

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 7 of Title 15 of the District of Columbia Code to waive court costs or fees for persons seeking to adopt children who have been adjudicated to be neglected, and to amend Chapter 23 of Title 16 of the District of Columbia Code to establish a procedure for the appointment of permanent guardians for children who have been adjudicated to be neglected and have been removed from the custody of their parents, and to provide eligibility for a subsidy for permanent guardians, subject to appropriations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Foster Children's Guardianship Act of 2000".

Sec. 2. Title 15 of the District of Columbia Code is amended as follows:

(a) The table of contents for the title is amended by striking the phrase "7. Fees and costs . . . §§ 15-701 to 15-718." and inserting the phrase "7. Fees and costs . . . §§ 15-701 to 15-719." in its place.

(b) The table of contents for Chapter 7 is amended by adding the phrase "15-719. Adoption court costs and fees." to the end.

(c) A new section 15-719 is added to read as follows:

"§ 15-719. Adoption court costs and fees.

"Any person who files a petition pursuant to Chapter 3 of Title 16 to adopt a child who is a respondent in a neglect proceeding or who has been adjudicated to be neglected as defined in Chapter 23 of Title 16 shall not be required to pay court costs or fees in the Superior Court of the District of Columbia."

Sec. 3. Chapter 23 of Title 16 of the District of Columbia Code is amended as follows:

(a) The table of contents for the title is amended by striking the phrase "23. Family Division Proceedings . . . §§ 16-2301 to 16-2372." and inserting the phrase "23. Family Division Proceedings . . . §§ 16-2301 to 16-2399."

(b) The table of contents for Chapter 23 is amended by adding the following to the end:
"Subchapter V. Permanent Guardianship.
16-2381. Purpose of the subchapter; construction of provisions.
16-2382. Definitions.

- 16-2383. Grounds for the creation of a permanent guardianship.
- 16-2384. Motions.
- 16-2385. Parties.
- 16-2386. Notice.
- 16-2387. Conduct of hearings.
- 16-2388. Adjudicatory hearings.
- 16-2389. Effect of guardianship order.
- 16-2390. Jurisdiction.
- 16-2391. Relocation.
- 16-2392. Guardianship order; finality; appeals; transcripts.
- 16-2393. Confidentiality of records.
- 16-2394. Unlawful disclosure.
- 16-2395. Modification, termination, or enforcement of the guardianship order.
- 16-2396. Support.
- 16-2397. Interlocutory order of guardianship.
- 16-2398. Successor guardian.
- 16-2399. Permanent guardianship subsidy.”.

(c) A new Subchapter V is added to read as follows:

"Subchapter V. Permanent Guardianship.

"§ 16-2381. Purpose of the subchapter; construction of provisions.

"The general purpose of this subchapter is to:

"(1) Encourage stability in the lives of certain children who have been adjudicated to be neglected and have been removed from the custody of their parent by providing judicial procedures for the creation of a permanent guardianship in the circumstances set forth in this subchapter;

"(2) Ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and

"(3) Increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing government supervision.

"§ 16-2382. Definitions.

"(a) For the purposes of this subchapter, the term:

“(1) "Agency having responsibility for the child" means the Mayor or his or her designee.

“(2) "Guardianship order" means the court document that establishes the permanent guardianship and enumerates the permanent guardian’s rights and responsibilities concerning the care, custody, and control of the child.

"(3) "Health care" includes, but is not limited to, ordinary and emergency medical, dental, psychological, psychiatric, and mental health care and treatment.

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"(4) "Permanent guardian" means an individual or individuals designated by the court pursuant to this subchapter.

"(b) Except when inconsistent with this subchapter, the terms found in this subchapter shall be given the same definition as provided in section 16-2301.

"§ 16-2383. Grounds for the creation of a permanent guardianship.

"(a) A guardianship order may not be entered unless the child has been adjudicated to be neglected pursuant to section 16-2317 and has been living with the proposed permanent guardian for at least 6 months.

"(b) If the child is 14 years of age or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child's best interests.

"(c) The court may issue a guardianship order only if the court finds that:

"(1) The permanent guardianship is in the child's best interests;

"(2) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and

"(3) The proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

"(d) In determining whether it is in the child's best interests that a permanent guardian be designated, the court shall consider each of the following factors:

"(1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

"(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

"(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;

"(4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and

"(5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 6-2104.1. Evidence of continued drug-activity shall be given great weight.

