause shown by the State's Attorney.

(4) The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 1996, but before July 1, 2001, shall be completed by January 1, 2010. The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 2001 but before July 1, 2004, shall be completed by January 1, 2008.

(b) In matters relating to a child who has been adjudicated delinquent prior to July 1, 1996, on application of the child or on the Court's own motion and after notice to all parties of record and hearing, the Court shall order the sealing of all files and records related to the proceeding if it finds:

(1) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after such initial adjudication, and no new proceeding is pending seeking such conviction or adjudication; and

(2) the person's rehabilitation has been attained to the satisfaction of the Court.

(c) On application of a person who, while a child, was found to be in need of care or supervision or, on the Court's own motion, after notice to all parties of record and hearing, the Court may order the sealing of all files and records related to the proceeding if it finds:

(1) the person has reached the age of majority; and

(2) sealing the person's record is in the interest of justice.

(d) Except as provided in subdivision (a)(3) and subsection (h) of this section or otherwise provided, orders issued in accordance with this section shall include the files and records of the Court, law enforcement, prosecution, and the Department for Children and Families related to the specific court proceeding that is the subject of the sealing.

(e)(1) Except as provided in subdivision (2) of this subsection, upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this act shall be considered never to have occurred, all general index references thereto shall be deleted, and the person, the Court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in any matter. Copies of the order shall be sent to each agency or official named in the order.

(2)(A) Any court, agency, or department that seals a record pursuant to an order under this section may keep a special index of files and records that have been sealed. This index shall only list the name and date of birth of the subject of the sealed files and records and the docket number of the proceeding which was the subject of the sealing. The special index shall be confidential and may be accessed only for purposes for which a department or agency may request to unseal a file or record pursuant to subsection (f) of this section.

(B) Access to the special index shall be restricted to the following persons:

(i) the Commissioner and general counsel of any administrative department;

(ii) the Secretary and general counsel of any administrative agency;

- (iii) a sheriff;
- (iv) a police chief;
- (v) a State's Attorney;
- (vi) the Attorney General;
- (vii) the Director of the Vermont Crime Information Center; and
- (viii) a designated clerical staff person in each office identified in subdivisions (i)-(vii) of this subdivision (B) who is necessary for establishing and maintaining the indices for persons who are permitted access.

(C) Persons authorized to access an index pursuant to subdivision (B) of this subdivision (2) may access only the index of their own department or agency.

(f)(1) Except as provided in subdivisions (2), (3), (4), and (5) of this subsection, inspection of the files and records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records, and only to those persons named in the record.

(2) Upon a confidential motion of any department or agency that was required to seal files and records pursuant to subsection (d) of this section, the Court may permit the department or agency to inspect its own files and records if it finds circumstances in which the department or agency requires access to such files and records to respond to a legal action, a legal claim, or an administrative action filed against the department or agency in relation to incidents or persons that are the subject of such files and records. The files and records shall be unsealed only for the minimum time necessary to address the circumstances enumerated in this subdivision, at which time the records and files shall be resealed.

(3) Upon a confidential motion of the Department for Children and Families, the Court may permit the Department to inspect its own files and records if the Court finds extraordinary circumstances in which the State's interest in the protection of a child clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the State's interest. The motion may be heard ex parte if the Court, based upon an affidavit, finds a compelling purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the Court shall send notice of the unsealing to the subject of the files and records within 20 days unless the Department provides a compelling reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(4) Upon a confidential motion of a law enforcement officer or prosecuting attorney, the Court may permit the department or agency to inspect its own files and records if the Court finds extraordinary circumstances in which the State's interest in public safety clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the State's interest. The motion may be heard ex parte if the Court, based upon an affidavit, finds a compelling public safety purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the Court shall send notice of the unsealing to the subject of the files and records within 20 days unless the law enforcement officer or prosecuting attorney provides a compelling public safety reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(5) The order unsealing a record pursuant to subdivisions (2), (3), and (4) of this subsection must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the Court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(6) If a person is convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3, the Court in which the person was convicted:

(A) May inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense.

(B) Shall examine Court indices developed pursuant to subdivision (e)(2)(A) of this section. If the offender appears on any of the Court indices, the Court shall unseal any Court files and records relating to the juvenile adjudication and shall make them available to the Commissioner of Corrections for the purposes of preparing a presentence investigation, determining placement, or developing a treatment plan. The Commissioner shall use only information relating to adjudications relevant to a sex offense conviction.

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime under the laws of this State which the person committed prior to attaining the age of 21, or on the motion of the Court having jurisdiction over such a person, after notice to all parties of record and hearing, the Court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the Court.

(h)(1) In matters relating to a person who was charged with a criminal offense on or after July 1, 2006, and prior to the person attaining the age of majority, the files and records of the Court applicable to the proceeding shall be sealed immediately if the case is dismissed.

(2) In matters relating to a person who was charged with a criminal offense prior to July 1, 2006, and prior to the person attaining the age of majority, the person may apply to seal the files and records of the Court applicable to the proceeding. The Court shall order the sealing, provided that two years have elapsed since the dismissal of the charge.

(i) Upon receipt of a court order to seal a record relating to an offense for which there is an identifiable victim, a State's Attorney shall record the name and date of birth of the victim, the offense, and the date of the offense. The name and any identifying information regarding the defendant shall not be recorded. Victim information retained by a State's Attorney pursuant to this subsection shall be available only to victims' advocates, the Victims' Compensation Program, and the victim and shall otherwise be confidential.

(j) For purposes of this section, to "seal" a file or record means to physically and electronically segregate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by law or court order to view the record. A "sealed" file or record is retained and shall not be destroyed unless a court issues an order to expunge the record.

(k) The Court shall provide assistance to persons who seek to file an application for sealing under this section.

(l) Any entities subject to sealing orders pursuant to this section shall establish policies for implementing this section and shall provide a copy of such policies to the House and Senate

Committees on Judiciary no later than January 15, 2007. State's Attorneys, sheriffs, municipal police, and the Judiciary are encouraged to adopt a consistent policy that may apply to each of their independent offices and may submit one policy to the General Assembly. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009; amended 2009, No. 1, § 34; 2011, No. 16, § 3, eff. May 9, 2011.)

#### **§ 5120. Indian Child Welfare Act**

The federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., governs any proceeding under this title that pertains to an Indian child, as defined by the Indian Child Welfare Act, and prevails over any inconsistent provision of this title. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

#### **§ 5121. Case planning process**

The Department shall actively engage families, and solicit and integrate into the case plan the input of the child, the child's family, relatives, and other persons with a significant relationship to the child. Whenever possible, parents, guardians, and custodians shall participate in the development of the case plan. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

#### **§ 5122. Misconduct during court proceedings**

A person who engages in misconduct while participating in a court proceeding under the juvenile judicial proceedings chapters may be subject to appropriate sanctions, including criminal charges, as provided by relevant law, regulation, rule, or employment policy. The confidentiality requirements of subsection 5110(c) of this title shall not apply to the extent necessary to report and respond to allegations of misconduct under the juvenile judicial proceedings chapters. This section shall not be construed to create a private right of action or a waiver of sovereign immunity. (Added 2007, No. 185 (Adj. Sess.), § 1, eff. Jan. 1, 2009.)

#### **§ 5123. Transportation of a child**

(a) The Commissioner for Children and Families shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a child subject to this chapter in a manner that:

- (1) reasonably avoids physical and psychological trauma;
- (2) respects the privacy of the child; and
- (3) represents the least restrictive means necessary for the safety of the child.

(b) The Commissioner for Children and Families shall have the authority to select the person or persons who may transport a child under the Commissioner's care and custody.

(c) The Commissioner shall ensure supervisory review of every decision to transport a child using mechanical restraints. When transportation with restraints for a particular child is approved, the reasons for the approval shall be documented in writing.

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on children subject to this chapter unless circumstances dictate that such methods are necessary. (Added 2009, No. 28, § 2, eff. May 21, 2009.)

## § 5124. Postadoption contact agreements

- (a) Either or both parents and each intended adoptive parent may enter into a 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 or parents who are parties to 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 shall approve the postadoption contact agreement if:
- (1)(A) it determines that the child's best interests will be served by postadoption communication or contact with either or both parents; and
    - (B) in making a best interests determination, it may consider:
      - (i) the age of the child;
      - (ii) the length of time that the child has been under the actual care, custody, and control of a person other than a parent;
      - (iii) the desires of the child, the child's parents; and the child's intended adoptive parents;
      - (iv) the child's relationship with and the interrelationships between the child's parents, the child's intended adoptive parents, the child's siblings, and any other person with a significant relationship with the child;
      - (v) the willingness of the parents to respect the bond between the child and the child's intended adoptive parents;
      - (vi) the willingness of the intended adoptive parents to respect the bond between the child and the parents;
      - (vii) the adjustment to the child's home, school, and community;
      - (viii) any evidence of abuse or neglect of the child;
      - (ix) the recommendation of any guardian ad litem;
      - (x) the recommendation of a therapist or mental health care provider working directly with the child; and
      - (xi) the recommendation of the Department;
  - (2) it has reviewed and made each of the following a part of the Court record:
    - (A) 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;
    - (B) a written acknowledgment 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;
    - (C) an agreement to the postadoption contact or communication from the child to be adopted, if he or she is 14 years of age or older; and

(D) an agreement to the postadoption contact or communication in writing from the Department, the guardian ad litem, and the attorney for the child.

(c) 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 agreement shall specify:

- (1) the form of communication or contact to take place;
- (2) the frequency of the communication or contact;
- (3) if visits are agreed to, whether supervision shall be required, and if supervision is required, what type of supervision shall be required;
- (4) if written communication or exchange of information is agreed upon, whether that will occur directly or through the Vermont Adoption Registry, set forth in 15A V.S.A. § 6-103;
- (5) if the Adoption Registry shall act as an intermediary for written communication, that the signing parties will keep their addresses updated with the Adoption Registry;
- (6) that failure to provide contact due to the child's illness or other good cause shall not constitute grounds for an enforcement proceeding;
- (7) that the right of the signing parties to change their residence is not impaired by the agreement;
- (8) 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;
- (9) an acknowledgment that once the adoption is finalized, the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct;
- (10) 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; and
- (11) 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.

(d) A copy of the order approving the postadoption contact agreement and the postadoption contact agreement shall be filed with the Probate Division of the Superior Court with the petition to adopt filed under 15A V.S.A. Article 3, and, if the agreement specifies a role for the Adoption Registry, with the Registry.

(e) The order approving a postadoption contact agreement shall be a separate order issued before and contingent upon the final order of voluntary termination of parental rights.

(f) The executed postadoption contact agreement shall become final upon legal finalization of an adoption under 15A V.S.A. Article 3. (Added 2015, No. 60, § 10.)

**NOTE:** See 15A V.S.A. § 9-101 re: enforcement, modification, and termination of postadoption contact agreements in the Superior Court Probate Division. (provided here for your convenience)

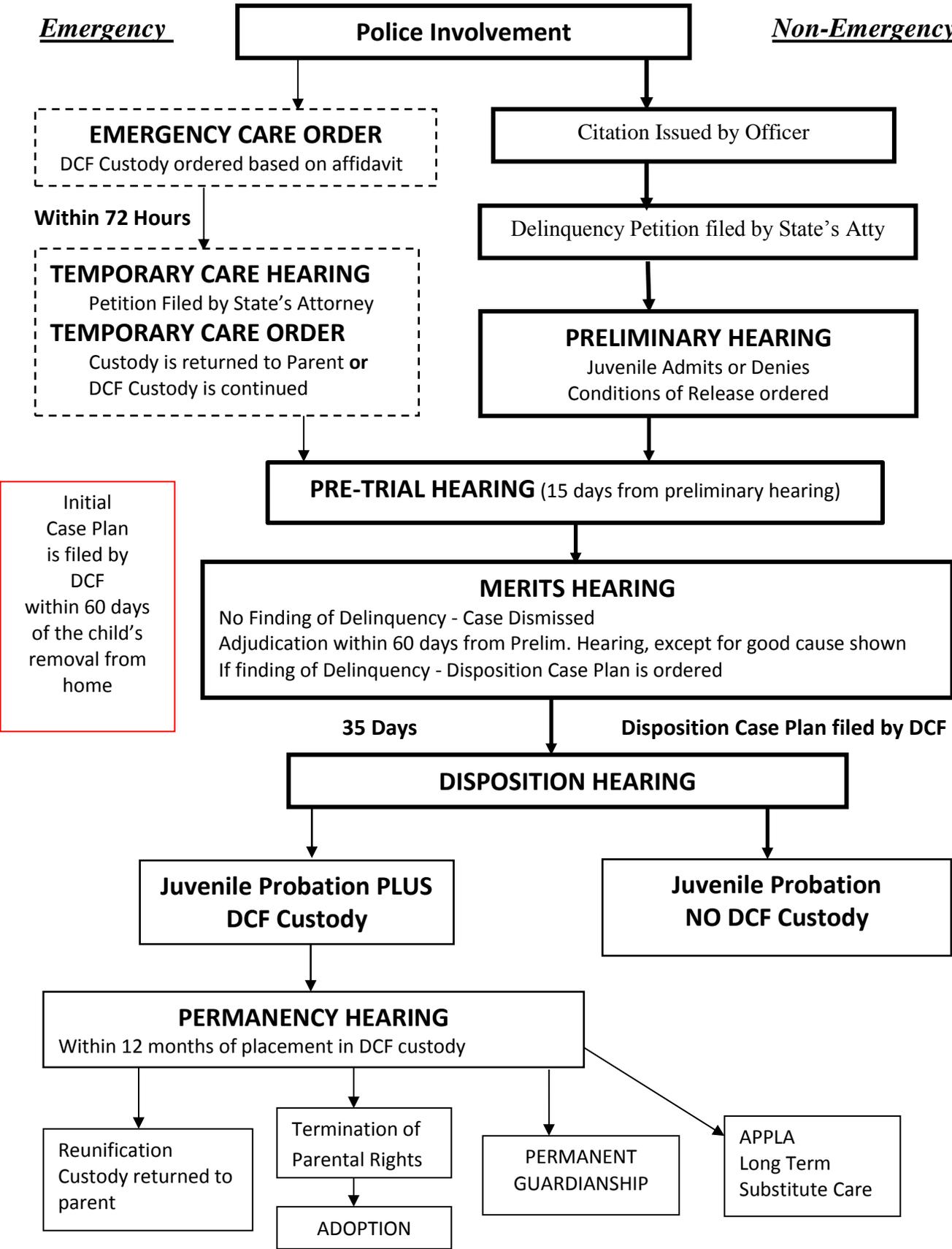
## **Title 15A: Adoption Act, Chapter 9: Enforcement, Modification, And Termination Of Postadoption Contact Agreements**

### **§ 9-101. Enforcement, modification, and termination of postadoption contact agreements**

- (a) An adoptive parent may petition the Court to modify or terminate a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent believes the best interests of the child are being compromised by the terms of the agreement. In an action brought under this section, the burden of proof shall be on the adoptive parent to show by clear and convincing evidence that the modification or termination of the agreement is in the best interests of the child.
- (b) A former parent may petition for enforcement of a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent is not in compliance with the terms of the agreement. In an action brought under this section, the burden of proof shall be on the former parent to show by a preponderance of the evidence that enforcement of the agreement is in the best interests of the child.
- (c) 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.
- (d) The Court shall not act on a petition to modify or enforce the agreement unless the petitioner had in good faith participated or attempted to participate in mediation or alternative dispute resolution proceedings to resolve the dispute prior to bringing the petition for enforcement.
- (e) Parties to the proceeding shall be the individuals who signed the original agreement created under 33 V.S.A. § 5124. The adopted child, if 14 years of age or older, may also participate. The Department for Children and Families shall not be required to be a party to the proceeding and the Court shall not order further investigation or evaluation by the Department.
- (f) The Court may order the communication or contact be terminated or modified if the Court deems such termination or modification to be in the best interests of the child. In making a best interests determination, the Court may consider:
- (1) the protection of the physical safety of the adopted child or other members of the adoptive family;
  - (2) the emotional well-being of the adopted child;
  - (3) whether enforcement of the agreement undermines the adoptive parent's parental authority; and
  - (4) whether, due to a change in circumstances, continued compliance with the agreement would be unduly burdensome to one or more of the parties.
- (g) A Court-imposed modification of the 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 former parents and the child or place new obligations on the adoptive parents.
- (h) A hearing held to enforce, modify, or terminate an agreement for postadoption contact shall be confidential.
- (i) Failure to comply with the agreement or petitioning the Court to enforce, modify, or terminate an agreement shall not form the basis for an award of monetary damages.
- (j) An agreement for postadoption contact or communication under 33 V.S.A. § 5124 shall cease to be enforceable on the date the adopted child turns 18 years of age or upon dissolution of the adoption. (Added 2015, No. 60, § 11.)

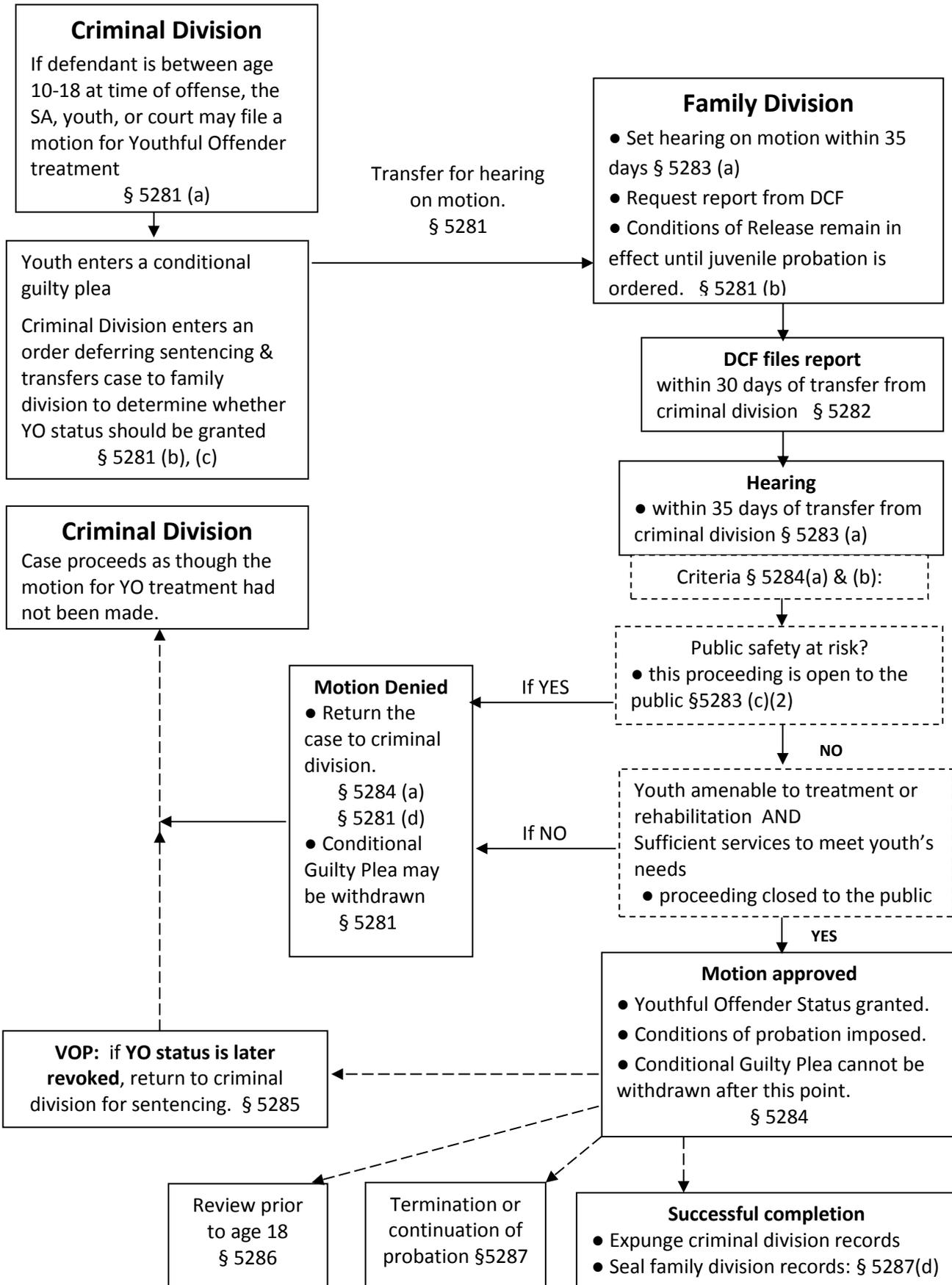


# DELINQUENCY PROCEEDINGS



# Youthful Offender Flowchart

## Title 33, Chapter 52, Subchapter 5



# **Chapter 52: DELINQUENCY PROCEEDINGS**

## **Subchapter 1. Commencement of Proceedings**

### **§ 5201. Commencement of delinquency proceedings**

- (a) Proceedings under this chapter shall be commenced by:
  - (1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or
  - (2) the filing of a delinquency petition by a State's Attorney.
- (b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.
- (c) Consistent with applicable provisions of Title 4, any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14, but not the age of 18, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.
- (d) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.
- (e) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 159 (Adj. Sess.), § 2.)

