

H.98

An act relating to confirmatory adoptions and standby guardianships

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

Sec. 1. 15A V.S.A. § 1-114 is added to read:

§ 1-114. CONFIRMATORY ADOPTION FOR CHILDREN BORN  
THROUGH ASSISTED REPRODUCTION

(a) As used in this section:

(1) “Assisted reproduction” means a method of causing pregnancy other  
than sexual intercourse and includes:

(A) intrauterine, intracervical, or vaginal insemination;

(B) donation of gametes;

(C) donation of embryos;

(D) in vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(2) “Donor” means a person who contributes a gamete or gametes or an  
embryo or embryos to another person for assisted reproduction or gestation,  
whether or not for consideration. This term does not include:

(A) a person who gives birth to a child conceived by assisted  
reproduction except as otherwise provided in 15C V.S.A. chapter 8; or

(B) a parent under 15C V.S.A. chapter 7 or an intended parent under  
15C V.S.A. chapter 8.

1           (3) “Marriage” includes civil union and any legal relationship that  
2           provides substantially the same rights, benefits, and responsibilities as  
3           marriage and is recognized as valid in the state or jurisdiction in which it was  
4           entered.

5           (4) “Petitioners” means the persons filing a petition for adoption in  
6           accordance with this section.

7           (b) Whenever a child is born as a result of assisted reproduction and the  
8           person or persons who did not give birth are a parent pursuant to 15C V.S.A.  
9           § 703 or presumed parent pursuant to 15C V.S.A. § 401 and the parents seek to  
10           file a petition to confirm parentage through an adoption of the child, the court  
11           shall permit the parents to file a petition for adoption in accordance with this  
12           section.

13           (c) A complete petition shall comprise the following:

14           (1) the petition for adoption signed by all parents;

15           (2) a copy of the petitioners’ marriage certificate, if petitioners are  
16           married;

17           (3) a declaration signed by the parents explaining the circumstances of  
18           the child’s birth through assisted reproduction, attesting to their consent to  
19           assisted reproduction, and stating that there are no other persons with a claim  
20           to parentage of the child under Title 15C; and

21           (4) a certified copy of the child’s birth certificate.

1       (d) A complete petition for adoption, as described in subsection (c) of this  
2       section, shall serve as the petitioners' written consents to adoption and no  
3       additional consent or notice shall be required.

4       (e) If the petitioners conceived through assisted reproduction with donor  
5       gametes or donor embryos, the court shall not require notice of the adoption to  
6       the donor or consent to the adoption by the donor.

7       (f) Unless otherwise ordered by the court for good cause shown and  
8       supported by written findings of the court demonstrating good cause, for  
9       purposes of evaluating and granting a petition for adoption pursuant to this  
10       section, the court shall not require:

11           (1) an in-person hearing or appearance, although the court may require a  
12       remote hearing;

13           (2) an investigation or home study by, a notice to, or the approval of the  
14       Department for Children and Families;

15           (3) a criminal-record check;

16           (4) verification that the child is not registered with the federal register  
17       for missing children or the central register; or

18           (5) a minimum residency period in the home of the petitioners.

19       (g) The court shall grant the adoption under this section and issue an  
20       adoption decree promptly after the filing of a complete petition and upon  
21       finding that:

1           (1) for marital parents, the parent who gave birth and the spouse were  
2           married at the time of the child's birth and the child was born through assisted  
3           reproduction; or

4           (2) for nonmarital parents:

5           (A) the person who gave birth and the nonmarital parent consented to  
6           the assisted reproduction; and

7           (B) no other person has a claim to parentage pursuant to Title 15C or  
8           that any other person with a claim to parentage of the child who is required to  
9           be provided notice of, or who must consent to, the adoption has been notified  
10          or provided consent to the adoption.

11          (h) Unless notice has been waived or consent given for the adoption, a copy  
12          of the petition and notice of a proceeding under this section shall be served  
13          upon any person entitled to notice within 30 days after the petition is filed.  
14          The notice shall include the address and telephone number of the court where  
15          the petition is pending and a statement that the person served with the notice  
16          and petition shall file a written appearance in the proceeding within 20 days  
17          after service in order to participate in the proceeding and to receive further  
18          notice of the proceeding, including notice of the time and place of any hearing.  
19          Service of the notice and petition shall be made in a manner appropriate under  
20          the Vermont Rules of Probate Procedure unless the court otherwise directs.

1 Proof of service on each person entitled to receive notice shall be on file with  
2 the court before the court acts on the petition.

3 (i) A petition to adopt a child pursuant to this section shall not be denied on  
4 the basis that any of the petitioners' parentage is already presumed or legally  
5 recognized in Vermont.

6 (j) When parentage is presumed or legally recognized pursuant to  
7 15C V.S.A. § 201, the fact that a person did not petition for adoption pursuant  
8 to this section shall not be considered as evidence when two or more  
9 presumptions conflict, nor in determining the best interests of the child.