"§ 16-2384. Motions.

"(a) A motion for permanent guardianship may be filed by the proposed permanent guardian, the District of Columbia government, or by the child through his or her legal representative.

"(b) A motion for a permanent guardianship may be filed any time after a neglect petition is filed pursuant to section 16-2305.

"(c) A motion for permanent guardianship shall include:

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- "(1) The name, sex, date and place of birth, and current placement of the child;
- "(2) The proposed permanent guardian's name and relationship to the child;
- "(3) The name and address of the child's parents;
- "(4) A plain and concise statement of the facts and opinions on which the permanent guardianship is sought;
- "(5) A description of the child's mental and physical health;
- "(6) A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to parent, is in the child's best interests;
- "(7) A statement as to the various efforts taken by the moving party to locate the parent of the child;
- "(8) An itemization of the child's assets;
- "(9) A statement of compliance with Chapter 3 of Title 21, if applicable;
- "(10) The name of proposed successor guardians, if any, and their relationship to the child and proposed permanent guardians;
- "(11) Information required by Chapter 45 of Title 16; and
- "(12) Written consents, if any, to the permanent guardianship.

"(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, the court, for good cause shown, may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations of neglect.

"§ 16-2385. Parties.

"Parties to a permanent guardianship proceeding shall be the child, the parents of the named child, the proposed permanent guardian, the agency having the legal custody of the child, and the District of Columbia. The court may, at its discretion, on its own motion, or in response to a motion for joinder or intervention, join additional parties to a guardianship proceeding.

"§ 16-2386. Notice.

"(a) When a motion for permanent guardianship is filed, the court shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

"(b) The court shall direct the issuance to and personal service upon the child's parents of a summons and a copy of the motion for permanent guardianship.

"(c) When it is appropriate to the proper disposition of the case, the court may direct the service of a summons upon other persons.

"(d) If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

"§ 16-2387. Conduct of hearings.

"(a) All hearings and proceedings conducted pursuant to this subchapter shall be held by a judge, without a jury.

"(b) All hearings and proceedings conducted pursuant to this subchapter shall be recorded by appropriate means.

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"(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings shall be admitted, but the court may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

"(d) If the court finds it is in the child's best interests, the child may be temporarily excluded from any proceeding. Under no circumstances, however, may counsel in the case be excluded.

"§ 16-2388. Adjudicatory hearings.

"(a) The court shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If a parent has been given proper notice but fails to appear, the court may proceed in the parent's absence.

"(b) The court shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.

"(c) Every party shall have the right to present evidence, to be heard in his or her own behalf, and to cross-examine witnesses called by another party.

"(d) All evidence which is relevant, material, and competent to the issues before the court shall be admitted.

"(e) Notwithstanding the provisions of sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.

"(f) The court may enter, modify, or terminate a guardianship order after considering all of the evidence presented, including the Mayor's report and recommendation, and after making a determination based upon a preponderance of the evidence that creation, modification, or termination of the guardianship order is in the child's best interests. If the court does not find that sufficient grounds exist to create, modify, or terminate a guardianship order, the motion may be dismissed.

"§ 16-2389. Effect of guardianship order.

"(a) Unless the court specifies otherwise, the permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

"(1) Protect, nurture, discipline, and educate the child;

"(2) Provide food, clothing, shelter, education as required by law, and routine health care for the child;

"(3) Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

"(4) Authorize a release of health care and educational information;

ENROLLED ORIGINAL

"(5) Authorize a release of information when consent of a parent is required by law, regulation, or policy;

"(6) Consent to social and school activities of the child;

"(7) Consent to military enlistment;

"(8) Obtain representation for the child in legal actions; and

"(9) Determine the nature and extent of the child's contact with other persons.

"(b) The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.

"(c) Entry of a guardianship order does not terminate the parent and child relationship, including:

"(1) The right of the child to inherit from his or her parents;

"(2) The parents' right to visit or contact the child (except as limited by the court);

"(3) The parents' right to consent to the child's adoption;

"(4) The parents' right to determine the child's religious affiliation; and

"(5) The parents' responsibility to provide financial, medical, and other support for the child.

"(d) The guardianship order may specify the frequency and nature of visitation or contact between relatives and the child. The court may determine whether the visitation or contact is in the child's best interest.