### **§ 5202. Order of adjudication; noncriminal**

- (a)(1) An order of the Family Division of the Superior Court in proceedings under this chapter shall not:
  - (A) be deemed a conviction of crime;
  - (B) impose any civil disabilities sanctions ordinarily resulting from a conviction; or
  - (C) operate to disqualify the child in any civil service application or appointment.
- (2) Notwithstanding subdivision (1) of this subsection, an order of delinquency in proceedings transferred under subsection 5203(b) of this title, where the offense charged in the initial criminal proceedings was a violation of those sections of Title 23 specified in subdivision 801(a)(1), shall be an event in addition to those specified therein, enabling the Commissioner of Motor Vehicles to require proof of financial responsibility under 23 V.S.A. chapter 11.
- (b) The disposition of a child and evidence given in a hearing in a juvenile proceeding shall not be admissible as evidence against the child in any case or proceeding in any other court except after a subsequent conviction of a felony in proceedings to determine the sentence. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5203. Transfer from other courts**

- (a) If it appears to a Criminal Division of the Superior Court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged

is not one of those specified in subsection 5204(a) of this title, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney may file charges in the Family or Criminal Division of the Superior Court. If charges in such a matter are filed in the Criminal Division of the Superior Court, the Criminal Division of the Superior Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(d) Any such transfer shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the Court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court for youthful offender treatment shall be made under section 5281 of this title. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), §§ 226, 238; 2011, No. 159 (Adj. Sess.), § 3.)

#### **§ 5204. Transfer from Family Division of the Superior Court**

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivisions (1)-(12) of this subsection or if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

- (1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and
- (2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the Court may consider, among other matters:

- (1) the maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community;
- (2) the extent and nature of the child's prior record of delinquency;
- (3) the nature of past treatment efforts and the nature of the child's response to them;
- (4) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;
- (6) the prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings;
- (7) whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(e) A transfer under this section shall terminate the jurisdiction of the Family Division of the Superior Court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The Family Division, following completion of the transfer hearing, shall make findings and, if the Court orders transfer of jurisdiction from the Family Division, shall state the reasons for that order. If the Family Division orders transfer of jurisdiction, the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the Family Division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The Court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the Court shall transfer the proceedings to the Criminal Division and the child shall be

treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the Court shall order the sealing of all applicable files and records of the Court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238; 2011, No. 159 (Adj. Sess.), § 4.)

#### **§ 5204a. Jurisdiction over adult defendant for crime committed when defendant was under age 18**

(a) A proceeding may be commenced in the Family Division against a defendant who has attained the age of 18 if:

- (1) the petition alleges that the defendant, before attaining the age of 18, violated a crime listed in subsection 5204(a) of this title;
- (2) a juvenile petition was never filed based upon the alleged conduct; and
- (3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the Criminal Division if the Family Division finds that:

- (A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;
- (B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;
- (C) there has not been an unreasonable delay in filing the petition; and
- (D) transfer would be in the interest of justice and public safety.

(2)(A) The Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age and the Family Division:

- (i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;
- (ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and
- (iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the Court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the Court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) In making the determination required by subdivision (1)(D) of this subsection, the Court may consider, among other matters:

(A) the maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(B) the extent and nature of the defendant's prior criminal record and record of delinquency;

(C) the nature of past treatment efforts and the nature of the defendant's response to them;

(D) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(E) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(F) whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(c) If the Family Division does not transfer the case to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed. (Added 2011, No. 16, § 2, eff. May 9, 2011.)

### **§ 5205. Fingerprints; photographs**

(a) Fingerprint files of a child under the jurisdiction of the Court shall be kept separate from those of other persons under special security measures. Inspection of such files shall be limited to law enforcement officers only on a need-to-know basis unless otherwise authorized by the Court in individual cases.

(b) Copies of fingerprints shall be maintained on a local basis only and not sent to central State or federal depositories except in national security cases.

(c) Fingerprints of persons under the jurisdiction of the Court shall be removed and destroyed when:

(1) the petition alleging delinquency with respect to which such fingerprints were taken does not result in an adjudication of delinquency; or

(2) jurisdiction of the Court is terminated, provided that there has been no record of a criminal offense by the child after reaching 16 years of age.

(d) If latent prints are found at the scene of an offense and there is reason to believe that a particular child was involved, the child may be fingerprinted for purposes of immediate comparison, and, if the result is negative, the fingerprint card shall be immediately destroyed.

(e) No photograph shall be taken of any child when taken into custody without the consent of the judge unless the case is transferred for criminal proceeding.

(f) A person who violates this section shall be imprisoned not more than six months or fined not more than \$500.00, or both. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2015, No. 23, § 15.)

## **Subchapter 2. Petition, Merits, and Disposition**

### **§ 5221. Citation and notice to appear at preliminary hearing**

(a) Citation. If an officer has probable cause to believe that a child has committed or is committing a delinquent act and the circumstances do not warrant taking the child into custody pursuant to subchapter 3 of this chapter, the officer may issue a citation to appear before a judicial officer in lieu of arrest.

(b) Appearance in Court. A child who receives a citation described in this section shall appear at the Court designated in the citation at the time and date specified in the citation unless otherwise notified by the Court.

(c) Notice to parent. The officer who issues the citation shall also issue or cause to be issued a notice to the child's custodial parent, guardian, or custodian. The notice shall indicate the date, time, and place of the preliminary hearing and shall direct the responsible adult to appear at the hearing with the child.

(d) Form. The citation to appear shall be dated and signed by the issuing officer and shall direct the child to appear before a judicial officer at a stated time and place. The citation shall state the name of the child to whom it is addressed, the delinquent act that the child is alleged to have committed, and a notice that the child is entitled to be represented by an attorney at the hearing and that an attorney will be appointed for the child if the parent or guardian is indigent and cannot afford an attorney.

(e) Filing of citation. The issuing officer shall sign the citation and file the citation and an affidavit as to probable cause with the State's Attorney. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5222. Petition; contents**

(a) The petition shall be supported by an affidavit as to probable cause. The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child has committed a delinquent act, together with a statement that it is in the best interests of the child that the proceedings be brought.

(2) The name, date of birth, telephone number, and residence address, if known, of the child and the custodial and noncustodial parents or the guardian or custodian of the child, if other than parent. If a parent is a participant in the Safe At Home Program pursuant to 15 V.S.A. § 1152, the petition shall so specify.

(b) If a temporary care order has been issued or the State is requesting that custody be transferred to the Commissioner, the petition shall contain jurisdictional information as required by the Uniform Child Custody Jurisdiction and Enforcement Act, 15 V.S.A. chapter 20.

(c) A petition alleging a delinquent act may not be amended to allege that a child is in need of care or supervision, and a child who has been adjudged a delinquent child as a result of a delinquency petition may not be subsequently adjudged a child in need of care or supervision, unless a separate petition alleging that the child is in need of care or supervision is filed. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5223. Filing of petition**

(a) When notice to the child is provided by citation, the State's Attorney shall file the petition and supporting affidavit at least 10 days prior to the date for the preliminary hearing specified in the citation.

(b) The Court shall send or deliver a copy of the petition and affidavit to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5224. Failure to appear at preliminary hearing**

If a child or custodial parent, guardian, or custodian fails to appear at the preliminary hearing as directed by a citation, the Court may issue a summons to appear, an order to have the child brought to Court, or a warrant as provided in section 5108 of this title. The summons, order, or warrant shall be served by the law enforcement agency that cited or took the child into custody, or another law enforcement agency acting on its behalf. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2015, No. 58, § E.204.3, eff. June 11, 2015.)

### **§ 5225. Preliminary hearing; risk assessment**

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the Court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening to the State's Attorney. If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the Court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

(d) At the preliminary hearing, the Court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the Court may appoint a guardian ad litem other than a parent, guardian or custodian.

(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the Court may proceed directly to disposition, provided that the juvenile, the custodial parent, the State's Attorney, the guardian ad litem, and the Department agree.

(f) The Court may order the child to abide by conditions of release pending a merits or disposition hearing. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 159 (Adj. Sess.), § 6.)

### **§ 5226. Notification of conditions of release to victim in delinquency proceedings**

A victim in a delinquency proceeding based on a listed crime shall be notified promptly by the prosecutor's office when conditions of release are initially ordered or modified by the Court and of

the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. A victim in a delinquency proceeding based on an act that is not a listed crime shall be notified promptly by the Court when conditions of release are initially ordered or modified by the Court and shall be notified promptly of the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. Victims are entitled only to information contained in the conditions of release that pertain to the victim or a member of the victim's family or current household. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5227. Timelines for pretrial and merits hearing**

(a) Pre-trial hearing. At the preliminary hearing, the Court shall set a date for a pretrial hearing on the petition. The pretrial hearing shall be held within 15 days of the preliminary hearing. In the event there is no admission or dismissal at the pretrial hearing, the Court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) Merits hearing. Except for good cause shown, a merits hearing shall be held and merits adjudicated no later than 60 days from the date of the preliminary hearing. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5228. Constitutional protections for a child in delinquency proceedings**

A child charged with a delinquent act need not be a witness against, nor otherwise incriminate, himself or herself. Any extrajudicial statement, if constitutionally inadmissible in a criminal proceeding, shall not be used against the child. Evidence illegally seized or obtained shall not be used over objection to establish the charge against the child. A confession out of court is insufficient to support an adjudication of delinquency unless corroborated in whole or in part by other substantial evidence. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5229. Merits adjudication**

(a) The parties at a merits hearing in a delinquency proceeding shall be limited to the State's Attorney and the child who is the subject of the petition. A merits adjudication hearing shall not proceed forward unless the child who is the subject of the delinquency petition is present in Court.

(b) The State shall have the burden of establishing beyond a reasonable doubt that the child has committed a delinquent act.

(c) If the child who is the subject of the delinquency petition enters an admission to the petition, the Court shall not accept the admission without first addressing the child personally in open court and determining that:

- (1) the plea is voluntary;
- (2) the child understands the nature of the delinquent act charged, the right to contest the charge, and the rights which will be waived if the admission is accepted by the Court; and
- (3) there is a factual basis for the delinquent act charged in the petition.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence.

(e) If the merits are contested, the Court, after hearing the evidence, shall make its findings on the record.

(f) If the Court finds that the allegations made in the petition have not been established beyond a reasonable doubt, the Court shall dismiss the petition and vacate any orders transferring custody to the State or other person or any conditional custody orders.

(g) If, based on the child's admission or the evidence presented, the Court finds beyond a reasonable doubt that the child has committed a delinquent act, the Court shall order the Department to prepare a disposition case plan within 28 days of the merits adjudication and shall set the matter for a disposition hearing. In no event, shall a disposition hearing be held later than 35 days after a finding that a child is delinquent.

(h) The Court may proceed directly to disposition providing that the child, the custodial parent, the State's Attorney, and the Department agree. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5230. Disposition case plan**

(a) Filing of case plan. The Department shall file a disposition case plan no later than 28 days from the date of the finding by the Court that a child is delinquent. The disposition case plan shall not be used or referred to as evidence prior to a finding that a child is delinquent.

(b) Content of case plan. A disposition case plan shall include, as appropriate:

(1) An assessment of the child's medical, psychological, social, educational, and vocational needs.

(2) An assessment of the impact of the delinquent act on the victim and the community, including, whenever possible, a statement from the victim.

(3) A description of the child's home, school, community, and current living situation.

(4) An assessment of the child's and family's strengths and risk factors.

(5) Proposed conditions of probation which address the identified risks and provide for, to the extent possible, repair of the harm to victims and the community. Proposed conditions may include a recommendation as to the term of probation.

(6) The plan of services shall describe the responsibilities of the child, the parent, guardian or custodian, the Department, other family members, and treatment providers, including a description of the services required to achieve successful completion of the goals of probation and, if the child has been placed in the custody of the Department, the permanency goal.

(c) Case plan for child in custody. If a child is in the custody of the Commissioner at the time of disposition or if a transfer of custody is requested, the case plan shall include the following additional information:

(1) A permanency goal if the child is in custody. The long-term goal for a child found to be delinquent and placed in the custody of the Department is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification with a parent, custodian, or guardian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

(2) A recommendation with respect to custody for the child and a recommendation for parent-child contact if appropriate.

(3) A request for child support if the child has been placed in the custody of the Department or the Department recommends a transfer of custody. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5231. Disposition hearing**

- (a) Timeline. A disposition hearing shall be held no later than 35 days after a finding that a child is delinquent.
- (b) Hearing procedure. If disposition is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.
- (c) Standard of proof. If the Court terminates the parental rights of one or both parents, the standard of proof on the issue of such termination shall be clear and convincing evidence. On all other issues, the standard of proof shall be a preponderance of the evidence.
- (d) Termination of parental rights. If the Commissioner or the attorney for the child seeks an order terminating parental rights of one or both parents and transfer of custody to the Commissioner without limitation as to adoption, the Court shall consider the best interests of the child in accordance with section 5114 of this title.
- (e) Further hearing. On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. The Court shall make an appropriate order for the temporary care of the child pending a final disposition order. The Court shall give scheduling priority to cases in which the child has been removed from the home. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5232. Disposition order**

- (a) If a child is found to be a delinquent child, the Court shall make such orders at disposition as may provide for:
  - (1) the child's supervision, care, and rehabilitation;
  - (2) the protection of the community;
  - (3) accountability to victims and the community for offenses committed; and
  - (4) the development of competencies to enable the child to become a responsible and productive member of the community.
- (b) In carrying out the purposes outlined in subsection (a) of this section, the Court may:
  - (1) Place the child on probation subject to the supervision of the Commissioner, upon such conditions as the Court may prescribe. The length of probation shall be as prescribed by the Court or until further order of the Court.
  - (2) Order custody of the child be given to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the Court may order that custody be subject to such conditions and limitations as the Court may deem necessary and sufficient to provide for the safety of the child and the community. Conditions may include protective supervision for up to one year following the disposition order unless further extended by court order. The Court shall schedule regular review hearings to determine whether the conditions continue to be necessary.
  - (3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child.
  - (4) Transfer custody of the child to the Commissioner.
  - (5) Terminate parental rights and transfer custody and guardianship to the Department without limitation as to adoption.

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

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the Court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the Court for disposition.

(c) If the Court orders the transfer of custody of the child pursuant to subdivisions (b)(4) and (5) of this section, the Court shall establish a permanency goal for the child and adopt a case plan prepared by the Department designed to achieve the permanency goal. If the Court determines that the plan proposed by the Department does not adequately support the permanency goal for the child, the Court may reject the plan proposed by the Department and order the Department to prepare and submit a revised plan for Court approval. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 28, § 3, eff. May 21, 2009; 2011, No. 159 (Adj. Sess.), § 5.)

### **§ 5233. Victim's statement at disposition proceeding; victim notification**

(a) Upon the filing of a delinquency petition, the Court shall notify a victim of his or her rights as provided by law and his or her responsibilities regarding the confidential nature of juvenile proceedings.

(b) A victim of a delinquent act has the right in a disposition proceeding to file with the Court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution. A victim of a delinquent act involving a listed crime also has the right to be present at the disposition hearing for the sole purpose of presenting to the Court the impact of the delinquent act on the victim and the need for restitution. A victim of a delinquent act that is not a listed crime may be present at the disposition hearing for the sole purpose of presenting to the Court the impact of the delinquent act on the victim and the need for restitution if the Court finds that the victim's presence at the disposition hearing is in the best interests of the child and the victim. The Court shall take a victim's views into consideration in the Court's disposition order. A victim shall not be allowed to be personally present at any portion of the disposition hearing except to present the impact statement unless authorized by the Court.

(c) After an adjudication of delinquency has been made involving an act that is not a listed crime, the Court shall inform the victim of the disposition of the case. Upon request of the victim, the Court may release to the victim the identity of the child if the Court finds that release of the child's identity to the victim is in the best interests of both the child and the victim.

(d) After an adjudication of delinquency has been made involving an act that is a listed crime, the State's Attorney's office shall inform the victim of the disposition in the case. Upon request of the victim, the State's Attorney's office shall release to the victim the identity of the child.

(e) For the purposes of this section, disposition in the case shall include whether the child was placed on probation and information regarding conditions of probation relevant to the victim. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5234. Rights of victims in delinquency proceedings involving a listed crime**

The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled.

(2) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including any conditions or restitution relevant to the victim.

(3) To present a victim's impact statement at the disposition hearing in accordance with subsection 5233(b) of this title and to be notified as to the disposition pursuant to subsection 5233(d) of this title.

(4) Upon request, to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title.

(6) To be notified by the Court of the victim's rights under this section. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5235. Juvenile restitution**

(a) Restitution shall be considered in every case in which a victim of a delinquent act has suffered a material loss. For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(b) When ordered, restitution may include:

- (1) return of property wrongfully taken from the victim;
- (2) cash, credit card, or installment payments paid to the Restitution Unit; and
- (3) payments in kind, if acceptable to the victim.

(c) In awarding restitution, the Court shall make findings in accordance with subdivision 5262(b)(2) of this title.

(d) If restitution is ordered, the victim shall be entitled to payment from the Crime Victims' Restitution Fund, pursuant to 13 V.S.A. § 5363. An order of restitution shall establish the amount of material loss incurred by the victim, which shall be the restitution judgment order. Every order of restitution shall include:

- (1) the juvenile's name and address;
- (2) the name of the victim;
- (3) the amount ordered; and
- (4) any co-defendant names if applicable.

(e) In the event the juvenile is unable to pay the restitution judgment order at the time of disposition, the Court shall fix the amount thereof, which shall not exceed an amount the juvenile can or will be able to pay, and shall fix the manner of performance or refer to a restorative justice program that will address how loss resulting from the delinquency will be addressed, subject to modification under section 5264 of this title.

(f) The Court shall transmit a copy of a restitution order to the Restitution Unit, which shall make payment to the victim in accordance with 13 V.S.A. § 5363.

- (g) To the extent that the Victims' Compensation Board has made payment to or on behalf of the victim in accordance with 13 V.S.A. chapter 167, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Crime Victims' Compensation Fund.
- (h) When restitution is requested but not ordered, the Court shall set forth on the record its reasons for not ordering restitution.
- (i) Any information concerning restitution payments made by a juvenile shall be available to the Vermont Restitution Unit for purposes of determining restitution obligations of adult and juvenile co-defendants.
- (j) In accordance with 13 V.S.A. § 5363, the Restitution Unit is authorized to make payments to victims of delinquent acts where restitution was ordered by a court prior to July 1, 2008, and the order was first entered on or after July 1, 2004.
- (k)(1) The Restitution Unit may bring an action to enforce a restitution order issued under this section in the Superior or Small Claims Court of the county where the offender resides or in the county where the order was issued. In an action under this subsection, a restitution order issued in a juvenile proceeding shall be enforceable in Superior or Small Claims Court in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.
- (2) An action under this subsection may be brought only after the offender reaches 18 years of age, and shall not be subject to any limitations period.
- (3) For purposes of this subsection, a restitution order issued in a juvenile proceeding shall not be confidential. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **Subchapter 3. Children in Custody**

#### **§ 5251. Taking into custody**

A child may be taken into custody by an officer:

- (1) pursuant to the laws of arrest of this State;
- (2) pursuant to an order of the Court under the provisions of this chapter and chapters 51 and 53 of this title; or
- (3) when the officer has reasonable grounds to believe that the child has committed a delinquent act; and that the child's immediate welfare or the protection of the community, or both, require the child's removal from the child's current home. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5252. Request for emergency care order**

- (a) If an officer takes a child who is alleged to be delinquent into custody, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare or the protection of the community, or both, require the child's continued removal from the home.
- (b) If the officer determines that the child's immediate welfare, the protection of the community, or both, require the child's continued removal from the home, the officer shall:
- (1) Take the child into custody pending either issuance of an emergency care order or direction from the State's Attorney to release the child.

