

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1539 Session of 2017

INTRODUCED BY PASHINSKI, DRISCOLL, THOMAS, FREEMAN, ROTHMAN, KINSEY, VAZQUEZ, MILLARD, READSHAW, SCHLOSSBERG, DAVIS, CALTAGIRONE, HILL-EVANS, TOOHIL, KORTZ, PHILLIPS-HILL, SAMUELSON, HARKINS, DeLUCA, WARREN, FARRY, MADDEN, ROZZI, SNYDER, SAINATO, BERNSTINE, WATSON, DOWLING, DALEY, ENGLISH AND BARBIN, JUNE 13, 2017

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 16, 2018

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in standby guardianship, further
3 providing for definitions and for scope and providing for
4 temporary guardianship; in child protective services, further
5 providing for release of information in confidential reports;
6 and making editorial changes.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The heading of Chapter 56 of Title 23 of the
10 Pennsylvania Consolidated Statutes is amended to read:

CHAPTER 56

STANDBY AND TEMPORARY GUARDIANSHIP

13 Section 2. Sections 5602 and 5603 of Title 23 are amended to
14 read:

15 § 5602. Definitions.

16 The following words and phrases when used in this chapter
17 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Alternate." A person with all the rights, responsibilities
3 and qualifications of a standby guardian who shall become a
4 standby guardian only in the event that the currently designated
5 standby guardian is unable or refuses to fulfill his obligation.

6 "Attending physician." A physician who has primary
7 responsibility for the treatment and care of the designator. If
8 physicians share responsibility, another physician is acting on
9 the attending physician's behalf or no physician has primary
10 responsibility, any physician who is familiar with the
11 designator's medical condition may act as an attending physician
12 under this chapter.

13 "Coguardian." A person who along with a parent shares
14 physical or legal custody, or both, of a child.

15 "Consent." A written authorization signed by the designator
16 in the presence of two witnesses who shall also sign the
17 writing. The witnesses must be 18 years of age or older and not
18 named in the designation.

19 "Court." Family Court Division or domestic relations section
20 of a court of common pleas unless otherwise provided by local
21 rules of court.

22 "Debilitation." A person's chronic and substantial inability
23 as a result of a physically incapacitating disease or injury to
24 care for a dependent minor.

25 "Designation." A written document naming the standby
26 guardian or temporary guardian. A parent, a legal custodian or a
27 legal guardian may designate an alternate standby guardian in
28 the same writing.

29 "Designator." A parent, a legal custodian or a legal
30 guardian who appoints a standby guardian or temporary guardian.

1 "Determination of debilitation." A written finding made by
2 an attending physician which states that the designator suffers
3 from a physically incapacitating disease or injury. No
4 identification of the illness in question is required.

5 "Determination of incapacity." A written finding made by an
6 attending physician which states the nature, extent and probable
7 duration of the designator's mental or organic incapacity.

8 "Family member." A grandparent, aunt, uncle or adult sibling
9 of a minor.

10 "Incapacity." A chronic and substantial inability, resulting
11 from a mental or organic impairment, to understand the nature
12 and consequences of decisions concerning the care of the
13 designator's dependent minor and a consequent inability to care
14 for the minor.

15 "Standby guardian." A person named by a designator to assume
16 the duties of coguardian or guardian of a minor and whose
17 authority becomes effective upon the incapacity, debilitation
18 and consent, or death of the minor's parent.

19 "Temporary guardian." A family member, appointed by a court
20 for a limited period as a guardian of the minor when the minor's
21 custodial parent has entered a rehabilitation facility for
22 treatment of drug or alcohol addiction or has been subject to
23 emergency medical intervention due to abuse of drugs or alcohol.

24 "Triggering event." A specified occurrence stated in the
25 designation which empowers a standby guardian to assume the
26 powers, duties and responsibilities of guardian or coguardian.
27 § 5603. Scope.

28 The provisions of Chapter 53 (relating to custody) and 20
29 Pa.C.S. Ch. 25 (relating to wills) shall apply to standby
30 guardians, coguardians, guardians, temporary guardians and any

1 alternates unless otherwise specified in this chapter. Nothing
2 in this chapter shall be construed to deprive any parent,
3 custodial or noncustodial, of legal parental rights. Nothing in
4 this chapter shall be construed to relieve any parent, custodial
5 or noncustodial, of a duty to support a child under the
6 provisions of Chapter 43 (relating to support matters
7 generally).

