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H.581

Introduced by Representative Haas of Rochester

Referred to Committee on

Date:

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

Statement of purpose of bill as introduced: This bill proposes to revise the law concerning guardianship of minors as recommended by the Minor Guardianship Study Committee.

An act relating to guardianship of minors

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

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.

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 waive 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 **custodial** minor guardianship proceeding brought in the Probate

12 Division under this article shall be transferred to the Family Division if there is

13 an open proceeding in the Family Division involving custody of the same child

14 who is 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 (C) Following the conference between the Probate judge and  
9 Superior judge, the Superior judge shall decide whether the family division  
10 shall be the court deciding the minor guardianship issues or, in the alternative,  
11 whether the guardianship case shall be transferred back to the probate division  
12 for decisions concerning the minor guardianship issues. In those cases where  
13 the family division retains decision-making authority over the minor  
14 guardianship issues, the case shall be transferred back to the probate division  
15 once the guardianship issues have been finally decided and the case is then  
16 ready for ongoing monitoring.

17 § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

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



1        (b) The child shall attend the hearing if he or she is 14 years of age or  
2        older. The child may attend the hearing if he or she is less than 14 years  
3        of age. In its discretion, the court may excuse any child from attending the  
4        hearing if, after the court communicates with counsel for the child, the  
5        guardian ad litem, the child, or the parties, the it appears to the court that it is  
6        in the best interests of the child to not attend the hearing.

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

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

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

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

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

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

20       § 2626. CONSENSUAL GUARDIANSHIP

1           (a) If the petition requests a consensual guardianship, the petition shall  
2           include an agreement between the parties with respect to the guardianship. **The**  
3           **court, for good cause shown, may extend the time for filing the agreement**  
4           **between the parties.** The agreement shall address:

5                   (1) the guardian's responsibilities;

6                   (2) the duration of the guardianship and the parties' expectations  
7           regarding the duration;

8                   (3) parent-child contact and parental involvement in decision  
9           making; and

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

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

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

16                   (1) the child is a child in need of guardianship as defined in subdivision  
17           2622(2)(A) of this title;

18                   (2) the child's parents had notice of the proceeding **to the extent**  
19           **required by Sec. 2623** and knowingly and voluntarily waived their rights;

20                   (3) the agreement is voluntary;

21                   (4) the proposed guardian is suitable; and

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

2           (d) If the Court grants the petition, it **[shall] may in its discretion** approve  
3 the agreement at the hearing and issue an order establishing a guardianship  
4 under section 2628 of this title.

5           § 2627. NONCONSENSUAL GUARDIANSHIP

6           (a) If the petition requests a nonconsensual guardianship, the burden shall  
7 be on the proposed guardian to establish by clear and convincing evidence that  
8 the child is a child in need of guardianship as defined in subdivision  
9 2622(2)(B) of this title.

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

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

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

17           § 2628. GUARDIANSHIP ORDER

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

- 1        (b) A guardianship order issued under this section shall include provisions  
2        addressing the following matters:
- 3            (1) the goal of the guardianship;  
4            (2) the powers and duties of the guardian consistent with section 2629 of  
5        this title;  
6            (3) a family plan that addresses:  
7            (A) the family members' agreement about the duration of the  
8        guardianship;  
9            (B) how the family will know when the child can return to the care of  
10       his or her parents;  
11           (C) specifics about when, where, and how often the child will have  
12       contact with his or her parents and siblings and other people who are important  
13       to the child;  
14           (D) how the guardian will keep the parents informed about and  
15       involved in major decisions affecting the child; and  
16           (E) ensuring that the parents and the guardian have contact  
17       information for support and service providers;  
18           (4) parent-child contact consistent with section 2630 of this title;  
19           (5) the duration of the guardianship; and  
20           (6) the process for reviewing the order consistent with section 2631 of  
21       this title.

1     § 2629. POWERS AND DUTIES OF GUARDIAN

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

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

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

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

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

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

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

14                (1) take custody of the child and establish his or her place of residence,  
15    provided however that a guardian may not change the residence of the minor  
16    child to a location outside the State of Vermont without prior authorization by  
17    the court following notice to the parties and opportunity for hearing;

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

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

1           (4) make decisions concerning the child's contact with other persons,  
2           including the child's parents, provided that the guardian shall comply with all  
3           provisions of the guardianship order regarding parent-child contact; and

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

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

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

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

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

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

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

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

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

3           § 2630. PARENT-CHILD CONTACT

4           (a) The guardian should:

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

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

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

13           § 2631. REPORTS; REVIEW HEARING

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

19           (b) The Probate Division may set a hearing to review a report required by  
20           subsection (a) of this section or to determine progress with the family plan

1 required by subdivision 2628(b)(3) of this title. The Court shall provide notice  
2 of the hearing to all parties and interested persons.

3 § 2632. TERMINATION

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

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

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

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



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

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

11       § 2633. APPEALS

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

15       § 2634. DEPARTMENT FOR CHILDREN AND FAMILIES POLICY

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

18       The policy shall be consistent with the following principles:

19       (1) When the Family Services Division (FSD) is conducting an  
20       investigation or assessment related to child safety and the child cannot remain  
21       safely at home, it is appropriate to work with the family on an alternative living

1 arrangement for the child with a relative only if the situation is anticipated to  
2 resolve within 30 days. If the situation is not expected to resolve within that  
3 period, a child in need of supervision (CHINS) petition should be sought.

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

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

14 (4) FSD has neither the statutory responsibility nor the staff capacity to  
15 provide assessment, case planning, or case monitoring services for minor  
16 guardianship cases.

17 (5) If a minor guardianship is established during the time that FSD has  
18 an open case involving the minor, the social worker shall review the case with  
19 his or her supervisor, focusing on any unresolved dangers. If safety has been  
20 achieved for the minor, the worker should plan for timely closure of the case.  
21 Before the case is closed, the worker should offer information to the guardian

1 and the parents about services and supports available to them in the  
2 community. Absent a new report concerning the minor, the case shall be  
3 closed within three months.

4 \* \* \*

5 Sec. 2. REPEAL

6 14 V.S.A. § 2645 (appointment of guardian) and 14 V.S.A. Sec. 2651  
7 (when minor refuses to choose) [is] are repealed.

8 Sec. 3. EFFECTIVE DATE

9 This act shall take effect on July 1, 2014.

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1           **THIS PROPOSED SECTION INCORPORATES THE MINORITY VIEW**  
2           **SET FORTH ON PAGE 21 OF THE REPORT**

3           Sec. 2625(e)(1) The Court may grant an emergency guardianship petition  
4           filed ex parte by the proposed guardian if the Court finds that **the best**  
5           **interests of the child require that a guardian be appointed without delay**  
6           **and before a hearing is held and:**

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

8                     (B) the best interests of the child require that a guardian be appointed  
9           without delay and before a hearing is held] or,

10                    (B) (1) the child is not in the physical custody of either of the  
11           parents;

12                    (2) the child has resided with the petitioner for at least six  
13           months continuously before the guardianship petition;

14                    (3) the petitioner has been acting as the guardian in fact for the  
15           child; and

16                    (4) at least one parent consents to the emergency guardianship or  
17           there is a finding by the court that the child's safety is in danger.

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

1           **(3) A petition for emergency guardianship shall be filed with all the**  
2           **information set forth in Sec. 2653 and a sworn affidavit setting forth the**  
3           **grounds for the emergency guardianship.**

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