"(e) Except as required by a motion under subsection (f) of this section, upon entry of a guardianship order, and during the period of time such an order remains in effect, the requirements of sections 16-2322 and 16-2323 shall be suspended.

"(f) The court shall make a permanency determination and close the neglect case upon motion by any party to the permanent guardianship proceeding if the court finds that such a determination is in the child's best interest.

"§ 16-2390. Jurisdiction.

"The court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until the child reaches 18 years of age. If the court finds that it is in the child's best interest and if the child consents, the court may retain jurisdiction until the child reaches 21 years of age.

"§ 16-2391. Relocation.

"The permanent guardian shall not relocate with the child over 100 miles from his or her place of residence at the time the guardianship order is entered without filing a notice with the court, which is personally served on all parties, 15 business days before the relocation.

"§ 16-2392. Guardianship order; finality; appeals; transcripts.

"(a) Every guardianship order shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

"(b) Except as otherwise expressly provided by law, in all hearings and cases tried before the court pursuant to this subchapter, the judgment of the court shall be final.

"(c) In all appeals from decisions of the court with respect to an order under this subchapter, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

"(d) Upon the filing of a motion and supporting affidavit stating that he or she is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal of an order under this subchapter shall be furnished, at no cost or at such part of cost as he or she is able to pay, so much of the transcript as is necessary to prepare adequately and support the appeal.

"(e) An appeal does not operate to stay the order, judgment, or decree appealed from, but whenever the case is properly before the appellate court, that court, on application and hearing, may order otherwise if suitable provision is made in the order for the care and custody of the child.

"§ 16-2393. Confidentiality of records.

"The provisions of sections 16-2332 and 16-2333 shall apply to all records and files that are created pursuant to proceedings under this subchapter.

"§ 16-2394. Unlawful disclosure.

"Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2393 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$250 or imprisoned for not more than 90 days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

"§ 16-2395. Modification, termination, or enforcement of the guardianship order.

"(a) Any party may move the court to modify, terminate, or enforce a guardianship order or an order of child support created under this subchapter.

"(b) Notice of a motion to modify, terminate, or enforce a guardianship order or an order of child support shall be personally served on all parties. If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

"(c) The court may issue an order of reference directing the Mayor to file a report and recommendation regarding the proposed modification or termination of the guardianship order within 45 days of the filing date of the motion.

"(d) A guardianship order may be modified or terminated if the court finds, by a preponderance of the evidence, that there has been a substantial and material change in the child's circumstances subsequent to the entry of the guardianship order and that it is in the child's best interests to modify or terminate the guardianship order.

"(e) The court shall hold an adjudicatory hearing as provided for in section 16-2388 before modifying or terminating a guardianship order and shall, at the conclusion of the hearing, enter a written order reciting the findings upon which such order is based, including findings

pertaining to the court's jurisdiction.

"(f) Upon entry of an order terminating the guardianship, the permanent guardian shall no longer be entitled to physical custody of the child, have any other parental rights and responsibilities concerning the child created under this subchapter, or have party status in any further proceeding brought under this subchapter.

"(g) Upon entry of an order terminating the guardianship, the court shall hold a hearing pursuant to section 16-2323.

"§ 16-2396. Support.

"(a) Nothing under this subchapter shall preclude the permanent guardian from receiving money paid for the child's support to the child's parent under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

"(b) After due notice to the parent or other persons legally obligated to care for and support the child and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the guardianship order is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

"§ 16-2397. Interlocutory order of guardianship.

"(a) If it is in the child's best interests, the court may enter an interlocutory guardianship order, which shall by its terms automatically become a guardianship order on a date therein named, not less than 6 months nor more than one year from the date of entry of the interlocutory order, unless in the interim the order shall have been set aside for cause shown.

"(b) The agency having responsibility for the child shall be permitted to visit the child during the period of the interlocutory order and may be ordered to provide services as specified in the interlocutory order.

"(c) The court may revoke its interlocutory guardianship order, either on its own motion or on the motion of one of the parties, for good cause shown, at any time before it becomes a guardianship order if it is in the child's best interests. Before the revocation, personal notice shall be given to the parties and an adjudicatory hearing shall be conducted pursuant to section 16-2388.

"§ 16-2398. Successor guardian.

