

SENATE BILL No. 529

September 29, 2015, Introduced by Senator EMMONS and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 2008 PA 260, entitled "Guardianship assistance act," by amending sections 2, 3, 4, 5a, 5b, 6, 7, 8, and 9 (MCL 722.872, 722.873, 722.874, 722.875a, 722.875b, 722.876, 722.877, 722.878, and 722.879), sections 2, 3, 4, and 9 as amended and sections 5a and 5b as added by 2009 PA 15 and section 6 as amended by 2011 PA 229, and by adding section 5c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Child" means a person less than 18 years of age.

3 (b) "Department" means the department of **HEALTH AND** human
4 services.

5 (c) "Eligible child" means a child who meets the eligibility
6 criteria set forth in section 3 for receiving guardianship
7 assistance.

1 (d) "Guardian" means a person appointed by the court to act as
2 a legal guardian for a child under section 19a or 19c of chapter
3 XIIIA of the probate code, MCL 712A.19a and 712A.19c.

4 (e) "Guardianship assistance agreement" means a negotiated
5 binding agreement regarding financial support as described in
6 section 5 for children who meet the qualifications for guardianship
7 assistance as specified in this act or in the department's
8 administrative rules.

9 (f) "Legal custodian" means an individual who is at least 18
10 years of age in whose care a child remains or is placed after a
11 court makes a finding under section 13a of chapter XIIIA of the
12 probate code, MCL 712A.13a.

13 (g) "Probate code" means the probate code of 1939, 1939 PA
14 288, MCL 710.21 to 712A.32.

15 (h) "Relative" means an individual who is at least 18 years of
16 age and related to the child by blood, marriage, or adoption, as
17 grandparent, great-grandparent, great-great-grandparent, aunt or
18 uncle, great-aunt or great-uncle, great-great-aunt or great-great-
19 uncle, sibling, stepsibling, nephew or niece, first cousin or first
20 cousin once removed, or the spouse of any of the above, even after
21 the marriage has ended by death or divorce. The parent of a man who
22 the court has found probable cause to believe is the putative
23 father if there is no man with legally established rights to the
24 child may be considered a relative under this act but this is not
25 to be considered as a finding of paternity and does not confer
26 legal standing on the putative father.

27 **(I) "SUCCESSOR GUARDIAN" MEANS A PERSON APPOINTED BY THE COURT**

1 TO ACT AS A LEGAL GUARDIAN WHEN THE PRECEDING GUARDIAN IS NO LONGER
 2 ABLE TO ACT AS A RESULT OF HIS OR HER DEATH OR INCAPACITATION UNDER
 3 SECTION 19A OR 19C OF CHAPTER XIIIA OF THE PROBATE CODE, MCL
 4 712A.19A AND 712A.19C. SUCCESSOR GUARDIAN DOES NOT INCLUDE A PERSON
 5 APPOINTED AS A GUARDIAN IF THAT PERSON'S PARENTAL RIGHTS TO THE
 6 CHILD HAVE BEEN TERMINATED OR SUSPENDED.

7 (J) ~~(i)~~ "Title IV-E" refers to the federal assistance provided
 8 through the United States ~~department~~ **DEPARTMENT** of ~~health~~ **HEALTH**
 9 and ~~human services~~ **HUMAN SERVICES** to reimburse states for foster
 10 care, adoption assistance payments, and guardianship assistance
 11 payments.

12 Sec. 3. A child is eligible to receive guardianship assistance
 13 if the department determines that all of the following apply:

14 (a) The child has been removed from his or her home as a
 15 result of a judicial determination that allowing the child to
 16 remain in the home would be contrary to the child's welfare.

17 (b) The child has resided in the home of the prospective
 18 guardian for, at a minimum, 6 consecutive months.

19 (c) Reunification ~~or~~ **AND** placing the child for adoption ~~is~~ **ARE**
 20 not an appropriate permanency ~~option~~ **OPTIONS**.

21 (d) The child demonstrates a strong attachment to the
 22 prospective guardian and the guardian has a strong commitment to
 23 caring permanently for the child **UNTIL THE CHILD REACHES 18 YEARS**
 24 **OF AGE**.

25 (e) If the child has reached 14 years of age, he or she has
 26 been consulted regarding the guardianship arrangement.

