

1 H.209

2 Introduced by Representative Fisher of Lincoln

3 Referred to Committee on

4 Date:

5 Subject: Judiciary; transfer of guardianship or adoption proceedings from
6 family to probate division of superior court

7 Statement of purpose: This bill proposes to permit the family or probate
8 division of the superior court to transfer guardianship or adoption proceedings
9 from the probate to the family division if: (1) the family services division of
10 the department for children and families has an open case for the parent and
11 child on or after the date the proceeding is filed; (2) the proceeding could
12 reasonably be expected to result in the termination of parental rights; or (3)
13 doing so would serve the best interests of a child or would otherwise best serve
14 the interests of justice. The bill permits a party to file a motion with either
15 division for such a transfer, and requires the probate division to provide notice
16 of the transfer motion option to all parties in any case involving guardianship
17 or custody of a child. A proceeding can only be transferred if the transferring
18 court has first communicated about it with the receiving court.

19 An act relating to transfer of guardianship or adoption proceedings from
20 probate to family court

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

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

3 § 33. JURISDICTION; FAMILY DIVISION

4 Notwithstanding any other provision of law to the contrary, the family
5 division shall have exclusive jurisdiction to hear and dispose of the following
6 proceedings filed or pending on or after October 1, 1990:

7 * * *

8 (18) All guardianship and adoption proceedings transferred to the family
9 division pursuant to section 455 of this title.

10 Sec. 2. 4 V.S.A. § 455 is amended to read:

11 § 455. TRANSFER OF PROBATE PROCEEDINGS

12 (a) Any guardianship action filed in the probate division of the superior
13 court pursuant to chapter 111, subchapter 2, article 1 of Title 14 and any
14 adoption action filed in the probate division pursuant to Title 15A may be
15 transferred to the family division of the superior court as provided in this
16 section.

17 (b) The family or probate division shall order the transfer of the proceeding
18 on motion of a party or on its own motion if it finds that:

19 (1) the identity of the parties, issues, and evidence are so similar in
20 nature to the parties, issues, and evidence in a proceeding pending in the family

1 division that transfer of the probate action to the family division would
2 expedite resolution of the issues or would best serve the interests of justice; or

3 (2) the family services division of the department for children and
4 families has an open case for the parent and child on or after the date the
5 proceeding is filed;

6 (3) the proceeding could reasonably be expected to result in the
7 termination of parental rights;

8 (4) transfer of the proceeding would serve the best interests of the child
9 or would otherwise best serve the interests of justice.

10 (c) The probate division shall provide notice of the option to file a motion
11 to transfer under subsection (b) of this section to all parties in any case
12 involving guardianship or custody of a child.

13 (d) A proceeding shall not be transferred pursuant to this section unless the
14 court ordering the transfer has communicated with the receiving court
15 regarding the advisability of the transfer.

16 Sec. 2. EFFECTIVE DATE

17 This act shall take effect on July 1, 2011.