

## CHAPTER 250

AN ACT establishing kinship legal guardianship, supplementing Title 3B of the New Jersey Statutes and Title 30 of the Revised Statutes, amending N.J.S.2B:2-1 and making an appropriation.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.3B:12A-1 Findings, declarations relative to kinship legal guardianship.

1. The Legislature finds and declares that:

a. There is an increase in the number of children who cannot reside with their parents due to the parents' incapacity or inability to perform the regular and expected functions of care and support of the child;

b. An increasing number of relatives, including grandparents, find themselves providing care on a long-term basis to these children without court approved legal guardianship status because the caregivers either are unable or unwilling to seek termination of the legal relationships between the birth parent and the child, particularly when it is the caregiver's own child or sibling who is the parent. In these cases, adoption of the child is neither feasible nor likely, and it is imperative that the State create an alternative, permanent legal arrangement for children and their caregivers. One such alternative arrangement, which does not require the termination of parental rights, is a court awarded kinship legal guardianship that is intended to be permanent and self-sustaining, as evidenced by the transfer to the caregiver of certain parental rights, but retains the birth parents' rights to consent to adoption, the obligation to pay child support, and the parents' right to have some ongoing contact with the child;

c. In considering kinship legal guardianship, the State is seeking to add another alternative, permanent placement option, beyond custody, without rising to the level of termination of parental rights, for caregivers in relationships where adoption is neither feasible nor likely; and

d. Therefore, it is in the public interest to create a new type of legal guardianship that addresses the needs of children and caregivers in long-term kinship relationships.

C.3B:12A-2 Definitions relative to kinship legal guardianship and court action.

2. As used in sections 1 through 6 of P.L.2001, c.250 (C.3B:12A-1 et seq.):

"Caregiver" means a person over 18 years of age, other than a child's parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months.

"Child" means a person under 18 years of age, except as otherwise provided in P.L.2001, c.250 (C.3B:12A-1 et al.).

"Commissioner" means the Commissioner of Human Services.

"Court" means the Superior Court, Chancery Division, Family Part.

"Department" means the Department of Human Services.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Family friend" means a person who is connected to a child or the child's parent by an established positive psychological or emotional relationship that is not a biological or legal relationship.

"Home review" means the basic review of the information provided by the petitioner and a visit to the petitioner's home where the child will continue to reside, in accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

"Kinship caregiver assessment" means a written report prepared in accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

"Kinship legal guardian" means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L.2001, c.250 (C.3B:12A-1 et al.). A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child's health, education and maintenance.

"Kinship relationship" means a family friend or a person with a biological or legal relationship with the child.

"Parental incapacity" means incapacity of such a serious nature as to demonstrate that the parent is unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child.

C.3B:12A-3 Jurisdiction, venue.

3. The Superior Court, Chancery Division, Family Part shall have jurisdiction under sections 1 through 6 of P.L.2001, c.250 (C.3B:12A-1 et seq.). Venue of a kinship legal guardianship action shall be determined in accordance with the applicable Rules of Court.

C.3B:12A-4 Rights, responsibilities, authority of kinship legal guardian.

4. a. (1) Except as provided in paragraph (2) of this subsection, a kinship legal guardian shall have the same rights, responsibilities and authority relating to the child as a birth parent, including, but not limited to: making decisions concerning the child's care and well-being; consenting to routine and emergency medical and mental health needs; arranging and consenting to educational plans for the child; applying for financial assistance and social services for which the child is eligible; applying for a motor vehicle operator's license; applying for admission to college; responsibility for activities necessary to ensure the child's safety, permanency and well-being; and ensuring the maintenance and protection of the child.

(2) A kinship legal guardian may not consent to the adoption of the child or a name change for the child. The birth parent of the child shall retain the authority to consent to the adoption of the child or a name change for the child.

(3) The birth parent of the child shall retain the obligation to pay child support.

(4) The birth parent of the child shall retain the right to visitation or parenting time with the child, as determined by the court.

(5) The appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance.

