

1 H.581

2 Introduced by Representative Haas of Rochester

3 Referred to Committee on

4 Date:

5 Subject: Decedents' estates and fiduciary relations; guardianship of minors

6 Statement of purpose of bill as introduced: This bill proposes to revise the law

7 concerning guardianship of minors as recommended by the Minor

8 Guardianship Study Committee.

9 An act relating to guardianship of minors

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

11 Sec. 1. 14 V.S.A. chapter 111, subchapter 2, article 1 is amended to read:

12 Article 1. Guardians of Minors

13 § 2621. POLICY; PURPOSES

14 This article shall be construed in accordance with the following purposes
15 and policies:

16 (1) It is presumed that the interests of minor children are best promoted
17 in the child's own home. However, when parents are temporarily unable to
18 care for their children, guardianship provides a process through which parents
19 can arrange for family members or other parties to care for the children.

1 (2) Family members can make better decisions about minor children
2 when they understand the consequences of those decisions and are informed
3 about the law and the available supports.

4 (3) Decisions about raising a child made by a person other than the
5 child's parent should be based on the informed consent of the parties unless
6 there has been a finding of parental unsuitability.

7 (4) When the informed consent of the parents cannot be obtained,
8 parents have a fundamental liberty interest in raising their children unless a
9 proposed guardian can show parental unsuitability by clear and convincing
10 evidence.

11 (5) Research demonstrates that timely reunification between parents and
12 their children is more likely when children have safe and substantial contact
13 with their parents.

14 (6) It is in the interests of all parties, including the children, that parents
15 and proposed guardians have a shared understanding about the length of time
16 that they expect the guardianship to last, the circumstances under which the
17 parents will resume care for their children, and the nature of the supports and
18 services that are available to assist them.

1 § 2622. DEFINITIONS

2 As used in this article:

3 (1) “Child” means an individual who is under 18 years of age and who
4 is the subject of a petition for guardianship filed pursuant to section 2623 of
5 this title.

6 (2) “Child in need of guardianship” means:

7 (A) A child who the parties consent is in need of adult care because
8 of any one of the following:

9 (i) The child’s custodial parent has a serious or terminal illness.

10 (ii) A parent’s physical or mental health prevents the parent from
11 providing proper care and supervision for the child.

12 (iii) The child’s home is no longer habitable as the result of a
13 natural disaster.

14 (iv) A parent of the child is incarcerated.

15 (v) A parent of the child is on active military duty.

16 (vi) The parties have articulated and agreed to another reason that
17 guardianship is in the best interests of the child.

18 (B) A child who is:

19 (i) abandoned or abused by the child’s parent;

20 (ii) without proper parental care, subsistence, education, medical,
21 or other care necessary for the child’s well-being; or

1 (iii) without or beyond the control of the child’s parent.

2 (3) “Custodial parent” means a parent who, at the time of the
3 commencement of the guardianship proceeding, has the right and
4 responsibility to provide the routine daily care and control of the child. The
5 rights of the custodial parent may be held solely or shared and may be subject
6 to the court-ordered right of the other parent to have contact with the child.

7 (4) “Interested person” means:

8 (A) a person who is not a party and with whom the child has resided
9 within the 60-day period preceding the filing of the petition; or

10 (B) the Commissioner for Children and Families or designee if the
11 Department has an open case involving the child.

12 (5) “Nonconsensual guardianship” means a guardianship with respect to
13 which:

14 (A) a parent is opposed to establishing the guardianship; or

15 (B) a parent seeks to terminate a guardianship that the parent
16 previously agreed to establish.

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

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

1 (8) “Parent-child contact” means the right of a parent to have visitation
2 with the child by court order.

3 (9) “Party” includes the child, the custodial parent, the noncustodial
4 parent, and the proposed guardian.

5 § 2623. PETITION FOR GUARDIANSHIP OF MINOR; VENUE; SERVICE

6 (a) A proposed guardian may file a petition with the Probate Division of
7 the Superior Court to be appointed as the guardian for a child. The petition
8 shall state:

9 (1) the names and addresses of the parents, the child, and the proposed
10 guardian;

11 (2) the proposed guardian’s relationship to the child;

12 (3) the names of all members of the proposed guardian’s household and
13 each person’s relationship to the proposed guardian and the child;

14 (4) that the child is alleged to be a child in need of guardianship;

15 (5) specific reasons with supporting facts why guardianship is sought;

16 (6) whether the parties agree that the child is in need of guardianship
17 and that the proposed guardian should be appointed as guardian;

18 (7) the child’s current school and grade level;

19 (8) if the guardian intends to change the child’s current school, the name
20 and location of the proposed new school and the estimated date when the child
21 would enroll;

1 (9) the places where the child has lived during the last five years, and
2 the names and present addresses of the persons with whom the child has lived
3 during that period;

4 (10) any prior or current court proceedings, child support matters, or
5 parent-child contact orders involving the child; and

6 (11) any previous involvement with the child by the Department for
7 Children and Families.

