



SPONSOR: Sen. Gay & Rep. Griffith
Sens. Hoffner, Poore

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 119

AN ACT TO AMEND TITLE 13 AND TITLE 31 OF THE DELAWARE CODE RELATING TO GUARDIANSHIP OF A CHILD.

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

1 Section 1. Amend § 2302, Title 13 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 2302. Definitions.

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

5 (16) ~~“Relative” shall have the same meaning as used in § 901 of Title 10. “Relative” means any sibling,~~
6 ~~grandparent, uncle, aunt, first cousin, first cousin once removed, great-grandparent, grandaunt or granduncle, half~~
7 ~~sibling, stepparent, stepsibling, stepaunt or stepuncle, or stepgrandparent of the child who is the subject of a~~
8 ~~guardianship petition.~~

9 Section 2. Amend § 2320, Title 13 of the Delaware Code by making deletions as shown by strike through and
10 insertions as shown by underline as follows:

11 § 2320. Persons eligible to petition for guardianship.

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

17 Section 3. Amend § 2321, Title 13 of the Delaware Code by making deletions as shown by strike through and
18 insertions as shown by underline as follows:

19 § 2321. Consent by parent.

20 Unless otherwise provided by this chapter, the parent or parents may voluntarily consent to the guardianship.
21 Notwithstanding such consent, a reason for establishing the guardianship shall be provided.

22 Section 4. Amend § 2322, Title 13 of the Delaware Code by making deletions as shown by strike through and
23 insertions as shown by underline as follows:

24 § 2322. Contents of petition.

25 Every petition for guardianship of a child filed under this chapter shall contain:

26 (9) A statement regarding each parent that:

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

28 b. The proposed guardian is a stepparent and meets the requirements of § 733 of this title; or

29 c. ~~The parent consents to the guardianship and an accompanying affidavit indicating same; The parent~~
30 consents to the guardianship. Notwithstanding the parent's consent, the petitioner must state the reason for
31 establishing the guardianship. An affidavit shall also be filed indicating that the parent consents to the
32 guardianship and whether the parent consents to the reason for establishing the guardianship as stated by the
33 petitioner. The affidavit shall also include a statement that the parent understands the impact that consenting to the
34 reason has on future rescission proceedings under § 2332 of this title;

35 Section 5. Amend § 2324, Title 13 of the Delaware Code by making deletions as shown by strike through and
36 insertions as shown by underline as follows:

37 § 2324. Social study and report.

38 (a) The Court, in its discretion, may order a social study and report (hereinafter "social report") for any petition
39 filed under this chapter. The social report, if ordered, shall be prepared by a ~~licensed child placing agency~~ licensed agency,
40 as defined in § 1101 of this title, retained by petitioner.

41 Section 6. Amend Chapter 23, Title 13 of the Delaware Code by making deletions as shown by strike through and
42 insertions as shown by underline as follows:

43 § 2324A. Assessment.

44 (a) DSCYF or a licensed agency, as defined in § 1101 of this title, shall conduct an assessment of any person who
45 is the proposed guardian and who is not a relative, as defined in § 2302 of this title.

46 (b) Notwithstanding subsection (a) of this section, the Court has jurisdiction to hear and rule on any petition for
47 guardianship, including granting of emergency relief, and to determine placement for a child in DSCYF custody under
48 § 2521(1) of this title.

Section 7. Amend § 2326, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2326. Decision within ~~30~~ 45 days.

The Court shall issue a decision and order on a petition for guardianship under this chapter within ~~30~~ 45 days following the conclusion of the proceedings, or if no hearing is necessary, within ~~30~~ 45 days of the petition and social report, if applicable, being filed.

Section 8. Amend § 2327, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2327. Confidentiality of proceedings.

All proceedings under this chapter shall be held before the Court privately, but for reasons appearing sufficient to the Court, the hearing ~~in any particular case~~ may be public.

Section 9. Amend § 2328, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2328. Appeals.

The petitioner, if the petition is not granted, or any person or organization who does not prevail in a petition for guardianship under this chapter, may, ~~at any time~~ within 30 days after the entry of an order by the Court, take an appeal therefrom to the Supreme Court.

Section 10. Amend § 2330, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2330. Grounds for guardianship of the child.