(6) Kinship legal guardianship terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when kinship legal guardianship is otherwise terminated.

b. There shall be no filing fee charged for kinship legal guardianship complaints or motions in the court.

c. For the purposes of P.L.2001, c.250 (C.3B:12A-1 et al.), a kinship legal guardian shall have the same meaning as the term "legal guardian" as defined in 42 U.S.C. s. 675, except that the process, procedure and ruling for kinship legal guardianship shall be apart from, and shall not amend, supplant or contravene, the provisions of Chapter 12 of Title 3B of the New Jersey Statutes.

d. (1) The provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) shall not be construed to grant or confer upon any person appointed kinship legal guardian of a child any of the additional rights or privileges accorded to persons appointed guardian of a minor's person or estate by a Surrogate or the Superior Court, Chancery Division, Probate Part pursuant to the provisions of Chapter 12 of Title 3B of the New Jersey Statutes.

(2) The provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) shall not be construed to preclude an application to the court for guardianship of the person or estate of a minor by any person appointed kinship legal guardian of a child.

C.3B:12A-5 Appointment as kinship legal guardian; contents of petition.

5. a. Upon petition of a caregiver, the court may appoint the caregiver as kinship legal guardian of a child residing in the caregiver's home pursuant to the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.).

b. A petition for the appointment of a kinship legal guardian shall include a kinship caregiver assessment, which shall contain:

- (1) the full name and address of the person seeking to become the kinship legal guardian;
- (2) the circumstances of the kinship relationship;
- (3) the whereabouts of the child's parents, if known;

- (4) the nature of the parents' incapacitation, if known;
- (5) the wishes of the parents, if known;
- (6) the ability of the kinship caregiver family to assume permanent care of the child;
- (7) the child's property and assets, if known;
- (8) the wishes of the child, if appropriate;
- (9) any current involvement of a child with the division if the child has an open division case and is actively receiving services;
- (10) certification from the caregiver that the caregiver has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months;
- (11) the results from a criminal history record background check and a domestic violence central registry check of the caregiver and any adult residing in the caregiver's household conducted pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86);
- (12) the results from a child abuse record check arranged for and coordinated by the division pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86); and
- (13) the results of the caregiver's home review.

C.3B:12A-6 Considerations for appointment as kinship legal guardian.

6. a. In making its determination about whether to appoint the caregiver as kinship legal guardian, the court shall consider:

- (1) if proper notice was provided to the child's parents;
  - (2) the best interests of the child;
  - (3) the kinship caregiver assessment;
  - (4) in cases in which the division is involved with the child as provided in subsection a. of section 8 of P.L.2001, c.250 (C.30:4C-85), the recommendation of the division, including any parenting time or visitation restrictions;
  - (5) the potential kinship legal guardian's ability to provide a safe and permanent home for the child;
  - (6) the wishes of the child's parents, if known to the court;
  - (7) the wishes of the child if the child is 12 years of age or older, unless unique circumstances exist that make the child's age irrelevant;
  - (8) the suitability of the kinship caregiver and the caregiver's family to raise the child;
  - (9) the ability of the kinship caregiver to assume full legal responsibility for the child;
  - (10) the commitment of the kinship caregiver and the caregiver's family to raise the child to adulthood;
  - (11) the results from the child abuse record check conducted pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86); and
  - (12) the results from the criminal history record background check and domestic violence check conducted pursuant to section 9 of P.L.2001, c.250 (C.30:4C-86). In any case in which the caregiver petitioning for kinship legal guardianship, or any adult residing in the prospective caregiver's home, has a record of criminal history or a record of being subjected to a final domestic violence restraining order under P.L.1991, c.261 (C.2C:25-17 et seq.), the court shall review the record with respect to the type and date of the criminal offense or the provisions and date of the final domestic violence restraining order and make a determination as to the suitability of the person to become a kinship legal guardian. For the purposes of this paragraph, with respect to criminal history, the court shall consider convictions for offenses specified in subsections c., d. and e. of section 1 of P.L.1985, c.396 (C.30:4C-26.8).
- b. The court shall not award kinship legal guardianship of the child unless proper notice was served upon the parents of the child and any other party to whom the court has awarded custody or parenting time for that child, in accordance with the Rules of Court.
- c. The court shall not award kinship legal guardianship of the child solely because of parental incapacity.
- d. The court shall appoint the caregiver as a kinship legal guardian if, based upon clear and convincing evidence, the court finds that:
- (1) each parent's incapacity is of such a serious nature as to demonstrate that the parents are

unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child;