10 Sec. 2. 14 V.S.A. § 2622 is amended to read:

11 § 2622. DEFINITIONS

12 As used in this article:

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

16 (2) "Child in need of guardianship" means:

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

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

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

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

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

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

5 (vi) A custodial parent of the child is unavailable to care for the  
6 child because the parent has been subject to an adverse immigration action.

7 (vii) 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. If  
19 physical parental rights and responsibilities are shared pursuant to court order,  
20 both parents shall be considered "custodial parents" for purposes of this  
21 subdivision.

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

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

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

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

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

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

13          (8) “Standby guardianship” means a consensual guardianship agreement  
14          between the custodial parent and their chosen guardian that meets the  
15          requirements of section 2626a of this title, in which the custodial parent has  
16          been subject to an adverse immigration action that has rendered the parent  
17          unavailable to care for their child.

18          (9) “Adverse immigration action” means:

19                   (A) arrest or apprehension by any federal law enforcement officer for  
20          an alleged violation of federal immigration law;

1           (B) arrest, detention, or custody by the Department of Homeland  
2           Security, or a federal, state, or local agency authorized by or acting on behalf  
3           of the Department of Homeland Security, for an alleged violation of federal  
4           immigration law;

5           (C) departure from the United States under an order of removal,  
6           deportation, exclusion, voluntary departure, or expedited removal or a  
7           stipulation of voluntary departure;

8           (D) the denial, revocation, or delay of the issuance of a visa or  
9           transportation letter by the Department of State;

10          (E) the denial, revocation, or delay of the issuance of a parole  
11          document or reentry permit by the Department of Homeland Security; or

12          (F) the denial of admission or entry into the United States by the  
13          Department of Homeland Security or other local or state officer acting on  
14          behalf of the Department of Homeland Security.

15       Sec. 3. 14 V.S.A. § 2623 is amended to read:

16       § 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE

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

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

- 1 (2) the proposed guardian's relationship to the child;
- 2 (3) the names of all members of the proposed guardian's household and
- 3 each person's relationship to the proposed guardian and the child;
- 4 (4) that the child is alleged to be a child in need of guardianship;
- 5 (5) specific reasons with supporting facts why guardianship is sought;
- 6 (6) whether the parties agree that the child is in need of guardianship
- 7 and that the proposed guardian should be appointed as guardian;
- 8 (7) the child's current school and grade level;
- 9 (8) if the proposed guardian intends to change the child's current school,
- 10 the name and location of the proposed new school and the estimated date when
- 11 the child would enroll;
- 12 (9) the places where the child has lived during the last five years, and
- 13 the names and present addresses of the persons with whom the child has lived
- 14 during that period; ~~and~~
- 15 (10) any prior or current court proceedings, child support matters, or
- 16 parent-child contact orders involving the child;
- 17 (11) whether the petition seeks a standby guardianship and the reasons
- 18 for the request, including the adverse immigration action that the custodial
- 19 parent is subject to; and
- 20 (12) whether the petition is an emergency petition filed pursuant to
- 21 subdivision 2625(f)(1) of this title.

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

4 (2)(A) The Probate Division may waive the notice requirements of  
5 subdivision (1) of this subsection (b) with respect to a parent if the court finds  
6 that:

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

8 (ii) the location of the parent is unknown and cannot be  
9 determined with reasonable effort; or

10 (iii)(I) the custodial parent is detained as the result of an adverse  
11 immigration action; and

12 (II) the guardian and the custodial parent's attorney are unable  
13 to contact the custodial parent after making reasonable efforts.

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

17 Sec. 4. 14 V.S.A. § 2625 is amended to read:

18 § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

19 (a) The Probate Division shall schedule a hearing upon the filing of the  
20 petition and shall provide notice of the hearing to all parties and interested  
21 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~~ the child is 14 years of  
2 age or older unless the child's presence is excused by the court for good cause.  
3 The child may attend the hearing if ~~he or she~~ the child is less than 14 years of  
4 age.

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

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

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

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

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

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

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

20 (f)(1) The court may grant an emergency guardianship petition filed ex  
21 parte by the proposed guardian, or by the custodial parent's attorney in the case

1 of a standby guardianship petition filed pursuant to section 2626a of this title,  
2 if the court finds that:

3 (A)(i) both parents are deceased or medically incapacitated; ~~and~~ or  
4 (ii) in the case of a standby guardianship petition filed pursuant to  
5 section 2626a of this title, the custodial parent has been subject to an adverse  
6 immigration action that renders the parent unavailable to care for the child; and

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

9 (2) If the court grants an emergency guardianship petition pursuant to  
10 subdivision (1) of this subsection (f), it shall schedule a hearing on the petition  
11 as soon as practicable and in no event more than three business days after the  
12 petition is filed.