27 Sec. 4. (1) Subject to subsection (2), a guardian who meets

1 all of the following criteria may receive guardianship assistance
2 on behalf of an eligible child:

3 (a) The guardian is the eligible child's relative or legal
4 custodian.

5 (b) The guardian is a licensed foster parent and approved for
6 guardianship assistance by the department. The approval process
7 shall include criminal record checks and child abuse and neglect
8 central registry checks on the guardian and all adults living in
9 the guardian's home as well as fingerprint-based criminal record
10 checks on the guardian. If the guardian's fingerprints are stored
11 in the automated fingerprint identification system under section 5k
12 of 1973 PA 116, MCL 722.115k, the department shall use those
13 fingerprints for the criminal record check required in this
14 subdivision.

15 (c) The eligible child has resided with the prospective
16 guardian in the prospective guardian's residence for a minimum of 6
17 months before the application for guardianship assistance is
18 received by the department.

19 (2) Only a relative who is a licensed foster parent caring for
20 a child who is eligible to receive title IV-E-funded foster care
21 payments for 6 consecutive months is eligible for federal funding
22 under title IV-E for guardianship assistance. A child who is not
23 eligible for title IV-E funding who is placed with a licensed
24 foster parent, related or unrelated, and who meets the requirements
25 of section 3(a) to (e) may be eligible for state-funded
26 guardianship assistance.

27 (3) If a child is eligible for title IV-E-funded guardianship

1 assistance under section 3 but has a sibling who is not eligible
2 under section 3, both of the following apply:

3 (a) The child and any of the child's siblings may be placed in
4 the same relative guardianship arrangement in accordance with
5 chapter XIIIA of the probate code, ~~of 1939, 1939 PA 288,~~ MCL 712A.1
6 to 712A.32, if the department and the relative agree on the
7 appropriateness of the arrangement for the sibling.

8 (b) Title IV-E-funded relative guardianship assistance
9 payments may be paid on behalf of each sibling placed in accordance
10 with this subsection.

11 **(4) A SUCCESSOR GUARDIAN MAY RECEIVE GUARDIANSHIP ASSISTANCE**
12 **PAYMENTS IF THE ELIGIBILITY CRITERIA SET FORTH IN SECTION 3 ARE**
13 **MET.**

14 Sec. 5a. For a child whose permanency plan includes placement
15 with a guardian and will include the receipt of guardianship
16 assistance payments, the department shall include in the case
17 service plan for the child all of the following:

18 (a) The steps that the child placing agency or the department
19 has taken to determine that reunification ~~or~~ **AND** placing the child
20 for adoption ~~is~~ **ARE** not an appropriate permanency ~~option~~ **OPTIONS**.

21 (b) The reason for any separation of siblings during
22 placement.

23 (c) The reason a permanent placement through guardianship is
24 in the child's best interest.

25 (d) The way in which the child meets the eligibility criteria
26 for a guardianship assistance payment.

27 (e) The efforts the child placing agency or the department has

1 made to discuss adoption by the prospective guardian as a permanent
2 alternative to legal guardianship and ~~, in the case of a relative~~
3 ~~foster parent who has chosen not to pursue adoption,~~ documentation
4 of the reasons **THE PROSPECTIVE GUARDIAN HAS CHOSEN NOT TO PURSUE**
5 **ADOPTION.**

6 (f) In cases where the parental rights have not been
7 terminated, the efforts the department has made to discuss with the
8 child's birth parent or parents the guardianship assistance
9 arrangement, or the reasons why the efforts were not made.

10 Sec. 5b. The legal guardianship shall be a judicially created
11 relationship as provided for under sections 19a and 19c of chapter
12 XIIIA of the probate code, ~~of 1939, 1939 PA 288,~~ MCL 712A.19a and
13 712A.19c, between the child and his or her guardian that is
14 intended to be permanent and self-sustaining as evidenced by the
15 transfer to the guardian of the following parental rights with
16 respect to the child:

- 17 (a) Protection.
18 (b) Education.
19 (c) Care and control of the person.
20 (d) Custody of the person.
21 (e) Decision making.