8 Section 3. The heading of Subchapter B of Chapter 56 of
9 Title 23 is amended to read:

10 SUBCHAPTER B

11 [GENERAL PROVISIONS] STANDBY GUARDIANSHIP

12 Section 4. Chapter 56 of Title 23 is amended by adding a
13 subchapter to read:

14 SUBCHAPTER C

15 TEMPORARY GUARDIANSHIP

16 Sec.

17 5621. Designation.

18 5622. Petition for approval of designation.

19 5623. Authority of temporary guardian.

20 5624. Period of temporary guardianship.

21 5625. Termination of temporary guardianship.

22 § 5621. Designation.

23 (a) General rule.--Except as provided in subsection (b), a
24 custodial parent may designate a temporary guardian by means of
25 a written designation unless the minor has another parent or
26 adoptive parent:

27 (1) whose parental rights have not been terminated or
28 relinquished;

29 (2) whose whereabouts are known; and

30 (3) who is willing and able to make and carry out the

1 day-to-day child-care decisions concerning the minor.

2 (b) Exception where other parent consents.--Notwithstanding
3 subsection (a), a parent, legal custodian or legal guardian may
4 designate a temporary guardian with the consent of the other
5 parent.

6 (c) Contents.--

7 (1) A designation of a temporary guardianship shall
8 identify the custodial parent, the minor or minors, any other
9 parent, the temporary guardian and the triggering event or
10 events upon which a named temporary guardian shall become a
11 coguardian or guardian. The designation shall also include
12 the signed consent of the temporary guardian and the signed
13 consent of any other parent or an indication why the other
14 parent's consent is not necessary.

15 (2) The designation shall be signed by the designating
16 parent in the presence of two witnesses who are 18 years of
17 age or older and not otherwise named in the designation, who
18 shall also sign the designation.

19 (3) A parent may also but need not designate an
20 alternate in the designation.

21 (4) A designation may but need not be in the following
22 form:

23

24 (Insert name of designator) do hereby appoint

25

26 (Insert name, address and telephone number of temporary
27 guardian) as the temporary guardian of

28

29 (Insert name(s) of minor(s) to take effect upon

30 (Date).

1 I am the mother/father/other to.....

2

3 (Insert name(s) of minor(s)).

4

5 (Insert name(s) of other parent(s) of minor(s)) is the

6 father/mother/other of

7

8 (Insert name(s) of minor(s)).

9 By this designation, I am granting

10 (insert name of temporary guardian) the authority to act for

11 90 days following the occurrence of

12 as a coguardian with me or as guardian of my minor

13 child(ren).

14 It is my intention to retain full parental rights to the

15 extent consistent with my condition and to retain the

16 authority to revoke the temporary guardianship if I so

17 choose.

18 This designation is made after careful reflection, while I am

19 of sound mind.

20

21 (Date)

(Designator's signature)

22

23 (Witness's signature)

(Witness's signature)

24

25 (Number and Street)

(Number and Street)

26

27 (City, State and Zip Code)

(City, State and Zip Code)

28 If applicable: I,

29 (Insert name of other parent)

30 hereby consent to this designation.

1
.....

2 (Date) (Signature of other parent)

3
.....

4 (Address of other parent)

5 I,

6 (Insert name of temporary guardian), hereby accept my
7 nomination as temporary guardian of

8

9 (Insert minor(s)'s name(s)). I understand that my rights and
10 responsibilities toward the minor child(ren) named above will
11 become effective upon (Date)

12 I further understand that in order to continue as temporary
13 guardian for the child(ren), I must file a petition with the
14 court of common pleas within 30 days of the order granting
15 the petition for temporary guardianship.

16

17 (Date) (Signature of temporary guardian)

18 NOTARY SEAL

19 I hereby revoke the above temporary guardianship agreement.

20 (Parent signature)

21 (Date)

22 NOTARY SEAL

23 § 5622. Petition for approval of designation.

24 (a) General rule.--Except as provided in subsection (b), a
25 petition for court approval of a designation under this chapter
26 may be made when an individual who is a custodial parent of a
27 minor has entered a rehabilitation facility for treatment of a
28 drug or alcohol addiction or has been subject to emergency
29 medical intervention due to abuse of drugs or alcohol by filing
30 with the court a copy of the designation.

