

## **Act No. 170 (H.581). Judiciary; minor guardianships**

### **An act relating to guardianship of minors**

This act creates a new statute concerning guardianship of minors in response to the recommendations of the Minor Guardianship Study Committee, which spent two years studying the issue after the General Assembly created it in 2011. The statute provides a comprehensive substantive and procedural structure for minor guardianship proceedings.

A minor guardianship proceeding is commenced by filing a petition for guardianship of a minor in the Probate Division of the Superior Court by a parent or by any person interested in the minor's welfare. The names of the parties, the proposed guardian's relationship to the child, and the reason for the guardianship must be included in the petition, and it must be served on all parties by certified mail, though the Court can waive this requirement for a parent who cannot be located.

The probate court generally has exclusive jurisdiction over proceedings involving guardianship of minors. However, the proceeding must be transferred to the Family Division if there is an open proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division, and it may be transferred if any of the parties to the probate proceeding was a party to a closed divorce proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

The Court must have a hearing for all guardianship petitions, with notice provided to all parties and interested persons. If the parties consent to the guardianship, the process is very straightforward. An agreement is filed with the petition that addresses the responsibilities of the guardian, the responsibilities of the parents, the expected duration of the guardianship, if known, and parent-child contact and parental involvement in decision making. The Court grants the petition and issues an order establishing a guardianship consistent with the agreement if it finds after the hearing by clear and convincing evidence that the parties have knowingly and voluntarily consented to the guardianship, the proposed guardian is suitable, and the guardianship is in the best interests of the child.

If the parent does not consent to the guardianship, then the burden is on the proposed guardian to establish by clear and convincing evidence that the parent is unfit. This is a constitutionally required standard and the rules of evidence apply to the proceeding. The Court may only grant the petition if it finds by clear and convincing evidence that the proposed guardian is suitable and the parent is unfit.

If the Court grants the petition, it issues an order establishing a guardianship and naming the proposed guardian as the child's guardian. The order must include the powers and duties of the guardian, the expected duration of the guardianship, if known, a family plan on a form approved by the Court Administrator, and the process for reviewing the order. In all cases, the guardian must file an annual status report about the guardianship with the Court. All appeals of guardianship orders go directly to the Supreme Court, which is a change from the requirement under current law that appeals first go to the Civil Division of the Superior Court.

The process for terminating a minor guardianship depends on whether the guardianship is consensual or nonconsensual. If it is a consensual guardianship, the court may grant a motion to terminate at any time if the guardian does not object within 30 days. If the guardian does object, the court may only grant the petition if it finds by clear and convincing evidence that the parent is unfit. This finding is constitutionally required because the guardianship is a consensual one and a finding of parental unfitness was never made. If the guardianship is nonconsensual, the court may only grant the motion if the party moving to terminate it shows that there has been a change in circumstances since the previous guardianship order was issued.

The act creates a separate process for financial guardianships for minors. These types of guardianships are frequently used for the limited purpose of appointing an adult to manage property for a minor. Financial guardians have limited authority and do not have custody of the minor, and therefore the procedures for financial guardianships are much simpler.

The act also requires the Department for Children and Families to adopt policies defining its role with respect to families who establish a guardianship, permits the Administrative Judge to specially assign probate judges to hear and decide other matters in the Civil Division when necessary, and extends the statute of limitations for manslaughter against a child from six years to 40 years, which is the same as for several other serious offenses against children.

Effective Date: September 1, 2014