(a) ~~Prior to~~ Before granting an order for guardianship under this chapter, when parental rights are vested in 1 or more parents, the Court shall find for each parent holding parental rights 1 of 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~~ guardianship.

a. Notwithstanding the consent, if the child is in DSCYF custody, the Court shall 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.

b. The Court shall also determine the reason for establishing the guardianship.

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

a. The child is dependent, neglected or abused and the reasons therefor; and

b. It is in the best interests of the child for the guardianship to be granted.

(b) When parental rights have been terminated and those rights are vested in DSCYF or a licensed agency, as defined in § 1101 of this title, the Court shall grant an order for guardianship upon finding both of the following:

(1) Guardianship is the appropriate permanency plan for the child.

(2) It is in the best interests of the child for the guardianship to be granted.

(b) (c) When more than 1 petition for guardianship regarding the same child or children has been filed, and the elements of either subsection (a) or (b) of this section are met regarding the parents, met, the Court shall determine which petition, if any, is granted to grant based upon the best interests of the child.

(e) (d) When a guardianship petition is filed against a current guardian, and the elements of either subsection (a) or (b) of this section are met regarding the parents, met, the Court shall determine whether the petition shall be granted based upon the best interests of the child.

(d) (e) 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, whether just cause requires the guardianship 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. If the Court determines the elements of subsection (a) or (b) of this section have been met, the Court shall issue an order stating the grounds and the reason for establishing the guardianship. The Court shall also determine by a preponderance of evidence the nature and extent, if any, of contact, sharing of information, or visitation between the parent and the child. In making such a determination, the Court shall apply the best interests of the child standard.

Section 11. Amend § 2332, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(c) Rescission. 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, reason determined by consent or by a finding of the Court at the time the guardianship was established, unless:

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

(2) 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.

Section 12. Amend § 2333, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2333 Subsidies.

(a) 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 DSCYF ~~and/or the Division~~ for a period of at least 1 year.

Section 13. Amend § 2340, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2340. Powers and duties of the guardian of the child.

(c) Except as modified by the order of guardianship and without qualifying the foregoing, a guardian of the person has the following powers and duties:

(1) The guardian is entitled to custody of the child and may establish the child's place of ~~abode within or without this State.~~ abode.

a. Notwithstanding the guardian's authority under subsection (c) of this section, if there is a proposed relocation of a child for a period of 60 days or more involving either a move outside the state of Delaware or a move that materially affects a parent's existing visitation arrangement or order, the guardian must obtain at least 1 of the following:

1. Leave of court.

2. The consent of the child's parents.

b. When considering a guardian's request to relocate a child, the Court shall apply the relocation factors under § 734 of this title.

(2) The guardian shall provide the child with:

a. A physically and emotionally healthy and safe living environment and daily care;

b. Education; and

c. All necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric examinations, treatment ~~and/or~~ or surgery.

(3) The guardian shall make decisions regarding:

a. Education;

b. Travel;

c. All necessary and appropriate medical treatment, including but not limited to medical, dental and psychiatric examinations, treatment ~~and/or~~ or surgery;

- 144 d. The child's right to marry or enlist in the armed forces;
145 e. Representation of the child in legal actions; and
146 f. Any other matter that involves the child's welfare and upbringing.

147 Section 14. Amend § 2351, Title 13 of the Delaware Code by making deletions as shown by strike through and
148 insertions as shown by underline as follows:

149 § 2351. Eligibility to serve as permanent guardian; eligibility to petition for permanent guardianship.

150 A relative, foster parent, ~~or guardian~~ guardian, or an individual with whom a child in DSCYF custody is placed
151 may serve as permanent guardian of a child and may petition the Family Court for a permanent guardianship order
152 regarding a ~~child not his, hers or theirs.~~ child. DSCYF, ~~the Division,~~ the Child Attorney, a licensed agency or guardian ad
153 litem may petition the Family Court for a permanent guardianship order so long as the proposed permanent guardian ~~or~~
154 ~~guardians consent~~ consents to the appointment.

155 Section 15. Amend § 2352, Title 13 of the Delaware Code by making deletions as shown by strike through and
156 insertions as shown by underline as follows:

157 § 2352. Contents of petition for permanent guardianship.

