

AMENDMENTS TO HOUSE BILL NO. 1539

Sponsor: REPRESENTATIVE WATSON

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1 Amend Bill, page 1, lines 1 through 5, by striking out all of
2 said lines and inserting

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

9 Amend Bill, page 1, lines 8 through 18; pages 2 through 7,
10 lines 1 through 30; page 8, lines 1 through 19; by striking out
11 all of said lines on said pages and inserting

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

14 CHAPTER 56

15 STANDBY AND TEMPORARY GUARDIANSHIP

16 Subchapter

17 A. Preliminary Provisions

18 B. [General Provisions] Standby Guardianship

19 C. Temporary Guardianship

20 Section 2. Sections 5602 and 5603 of Title 23 are amended to
21 read:

22 § 5602. Definitions.

23 The following words and phrases when used in this chapter
24 shall have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

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

30 "Attending physician." A physician who has primary
31 responsibility for the treatment and care of the designator. If
32 physicians share responsibility, another physician is acting on
33 the attending physician's behalf or no physician has primary
34 responsibility, any physician who is familiar with the
35 designator's medical condition may act as an attending physician

1 under this chapter.

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

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

8 "Court." Family Court Division or domestic relations section
9 of a court of common pleas unless otherwise provided by local
10 rules of court.

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

14 "Designation." A written document naming the standby
15 guardian or temporary guardian. A parent, a legal custodian or a
16 legal guardian may designate an alternate standby guardian in
17 the same writing.

18 "Designator." A parent, a legal custodian or a legal
19 guardian who appoints a standby guardian or temporary guardian.

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

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

27 "Family member." A grandparent, aunt, uncle or adult sibling
28 of a minor.

29 "Incapacity." A chronic and substantial inability, resulting
30 from a mental or organic impairment, to understand the nature
31 and consequences of decisions concerning the care of the
32 designator's dependent minor and a consequent inability to care
33 for the minor.

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

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

43 "Triggering event." A specified occurrence stated in the
44 designation which empowers a standby guardian to assume the
45 powers, duties and responsibilities of guardian or coguardian.
46 § 5603. Scope.

47 The provisions of Chapter 53 (relating to custody) and 20
48 Pa.C.S. Ch. 25 (relating to wills) shall apply to standby
49 guardians, coguardians, guardians, temporary guardians and any
50 alternates unless otherwise specified in this chapter. Nothing
51 in this chapter shall be construed to deprive any parent,

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

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

8 SUBCHAPTER B

9 [GENERAL PROVISIONS] STANDBY GUARDIANSHIP

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

12 SUBCHAPTER C

13 TEMPORARY GUARDIANSHIP

14 5621. Designation.

15 5622. Petition for approval of designation.

16 5623. Authority of temporary guardian.

17 5624. Period of temporary guardianship.

18 5625. Termination of temporary guardianship.

19 § 5621. Designation.

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

24 (1) whose parental rights have not been terminated or
25 relinquished;

26 (2) whose whereabouts are known; and

27 (3) who is willing and able to make and carry out the
28 day-to-day child-care decisions concerning the minor.

29 (b) Exception where other parent consents.--Notwithstanding
30 subsection (a), a parent, legal custodian or legal guardian may
31 designate a temporary guardian with the consent of the other
32 parent.

33 (c) Contents.--

34 (1) A designation of a temporary guardianship shall
35 identify the custodial parent, the minor or minors, any other
36 parent, the temporary guardian and the triggering event or
37 events upon which a named temporary guardian shall become a
38 coguardian or guardian. The designation shall also include
39 the signed consent of the temporary guardian and the signed
40 consent of any other parent or an indication why the other
41 parent's consent is not necessary.

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

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

48 (4) A designation may but need not be in the following
49 form:

50
51 (Insert name of designator) do hereby appoint

1
 2 (Insert name, address and telephone number of temporary
 3 guardian) as the temporary guardian of
 4
 5 (Insert name(s) of minor(s) to take effect upon
 6 (Date).
 7 I am the mother/father/other to.....
 8
 9 (Insert name(s) of minor(s)).
 10
 11 (Insert name(s) of other parent(s) of minor(s)) is the
 12 father/mother/other of
 13
 14 (Insert name(s) of minor(s)).
 15 By this designation, I am granting
 16 (insert name of temporary guardian) the authority to act for
 17 90 days following the occurrence of
 18 as a coguardian with me or as guardian of my minor
 19 child(ren).
 20 It is my intention to retain full parental rights to the
 21 extent consistent with my condition and to retain the
 22 authority to revoke the temporary guardianship if I so
 23 choose.
 24 This designation is made after careful reflection, while I am
 25 of sound mind.
 26
 27 (Date) (Designator's signature)
 28
 29 (Witness's signature) (Witness's signature)
 30
 31 (Number and Street) (Number and Street)
 32
 33 (City, State and Zip Code) (City, State and Zip Code)
 34 If applicable: I,,
 35 (Insert name of other parent)
 36 hereby consent to this designation.
 37
 38 (Date) (Signature of other parent)
 39
 40 (Address of other parent)
 41 I,
 42 (Insert name of temporary guardian), hereby accept my
 43 nomination as temporary guardian of
 44
 45 (Insert minor(s)'s name(s)). I understand that my rights and
 46 responsibilities toward the minor child(ren) named above will
 47 become effective upon (Date)
 48 I further understand that in order to continue as temporary
 49 guardian for the child(ren), I must file a petition with the
 50 court of common pleas within 30 days of the order granting
 51 the petition for temporary guardianship.

