

H.615

AN ACT RELATING TO JUVENILE JUDICIAL PROCEEDINGS

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

Sec. 1. 33 V.S.A. chapter 51 is added to read:

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 assure:

(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 assure 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 assured 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.

§ 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 ten 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 section 2301 of Title 13 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 of the department 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 Vermont family 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 family or probate 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 subchapter 1 and motorboat offenses in subchapter 2 of chapter 29 of Title 23, 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 subchapter 13 of chapter 13 and of section 1091 of Title 23.

(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 probate court or a similar court in another jurisdiction.

(13) “Judge” means a judge of the family 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 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 marriage and enlistment in the armed forces of the United States, 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 section 2358 of Title 20.

(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 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 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.

§ 5103. JURISDICTION

(a) The family 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 court 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) Except as otherwise provided by this title, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(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.

§ 5104. RETENTION OF JURISDICTION OVER YOUTHFUL

OFFENDERS

(a) The family 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5333 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.

§ 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 subchapter 3A of Title 15. 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.

§ 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.

§ 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.

§ 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 without limitation as to adoption is filed by the commissioner or the attorney for the child, 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.

§ 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.

§ 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 without limitation, 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 Title 33 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.

§ 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 court.

(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.

§ 5118. LIMITED EXCEPTION TO CONFIDENTIALITY OF RECORDS
OF JUVENILES MAINTAINED BY THE FAMILY COURT

(a) For the purposes of 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 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.

§ 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), and (4) 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 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.

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime committed under the laws of this state prior to attaining the age of majority, 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.

§ 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.

§ 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.

§ 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.

Sec. 2. 33 V.S.A. chapter 52 is added to read:

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 district or 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.

§ 5202. ORDER OF ADJUDICATION; NONCRIMINAL

(a)(1) An order of the juvenile 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 chapter 11 of Title 23.

(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.

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a district 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 juvenile court under the authority of this chapter.

(b) If it appears to a district 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 juvenile 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 a juvenile court or the district court. If charges in such a matter are filed in district court, the district court may forthwith transfer the proceeding to the juvenile 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 juvenile 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 juvenile court at a time designated by that court. The juvenile 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 family court for youthful offender treatment shall be made under section 5281 of this title.

§ 5204. TRANSFER FROM JUVENILE COURT

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the juvenile court may transfer jurisdiction of the proceeding to district court, 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 juvenile court for an order transferring jurisdiction under subsection (a) of this section within ten days of the filing of the petition alleging delinquency. 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 juvenile 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 juvenile 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 juvenile courts 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 juvenile court to the district court.

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

(f) The juvenile court, following completion of the transfer hearing, shall make written findings and, if the court orders transfer of jurisdiction from the juvenile court, shall state the reasons for that order. If the juvenile court 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.

(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 juvenile 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 juvenile court throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to juvenile court 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.

§ 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 limited to inspection by 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.

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.

§ 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 Act, 15 V.S.A. § 1032 et seq.

(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.

§ 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 ten 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.

§ 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.

§ 5225. PRELIMINARY HEARING

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

(c) 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.

(d) 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.

(e) The court may order the child to abide by conditions of release pending a merits or disposition hearing.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

(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.

§ 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.

§ 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.

§ 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 chapter 167 of Title 13, 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.

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.

§ 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 phone numbers of the child's parents, guardians, or custodians, and the name, address, and phone 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 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.

§ 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 5152(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.

§ 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.

§ 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 criminal 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 criminal 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 criminal 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 criminal information center. The Vermont criminal 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 criminal 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 Act pursuant to 15 V.S.A. § 1037 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.

§ 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.

§ 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.

§ 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.

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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 5266. SUMMONS, APPREHENSION, AND DETENTION 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 detention.

(2) Any juvenile probation officer may detain 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 detaining officer to the supervisor of the juvenile facility or
residential program to which the juvenile is brought for detention shall be
sufficient authority for detaining the juvenile.

(3) Any juvenile probationer apprehended or detained 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
detention.