158 A petition for permanent guardianship shall contain all of the information required by § 2322 of this title, ~~as well~~
159 ~~as~~ and all of the following information:

- 160 (1) The grounds for the granting of an order of permanent ~~guardianship; and~~ guardianship.
161 (2) A statement outlining prior efforts to place the child for adoption, if applicable.

162 Section 16. Amend § 2353, Title 13 of the Delaware Code by making deletions as shown by strike through and
163 insertions as shown by underline as follows:

164 § 2353. Standard for permanent guardianship.

165 (a) The Court shall grant a permanent guardianship if it finds by clear and convincing evidence ~~that:~~ all of the
166 following:

- 167 (1) One of the statutory grounds for termination of parental rights as set forth in § 1103(a) of this title has
168 ~~been met;~~ met or the parent consents to permanent guardianship.
169 (2) Adoption of the child is not possible or ~~appropriate;~~ appropriate.
170 (3) Permanent guardianship is in the best interests of the ~~child;~~ child.
171 (4) The proposed permanent ~~guardian;~~ guardian meets all of the following requirements:
172 a. Is emotionally, mentally, physically and financially suitable to become the permanent ~~guardian;~~
173 guardian.

b. ~~Is a foster parent 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 relative; Is an individual with whom a child in DSCYF custody is placed, a relative, a foster parent, or a guardian.~~

c. Has expressly committed to remain the permanent guardian and assume the rights and responsibilities for the child for the duration of the child's ~~minority; and minority.~~

d. Has demonstrated an understanding of the financial implications of becoming a permanent ~~guardian; guardian.~~

e. Has had the child placed with them for at least 6 months immediately preceding the filing of the petition. The Court may waive this requirement if the petitioner is a relative and the Court finds just cause.

(5) If the child is age 14 or over, the child consents to the permanent guardianship or, if the child does not consent, just cause why the permanent guardian should be ~~appointed; and appointed.~~

(6) If the proposed permanent guardian is ~~a foster parent or parents; is not a relative or current guardian, at least 1 of the following:~~

a. The child is at least 12 years of ~~age; or age.~~

b. The proposed permanent guardian is the permanent guardian of 1 of the child's ~~siblings; or siblings.~~

c. The child receives substantial governmental benefits for a serious physical ~~and/or or~~ mental disability which would no longer be available to the child if parental rights were terminated ~~and/or if or~~ the child was adopted.

d. Extraordinary circumstances that support granting the permanent guardianship exist.

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

(c) ~~The parent or parents may voluntarily consent to the permanent guardianship provided the elements of subsection (a) of this section are met. [Repealed.]~~

Section 17. Amend § 2356, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2356. Order granting permanent guardianship.

(a) The Court shall issue an order regarding permanent guardianship within ~~30~~ 45 days ~~of; of 1 of the following:~~

(1) The final day of ~~trial; or trial.~~

(2) The filing of the petition and social report in cases based upon the consent of all parties.

(b) If the Court grants permanent guardianship, it shall include in that order provisions regarding visitation by the child with the child's parents, contact by the child with ~~his or her~~ the child's parents, and the sharing of information to be provided to the parents about the child, all based upon the child's best interests.

Section 18. Amend § 2358, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2358. Duties and rights of parents.

(a) While a permanent guardianship is in effect, the parent shall have the following rights:

(1) Visitation, contact and information, to the extent delineated in the permanent guardianship order issued by the Court. A parent may petition the Court for specific enforcement of provisions of the order granting permanent guardianship relating to contact, visitation or ~~information;~~ information.

(2) Inheritance by and from the ~~child;~~ and child.

(3) Right to consent to termination of parental rights ~~and/or~~ or adoption of the child.

Section 19. Amend § 2359, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(a) Termination. Except as otherwise specified in this chapter, permanent guardianship of a child ~~terminates;~~ terminates upon at least 1 of the following conditions:

(1) ~~Upon the~~ The permanent guardian's ~~death;~~ death.

(2) ~~Upon adoption~~ Adoption of the ~~child;~~ child.

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

(4) ~~As otherwise ordered by the Court.~~ The Court otherwise orders termination of the permanent guardianship.

(b) 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;~~ finding both of the following:

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

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

(c) Rescission.