.....
(Date) (Signature of temporary guardian)
NOTARY SEAL
I hereby revoke the above temporary guardianship agreement.
..... (Parent signature)
..... (Date)
NOTARY SEAL

§ 5622. Petition for approval of designation.

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

(b) Exception where designation has not been entered.--If a custodial parent has been subject to emergency medical intervention due to abuse of drugs or alcohol and a written designation has not been executed, a family member shall petition the court to hold a hearing to be designated temporary guardian.

(c) Notice.--

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

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

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

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

(e) Presumptions.--In a proceeding for judicial appointment of a temporary guardian, a designation shall constitute a rebuttable presumption that the designated temporary guardian is capable of serving as coguardian or guardian. When the designator is the sole surviving parent and when the parental rights of any noncustodial parent have been terminated or relinquished or when all parties consent to the designation there shall be a rebuttable presumption that entry of the approval order is in the best interest of the child. In any case, if the court finds entry of the approval order to be in the best interests of the child, the court shall enter an order approving the designation petition.

(f) Approval without hearing.--Approval of the designation

1 without a hearing is permitted when the designator is the sole
2 surviving parent, when the parental rights of a noncustodial
3 parent have been terminated or relinquished or when all parties
4 consent to entry of the approval order.

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

8 (h) Court appearance.--If a designation has not been
9 executed and a petition for temporary guardianship has been
10 filed with the court by a family member, the custodial parent
11 and noncustodial parent or adoptive parent shall appear in court
12 in order to consent to or oppose the designation. If notice has
13 been given under subsection (c) (3) and a noncustodial parent
14 does not appear in court, it is presumed that consent to the
15 designation has been granted.

16 (i) Costs.--A court may waive filing fees and other costs
17 upon application when the petitioner demonstrates the fees and
18 other costs would constitute a financial burden upon the
19 petitioner and the petitioner's family. There shall be a
20 presumption of a financial burden if the income from all sources
21 of the petitioner is less than 300% of the poverty level set by
22 the Federal Government.

23 § 5623. Authority of temporary guardian.

24 (a) Authority.--

25 (1) The temporary guardian shall have the authority to
26 act as coguardian or guardian upon a custodial parent
27 entering into an alcohol or drug treatment facility or upon a
28 court ordering the designation pursuant to hearing under
29 subsection 5622(b) (relating to petition for approval of
30 designation).

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

35 (3) A coguardian shall assure frequent and continuing
36 contact with and physical access to the child and shall
37 further assure the involvement of the custodial parent, to
38 the greatest extent possible, in the decision making on
39 behalf of the child.

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

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

46 (1) remove the minor or permit the minor to be removed
47 from the United States either permanently or temporarily
48 without the consent of the custodial parent and the approval
49 of the court; or

50 (2) remove the minor from this Commonwealth absent a
51 court order, which may only be issued after a hearing at

1 which both parents and the minor shall have the right to be
2 present.

3 § 5624. Period of temporary guardianship.

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

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

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

14 § 5625. Termination of temporary guardianship.

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

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

19 (2) The custodial parent and temporary guardian agree
20 upon termination.

21 (3) The temporary guardian files a petition with the
22 court seeking termination.

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

26 (5) The temporary guardian or an individual who resides
27 with the temporary guardian commits an offense that results
28 in the temporary guardian or an individual who resides with
29 the temporary guardian being identified as a perpetrator as
30 defined in section 6303 (relating to definitions).

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

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

38 § 6340. Release of information in confidential reports.

39 (a) General rule.--Reports specified in section 6339
40 (relating to confidentiality of reports) shall only be made
41 available to:

42 * * *

43 (5.1) A court of common pleas in connection with any
44 matter involving custody of a child as set forth in sections
45 5328 (relating to factors to consider when awarding custody)
46 and 5329.1 (relating to consideration of child abuse and
47 involvement with protective services) or temporary
48 guardianship of a child under Chapter 56 (relating to standby
49 and temporary guardianship).

50 * * *

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