§ 5267. DETENTION HEARING

(a) Whenever a juvenile probationer is detained 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 detention 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 detention 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 in detention pursuant to a request to find the juvenile in violation of probation may be released by a judicial officer pending hearing or appeal.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 and the departments of education, corrections, employment and training, developmental and mental health services, and public safety, and the office 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.

Subchapter 5. Youthful Offenders

§ 5281. MOTION IN DISTRICT COURT

(a) A motion may be filed in the district 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 district court shall enter an order deferring the sentence and transferring the case to the family court for a hearing on the motion. Copies of all records relating to the case shall be forwarded to the family court. Conditions of release and any department of corrections supervision or custody shall remain in effect until the family court 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 court granting the motion for youthful offender status.

(d)(1) If the family court denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the district court and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the district court 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 court'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 proceeding in district court.

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to family court, unless the court extends the period for good cause shown, the department shall file a report with the family 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.

§ 5283. HEARING IN FAMILY COURT

(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 district court.

(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.

§ 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 district 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 eighteenth 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.

§ 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 family 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 district court 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 district court under subdivision (c)(2) of this section, the district court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the district court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender

status. The district court shall have access to all family court records of the proceeding.

§ 5286. REVIEW PRIOR TO THE AGE OF 18

(a) The family court 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 court 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.

§ 5287. TERMINATION OR CONTINUANCE OF PROBATION

(a) A motion may be filed at any time in the family court 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 court case. The family court shall provide notice of the dismissal to the district court, which shall dismiss the district court case.

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the district court 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.

§ 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 subdivision 5301(4) of Title 13.

Subchapter 6. Placement of Minors in Secure Facilities

§ 5291. DETENTION OF MINORS CHARGED AS DELINQUENTS IN A
SECURE FACILITY FOR THE DETENTION 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 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 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 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.

§ 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.

§ 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 district court or the district 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 chapter 229 of Title 13 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 district court.

(B) If the minor is delivered to the district 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 chapter 229 of Title 13 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.

Sec. 3. 33 V.S.A. chapter 53 is added to read:

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 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.

§ 5302. REQUEST FOR EMERGENCY CARE ORDER

(a) If an officer takes a child into custody pursuant to subdivision 5301(1) or (2) 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, the officer shall:

(1) 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) 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 shall contact the department and the department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 criminal 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 criminal 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 criminal 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 criminal information center. The Vermont criminal 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 criminal 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 Act pursuant to 15 V.S.A. § 1037 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.

§ 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 child's welfare 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 guardian 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 any of the conditions set forth in subsection (a) of this section exists, 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, in order of preference:

(1) A conditional custody order returning legal custody of the child to the custodial parent, guardian, or custodian, subject to such conditions and limitations as the court may deem necessary and sufficient to protect the child.

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Protect the child from the custodial parent to the degree the court deems such protection necessary.

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

(v) Consider providing legal permanence if reunification fails.

(C) In considering the suitability of a relative under this subdivision (3), the court may order the department to conduct an investigation and file a written report of its findings with the court. The court may place the child in the temporary custody of the department, pending such investigation.

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

(5) A temporary care order transferring temporary legal custody of the child to the commissioner.

(c) 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 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 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 necessary for the protection and welfare of the child, such as:

(A) Establishing parent-child contact under such terms and conditions as are necessary for the protection of the child.

(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.

(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.

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

§ 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 the agency 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.

§ 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 Act, 15 V.S.A. § 1032 et seq.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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) A permanency goal. 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.

§ 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.

§ 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 juvenile 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 agency of human services, the department 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.

§ 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.

§ 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.

§ 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 chapter 111 of Title 14; 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 ten 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.

§ 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.

Sec. 4. 33 V.S.A. § 5802 is added to read:

§ 5802. SEPARATION OF VICTIM OF SEXUAL ASSAULT AND
PERPETRATOR

The commissioner of the department for children and families shall develop policies applicable when the department knows or learns that a sexual assault perpetrator and his or her victim have been simultaneously placed at the facility. The policies shall include processes and procedures for investigation and, if appropriate, continued separation of or minimizing incidental contact between the perpetrator and the victim, while ensuring that they both receive educational and other appropriate services.

