



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1539

PRINTERS NO. 3353

PRIME SPONSOR: Pashinski

COST / (SAVINGS)

FUND	FY 2017/18	FY 2018/19
General Fund	\$0	\$0

SUMMARY: House Bill 1539, Printer's Number 3353, amends Chapter 56 (Standby Guardianship) of Title 23 (Domestic Relations) to change the title of that chapter to Standby and Temporary Guardianship and to add a Subchapter C (Temporary Guardianship). This legislation is effective in 60 days.

ANALYSIS: This legislation allows a grandparent, aunt, uncle or adult sibling of a minor child, to petition a court of common pleas for temporary guardianship of a child when a parent of that child 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.

A custodial parent may designate a temporary guardian by means of a written designation unless the minor has another parent or adoptive parent whose parental rights have not been terminated or relinquished, whose whereabouts are known, and who is willing and able to make and carry out the day-to-day child-care decisions concerning the minor. However, a parent, legal custodian or legal guardian may designate a temporary guardian with the consent of the other parent.

The designation of a temporary guardianship shall identify the custodial parent, the minor or minors, any other parent, the temporary guardian and the triggering event or events upon which a named temporary guardian shall become a co-guardian or guardian. The designation must include the signed consent of the temporary guardian and the signed consent of any other parent or an indication why the other parent's consent is not necessary. The designation must be signed by the designating parent in the presence of two witnesses who are adults, not otherwise named in the designation and who also sign the designation.

A petition for court approval of a designation 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.

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 must petition the court to hold a hearing to be designated temporary guardian.

The court shall notify any person named in the designation within 10 days of the filing of the petition and of any hearing. If a designation has not been executed, the petitioner shall notify the custodial parent(s), non-custodial parent or adoptive parent within 10 days of the filing of the petition and of any hearing. If the petition alleges that a non-custodial parent cannot be located, that parent shall be notified in accordance with the notice provisions of the PA Rules of Civil Procedure in Custody Matters. No notice is necessary to a parent whose parental rights have previously been terminated or relinquished.

The designation shall constitute a rebuttable presumption that the designated temporary guardian is capable of serving as co-guardian or guardian. When the designator is the sole surviving parent, when the parental rights of any non-custodial 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.

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

In the event a hearing is required, it shall be conducted in accordance with the proceedings set forth in Chapters 53 (relating to custody) and 54 (relating to uniform child custody jurisdiction and enforcement).

If a designation has not been executed and a petition for temporary guardianship has been filed with the court by a family member, the custodial parent and non-custodial parent or adoptive parent shall appear in court in order to consent to or oppose the designation. If notice has been given and a non-custodial parent does not appear in court, it is presumed that consent to the designation has been granted.

A court may waive filing fees and other costs upon application when the petitioner demonstrates the fees and other costs would constitute a financial burden upon the petitioner and their family. There shall be a presumption of a financial burden if the income from all sources of the petitioner is less than 300% of the poverty level set by the Federal Government.

The temporary guardian shall have the authority to act as co-guardian or guardian upon a custodial parent entering into an alcohol or drug treatment facility. A temporary guardian's authority to act as co-guardian does not divest the custodial parent of any parental rights, but shall confer shared custody of the child to the temporary guardian. A co-guardian shall assure frequent and continuing contact with and physical access to the child and shall further assure

the involvement of the custodial parent, to the greatest extent possible, in the decision making on behalf of the child.

In addition to any other restrictions placed on a temporary guardian by the court, the temporary guardian shall not:

- Remove the minor or permit the minor to be removed from the United States either permanently or temporarily without the consent of the custodial parent and the approval of the court.
- Remove the minor from this Commonwealth absent a court order, which may only be issued after a hearing at which both parents and the minor shall have the right to be present.

Temporary guardianship is initially limited to 90 days from entry of the order. However, upon approval by the court or by written agreement of the temporary guardian and the parent who has entered a rehabilitation facility, temporary guardianship can be incrementally extended for additional 90-day periods, up to 365 days.

A court shall terminate a temporary guardianship if:

- The custodial parent demonstrates that the basis for the temporary guardianship no longer exists.
- The custodial parent and temporary guardian agree upon termination.
- The temporary guardian files a petition with the court seeking termination;
- A non-custodial or adoptive parent files a petition with the court seeking termination of the guardianship;
- The temporary guardian or an individual who resides with the temporary guardian commits an offense of child abuse.

Before terminating an order for temporary guardianship, the court shall consider if termination of the temporary guardianship is in the best interests of the child.

HB 1539 also amends Section 6340(a)(5.1) (release of information in confidential reports) of Chapter 63 (Child Protective Services Law) of Title 23 to allow a court of common pleas access to reports of suspected child abuse by mandated reporters or any other related information about suspected or alleged child abuse in connection with a matter involving temporary guardianship under Chapter 56.

FISCAL IMPACT: Adoption of this legislation is not anticipated to have any adverse fiscal impact on Commonwealth funds.

PREPARED BY: Ann Bertolino
House Appropriations Committee (R)

DATE: April 17, 2018

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.