13 Sec. 5. 14 V.S.A. § 2626a is added to read:

14 § 2626a. CONSENSUAL STANDBY GUARDIANSHIP

15 (a)(1) If the petition requests a consensual standby guardianship, the  
16 petition shall include or be accompanied by a consent signed by the custodial  
17 parent attesting that the custodial parent understands the nature of the standby  
18 guardianship and knowingly and voluntarily consents to the standby  
19 guardianship.

20 (2) The consent required by this subsection shall be on a form approved  
21 by the Court Administrator.

1        (b)(1) The court shall schedule a hearing on the petition within 14 days.

2        The custodial parent shall be permitted to appear at and participate in the  
3        hearing remotely.

4        (2) On or before the date of the hearing, the parties shall file an  
5        agreement between the proposed guardian and the custodial parents. The  
6        agreement shall provide:

7                (A) that the parties are creating a standby guardianship that is  
8        effective only if the custodial parent has been subject to an adverse  
9        immigration action that renders the custodial parent unavailable to care for the  
10       child;

11               (B) the responsibilities of the guardian;

12               (C) the responsibilities of the parents;

13               (D) the expected duration of the guardianship, if known;

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

16               (F) that the guardianship shall presumptively terminate if the  
17       custodial parent is released from custody and reunited with the child.

18               (3) Any party may notify the court that the guardianship is  
19       presumptively terminated pursuant to subdivision (2)(F) of this subsection.

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

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

3               (1) the child is a child in need of guardianship as defined in subdivision  
4       2622(2)(A) of this title because the parent has been subject to an adverse  
5       immigration action that renders the parent unavailable to care for the child;

6               (2) the child's custodial parents knowingly and voluntarily consented to  
7       the standby guardianship;

8               (3) the guardian or the custodial parent's attorney made reasonable  
9       efforts to notify the parent of the proceeding;

10              (4) the agreement is voluntary;

11              (5) the proposed guardian is suitable; and

12              (6) the guardianship is in the best interests of the child.

13       (e) There shall be a rebuttable presumption that the guardianship is in the  
14       best interests of the child if:

15              (1) the custodial parent has been subject to an adverse immigration  
16       action and is unavailable to care for their child;

17              (2) all parties consented to the guardianship; and

18              (3) the custodial parent is represented by an attorney.

19       (f) If the court grants the petition, it shall approve the agreement at the  
20       hearing and issue an order establishing a guardianship under section 2628 of  
21       this title within 45 days after the petition was filed, unless the court extends the

1 time for issuing the order for good cause shown. The order shall be consistent  
2 with the terms of the parties' agreement unless the court finds that the  
3 agreement was not reached voluntarily or is not in the best interests of the  
4 child.

5 Sec. 6. 14 V.S.A. § 2628 is amended to read:

6 § 2628. GUARDIANSHIP ORDER

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

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

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

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

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

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

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

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

1 Sec. 7. 14 V.S.A. § 2629 is amended to read:

2 § 2629. POWERS AND DUTIES OF GUARDIAN

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

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

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

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

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

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

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

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

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

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

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

7 (D) contact between the child and ~~his or her~~ the child's parents,  
8 including the frequency and duration of the contact and whether it was  
9 supervised;

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

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

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

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

19 (c) In the case of a standby guardianship petition filed pursuant to section  
20 2626a of this title, the guardian shall provide status reports to the custodial

1 parent at the parent's last known email address and to the custodial parent's  
2 attorney at the attorney's last known address.

3 Sec. 8. 14 V.S.A. § 2632 is amended to read:

4 § 2632. TERMINATION

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

8 (b)(1) If the motion to terminate is made with respect to a consensual  
9 guardianship established under section 2626 of this title or a standby  
10 guardianship established under section 2626a of this title, the court shall grant  
11 the motion and terminate the guardianship unless the guardian files a motion to  
12 continue the guardianship within 30 days after the motion to terminate is  
13 served. In the case of a standby guardianship established under section 2626a  
14 of this title, the court may, for good cause shown, accept filings that do not  
15 meet the format and signing requirements for the motion under Vermont Rules  
16 of Probate Procedure 10 and 11.

17 (2) If the guardian files a motion to continue the guardianship, the  
18 matter shall be set for hearing and treated as a nonconsensual guardianship  
19 proceeding under section 2627 of this title. The parent shall not be required to  
20 show a change in circumstances, and the court shall not grant the motion to  
21 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. In the case of a standby guardianship  
3 established under section 2626 of this title, the custodial parent shall be  
4 permitted to appear at and participate in the hearing remotely.

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 Sec. 9. EFFECTIVE DATES

18 (a) Sec. 1 shall take effect on July 1, 2025.

19 (b) Secs. 2–8 and this section shall take effect on passage.