"(a) Upon filing a motion for permanent guardianship pursuant to section 16-2384, the movant may designate and the court shall approve any successor guardian.

"(b) A successor guardian may be designated or removed after the creation of the permanent guardianship by the filing of a motion to modify pursuant to section 16-2395.

"(c) The successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child upon the

permanent guardian's death, or physical or mental infirmity.

"(d) The successor guardian shall move the court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the court, the successor guardian shall assume the permanent guardian's rights and responsibilities concerning the child until the court conducts a hearing on the motion to modify.

"(e) A motion filed pursuant to this section shall:

"(1) Include information required by section 16-2384(c);

"(2) Append the original order which designated the successor guardian; and

"(3) Append a copy of either:

"(A) Proof of the permanent guardian's death, such as a copy of a death certificate or funeral home receipt; or

"(B) Proof of the permanent guardian's physical or mental infirmity.

"(f) Before issuing a final order transferring the permanent guardian's rights and responsibilities to the successor guardian, the court shall, in addition to the requirements specified in section 16-2395(e), find that:

"(1) The successor guardian was duly designated by the permanent guardian;

"(2) The permanent guardian is deceased or is physically or mentally infirm;

"(3) The transfer of permanent guardianship is in the child's best interests;

"(4) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and

"(5) The successor guardian is suitable and able to provide a safe and permanent home for the child.

"§ 16-2399. Permanent guardianship subsidy.

"(a) To the extent that appropriated funds are available, the Mayor may make subsidy payments to a permanent guardian, irrespective of the permanent guardian's state of residence, as needed on behalf of a child with special needs where the permanent guardian has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. For the purposes of this section a "child with special needs" includes any child who is difficult to place in adoption because of age, race, ethnic background, physical or mental condition, or membership in a sibling group which should be placed together, or a child who, in all likelihood, would go without another permanent placement arrangement except for the acceptance of the child as a member of the permanent guardian's family.

"(b) For a permanent guardian to be eligible for subsidy payments under this section:

"(1) The child must be adjudicated abused or neglected pursuant to section 16-2317;

"(2) The child must be committed to the legal custody of the Child and Family Services Agency;

"(3) The permanent guardian must be an approved kinship caregiver, as that term is defined in section 6-2101(14); and

"(4) A subsidy payment agreement must be entered into by the Child and Family Services Agency and the permanent guardian.

"(c) Subsidy payments allowed under this section may be paid, subject to the availability of appropriated funds necessary to carry out the provisions of this section, on a long-term basis to help a permanent guardian whose income is limited and likely to remain so, or on a time-limited basis to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time.

"(d) Eligibility for subsidy payments under this section may continue during the period of the guardianship order until the child reaches 18 years of age.

"(e) No subsidy payment to a permanent guardian shall be made on behalf of any child with respect to whom a guardianship order has been entered by the Superior Court of the District of Columbia, pursuant to this subchapter, before October 1, 2000.

"(f) Once during each calendar year and at other times during the year when changed conditions and costs are deemed by the Mayor to warrant review, the Mayor shall review the need for continuing each permanent guardianship subsidy. A permanent guardian who is subject to a subsidy agreement under this section may request, in writing, at any time, for reasons set forth in the request, a review of the amount of the payment or the level of continuing payments. Such review shall begin not later than 30 days from the receipt of the request by the Mayor. At the time of a review, appropriate adjustments in payment shall be made based upon changes in the needs of the child. Any adjustment may be made retroactive to the date a request for review was received by the Mayor. If a request for review is not acted on within 30 days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of subchapter I of Chapter 15 of Title 1.

"(g) The Mayor shall disseminate information to prospective permanent guardians as to eligibility for subsidy under this section.

"(h) The Mayor shall keep such records as are necessary to evaluate the effectiveness of permanent guardianship subsidies as a means of encouraging and promoting the placement of children with special needs with permanent guardians. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include the number of children placed with permanent guardians under subsidy payment agreements during the year preceding the annual report and the major characteristics of the children placed.

"(i) Permanent guardianship subsidies shall be subject to the availability of appropriations. Nothing in this section shall be construed to create an entitlement to a permanent guardianship subsidy for any person.

"(j) The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, may issue rules to implement the provisions of this section."

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Sec. 4. The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813, D.C. Code § 1-233(c)(3)).

Sec. 5. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia