

SENATE PROPOSAL OF AMENDMENT

H. 581

An act relating to guardianship of minors

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

Article 1. Guardians of Minors

§ 2621. POLICY; PURPOSES

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

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

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

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

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

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

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

§ 2622. DEFINITIONS

As used in this article:

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

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

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

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

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

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

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

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

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

(B) A child who is:

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

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

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

(3) “Custodial parent” means a parent who, at the time of the commencement of the guardianship 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. If physical parental rights and responsibilities are shared pursuant to court order, both parents shall be considered “custodial parents” for purposes of this subdivision.

(4) “Nonconsensual guardianship” means a guardianship with respect to which:

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

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

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

(6) “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.

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

§ 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE

(a) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

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

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

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

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

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

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

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

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

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

(10) any prior or current court proceedings, child support matters, or parent-child contact orders involving the child.

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

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

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

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

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

§ 2624. JURISDICTION; TRANSFER TO FAMILY DIVISION

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

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

(B) A minor guardianship proceeding brought in the Probate Division under this article may be transferred to the Family Division on motion of a party or on the court's own motion if any of the parties to the probate proceeding was a party to a closed divorce proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(2)(A) When a minor guardianship proceeding is transferred from the Probate Division to the Family Division pursuant to subdivision (1) of this subsection (b), the Probate judge and a Superior judge assigned to the Family Division shall confer regarding jurisdiction over the proceeding. Except as provided in subdivision (B) of this subdivision (2), all communications concerning jurisdiction between the Probate judge and the Superior judge under this subsection shall be on the record. Whenever possible, a party shall be provided notice of the communication and an opportunity to be present when it occurs. A party who is unable to be present for the communication shall be provided access to the record.

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

(C) After the Superior judge and Probate judge confer under subdivision (2)(A) of this subsection (b), the Superior judge may:

(i) consolidate the minor guardianship case with the pending matter in the Family Division and determine whether a guardianship should be established under this article; or

(ii) transfer the guardianship petition back to the Probate Division for further proceedings after the pending matter in the Family Division has been adjudicated.

(D) If a guardianship is established by the Family Division pursuant to subdivision (2)(C)(i) of this subsection, the guardianship case shall be

transferred back to the Probate Division for ongoing monitoring pursuant to section 2631 of this title.

§ 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

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

(b) The child shall attend the hearing if he or she is 14 years of age or older unless the child's presence is excused by the Court for good cause. The child may attend the hearing if he or she is less than 14 years of age.

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

(d)(1) The child may be called as a witness only if the Court finds after hearing that:

(A) the child's testimony is necessary to assist the Court in determining the issue before it;

(B) the probative value of the child's testimony outweighs the potential detriment to the child; and

(C) the evidence sought is not reasonably available by any other means.

(2) The examination of a child called as a witness may be conducted by the Court in chambers in the presence of such other persons as the Court may specify and shall be recorded.

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

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

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

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

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

§ 2626. CONSENSUAL GUARDIANSHIP

(a) If the petition requests a consensual guardianship, the petition shall include a consent signed by the custodial parent or parents verifying that the parent or parents understand the nature of the guardianship and knowingly and

voluntarily consent to the guardianship. The consent required by this subsection shall be on a form approved by the Court Administrator.

(b) On or before the date of the hearing, the parties shall file an agreement between the proposed guardian and the parents. The agreement shall address:

- (1) the responsibilities of the guardian;
- (2) the responsibilities of the parents;
- (3) the expected duration of the guardianship, if known; and
- (4) parent-child contact and parental involvement in decision making.

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

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

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

(2) the child's parents had notice of the proceeding and knowingly and voluntarily consented to the guardianship;

(3) the agreement is voluntary;

(4) the proposed guardian is suitable; and

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

(e) If the Court grants the petition, it shall approve the agreement at the hearing and issue an order establishing a guardianship under section 2628 of this title. The order shall be consistent with the terms of the parties' agreement unless the Court finds that the agreement was not reached voluntarily or is not in the best interests of the child.

