

CHAPTER 154
(CORRECTED COPY)

AN ACT concerning child protective services and amending and supplementing various parts of the statutory law.

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

1. The Legislature finds and declares that:
 - a. Foster care is intended by existing state and federal statute to be temporary.
 - b. Kinship care is the preferred resource for children who must be removed from their birth parents because use of kinship care maintains children's connections with their families. There are many benefits to placing children with relatives or other kinship caregivers, such as increased stability and safety as well as the ability to maintain family connections and cultural traditions.
 - c. Federal law permits kinship legal guardianship arrangements to be used when the child has been in the care of a relative for a period of six months.
 - d. Parental rights must be protected and preserved whenever possible.
 - e. Children are capable of forming healthy attachments with multiple caring adults throughout the course of their childhood, including with birth parents, temporary resource parents, extended family members, and other caring adults.
 - f. The existence of a healthy attachment between a child and the child's resource family parent does not in and of itself preclude the child from maintaining, forming or repairing relationships with the child's parent or caregiver of origin.
 - g. It is therefore necessary for the Legislature to amend current laws to strengthen support for kinship caregivers, and ensure focus on parents' fitness and the benefits of preserving the birth parent-child relationship, as opposed to considering the impact of severing the child's relationship with the resource family parents.

2. Section 2 of P.L.2001, c.250 (C.3B:12A-2) is amended to read as follows:

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

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 either the last six consecutive months or nine of the last 15 months. "Caregiver" includes a resource family parent as defined in section 1 of P.L.1962, c.136 (C.30:4C-26.4).

"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 Children and Families.

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

"Department" means the Department of Children and Families.

"Division" means the Division of Child Protection and Permanency in the Department of Children and Families.

"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.

3. Section 5 of P.L.2001, c.250 (C.3B:12A-5) is amended to read as follows:

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 six consecutive months or nine of the last 15 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.

4. Section 6 of P.L.2001, c.250 (C.3B:12A-6) is amended to read as follows:

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), the division exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; (Deleted by amendment, P.L.2021, c.154) 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, in cases where there is an application to return the child to the parent, 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.

5. Section 10 of P.L.1974, c.119 (C.9:6-8.30) is amended to read as follows:

C.9:6-8.30 Action by the division upon emergency removal.

10. a. The division, when informed that there has been an emergency removal of a child from his home without court order, shall make every reasonable effort to communicate immediately with the child's parent or guardian that such emergency removal has been made and the location of the facility to which the child has been taken, and advise the parent or guardian to appear in the appropriate Superior Court, Chancery Division, Family Part within two court days.

The division shall make a reasonable effort, at least 24 hours prior to the court hearing, to: notify the parent or guardian of the time to appear in court; and

inform the parent or guardian of his right to obtain counsel, and how to obtain counsel through the Office of the Public Defender if the parent or guardian is indigent.

The division shall also advise the party making the removal to appear. If the removed child is returned to his home prior to the court hearing, there shall be no court hearing to determine the sufficiency of cause for the child's removal, unless the child's parent or guardian makes application to the court for review.

The division shall make reasonable efforts to place the child with a suitable relative or person who has a kinship relationship as defined in section 2 of P.L.2001, c.250 (C.3B:12A-2) prior to placing the child with another suitable person.

For the purposes of this section, “facility” means a hospital, shelter or child care institution in which a child may be placed for temporary care, but does not include a resource family home.

b. The division shall cause a complaint to be filed under this act within two court days after such removal takes place.

c. Whenever a child has been removed pursuant to section 7 or 9 of P.L.1974, c.119 (C.9:6-8.27 or 9:6-8.29), the division shall arrange for immediate medical screening of the child and shall have legal authority to consent to such screening. If necessary to safeguard the child’s health or life, the division also is authorized to arrange for and consent to medical care or treatment of the child. Consent by the division pursuant to this subsection shall be deemed legal and valid for all purposes with respect to any person, hospital, or other health care facility screening, examining or providing care or treatment to a child in accordance with and in reliance upon such consent. Medical reports resulting from such screening, examination or care or treatment shall be released to the division for the purpose of aiding in the determination of whether the child has been abused or neglected. Any person or health care facility acting in good faith in the screening of, examination of or provision of care and treatment to a child or in the release of medical records shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such act.