(2) Prepare an affidavit in support of a request for an emergency care order. The affidavit shall include the reasons for taking the child into custody and, if known, placements with which the child is familiar, the names, addresses, and telephone numbers of the child's parents, guardians, or custodians, and the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer shall contact the Department, and, if the Department has knowledge of the reasons for the removal of the child, the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer.

(3) Provide the affidavit to the State's Attorney.

(c) If the child is taken into custody during regular court hours, the State's Attorney shall immediately file a request for an emergency care order accompanied by the supporting affidavit or direct the immediate return of the child to the child's custodial parent, guardian, or custodian. If the child is taken into custody after regular court hours or on a weekend or holiday, the State's Attorney or officer shall contact a judge to request an emergency care order or return the child to the child's custodial parent, guardian, or custodian. If an order is granted, the State's Attorney shall file the supporting affidavit with the Family Division of the Superior Court on the next day that the Court is open.

(d) If the judge denies a request for an emergency care order, the State's Attorney shall direct the immediate return of the child to the child's custodial parent, guardian, or custodian. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.)

### **§ 5253. Emergency care order; conditional custody order**

(a)(1) Transfer of temporary custody. The Court may issue an emergency care order transferring temporary custody of the child to the Department pending a temporary care hearing if the Court determines that:

(A) there is probable cause that the child has committed a delinquent act; and

(B) continued residence in the home is contrary to the child's welfare because:

(i) the child cannot be controlled at home and is at risk of harm to self or others; or

(ii) continued residence in the home will not safeguard the well-being of the child and the safety of the community because of the serious and dangerous nature of the act the juvenile is alleged to have committed.

(2) The determination may be made ex parte, provided that it is reasonably supported by the affidavit prepared in accordance with subsection 5252(b) of this title.

(b) Contents of emergency care order. The emergency care order shall contain:

(1) a written finding that the child's continued residence in the home is contrary to the child's welfare and the factual allegations that support that finding;

(2) the date, hour, and place of the temporary care hearing to be held pursuant to section 5255 of this title;

(3) notice of a parent's right to counsel at the temporary care hearing.

(c) Conditional custody order. If the Court determines that the child may safely remain in the custody of the custodial parent, guardian, or custodian, the Court may deny the request for an emergency care order and issue an emergency conditional custody order. The order shall contain:

(1) conditions and limitations necessary to protect the child, the community, or both;

(2) the date, hour, and place of the temporary care hearing to be held pursuant to section 5255 of this title;

(3) notice of a parent's right to counsel at the hearing. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

**§ 5254. Notice of emergency care order and temporary care hearing**

(a) Notice to custodial parent. An officer shall deliver a copy of the emergency care order or conditional custody order to the custodial parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify or cause to be notified the custodial parent, guardian, or custodian of the order, the date, time, and place of the temporary care hearing, and the right to counsel. If the custodial parent, guardian, or custodian cannot be located, the officer shall so certify to the Court in an affidavit describing the efforts made to locate the custodial parent, guardian, or custodian.

(b) Notice to noncustodial parent. The Department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with the emergency care or conditional custody order, notice of the date, hour, and place of the temporary care hearing and of the right to counsel. If the noncustodial parent cannot be located, the Department shall provide to the Court a summary of the efforts made to locate the noncustodial parent.

(c) Notice to other parties. The Court shall notify the following persons of the date and time of the temporary care hearing:

- (1) The State's Attorney.
- (2) The Department.
- (3) An attorney to represent the child.
- (4) A guardian ad litem for the child.
- (5) An attorney to represent each parent. The attorney may be Court-appointed in the event a parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

**§ 5255. Temporary care hearing**

(a) A temporary care hearing shall be held within 72 hours of the issuance of an emergency care order or conditional custody order under section 5253 of this title. State holidays shall be excluded from the computation of 72 hours. If the custodial parent, guardian, or custodian has not been notified in accordance with section 5254 of this title and does not appear or waive appearance at the temporary care hearing and files thereafter with the Court an affidavit so showing, the Court shall hold another temporary care hearing within one business day of the filing of the affidavit as if no temporary care hearing had theretofore been held.

(b) If the State's Attorney is seeking a temporary care order, the State's Attorney shall file a petition on or before the temporary care hearing. If the State's Attorney elects not to file a petition, the State's Attorney shall so notify the Court, and the Court shall vacate any temporary orders.

(c) The following persons shall be present at the temporary care hearing:

- (1) the child;
- (2) the child's custodial parent, guardian, or custodian, unless he or she cannot be located or fails to appear in response to notice;
- (3) the child's guardian ad litem;
- (4) an attorney for the child;

- (5) an attorney for the custodial parent, if requested;
- (6) a representative of the Department;
- (7) the State's Attorney.

(d) A noncustodial parent and his or her attorney shall have the right to be present at the hearing. The hearing shall not be delayed by reason of the inability of the Department to locate the noncustodial parent.

(e) The Department shall provide the following information to the Court at the hearing:

- (1) Any reasons for the child's removal which are not set forth in the affidavit required pursuant to section 5252 of this title.
- (2) Services, if any, provided to the child and the family in an effort to prevent removal.
- (3) The need, if any, for continued custody of the child with the Department pending a hearing to adjudicate the merits of the petition.
- (4) Services which could facilitate the return of the child to the custody of the parent or guardian.
- (5)(A) The identity of a noncustodial parent and any relatives known to the Department who may be suitable, willing, and available to assume temporary custody of the child.

(B) With respect to any person whom the Department identifies pursuant to this subdivision, the Department shall conduct an assessment of the suitability of the person to care for the child. The assessment shall include consideration of the person's ability to care for the child's needs, a criminal history record as defined in 20 V.S.A. § 2056a(a)(1) in accordance with subdivision (5)(C) of this subsection, and a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home. The Court may continue the hearing if necessary to permit the Department to complete the assessment.

(C) The Department shall request from the Vermont Crime Information Center criminal history record information for any person being considered to assume temporary legal custody of the child pursuant to this subdivision. The request shall be in writing and shall be accompanied by a release signed by the person. The Department through the Vermont Crime Information Center shall request criminal history record information from the appropriate state criminal repositories in all states in which it has reason to believe the person has resided or been employed. If no disqualifying record is identified at the state level, the Department through the Vermont Crime Information Center shall request from the Federal Bureau of Investigation (FBI) a National Criminal History Record Check of the person's criminal history. The request to the FBI shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Crime Information Center. The Vermont Crime Information Center shall send the Department the criminal history record from any state repository and the FBI of a person about whom a request is made under this subdivision or inform the Department that no record exists. The Department shall promptly provide a copy of the criminal history record, if any, to the person and shall inform the person that he or she has the right to appeal the accuracy and completeness of the record through the Vermont Crime Information Center. Upon completion of the process under this subdivision, the person's fingerprint card shall be destroyed.

(6) Additional information as required by the Uniform Child Custody Jurisdiction and Enforcement Act pursuant to 15 V.S.A. chapter 20 and the Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq.

(f) All parties shall have the right to present evidence on their own behalf and examine witnesses. Hearsay, to the extent it is deemed relevant and reliable by the Court, shall be admissible. The Court may in its discretion limit testimony and evidence to only that which goes to the issues of removal, custody, and the child's welfare.

(g) The temporary care hearing shall also be a preliminary hearing on the petition. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2013, No. 119 (Adj. Sess.), § 18.)

### **§ 5256. Temporary care order**

(a) The Court shall order that custody be returned to the child's custodial parent, guardian, or custodian unless the Court finds by a preponderance of the evidence that return to the home would be contrary to the welfare of the child because of any of the following:

- (1) The child cannot be controlled at home and is at risk of harm to self or others.
- (2) Continued residence in the home will not protect the community because of the serious and dangerous nature of the act the child is alleged to have committed.
- (3) The child's welfare is otherwise endangered.

(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the Court may issue such temporary orders related to the custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child, and the safety of the community, including:

- (1) a conditional custody order returning custody of the child to the custodial parent, guardian, or custodian, subject to such conditions and limitation as the Court may deem necessary and sufficient to protect the child and the community;
- (2) an order transferring temporary custody of the child to a noncustodial parent or a relative;
- (3) a temporary care order transferring temporary custody of the child to the Commissioner.

(c)(1) If the Court transfers custody of the child to the Commissioner, the Court shall issue a written temporary care order. The order shall include:

(A) a finding that remaining in the home is contrary to the child's welfare and the facts upon which that finding is based; and

(B) a finding as to whether reasonable efforts were made to prevent the unnecessary removal of the child from the home.

(2) If at the conclusion of the hearing the Court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

(3) The order may include such other provisions as may be necessary for the protection and welfare of the child:

(A) conditions of release;

(B) an order for parent-child contact under such terms and conditions as are necessary for the protection of the child;

(C) an order that the Department provide the child with services if legal custody of the child has been transferred to the Commissioner;

(D) an order that the Department refer a parent to services;

(E) a genetic testing order if parentage of the child is at issue;

(F) an order that the Department make diligent efforts to locate the noncustodial parent;

(G) an order that the custodial parent provide the Department with names of all potential noncustodial parents and relatives of the child;

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

(4) In his or her discretion, the Commissioner may provide assistance and services to children and families to the extent that funds permit, notwithstanding subdivision (3)(C) of this subsection. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5257. Filing of initial case plan**

(a) If a temporary care order is issued granting custody to the Commissioner, the Department shall prepare and file with the Court an initial case plan for the child and the family within 60 days of the child's removal from the home. The Department shall provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem.

(b) The initial case plan shall not be used or referred to as evidence prior to a finding that the child has committed a delinquent act. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5258. Postdisposition review and permanency review for delinquents in custody**

Whenever custody of a delinquent child is transferred to the Commissioner, the custody order of the Court shall be subject to a postdisposition review hearing pursuant to section 5320 of this title and permanency reviews pursuant to section 5321 of this title. At the permanency review, the Court shall review the permanency plan and determine whether the plan advances the permanency goal recommended by the Department. The Court may accept or reject the plan, but may not designate a particular placement for a child in the Department's legal custody. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **Subchapter 4. Probation**

#### **§ 5261. Powers and responsibilities of the Commissioner regarding juvenile probation**

The Commissioner shall be charged with the following powers and responsibilities regarding the administration of juvenile probation:

- (1) to maintain supervision of juveniles placed on probation;
- (2) to supervise the administration of juvenile probation services, including the authority to enter into contracts with community-based agencies to provide probation services which may include restitution and community service programs and to establish policies and standards and adopt rules regarding juvenile probation investigation, supervision, casework and caseloads, record-keeping, and the qualification of juvenile probation officers;
- (3) to prescribe rules, consistent with any orders of the Court, governing the conduct of juveniles on probation. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5262. Conditions of probation**

(a) The conditions of probation shall be such as the Court in its discretion deems necessary to ensure to the greatest extent reasonably possible that the juvenile will be provided a program of treatment, training, and rehabilitation consistent with the protection of the public interest. The Court shall provide as an explicit condition of every juvenile probation certificate that if the juvenile is adjudicated a delinquent or is convicted of an adult crime while on probation, then the Court may find the juvenile in violation of the conditions of probation.

(b) The Court may, as a condition of probation, require that the juvenile:

- (1) Work faithfully for a prescribed number of hours at a community service activity acceptable to the Court or, if so ordered by the Court, at a community service activity acceptable to a probation officer.
- (2) Make restitution or reparation to the victim of the juvenile's conduct for the damage or injury which was sustained. When restitution or reparation is a condition of probation, the Court shall fix the amount thereof. The Court shall further determine the amount the juvenile can or will be able to pay and fix the manner of performance. In the alternative, the Court may refer the determination of the amount, the ability to pay, and the manner of performance to a restorative justice panel.
- (3) Participate in programs designed to develop competencies to enable the child to become a responsible and productive member of the community.
- (4) Refrain from purchasing or possessing a firearm or ammunition, any destructive device, or any dangerous weapon unless granted written permission by the Court or juvenile probation officer.
- (5) Report to a juvenile probation officer at reasonable times as directed by the Court or the probation officer.
- (6) Permit the juvenile probation officer to visit the juvenile at reasonable times at home or elsewhere.
- (7) Remain within the jurisdiction of the Court unless granted permission to leave by the Court or the probation officer.
- (8) Answer all reasonable inquiries by the juvenile probation officer and promptly notify the probation officer of any change in address or employment.
- (9) Satisfy any other conditions reasonably related to the juvenile's rehabilitation.
- (10) Reside at home or other location specified by the Court.
- (11) Attend or reside at an educational or vocational facility or a facility established for the instruction, recreation, or residence of persons on probation.
- (12) Work faithfully at suitable employment or faithfully pursue a course of study or of vocational training that will equip the juvenile for suitable employment.
- (13) Undergo available medical treatment, participate in psychiatric treatment or mental health counseling, and participate in alcohol or drug abuse assessment or treatment on an outpatient or inpatient basis. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5263. Juvenile probation certificate**

(a) When a juvenile is placed on probation, the Court shall issue a written juvenile probation certificate setting forth:

- (1) the name of the juvenile;
- (2) the nature of the delinquent act committed by the juvenile;
- (3) the date and place of the juvenile delinquency hearing;
- (4) the order of the Court placing the juvenile on probation; and
- (5) the conditions of the juvenile's probation.

(b) The juvenile probation certificate shall be furnished to and signed by the juvenile and a custodial parent, guardian, or custodian of the child, if other than parent. It shall be fully explained to them, and they shall be informed about the consequences of violating the conditions of probation, including the

possibility of revocation of probation. A copy of the juvenile probation certificate shall also be furnished to the Commissioner. The probation certificate is not invalidated if it is not signed as required by this subsection.

(c) The signature of a custodial parent, guardian, or custodian on a probation certificate shall constitute verification that the parent, guardian, or custodian understands the terms of juvenile probation and agrees to facilitate and support the child's compliance with such terms and to attend treatment programs with the child as recommended by the treatment provider.

(d) The juvenile probation certificate shall be full authority for the exercise by the Commissioner of all the rights and powers over and in relation to the juvenile prescribed by law and by the order of the Court. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5264. Modification of conditions**

(a) During the period of probation, the Court, on application of a juvenile probation officer, the State's Attorney, the juvenile, or on its own motion may modify the requirements imposed upon the juvenile or add further requirements authorized by section 5262 of this title. A juvenile may request modification of a restitution issue determined by a restorative panel.

(b) Whenever the Court proposes any modification of the conditions of probation, the juvenile probationer shall have a reasonable opportunity to contest the modification prior to its imposition. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5265. Violation of conditions of probation**

(a) If the juvenile fails to comply with conditions of probation, the State's Attorney, a juvenile probation officer, or the Court on its own motion may initiate a proceeding to establish that the juvenile is in violation of probation conditions.

(b) A juvenile probationer shall not be found in violation of conditions of probation unless the juvenile probationer is found to have violated a condition of probation, is again adjudicated a delinquent, or is convicted of a crime. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

#### **§ 5266. Summons, apprehension, and prehearing placement of juvenile probationer**

At any time before the discharge of a juvenile probationer or the termination of the period of probation:

(1) The Court may summon the juvenile to appear before it or may issue an order for the juvenile's apprehension and placement in a detention or treatment facility.

(2) Any juvenile probation officer may apprehend a juvenile probationer or may authorize any officer to do so by giving the officer a written statement setting forth that the juvenile has, in the judgment of the juvenile probation officer, violated a condition of probation. The written statement delivered with the juvenile by the apprehending officer to the supervisor of the juvenile detention or treatment facility or residential program to which the juvenile is brought for prehearing placement shall be sufficient authority for maintaining the juvenile in the facility or residential program.

(3) Any juvenile probationer apprehended or placed in accordance with the provisions of this chapter shall have no right of action against the juvenile probation officer or any other person because of such apprehension or placement. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 3, § 94, eff. Feb. 17, 2011.)

### **§ 5267. Previolation hearing**

(a) Whenever a juvenile probationer is apprehended and placed on the grounds that the juvenile has violated a condition of probation, the juvenile shall be given a hearing before a judicial officer prior to the close of business on the next court business day in order to determine whether there is probable cause to hold the juvenile for a violation hearing. The juvenile and the adult who signed the probation certificate shall be given:

- (1) notice of the previolation hearing and its purpose and the allegations of violations of conditions of probation; and
- (2) notice of the juvenile's right to be represented by counsel and right to be assigned counsel if the juvenile is unable to obtain counsel.

(b) At the previolation hearing the juvenile shall be given:

- (1) an opportunity to appear at the hearing and present evidence on his or her own behalf; and
- (2) upon request, the opportunity to question witnesses against him or her unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness.

(c) If probable cause is found to exist, the juvenile shall be held for a hearing to determine if the juvenile violated the conditions of probation. If probable cause is not found to exist, the proceedings shall be dismissed.

(d) A juvenile held under this section pursuant to a request to find the juvenile in violation of probation may be released by a judicial officer pending hearing or appeal. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 3, § 95, eff. Feb. 17, 2011.)

### **§ 5268. Notice; violation hearing**

(a) The Court shall not find a juvenile in violation of the juvenile's probation without a hearing, which shall be held promptly in the Court in which the probation was imposed. If the juvenile is held in detention prior to the hearing, the hearing shall take place at the earliest possible time. Prior to the hearing, the juvenile and the adult who signed the probation certificate shall receive a written notice of the hearing at his or her last known address stating that the juvenile has allegedly violated one or more conditions of probation and which condition or conditions have been violated. At the hearing, the juvenile shall have:

- (1) the right to legal counsel if requested by the juvenile probationer or the adult who signed the probation certificate to be assigned by the Court in the same manner as in criminal cases;
- (2) the right to disclosure of evidence against the juvenile;
- (3) the opportunity to appear and to present evidence on the juvenile's behalf;
- (4) the opportunity to question witnesses against the juvenile.

(b) The State's Attorney having jurisdiction or the Commissioner shall establish the alleged violation by a preponderance of the evidence, if the juvenile probationer contests the allegation. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

### **§ 5269. Disposition alternatives upon violation of conditions of probation**

If a violation of conditions of probation is established, the Court may, in its discretion, modify the conditions of probation or order any of the disposition alternatives provided for in section 5232 of this title. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

## **§ 5270. Final judgment**

An order placing a juvenile on probation and a finding that a juvenile violated a condition of probation shall constitute a final judgment. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

## **§ 5271. Discharge from probation**

- (a) The Court placing a juvenile on probation may terminate probation and discharge the juvenile at any time.
- (b) Upon the termination of the period of probation, the juvenile probationer shall be discharged from probation. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

## **§ 5272. Juvenile Justice Unit; Juvenile Justice Director**

- (a) A Juvenile Justice Unit is created in the Family Services Division of the Department. The Unit shall be headed by a Juvenile Justice Director.
- (b) The Juvenile Justice Director shall have the responsibility and authority to monitor and coordinate all State and participating regional and local programs that deal with juvenile justice issues, including prevention, education, enforcement, adjudication, and rehabilitation.
- (c) The Juvenile Justice Director shall ensure that the following occur:
  - (1) development of a comprehensive plan for a coordinated and sustained statewide program to reduce the number of juvenile offenders, involving State, regional, and local officials in the areas of health, education, prevention, law enforcement, corrections, teen activities, and community wellness;
  - (2) cooperation among State, regional, and local officials, court personnel, service providers, and law enforcement agencies in the formulation and execution of a coordinated statewide juvenile justice program;
  - (3) cooperation among appropriate departments, including the Department; the Agency of Education; the Departments of Corrections, Labor, Mental Health, Public Safety, and Disabilities, Aging, and Independent Living; and the Division of Alcohol and Drug Abuse Programs;
  - (4) a study of issues relating to juvenile justice and development of recommendations regarding changes in law and rules, as deemed advisable;
  - (5) compilation of data on issues relating to juvenile justice and analysis, study, and organization of such data for use by educators, researchers, policy advocates, administrators, legislators, and the Governor. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

## **Subchapter 5. Youthful Offenders**

### **§ 5281. Motion in Criminal Division of Superior Court**

- (a) A motion may be filed in the Criminal Division of the Superior Court requesting that a defendant under 18 years of age in a criminal proceeding who had attained the age of 10 but not the age of 18 at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the State's Attorney, the defendant, or the Court on its own motion.
- (b) Upon the filing of a motion under this section and the entering of a conditional plea of guilty by the youth, the Criminal Division shall enter an order deferring the sentence and transferring the case to the Family Division for a hearing on the motion. Copies of all records relating to the case shall be forwarded to the Family Division. Conditions of release and any Department of Corrections

supervision or custody shall remain in effect until the Family Division approves the motion for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title.