1 (b) Exception where designation has not been entered.--If a
2 custodial parent has been subject to emergency medical
3 intervention due to abuse of drugs or alcohol and a written
4 designation has not been executed, a family member shall
5 petition the court to hold a hearing to be designated temporary
6 guardian. THE PETITION, WHICH SHALL REQUIRE THE NOTARIZED <--
7 SIGNATURE OF THE PETITIONER, SHALL BE PROVIDED BY THE COURT IN
8 THE FOLLOWING FORM:

9 PETITION FOR TEMPORARY GUARDIANSHIP WITHOUT CONSENT OF PARENT

10 I,.....

11 (INSERT NAME, ADDRESS AND TELEPHONE NUMBER OF FAMILY MEMBER
12 PETITIONING FOR TEMPORARY GUARDIANSHIP AND RELATIONSHIP TO
13 MINOR), HEREBY DECLARE MY INTENT TO BE APPOINTED TEMPORARY
14 GUARDIAN OF

15 (INSERT NAME(S), ADDRESS(ES) AND TELEPHONE NUMBER(S) OF MINOR(S)
16 FOR WHOM THE APPOINTMENT OF TEMPORARY GUARDIAN IS BEING SOUGHT)
17 AS A RESULT OF EMERGENCY MEDICAL INTERVENTION RESULTING FROM
18 ABUSE OF DRUGS OR ALCOHOL BY

19 (INSERT NAME, ADDRESS AND TELEPHONE NUMBER),
20 FATHER/MOTHER TO (INSERT
21 NAME(S) OF MINOR(S)), ON (INSERT
22 APPROXIMATE DATE OF THE EVENT).

23 I HAVE NOTIFIED THE CHILD(REN)'S OTHER PARENT,.....
24 (INSERT NAME,
25 ADDRESS AND TELEPHONE NUMBER), OF MY INTENT TO PETITION THIS
26 COURT FOR TEMPORARY GUARDIANSHIP.

27 I UNDERSTAND THAT FILING THIS PETITION DOES NOT REVOKE THE
28 PARENTAL RIGHTS OF THE MINOR'S PARENT(S) NOR DOES IT GRANT ME
29 ANY PARENTAL RIGHTS.

30 I UNDERSTAND THAT MY RIGHTS AND RESPONSIBILITIES AS A

1 TEMPORARY GUARDIAN TOWARD THE MINOR CHILD(REN) NAMED ABOVE WILL
2 BECOME EFFECTIVE UPON THE COMPLETION OF A HEARING AND RENDERING
3 OF A DECISION BY THE COURT.

4 I UNDERSTAND THAT FILING FEES AND OTHER COSTS ASSOCIATED WITH
5 THESE PROCEEDINGS MAY BE WAIVED IF I DEMONSTRATE THE FEES AND
6 OTHER COSTS WOULD CONSTITUTE A FINANCIAL BURDEN TO ME AND MY
7 FAMILY.

8 I HEREBY SWEAR OR AFFIRM THAT THE INFORMATION CONTAINED
9 HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

10

11 (DATE) (SIGNATURE OF PETITIONER)

12 (c) Notice.--

13 (1) The court shall notify a person named in the
14 designation within 10 days of the filing of the petition and
15 of any hearing on the petition.

16 (2) If a designation has not been executed, the
17 petitioner shall notify the custodial parent or parents,
18 noncustodial parent or adoptive parent within 10 days of the
19 filing of the petition and of any hearing on the petition.

20 (3) If the petition alleges that a noncustodial parent
21 cannot be located, that parent shall be notified in
22 accordance with the notice provisions of the Pennsylvania
23 Rules of Civil Procedure in custody matters. No notice is
24 necessary to a parent whose parental rights have previously
25 been terminated or relinquished.

26 (d) Jurisdiction.--For purposes of determining jurisdiction
27 under this chapter, the provisions of Chapter 54 (relating to
28 uniform child custody jurisdiction and enforcement) shall apply.

29 (e) Presumptions.--In a proceeding for judicial appointment
30 of a temporary guardian, a designation shall constitute a

1 rebuttable presumption that the designated temporary guardian is
2 capable of serving as coguardian or guardian. When the
3 designator is the sole surviving parent and when the parental
4 rights of any noncustodial parent have been terminated or
5 relinquished or when all parties consent to the designation
6 there shall be a rebuttable presumption that entry of the
7 approval order is in the best interest of the child. In any
8 case, if the court finds entry of the approval order to be in
9 the best interests of the child, the court shall enter an order
10 approving the designation petition.

11 (f) Approval without hearing.--Approval of the designation
12 without a hearing is permitted when the designator is the sole
13 surviving parent, when the parental rights of a noncustodial
14 parent have been terminated or relinquished or when all parties
15 consent to entry of the approval order.

