

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 581 entitled
3 “An act relating to guardianship of minors” respectfully reports that it has
4 considered the same and recommends that the bill be amended by striking out
5 all after the enacting clause and inserting in lieu thereof the following:

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

7 Article 1. Guardians of Minors

8 § 2621. POLICY; PURPOSES

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

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

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

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

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

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

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

13 § 2622. DEFINITIONS

14 As used in this article:

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

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

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

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

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

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

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

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

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

9 (B) A child who is:

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

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

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

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

19 (4) “Interested person” means:

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

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

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

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

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

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

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

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

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

17 § 2623. PETITION FOR GUARDIANSHIP OF MINOR; VENUE; SERVICE

18 (a) A ~~proposed guardian~~ parent or a person interested in the welfare of a
19 minor may file a petition with the Probate Division of the Superior Court to be
20 appointed as the guardian for a child. The petition shall state:

- 1 (1) the names and addresses of the parents, the child, and the proposed
- 2 guardian;
- 3 (2) the proposed guardian’s relationship to the child;
- 4 (3) the names of all members of the proposed guardian’s household and
- 5 each person’s relationship to the proposed guardian and the child;
- 6 (4) that the child is alleged to be a child in need of guardianship;
- 7 (5) specific reasons with supporting facts why guardianship is sought;
- 8 (6) whether the parties agree that the child is in need of guardianship
- 9 and that the proposed guardian should be appointed as guardian;
- 10 (7) the child’s current school and grade level;
- 11 (8) if the proposed guardian intends to change the child’s current school,
- 12 the name and location of the proposed new school and the estimated date when
- 13 the child would enroll;
- 14 (9) the places where the child has lived during the last five years, and
- 15 the names and present addresses of the persons with whom the child has lived
- 16 during that period;
- 17 (10) any prior or current court proceedings, child support matters, or
- 18 parent-child contact orders involving the child; and
- 19 (11) any previous involvement with the child by the Department for
- 20 Children and Families.
- 21 (b) A petition for guardianship of a child under this section shall be filed:

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

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

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

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

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

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

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

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

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1 § 2624. JURISDICTION; TRANSFER TO FAMILY DIVISION

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

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

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

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

1 be on the record. Whenever possible, a party shall be provided notice of the
2 communication and an opportunity to be present when it occurs. A party who
3 is unable to be present for the communication shall be provided access to the
4 record.

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

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

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

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

17 (D) If a guardianship is established by the Family Division pursuant
18 to subdivision (2)(C)(i) of this subsection, the guardianship case shall be
19 transferred back to the Probate Division for ongoing monitoring pursuant to
20 section 2631 of this title.

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1 § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

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

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

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

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

12 (1) the child's testimony is necessary to assist the court in determining
13 the issue before it;

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

16 (3) the evidence sought is not reasonably available by any other
17 means.

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

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

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

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

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

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

12 § 2626. CONSENSUAL GUARDIANSHIP

13 (a) If the petition requests a consensual guardianship, the petition shall
14 include a consent signed by the custodial parent or parents verifying that the
15 parent or parents understand the nature of the guardianship, knowingly waive
16 their parental rights, and voluntarily consent to the guardianship. The consent
17 required by this subsection shall be on a form approved by the Court
18 Administrator.

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

- 1 (1) the guardian’s responsibilities;
2 (2) the expected duration of the guardianship; and
3 (3) parent-child contact and parental involvement in decision making.

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

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

8 (1) the child is a child in need of guardianship as defined in subdivision
9 2622(2)(A) of this title;

10 (2) the child’s parents had notice of the proceeding and knowingly and
11 voluntarily waived their rights;

12 (3) the agreement is voluntary;

13 (4) the proposed guardian is suitable; and

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

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

20 § 2627. NONCONSENSUAL GUARDIANSHIP

1 (a) If the petition requests a nonconsensual guardianship, the **burden shall**
2 **be on the proposed guardian to establish** by clear and convincing evidence that
3 the child is a child in need of guardianship as defined in subdivision
4 2622(2)(B) of this title.

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

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

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

12 § 2628. GUARDIANSHIP ORDER

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

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

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

21 (2) the expected duration of the guardianship;

1 (3) a family plan that:

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

3 (B) in a nonconsensual case includes at a minimum provisions that

4 address parent-child contact consistent with section 2630 of this title; and

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

7 § 2629. POWERS AND DUTIES OF GUARDIAN

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

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

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

13 (2) apply any of the child's available money to meet the child's current
14 needs, provided that money received as an inheritance or as the result of a
15 lawsuit shall not be expended without prior court approval;

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

18 (4) file an annual status report to the Probate Division accounting for the
19 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 provided that a guardian shall not change the residence of the child to a
4 location outside the State of Vermont without prior authorization by the court
5 following notice to the parties and an opportunity for hearing;

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

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

9 (4) make decisions concerning the child’s contact with other persons,
10 including the child’s parents, provided that the guardian shall comply with all
11 provisions of the guardianship order regarding parent-child contact; and

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

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

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

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

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

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

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

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

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

11 § 2630. PARENT-CHILD CONTACT

12 (a) The guardian should:

13 (1) permit the child to have contact of reasonable duration and
14 frequency with the child’s parents and siblings; and

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

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

21 § 2631. REPORTS; REVIEW HEARING

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

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

10 § 2632. TERMINATION

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

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

19 (2) If the guardian files a motion to continue the guardianship, the
20 matter shall be set for hearing and treated as a nonconsensual guardianship
21 proceeding under section 2627 of this title. The parent shall not be required to

1 show a change in circumstances, and the Court shall not grant the motion to
2 continue the guardianship unless the guardian establishes by clear and
3 convincing evidence that the minor is a child in need of guardianship under
4 subdivision 2622(2)(B) of this title.

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

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

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

17 § 2633. APPEALS

18 Notwithstanding 12 V.S.A. § 2551 or 2553, the Vermont Supreme Court
19 shall have appellate jurisdiction over orders of the Probate Division issued
20 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.

1 (Committee vote: _____)

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Representative [surname]

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FOR THE COMMITTEE