(c) A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the Family Division granting the motion for youthful offender status.

(d)(1) If the Family Division denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the Criminal Division, and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the Criminal Division shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment had not been made.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent Criminal Division proceeding. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 227.)

### **§ 5282. Report from the Department**

(a) Within 30 days after the case is transferred to the Family Division, unless the Court extends the period for good cause shown, the Department shall file a report with the Family Division of the Superior Court.

(b) A report filed pursuant to this section shall include the following elements:

(1) a recommendation as to whether youthful offender status is appropriate for the youth;

(2) a disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved;

(3) a description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the Department, the Court, the State's Attorney, the youth, the youth's attorney, the youth's guardian ad litem, the Department of Corrections, or any other person when the Court determines that the best interests of the youth would make such a disclosure desirable or helpful. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 228.)

### **§ 5283. Hearing in Family Division**

(a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from the Criminal Division.

(b) Notice. Notice of the hearing shall be provided to the State's Attorney; the youth; the youth's parent, guardian, or custodian; the Department; and the Department of Corrections.

(c) Hearing procedure.

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the Court makes the motion, the burden shall be on the youth.

(e) Further hearing. On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 229.)

#### **§ 5284. Determination and order**

(a) In a hearing on a motion for youthful offender status, the Court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the Court finds that public safety will not be protected by treating the youth as a youthful offender, the Court shall deny the motion and return the case to the Criminal Division of the Superior Court pursuant to subsection 5281(d) of this title. If the Court finds that public safety will be protected by treating the youth as a youthful offender, the Court shall proceed to make a determination under subsection (b) of this section.

(b)(1) The Court shall deny the motion if the Court finds that:

(A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or

(B) there are insufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(2) The Court shall grant the motion if the Court finds that:

(A) the youth is amenable to treatment or rehabilitation as a youthful offender; and

(B) there are sufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(c) If the Court approves the motion for youthful offender treatment, the Court:

(1) shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

(2) may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's 18th birthday.

(d) The Department shall be responsible for supervision of and providing services to the youth until he or she reaches the age of 18. A lead case manager shall be designated who shall have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by the Department.

(e) The youth shall not be permitted to withdraw his or her plea of guilty after youthful offender status is approved except to correct manifest injustice pursuant to Rule 32(d) of the Vermont Rules of Criminal Procedure. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2015, No. 5, § 6, eff. April 9, 2015.)

#### **§ 5285. Modification or revocation of disposition**

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the Family Division of the Superior Court. The Court shall set the

motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained the age of 18 for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the Court finds after the hearing that the youth has violated the terms of his or her probation, the Court may:

(1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the Court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the Criminal Division for sentencing; or

(3) transfer supervision of the youth to the Department of Corrections.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the Criminal Division under subdivision (c)(2) of this section, the Court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the Court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 230.)

#### **§ 5286. Review prior to the age of 18**

(a) The Family Division shall review the youth's case before he or she reaches the age of 18 and set a hearing to determine whether the Court's jurisdiction over the youth should be continued past the age of 18. The hearing may be joined with a motion to terminate youthful offender status under section 5285 of this title. The Court shall provide notice and an opportunity to be heard at the hearing to the State's Attorney, the youth, the Department, and the Department of Corrections.

(b) After receiving a notice of review under this section, the State may file a motion to modify or revoke pursuant to section 5285 of this title. If such a motion is filed, it shall be consolidated with the review under this section and all options provided for under section 5285 of this title shall be available to the Court.

(c) The following reports shall be filed with the Court prior to the hearing:

(1) The Department shall report its recommendations, with supporting justifications, as to whether the Family Division should continue jurisdiction over the youth past the age of 18 and, if continued jurisdiction is recommended, whether the Department or the Department of Corrections should be responsible for supervision of the youth.

(2) If the Department recommends that the Department of Corrections be responsible for supervision of the youthful offender past the age of 18, the Department shall notify the Department of Corrections, which shall report on the services which would be available for the youth in the event supervision over him or her is transferred to the Department of Corrections.

(d) If the Court finds that it is in the best interest of the youth and consistent with community safety to continue the case past the age of 18, it shall make an order continuing the Court's jurisdiction up to the age of 22. The order shall specify whether the youth will be supervised by the Department or the Department of Corrections. Irrespective of which department is specified in the order, the Department and the Department of Corrections shall jointly develop a case plan for the youth and coordinate services and share information to ensure compliance with and completion of the juvenile disposition.

(e) If the Court finds that it is not in the best interest of the youth to continue the case past the age of 18, it shall terminate the disposition order, discharge the youth, and dismiss the case in accordance with subsection 5287(c) of this title. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 231.)

### **§ 5287. Termination or continuance of probation**

(a) A motion may be filed at any time in the Family Division requesting that the Court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the State's Attorney, the youth, the Department, or the Court on its own motion. The Court shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the State's Attorney, the youth, and the Department.

(b) In determining whether a youth has successfully completed the terms of probation, the Court shall consider:

- (1) the degree to which the youth fulfilled the terms of the case plan and the probation order;
- (2) the youth's performance during treatment;
- (3) reports of treatment personnel; and
- (4) any other relevant facts associated with the youth's behavior.

(c) If the Court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the Family Division case. The Family Division shall provide notice of the dismissal to the Criminal Division, which shall dismiss the criminal case.

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the Criminal Division shall be expunged, and all records relating to the case in the Family Court shall be sealed pursuant to section 5119 of this title.

(e) If the Court denies the motion to discharge the youth from probation, the Court may extend or amend the probation order as it deems necessary. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 232; 2015, No. 23, § 16.)

### **§ 5288. Rights of victims in youthful offender proceedings**

(a) The victim in a proceeding involving a youthful offender shall have the following rights:

- (1) to be notified by the prosecutor in a timely manner when a court proceeding is scheduled to take place and when a court proceeding to which he or she has been notified will not take place as scheduled;
- (2) to be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence and to express reasonably his or her views concerning the offense and the youth;
- (3) to request notification by the agency having custody of the youth before the youth is released from a residential facility;
- (4) to be notified by the prosecutor as to the final disposition of the case;
- (5) to be notified by the prosecutor of the victim's rights under this section.

(b) In accordance with court rules, at a hearing on a motion for youthful offender treatment, the Court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding disposition. In ordering disposition, the Court shall consider any views offered at the hearing by the

victim. If the victim is not present, the Court shall ask whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into consideration in ordering disposition.

(c) No youthful offender proceeding shall be delayed or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.

(d) For purposes of this section, “victim” shall have the same meaning as in 13 V.S.A. § 5301(4). (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

## **Subchapter 6. Placement of Minors in Secure Facilities**

### **§ 5291. Detention or treatment of minors charged as delinquents in secure facilities for the detention or treatment of delinquent children**

(a) Unless ordered otherwise at or after a temporary care hearing, the Commissioner shall have sole authority to place the child who is in the custody of the Department in a secure facility for the detention or treatment of minors.

(b) Upon a finding at the temporary care hearing that no other suitable placement is available and the child presents a risk of injury to him- or herself, to others, or to property, the Court may order that the child be placed in a secure facility used for the detention or treatment of delinquent children until the Commissioner determines that a suitable placement is available for the child. Alternatively, the Court may order that the child be placed in a secure facility used for the detention or treatment of delinquent children for up to seven days. Any order for placement at a secure facility shall expire at the end of the seventh day following its issuance unless, after hearing, the Court extends the order for a time period not to exceed seven days. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2011, No. 3, § 96, eff. Feb. 17, 2011.)

### **§ 5292. Detention in adult facilities of minors charged or adjudicated as delinquents**

(a) A minor charged with a delinquent act shall not be detained under this chapter in a jail or other facility intended or used for the detention of adults unless the child is alleged to have committed a crime punishable by life imprisonment and it appears to the satisfaction of the Court that public safety and protection reasonably require such detention.

(b) A minor who has been adjudicated as a delinquent child shall not by virtue of such adjudication be committed or transferred to an institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

(c) The official in charge of a jail or other facility intended or used for the detention of adult offenders or persons charged with crime shall inform the Court immediately when a minor who is or appears to be under the age of 18 years is received at the facility other than pursuant to subsection (a) of this section or section 5293 of this title and shall deliver the minor to the Court upon request of the Court or transfer the minor to the detention facility designated by the Court by order. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

**§ 5293. Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults**

(a) Pretrial detention.

(1) A minor who is under the age of 18 who has been arrested shall not be placed in a facility for adult offenders unless a felony charge has been filed in the Criminal Division of the Superior Court or the Criminal Division of the Superior Court has exercised jurisdiction over the matter and the State's Attorney has determined that a felony charge will be filed without delay. A minor who is eligible for release under 13 V.S.A. chapter 229 shall be released.

(2)(A) A minor who is under the age of 18 who has been arrested for a misdemeanor shall immediately and without first being taken elsewhere:

- (i) be released to his or her custodial parent, guardian, or custodian; or
- (ii) be delivered to the Criminal Division of the Superior Court.

(B) If the minor is delivered to the Criminal Division of the Superior Court, the arresting officer shall immediately file written notice thereof with the Court together with a statement of the reason for taking the minor into custody. A minor who is eligible for release under 13 V.S.A. chapter 229 shall be released. In the event that the minor is not released:

- (i) the minor shall not be detained in a facility for adult offenders; and
- (ii) The Court shall defer to the Commissioner of Corrections concerning the facility in which the minor shall be detained.

(b) Sentencing of minor. If a minor is convicted of an offense in a court of criminal jurisdiction as an adult, the Court shall sentence the minor as an adult.

(c) Placement of minors under 16. The Commissioner of Corrections shall not place a minor under the age of 16 who has been sentenced to a term of imprisonment in a correctional facility used to house adult offenders.

(d) Placement of minors over 16 convicted of felony. The Commissioner of Corrections may place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a felony and who has been sentenced to a term of imprisonment.

(e) Placement of minor over 16 convicted of misdemeanor. The Commissioner of Corrections shall not place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a misdemeanor.

(f) Transfer of minor at 18th birthday. At the 18th birthday of a minor convicted of a misdemeanor, the Commissioner may transfer the minor to a facility for adult offenders.

(g) Applicability. The provisions of this section shall apply to the commitment of minors to institutions within or outside the State of Vermont. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.)

**CHILDREN IN NEED OF CARE OR SUPERVISION (CHINS)**  
Abuse/Neglect, Truant, or Beyond Control of Parents

Emergency Track

Non-Emergency Track

**POLICE/DCF Intervention**

**EMERGENCY CARE ORDER**  
Order based on affidavit  
DCF Custody or Conditional Custody to parent

Within 72 Hours

**TEMPORARY CARE HEARING**  
Petition Filed by State's Attorney  
TEMPORARY CARE ORDER 33 V.S.A. § 5308:  
Custody returned to parent OR transferred to noncustodial parent, kin, fictive kin, OR to DCF  
Parentage, Services and visitation addressed

**PETITION Filed by State's Attorney**

**PRELIMINARY HEARING**

**PRETRIAL HEARING**  
within 15 days of Temporary Care or Preliminary Hearing

**MERITS HEARING (adjudication within 60 days of DCF custody)**  
No Finding of CHINS → Case dismissed  
Finding of CHINS → Disposition Case Plan ordered

Initial Case Plan filed by DCF within 60 days of child's removal from home

Disposition Case Plan Filed by DCF (28 days)

**DISPOSITION HEARING (35 days after Merits)**  
Custody decided  
Case Plan and Permanency Goal established as well as parent child contact, sibling contact and contact with relative

**POST DISPOSITION REVIEW HEARING (60 days after disposition)**

**PERMANENCY HEARING**  
Within 12 months of placement in DCF custody

**REUNIFICATION**  
Custody returned to parent

Termination of Parental Rights

**ADOPTION**

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**PERMANENT GUARDIANSHIP**

**APPLA**  
Long Term Substitute Care



## **Chapter 53: CHILDREN IN NEED OF CARE** **OR SUPERVISION**

### **§ 5301. Taking into custody**

A child may be taken into custody:

- (1) pursuant to an order of the Family Division of the Superior Court under the provisions of this chapter;
- (2) by an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal from the child's current home is necessary for the child's protection;
- (3) by an officer when the officer has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2009, No. 154 (Adj. Sess.), § 238.)

### **§ 5302. Request for emergency care order**

- (a) If an officer takes a child into custody pursuant to section 5301 of this title, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home.
- (b) If the officer determines that the child's immediate welfare requires the child's continued absence from the home:
  - (1) The officer shall remove the child from the child's surroundings, contact the Department, and deliver the child to a location designated by the Department. The Department shall have the authority to make reasonable decisions concerning the child's immediate placement, safety, and welfare pending the issuance of an emergency care order.
  - (2) The officer or a social worker employed by the Department for Children and Families shall prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the State's Attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, potential placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer or social worker shall contact the Department and the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer or social worker if the Department has additional information with respect to the child or the family.
- (c) If the child is taken into custody during regular court hours, the State's Attorney shall immediately file a request for an emergency care order accompanied by the supporting affidavit or direct the immediate return of the child to the child's custodial parent, guardian, or custodian. If the child is taken into custody after regular court hours or on a weekend or holiday, the State's Attorney or officer shall contact a judge to request an emergency care order or return the child to the child's

custodial parent, guardian, or custodian. If an order is granted, the State's Attorney shall file the supporting affidavit with the Court on the next day that the Court is open.

(d) If the judge denies a request for an emergency care order, the State's Attorney shall direct the immediate return of the child to the child's custodial parent, guardian, or custodian. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2015, No. 60, § 7.)

### **§ 5303. Procedure for runaway children**

(a) If an officer takes a child into custody pursuant to subdivision 5301(3) of this title, the officer shall deliver the child to:

(1) the child's custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) a shelter designated by the Department pursuant to section 5304 of this title as qualified to assist children who have run away for the purpose of reuniting them with their parents, guardian, or legal custodian.

(b) Upon delivery of a child to a shelter, the shelter program director or his or her designee, shall notify the child's parents, guardian, or custodian that the child has been taken into custody and make reasonable efforts to mediate the differences between the parties.

(c) A child may remain at a designated shelter for a period not to exceed seven days.

(d) Upon expiration of the seven-day period or sooner at the request of the child or the custodial parent:

(1) the child shall be released to his or her custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) an officer shall seek an emergency care order pursuant to section 5302 of this title.

(e) Unless otherwise ordered by the Court, the custody status of the child shall remain the same during the period of time the child is at the shelter. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5304. Designated shelters for runaway children**

The Commissioner shall designate shelters throughout the State where a child taken into custody pursuant to subdivision 5301(3) of this title may be housed for a period not to exceed seven days. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5305. Emergency care order; conditional custody order**

(a) Transfer of temporary custody. If the Court determines that the child's continued residence in the home is contrary to the child's welfare, the Court may issue an emergency care order transferring temporary custody of the child to the Department pending a temporary care hearing. The determination may be made ex parte, provided that it is reasonably supported by the affidavit prepared in accordance with section 5302 of this title.

(b) Contents of emergency care order. The emergency care order shall contain:

- (1) a written finding that the child's continued residence in the home is contrary to the child's welfare and the factual allegations that support that finding;
- (2) the date, hour, and place of the temporary care hearing to be held pursuant to section 5307 of this title; and
- (3) notice of a parent's right to counsel at the temporary care hearing.

(c) Conditional custody order. If the Court determines that the child may safely remain in the custody of the custodial parent, guardian, or custodian subject to such conditions and limitations necessary and sufficient to protect the child pending a temporary care hearing, the Court may deny the request for an emergency care order and issue an emergency conditional custody order. An emergency conditional custody order shall contain the date, hour, and place of the temporary care hearing and notice of a parent's right to counsel at the hearing. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5306. Notice of emergency care order and temporary care hearing**

- (a) Notice to custodial parent. An officer shall deliver a copy of the emergency care order or conditional custody order to the custodial parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify or cause to be notified the custodial parent of the order, the date, the time, and place of the temporary care hearing, and the parent's right to counsel. If the custodial parent, guardian, or custodian cannot be located, the officer shall so certify to the Court in an affidavit describing the efforts made to locate such persons.
- (b) Notice to noncustodial parent. The Department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with the emergency care order or conditional custody order, notice of the date, hour, and place of the temporary care hearing, and right to counsel. If the noncustodial parent cannot be located, the Department shall provide to the Court a summary of the efforts made to locate the parent.
- (c) Failure to locate. The hearing shall not be delayed by reason of not being able to locate either the custodial or noncustodial parent.
- (d) Notice to other parties. The Court shall notify the following persons of the date and time of the temporary care hearing:
  - (1) The State's Attorney.
  - (2) A representative of the Department.
  - (3) An attorney to represent the child.
  - (4) A guardian ad litem for the child.
  - (5) An attorney to represent each parent. The attorney may be Court-appointed in the event the parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5307. Temporary care hearing**

(a) A temporary care hearing shall be held within 72 hours of the issuance of an emergency care order or conditional custody order under section 5305 of this title. State holidays shall be excluded from the computation of 72 hours. If the custodial parent, guardian, or custodian has not been notified in accordance with section 5306 of this title and does not appear or waive appearance at the

temporary care hearing and files thereafter with the Court an affidavit so showing, the Court shall hold another temporary care hearing within one business day of the filing of the affidavit as if no temporary care hearing had theretofore been held.

(b) If the State's Attorney is seeking a temporary care order, he or she shall file a petition in accordance with section 5308 of this title prior to the temporary care hearing. If the State's Attorney elects not to file a petition, he or she shall so notify the Court, and the Court shall vacate any temporary order and order the return of the child to the custodial parent, guardian, or custodian.

(c) The following persons shall be present at the temporary care hearing:

- (1) The child, unless the child is under 10 years of age and the presence of the child is waived by the child's attorney. For good cause shown, the Court may waive the presence of a child who is 10 years of age or older.
- (2) The child's custodial parent, guardian, or custodian, unless the custodial parent, guardian, or custodian cannot be located or fails to appear in response to notice.
- (3) The child's guardian ad litem.
- (4) An attorney for the child.
- (5) An attorney for the custodial parent, if requested.
- (6) The Department.
- (7) The State's Attorney.

(d) A noncustodial parent and his or her attorney shall have the right to be present at the hearing; however, the hearing shall not be delayed by reason of the inability of the Department to locate the noncustodial parent.

(e) The Department shall provide the following information to the Court at the hearing:

- (1) Any reasons for the child's removal which are not set forth in the affidavit required pursuant to subsection 5302(b) of this title.
- (2) Services, if any, provided to the child and the family in an effort to prevent removal.
- (3) The need, if any, for continued custody of the child with the Department, pending a hearing to adjudicate the merits of the petition.
- (4) Services which could facilitate the return of the child to the custodial parent, guardian, or custodian.
- (5)(A) The identity and location of a noncustodial parent, a relative, or person with a significant relationship with the child known to the Department who may be appropriate, capable, willing, and available to assume temporary legal custody of the child. If the noncustodial parent cannot be located, the Department shall provide to the Court a summary of the efforts made to locate the parent.
  - (B) With respect to any person whom the Department identifies pursuant to this subdivision, the Department shall conduct an assessment of the suitability of the person to care for the child. The assessment shall include consideration of the person's ability to care for the child's needs, a criminal history record as defined in 20 V.S.A. § 2056a(a)(1) in accordance with subdivision (5)(C) of this subsection, and a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home. The Court may continue the hearing if necessary to permit the Department to complete the assessment.

(C) The Department shall request from the Vermont Crime Information Center criminal history record information for any person being considered to assume temporary legal custody of the child pursuant to this subdivision. The request shall be in writing and shall be accompanied by a release signed by the person. The Department through the Vermont Crime Information Center shall request criminal history record information from the appropriate state criminal repositories in all states in which it has reason to believe the person has resided or been employed. If no disqualifying record is identified at the state level, the Department through the Vermont Crime Information Center shall request from the Federal Bureau of Investigation a national criminal history record check of the person's criminal history. The request to the FBI shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Crime Information Center. The Vermont Crime Information Center shall send the Department the criminal history record from any state repository and the FBI of a person about whom a request is made under this subdivision or inform the Department that no record exists. The Department shall promptly provide a copy of the criminal history record, if any, to the person and shall inform the person that he or she has the right to appeal the accuracy and completeness of the record through the Vermont Crime Information Center. Upon completion of the process under this subdivision, the person's fingerprint card shall be destroyed.