6. Section 11 P.L.1974, c.119 (C.9:6-8.31) is amended to read as follows:

C.9:6-8.31 Preliminary orders after filing of complaint.

11. a. In any case where the child has been removed without court order, except where action has been taken pursuant to P.L.1973, c.147 (C.9:6-8.16 et seq.) the Superior Court, Chancery Division, Family Part shall hold a hearing on the next court day, whereby the safety of the child shall be of paramount concern, to determine whether the child’s interests require protection pending a final order of disposition. In any other case under P.L.1974, c.119 (C.9:6-8.21 et seq.), any person who may originate a proceeding may apply for, or the court, on its own motion, may order a hearing at any time after the complaint is filed to determine, with the safety of the child of paramount concern, whether the child’s interests require protection pending a final order of disposition.

b. Upon such hearing, if the court finds that continued removal is necessary to avoid an ongoing risk to the child’s life, safety, or health, it shall affirm the removal of the child to an appropriate place or place him in the custody of a suitable person.

The court shall also first consider placement of the child with a suitable relative or person who has a kinship relationship as defined in section 2 of P.L.2001, c.250 (C.3B:12A-2), when considering if the child should be placed in the custody of a suitable person.

If the court determines that removal of the child by a physician, police officer, designated employee of the Probation Division, or designated employee of the Division of Child Protection and Permanency was necessary due to imminent danger to the child’s life, safety, or health, the court shall find that the Division of Child Protection and Permanency was not required to provide reasonable efforts to prevent placement of the child in accordance with section 24 of P.L.1999, c.53 (C.30:4C-11.2).

c. Upon such hearing the court may, for good cause shown, issue a preliminary order of protection which may contain any of the provisions authorized on the making of an order of protection under section 35 of P.L.1974, c.119 (C.9:6-8.55).

d. Upon such hearing, the court may, for good cause shown, release the child to the custody of his parent or guardian from whose custody or care the child was removed, pending a final order of disposition, in accord with section 33 of P.L.1974, c.119 (C.9:6-8.53).

e. Upon such hearing, the court may authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

f. If the court grants or denies a preliminary order requested pursuant to this section, it shall state the grounds for such decision.

g. In all cases involving abuse or neglect the court shall order an examination of the child by a physician appointed or designated for the purpose by the division. As part of such examination, the physician shall arrange to have color photographs taken as soon as practical of any areas of trauma visible on such child and may if indicated, arrange to have a radiological examination performed on the child. The physician, on the completion of such examination, shall forward the results thereof together with the color photographs to the court ordering such examination.

7. Section 34 of P.L.1974, c. 119 (C.9:6-8.54) is amended to read as follows:

C.9:6-8.54 Placement of child.

34. a. For the purpose of section 31 of P.L.1974, c.119 (C.9:6-8.51), the court may place the child in the custody of a relative or other suitable person or the division for the placement of a child after a finding that the division has made reasonable efforts to prevent placement or that reasonable efforts to prevent placement were not required in accordance with section 24 of P.L.1999, c.53 (C.30:4C-11.2). The court shall also first consider placement of the child with a suitable relative or person who has a kinship relationship as defined in section 2 of P.L.2001, c.250 (C.3B:12A-2), when considering if the child should be placed in the custody of another suitable person.

b. (1) Placements under this section may be for an initial period of 12 months and the court, in its discretion, may at the expiration of that period, upon a hearing make successive extensions for additional periods of up to one year each. The court on its own motion may, at the conclusion of any period of placement, hold a hearing concerning the need for continuing the placement.

(2) The court shall conduct a permanency hearing for the child no later than 30 days after placement in cases in which the court has determined that reasonable efforts to reunify the child with the parent or guardian are not required pursuant to section 25 of P.L.1999, c.53 (C.30:4C-11.3), or no later than 12 months after placement in cases in which the court has determined that efforts to reunify the child with the parent or guardian are required. The hearing shall include, but not necessarily be limited to, consideration and evaluation of information provided by the division and other interested parties regarding such matters as those listed in subsection c. of section 50 of P.L.1999, c.53 (C.30:4C-61.2).

(3) The court shall review the permanency plan for the child periodically, as deemed appropriate by the court, to ensure that the permanency plan is achieved.

c. No placement may be made or continued under this section beyond the child's eighteenth birthday without his consent.

d. If the parent or person legally responsible for the care of any such child or with whom such child resides receives public assistance and care, any portion of which is attributable to such child, a copy of the order of the court providing for the placement of such child from his home shall be furnished to the appropriate county welfare board, which shall reduce the

public assistance and care furnished to such parent or other person by the amount attributable to such child.

8. Section 6 of P.L.1991, c.275 (C.30:4C-12.1) is amended to read as follows:

C.30:4C-12.1 Search for relatives; assessment of abilities.

6. a. In any case in which the Department of Children and Families accepts a child in its care or custody, including placement, the department shall consider placement of the child with a suitable relative or person who has a kinship relationship as defined in section 2 of P.L.2001, c.250 (C.3B:12A-2). The department shall initiate a search for relatives or persons with a kinship relationship with the child who may be willing and able to provide the care and support required by the child. The search shall be initiated within 30 days of the department's acceptance of the child in its care or custody. The search will be completed when all sources contacted have either responded to the inquiry or failed to respond within 45 days. The department shall complete an assessment of each interested relative's or person's ability to provide the care and support, including placement, required by the child.

b. If the department determines that the relative or person who has a kinship relationship with the child is unwilling or unable to assume the care of the child, the department shall not be required to re-evaluate the relative. The department shall inform the relative or person in writing of:

- (1) the reasons for the department's determination;
- (2) the responsibility of the relative or person to inform the department if there is a change in the circumstances upon which the determination was made;
- (3) the possibility that termination of parental rights may occur if the child remains in resource family care for more than six months; and
- (4) the right to seek review by the department of such determination.

c. The department may decide to pursue the termination of parental rights if the department determines that termination of parental rights is in the child's best interests.

9. Section 7 of P.L.1991, c.275 (C.30:4C-15.1) is amended to read as follows:

C.30:4C-15.1 Termination of parental rights, standards.

7. a. The division shall initiate a petition to terminate parental rights on the grounds of the "best interests of the child" pursuant to subsection (c) of section 15 of P.L.1951, c.138 (C.30:4C-15) if the following standards are met:

- (1) The child's safety, health, or development has been or will continue to be endangered by the parental relationship;
- (2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm;
- (3) The division has made reasonable efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights; and
- (4) Termination of parental rights will not do more harm than good.

b. The division shall initiate a petition to terminate parental rights on the ground that the "parent has abandoned the child" pursuant to subsection (e) of section 15 of P.L.1951, c.138 (C.30:4C-15) if the following standards are met:

- (1) a court finds that for a period of six or more months:

(a) the parent, although able to have contact, has had no contact with the child, the child's resource family parent or the division; and

(b) the parent's whereabouts are unknown, notwithstanding the division's reasonable efforts to locate the parent; or

(2) where the identities of the parents are unknown and the division has exhausted all reasonable methods of attempting identification, the division may immediately file for termination of parental rights upon the completion of the law enforcement investigation; or

(3) where the parent voluntarily delivered the child to and left the child with an adult employee, or voluntarily arranged for another person to deliver the child to and leave the child with an adult employee, at a State, county or municipal police station, a fire station of a municipal, county, fire district, or volunteer fire department, the premises of a public or private ambulance, first aid, or rescue squad; or voluntarily delivered the child to and left the child at an emergency department of a licensed general hospital in this State when the child is or appears to be no more than 30 days old, without expressing an intent to return for the child, as provided in section 4 of P.L.2000, c.58 (C.30:4C-15.7), the division shall file for termination of parental rights no later than 21 days after the day the division assumed care, custody and control of the child.

c. As used in this section and in section 15 of P.L.1951, c.138 (C.30:4C-15) "reasonable efforts" mean attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, but not limited to:

(1) consultation and cooperation with the parent in developing a plan for appropriate services;

(2) providing services that have been agreed upon, to the family, in order to further the goal of family reunification;

(3) informing the parent at appropriate intervals of the child's progress, development, and health; and

(4) facilitating appropriate visitation.

d. The division shall not be required to provide "reasonable efforts" as defined in subsection c. of this section prior to filing a petition for the termination of parental rights if an exception to the requirement to provide reasonable efforts to reunify the family has been established pursuant to section 25 of P.L.1999, c.53 (C.30:4C-11.3).

10. This act shall take effect immediately.

Approved July 2, 2021.