16 (g) Hearing.--If a hearing is required, it shall be
17 conducted in accordance with the proceedings under Chapters 53
18 (relating to child custody) and 54.

19 (h) Court appearance.--If a designation has not been
20 executed and a petition for temporary guardianship has been
21 filed with the court by a family member, the custodial parent
22 and noncustodial parent or adoptive parent shall appear in court
23 in order to consent to or oppose the designation. If notice has
24 been given under subsection (c) (3) and a noncustodial parent
25 does not appear in court, it is presumed that consent to the
26 designation has been granted.

27 (i) Costs.--A court may waive filing fees and other costs
28 upon application when the petitioner demonstrates the fees and
29 other costs would constitute a financial burden upon the
30 petitioner and the petitioner's family. There shall be a

1 presumption of a financial burden if the income from all sources
2 of the petitioner is less than 300% of the poverty level set by
3 the Federal Government.

4 § 5623. Authority of temporary guardian.

5 (a) Authority.--

6 (1) The temporary guardian shall have the authority to
7 act as coguardian or guardian upon a custodial parent
8 entering into an alcohol or drug treatment facility or upon a
9 court ordering the designation pursuant to hearing under
10 subsection 5622(b) (relating to petition for approval of
11 designation).

12 (2) The commencement of the temporary guardian's
13 authority to act as coguardian shall not itself divest the
14 custodial parent of parental rights but shall confer upon the
15 temporary guardian concurrent or shared custody of the child.

16 (3) A coguardian shall assure frequent and continuing
17 contact with and physical access to the child and shall
18 further assure the involvement of the custodial parent, to
19 the greatest extent possible, in the decision making on
20 behalf of the child.

21 (4) The commencement of a temporary guardian's authority
22 under this subchapter shall not itself divest a parent or
23 legal guardian of parental or guardianship rights.

24 (b) Limitations on authority.--In addition to any other
25 restrictions placed on a temporary guardian by the court, the
26 temporary guardian may not:

27 (1) remove the minor or permit the minor to be removed
28 from the United States either permanently or temporarily
29 without the consent of the custodial parent and the approval
30 of the court; or

1 (2) remove the minor from this Commonwealth absent a
2 court order, which may only be issued after a hearing at
3 which both parents and the minor shall have the right to be
4 present.

5 § 5624. Period of temporary guardianship.

6 (a) Initial period.--Temporary guardianship under this
7 subchapter shall be limited to not more than 90 days from entry
8 of the order of temporary guardianship.

9 (b) Extension of guardianship.--Upon approval by the court
10 or by written agreement of the temporary guardian and the parent
11 who has entered a rehabilitation facility, temporary
12 guardianship shall be extended for periods of up to 90
13 additional days.

14 (c) Total period.--The total period of guardianship under
15 this section shall not exceed 365 days.

16 § 5625. Termination of temporary guardianship.

17 (a) Conditions.--A court shall terminate a temporary
18 guardianship if any of the following exists:

19 (1) The custodial parent demonstrates the basis for the
20 temporary guardianship no longer exists.

21 (2) The custodial parent and temporary guardian agree
22 upon termination.

23 (3) The temporary guardian files a petition with the
24 court seeking termination.

25 (4) Subject to subsection (b), a noncustodial or
26 adoptive parent files a petition with the court seeking
27 termination of the guardianship.

28 (5) The temporary guardian or an individual who resides
29 with the temporary guardian commits an offense that results
30 in the temporary guardian or an individual who resides with

1 the temporary guardian being identified as a perpetrator as
2 defined in section 6303 (relating to definitions).

3 (b) Mandatory considerations.--Before terminating an order
4 for temporary guardianship under subsection (a)(4), the court
5 shall consider if termination of the temporary guardianship is
6 in the best interests of the minor if the individual's parental
7 rights were previously terminated.

8 Section 5. Section 6340(a)(5.1) of Title 23 is amended to
9 read:

10 § 6340. Release of information in confidential reports.

11 (a) General rule.--Reports specified in section 6339
12 (relating to confidentiality of reports) shall only be made
13 available to:

14 * * *

15 (5.1) A court of common pleas in connection with any
16 matter involving custody of a child as set forth in sections
17 5328 (relating to factors to consider when awarding custody)
18 and 5329.1 (relating to consideration of child abuse and
19 involvement with protective services) or temporary
20 guardianship of a child under Chapter 56 (relating to standby
21 and temporary guardianship).

22 * * *

23 Section 6. This act shall take effect in 60 days.