

CHAPTER 246
FORMERLY
HOUSE BILL NO. 251

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE PERTAINING TO GUARDIANSHIP OF A CHILD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 23, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§2302. Definitions.

For the purposes of this chapter, unless the context indicates differently:

(6) "Department" or "DSCYF" means the Department of Services for Children, Youth and Their Families.

(9) "Foster parent" means an individual or couple who has been approved by ~~the Department~~ DSCYF or a licensed agency to provide foster care in exchange for foster care payments provided by ~~the Department~~ DSCYF or a licensed agency.

(16) "Relative" shall have the same meaning as used in § 901 of Title 10.

§2320. Persons eligible to petition for guardianship.

Unless otherwise specified in this chapter, any adult person or persons may petition the Family Court for a guardianship order regarding a child not his, hers or theirs. Unless otherwise specified in this chapter, ~~the Department~~ DSCYF, the Division, a licensed agency, the guardian ad litem or a hospital that has an interest in the health, education or welfare of a child or children may petition the Family Court for a guardianship order so long as the proposed guardian or guardians consent to the appointment.

§2322. Contents of petition.

(9) A statement regarding each parent that:

a. The child is dependent, ~~and/or neglected or abused~~, and the reasons therefore; or

~~§2323. Religious affiliation.~~

~~(a) Under this chapter, if either natural parent, in a notarized statement made prior to the child's placement with the proposed guardian, specifies the religion in which the parent desires the child to be raised, the Department DSCYF or licensed agency shall make placement in accordance with such statement. Otherwise, the Department or licensed agency shall make placement without regard to religion.~~

~~(b) If the proposed guardian is a stepparent or blood relative, there shall be no restriction regarding the religious affiliation.~~

~~(c) Whenever the provisions as set forth in subsection (a) of this section appear to create a hardship for the child in obtaining a suitable and prompt placement, the Court, in its discretion, may waive these requirements in the best interests of the child.~~

§2325. Hearing procedure and notice requirements.

(a) When a guardianship petition is filed, ~~the Court shall set a date for a proceeding on the petition, and shall cause notice of time, place and purpose of the proceeding to be served as required in this section.~~

~~(b) Notice of the time, place and purpose of the proceeding the petition shall be served upon the parent or parents, person or persons or organization holding parental rights at the respondent's last known address or to the address received in the petition.~~

§2330. Grounds for guardianship of the child.

(a) Prior to granting an order for guardianship under this chapter, the Court shall find for each parent the following:

(1) The parent voluntarily consents to the guardianship; notwithstanding the consent, if the child is in DSCYF custody, the Court shall also determine whether guardianship is the appropriate permanency plan for the child and whether it is in the best interest of the child for the guardianship to be granted; or

(2) After a hearing on the merits, by a preponderance of the evidence that petitioner has established:

- a. The child is dependent, ~~and/or~~ neglected or abused and the reasons therefore; and
- b. It is in the best interests of the child for the guardianship to be granted.

~~(b) If the child is 14 years of age or older, the Court shall find that the child consents to the guardianship or, if the child does not consent, just cause why the guardian should be appointed. When more than one petition for guardianship regarding the same child or children has been filed, and the elements of subsection (a) are met regarding the parents, the Court shall determine which petition, if any, is granted based upon the best interests of the child.~~

~~(c) If the Court determines that the elements of subsection (a) of this section have been met, the Court shall also determine by a preponderance of evidence the nature and extent, if any, of any contact, sharing of information, and/or visitation between the parent and the child. In making such a determination, the Court shall apply the best interests of the child standard. When a guardianship petition is filed against a current guardian, and the elements of subsection (a) are met regarding the parents, the Court shall determine whether the petition shall be granted based upon the best interests of the child.~~

~~(d) If the child is 14 years of age or older, the Court shall determine whether the child consents to the guardianship, and if the child opposes, if just cause still requires the guardianship to be granted.~~

~~(e) If the Court determines that the elements of subsection (a) of this section have been met, the Court shall also determine by a preponderance of evidence the nature and extent, if any, of any contact, sharing of information, and/or visitation between the parent and the child. In making such a determination, the Court shall apply the best interests of the child standard.~~

§2331. Duties and rights of parents.

~~(d) If the child has been in the custody of the Department DSCYF immediately prior to the creation of a guardianship granting of a guardianship order, the Department DSCYF shall have no further duty of support or care for the child after establishment of the guardianship unless the Department DSCYF agrees in writing to that support.~~

§2332. Termination, ~~or~~ modification or rescission of guardianship order.