(6) Additional information as required by the Uniform Child Custody Jurisdiction and Enforcement Act pursuant to 15 V.S.A. chapter 20 and the Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq.

(f) All parties shall have the right to present evidence on their own behalf and examine witnesses. Hearsay, to the extent it is deemed relevant and reliable by the Court, shall be admissible. The Court may, in its discretion, limit testimony and evidence to only that which goes to the issues of removal of the child from the home and the child's temporary legal custody.

(g) The temporary care hearing shall also be a preliminary hearing on the petition.

(h) The Department shall provide information to relatives and others with a significant relationship with the child about options to take custody or participate in the care and placement of the child, about the advantages and disadvantages of the options, and about the range of available services and supports. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2009, No. 97 (Adj. Sess.), § 8; 2011, No. 29, § 4; 2013, No. 119 (Adj. Sess.), § 19.)

### **§ 5308. Temporary care order**

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

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

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

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

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

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

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

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

(b) Upon a finding that a return home would be contrary to the best interests of the child, the Court may issue such temporary orders related to the legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child, including:

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

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

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

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

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

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

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

(1) The order shall include:

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

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

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

(A) establishing parent-child contact and terms and conditions for that contact;

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

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

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

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

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

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

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

(Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2015, No. 5, § 4, eff. April 9, 2015; 2015, No. 23, § 61; 2015, No. 60, § 8.)

### **§ 5309. Filing of a petition**

(a) The State's Attorney having jurisdiction shall prepare and file a petition alleging that a child is in need of care or supervision upon the request of the Commissioner or, in the event the child is truant from school, upon the request of the superintendent of the school district in which the child is enrolled or resides. If the State's Attorney fails to file a petition within a reasonable amount of time, the Department or the superintendent of the school district may request that the Attorney General file a petition on behalf of the Department.

(b) If the Court has issued an emergency care order placing the child who is the subject of the petition in the temporary legal custody of the Department or has issued a conditional custody order, the State's Attorney shall file the petition on or before the date of the temporary care hearing.

(c) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

(d) Upon the request of the Secretary of Human Services, the State's Attorney may file a petition pursuant to subsection (a) of this section alleging that a 16- to 17.5-year-old youth who is not in the custody of the State is a child in need of care or supervision under subdivision 5102(2)(B)(ii) of this title when the child meets the criteria set forth in subdivision 5102(2)(B)(ii) of this title. The petition shall be accompanied by a report from the Department which sets forth facts supporting the specific criteria of subdivision 5102(2)(B)(ii) of this title and that it is in the best interests of the child to be considered as a child in need of care or supervision. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5310. Petition, contents**

(a) The petition shall be supported by an affidavit of an officer or the Department.

(b) The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child is a child in need of care or supervision together with a statement that it is in the best interests of the child that the proceedings be brought.

(2) The name, date of birth, telephone number, and residence address, if known, of the child, the custodial and noncustodial parents, the guardian or custodian of the child if other than parent. If a parent is a participant in the Safe At Home Program pursuant to 15 V.S.A. § 1152, the petition shall so specify.

(3) Jurisdictional information required pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 15 V.S.A. chapter 20. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5311. Service of summons and petition; no request for temporary care order**

(a) When the State's Attorney files a petition but does not request a temporary care order, the Court shall set a date for a preliminary hearing on the petition no later than 15 days from the date the petition is filed and issue a judicial summons addressed to the custodial parent, guardian, custodian, or care provider. A copy of the petition shall be attached to the summons. The Court shall make reasonably diligent efforts to serve a noncustodial parent with a copy of the summons and petition.

(b) The summons shall contain:

(1) the name and address of the person to whom the notice is directed;

(2) the date, time, and place for the preliminary hearing on the petition;

(3) the name of the minor on whose behalf the petition has been brought;

(4) notice of a parent's right to counsel;

(5) a statement that the parent, guardian, or custodian may be liable for the cost of the support of a child if the child is placed in the legal custody of the Department;

(6) an order directing the parent, guardian, custodian, or care provider to appear at the hearing with the child.

(c) The summons and petition may be served by mailing a copy by certified mail return receipt requested to the child and to the child's parent, guardian, custodian, or care provider. Service of the summons and petition may also be made by any sheriff, deputy, or constable. The Court shall provide a copy of the summons to the State's Attorney and a copy of the summons and petition to the Department and the attorney for the child.

(d) Notice and a copy of the petition shall be served on all persons required to receive notice as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

(e) A party may waive service of the petition and notice by written stipulation or by voluntary appearance at the hearing.

(f) Once a parent, guardian, or custodian has been served, the Court shall provide notice of hearing either directly or by mail. The parent shall be responsible for providing the Court with information regarding any changes in address. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5312. Failure to appear at preliminary hearing**

(a) If a parent, guardian, or custodian has been served by certified mail with the petition and notice of hearing and fails to appear at the preliminary hearing, the Court may order that the parent, guardian, or custodian be served with a judicial summons ordering the person to appear in Court with the child at a specified date and time.

(b) If, after being summoned to appear, the parent, guardian, or custodian fails to appear or fails to bring the child to Court as ordered, the Court may issue a pick-up order or warrant pursuant to section 5108 of this title. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5313. Timelines for pretrial and merits hearing**

(a) Pretrial hearing. At the time of the temporary care hearing or at the preliminary hearing on the petition if there is no request for temporary legal custody, the Court shall set a pretrial hearing on the petition. The hearing shall be held within 15 days of the temporary care hearing or the preliminary hearing. In the event that there is no admission or dismissal at or before the pretrial hearing, the Court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) Merits hearing. If the child who is the subject of the petition has been removed from the legal custody of the custodial parent, guardian, or custodian pursuant to a temporary care order, a merits hearing shall be held and merits adjudicated no later than 60 days from the date the temporary care order is issued, except for good cause shown. In all other cases, merits shall be adjudicated in a timely manner in the best interests of the child. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5314. Filing of initial case plan**

(a) If a temporary care order is issued transferring legal custody of the child to the Commissioner, the Department shall prepare and file with the Court an initial case plan for the child and the family within 60 days of removal of a child from home. The Department shall provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem.

(b) The initial case plan shall not be used or referred to as evidence prior to a finding that a child is in need of care or supervision. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5315. Merits adjudication**

(a) At a hearing on the merits of a petition, the State shall have the burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. In its discretion, the Court may make findings by clear and convincing evidence.

(b) The parties may stipulate to the merits of the petition. Such stipulation shall include a stipulation as to the facts that support a finding that the child is in need of care and supervision.

(c) If the merits are contested, all parties shall have the right to present evidence on their own behalf and to examine witnesses.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence. A finding of fact made after a contested temporary care hearing based on nonhearsay evidence may be adopted by the Court as a finding of fact at a contested merits hearing provided that a witness who

testified at the temporary care hearing may be recalled by any party at a contested merits hearing to supplement his or her testimony.

(e) If the merits are contested, the Court after hearing the evidence shall make its findings on the record.

(f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding.

(g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the Department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a disposition hearing.

(h) The Court in its discretion and with the agreement of the parties may waive the preparation of a disposition case plan and proceed directly to disposition based on the initial case plan filed with the Court pursuant to section 5314 of this title. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5316. Disposition case plan**

(a) The Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title no later than 28 days from the date of the finding by the Court that a child is in need of care or supervision.

(b) A disposition case plan shall include, as appropriate:

(1) The long-term goal for a child found to be in need of care and supervision is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification with a custodial parent, guardian, or custodian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

(2) An assessment of the child's medical, psychological, social, educational, and vocational needs.

(3) A description of the child's home, school, community, and current living situation.

(4) An assessment of the family's strengths and risk factors, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration.

(5) A statement of family changes needed to correct the problems necessitating State intervention, with timetables for accomplishing the changes.

(6) A recommendation with respect to legal custody for the child and a recommendation for parent-child contact and sibling contact, if appropriate.

(7) A plan of services that shall describe the responsibilities of the child, the parents, guardian, or custodian, the Department, other family members, and treatment providers, including a description of the services required to achieve the permanency goal. The plan shall also address the minimum frequency of contact between the social worker assigned to the case and the family.

(8) A request for child support.

(9) Notice to the parents that failure to accomplish substantially the objectives stated in the plan within the time frames established may result in termination of parental rights. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2015, No. 23, § 62.)

### **§ 5317. Disposition hearing**

- (a) **Timeline.** A disposition hearing shall be held no later than 35 days after a finding that a child is in need of care and supervision.
- (b) **Hearing procedure.** If disposition is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those making the reports, but sources of confidential information need not be disclosed.
- (c) **Standard of proof.** If the Court terminates the parental rights of one or both parents, the standard of proof on the issue of termination shall be clear and convincing evidence. On all other issues, the standard of proof shall be a preponderance of the evidence.
- (d) **Termination of parental rights.** If the Commissioner or the attorney for the child seeks an order at disposition terminating the parental rights of one or both parents and transfer of legal custody to the Commissioner without limitation as to adoption, the Court shall consider the best interests of the child in accordance with section 5114 of this title.
- (e) **Further hearing.** On its own motion or on the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. The Court shall make an appropriate order for the temporary care of the child pending a final disposition order. The Court shall give scheduling priority to cases in which the child has been removed from home. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5318. Disposition order**

- (a) **Custody.** At disposition, the Court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the Court determines are in the best interest of the child, including:
  - (1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. The Court shall schedule regular review hearings to determine whether the conditions continue to be necessary.
  - (2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact. Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. The Court shall schedule regular review hearings to evaluate progress toward reunification and determine whether the conditions and continuing jurisdiction of the Family Division of the Superior Court are necessary.
  - (3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding. The order may provide for parent-child contact with the other parent. Any orders transferring legal custody to a noncustodial parent issued under this section shall not be confidential and shall be made a part of the record in any existing parentage or divorce proceeding involving the child. On the motion of a party or on the Court's own motion, the Court may order that a sealed copy of the disposition case plan be made part of the record in a divorce or parentage proceeding involving the child.
  - (4) An order transferring legal custody to the Commissioner.

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

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

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to periodic review as determined by the Court.

(b) Case plan. If the Court orders the transfer of custody pursuant to subdivision (a)(2), (4), or (5) of this section, the Court shall establish a permanency goal for the minor child and adopt a case plan prepared by the Department which is designed to achieve the permanency goal. If the Court determines that the plan proposed by the Department does not adequately support the permanency goal for the child, the Court may reject the plan proposed by the Department and order the Department to prepare and submit a revised plan for court approval.

(c) Sixteen- to 17.5-year-olds. In the event that custody of a 16- to 17.5 year-old is transferred to the Department pursuant to a petition filed under subsection 5309(d) of this title services to the child and to his or her family shall be provided through a coordinated effort by the Agencies of Human Services and of Education and community-based interagency teams.

(d) Modification. A disposition order is a final order which may only be modified based on the stipulation of the parties or pursuant to a motion to modify brought under section 5113 of this title.

(e) Findings. Whenever the Court orders the transfer of legal custody to a noncustodial parent, a relative, or a person with a significant relationship with the child, such orders shall be supported by findings regarding the suitability of that person to assume legal custody of the child and the safety and appropriateness of the placement. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009; amended 2013, No. 92 (Adj. Sess.), § 301, eff. Feb. 14, 2014.)

### **§ 5319. Parent-child contact and contact with siblings and relatives**

(a) The Court shall order parent-child contact unless the Court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires. Except for good cause shown, the order shall be consistent with any existing parent-child contact order.

(b) The Court may determine the reasonable frequency and duration of parent-child contact and may set such conditions for parent-child contact as are in the child's best interests including whether parent-child contact should be unsupervised or supervised. The Court may allocate the costs of supervised visitation.

(c) Parent-child contact may be modified by stipulation or upon motion of a party or upon the Court's own motion pursuant to section 5113 of this title.

(d) The Court may terminate a parent-child contact order in a juvenile proceeding upon a finding that:

(1) a parent has without good cause failed to maintain a regular schedule of contact with the child and that the parent's failure to exercise regular contact has had a detrimental impact on the emotional well-being of the child; or

(2) continued parent-child contact in accordance with the terms of the prior order will have a detrimental impact on the physical or emotional well-being of the child.

(e) Upon motion of the child's attorney, the Court may also order contact between the child and the child's siblings, an adult relative with whom the child has a significant relationship, or an adult friend with whom the child has a significant relationship.

(f) Failure to provide parent-child contact due to the child's illness or other good cause shall not constitute grounds for a contempt or enforcement proceeding against the Department. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5320. Postdisposition review hearing**

If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the Court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, or relative caregiver shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5321. Permanency hearing**

(a) Purpose. Unless otherwise specified therein, an order under the authority of this chapter transferring legal custody or residual parental rights and responsibilities of a child to the Department pursuant to subdivision 5318(a)(4) or (5) of this title shall be for an indeterminate period and shall be subject to periodic review at a permanency hearing. At the permanency hearing, the Court shall determine the permanency goal for the child and an estimated time for achieving that goal. The goal shall specify when:

- (1) legal custody of the child will be transferred to the parent, guardian, or custodian;
- (2) the child will be released for adoption;
- (3) a permanent guardianship will be established for the child;
- (4) a legal guardianship will be established for the child pursuant to an order under 14 V.S.A. chapter 111; or
- (5) the child will remain in the same living arrangement or be placed in another planned permanent living arrangement because the Commissioner has demonstrated to the satisfaction of the Court a compelling reason that it is not in the child's best interests to:
  - (A) return home;
  - (B) have residual parental rights terminated and be released for adoption; or
  - (C) be placed with a fit and willing relative or legal guardian.

(b) The Court shall adopt a case plan designed to achieve the permanency goal. At the permanency review, the Court shall review the permanency plan and determine whether the plan advances the permanency goal recommended by the Department. The Court may accept or reject the plan, but may not designate a particular placement for a child in the Department's legal custody.

(c) A permanency review hearing shall be held no less than every 12 months with the first hearing to be held 12 months after the date the legal custody of the child was transferred, subject to the following exceptions:

- (1) If the child was three years of age or younger at the time of the initial transfer of legal custody, the Court may order that permanency review hearings be held as frequently as every three months.

(2) If the child is between the ages of three and six at the time of the initial transfer of legal custody, the Court may order that permanency review hearings be held as frequently as every six months.

(d) If the Court shortens the time for the permanency review hearing for a younger sibling, that shortened review interval shall be applied to all siblings in the family who are in the legal custody of the Department.

(e)(1) The Department shall file with the Court a notice of permanency review together with a case plan and recommendation for a permanency goal. The Department shall provide notice to the State's Attorney having jurisdiction and to all parties to the proceeding in accordance with the rules for family proceedings. The Court shall hold a permanency review hearing within 30 days of the filing of notice by the Department. Failure to give such notice or to review an order shall not terminate the original order or limit the Court's jurisdiction.

(2) A foster parent, preadoptive parent, or relative caregiver for the child shall be provided notice of and an opportunity to be heard at any permanency hearing held with respect to the child. Nothing in this subsection shall be construed as affording such person party status in the proceeding.

(f) All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value even though not competent at an adjudication hearing.

(g) The permanency hearing may be held by an administrative body appointed or approved by the Court. The administrative body may consist of one but not more than three persons. No person employed by the Department shall be a member of the administrative body. In the event that the administrative body determines that the existing order should be altered, it shall submit its recommendation to the Court for its consideration. In the event that the administrative body determines that the existing order should not be altered, its determination shall be binding unless any party requests review by the Court within 10 days of receipt of the determination. A copy of the determination shall be sent to each party and to the Court. The Court, on its own motion or on the request of any party, shall conduct a review de novo within 30 days of receipt of such request.

(h) Upon the filing of a petition for a finding of reasonable efforts and a report or affidavit by the Department for Children and Families with notice to all parties, the Court shall hold a hearing within 30 days of the filing of the petition to determine, by a preponderance of the evidence, whether the Department for Children and Families has made reasonable efforts to finalize the permanency plan for the child that is in effect at the time of the hearing. The hearing may be consolidated with or separate from a permanency hearing. Reasonable efforts to finalize a permanency plan may consist of:

(1) reasonable efforts to reunify the child and family following the child's removal from the home, where the permanency plan for the child is reunification; or

(2) reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

### **§ 5322. Placement of a child in a facility used for treatment of delinquent children**

A child found by the Court to be a child in need of care and supervision shall not be placed in or transferred to an institution used solely for the treatment or rehabilitation of delinquent children unless the child has been charged with or adjudicated as having committed a delinquent act. (Added 2007, No. 185 (Adj. Sess.), § 3, eff. Jan. 1, 2009.)

# Title 14 : Decedents' Estates And Fiduciary Relations

## Chapter 111: Guardianship

### Subchapter 2: Persons For Whom Guardians Appointed

#### **A comparison of supports available to children in foster care and supports available to children placed with a relative under the Juvenile Proceedings Act (Title 33) or through Probate Court**

Research shows that children whose parents are unable to care for them are more successful when placed with a relative than with a stranger. In Family Court, a child who is determined to be in need of care and supervision (CHINS) may be placed in foster care or legal custody may be transferred to a relative. There are major differences in the support that the child and family receive when a child is in foster care as compared to a child placed in the legal custody of a relative.

#### **FINANCIAL DIFFERENCES**

A child in foster care is eligible for more financial support than one not in foster care. As illustrated below, the difference is even more dramatic when more than one child is placed with a family.

	2015 <u>Foster Care Reimbursement Rates</u> Infant, Level One/Adolescent, Level Three County.	2015 <u>(Maximum) Child Only RUFA* grant</u> Outside Chittenden County/Chittenden
1 child	\$ 534.90 / \$762.60	\$478.00 / \$503.00
2 children	\$1,069.80 / \$1,525.20	\$580.00 / \$605.00
3 children	\$1,604.70 / 2,287.80	\$684.00 / \$ 709.00
4 children	\$2,139.60 / \$3,050.40	\$770.00 / \$795.00
5 children	\$2,674.60 / \$3,813.00	\$861.00 / \$886.00

\*Child Only Reach Up grant is obtained through Economic Services. Child support and any income for the child such as Social Security offsets the benefit; caregiver income is not taken into consideration.

*From Vermont Kin As Parents [www.vermontkinasparents.org](http://www.vermontkinasparents.org) 802-871-5104*



# **Minor Guardianship**

## **§ 2621. Policy; purposes**

This article shall be construed in accordance with the following purposes and policies:

- (1) It is presumed that the interests of minor children are best promoted in the child's own home. However, when parents are temporarily unable to care for their children, guardianship provides a process through which parents can arrange for family members or other parties to care for the children.
- (2) Family members can make better decisions about minor children when they understand the consequences of those decisions and are informed about the law and the available supports.
- (3) Decisions about raising a child made by a person other than the child's parent should be based on the informed consent of the parties unless there has been a finding of parental unsuitability.
- (4) When the informed consent of the parents cannot be obtained, parents have a fundamental liberty interest in raising their children unless a proposed guardian can show parental unsuitability by clear and convincing evidence.
- (5) Research demonstrates that timely reunification between parents and their children is more likely when children have safe and substantial contact with their parents.
- (6) It is in the interests of all parties, including the children, that parents and proposed guardians have a shared understanding about the length of time that they expect the guardianship to last, the circumstances under which the parents will resume care for their children, and the nature of the supports and services that are available to assist them. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

## **§ 2622. Definitions**

As used in this article:

- (1) "Child" means an individual who is under 18 years of age and who is the subject of a petition for guardianship filed pursuant to section 2623 of this title.
- (2) "Child in need of guardianship" means:
  - (A) A child who the parties consent is in need of adult care because of any one of the following:
    - (i) The child's custodial parent has a serious or terminal illness.
    - (ii) A custodial parent's physical or mental health prevents the parent from providing proper care and supervision for the child.
    - (iii) The child's home is no longer habitable as the result of a natural disaster.
    - (iv) A custodial parent of the child is incarcerated.
    - (v) A custodial parent of the child is on active military duty.
    - (vi) The parties have articulated and agreed to another reason that guardianship is in the best interests of the child.

(B) A child who is:

(i) abandoned or abused by the child's parent;

(ii) without proper parental care, subsistence, education, medical, or other care necessary for the child's well-being; or

(iii) without or beyond the control of the child's parent.

(3) "Custodial parent" means a parent who, at the time of the commencement of the guardianship proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child. If physical parental rights and responsibilities are shared pursuant to court order, both parents shall be considered "custodial parents" for purposes of this subdivision.

