

**No. 97. An act relating to voluntary guardianship and children in foster care.**

(H.507)

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

Sec. 1. 14 V.S.A. § 2664(a) is amended to read:

(a) The family court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding pursuant to 33 V.S.A. § ~~5528~~ 5318, or a delinquency proceeding pursuant to 33 V.S.A. § ~~5529~~ 5232. The court shall also issue an order permitting or denying visitation, contact or information with the parent at the same time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

(1) Neither parent is capable or willing to provide adequate care to the child, requiring that parental rights and responsibilities be awarded to a permanent guardian.

(2) Neither returning the child to the parents nor adoption of the child is ~~reasonably likely during the remainder of the child's minority~~ likely within a reasonable period of time.

(3) The child is at least 12 years old unless the proposed permanent guardian is:

(A) a relative; or

(B) the permanent guardian of one of the child's siblings.

(4) The child has resided with the permanent guardian for at least a year, ~~unless~~ or the permanent guardian is a relative with whom the child has a relationship and with whom the child has resided for at least six months.

(5) A permanent guardianship is in the best interests of the child.

(6) The proposed permanent guardian:

(A)(i) is emotionally, mentally, and physically ~~and financially~~ suitable to become the permanent guardian; and

(ii) is financially suitable, with kinship guardianship assistance provided for in 33 V.S.A. § 4903 if applicable, to become the permanent guardian;

(B) has expressly committed to remain the permanent guardian for the duration of the child's minority; and

(C) has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any resulting loss of state or federal benefits or other assistance.

Sec. 2. 33 V.S.A. § 4903(7) is added to read:

(7) Providing aid to a child in the permanent guardianship of a relative if the child was in the care and custody of the department and was placed in the

home of the relative for at least six months prior to the creation of the guardianship.

Sec. 3. 33 V.S.A. § 4904(b)(2) is amended to read:

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

Sec. 4. 33 V.S.A. § 4904(c) is amended to read:

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

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

Sec. 5. 14 V.S.A. § 2663(c)(2) is amended to read:

(2) If the child has been in the custody of the commissioner ~~of social and rehabilitation services~~ for children and families immediately prior to the creation of the guardianship, the commissioner shall have no further duty of support or care for the child after the establishment of the permanent guardianship unless the family is eligible for kinship guardianship assistance provided for in 33 V.S.A. § 4903 or the commissioner contractually agrees in writing to that support.

Sec. 6. 14 V.S.A. § 2666 is amended to read:

§ 2666. MODIFICATION; TERMINATION

(a) A modification or termination of the permanent guardianship may be requested by the permanent guardian, the child if the child is age 14 or older, or the commissioner ~~of social and rehabilitation services~~ for children and families. A modification or termination may also be ordered by the probate court on its own initiative.

(b) Where the permanent guardianship is terminated by the probate court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the commissioner ~~of social and~~

~~rehabilitation services~~ for children and families as if the child had been abandoned.

\* \* \*

Sec. 7. 14 V.S.A. § 2667(b) is amended to read:

(b) Upon a showing by affidavit of immediate harm to the child, the probate court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and assign parental rights and responsibilities to the commissioner ~~of social and rehabilitation services~~ for children and families.

Sec. 8. 33 V.S.A. § 5307(h) is added to read as follows:

(h) The department shall provide information to relatives and others with a significant relationship with the child about options to take custody or participate in the care and placement of the child, about the advantages and disadvantages of the options, and about the range of available services and supports.

Sec. 9. 14 V.S.A. § 2671 is amended to read:

§ 2671. VOLUNTARY GUARDIANSHIP

(a) Any person of at least ~~eighteen~~ 18 years of age, who desires assistance with the management of his or her affairs, may file a petition with the probate court requesting the appointment of a guardian.

