

1 S.95

2 Introduced by Senator Hashim

3 Referred to Committee on

4 Date:

5 Subject: Guardianship; standby guardianship; adverse immigration actions

6 Statement of purpose of bill as introduced: This bill proposes to establish
7 standby guardianships for children whose parents have been subject to adverse
8 immigration actions.

9 An act relating to standby guardianships for children whose parents have
10 been subject to adverse immigration actions

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

12 Sec. 1. 14 V.S.A. § 2622 is amended to read:

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:

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

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

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

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

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

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

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

12 (B) A child who is:

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

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

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

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

1 physical parental rights and responsibilities are shared pursuant to court order,
2 both parents shall be considered “custodial parents” for purposes of this
3 subdivision (3).

4 (B) In standby guardianship cases filed pursuant to section 2626a of
5 this title, the following parents shall be considered “custodial parents” for
6 purposes of this subdivision (3):

7 (i) the custodial parent who has sole custody of the child; or

8 (ii) if custodial parenting rights are shared, all the parents who
9 share custody.

10 (4) “Nonconsensual guardianship” means a guardianship with respect to
11 which:

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

13 (B) a parent seeks to terminate a guardianship that the parent
14 previously agreed to establish.

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

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

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

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

6 (9) “Adverse immigration action” means:

7 (A) arrest or apprehension by any local, state, or federal law
8 enforcement officer for an alleged violation of federal immigration law;

9 (B) arrest, detention, or custody by the Department of Homeland
10 Security or a federal, state, or local agency authorized by or acting on behalf of
11 the Department of Homeland Security;

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

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

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

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

1 Sec. 2. 14 V.S.A. § 2623 is amended to read:

2 § 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE

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

6 (1) the names and addresses of the parents, the child, and the proposed
7 guardian;

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

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

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

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

13 (6) whether the parties agree that the child is in need of guardianship

14 and that the proposed guardian should be appointed as guardian;

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

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

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

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

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

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

8 (b)(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 (b) 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; or

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

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

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

4 Sec. 3. 14 V.S.A. § 2625 is amended to read:

5 § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

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

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

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

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

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

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

1 (C) the evidence sought is not reasonably available by any other
2 means.

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

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

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

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

13 (ii) in the case of a standby guardianship petition filed pursuant to
14 section 2626a of this title, the custodial parent has been subject to an adverse
15 immigration action that renders the parent unavailable to care for the child; and

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

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

1 Sec. 4. 14 V.S.A. § 2626a is added to read:

2 § 2626a. CONSENSUAL STANDBY GUARDIANSHIP

3 (a)(1) If the petition requests a standby consensual 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. The consent shall provide that the custodial parent's agreement
8 is contingent upon the parent becoming subject to an adverse immigration
9 action that renders the parent unavailable to care for the child.

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

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

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

18 (A) that the parties intend to create a standby guardianship that is
19 effective only if the custodial parent has been subject to an adverse
20 immigration action that renders the custodial parent unavailable to care for the
21 child;

1 (B) the responsibilities of the guardian;

2 (C) the responsibilities of the parents;

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

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

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

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

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

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

14 (1) the child is a child in need of guardianship as defined in subdivision
15 2622(2)(A) of this title because the parent has been subject to an adverse
16 immigration action that renders the parent unavailable to care for the child;

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

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

21 (4) the agreement is voluntary;

1 (5) the proposed guardian is suitable; and

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

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

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

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

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

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

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

16 § 2628. GUARDIANSHIP ORDER

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

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

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

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

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

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

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

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

12 Sec. 6. 14 V.S.A. § 2629 is amended to read:

13 § 2629. POWERS AND DUTIES OF GUARDIAN

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

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

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

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

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

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

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

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

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

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

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

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

20 (E) how the parents have been involved in decision making for the
21 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 notice of all changes and status
10 reports to the custodial parent at the parent's last known email address and to
11 the custodial parent's attorney at the attorney's last known address.

12 Sec. 7. 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 shall accept filings that do not meet the format and
3 signing requirements for the motion under Vermont Rules of Probate
4 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.

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

6 Sec. 8. EFFECTIVE DATE

7 This act shall take effect on passage.