(4) "Nonconsensual guardianship" means a guardianship with respect to which:

(A) a parent is opposed to establishing the guardianship; or

(B) a parent seeks to terminate a guardianship that the parent previously agreed to establish.

(5) "Noncustodial parent" means a parent who is not a custodial parent at the time of the commencement of the guardianship proceeding.

(6) "Parent" means a child's biological or adoptive parent, including custodial parents; noncustodial parents; parents with legal or physical responsibilities, or both; and parents whose rights have never been adjudicated.

(7) "Parent-child contact" means the right of a parent to have visitation with the child by court order. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

### **§ 2623. Petition for guardianship of minor; service**

(a) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

(1) the names and addresses of the parents, the child, and the proposed guardian;

(2) the proposed guardian's relationship to the child;

(3) the names of all members of the proposed guardian's household and each person's relationship to the proposed guardian and the child;

(4) that the child is alleged to be a child in need of guardianship;

(5) specific reasons with supporting facts why guardianship is sought;

(6) whether the parties agree that the child is in need of guardianship and that the proposed guardian should be appointed as guardian;

(7) the child's current school and grade level;

(8) if the proposed guardian intends to change the child's current school, the name and location of the proposed new school and the estimated date when the child would enroll;

(9) the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period; and

(10) any prior or current court proceedings, child support matters, or parent-child contact orders involving the child.

(b)(1) A petition for guardianship of a child under this section shall be served on all parties and interested persons as provided by Rule 4 of the Vermont Rules of Probate Procedure.

(2)(A) The Probate Division may waive the notice requirements of subdivision (1) of this subsection (c) with respect to a parent if the Court finds that:

(i) the identity of the parent is unknown; or

(ii) the location of the parent is unknown and cannot be determined with reasonable effort.

(B) After a guardianship for a child is created, the Probate Division shall reopen the proceeding at the request of a parent of the child who did not receive notice of the proceeding as required by this subsection. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

### **§ 2624. Jurisdiction; transfer to Family Division**

(a) Except as provided in subsection (b) of this section, the Probate Division shall have exclusive jurisdiction over proceedings under this article involving guardianship of minors.

(b)(1)(A) A custodial minor guardianship proceeding brought in the Probate Division under this article shall be transferred to the Family Division if there is an open proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(B) A minor guardianship proceeding brought in the Probate Division under this article may be transferred to the Family Division on motion of a party or on the Court's own motion if any of the parties to the probate proceeding was a party to a closed divorce proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(2)(A) When a minor guardianship proceeding is transferred from the Probate Division to the Family Division pursuant to subdivision (1) of this subsection (b), the Probate judge and a Superior judge assigned to the Family Division shall confer regarding jurisdiction over the proceeding. Except as provided in subdivision (B) of this subsection (2), all communications concerning jurisdiction between the Probate judge and the Superior judge under this subsection shall be on the record. Whenever possible, a party shall be provided notice of the communication and an opportunity to be present when it occurs. A party who is unable to be present for the communication shall be provided access to the record.

(B) It shall not be necessary to inform the parties about or make a record of a communication between the Probate judge and the Superior judge under this subsection (b) if the communication involves scheduling, calendars, court records, or other similar administrative matters.

(C) After the Superior judge and Probate judge confer under subdivision (2)(A) of this subsection (b), the Superior judge may:

(i) consolidate the minor guardianship case with the pending matter in the Family Division and determine whether a guardianship should be established under this article; or

(ii) transfer the guardianship petition back to the Probate Division for further proceedings after the pending matter in the Family Division has been adjudicated.

(D) If a guardianship is established by the Family Division pursuant to subdivision (2)(C)(i) of this subsection, the guardianship case shall be transferred back to the Probate Division for ongoing monitoring pursuant to section 2631 of this title. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

**§ 2625. Hearing; counsel; guardian ad litem**

(a) The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties and interested persons who were provided notice under subdivision 2623(c)(1) of this title.

(b) The child shall attend the hearing if he or she is 14 years of age or older unless the child's presence is excused by the Court for good cause. The child may attend the hearing if he or she is less than 14 years of age.

(c) The Court shall appoint counsel for the child if the child will be called as a witness. In all other cases, the Court may appoint counsel for the child.

(d)(1) The child may be called as a witness only if the Court finds after hearing that:

(A) the child's testimony is necessary to assist the Court in determining the issue before it;

(B) the probative value of the child's testimony outweighs the potential detriment to the child; and

(C) the evidence sought is not reasonably available by any other means.

(2) The examination of a child called as a witness may be conducted by the Court in chambers in the presence of such other persons as the Court may specify and shall be recorded.

(e) The Court may appoint a guardian ad litem for the child on motion of a party or on the Court's own motion.

(f)(1) The Court may grant an emergency guardianship petition filed ex parte by the proposed guardian if the Court finds that:

(A) both parents are deceased or medically incapacitated; and

(B) the best interests of the child require that a guardian be appointed without delay and before a hearing is held.

(2) If the Court grants an emergency guardianship petition pursuant to subdivision (1) of this subsection (e), it shall schedule a hearing on the petition as soon as practicable and in no event more than 72 hours after the petition is filed. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

**§ 2626. Consensual guardianship**

(a) If the petition requests a consensual guardianship, the petition shall include a consent signed by the custodial parent or parents verifying that the parent or parents understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship. The consent required by this subsection shall be on a form approved by the Court Administrator.

(b) On or before the date of the hearing, the parties shall file an agreement between the proposed guardian and the parents. The agreement shall address:

- (1) the responsibilities of the guardian;
  - (2) the responsibilities of the parents;
  - (3) the expected duration of the guardianship, if known; and
  - (4) parent-child contact and parental involvement in decision making.
- (c) Vermont Rule of Probate Procedure 43 (relaxed rules of evidence in probate proceedings) shall apply to hearings under this section.
- (d) The Court shall grant the petition if it finds after the hearing by clear and convincing evidence that:
- (1) the child is a child in need of guardianship as defined in subdivision 2622(2)(A) of this title;
  - (2) the child's parents had notice of the proceeding and knowingly and voluntarily consented to the guardianship;
  - (3) the agreement is voluntary;
  - (4) the proposed guardian is suitable; and
  - (5) the guardianship is in the best interests of the child.
- (e) If the Court grants the petition, it shall approve the agreement at the hearing and issue an order establishing a guardianship under section 2628 of this title. The order shall be consistent with the terms of the parties' agreement unless the Court finds that the agreement was not reached voluntarily or is not in the best interests of the child. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

#### **§ 2627. Nonconsensual guardianship**

- (a) If the petition requests a nonconsensual guardianship, the burden shall be on the proposed guardian to establish by clear and convincing evidence that the child is a child in need of guardianship as defined in subdivision 2622(2)(B) of this title.
- (b) The Vermont Rules of Evidence shall apply to a hearing under this section.
- (c) The Court shall grant the petition if it finds after the hearing by clear and convincing evidence that the proposed guardian is suitable and that the child is a child in need of guardianship as defined in subdivision 2622(2)(B) of this title.
- (d) If the Court grants the petition, it shall issue an order establishing a guardianship under section 2628 of this title. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

#### **§ 2628. Guardianship order**

- (a) If the Court grants a petition for guardianship of a child under subsection 2626(d) or 2627(d) of this title, the Court shall enter an order establishing a guardianship and naming the proposed guardian as the child's guardian.
- (b) A guardianship order issued under this section shall include provisions addressing the following matters:
- (1) the powers and duties of the guardian consistent with section 2629 of this title;
  - (2) the expected duration of the guardianship, if known;
  - (3) a family plan on a form approved by the Court Administrator that:

- (A) in a consensual case is consistent with the parties' agreement; or
  - (B) in a nonconsensual case includes, at a minimum, provisions that address parent-child contact consistent with section 2630 of this title; and
- (4) the process for reviewing the order consistent with section 2631 of this title. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

**§ 2629. Powers and duties of guardian**

- (a) The Court shall specify the powers and duties of the guardian in the guardianship order.
- (b) The duties of a custodial guardian shall include the duty to:
  - (1) take custody of the child and establish his or her place of residence, provided that a guardian shall not change the residence of the child to a location outside the State of Vermont without prior authorization by the Court following notice to the parties and an opportunity for hearing;
  - (2) make decisions related to the child's education;
  - (3) make decisions related to the child's physical and mental health, including consent to medical treatment and medication;
  - (4) make decisions concerning the child's contact with others, provided that the guardian shall comply with all provisions of the guardianship order regarding parent-child contact and contact with siblings;
  - (5) receive funds paid for the support of the child, including child support and government benefits; and
  - (6) file an annual status report to the Probate Division, with a copy to each parent at his or her last known address, including the following information:
    - (A) the current address of the child and each parent;
    - (B) the child's health care and health needs, including any medical and mental health services the child received;
    - (C) the child's educational needs and progress, including the name of the child's school, day care, or other early education program, the child's grade level, and the child's educational achievements;
    - (D) contact between the child and his or her parents, including the frequency and duration of the contact and whether it was supervised;
    - (E) how the parents have been involved in decision making for the child;
    - (F) how the guardian has carried out his or her responsibilities and duties, including efforts made to include the child's parents in the child's life;
    - (G) the child's strengths, challenges, and any other areas of concern; and
    - (H) recommendations with supporting reasons as to whether the guardianship order should be continued, modified, or terminated. (Added 2013, No. 170 (Adj. Sess.), § 1.)

### **§ 2630. Parent-child contact**

- (a) The Court shall order parent-child contact unless it finds that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the child. Except for good cause shown, the order shall be consistent with any existing parent-child contact order. The order should permit the child to have contact of reasonable duration and frequency with the child's siblings, if appropriate.
- (b) The Court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the child's best interests.
- (c) The Court may modify the parent-child contact order upon motion of a party or upon the Court's own motion, or if the parties stipulate to the modification. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

### **§ 2631. Reports; review hearing**

- (a) The guardian shall file an annual status report to the Probate Division pursuant to subdivisions 2629(b)(4) and 2629(c)(5) of this title, and shall provide copies of the report to each parent at his or her last known address. The Court may order that a status report be filed more frequently than once per year.
- (b) The Probate Division may set a hearing to review a report required by subsection (a) of this section or to determine progress with the family plan required by subdivision 2628(b)(3) of this title. The Court shall provide notice of the hearing to all parties and interested persons. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

### **§ 2632. Termination**

- (a) A parent may file a motion to terminate a guardianship at any time. The motion shall be filed with the Probate Division that issued the guardianship order and served on all parties and interested persons.
- (b)(1) If the motion to terminate is made with respect to a consensual guardianship established under section 2626 of this title, the Court shall grant the motion and terminate the guardianship unless the guardian files a motion to continue the guardianship within 30 days after the motion to terminate is served.
  - (2) If the guardian files a motion to continue the guardianship, the matter shall be set for hearing and treated as a nonconsensual guardianship proceeding under section 2627 of this title. The parent shall not be required to show a change in circumstances, and the Court shall not grant the motion to continue the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title.
  - (3) If the Court grants the motion to continue, it shall issue an order establishing a guardianship under section 2628 of this title.
- (c)(1) If the motion to terminate the guardianship is made with respect to a nonconsensual guardianship established under section 2627 or subdivision 2632(b)(3) of this title, the Court shall dismiss the motion unless the parent establishes that a change in circumstances has occurred since the previous guardianship order was issued.

(2) If the Court finds that a change in circumstances has occurred since the previous guardianship order was issued, the Court shall grant the motion to terminate the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

**§ 2633. Appeals**

Notwithstanding 12 V.S.A. § 2551 or 2553, the Vermont Supreme Court shall have appellate jurisdiction over orders of the Probate Division issued under this article. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

**§ 2634. Department for Children and Families policy**

The Department for Children and Families shall adopt a policy defining its role with respect to families who establish a guardianship under this article. The policy shall be consistent with the following principles:

- (1) The Family Services Division shall maintain a policy ensuring that when a child must be removed from his or her home to ensure the child’s safety, the Division will pursue a CHINS procedure promptly if there are sufficient grounds under 33 V.S.A. § 5102.
- (2) When the Family Services Division is conducting an investigation or assessment related to child safety and the child may be a child in need of care and supervision as defined in 33 V.S.A. § 5102(3), the Division shall not make any recommendation regarding whether a family should pursue a minor guardianship. The staff may provide referrals to community-based resources for information regarding minor guardianships.
- (3) In response to a request from the Probate judge, the Family Services Division social worker shall attend a minor guardianship hearing and provide information relevant to the proceeding.
- (4) If a minor guardianship is established during the time that the Family Services Division has an open case involving the minor, the social worker shall inform the guardian and the parents about services and supports available to them in the community and shall close the case within a reasonable time unless a specific safety risk is identified. (Added 2013, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 2014.)

**NOTE: Check statutes (Title 14, Subchapter 2 (Persons For Whom Guardians Appointed)), for other sections that may apply.**

# **Permanent Guardianship for Minors**

## **§ 2661. Definitions**

For the purposes of this article:

- (1) “Best interest of the child” means a determination, based on consideration of all relevant factors and available options, of circumstances that will best provide the child with at a minimum all the following:
  - (A) Adequate food.
  - (B) Clothing.
  - (C) Health care.
  - (D) Any other material needs.
  - (E) A safe and nurturing environment that meets the child’s present and future developmental needs and promotes appropriate interactions and relationships with family members, foster family and other people who will play a constructive role in the child’s life.
  - (F) Support to help the child adjust to home, school and community.
- (2) “Parent” means the parent or parents of a minor.
- (3) “Permanent guardian” means one or two adults appointed by the court to act as a parent for a child during the child’s minority.
- (4) “Permanent guardianship” means a legal guardianship of a minor that is intended to continue with the same guardian, based on the guardian’s express commitment, for the duration of the child’s minority.
- (5) “Relative” means a grandparent, great grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew of a person, whether related to the person by the whole or the half blood, affinity, or adoption. The term does not include a person’s stepparent. (Added 1999, No. 162 (Adj. Sess.), § 2.)

## **§ 2662. Permanent guardian; rights and obligations**

- (a) A permanent guardian shall have parental rights and responsibilities for the child that include:
  - (1) Providing the child with:
    - (A) A healthy and safe living environment and daily care.
    - (B) Education.
    - (C) Necessary and appropriate health care, including medical, dental and mental health care.
  - (2) Making decisions regarding:
    - (A) Travel.
    - (B) Management of the child’s income and assets.
    - (C) The child’s right to marry or enlist in the armed forces.
    - (D) Representation of the child in legal actions.
    - (E) Any other matter that involves the child’s welfare and upbringing.

(b) The permanent guardian shall:

- (1) Before appointment, expressly commit to remain the permanent guardian and assume the parental rights and responsibilities for the child for the duration of the child's minority;
- (2) Be responsible to the court and the child for the health, education and welfare of the minor.
- (3) Comply with all terms of any court order to provide the child's parent with visitation, contact or information. (Added 1999, No. 162 (Adj. Sess.), § 2.)

**§ 2663. Parent of the minor; rights and obligations; support**

(a) While a permanent guardianship is in effect, the parent shall have the following rights:

- (1) Visitation, contact and information to the extent delineated in the order issued by the family division of the superior court. The family division of the superior court shall issue an order regarding visitation, contact and information based on the best interests of the child. The order may prohibit visitation, contact and information. The order may incorporate an agreement reached among the parties.
- (2) Inheritance by and from the child.
- (3) Right to consent to adoption of the child.

(b) After the court has issued a final order establishing permanent guardianship, the parent shall have no right to seek termination of the guardianship order. The parent may seek only enforcement or modification of an order of visitation, contact or information.

(c) The parent shall have the primary responsibility to support the child.

- (1) In the event the income and assets of the parent qualify the child for governmental benefits, the benefits may be conferred upon the child with payment to be made to the permanent guardian. The provision of necessities by the permanent guardian shall not disqualify the child for any benefit or entitlement.
- (2) If the child has been in the custody of the commissioner for children and families immediately prior to the creation of the guardianship, the commissioner shall have no further duty of support or care for the child after the establishment of the permanent guardianship unless the family is eligible for kinship guardianship assistance provided for in 33 V.S.A. § 4903 or the commissioner contractually agrees in writing to that support. (Added 1999, No. 162 (Adj. Sess.), § 2; amended 2009, No. 97 (Adj. Sess.), § 5; 2009, No. 154 (Adj. Sess.), § 238.)

**§ 2664. Creation of permanent guardianship**

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

- (1) Neither parent is capable or willing to provide adequate care to the child, requiring that parental rights and responsibilities be awarded to a permanent guardian.

- (2) Neither returning the child to the parents nor adoption of the child is likely within a reasonable period of time.
- (3) The child is at least 12 years old unless the proposed permanent guardian is:
  - (A) a relative; or
  - (B) the permanent guardian of one of the child's siblings.
- (4) The child has resided with the permanent guardian for at least a year or the permanent guardian is a relative with whom the child has a relationship and with whom the child has resided for at least six months.
- (5) A permanent guardianship is in the best interests of the child.
- (6) The proposed permanent guardian:
  - (A)(i) is emotionally, mentally, and physically suitable to become the permanent guardian; and  
(ii) is financially suitable, with kinship guardianship assistance provided for in 33 V.S.A. § 4903 if applicable, to become the permanent guardian;
  - (B) has expressly committed to remain the permanent guardian for the duration of the child's minority; and
  - (C) has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any resulting loss of state or federal benefits or other assistance.
- (b) The parent may voluntarily consent to the permanent guardianship, and shall demonstrate an understanding of the implications and obligations of the consent.
- (c) After the family division of the superior court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate probate division of the superior court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate division. Appeal of any decision by the probate division of the superior court shall be de novo to the family division. (Added 1999, No. 162 (Adj. Sess.), § 2; amended 2009, No. 97 (Adj. Sess.), § 1; 2009, No. 154 (Adj. Sess.), §§ 123, 123a.)

## **§ 2665. Reports**

The permanent guardian shall file a written report on the status of the child to the probate division of the superior court annually and at any other time the court may order. The report shall include the following:

- (1) The location of the child.
- (2) The child's health and educational status.
- (3) A financial accounting of the income, expenditures and assets of the child if the permanent guardian is receiving any state or federal government benefits for the child.
- (4) Any other information regarding the child that the probate division of the superior court may require. (Added 1999, No. 162 (Adj. Sess.), § 2; amended 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

### **§ 2666. Modification; termination**

- (a) A modification or termination of the permanent guardianship may be requested by the permanent guardian, the child if the child is age 14 or older, or the commissioner for children and families. A modification or termination may also be ordered by the probate division of the superior court on its own initiative.
- (b) Where the permanent guardianship is terminated by the probate division of the superior court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the commissioner for children and families as if the child had been abandoned.
- (c) An order for modification or termination of the permanent guardianship shall be based on a finding by a preponderance of the evidence that there has been a substantial change in material circumstances, or that one or more findings required by subsection 2664(a) of this title no longer can be supported by the evidence, and that the proposed modification or termination is in the best interests of the child.
- (d) The burden of proof shall be on the party seeking the modification or termination.
- (e) In the event that it is necessary to appoint a successor permanent guardian, the parent may be considered with no greater priority than a third party. (Added 1999, No. 162 (Adj. Sess.), § 2; amended 2009, No. 97 (Adj. Sess.), § 6; 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

### **§ 2667. Order for visitation, contact or information; immediate harm to the minor**

- (a) The probate division of the superior court shall have exclusive jurisdiction to hear any action to enforce, modify, or terminate the initial order issued by the family division of the superior court for visitation, contact, or information.
- (b) Upon a showing by affidavit of immediate harm to the child, the probate division of the superior court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and assign parental rights and responsibilities to the commissioner for children and families.
- (c) Nothing in this section shall limit the jurisdiction of the family division of the superior court to enter an abuse prevention order pursuant to 15 V.S.A. chapter 21. A breach by the permanent guardian of an order for visitation, contact or information shall not be grounds for voiding or terminating the permanent guardianship. However, the court may enforce the order with all the powers and remedies of the court, including contempt.
- (d) A modification of an order of visitation or contact shall be based upon a finding by a preponderance of the evidence that there has been a substantial change in the material circumstances, and that the proposed modification is in the best interests of the child. (Added 1999, No. 162 (Adj. Sess.), § 2; amended 2009, No. 97 (Adj. Sess.), § 7; 2009, No. 154 (Adj. Sess.), § 238; No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

# **VERMONT RULES FOR FAMILY PROCEEDINGS**

(as amended through October 2015)

## **Rule 1, 2, 3, 5 and 6**



# **Rule 1. Procedure for Juvenile Delinquency Proceedings**

## **(a) Applicability of Rules to Juvenile Proceedings.**

(1) In General. -- The Rules of Criminal Procedure shall apply to all delinquency proceedings commenced pursuant to Chapters 51 and 52 of Title 33 of the Vermont Statutes Annotated or transferred from other courts pursuant to 33 V.S.A. § 5203, except as otherwise provided by this rule. References to an information or an indictment shall be deemed to be references to the petition filed under Chapter 52.