(2) the parents' inability to perform those functions is unlikely to change in the foreseeable future;

(3) in cases in which the division is involved with the child as provided in subsection a. of section 8 of P.L.2001, c.250 (C.30:4C-85), (a) the division exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; and (b) adoption of the child is neither feasible nor likely; and

(4) awarding kinship legal guardianship is in the child's best interests.

e. The court order appointing the kinship legal guardian shall specify, as appropriate, that:

(1) a kinship legal guardian shall have the same rights, responsibilities and authority relating to the child as a birth parent, including, but not limited to: making decisions concerning the child's care and well-being; consenting to routine and emergency medical and mental health needs; arranging and consenting to educational plans for the child; applying for financial assistance and social services for which the child is eligible; applying for a motor vehicle operator's license; applying for admission to college; responsibility for activities necessary to ensure the child's safety, permanency and well-being; and ensuring the maintenance and protection of the child; except that a kinship legal guardian may not consent to the adoption of the child or a name change for the child;

(2) the birth parent of the child retains the authority to consent to the adoption of the child or a name change for the child;

(3) the birth parent of the child retains the obligation to pay child support;

(4) the birth parent of the child retains the right to visitation or parenting time with the child, as determined by the court;

(5) the appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance; and

(6) kinship legal guardianship terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when kinship legal guardianship is otherwise terminated.

f. An order or judgment awarding kinship legal guardianship may be vacated by the court prior to the child's 18th birthday if the court finds that the kinship legal guardianship is no longer in the best interests of the child or, based upon clear and convincing evidence, the court finds that the parental incapacity or inability to care for the child that led to the original award of kinship legal guardianship is no longer the case and termination of kinship legal guardianship is in the child's best interests.

In cases in which the division was involved, when determining whether a child should be returned to a parent, the court may refer a parent for an assessment prepared by the division, in accordance with regulations adopted by the commissioner.

g. An order or judgment awarding kinship legal guardianship may be vacated by the court if, based upon clear and convincing evidence, the court finds that the guardian failed or is unable, unavailable or unwilling to provide proper care and custody of the child, or that the guardianship is no longer in the child's best interests.

C.30:4C-84 Definitions relative to kinship legal guardianship and State agency action.

7. As used in sections 7 through 10 of P.L.2001, c.250 (C.30:4C-84 et seq.):

"Caregiver" means a person over 18 years of age, other than a child's parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months.

"Child" means a person under 18 years of age, except as otherwise provided in P.L.2001, c.250 (C.3B:12A-1 et al.).

"Commissioner" means the Commissioner of Human Services.

"Court" means the Superior Court, Chancery Division, Family Part.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Kinship caregiver assessment" means a written report prepared in accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.) and pursuant to regulations adopted by the commissioner.

"Kinship legal guardian" means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to P.L.2001, c.250 (C.3B:12A-1 et al.). A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child's health, education and maintenance.

"Kinship relationship" means a family friend or a person with a biological or legal relationship with the child.

C.30:4C-85 Conduct of kinship caregiver assessment in certain cases.

8. a. In the case of a child who has been removed from his home by the division within the last 12 months, or for whom the division has an open or currently active case and where legal representation is currently being provided by the Office of the Public Defender either through its Law Guardian Program or Parental Representation Unit:

(1) The kinship caregiver assessment required pursuant to section 5 of P.L.2001, c.250 (C.3B:12A-5) shall be conducted by the division, at no cost to the caregiver.

(2) An indigent parent and child shall be afforded the same right to legal counsel and representation as in actions under P.L.1974, c.119 (C.9:6-8.21 et seq.) and section 54 of P.L.1999, c.53 (C.30:4C-15.4).

