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S.97

Introduced by Senators Williams, Collamore, Gulick, Lyons, Weeks and
White

Referred to Committee on

Date:

Subject: Guardianship proceedings; adult guardianship

Statement of purpose of bill as introduced: This bill proposes to provide the
Probate Division of the Superior Court with jurisdiction over guardianship
proceedings for individuals with developmental disabilities and to establish
rules for these and other guardianship proceedings in the Probate Division.

An act relating to guardianship proceedings

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

Sec. 1. SHORT TITLE

This act shall be referred to as the Adult Guardianship Equity Act or as the
AGE Act.

Sec. 2. 14 V.S.A. § 3060 is amended to read:

§ 3060. POLICY

(a) Guardianship shall be utilized only as necessary to promote the well-
being of the individual and to protect the individual from violations of ~~his or~~
~~her~~ the individual's human and civil rights. It shall be designed to encourage

1 the development and maintenance of maximum self-reliance and independence
2 in the individual and only the least restrictive form of guardianship shall be
3 ordered to the extent required by the individual's actual mental and adaptive
4 limitations. The State of Vermont recognizes the fundamental right of an adult
5 with capacity to determine the extent of health care the individual will receive.

6 (b) A person shall not be subjected to a determination of mental
7 incompetency regarding guardianship if the person would qualify for and agree
8 to the creation of an appropriate voluntary guardianship.

9 (c) Regardless of the form of guardianship applied for, if the proposed
10 person under guardianship qualifies for a voluntary guardianship under section
11 2671 of this title and agrees to the creation of an appropriate voluntary
12 guardianship, then the voluntary guardianship shall be deemed the least
13 restrictive form of guardianship under subsection (a) of this section.

14 Sec. 3. 14 V.S.A. § 3061 is amended to read:

15 § 3061. DEFINITIONS

16 The words and phrases used in this subchapter shall be defined as follows:

17 (1)(A) "Person in need of guardianship" means a person who:

18 ~~(A)~~(i) is at least 18 years of age; and

19 ~~(B)~~(ii) is unable to manage, without the supervision of a guardian,

20 some or all aspects of ~~his or her~~ the person's personal or financial affairs as a
21 result of:

1 administered, modified, and revoked in the Probate Division under the
2 procedures of this chapter. The Supreme Court is authorized to promulgate
3 rules to supplement the procedures in this chapter to accommodate
4 circumstances particular to guardianships established under former 18 V.S.A.
5 chapter 215, provided that the rules shall not lessen the procedural protections
6 or reduce the options available under this chapter.

7 (c)(1) Any person with knowledge of the facts may request that the State's
8 Attorney in the county where the person resides file a petition with the court
9 alleging that:

10 (A) the person has a developmental disability;

11 (B) the person desires the assistance of a guardian or is in need of
12 guardianship; and

13 (C) there is no suitable private person to serve as guardian.

14 (2) The State's Attorney shall file a petition requested under subdivision
15 (1) of this subsection with the court unless it clearly appears to the State's
16 Attorney that the petition will be legally or factually insufficient to support an
17 action under this chapter.

18 (3) A petition filed under subdivision (2) of this subsection shall propose
19 that the Office of Public Guardian be appointed as the person's guardian. If
20 appropriate, the court shall proceed in the same manner as for all petitions for
21 guardianship under this chapter.

1 (4) If the court after hearing determines that it is appropriate for a
2 guardianship to be established, and the court makes specific findings that there
3 is no suitable private person to serve as guardian, the court may appoint the
4 Office of Public Guardian as the person’s guardian. If the court makes an
5 appointment of the Office of Public Guardian under this subdivision, the
6 provisions of subchapter 13 of this chapter (public guardian) shall apply.

7 (d) A person who is receiving guardianship services under this chapter
8 from the Office of the Public Guardian or the Commissioner of Disabilities,
9 Aging, and Independent Living may appeal a decision of the guardian in
10 accordance with 3 V.S.A. § 3091 or by petition to the court, but an appeal or
11 petition pursuant to this subsection shall not be required for a petition to the
12 court by an interested person to modify or terminate a guardianship under this
13 chapter.

14 Sec. 6. 14 V.S.A. § 3067 is amended to read:

15 § 3067. EVALUATION AND REPORT; BACKGROUND CHECK;

16 RELEASE OF EVALUATION

17 (a)(1) When a petition is filed pursuant to section 3063 of this title and
18 there is probable cause to believe that the respondent is a person in need of
19 guardianship under subdivision 3061(1) of this title, or when a motion for
20 modification or termination is filed pursuant to subdivision 3077(a)(4) of this
21 title, the court shall order an evaluation of the respondent. Except as otherwise

1 provided in this subsection, the cost of the evaluation shall be paid for out of
2 the respondent's estate or as ordered by the court. If the respondent is unable
3 to afford some or all of the cost of the evaluation without expending income or
4 liquid resources necessary for living expenses, the court shall order that the
5 Department of Mental Health or the Department of Disabilities, Aging, and
6 Independent Living provide the evaluation through qualified evaluators.

7 (2) The evaluation order shall be served upon the respondent and
8 contain a prominent notice that the respondent may object to the evaluation
9 and is entitled to a hearing on whether the evaluation order should be issued.

10 * * *

11 Sec. 7. 14 V.S.A. § 3068 is amended to read:

12 § 3068. HEARING

13 * * *

14 (h) Final orders of the Probate Division under this chapter shall notify the
15 parties of the right to appeal issues of fact to the Civil Division and issues of
16 law to the Supreme Court under 12 V.S.A. chapter 107 by filing a notice of
17 appeal with the Probate Division within 30 days after issuance of the order.
18 Final orders shall notify the parties of the right to seek a stay of the order from
19 the Probate Division or from the court appealed to under Vermont Rule of
20 Probate Procedure 62(d).

1 Sec. 8. 14 V.S.A. § 3076 is amended to read:

2 § 3076. ANNUAL REPORTS; FINAL ACCOUNTING; FEES

3 (a) The guardian shall file an annual report with the appointing court within
4 30 days of following the anniversary date of the appointment.

5 * * *

6 (e) If the Commissioner of Disabilities, Aging, and Independent Living or
7 the Office of Public Guardian has been appointed guardian under this chapter,
8 the Commissioner or Office shall annually assess whether the person under
9 guardianship would qualify for a voluntary guardianship under section 2671 of
10 this title and agree to a voluntary guardianship being established. The
11 assessment shall be included in the annual report to the court required by this
12 section.

13 Sec. 9. 14 V.S.A. § 3080 is amended to read:

14 § 3080. APPEALS

15 ~~Orders of the court issued pursuant to the provisions of this subchapter may~~
16 ~~be appealed in such manner as provided in 12 V.S.A. § 2551 et seq. and Rule~~
17 ~~72, Vermont Rules of Civil Procedure, provided, however, that any order~~
18 ~~issued pursuant to this subchapter shall not be stayed during the pendency of~~
19 ~~an appeal except by order of a court of competent jurisdiction.~~

20 (a) 12 V.S.A. §§ 2551 and 2553 shall govern whether an appeal under this
21 chapter shall be to the Civil Division or the Supreme Court. Appeals to the

1 Civil Division on questions of fact shall be tried de novo under Vermont Rule
2 of Civil Procedure 72.

3 (b) In an appeal to the civil division where the question is whether the
4 respondent is a person in need of guardianship, the respondent shall be entitled
5 to a jury trial. The right to a jury trial under this subsection may only be
6 waived with approval of the court.

7 Sec. 10. EFFECTIVE DATE

8 This act shall take effect on July 1, 2024.