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H.400

Introduced by Representative Pugh of South Burlington

Referred to Committee on

Date:

Subject: Judicial procedure; Department for Children and Families

Statement of purpose of bill as introduced: This bill proposes to: (1) allow Probate and Family Courts to review DCF chapter 49 records in camera; (2) allow courts to provide notice to DCF of juvenile delinquency proceedings; (3) amend the timeline for preparing and filing disposition case plans; and (4) require Probate Court to notify DCF when a guardian dies and custody reverts back to DCF.

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An act relating to various changes to judicial procedure

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

~~Sec. 1. 14 V.S.A. § 2666 is amended to read:~~

~~§ 2666. MODIFICATION; TERMINATION~~

~~* * *~~

~~(b) Where the permanent guardianship is terminated by the probate division of the superior court Probate Division of the Superior Court order or the death of the permanent guardian, the custody and guardianship of the child shall not~~

1 ~~revert to the parent, but to the commissioner for children and families~~

2 Commissioner for Children and Families as if the child had been abandoned.

3 (1) Upon the death of the permanent guardian or when the permanent
4 guardianship is otherwise terminated by order of the Probate Division, the
5 Probate Division shall issue an order placing the child in the custody of the
6 Commissioner and shall immediately notify the Department for Children and
7 Families, the State's Attorney, and the Family Division.

8 (2) The order transferring the child's legal custody to the Commissioner
9 shall have the same legal effect as a similar order issued by the Family
10 Division under the authority of 33 V.S.A. chapters 51-53.

11 (3) After the Probate Division issues the order transferring legal custody
12 of the child, the State shall commence proceedings under the authority of
13 33 V.S.A. chapters 51-53 as if the child has been abandoned.

14 * * *

15 Sec. 2. 14 V.S.A. § 2667 is amended to read:

16 § 2667. ORDER FOR VISITATION, CONTACT, OR INFORMATION;
17 IMMEDIATE HARM TO THE MINOR

18 (a) ~~The probate division of the superior court~~ Probate Division of the
19 Superior Court shall have exclusive jurisdiction to hear any action to enforce,
20 modify, or terminate the initial order issued by the ~~family division of the~~

1 ~~superior court Family Division of the Superior Court for visitation, contact, or~~
2 information.

3 (b) Upon a showing by affidavit of immediate harm to the child, the
4 ~~probate division of the superior court~~ Probate Division of the Superior Court
5 may temporarily stay the order of visitation or contact on an ex parte basis
6 until a hearing can be held, or stay the order of permanent guardianship and
7 ~~assign parental rights and responsibilities~~ transfer legal custody of the child to
8 ~~the commissioner for children and families~~ Commissioner for Children and
9 Families.

10 (1) The order transferring the child's legal custody to the Commissioner
11 shall have the same legal effect as a similar order issued by the Family
12 Division under the authority of 33 V.S.A. chapters 51-53.

13 (2) The Probate Division shall then immediately notify the Department
14 for Children and Families, the State's Attorney, and the Family Division when
15 it has issued an order transferring the child's legal custody to the
16 Commissioner, and nothing in this subsection shall prohibit the State from
17 commencing proceedings under 33 V.S.A. chapters 51-53.

18 * * *

19 Sec. 3. 33 V.S.A. § 4921 is amended to read:

20 § 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

21 * * *

1 ~~(d) Upon request, Department records created under this subchapter shall~~
2 be disclosed to:
3 (1) The court, parties to the juvenile proceeding, and the child's
4 guardian ad litem if there is a pending juvenile proceeding or if the child is in
5 the custody of the Commissioner;
6 (2) ~~the~~ The Commissioner or person designated by the Commissioner to
7 receive such records;
8 (3) ~~persons~~ Persons assigned by the Commissioner to conduct
9 investigations;
10 (4) ~~law~~ Law enforcement officers engaged in a joint investigation with
11 the Department, an assistant Attorney General, or a State's Attorney;
12 (5) ~~other~~ Other State agencies conducting related inquiries or
13 proceedings; ~~and~~
14 (6) ~~a~~ A Probate Division of the Superior Court involved in guardianship
15 proceedings. The Probate Division of the Superior Court shall request the
16 record directly from the Department and conduct an in camera review of the
17 information in accordance with the Vermont Rules of Evidence 401–403. The
18 Probate Division of the Superior Court shall then provide a copy of the
19 relevant record for use in the guardianship proceeding to the respondent, the
20 respondent's attorney, the petitioner, the guardian upon appointment, and any

1 ~~other individual, including the proposed guardian, determined by the Court to~~
2 have a strong interest in the welfare of the respondent.

3 (7) A Family Division of the Superior Court involved in a proceeding
4 where a child's custody and parent child contact is an issue. The Family
5 Division of the Superior Court shall request the record directly from the
6 Department and conduct an in camera review of the information in accordance
7 with Vermont Rules of Evidence 401–403. The Family Division of the
8 Superior Court shall then provide of copy of the relevant information to the
9 parties for use in the proceedings.

10 * * *

11 Sec. 4. 33 V.S.A. § 5223 is amended to read:

12 § 5223. FILING OF PETITION

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

16 (b) The Court shall send or deliver a copy of the petition and affidavit to all
17 persons required to receive notice, including the noncustodial parent and the
18 Department, as soon as possible after the petition is filed and at least five days
19 prior to the date set for the preliminary hearing.

1 ~~Sec. 5. 33 V.S.A. § 5229 is amended to read:~~

2 § 5229. MERITS ADJUDICATION

3 * * *

4 (g) If, based on the child's admission or the evidence presented, the Court
5 finds beyond a reasonable doubt that the child has committed a delinquent act,
6 the Court shall order the Department to prepare a disposition case plan ~~within~~
7 ~~28 days of the merits adjudication and shall set the matter for a not later than~~
8 seven days before the disposition hearing. In no event, shall a disposition
9 hearing be held later than 35 days after a finding that a child is delinquent.

10 (h) The Court may proceed directly to disposition providing that the child,
11 the custodial parent, the State's Attorney, and the Department agree.

12 Sec. 6. 33 V.S.A. § 5230 is amended to read:

13 § 5230. DISPOSITION CASE PLAN

14 (a) Filing of case plan. ~~The~~ Following the finding by the Court that a child
15 is delinquent, the Department shall file a disposition case plan ~~no~~ not later than
16 ~~28 days from the date of the finding by the Court that a child is delinquent~~
17 seven days before the scheduled disposition hearing. The disposition case plan
18 shall not be used or referred to as evidence prior to a finding that a child is
19 delinquent.

20 * * *

1 ~~Sec. 7. 33 V.S.A. § 5315 is amended to read:~~

2 § 5315. MERITS ADJUDICATION

3 * * *

4 (g) If the Court finds that the allegations made in the petition have been
5 established based on the stipulation of the parties or on the evidence if the
6 merits are contested, the Court shall order the Department to prepare a
7 disposition case plan ~~within 28 days of the merits hearing and shall set the~~
8 ~~matter for a~~ not later than seven days before a scheduled disposition hearing.

9 * * *

10 Sec. 8. 33 V.S.A. § 5316 is amended to read:

11 § 5316. DISPOSITION CASE PLAN

12 (a) ~~The~~ Following a finding by the Court that a child is in need of care or
13 supervision, the Department shall file a disposition case plan ordered pursuant
14 to subsection 5315(g) of this title ~~no~~ not later than ~~28 days from the date of the~~
15 ~~finding by the Court that a child is in need of care or supervision~~ seven days
16 before the scheduled disposition hearing.

17 * * *

18 Sec. 9. EFFECTIVE DATE

19 ~~This act shall take effect on passage.~~

Sec. 1. 14 V.S.A. § 2666 is amended to read:

§ 2666. MODIFICATION; TERMINATION

* * *

(b) Where the permanent guardianship is terminated by the ~~probate division of the superior court~~ 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~~ Commissioner for Children and Families as if the child had been abandoned.

(1) Upon the death of the permanent guardian or when the permanent guardianship is otherwise terminated by order of the Probate Division, the Probate Division shall issue an order placing the child in the custody of the Commissioner and shall immediately notify the Department for Children and Families, the State's Attorney, and the Family Division.

(2) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51-53.

(3) After the Probate Division issues the order transferring legal custody of the child, the State shall commence proceedings under the authority of 33 V.S.A. chapters 51-53 as if the child were abandoned.

* * *

Sec. 2. 14 V.S.A. § 2667 is amended to read:

*§ 2667. ORDER FOR VISITATION, CONTACT, OR INFORMATION;
IMMEDIATE HARM TO THE MINOR*

(a) ~~The probate division of the superior court~~ 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~~ 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~~ 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~~ transfer legal custody of the child to the commissioner for children and families Commissioner for Children and Families.

(1) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51-53.

(2) The Probate Division shall then immediately notify the Department for Children and Families, the State's Attorney, and the Family Division when it has issued an order transferring the child's legal custody to the Commissioner, and nothing in this subsection shall prohibit the State from commencing proceedings under 33 V.S.A. chapters 51-53.

* * *

Sec. 3. 33 V.S.A. § 5223 is amended to read:

§ 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 business 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 and the Department, as soon as possible after the petition is filed and at least five business days prior to the date set for the preliminary hearing.

Sec. 4. 33 V.S.A. § 5229 is amended to read:

§ 5229. MERITS ADJUDICATION

** * **

(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~~ not later than seven business days before the 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.

Sec. 5. 33 V.S.A. § 5230 is amended to read:

§ 5230. DISPOSITION CASE PLAN

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

** * **

Sec. 6. 33 V.S.A. § 5315 is amended to read:

§ 5315. MERITS ADJUDICATION

** * **

(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. A dismissal pursuant to this subsection is a final order subject to appeal.

(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~~ not later than seven business days before a scheduled disposition

hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.

* * *

Sec. 7. 33 V.S.A. § 5315a is added to read:

§ 5315a. MERITS STIPULATION

(a) At any time after the filing of the CHINS petition and prior to an order of adjudication on the merits, the Court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services.

(b) The Court may approve a written stipulation if:

(1) the parties to the petition, as defined in subdivision 5102 (22) of this title, agree to the terms of the stipulation; and

(2) the Court determines that:

(A) the agreement between the parties is voluntary;

(B) the parties to the agreement understand the nature of the allegation; and

(C) the parties to the agreement understand the rights waived if the Court approves of and issues an order based upon the stipulation.

Sec. 8. 33 V.S.A. § 5316 is amended to read:

§ 5316. DISPOSITION CASE PLAN

(a) ~~The~~ Following a finding by the Court that a child is in need of care or supervision, the Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title ~~no~~ not later than 28 days from the date of the finding by the Court that a child is in need of care or supervision seven business days before the scheduled disposition hearing.

* * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.