(a) Termination. -- Except as otherwise specified in this chapter, guardianship of a child terminates:

- ~~(1) Upon the child's death;~~
- ~~(2) (1) Upon the guardian's death;~~
- ~~(3) (2) Upon adoption of the child;~~
- ~~(4) (3) When the child reaches the age of majority; or~~
- ~~(5) (4) As otherwise ordered by the Court.~~

~~(b) Modification. -- Except as otherwise specified in this chapter, modification of a guardianship may be made as follows: an order of guardianship may be modified regarding~~

~~(1) An order concerning contact, visitation or sharing of information may be modified at any time if it is in the best interests of the child; ~~or~~~~

~~(2) An order of guardianship may be modified at any time if the child is no longer dependent or neglected, and it is in the best interests of the child to modify the order.~~

~~(c) Rescission. --~~

~~(1) Except as otherwise specified in this chapter, an order of guardianship may be rescinded upon a judicial determination that petitioner has made a preliminary showing the guardianship is no longer necessary for the reason(s) it was established, unless:~~

~~a. The Court finds that the guardian has established, by a preponderance of the evidence, that the child will be dependent, neglected, and/or abused in the care of the parent or parents seeking rescission; or~~

~~b. The Court finds that the guardian has established, by clear and convincing evidence, that the child will suffer physical or emotional harm if the guardianship is terminated.~~

§2333. Subsidies.

~~(a) The Department DSCYF, in its discretion, may award subsidy moneys to guardians of the person of a child where the Court finds:~~

(1) The grounds for guardianship have been met as set forth in this chapter; and

(2) The child was in the custody of ~~the Department~~ DSCYF and/or the Division for a period of at least 1 year.

(b) The amount and duration of the subsidy shall be in the sole discretion of ~~the Department~~ DSCYF.

§2351. Eligibility to serve as permanent guardian; eligibility to petition for permanent guardianship.

A ~~blood~~ relative, foster parent ~~or parents~~, or guardian may serve as permanent guardian of a child. ~~A blood relative, foster parent or parents~~ and may petition the Family Court for a permanent guardianship order regarding a child not his, hers or theirs. ~~the Department~~ DSCYF, the Division, a licensed agency or guardian ad litem may petition the Family Court for a permanent guardianship order so long as the proposed permanent guardian or guardians consent to the appointment.

§2353. Standard for permanent guardianship.

(a) The Court shall grant a permanent guardianship if it finds by clear and convincing evidence that:

(4) The proposed permanent guardian:

b. Is a foster parent~~(s)~~ or guardian who has been caring for the child for at least 6 months or held guardianship for at least 6 months at the time of the filing of the petition or is a ~~blood~~ relative;

§2358. Duties and rights of parents.

(d) If the child has been in the custody of ~~the Department~~ DSCYF immediately prior to the entry of an order for a permanent guardianship, ~~The Department~~ DSCYF shall have no further duty of support or care for the child after establishment of the permanent guardianship unless ~~the Department~~ DSCYF agrees in writing to that support. ~~However, if the permanent guardianship is terminated, and the Department held custody immediately prior to the entry of the order, custody shall revert to the Department.~~

§2359. Termination, ~~or~~ modification or rescission of permanent guardianship order.

(a) ~~A parent may not petition the Court to modify or terminate a permanent guardianship once granted under this chapter.~~ Termination. -- Except as otherwise specified in this chapter, permanent guardianship of a child terminates:

(1) Upon the permanent guardian's death;

(2) Upon adoption of the child;

(3) When the child reaches the age of majority; or

(4) As otherwise ordered by the Court.

(b) ~~The Court shall modify or terminate a permanent guardianship only upon a finding:~~ Modification. -- Except as otherwise specified in this chapter, an order of permanent guardianship may be modified regarding contact, visitation or sharing of information only upon a finding:

(1) That there has been a substantial change in material circumstances; and

(2) That modification ~~or termination~~ is in the best interests of the child.

(c) ~~Where the permanent guardianship is terminated by the Court, custody of the child shall not automatically revert to the parent. At any subsequent hearing, the parent shall be considered with no greater priority than any other person or agency, and the Court shall apply the best interests of the child factors in entering an order on behalf of the child.~~ Rescission. --

(1) An order of permanent guardianship may be rescinded only upon a finding:

a. That there has been a substantial change in material circumstances; and

b. That rescission is in the best interests of the child.

(2) A parent may not petition the Court to rescind a permanent guardianship once granted under this chapter.

(3) Where the permanent guardianship is rescinded by the Court, custody of the child shall not automatically revert to the parent. At any subsequent hearing, the parent shall be considered with no greater priority than any other person or agency, and in entering any further order regarding the child the Court shall apply the best interests of the child standard.

(4) If the permanent guardianship is rescinded, and DSCYF held custody immediately prior to the entry of the order, custody shall revert to DSCYF.

(d) Upon a showing by affidavit of immediate harm to a child, the Court may temporarily:

(1) Stay a permanent guardianship order on an ex parte basis pending a hearing and grant temporary custody of the child to ~~the Department~~ DSCYF or temporary guardianship to petitioner; and/or

(2) Stay the visitation, contact or information provisions of a permanent guardianship order on an ex parte basis pending a hearing.

Approved June 10, 2014