(1) An order of permanent guardianship may be rescinded only upon ~~a finding;~~ finding both of the following:

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

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

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

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

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

Section 20. Amend § 351, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 351. DSCYF assessment required; exceptions. [Repealed]

~~(a) Before any person, institution, agency, association, corporation, or organization shall place or cause to be placed or shall receive or cause to be received or shall keep or retain in custody, for the purpose of continued free or wage boarding or otherwise, any dependent child residing in the State, such person, institution, agency, association, corporation, or organization must first obtain a written assessment of the proposed placement, conducted by DSCYF, or an agency licensed by the Department of Education, Office of Child Care Licensing.~~

~~(b) Subsection (a) of this section does not apply to any of the following:~~

~~(1) Child placement agencies regularly and duly authorized and licensed to place and receive dependent children in the State.~~

~~(2) Institutions regularly and duly authorized and licensed to take children under permanent care in the State.~~

~~(3) The homes in which such authorized and licensed child placement agencies or institutions place children.~~

~~(4) Privately endowed institutions supported wholly by private endowment and established to provide continued care for dependent children.~~

~~(c) An assessment of the proposed placement of a dependent child pursuant to subsection (a) of this section is not required by DSCYF, or an agency licensed by the Department of Education, Office of Child Care Licensing, if all of the following conditions are met:~~

~~(1) When the child is placed in a home of an "adult individual" who fails to meet the definition of "relative" in § 901 of Title 10 but the adult individual is by marriage, blood, or adoption the child's great-grandparent, stepgrandparent, great uncle or great aunt, half brother or half sister, stepbrother or stepsister, stepparent, or stepuncle or steppaunt to the extent not already included in the definition of "relative," or first cousin once removed.~~

~~(2) When DSCYF has not currently filed, and does not intend to file, for custody of the child on the basis of dependency or neglect.~~

~~(3) When there have been no prior or present allegations of abuse or neglect regarding the adult individual with whom the child is placed.~~

~~(4) When DSCYF is not currently a party to a custody or visitation dispute regarding the child.~~

~~(5) When DSCYF does not hold or seek custody of the child.~~

~~(6) When the child meets the definition of "dependent child" solely because the child has been placed on a permanent basis in the home of an adult individual as described above and has been placed with such individual~~

269 without an assessment by DSCYF, or an agency licensed by the Department of Education, Office of Child Care
270 Licensing.

271 (d) This section does not limit the Family Court's jurisdiction to hear a petition for guardianship of a child
272 pursuant to Chapter 23 of Title 13, including granting of emergency relief, nor does this section limit the Family Court's
273 determination of appropriate placement for a child in DSCYF custody pursuant to § 521(1) of Title 13.

274 Section 21. This Act takes effect 180 days after its enactment into law.

SYNOPSIS

This Act amends Chapter 23, Title 13 relating to guardianship and permanent guardianship of a child. The Act does all of the following:

1. Repeals § 351, Title 31, and embeds the requirement for assessments of non-relative guardianship petitioners in Chapter 23, Title 13, the statute for guardianship of a child.
2. Revises the definition of relative for Chapter 23, Title 13, to include the relationships outlined in § 351, Title 31 for whom assessment is not required. This revision also expands eligibility for relative permanent guardianship petitioners.
3. Clarifies that when a parent consents to guardianship, a reason for establishing the guardianship is still required.
4. Moves the parental consent provision previously in § 2353(c) to § 2353(a)(1).
5. Creates separate grounds for granting guardianship when parental rights have been terminated and are vested in DSCYF or a licensed agency.
6. Requires parental consent or a Court order for a guardian or permanent guardian to relocate a child if it will materially affect a parent's visitation. This provision mirrors the relocation provision in § 734, Title 13.
7. Adds an individual with whom a child in DSCYF custody is placed as a person eligible to serve as a permanent guardian.
8. Clarifies that either a TPR ground or a parent's consent is required to grant a permanent guardianship.
9. Clarifies that a permanent guardianship petitioner must have the child placed with them for 6 months immediately preceding the filing of the petition. This requirement is also expanded to include relatives, unless the court finds just cause to waive the requirement for a relative petitioner.
10. Provides judicial discretion, where extraordinary circumstances are found, to grant permanent guardianship to a foster parent or individual with whom a child in DSCYF custody is placed when none of the other exceptions apply.
11. Makes minor technical changes to conform existing law to the standards of the Delaware Legislative Drafting Manual, including replacing "and/or" with the appropriate conjunction and using gender silent language.

Author: Senator Gay