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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1539 Session of  
2017

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INTRODUCED BY PASHINSKI, DRISCOLL, THOMAS, FREEMAN, ROTHMAN,  
KINSEY, VAZQUEZ, MILLARD, READSHAW, SCHLOSSBERG, DAVIS,  
CALTAGIRONE, HILL-EVANS, TOOHL, KORTZ, PHILLIPS-HILL,  
SAMUELSON, HARKINS, DeLUCA, WARREN AND FARRY, JUNE 13, 2017

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REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, JUNE 13, 2017

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AN ACT

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

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

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

10 CHAPTER 56

11 STANDBY AND TEMPORARY GUARDIANSHIP

12 Subchapter

13 A. Preliminary Provisions

14 B. General Provisions

15 C. Temporary Guardianship

16 Section 2. Chapter 56 of Title 23 is amended by adding a  
17 subchapter to read:

18 SUBCHAPTER C

1 TEMPORARY GUARDIANSHIP

2 Sec.

3 5630. Grounds for appointment.

4 5631. Standard for appointment.

5 5632. Duration.

6 5633. Hearing required.

7 5634. Mandatory considerations.

8 5635. Investigation required.

9 5636. Limits on temporary guardianship powers.

10 5637. Costs.

11 5638. Termination of temporary guardianship.

12 5639. Onsite assessment.

13 5640. Agreement for temporary guardianship.

14 § 5630. Grounds for appointment.

15 When an individual who is a parent of a minor has entered a  
16 rehabilitation facility for treatment of a drug or alcohol  
17 addiction, or has been subject to emergency medical intervention  
18 due to abuse of drugs or alcohol, a grandparent of the minor or  
19 an individual who stands in loco parentis to the minor may file  
20 a petition with the court of common pleas for temporary  
21 guardianship of that minor.

22 § 5631. Standard for appointment.

23 A court may appoint an individual under section 5630  
24 (relating to grounds for appointment) as temporary guardian if,  
25 upon petition, it is shown by clear and convincing evidence  
26 that:

27 (1) Grounds for appointment have been established under  
28 section 5630 or a written agreement for temporary  
29 guardianship has been executed by a parent of the minor and  
30 an individual listed under section 5630.

1           (2) The other parent of the child:

2           (i) is unable or unwilling to assume physical  
3           custody or make decisions regarding the child;

4           (ii) consents to the temporary guardianship;

5           (iii) after a good faith effort, cannot be located;

6           or

7           (iv) is deceased.

8   § 5632. Duration.

9           Temporary guardianship under this section shall be limited in  
10          duration to not more than 60 days from entry of the order of  
11          temporary guardianship but, upon petition or by written  
12          agreement of the temporary guardian and the parent who has  
13          entered a rehabilitation facility, may be extended for periods  
14          of up to 60 additional days. The total period of guardianship  
15          under this section may not exceed 365 days.

16   § 5633. Hearing required.

17          Upon petition for temporary guardianship of a minor, the  
18          court shall hold a hearing, at which one or both parents and the  
19          minor has the right to be present. The court may not hold a  
20          hearing absent proof of personal service upon the parent or  
21          documentary evidence that after a good faith effort the other  
22          parent cannot be located.

23   § 5634. Mandatory considerations.

24          Before granting a petition under this section, the court  
25          shall consider whether granting temporary guardianship is in the  
26          best interest of a minor. When determining whether to grant or  
27          extend temporary guardianship the court shall also consider the  
28          following:

29               (1) The existence of feasible alternatives to temporary  
30               guardianship.

1       (2) The effect on the emotional, social and educational  
2 development of the minor.

3       (3) Whether the temporary guardianship will have an  
4 adverse effect on the minor's relationship with the parent.

5       (4) The wishes of either parent regarding the temporary  
6 guardianship.

7       (5) The expressed preference of an age-appropriate  
8 minor.

9       (6) The physical and behavioral health of the temporary  
10 guardian and any treatment rendered to the temporary guardian  
11 by health care providers.

12       (7) Other relevant factors regarding the effect of the  
13 temporary guardianship.

14 § 5635. Investigation required.

15       A court may not enter or extend an order of temporary  
16 guardianship unless:

17       (1) A search of the ChildLine database maintained by the  
18 Department of Human Services indicates no record of the  
19 temporary guardian or a person who resides in the same  
20 household as the temporary guardian as being a perpetrator of  
21 child abuse or neglect.