(b) The petition shall:

(1) state that the petitioner ~~is not mentally ill or mentally retarded~~  
understands the nature, extent, and consequences of the guardianship;

\* \* \*

(d) ~~A petition for voluntary guardianship shall be granted if the court finds~~  
~~that:~~

~~(1) the petitioner is not mentally ill or mentally retarded; and~~

~~(2) the petitioner is uncoerced; and~~

~~(3) the petitioner understands the nature, extent and consequences of the~~  
~~guardianship requested and the procedures for revoking the guardianship.~~

(1) The court shall hold a hearing on the petition, with notice to the  
petitioner and the proposed guardian.

(2) At the hearing, the court shall explain to the petitioner the nature,  
extent, and consequences of the proposed guardianship and determine if the  
petitioner agrees to the appointment of the named guardian.

(3) At the hearing, the court shall explain to the petitioner the  
procedures for terminating the guardianship.

(4) After the hearing, the court shall make findings on the following  
issues:

(A) whether the petitioner is uncoerced;

(B) whether the petitioner understands the nature, extent, and  
consequences of the proposed guardianship; and

(C) whether the petitioner understands the procedures for terminating the guardianship.

(e) ~~In its discretion, the~~ The court may order that the petitioner be evaluated by ~~a qualified mental health professional~~ a person who has specific training and demonstrated competence to evaluate the petitioner. The scope of the evaluation shall be limited to:

~~(1) whether the petitioner is mentally ill or mentally retarded; and~~

~~(2) the capacity of the petitioner to understand~~ understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.

(f) If after the hearing the court finds that the petitioner ~~meets the criteria set forth in subsection (d) of this section~~ is uncoerced, understands the nature, extent and consequences of the proposed guardianship, and understands the procedures for terminating the guardianship, it shall enter judgment specifying the powers of the guardian as requested in the petition. The court shall mail a copy of its order to the petitioner and the guardian, and it shall attach to the order a notification to the petitioner setting forth the procedures for terminating the guardianship.

(g) If the court finds that the petitioner does not meet the criteria set forth in subsection (d) of this section, it shall dismiss the petition; provided, however, that if the court finds that the petitioner ~~is mentally ill or mentally~~

~~retarded~~ does not understand the nature, extent, and consequences of the guardianship and in the court's opinion requires assistance with the management of his or her personal or financial affairs, the court may treat the petition as if filed pursuant to section 3063 of this title.

(h) The ~~ward~~ person under guardianship may, at any time, file a motion to revoke the guardianship. Upon receipt of the motion, the court shall give notice as provided by the rules of probate procedure. Unless the guardian files a motion pursuant to section 3063 of this title within ten days from the date of the notice, the court shall enter judgment revoking the guardianship and shall provide the ward and the guardian with a copy of the judgment.

(i)(1) Any person interested in the welfare of the ~~ward~~ person under guardianship, as defined by section 3061 of this chapter, may petition the court where venue lies for termination of the guardianship. Grounds for termination of the guardianship shall be:

~~(1)~~(A) failure to render an account after having been duly cited by the court;

~~(2)~~(B) failure to perform an order or decree of the court;

~~(3)~~(C) a finding that the guardian has become incapable of or unsuitable for exercising his or her powers; or

~~(4)~~(D) the death of the guardian.

(2) The court may also consider termination of the guardianship on the court's own motion.

(j) The guardian shall file an annual report with the appointing court ~~on~~ within 30 days of the anniversary date of appointment containing the information required by section 3076 of this title.

(k) The court shall mail an annual notice on the anniversary date of the appointment of the guardian to the person under a guardianship setting forth the procedure for terminating the guardianship and the right of the person under guardianship to receive and review the annual reports filed by the guardian.

(l) At the termination of a voluntary guardianship, the guardian shall render a final accounting as required by section 2921 of this title.

~~(m)~~ (m) The guardian shall not be paid any fees to which the guardian may be entitled from the estate of the ~~ward~~ person under guardianship until the annual reports or final accounting required by this section have been filed with the court.

Approved: May 8, 2010