(2) Rules Not Applicable. -- The following Vermont Rules of Criminal Procedure shall not apply in delinquency proceedings: Rules 1 (Scope), 5(b) and (d)-(f) (Appearance Before Judicial Officer), 6 (Grand Jury), 7(a)-(c) (Indictment and Information), 8(b) (Joinder of Defendants), 10 (Arraignment), 17.1 (Pretrial Conference), 23(a) and (b) (Trial by Jury), 24 (Jurors), 29(b) and (c) (Motion for Judgment of Acquittal in Jury Cases), 29.1 (Closing Argument), 30 (Instructions), 31 (Verdict), 32 (Sentencing), 34 (Arrest of Judgment), 35 (Correction of Sentence), 38 (Stays), 43 (Presence of the Defendant), 44 (Right to Counsel), 46 (Release from Custody), 50(a) (Trial Calendar), 53 (Recording of Proceedings), 59 (Effective Date) and 60 (Title).

(3) Rules Modified. -- The following Vermont Rules of Criminal Procedure shall apply to the extent set forth in this paragraph: Vermont Rule of Criminal Procedure 3 shall not apply except that in those situations in which Rule 3 authorizes a law enforcement officer to arrest an adult without a warrant a law enforcement officer may, without arrest warrant, emergency care order or other order of the juvenile court, take a child into custody for the purposes of initiating the statutory procedures set forth in 33 V.S.A. §§ 5251, 5252 and 5253. Rule 4 shall not apply except to the extent it is incorporated by reference into Rule 5(c). Rule 5(a), 5(c) and 5(h) shall apply to any child who is the subject of an emergency care order or other order of the juvenile court under 33 V.S.A. § 5251. Rules 11, 11.1, 12, 12.1, 15, 16, 16.1, 16.2, 17 and 26 shall be subject to subdivisions (d), (e), (h) and (i) of this rule and to 33 V.S.A. § 5110; however, in lieu of pleas of guilty or not guilty the pleas shall be admissions or denials, pleas shall be entered at the preliminary hearing, the pretrial hearing shall be held within 15 days of the preliminary hearing, and pretrial motions shall be filed at or before the merits hearing. Rules 13 and 14 shall apply but shall not authorize trial together of children accused of delinquent acts except when each child consents. Rule 32.1 shall apply except that references to a person in custody shall be deemed to be references to a person subject to a detention order or other order of the juvenile court, and Rule 32.1(a)(3) shall not apply. Rule 42 shall apply but only to adults and, upon appropriate ruling that a child should be tried as an adult, to children who may be tried as adults pursuant to Vermont law. Rule 47 shall apply but memoranda in opposition shall be filed within 5 days unless otherwise ordered by the court. Rule 50(b) and (c) shall apply subject to subdivision (b) of this rule. Rule 54 shall apply but "court" shall be deemed to mean the Presiding Judge of the family court. Rules 55 and 56 shall apply but the docket shall not be labelled "criminal," no trial calendar need be maintained, and all books, records and proceedings shall be subject to 33 V.S.A. § 5110.

## **(b) Petition; Submission of Jurisdictional Facts; Scheduling.**

(1) Petition. -- A proceeding under this rule shall be commenced by a petition as provided under Chapter 52 of Title 33 of the Vermont Statutes Annotated. The petition shall be supplemented by facts regarding the race and ethnicity of the subject child contained in Form 101, Law Enforcement Juvenile Data Sheet, prepared by law enforcement.

(2) Submission of Jurisdictional Facts. -- The party filing a petition pursuant to paragraph (1) of this subdivision shall supplement the petition with the information required by 15 V.S.A. § 1079(a) to the extent known to that party at that time. At the initial hearing the parents of the child and any other person acting as a parent shall complete and submit an affidavit as to that information on a form to be provided by the clerk. At the hearing, the court may inquire as to any additional facts deemed necessary, and the parties shall answer under oath as provided in 15 V.S.A. § 1079(c). All parties have the continuing duty to supplement the information as provided in 15 V.S.A. § 1079(d).

(3) Scheduling. -- A petition under Chapter 52 of Title 33 of the Vermont Statutes Annotated, a motion under §§ 5113 or 5115 of 33 V.S.A. Chapter 51, or any other motion if cause is shown for an expedited hearing, shall be set for hearing at the earliest possible time. A hearing on the merits of a petition or disposition hearing shall be continued only for good cause shown and found by the court.

**(c) Preliminary Hearing.** -- At the temporary care hearing, or if no temporary care hearing is held, at or within a reasonable time after the filing of a petition, a preliminary hearing shall be held. Counsel shall be assigned prior to the preliminary hearing. Upon order of the court a guardian ad litem other than a parent may be appointed for the child. If not assigned prior to the hearing, a guardian ad litem, who may be the child's parent, shall be appointed for the child at the hearing. A denial shall be entered to the allegations of the petition unless the child, after adequate consultation with the guardian ad litem and counsel, enters an admission.

**(d) Scheduling; Discovery.**

(1) In General. -- At the preliminary hearing, unless an admission is accepted by the court, the court shall schedule a pretrial hearing and a hearing on the merits.

(2) Discovery Orders. -- At the preliminary hearing on the request of a party or on the judge's own initiative the judge shall issue a discovery order. The order shall set forth dates by which: the state's attorney shall provide to the child's attorney all of the discovery required by Vermont Rule of Criminal Procedure 16; the child's attorney shall provide to the state's attorney all of the information required by Vermont Rules of Criminal Procedure 12.1 and 16.1; depositions shall be completed; records of the Family Services Division of the Department for Children and Families shall be inspected or copied; and all discovery shall be completed.

(3) Scheduling of Pretrial Hearings and Motions Hearings. -- The court shall schedule a pretrial hearing within 15 days of the preliminary hearing. The court may schedule a motions hearing at any time.

(4) Depositions. -- The procedures set forth in Vermont Rule of Criminal Procedure 15 for the taking of depositions in felonies shall govern the taking of depositions in delinquency proceedings where the offense charged would be a felony if the charge were in District Court. Vermont Rule of Criminal Procedure 15(e)(4) shall govern the taking of depositions in delinquency proceedings where the offense charged would be a misdemeanor if the charge were in District Court. The notice of taking of a deposition may be given orally or in writing, at least 48 hours prior to any deposition.

(5) Department for Children and Families Records. -- Upon the filing of a petition, a party's attorney shall be permitted to inspect or photocopy all material or information within the possession, custody or control of the Family Services Division of the Department for Children and Families which relates to the child, the parent(s), the guardian(s), or which is otherwise relevant to the subject matter of the

proceedings. However, any party or the department may promptly file a motion for a protective order pursuant to Vermont Rule of Criminal Procedure 16.2, or an agent of the department may make an objection to disclosure of a specific record, and state the reasons for the objection, at the temporary care hearing or preliminary hearing.

**(e) Pretrial Hearing.** -- A pretrial hearing shall be held prior to the merits hearing. All parties shall attend each pretrial hearing, unless otherwise ordered by the court.

**(f) Parties and Participants Other Than Child and Attorney Representing the State.**

(1) Notice. -- All persons who by statute are parties to these proceedings shall receive notice of all proceedings and copies of all pleadings.

(2) Participation. -- Only the child and the attorney representing the state shall be entitled to participate in pretrial discovery relating to the merits hearing, call or examine witnesses at the merits hearing, or otherwise actively participate at the merits hearing or proceedings relating to the merits hearing, unless the court for good cause shown at or before the merits hearing grants permission. The court's order of permission may place limits on the participation and may condition participation upon prompt compliance with such discovery as the order specifies. All persons who by statute are parties to these proceedings shall be entitled to participate fully in the disposition hearing and at discovery and other proceedings relating only to the disposition hearing. In any proceeding at which a party other than the child or the attorney representing the state intends to call a witness, the name and address of the witness and any written statement of the witness shall be disclosed at least three days prior to the hearing, except for good cause shown.

(3) Notice to Caregivers.

(A) Notice of a permanency review held in connection with a delinquency proceeding under Chapter 52 of Title 33 of the Vermont Statutes Annotated must be provided to the current caregiver of a child who is the subject of the hearing, including foster parents (if any) and any preadoptive parent or relative providing care for the child. The notice shall specify that the caregiver has a right to be heard at the hearing but that this notice and the right to be heard do not confer party status on a caregiver who does not otherwise have that status.

(B) If the child is in the custody of the Department for Children and Families, the Department shall give such notice by ordinary first-class mail, by personal delivery, or, if notice by those methods will not be timely, by telephone. If notice is given by telephone, a copy of the notice shall be mailed or delivered to the caregiver as soon as possible thereafter. If the child is not in the custody of the Department, notice by ordinary first-class mail shall be given by the court.

(C) If the caregiver does not appear at the hearing, the court shall inquire whether, and how, the caregiver was given notice. If the court finds that adequate notice was not given to the caregiver, the court shall continue the hearing until the agency or officer responsible for giving notice certifies to the court that such notice has been given.

**(g) Discovery of Disposition Information.**

(1) Disposition Case Plans. -- The disposition case plan made by the Commissioner for Children and Families pursuant to 33 V.S.A. § 5230 and any report of an expert witness shall be filed with the court

and arrangements shall be made for their receipt by the guardian ad litem and attorneys of record seven days prior to the disposition hearing. Within the same time period, notice of the availability of each report, for reading at the court, shall be mailed to each party not represented by counsel. For good cause shown, the report of an expert witness may be filed and disclosed subsequent to this time period.

(2) Other Information. -- Discovery prior to the disposition hearing shall be as set forth in subdivision (d) above, except that written statements other than those from expert witnesses to be submitted to the court at the hearing shall be disclosed and made available to the parties for inspection and copying no later than the last business day prior to the hearing.

**(h) Physical and Mental Examinations in Delinquency Proceedings.**

(1) In General. -- The court may order a physical or mental examination pursuant to Vermont Rule of Criminal Procedure 16.1(a)(1)(I). No communications made in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined.

(2) After a Finding of Delinquency. -- After a finding of delinquency has been entered by court, the court may order a physical or mental examination pursuant to Vermont Rule of Civil Procedure 35. However, Vermont Rule of Civil Procedure 35(b) shall not apply. The judge shall select the person or persons by whom the examination is to be made, and the court's order shall include a date by which a report of the examination shall be filed with the court and served on the parties. No communications made in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined.

**(i) Determination of Competence to Be Subject to Delinquency Proceedings.**

(1) In general. -- The issue of a child's competence to be subject to delinquency proceedings may be raised by motion of any party, or upon the court's own motion, at any stage of the proceedings.

(2) Mental Examination. -- Competence shall be determined through a mental examination conducted by a psychologist or psychiatrist selected by the court. In addition to the factors ordinarily considered in determining competence in criminal proceedings, the examiner shall consider the following as appropriate to the circumstances of the child:

(A) The age and developmental maturity of the child;

(B) whether the child suffers from mental illness or a developmental disorder, including mental retardation;

(C) whether the child has any other disability that affects the child's competence; and

(D) any other factor that affects the child's competence.

The child, or the state, shall have the right to obtain an independent examination by an expert.

(3) Report. -- The report of an examination ordered by the court or obtained by the child or the state is to be sealed and filed in the juvenile court, with copies transmitted to counsel and available to the parties for review.

(4) **Statements Made in the Course of Examination.** -- No statement made in the course of an examination by the child examined, whether or not the child has consented to, or obtained, the examination, shall be admitted as evidence in the delinquency proceedings for the purpose of proving the delinquency alleged or for the purpose of impeaching the testimony of the child examined.

(5) **Hearing.** -- The issue of competence shall be determined by the court after a hearing at which all parties are entitled to present evidence. The hearing shall be held as soon as practicable after the reports of the examination or examinations are filed.

(6) **Determination of Competence.** -- If the court determines that the child is competent to be subject to delinquency proceedings, the proceeding shall continue without delay.

(7) **Determination of Incompetence.** -- If the court determines that the child is not competent to be subject to delinquency proceedings, the court shall dismiss the petition without prejudice; provided that, if the child is found incompetent by reason of developmental disabilities or mental retardation, the dismissal may be with prejudice.

**(j) Withdrawal of Admission of Delinquency.** -- A motion to withdraw an admission of delinquency must be made prior to or within 30 days after the date of entry of an adjudication of delinquency. If the motion is made before a disposition order is made, the court may permit withdrawal of the admission if the child shows any fair and just reason and that reason substantially outweighs any prejudice which would result to the state from the withdrawal of the admission. If the motion is made after disposition, the court may set aside the adjudication of delinquency and permit withdrawal of the admission only to correct manifest injustice.

**HISTORY:** Added Aug. 22, 1991, eff. Nov. 1, 1991; amended Jan. 27, 2000, eff. May 1, 2000; May 12, 2006, eff. July 14, 2006; June 1, 2007, eff. June 22, 2007; August 15, 2007, eff. Oct. 15, 2007; Jan. 11, 2008, eff. March 11, 2008; Nov. 12, 2008, eff. Jan. 12, 2009, Dec. 17, 2008, eff. Jan. 1, 2009; Feb. 24, 2010, eff. April 26, 2010; June 11, 2013, eff. August 12, 2013; Dec. 11, 2014, eff. Feb. 13, 2015.

## **Rule 2. Children in Need of Care or Supervision**

### **(a) Applicability of Rules to Juvenile Proceedings.**

(1) **In General.** -- The Rules of Civil Procedure shall apply to all proceedings under Chapters 51 and 53 of Title 33 of the Vermont Statutes Annotated, except as otherwise provided in this rule. References to a complaint shall be deemed to be references to the petition filed under Chapter 53.

(2) **Rules Not Applicable.** -- The following Vermont Rules of Civil Procedure shall not apply in proceedings under this rule: Rules 2 (One Form of Action), 3 (Commencement), 3.1 (In Forma Pauperis), 4.1 (Attachment), 4.2 (Trustee Process), 4.3 (Arrest), 7(a) and (c) (Pleadings and Demurrers), 8 (Rules of Pleading), 9 (Pleading Special Matters), 10(b) and (c) (Form of Pleadings), 12(a) and (h) (When Defenses Presented; Waiver), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 16.1 (Complex Actions), 17 (Parties), 19 (Joinder of Persons), 20 (Permissive Joinder), 21 (Misjoinder and Nonjoinder), 22 (Interpleader), 23 (Class Actions), 23.1 (Shareholder Derivative Actions), 23.2 (Unincorporated Associations), 25 (Substitution of Parties), 31 (Depositions Upon Written Questions), 38 and 39 (Trial by Jury), 40(a) and (b) (Calendar), 41(b)(1), (c) and (d) (Involuntary Dismissal on Court's Motion; Dismissal of Counterclaim; Costs), 45 (Subpoenas), 47, 48, 49 and 51 (Jurors; Jury

Trials), 50 (Judgment As a Matter of Law in Actions Tried by a Jury; Alternative Motions for New Trial; Conditional Rulings), 53 (Masters), 54 (Judgment; Costs), 55 (Default), 56 (Summary Judgment), 57 (Declaratory Judgments), 62 (Stays), 64 (Replevin), 65 (Injunctions), 65.1 (Security), 66 (Receivers), 67 (Deposit In Court), 68 (Offer of Judgment), 69 (Execution), 70 (Judgment for Specific Acts), 72 (Probate Appeals), 73 (Small Claims Appeals), 74 and 75 (Appeals from Governmental Agencies), 78(a) (Motion Days), 79(b) (Judgment Book), 79.1 (Appearance and Withdrawal of Attorneys), 79.2 (Recording Court Proceedings), 80.1 (Mortgage Foreclosure), 80.2 (Naturalization), 80.4 (Habeas Corpus), 80.5 (Civil License Suspensions and DWI Penalties), 80.6 (Judicial Bureau Procedures), 80.7 (Immobilization or Forfeiture Procedures), 80.8 (Transfer from District Court), 80.9 (Municipal Parking Violations), and 80.10 (Stalking or Sexual Assault Orders), 81(a)-(c) (Applicability of Rules to Specified Actions; Terminology), 85 (Title), 86 (Effective Date).

(3) Rules Modified. -- The following Vermont Rules of Civil Procedure shall apply to the extent set forth in this paragraph: Rule 4 shall apply subject to 33 V.S.A. §§ 5311, 5312. Rule 12(b)-(g) shall be subject to subdivision (d) of this rule. Rules 15, 16 and 16.2 shall be subject to subdivision (d) of this rule. In addition, the pretrial conference shall be entitled a pretrial hearing, which shall be held within 15 days of the preliminary hearing; and, absent a showing of good cause, pretrial motions must be filed at or before the pretrial hearing. Rules 26-37 shall apply subject to subdivisions (d), (f) and (g) of this rule. Rule 40(c), (d) and (e) shall apply subject to subdivision (b) of this rule. Rule 43 shall apply subject to 33 V.S.A. § 5110. Rule 58 shall apply except that, although a judgment need not be set forth on a separate document, it is effective only when it is in writing, signed by the judge, and entered as provided in Rule 79(a). Rule 78(b) shall apply, but memoranda in opposition shall be filed within 5 days unless otherwise ordered by the court. Vermont Rule of Criminal Procedure 17 shall govern the issuance of subpoenas.

**(b) Petition; Submission of Jurisdictional Facts; Scheduling.**

(1) Petition. -- A proceeding under this rule shall be commenced by a petition as provided under Chapter 53 of Title 33 of the Vermont Statutes Annotated.

(2) Submission of Jurisdictional Facts. -- The party filing a petition pursuant to paragraph (1) of this subdivision shall supplement the petition with the information required by 15 V.S.A. § 1079(a) to the extent known to that party at that time. At the initial hearing the parents of the child and any other parties to the proceeding shall complete and submit an affidavit as to that information on a form to be provided by the clerk. At the hearing, the court may inquire as to any additional facts deemed necessary, and the parties shall answer under oath as provided in 15 V.S.A. § 1079(c). All parties have the continuing duty to supplement the information as provided in 15 V.S.A. § 1079(d).

(3) Scheduling. -- A petition under Chapter 53 of Title 33 of the Vermont Statutes Annotated, a motion under §§ 5113 or 5115 of Title 33, or any other motion if cause is shown for an expedited hearing, shall be set for hearing at the earliest possible time. A hearing on the merits of a petition, or a disposition hearing, shall be continued only for good cause shown and found by the court.

(c) Preliminary Hearing. -- At the temporary care hearing, or if no temporary care hearing is held, at or within a reasonable time after the filing of a petition, a preliminary hearing shall be held. Counsel shall be assigned at the temporary care hearing or prior to the preliminary hearing. Upon order of the court, a guardian ad litem other than a parent may be appointed for the child. If not assigned prior to the hearing, a guardian ad litem shall be appointed for the child at the hearing. A party's denial shall be entered to the allegations of the petition unless that party enters an admission.

**(d) Scheduling; Discovery.**

(1) Preliminary Hearing. -- At the preliminary hearing, unless an admission from each party is accepted by the court, the court shall schedule a pretrial hearing or a hearing on the merits.

(2) Discovery. -- At the preliminary hearing on the request of a party or on the judge's own initiative the judge shall issue a discovery order. The order shall set forth dates by which each party shall file and respond to interrogatories, complete depositions, inspect or photocopy records of the Family Services Division of the Department for Children and Families, and:

(A) disclose to any other party the names and addresses of all witnesses known to have information relevant to the allegations of the petition;

(B) disclose to any other party the names and addresses of all witnesses whom the party intends to call as witnesses at any hearing and permit any other party to inspect and photocopy their relevant written or recorded statements within the party's possession or control;

(C) disclose to any other party and permit any other party to inspect, copy or photograph the following material or information within the party's possession, custody or control:

(i) any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the party intends to use at any hearing;

(ii) any books, papers, documents, photographs (including motion pictures and video tapes), tangible objects, buildings or places or copies of portions thereof, which the party intends to use in any hearing.