Sec. 5. 13 V.S.A. § 1030 is amended to read:

§ 1030. VIOLATION OF AN ABUSE PREVENTION ORDER OR, AN ORDER AGAINST STALKING OR SEXUAL ASSAULT, OR A PROTECTIVE ORDER CONCERNING CONTACT WITH A CHILD

(a) A person who commits an act prohibited by a court or who fails to perform an act ordered by a court in violation of an abuse prevention order issued under chapter 21 of Title 15 or chapter 69 of Title 33, a protective order that concerns contact with a child and is issued under chapter 51 of Title 33, or an order against stalking or sexual assault issued under chapter 178 of Title 12, after the person has been served notice of the contents of the order as provided

in those chapters; or a foreign abuse prevention order issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(b) A person who is convicted of a second or subsequent offense under this section shall be imprisoned not more than three years or fined not more than \$25,000.00, or both.

* * *

(e) Nothing in this section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through contempt proceedings.

* * *

Sec. 6. Rule (3)(c)(6) of the Vermont Rules of Criminal Procedure is amended to read:

(6) The person has violated an order issued by a court in this state pursuant to 12 V.S.A. chapter 178, 15 V.S.A. chapter 21, or 33 V.S.A. chapter 69 or subsection 5115(e).

Sec. 7. Section 6(b) of the Rules of Public Access to Court Records is amended to read:

(b) Exceptions. The public shall not have access to the following judicial branch records:

* * *

(34) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.

(35) Any other record to which public access is prohibited by statute.

Sec. 8. 33 V.S.A. § 3902 is amended as follows:

§ 3902. ASSIGNMENT OF SUPPORT RIGHTS BY PUBLIC ASSISTANCE
RECIPIENTS; PROCEEDINGS TO ESTABLISH SUPPORT
OBLIGATION

* * *

~~(e) When a responsible parent is receiving welfare assistance under Title XVI of the Social Security Act or chapter 11 of this title, on the parent's own behalf or on behalf of a dependent child, no amounts shall accrue or be collected under the support order while the welfare assistance is being received. The commissioner shall monitor receipt of welfare assistance by responsible parents to ensure collection action is not instituted while welfare assistance is being received and that collection action is instituted promptly when the responsible parent no longer receives assistance.~~

(f) If a support order has been entered and the legal custodian and obligee relinquishes physical responsibility of the child to a caretaker without

modifying the physical rights and responsibilities order, the office of child support may change the payee of support upon the caretaker's receipt of Reach Up family assistance (RUFA) from the department for children and families. The obligor's obligation under the support order to pay child support and medical support continues but shall be payable to the office of child support upon the caretaker's receipt of RUFA and shall continue so long as the assignment is in effect. The office of child support shall notify the obligor and obligee under the support order, by first class mail at last known address, of the change of payee.

Sec. 9. 33 V.S.A. § 3903 is amended to read:

§ 3903. CHILD SUPPORT DEBT

(a) Except as otherwise provided in this section, any payment of Reach Up financial assistance made to or for the benefit of a dependent child creates a debt due and owing to the department for children and families by any responsible parent in an amount equal to the amount of Reach Up financial assistance paid.

~~(1) A debt shall not be incurred by any responsible parent while that parent receives public assistance for the benefit of any of his or her dependent children. A debt previously incurred by any responsible parent shall not be collected from the responsible parent while that parent receives public~~

~~assistance for the benefit of his or her dependent children, or assistance under Title XVI of the Social Security Act.~~

(2)(b) Collection of child support debts shall be made as provided by this section and section 3902 of this title and by subchapter 7 of chapter 11 of Title 15. Regardless of the amount of Reach Up financial assistance paid, the court may limit the child support debt, taking into consideration the criteria of section 659 of Title 15. The department for children and families and the responsible parent may limit the child support debt by stipulation which shall be enforceable on its terms unless it is modified.