(3) In cases where the child has been placed in the caregiver's home by the division and the child has resided in the caregiver's home for at least the last 12 consecutive months, the caregiver shall obtain the consent of the division in order to petition the court for the appointment of the caregiver as kinship legal guardian of the child. The appointment of a kinship legal guardian for a child shall be considered by the court as the permanent placement for the child.

b. In all cases other than those specified in subsection a. of this section:

(1) The kinship caregiver assessment required pursuant to section 5 of P.L.2001, c.250 (C.3B:12A-5) shall be conducted by an agency in accordance with regulations adopted by the commissioner.

(2) The costs for the kinship caregiver assessment shall be borne by the department in cases where a financially eligible individual is applying for cash assistance under a kinship care program or pilot program provided by the department, for which kinship legal guardianship is a requirement for receiving such assistance. For all other cases under this subsection, the caregiver shall be responsible for all of the costs of the kinship caregiver assessment.

C.30:4C-86 Checks required prior to submission of petition.

9. a. Prior to the submission of a petition for appointment as a kinship legal guardian, the caregiver and any adult residing in the caregiver's household shall undergo:

(1) a criminal history record background check, which shall be conducted by the Division of State Police in the Department of Law and Public Safety and shall include an examination of its own files and the obtaining of a similar examination by the Federal Bureau of Investigation; and

(2) a domestic violence central registry check, which shall be conducted by the Division of State Police. The Division of State Police shall provide a report on all incidents of domestic violence perpetrated by the caregiver and any adult in the caregiver's household.

The Division of State Police shall provide the results of the criminal history background and central registry checks to the commissioner or his designee.

b. Prior to the submission of a petition for appointment as a kinship legal guardian, the division shall arrange for and coordinate a division child abuse registry record check. The division shall report the results of the registry check directly to the court.

C.30:4C-87 Kinship legal guardianship as alternative disposition.

10. With respect to a complaint initiated by the division pursuant to P.L.1974, c.119 (C.9:6-8.21 et seq.) and section 15 of P.L.1951, c.138 (C.30:4C-15):

a. Only the division or the court shall have legal standing to seek a kinship legal

guardianship arrangement as an alternative disposition. The parents of the child who is the subject of the complaint may request, with appropriate notice to the division, that the court consider a kinship legal guardianship arrangement as an alternative disposition. If the division agrees to a kinship legal guardianship arrangement as an alternative disposition, the division shall not be required to file a new petition, but may amend the pending complaint in accordance with the Rules of Court.

b. If the court appoints a kinship legal guardian as an alternative disposition, the court shall consider such an appointment as the final disposition of the complaint.

C.30:4C-88 Rules, regulations.

11. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act.

C.3B:12A-7 Court rules.

12. The Supreme Court of New Jersey may adopt court rules to effectuate the purposes of this act.

13. N.J.S.2B:2-1 is amended to read as follows:

Number of judges.

2B:2-1. Number of Judges.

a. The Superior Court shall consist of 441 judges.

b. (1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were resident of each county:

Atlantic	11
Bergen	28
Burlington	10
Camden	16
Cape May	4
Cumberland.	7
Essex	34
Gloucester	11
Hudson	24
Hunterdon	3
Mercer	9
Middlesex	24
Monmouth	18
Morris	16
Ocean	15
Passaic	17
Salem	3
Somerset	6
Sussex	4
Union	20
Warren	3

(2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4
Camden	8
Cape May	2
Cumberland.	4
Essex	14

Gloucester. . . . .	6
Hudson . . . . .	6
Hunterdon . . . . .	2
Mercer . . . . .	6
Middlesex. . . . .	8
Monmouth . . . . .	4
Morris . . . . .	6
Ocean . . . . .	8
Passaic . . . . .	6
Salem . . . . .	
Somerset . . . . .	4
Sussex . . . . .	2
Union . . . . .	6
Warren . . . . .	2

14. a. There is appropriated to the Administrative Office of the Courts from the General Fund \$464,000 for costs associated with the additional judgeships created by this act.

b. There is appropriated to the Administrative Office of the Courts from the General Fund \$1,401,000 for staff associated with the operation of the additional judgeships created by this act.

c. There is appropriated to the Office of the Public Defender from the General Fund \$872,716 for costs associated with implementation of the kinship legal guardianship program.

15. This act shall take effect January 1, 2002, except that sections 13 and 14 shall take effect December 1, 2001

Approved October 11, 2001.