(3) Interrogatories. -- Interrogatories shall not be allowed except on court order, where no other means of pretrial discovery is reasonably practical, and under such conditions as the court may impose, including limits on the number of questions and specifications as to who shall answer and the time in which to answer.

(4) Scheduling of Pretrial Hearings and Motions Hearings. -- The court shall schedule a pretrial hearing within 15 days of the temporary care or preliminary hearing. The court may schedule a motions hearing at any time.

(5) Depositions. -- Except as set forth in this rule, Vermont Rule of Civil Procedure 30 shall govern the taking of depositions. Depositions may be taken without leave of the court prior to the date set by the court at the preliminary hearing for completion of depositions, if a date was set, or if no date was set, the date of the pretrial hearing or merits hearing scheduled at the preliminary hearing. Notice of deposition may be oral or written, and need not be provided ten days in advance of the deposition so long as reasonable notice is given, which in no case shall be less than 48 hours. However, no deposition shall be taken of a minor unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of Chapter 53 of Title 33 of the Vermont Statutes Annotated.

(6) Department for Children and Families Records. -- Upon the filing of a petition, a party's attorney shall be permitted to inspect or photocopy all material or information within the possession, custody or

control of the Family Services Division of the Department for Children and Families which relates to the child, the parent(s), the guardian(s), or which is otherwise relevant to the subject matter of the proceedings. However, any party or the department may promptly file a motion for a protective order pursuant to Vermont Rule of Civil Procedure 26(c), or an agent of the department may make an objection to disclosure of a specific record, and state the reasons for the objection, at the temporary care hearing or preliminary hearing.

**(e) Pretrial Hearing.**

- (1) A pretrial hearing shall be held prior to the merits hearing.
- (2) All parties shall attend each pretrial hearing, unless otherwise ordered by the court.

**(f) Parties and Participants Not Specified By Statute.**

(1) Generally. -- When the court determines that a person is a proper or necessary party pursuant to 33 V.S.A. § 5102(22)(F), but is not a party specifically listed in that section, the court may place limits on that person's participation and may condition participation upon prompt compliance with such discovery as the court specifies.

(2) Notice to Caregivers.

(A) Notice of a permanency hearing held in connection with a proceeding under Chapter 53 of Title 33 of the Vermont Statutes Annotated on a petition alleging that a child is in need of care or supervision must be provided to the current caregiver of the child, including foster parents (if any) and any preadoptive parent or relative providing care for the child. The notice shall specify that the caregiver has a right to be heard at the hearing but that this notice and the right to be heard do not confer party status on a caregiver who does not otherwise have that status.

(B) If the child is in the custody of the Department for Children and Families, the Department shall give such notice by ordinary first-class mail, by personal delivery, or, if notice by those methods will not be timely, by telephone. If notice is given by telephone, a copy of the notice shall be mailed or delivered to the caregiver as soon as possible thereafter. If the child is not in the custody of the Department, notice by ordinary first-class mail shall be given by the court.

(C) If the caregiver does not appear at the hearing, the court shall inquire whether, and how, the caregiver was given notice. If the court finds that adequate notice was not given to the caregiver, the court shall continue the hearing until the agency or officer responsible for giving notice certifies to the court that such notice has been given.

**(g) Discovery of Disposition Information.**

(1) Disposition Case Plans. -- The disposition case plan made by the Commissioner for Children and Families pursuant to 33 V.S.A. § 5316 and any report of an expert witness shall be filed with the court and arrangements shall be made for their receipt by the guardian ad litem and attorneys of record seven days prior to the disposition hearing. Within the same time period, notice of the availability of each report, for reading at the court, shall be mailed to each party not represented by counsel. For good cause shown, the report of an expert witness may be filed and disclosed subsequent to this time period.

(2) Other Information. -- Discovery prior to the disposition hearing shall be as set forth in subdivision (d), above, except that written statements (other than those from expert witnesses) to be submitted to the court at the hearing shall be disclosed and made available to the parties for inspection and copying no later than the last business day prior to the hearing.

(h) Physical and Mental Examinations. -- Vermont Rule of Civil Procedure 35, except subdivision (b)(2), governs requests for physical and mental examinations. The judge shall select the person or persons by whom the examination is to be made, and the court's order shall include a date by which a report of the examination shall be filed with the court and served on the parties. No information acquired in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined.

**HISTORY:** Added Aug. 22, 1991, eff. Nov. 1, 1991; amended 1993, No. 232 (Adj. Sess.), § 38, eff. March 15, 1995; June 27, 1996, eff. Sept. 1, 1996; Jan. 27, 2000, eff. May 1, 2000; Nov. 26, 2002, eff. Nov. 26, 2002; June 1, 2007, eff. June 22, 2007; Jan. 11, 2008, eff. March 11, 2008; Dec. 17, 2008, eff. Jan. 1, 2009; Feb. 24, 2010, eff. April 26, 2010; June 11, 2013, eff. August 12, 2013.

### **Rule 3. Termination of Parental Rights**

**(a) In General.** -- Rule 2, setting forth procedures for proceedings in which a child is alleged to be in need of care or supervision, shall govern all proceedings in which a petition, motion or request has been filed seeking custody of a child without limitation as to adoption, except as set forth in this rule.

(1) The petition, motion or request shall be in writing and shall notify respondents and the court of the relief sought.

(2) When a disposition or permanency case plan, or other case plan, recommending termination of parental rights is filed, it shall be accompanied by a motion or petition signed by an attorney for the state or child.

(3) (A) If a parent or the parents of a child have appeared in open court in a proceeding in which the child is alleged to be in need of care or supervision, a copy of a pending petition, motion, or request for termination of parental rights filed in that proceeding, together with notice of the time and place of the hearing on the petition, motion, or request, shall be served by the court directly upon the parent or parents by first-class mail in accordance with Rule 5(b)(2) of the Vermont Rules of Civil Procedure unless otherwise ordered. The expense of service other than by first-class mail shall be borne by the party seeking termination of parental rights.

(B) If a parent or the parents have not appeared in open court, the petition, motion, or request and notice of hearing shall be served directly upon the parent or parents by an appropriate method provided in Rule 4 of the Vermont Rules of Civil Procedure as modified by sections 5311 and 5312 of Title 33 of the Vermont Statutes Annotated. Such service shall be made by the party seeking termination of parental rights at that party's expense.

**(b) Pretrial Hearing.** -- A pretrial hearing shall be held within fifteen days of the filing of the petition, motion or request. At the pretrial hearing the judge either shall assign a date certain for hearing on the petition, motion or request, or shall issue a discovery schedule and assign a date certain for a second pretrial hearing at which a date certain for the hearing shall be set.

**HISTORY:** Added Aug. 22, 1991, eff. Nov. 1, 1991; amended Jan. 27, 2000, eff. May 1, 2000; January 11, 2008, eff. Mar. 11, 2008; Nov. 12, 2008, eff. Nov. 12, 2008; Dec. 17, 2008, eff. January 1, 2009; Feb. 24, 2010, eff. April 26, 2010

## **Rule 5. Physical and Mental Examination of Persons Before the Family Court**

**(a) In General.** -- Except as provided in Family Court Rules 1, 2 and 3, in any proceeding of the family court the court may order a physical or mental evaluation of a party or of a person who is in the custody or legal control of a party or may order a home study. The court shall select the physician or other expert who will perform the evaluation or home study, and shall consider the names of persons submitted by the parties. The court shall determine who pays the cost of such evaluation and may order a party, the parties, or the court or some combination thereof to pay.

**(b) Treatment Providers.** -- No expert may be appointed who presently provides or formerly provided treatment to the person being evaluated, without that person's consent.

**(c) Exclusion of V.R.C.P. 35(b)(2).** -- Vermont Rule of Civil Procedure 35(b)(2) does not apply in family court.

**(d) Statutory Procedures.** -- In respects not covered by statute, the practice in proceedings authorized by 18 V.S.A. chapters 179, 181, 185, 204, 206 and 215 shall conform to this rule.

**HISTORY:** Added Aug. 22, 1991, eff. Nov. 1, 1991.

## **Rule 6. Representation by Attorneys and Guardians Ad Litem of Minors**

**(a) Applicability.** -- This rule applies to all proceedings under 33 V.S.A. Chapters 51, 52 and 53 (Juvenile Judicial Proceedings) which are held within the family court and to any proceeding under Article 1 of Subchapter 2 of 14 V.S.A. Chapter 111 (Guardians of Minors) in which the probate court, in its discretion, seeks to appoint a guardian ad litem for a minor; and to any proceeding under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment), and Chapter 206 (Care for Mentally Retarded Persons), involving a minor.

**(b) Appointment of Counsel.** -- In proceedings under 33 V.S.A. Chapters 51, 52 and 53, the court shall assign counsel pursuant to Administrative Order No. 32 to represent the child unless counsel has been retained by that person.

**(c) Appointment of Guardian Ad Litem.**

(1) Proceedings Under 33 V.S.A. Chapters 51, 52 and 53. -- In all proceedings under Chapters 51, 52 and 53 of Title 33, appointment of a guardian ad litem for the child shall be governed by Family Court Rules 1, 2 and 3.

(2) Guardians of Minors. -- In proceedings under Article 1 of Subchapter 2 of 14 V.S.A. Chapter 111, the probate court, in the exercise of its discretion, may appoint a guardian ad litem for a minor upon notice to the minor, with opportunity to request a hearing.

Hearings on these motions shall be set expeditiously, and sufficiently in advance of the hearing on the merits so as to allow the guardian ad litem adequate time to prepare for the hearing on the merits. Civil Rule 78(b) shall not apply to these motions.

When served upon the proposed ward, the motion and affidavit must include or be accompanied by a clear explanation that the proposed ward need not consent to the motion, and that the person has a right to appear in person before the court to object, or may object by letter.

(3) Selection, Replacement, Discharge. -- The guardian ad litem shall be selected and replaced as appropriate by the court in its discretion.

**(d) Settlements, Compromises and Waivers.**

(1) In General. -- In any proceeding in which a guardian ad litem has been appointed pursuant to the Family Court Rules, the court shall review all settlements, compromises, waivers of evidentiary, statutory, constitutional or common-law privileges, stipulations and other decisions affecting the substantial rights or interests of the ward.

(2) Disagreements Between Ward and Guardian Ad Litem. -- When a ward and a ward's guardian ad litem disagree as to a matter governed by subdivision (d)(1) of this rule, the attorney assigned to represent the ward shall promptly and fully inform the court of the position of the guardian ad litem. The guardian ad litem also shall be afforded the right to be heard but shall not disclose privileged information or information that has not been admitted into evidence. The court may, in its discretion, appoint additional counsel for the guardian ad litem.

(3) Waivers of Constitutional and Other Important Rights. -- When a ward or a guardian ad litem wishes to waive a constitutional right of the ward, enter an admission to the merits of a proceeding, or waive patient's privilege under V.R.E. 503, the court shall not accept the proposed waiver or admission unless the court determines, after opportunity to be heard, each of the following:

(A) that there is a factual and legal basis for the waiver or admission;

(B) that the attorney has investigated the relevant facts and law, consulted with the client and guardian ad litem, and the guardian ad litem has consulted with the ward;

(C) that the waiver or admission is in the best interest of the ward; and

(D) that the waiver or admission is being entered into knowingly and voluntarily by the ward and also by the guardian ad litem, except as set forth in (4) below.

(4) Approval Without Ward's Consent of Constitutional or Other Important Waivers. -- A waiver or admission listed in subdivision (d)(3) of this rule may be approved of with the consent of the guardian ad litem but without the consent of the ward if the ward, because of mental or emotional disability, is unable to understand the nature and consequences of the waiver or admission or is unable to communicate with respect to the waiver or admission. A person who has not attained the age of thirteen shall be rebuttably presumed to be incapable of understanding the nature and consequences of the waiver or admission and of communicating with respect to the waiver or admission; a person thirteen years old or older shall be rebuttably presumed to be capable. The rebuttable presumptions shall have the effect set forth by Vermont Rule of Evidence 301 and shall also allocate the burden of persuasion. Notwithstanding this subdivision, in all cases in which it is alleged that a person had committed a crime or delinquent act, that person's knowing and voluntary consent shall be required with respect to the waiver or admission.

**(e) Role of Guardian Ad Litem.**

(1) In General. -- The guardian ad litem shall act as an independent parental advisor and advocate whose goal shall be to safeguard the ward's best interests and rights.

(2) Duties Generally. -- Each guardian ad litem shall meet with the ward, the ward's attorney, and others who may be necessary for an understanding of the issues in the proceeding. The guardian ad litem shall be familiar with all pertinent pleadings, reports, and other documents. The guardian ad litem shall discuss with the ward and the ward's attorney all options which may be presented to the court, and shall assist the attorney in advising the ward regarding those options.

(3) Courtroom Role. -- The guardian ad litem shall not be asked for nor provide an opinion on the merits to the court at any contested merits hearings held under Chapters 52 and 53 of Title 33, Vermont Statutes Annotated. The guardian ad litem may, at a disposition or temporary care hearing held under Chapters 52 and 53, state his or her position or opinion and the reasons therefor. In any other proceeding governed by this rule, the guardian ad litem may, at any phase of the proceeding, state his or her position or opinion and the reasons therefor, which reasons shall be based upon the evidence which is in the record. At any hearing the court may inquire, subject to the provisions of this rule, whether the guardian ad litem is satisfied with the representation of the ward by the attorney, including but not limited to the presentation of evidence made by the ward's attorney. If the guardian ad litem at any time is not satisfied that the ward's rights and interests are being effectively represented, the guardian ad litem shall so advise the court in open court, orally or in writing.

(4) Guardian Ad Litem as Witness. -- A guardian ad litem may be called as a witness only when that person's testimony would be directly probative of the child's best interest, and no other persons could be employed or subpoenaed to testify on the same subject matter. When a guardian ad litem is to be called as a witness, the court may appoint a new guardian ad litem.

(5) Reports Prepared by Guardians Ad Litem. -- If the guardian ad litem prepares a written report, it shall be submitted to the court only by agreement of the parties or pursuant to the Vermont Rules of Evidence and subject to paragraph (4) of this subdivision.

**(f) Record of Proceedings.** -- The court shall make a verbatim record of all proceedings under this rule.

**HISTORY:** Added Aug. 22, 1991, eff. Nov. 1, 1991; amended Oct. 16, 1991, eff. Nov. 1, 1991; Aug.

29, 1995, eff. Dec. 1, 1995; Jan. 11, 1996, eff. Jan. 12, 1996; Dec. 17, 2008, eff. Jan. 1, 2009; Feb. 24, 2010, eff. April 26, 2010.

# **Miscellaneous Federal and State Child Welfare Laws**

(This list is not a comprehensive list)



## **Federal Laws:**

### **Adoption and Safe Families Act (ASFA)**

The Adoption and Safe Families Act of 1997 (P.L. 105-89) was enacted to improve the safety of children, promote adoption and other permanent homes for children who need them, and to support families. ASFA made changes and clarifications in a wide range of policies established under the Adoption Assistance and Child Welfare Act (P.L. 96-272), the major federal law enacted in 1980 to assist the states in protecting and caring for abused and neglected children. 42 U.S.C. § 620-679 ASFA made safety and permanency the primary focus of federal foster care law. Major provisions of ASFA:

- Requires that states move to terminate parental rights for children who have been in foster care for 15 out of the last 22 months, absent a compelling reason
- Requires courts to make certain findings when a child is removed from home and Permanency Hearings every 12 months
- Clarifies situations (aggravated circumstances) in which states are not required to reunify families
- Expands Family Preservation and Support Services
- Extends subsidies for adoptive children, provides incentives for States to improve adoption rates, and provides funding for efforts encouraging adoption
- Expands health care coverage for adoptive children
- Clarifies that interstate boundaries should not delay adoption

### **Child Abuse Prevention and Treatment Act (CAPTA)**

The Child Abuse Prevention and Treatment Act provides federal funding to States in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and nonprofit organizations for demonstration programs and projects. The Child Abuse Prevention and Treatment Act (CAPTA) was reauthorized in 1978, 1984, 1988, 1992, 1996, and 2003, and most recently in 2010 (P.L. 111-320). With each reauthorization, amendments have been made to CAPTA that have expanded and refined the scope of the law.

### **Fostering Connections to Success and Increasing Adoptions Act of 2008**

The “Fostering Connections” Act (PL 110-351) is a significant federal reform for abused and neglected children. It promotes permanent families for children and youth in foster care by: encouraging continued family connections, supporting youth transition from foster care, ensuring the health and educational well-being of foster youth, and providing federal protections and support to Native American children. Vermont has enacted laws that are consistent with some provisions of this Act.

### **Indian Child Welfare Act (ICWA)**

The Indian Child Welfare Act was enacted in 1978 to protect the best interests of Indian children and promote the stability of Indian tribes and families. It established minimum federal standards for the removal of American Indian children from their families and placement of these children in foster care or adoptive homes that reflect Indian culture. ICWA applies to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe. 25 U.S.C. § 1901 et seq

### **Individuals with Disabilities Education Act (IDEA)**

The Individuals with Disabilities Education Act is a law ensuring that children with disabilities have the opportunity to receive a free appropriate public education. IDEA governs how states and public agencies provide early intervention, special education and related services to eligible infants, toddlers, children and youth with disabilities.

Infants and toddlers with disabilities (birth-2) and their families receive early intervention services under IDEA Part C. Children and youth (ages 3-21) receive special education and related services under IDEA Part B.

### **Uninterrupted Scholars Act (2013)**

The Uninterrupted Scholars Act (USA, Pub.L. 112-278) amends the Family Educational Rights and Privacy Act (FERPA). It streamlines child welfare agencies' access to school records for children in foster care. The law addresses a barrier to prompt education-related decisions by courts and child welfare agencies to help children stay on track academically.

### **Preventing Sex Trafficking and Strengthening Families Act (2014):**

Public Law 113-183 is a significant bill covering a number of topics. Some sections address identifying and protecting children and youth in foster care from becoming sex trafficking victims. It requires state child welfare agencies to collect and report data, and determine services for children who have been or may be at high-risk of becoming sex trafficking victims, including run-away youth. This law also supports “normalcy” for children and youth in foster care with respect to participation in extracurricular, enrichment, cultural, and social activities based on a “reasonable and prudent parent standard.” The law also eliminates Another Planned Permanent Living Arrangement (APPLA) as a permanency goal for children under age 16 and adds additional case plan and case review requirements for older youth who do have APPLA as a permanency goal. The law has other provisions regarding youth age 14 and older, with respect to their involvement in developing their caseplan and planning for transition to adulthood. (A concise description may be found here: <http://www.childrensdefense.org/library/data/fact-sheet-on-hr-4980.pdf> )

## **Vermont State Laws:**

**Child Welfare Services** (Title 33, Chapter 49; 33 V.S.A. § 4901 et seq)

**Interstate Compact on Juveniles** (Title 33, Chapter 57; 33 V.S.A. § 5721 et seq)

Establishes procedures and protections for youth on probation and/or parole and the return of runaway youth. The new Compact became effective in Vermont in July 2010 and repealed the previous compact.

**Interstate Compact on the Placement of Children** (Title 33, Chapter 59; 33 V.S.A. § 5901 et seq)

A compact among states that establishes a uniform process when an out-of-state placement is being considered for a child in foster care. It ensures that children placed across state lines are placed with caregivers who are able to properly care for the child.

**Woodside Juvenile Rehabilitation Center** (Title 33, Chapter 58; 33 V.S.A. § 5801 et seq)

The statute was amended in February 2011 to repurpose Woodside from a detention and treatment center to a psychiatric treatment facility.

**Uniform Child Custody Jurisdiction And Enforcement Act (UCCJEA)**

(Title 15, Chapter 20; 15 V.S.A. § 1061 et seq)

The act provides a mechanism to obtain and enforce custody and visitation orders across state lines. It protects victims of child abuse and/or domestic violence. The Act became effective in Vermont in July 2011.

**Adoption Act (Title 15A)**

In 2015, § 9-101 was added with respect to enforcement, modification, and termination of Post-adoption Contact Agreements entered into in a Title 33 juvenile TPR matter. Applies to adoptions in Probate Division.

**Minor Guardianships (2014)**

Title 14, chapter 111. Clarifies consensual and nonconsensual Probate Court minor guardianships, including in those situations where there is a matter in the Superior Court Family Division.

**DCF-Family Services Division Policies:** online at <http://dcf.vermont.gov/fsd/policies>

A number of policies have been amended or created in the past 1-2 years.

