

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 98  
3 entitled “An act relating to confirmatory adoptions” respectfully reports that it  
4 has considered the same and recommends that the Senate propose to the House  
5 that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

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

8 § 1-114. CONFIRMATORY ADOPTION FOR CHILDREN BORN  
9 THROUGH ASSISTED REPRODUCTION

10 (a) As used in this section:

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

13 (A) intrauterine, intracervical, or vaginal insemination;

14 (B) donation of gametes;

15 (C) donation of embryos;

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

17 (E) intracytoplasmic sperm injection.

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

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

3           (B) a parent under 15C V.S.A. chapter 7 or an intended parent under  
4           15C V.S.A. chapter 8.

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

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

11          (b) Whenever a child is born as a result of assisted reproduction and the  
12          person or persons who did not give birth are a parent pursuant to 15C V.S.A.  
13          § 703 or presumed parent pursuant to 15C V.S.A. § 401 and the parents seek to  
14          file a petition to confirm parentage through an adoption of the child, the court  
15          shall permit the parents to file a petition for adoption in accordance with this  
16          section.

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

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

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

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

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

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

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

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

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

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

20           (3) a criminal-record check;

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

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

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

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

10          (2) for nonmarital parents:

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

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

17          (h) Unless notice has been waived or consent given for the adoption, a copy  
18          of the petition and notice of a proceeding under this section shall be served  
19          upon any person entitled to notice within 30 days after the petition is filed.  
20          The notice shall include the address and telephone number of the court where  
21          the petition is pending and a statement that the person served with the notice

1 and petition shall file a written appearance in the proceeding within 20 days  
2 after service in order to participate in the proceeding and to receive further  
3 notice of the proceeding, including notice of the time and place of any hearing.  
4 Service of the notice and petition shall be made in a manner appropriate under  
5 the Vermont Rules of Probate Procedure unless the court otherwise directs.  
6 Proof of service on each person entitled to receive notice shall be on file with  
7 the court before the court acts on the petition.

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

11 (j) When parentage is presumed or legally recognized pursuant to  
12 15C V.S.A. § 201, the fact that a person did not petition for adoption pursuant  
13 to this section shall not be considered as evidence when two or more  
14 presumptions conflict, nor in determining the best interests of the child.

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

16 § 2622. DEFINITIONS

17 As used in this article:

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

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

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

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

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

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

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

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

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

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

14 (B) A child who is:

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

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

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

19 (3) "Custodial parent" means a parent who, at the time of the  
20 commencement of the guardianship proceeding, has the right and  
21 responsibility to provide the routine daily care and control of the child. The

1 rights of the custodial parent may be held solely or shared and may be subject  
2 to the court-ordered right of the other parent to have contact with the child. If  
3 physical parental rights and responsibilities are shared pursuant to court order,  
4 both parents shall be considered “custodial parents” for purposes of this  
5 subdivision.

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

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

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

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

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

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

18 (8) “Standby guardianship” means a consensual guardianship agreement  
19 between the custodial parent and their chosen guardian that meets the  
20 requirements of section 2626a of this title, in which the custodial parent has

1 been subject to an adverse immigration action that has rendered the parent  
2 unavailable to care for their child.

3 (9) “Adverse immigration action” means:

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

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

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

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

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

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

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

21 § 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE



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

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

6 (2) the proposed guardian's relationship to the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2       § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

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

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

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

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

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

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

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

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

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

6           (f)(1) The court may grant an emergency guardianship petition filed ex  
7           parte by the proposed guardian, or by the custodial parent's attorney in the case  
8           of a standby guardianship petition filed pursuant to section 2626a of this title,  
9           if the court finds that:

10           (A)(i) both parents are deceased or medically incapacitated; ~~and~~ or  
11           (ii) in the case of a standby guardianship petition filed pursuant to  
12           section 2626a of this title, the custodial parent has been subject to an adverse  
13           immigration action that renders the parent unavailable to care for the child; 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 (f), it shall schedule a hearing on the petition  
18           as soon as practicable and in no event more than three business days after the  
19           petition is filed.

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

2 § 2626a. CONSENSUAL STANDBY GUARDIANSHIP

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

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

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

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

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

20 (B) the responsibilities of the guardian;

21 (C) the responsibilities of the parents;

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

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

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

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

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

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

12           (1) the child is a child in need of guardianship as defined in subdivision  
13           2622(2)(A) of this title because the parent has been subject to an adverse  
14           immigration action that renders the parent unavailable to care for the child;

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

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

19           (4) the agreement is voluntary;

20           (5) the proposed guardian is suitable; and

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

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

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

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

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

7       (f) If the court grants the petition, it shall approve the agreement at the  
8       hearing and issue an order establishing a guardianship under section 2628 of  
9       this title within 45 days after the petition was filed, unless the court extends the  
10       time for issuing the order for good cause shown. The order shall be consistent  
11       with the terms of the parties' agreement unless the court finds that the  
12       agreement was not reached voluntarily or is not in the best interests of the  
13       child.

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

15       § 2628. GUARDIANSHIP ORDER

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

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

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

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

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

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

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

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

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

11 § 2629. POWERS AND DUTIES OF GUARDIAN

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

8 (c) In the case of a standby guardianship petition filed pursuant to section  
9 2626a of this title, the guardian shall provide status reports to the custodial  
10 parent at the parent's last known email address and to the custodial parent's  
11 attorney at the attorney's last known address.

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

13 § 2632. TERMINATION

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

17 (b)(1) If the motion to terminate is made with respect to a consensual  
18 guardianship established under section 2626 of this title or a standby  
19 guardianship established under section 2626a of this title, the court shall grant  
20 the motion and terminate the guardianship unless the guardian files a motion to  
21 continue the guardianship within 30 days after the motion to terminate is

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

5 (2) If the guardian files a motion to continue the guardianship, the  
6 matter shall be set for hearing and treated as a nonconsensual guardianship  
7 proceeding under section 2627 of this title. The parent shall not be required to  
8 show a change in circumstances, and the court shall not grant the motion to  
9 continue the guardianship unless the guardian establishes by clear and  
10 convincing evidence that the minor is a child in need of guardianship under  
11 subdivision 2622(2)(B) of this title. In the case of a standby guardianship  
12 established under section 2626 of this title, the custodial parent shall be  
13 permitted to appear at and participate in the hearing remotely.

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

16 (c)(1) If the motion to terminate the guardianship is made with respect to a  
17 nonconsensual guardianship established under section 2627 or subdivision  
18 2632(b)(3) of this title, the court shall dismiss the motion unless the parent  
19 establishes that a change in circumstances has occurred since the previous  
20 guardianship order was issued.

## Sec. 9. EFFECTIVE DATES

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

(Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE