

Senate proposal of amendment

H. 98

An act relating to confirmatory adoptions

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. 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.

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

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

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

(c) A complete petition shall comprise the following:

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

(2) a copy of the petitioners' marriage certificate, if petitioners are married;

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

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

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

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

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

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

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

(3) a criminal-record check;

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

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

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

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

(2) for nonmarital parents:

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

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

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

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

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

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

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

(vii) 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.

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

(9) "Adverse immigration action" means:

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

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

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

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

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

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

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

§ 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;

(11) whether the petition seeks a standby guardianship and the reasons for the request, including the adverse immigration action that the custodial parent is subject to; and

(12) whether the petition is an emergency petition filed pursuant to subdivision 2625(f)(1) of this title.

(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 (b) 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; or

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

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

(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 (b).

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

§ 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~~ the child 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~~ the child 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, or by the custodial parent's attorney in the case of a standby guardianship petition filed pursuant to section 2626a of this title, if the court finds that:

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

(ii) in the case of a standby guardianship petition filed pursuant to section 2626a of this title, the custodial parent has been subject to an adverse immigration action that renders the parent unavailable to care for the child; 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 (f), it shall schedule a hearing on the petition as soon as practicable and in no event more than three business days after the petition is filed.

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

§ 2626a. CONSENSUAL STANDBY GUARDIANSHIP

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

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

(b)(1) The court shall schedule a hearing on the petition within 14 days. The custodial parent shall be permitted to appear at and participate in the hearing remotely.

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

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

(B) the responsibilities of the guardian;

(C) the responsibilities of the parents;

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

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

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

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

(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 because the parent has been subject to an adverse immigration action that renders the parent unavailable to care for the child;

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

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

(4) the agreement is voluntary;

(5) the proposed guardian is suitable; and

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

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

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

(2) all parties consented to the guardianship; and

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

(f) 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 within 45 days after the petition was filed, unless the court extends the time for issuing the order for good cause shown. 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.

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

§ 2628. GUARDIANSHIP ORDER

(a) If the court grants a petition for guardianship of a child under subsection 2626(d), 2626a(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.

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

§ 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~~ the child's 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~~ the parent's 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~~ the child's 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~~ the guardian's 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.

(c) In the case of a standby guardianship petition filed pursuant to section 2626a of this title, the guardian shall provide status reports to the custodial parent at the parent's last known email address and to the custodial parent's attorney at the attorney's last known address.

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

§ 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 or a standby guardianship established under section 2626a 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. In the case of a standby guardianship established under section 2626a of this title, the court may, for good cause shown, accept filings that do not meet the format and signing requirements for the motion under Vermont Rules of Probate Procedure 10 and 11.

(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. In the case of a standby guardianship established under section 2626 of this title, the custodial parent shall be permitted to appear at and participate in the hearing remotely.

(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.

Sec. 9. EFFECTIVE DATES

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

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