22       (2) A search of criminal history records in this  
23 Commonwealth and criminal history records maintained by  
24 Federal agencies indicates no record of the temporary  
25 guardian or a person who resides in the same household as the  
26 temporary guardian as being convicted of a crime of violence,  
27 as defined in 42 Pa.C.S. § 9714(g) (relating to sentences for  
28 second and subsequent offenses).

29 § 5636. Limits on temporary guardianship powers.

30       In addition to any other restrictions on the power of a

1 guardian or temporary guardian, a temporary guardian may not  
2 have the power to:

3 (1) Remove the minor from the United States either  
4 permanently or temporarily or permit the minor to be removed  
5 from the United States either permanently or temporarily.

6 (2) Remove the minor from this Commonwealth absent a  
7 court order, which may only be issued after a hearing at  
8 which both parents and the child shall have the right to be  
9 present.

10 § 5637. Costs.

11 A court may waive filing fees and other costs upon  
12 application when the temporary guardian demonstrates the fees  
13 and other costs would constitute a financial burden upon the  
14 temporary guardian and the family of the temporary guardian.  
15 There shall be a presumption of a financial burden if the income  
16 from all sources of the temporary guardian is less than 300% of  
17 the poverty level set by the Federal Government.

18 § 5638. Termination of temporary guardianship.

19 A court may terminate a temporary guardianship upon a showing  
20 that the basis for the temporary guardianship no longer exists  
21 or that the parent and temporary guardian agree upon  
22 termination. A party to the temporary guardianship may file a  
23 petition with the court seeking termination.

24 § 5639. Onsite assessment.

25 Within 15 days of termination of a temporary guardianship,  
26 the court shall direct a county children and youth agency to do  
27 an onsite assessment of the home of the parent of the minor.

28 § 5640. Agreement for temporary guardianship.

29 A parent and a temporary guardian may agree on a temporary  
30 guardianship. In the case of more than one agreement for

1 temporary guardianship, the last executed agreement shall be  
2 given effect. A designation of temporary guardianship may, but  
3 need not, be in the following form:

4 .....

5 (Insert name of designator) do hereby appoint

6 .....

7 (Insert name, address and telephone number of temporary  
8 guardian) as the temporary guardian of

9 .....

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

11 ..... (Date).

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

13 .....

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

15 .....

16 (Insert name(s) of other parent(s) of minor(s)) is the  
17 father/mother/other of .....

18 .....

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

20 By this designation, I am granting .....

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

22 45 days following the occurrence of .....

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

24 child(ren).

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

26 extent consistent with my condition and to retain the

27 authority to revoke the temporary guardianship if I so

28 choose.

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

30 of sound mind.

1 .....  
.....

2 (Date) (Designator's signature)

3 .....  
.....

4 (Witness's signature) (Witness's signature)

5 .....  
.....

6 (Number and Street) (Number and Street)

7 .....  
.....

8 (City, State and Zip Code) (City, State and Zip Code)

9 If applicable: I, .....

10 (Insert name of other parent)

11 hereby consent to this designation.

12 .....  
.....

13 (Date) (Signature of other parent)

14 .....  
.....

15 (Address of other parent)

16 I, .....

17 (Insert name of temporary guardian) hereby accept my

18 nomination as temporary guardian of .....

19 .....  
.....

20 (Insert minor(s)'s name(s)). I understand that my rights and

21 responsibilities toward the minor child(ren) named above will

22 become effective upon ..... (Date)

23 I further understand that in order to continue as temporary

24 guardian for the child(ren), I must file a petition with the

25 court of common pleas within 30 days of the order granting

26 the petition for temporary guardianship.

27 .....  
.....

28 (Date) (Signature of temporary guardian)

29 NOTARY SEAL

30 I hereby revoke the above temporary guardianship agreement.

1       ..... (Parent signature)

2       ..... (Date)

3       NOTARY SEAL

4       Section 3. Section 6340(a)(5.1) of Title 23 is amended to  
5 read:

6 § 6340. Release of information in confidential reports.

7       (a) General rule.--Reports specified in section 6339  
8 (relating to confidentiality of reports) shall only be made  
9 available to:

10           \* \* \*

11           (5.1) A court of common pleas in connection with any  
12 matter involving custody of a child as set forth in sections  
13 5328 (relating to factors to consider when awarding custody)  
14 and 5329.1 (relating to consideration of child abuse and  
15 involvement with protective services) or temporary  
16 guardianship of a child under Chapter 56 (relating to standby  
17 and temporary guardianship).

18           \* \* \*

19 Section 4. This act shall take effect in 60 days.