8 (b) A petition for guardianship of a child under this section shall be filed:

9 (1) if the parties consent, in the Probate Division of the county where
10 the child resides or the proposed guardian resides;

11 (2) if the parties do not consent and the child is not subject to an existing
12 guardianship, in the Probate Division of the county where the child has had his
13 or her primary residence for the previous six months;

14 (3) if the parties do not consent and the child is subject to an existing
15 guardianship, in the Probate Division of the county where the guardian resides.

16 (c)(1) A petition for guardianship of a child under this section shall be
17 served on all parties and interested persons as provided by Rule 4 of the
18 Vermont Rules of Probate Procedure.

19 (2)(A) The Probate Division may wave the notice requirements of
20 subdivision (1) of this subsection (c) with respect to a parent if the Court finds
21 that:

1 (i) the identity of the parent is unknown; or

2 (ii) the location of the parent is unknown and cannot be
3 determined with reasonable effort.

4 (B) After a guardianship for a child is created, the Probate Division
5 shall reopen the proceeding at the request of a parent of the child who did not
6 receive notice of the proceeding as required by this subsection.

7 § 2624. JURISDICTION; TRANSFER TO FAMILY DIVISION

8 (a) Except as provided in subsection (b) of this section, the Probate
9 Division shall have exclusive jurisdiction over proceedings under this article
10 involving guardianship of minors.

11 (b)(1) A minor guardianship proceeding brought in the Probate Division
12 under this article shall be transferred to the Family Division if there is an open
13 proceeding in the Family Division involving custody of the same child who is
14 the subject of the guardianship proceeding in the Probate Division.

15 (2)(A) When a minor guardianship proceeding is transferred from the
16 Probate Division to the Family Division pursuant to subdivision (1) of this
17 subsection (b), the Probate judge and a Superior judge assigned to the Family
18 Division shall confer regarding jurisdiction over the proceeding. Except as
19 provided in subdivision (B) of this subdivision (2), all communications
20 between the Probate judge and the Superior judge under this subsection shall
21 be on the record. Whenever possible, a party shall be provided notice of the

1 communication and an opportunity to be present when it occurs. A party who
2 is unable to be present for the communication shall be provided access to the
3 record.

4 (B) It shall not be necessary to inform the parties about or make a
5 record of a communication between the Probate judge and the Superior judge
6 under this subsection (b) if the communication involves scheduling, calendars,
7 court records, or other similar administrative matters.

8 § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

9 (a) The Probate Division shall schedule a hearing upon the filing of the
10 petition and shall provide notice of the hearing to all parties and interested
11 persons who were provided notice under subdivision 2623(c)(1) of this title.

12 (b) The child shall attend the hearing if he or she is 14 years of age or
13 older. The child may attend the hearing if he or she is less than 14 years
14 of age.

15 (c) The Court shall appoint counsel for the child if the child will be called
16 as a witness. In all other cases, the Court may appoint counsel for the child.

17 (d) The Court may appoint a guardian ad litem for the child on motion of a
18 party or on the Court's own motion.

19 (e)(1) The Court may grant an emergency guardianship petition filed
20 ex parte by the proposed guardian if the Court finds that:

21 (A) both parents are deceased or medically incapacitated; and

1 (B) the best interests of the child require that a guardian be appointed
2 without delay and before a hearing is held.

3 (2) If the Court grants an emergency guardianship petition pursuant to
4 subdivision (1) of this subsection (e), it shall schedule a hearing on the petition
5 as soon as practicable and in no event more than 72 hours after the petition is
6 filed.

7 § 2626. CONSENSUAL GUARDIANSHIP

8 (a) If the petition requests a consensual guardianship, the petition shall
9 include an agreement between the parties with respect to the guardianship.

10 The agreement shall address:

11 (1) the guardian's responsibilities;

12 (2) the duration of the guardianship and the parties' expectations
13 regarding the duration;

14 (3) parent-child contact and parental involvement in decision
15 making; and

16 (4) that the parents understand the nature of the guardianship and
17 knowingly and voluntarily waive their rights.

18 (b) Vermont Rule of Probate Procedure 43 (relaxed rules of evidence in
19 probate proceedings) shall apply to hearings under this section.

20 (c) The Court shall grant the petition if it finds after the hearing by clear
21 and convincing evidence that:

1 (1) the child is a child in need of guardianship as defined in subdivision
2 2622(2)(A) of this title;

3 (2) the child's parents had notice of the proceeding and knowingly and
4 voluntarily waived their rights;

5 (3) the agreement is voluntary;

6 (4) the proposed guardian is suitable; and

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

8 (d) If the Court grants the petition, it shall approve the agreement at the
9 hearing and issue an order establishing a guardianship under section 2628 of
10 this title.

11 § 2627. NONCONSENSUAL GUARDIANSHIP

12 (a) If the petition requests a nonconsensual guardianship, the burden shall
13 be on the proposed guardian to establish by clear and convincing evidence that
14 the child is a child in need of guardianship as defined in subdivision
15 2622(2)(B) of this title.

16 (b) The Vermont Rules of Evidence shall apply to a hearing under this
17 section.

18 (c) The Court shall grant the petition if it finds after the hearing by clear
19 and convincing evidence that the child is a child in need of guardianship as
20 defined in subdivision 2622(2)(B) of this title.

1 (d) If the Court grants the petition, it shall issue an order establishing a
2 guardianship under section 2628 of this title.

3 § 2628. GUARDIANSHIP ORDER

4 (a) If the Court grants a petition for guardianship of a child under
5 subsection 2626(c) or 2627(d) of this title, the Court shall enter an order
6 establishing a guardianship and naming the proposed guardian as the child's
7 guardian.

8 (b) A guardianship order issued under this section shall include provisions
9 addressing the following matters:

10 (1) the goal of the guardianship;

11 (2) the powers and duties of the guardian consistent with section 2629 of
12 this title;

13 (3) a family plan that addresses:

14 (A) the family members' agreement about the duration of the
15 guardianship;

16 (B) how the family will know when the child can return to the care of
17 his or her parents;

18 (C) specifics about when, where, and how often the child will have
19 contact with his or her parents and siblings and other people who are important
20 to the child;

1 (D) how the guardian will keep the parents informed about and
2 involved in major decisions affecting the child; and

3 (E) ensuring that the parents and the guardian have contact
4 information for support and service providers;

5 (4) parent-child contact consistent with section 2630 of this title;

6 (5) the duration of the guardianship; and

7 (6) the process for reviewing the order consistent with section 2631 of
8 this title.

9 § 2629. POWERS AND DUTIES OF GUARDIAN

10 (a) The Court shall specify the powers and duties of the guardian in the
11 guardianship order.

12 (b) The duties of a financial guardian shall include the duty to:

13 (1) receive funds paid for the support of the child, including child
14 support and government benefits;

15 (2) apply any of the child's available money to meet the child's current
16 needs;

17 (3) conserve for the child's future needs any money the child has that is
18 not required to meet the child's current needs; and

19 (4) file an annual status report to the Probate Division accounting for the
20 funds received and spent on behalf of the child.

1 (c) The duties of a custodial guardian shall include the duty to:

2 (1) take custody of the child and establish his or her place of residence;

3 (2) make decisions related to the child's education;

4 (3) make decisions related to the child's physical and mental health,

5 including consent to medical treatment and medication;

6 (4) make decisions concerning the child's contact with other persons,

7 including the child's parents, provided that the guardian shall comply with all

8 provisions of the guardianship order regarding parent-child contact; and

9 (5) file an annual status report to the Probate Division, with a copy to

10 each parent at his or her last known address, including the following

11 information:

12 (A) the current address of the child and each parent;

13 (B) the child's health care and health needs, including any medical

14 and mental health services the child received;

15 (C) the child's educational needs and progress, including the name of

16 the child's school, day care, or other early education program, the child's grade

17 level, and the child's educational achievements;

18 (D) contact between the child and his or her parents, including the

19 frequency and duration of the contact and whether it was supervised;

20 (E) how the parents have been involved in decision making for the

21 child;

1 (F) how the guardian has carried out his or her responsibilities and
2 duties, including efforts made to include the child's parents in the child's life;

3 (G) the child's strengths, challenges, and any other areas of
4 concern; and

5 (H) recommendations with supporting reasons as to whether the
6 guardianship order should be continued, modified, or terminated.

7 § 2630. PARENT-CHILD CONTACT

8 (a) The guardian should:

9 (1) permit the child to have contact of reasonable duration and
10 frequency with the child's parents and siblings; and

11 (2) abide by and ensure the child is available for contact with a
12 noncustodial parent pursuant to an existing parent-child contact order issued by
13 the Family Division.

14 (b) If the proposed guardian and the parents are unable to agree on a
15 schedule for parent-child contact, either party may file a motion requesting the
16 Probate Division to establish a parent-child contact schedule.

17 § 2631. REPORTS; REVIEW HEARING

18 (a) The guardian shall file an annual status report to the Probate Division
19 pursuant to subdivisions 2629(b)(4) and 2629(c)(5) of this title, and shall
20 provide copies of the report to each parent at his or her last known address.

1 The Court may order that a status report be filed more frequently than once
2 per year.

3 (b) The Probate Division may set a hearing to review a report required by
4 subsection (a) of this section or to determine progress with the family plan
5 required by subdivision 2628(b)(3) of this title. The Court shall provide notice
6 of the hearing to all parties and interested persons.

7 § 2632. TERMINATION

8 (a) A parent may file a motion to terminate a guardianship at any time. The
9 motion shall be filed with the Probate Division that issued the guardianship
10 order and served on all parties and interested persons.

11 (b)(1) If the motion to terminate is made with respect to a consensual
12 guardianship established under section 2626 of this title, the Court shall grant
13 the motion and terminate the guardianship unless the guardian files a motion to
14 continue the guardianship within 30 days after the motion to terminate is
15 served.

16 (2) If the guardian files a motion to continue the guardianship, the
17 matter shall be set for hearing and treated as a nonconsensual guardianship
18 proceeding under section 2627 of this title. The parent shall not be required to
19 show a change in circumstances, and the Court shall not grant the motion to
20 continue the guardianship unless the guardian establishes by clear and

1 convincing evidence that the minor is a child in need of guardianship under
2 subdivision 2622(2)(B) of this title.

3 (3) If the Court grants the motion to continue, it shall issue an order
4 establishing a guardianship under section 2628 of this title.

5 (c)(1) If the motion to terminate the guardianship is made with respect to a
6 nonconsensual guardianship established under section 2627 or subdivision
7 2632(b)(3) of this title, the Court shall dismiss the motion unless the parent
8 establishes that a change in circumstances has occurred since the previous
9 guardianship order was issued.

10 (2) If the Court finds that a change in circumstances has occurred since
11 the previous guardianship order was issued, the Court shall grant the motion to
12 terminate the guardianship unless the guardian establishes by clear and
13 convincing evidence that the minor is a child in need of guardianship under
14 subdivision 2622(2)(B) of this title.

15 § 2633. APPEALS

16 Notwithstanding 12 V.S.A. § 2551 or 2553, the Vermont Supreme Court
17 shall have appellate jurisdiction over orders of the Probate Division issued
18 under this article.

1 § 2634. DEPARTMENT FOR CHILDREN AND FAMILIES POLICY

2 The Department for Children and Families shall adopt a policy defining its
3 role with respect to families who establish a guardianship under this article.

4 The policy shall be consistent with the following principles:

5 (1) When the Family Services Division (FSD) is conducting an
6 investigation or assessment related to child safety and the child cannot remain
7 safely at home, it is appropriate to work with the family on an alternative living
8 arrangement for the child with a relative only if the situation is anticipated to
9 resolve within 30 days. If the situation is not expected to resolve within that
10 period, a child in need of supervision (CHINS) petition should be sought.

11 (2) When it is necessary for a child to be in the care of an alternative
12 caretaker for an extended period in order to address identified dangers, it is not
13 appropriate for the social worker to encourage or recommend that the family
14 address those dangers by establishing a minor guardianship in the Probate
15 Division. However, there are times when the family may independently decide
16 to file a petition for minor guardianship. The social worker shall make it clear
17 that whether to file the petition is the family's choice.

18 (3) In response to a request from the Probate judge, the FSD social
19 worker shall attend a Court hearing and provide information relevant to the
20 proceeding.