§ 2627. NONCONSENSUAL GUARDIANSHIP

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

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

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

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

§ 2628. GUARDIANSHIP ORDER

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

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

(1) the powers and duties of the guardian consistent with section 2629 of this title;

(2) the expected duration of the guardianship, if known;

(3) a family plan on a form approved by the Court Administrator that:

(A) in a consensual case is consistent with the parties' agreement; or

(B) in a nonconsensual case includes, at a minimum, provisions that address parent-child contact consistent with section 2630 of this title; and

(4) the process for reviewing the order consistent with section 2631 of this title.

§ 2629. POWERS AND DUTIES OF GUARDIAN

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

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

(1) take custody of the child and establish his or her place of residence, provided that a guardian shall not change the residence of the child to a location outside the State of Vermont without prior authorization by the Court following notice to the parties and an opportunity for hearing;

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

(3) make decisions related to the child's physical and mental health, including consent to medical treatment and medication;

(4) make decisions concerning the child's contact with others, provided that the guardian shall comply with all provisions of the guardianship order regarding parent-child contact and contact with siblings;

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

(6) file an annual status report to the Probate Division, with a copy to each parent at his or her last known address, including the following information:

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

(B) the child's health care and health needs, including any medical and mental health services the child received;

(C) the child's educational needs and progress, including the name of the child's school, day care, or other early education program, the child's grade level, and the child's educational achievements;

(D) contact between the child and his or her parents, including the frequency and duration of the contact and whether it was supervised;

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

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

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

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

§ 2630. PARENT-CHILD CONTACT

(a) The Court shall order parent-child contact unless it finds that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the child. Except for good cause shown, the order shall be consistent with any existing parent-child contact order. The order should permit the child to have contact of reasonable duration and frequency with the child's siblings, if appropriate.

(b) The Court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the child's best interests.

(c) The Court may modify the parent-child contact order upon motion of a party or upon the Court's own motion, or if the parties stipulate to the modification.

§ 2631. REPORTS; REVIEW HEARING

(a) The guardian shall file an annual status report to the Probate Division pursuant to subdivisions 2629(b)(4) and 2629(c)(5) of this title, and shall provide copies of the report to each parent at his or her last known address. The Court may order that a status report be filed more frequently than once per year.

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

§ 2632. TERMINATION

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

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

(2) If the guardian files a motion to continue the guardianship, the matter shall be set for hearing and treated as a nonconsensual guardianship proceeding under section 2627 of this title. The parent shall not be required to show a change in circumstances, and the Court shall not grant the motion to continue the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title.

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

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

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

§ 2633. APPEALS

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

§ 2634. DEPARTMENT FOR CHILDREN AND FAMILIES POLICY

The Department for Children and Families shall adopt a policy defining its role with respect to families who establish a guardianship under this article. The policy shall be consistent with the following principles:

(1) The Family Services Division shall maintain a policy ensuring that when a child must be removed from his or her home to ensure the child's safety, the Division will pursue a CHINS procedure promptly if there are sufficient grounds under 33 V.S.A. § 5102.

(2) When the Family Services Division is conducting an investigation or assessment related to child safety and the child may be a child in need of care and supervision as defined in 33 V.S.A. § 5102(3), the Division shall not make any recommendation regarding whether a family should pursue a minor guardianship. The staff may provide referrals to community-based resources for information regarding minor guardianships.

(3) In response to a request from the Probate judge, the Family Services Division social worker shall attend a minor guardianship hearing and provide information relevant to the proceeding.

(4) If a minor guardianship is established during the time that the Family Services Division has an open case involving the minor, the social worker shall inform the guardian and the parents about services and supports available to them in the community and shall close the case within a reasonable time unless a specific safety risk is identified.

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

Article 1A. Financial Guardians of Minors

§ 2659. FINANCIAL GUARDIANSHIP; MINORS

(a) The Probate Division may appoint a financial guardian for a minor pursuant to this section if the minor is the owner of real or personal property. A financial guardian appointed pursuant to this section shall have the care and management of the estate of the minor but shall not have custody of the minor.

(b)(1) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

(A) the names and addresses of the parents, the child, and the proposed guardian;

(B) the proposed guardian's relationship to the child; and

(C) any real and personal property owned by the minor.

(2) A petition for financial guardianship of a minor under this section shall be served on all parties and interested persons as provided by Rule 4 of the Vermont Rules of Probate Procedure.

(c) The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties.

(d) If the Court grants the petition for financial guardianship of the minor, the Court shall enter an order establishing a financial guardianship, naming the proposed guardian as the child's financial guardian, and specifying the powers and duties of the guardian.

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

(1) pursue, receive, and manage any property right of the minor's, including inheritances, insurance benefits, litigation proceeds, or any other real or personal property, provided the benefits or property shall not be expended without prior court approval;

(2) deposit any cash resources of the minor in accounts established for the guardianship, provided the cash resources of the minor shall not be comingled with the guardian's assets;

(3) responsibly invest and re-invest the cash resources of the minor;

(4) obtain court approval for expenditures of funds to meet extraordinary needs of the minor which cannot be met with other family resources;

(5) establish special needs trusts with court approval; and

(6) file an annual financial accounting with the Probate Division stating the funds received, managed, and spent on behalf of the minor.

Sec. 3. 14 V.S.A. chapter 111, subchapter 2, article 1A is redesignated as article 1B to read:

Article 1B. Permanent Guardianship for Minors

Sec. 4. 4 V.S.A. § 22 is amended to read:

§ 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL OFFICERS AND RETIRED JUDICIAL OFFICERS

(a)(1) The ~~chief justice~~ Chief Justice may appoint and assign a retired ~~justice~~ Justice or judge with his or her consent or a ~~superior~~ Superior or Probate judge to a special assignment on the ~~supreme court~~ Supreme Court. The ~~chief justice~~ Chief Justice may appoint, and the ~~administrative judge~~ Administrative Judge shall assign, an active or retired ~~justice~~ Justice or a retired judge, with his or her consent, to any special assignment in the ~~superior court~~ Superior Court or the ~~judicial bureau~~ Judicial Bureau.

(2) The administrative judge shall Administrative Judge may appoint and assign a judge to any special assignment in the superior court Superior Court. As used in this subdivision, a judge shall include a Superior judge, a Probate judge, a Family Division magistrate, or a judicial hearing officer.

(b) The ~~administrative judge~~ Administrative Judge may appoint and assign a member of the Vermont ~~bar~~ Bar residing within the ~~state~~ State of Vermont to serve temporarily as:

(1) an acting judge in ~~superior court~~ Superior Court;

(2) an acting magistrate; ~~or~~

(3) an acting Probate judge; or

(4) an acting hearing officer to hear cases in the judicial bureau Judicial Bureau.

* * *

Sec. 5. 4 V.S.A. § 455 is amended to read:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

(a) Any guardianship action filed in the ~~probate division of the superior court~~ Probate Division of the Superior Court pursuant to 14 V.S.A. chapter 111, subchapter 2, article 1 of Title 14 and any adoption action filed in the ~~probate division~~ Probate Division pursuant to Title 15A may be transferred to the ~~family division of the superior court as provided in this section~~ Family Division of the Superior Court.

(b) ~~The family division~~ In an adoption action filed in the Probate Division pursuant to Title 15A, the Family Division shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in the family division Family Division that transfer of the probate action to the ~~family division~~ Family Division would expedite resolution of the issues or would best serve the interests of justice.

Sec. 6. REPEAL

14 V.S.A. §§ 2645 (appointment of guardian), 2651 (when minor refuses to choose), and 2653 (extent of guardian's control) are repealed.

Sec. 7. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES

* * *

(c) Prosecutions for any of the following offenses alleged to have been committed against a child under 18 years of age shall be commenced within 40 years after the commission of the offense, and not after:

- (1) sexual assault;
- (2) lewd and lascivious conduct;
- (3) sexual exploitation of a minor as defined in subsection 3258(c) of this title;~~and~~
- (4) lewd or lascivious conduct with a child; and
- (5) manslaughter.

* * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on September, 1, 2014.