Sec. 10. REPORT FROM THE DEPARTMENT FOR CHILDREN AND
FAMILIES

(a) No later than March 1, 2009, the department for children and families shall report to the general assembly on the following:

(1) Procedures used to identify parents with disabilities.

(2) Procedures for modifying case plans, disposition of case plans, service plans, and permanency plans to include the use of adaptive equipment and parental supports for parents with disabilities.

(3) Procedures used to assess family strengths and weaknesses as they relate to children and parents with disabilities.

(4) The state's ability to accommodate the court-related needs of children and parents with disabilities as they relate to juvenile judicial proceedings.

(b) In preparation of the report, the department for children and families shall consult with:

(1) The family support project at the University of Vermont.

(2) The Vermont judiciary.

(3) The office of the defender general.

(4) The department of disabilities, aging, and independent living.

Sec. 11. REPORT FROM THE CENTER FOR CRIME VICTIM SERVICES

The center for crime victim services shall report to the house and senate committees on judiciary no later than January 15, 2012 on the implementation and operation of the juvenile restitution provisions established by this act.

Sec. 12. JUVENILE JURISDICTION POLICY AND OPERATIONS

COORDINATING COUNCIL

(a) The juvenile jurisdiction policy and operations coordinating council is established in order to plan and develop the steps advisable better to address age-appropriate responses to older youth within the juvenile justice system. The council shall report to the house and senate committees on judiciary on or before December 15, 2008. The report may consider the juvenile justice jurisdiction study submitted to the agency of human services in December

2007 as well as other relevant information and recommend any changes to Vermont juvenile justice jurisdiction policy the council decides are advisable.

(b)(1) The council shall develop an implementation plan for each of the following options:

(A) Maintaining the current jurisdiction statute and continuing jurisdiction of the family court in delinquency proceedings until age 22.

(B) Changing the initial court of jurisdiction in all misdemeanor proceedings to the family court, with the possibility to be waived to district court, and continuing family court jurisdiction until age 22.

(C) Changing the initial court of jurisdiction in all juvenile proceedings to the family court with the possibility to be waived to district court and continuing family court jurisdiction until age 22.

(2) Each option in subdivision (1) of this subsection shall address:

(A) Estimated numbers of youth to be served by the department of corrections and by the department for children and families.

(B) Resource increases needed by the department for children and families to implement each option, including probation supervision staff, locked capacity, and contracted services.

(C) Potential decreases in the department of corrections services.

(D) Resource increases and decreases in the judicial system.

(E) The net costs.

(c) With respect to any policy changes recommended, the report shall include:

(1) Necessary statutory changes.

(2) Necessary structural modifications to the juvenile system, including personnel and programming requirements and changes.

(3) Cost implications and financial impacts.

(4) Review of the impact on 16- and 17-year-olds of being commingled with older offenders.

(5) A summary of evidence-based research on outcomes and recidivism rates by juvenile offenders and juvenile delinquents, including comparisons of minors processed as juvenile delinquents with minors processed as adult offenders.

(d) The council shall consist of the following members:

(1) The administrative judge or designee.

(2) The court administrator or designee.

(3) The defender general or designee.

(4) The attorney general or designee.

(5) The executive director of the department of state's attorneys and sheriffs or designee.

(6) The commissioner of the department for children and families or designee.

(7) The director of the juvenile justice commission or designee.

(8) The commissioner of corrections or designee.

(9) The commissioner of public safety or designee.

(10) A mental health professional with experience working with juveniles, appointed by the Vermont council of developmental and mental health services.

(11) A law enforcement officer with experience working with juveniles, appointed by the commissioner of public safety.

(12) The executive director of the center for crime victim services or his or her designee.

Sec. 13. REPEAL

The following are repealed:

(1) 33 V.S.A. chapter 55 (judicial proceedings).

(2) 13 V.S.A. § 5320 (notification of conditions of release to victim in delinquency proceedings).

Sec. 14. EFFECTIVE DATE AND APPLICATION

This act shall take effect January 1, 2009 and shall apply to any petition filed after the effect date or any permanency review hearing held after the effective date.