22 **SEC. 5C. (1) SUBJECT TO PROVISIONS OF THIS ACT, THE DEPARTMENT**
23 **MAY PAY GUARDIANSHIP ASSISTANCE TO AN ELIGIBLE SUCCESSOR GUARDIAN**
24 **ON BEHALF OF AN ELIGIBLE CHILD.**

25 **(2) THE SUCCESSOR GUARDIAN SHALL APPLY FOR GUARDIANSHIP**
26 **ASSISTANCE UNDER THIS ACT TO THE DEPARTMENT.**

27 **(3) THE PRECEDING GUARDIANSHIP ASSISTANCE AGREEMENT MAY BE**

1 TRANSFERRED TO A SUCCESSOR GUARDIAN WHO HAS BEEN APPOINTED BY THE
2 COURT. THIS OCCURS WHEN THE SUCCESSOR GUARDIAN ENTERS INTO A
3 WRITTEN, BINDING GUARDIANSHIP ASSISTANCE AGREEMENT WITH THE
4 DEPARTMENT.

5 (4) A SUCCESSOR GUARDIAN MAY BE ELIGIBLE TO RECEIVE
6 GUARDIANSHIP ASSISTANCE ON BEHALF OF AN ELIGIBLE CHILD IF THE
7 DEPARTMENT DETERMINES THAT ALL OF THE FOLLOWING APPLY:

8 (A) A GUARDIANSHIP ASSISTANCE AGREEMENT FOR THE CHILD WAS IN
9 EFFECT BEFORE THE APPOINTMENT OF THE SUCCESSOR GUARDIAN.

10 (B) THE SUCCESSOR GUARDIAN WAS APPOINTED BY THE COURT AS A
11 RESULT OF THE DEATH OR INCAPACITATION OF THE PRECEDING GUARDIAN.

12 (C) THE PRECEDING GUARDIAN HAD AN ACTIVE GUARDIANSHIP
13 ASSISTANCE AGREEMENT FOR THE CHILD BEFORE HIS OR HER DEATH OR
14 INCAPACITATION.

15 (D) THE SUCCESSOR GUARDIAN MEETS ALL OF THE CONDITIONS SET
16 FORTH IN THIS ACT.

17 Sec. 6. (1) Except as provided in subsection (2), the
18 department shall not provide guardianship assistance after 1 of the
19 following occurs:

20 (a) The child reaches 18 years of age.

21 (b) The department determines that the guardian is no longer
22 legally responsible for support of the child.

23 (c) The department determines that the child is no longer
24 receiving any support from the relative guardian.

25 (d) The death of the child.

26 (e) The child is adopted by the guardian or another individual
27 under the Michigan adoption code, chapter X of the probate code,

1 MCL 710.21 to 710.70, or the adoption laws of any other state or
2 country.

3 (f) The guardianship is terminated by order of the court
4 having jurisdiction in the guardianship proceeding.

5 (g) The death of the guardian **UNLESS A SUCCESSOR GUARDIAN HAS**
6 **BEEN APPOINTED BY THE COURT.**

7 (2) The department may provide extended guardianship
8 assistance until the youth reaches the age of 21 if the youth meets
9 the requirements set forth in the young adult voluntary foster care
10 act, **2011 PA 225, MCL 400.641 TO 400.671.**

11 (3) The department shall send notice of termination of
12 guardianship assistance under this section by mail to the guardian
13 at the guardian's current or last known address and to the court
14 with jurisdiction over the guardianship case. Notice mailed under
15 this subsection shall include a statement of the department's
16 reason for termination.

17 Sec. 7. The guardian **OR SUCCESSOR GUARDIAN** shall apply for and
18 maintain on behalf of the child any public or private medical
19 insurance or assistance for which the child is eligible, including
20 eligibility under applicable laws providing financial assistance
21 for medical or health care expenses.

22 Sec. 8. (1) The department is responsible for collecting,
23 assembling, and reporting all data and information required for
24 reporting purposes.

25 (2) The guardian **OR SUCCESSOR GUARDIAN** shall cooperate with
26 the department and provide all information that the guardian **OR**
27 **SUCCESSOR GUARDIAN** possesses as requested by the department to

1 facilitate compliance with this section.

2 Sec. 9. An applicant for guardianship assistance under this
3 act or a guardian, **SUCCESSOR GUARDIAN**, or child who has received
4 guardianship assistance under a guardianship assistance agreement
5 may appeal a decision of the department denying the application,
6 establishing or modifying the guardianship assistance, or
7 terminating guardianship assistance according to the administrative
8 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.