

**§5-204. Judicial appointment of guardian; conditions for appointment**

**1. Petition.** A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Appointment.** The court may appoint a guardian for a minor if the court finds the appointment is in the best interest of the minor, finds the proposed guardian is suitable and finds:

A. That the parents consent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. That all parental rights have been terminated; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to the following situations:

(1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent;

(2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor; or

(3) A prior court order concerning the minor granted another parent, who is now deceased, exclusive parental rights and responsibilities with respect to all aspects of the minor's welfare without reserving for the parent who is now the respondent in the guardianship proceeding any rights to make decisions, to have access to records or to have contact with the minor and:

(a) Such order was in effect at the time of the death of the parent awarded exclusive parental rights and responsibilities; and

(b) There is neither a substantial change in circumstances between the time of the entry of the order and the parent's death nor other facts that would render a finding based on the order to be inequitable or unjust. [PL 2021, c. 340, §1 (AMD).]

[PL 2021, c. 340, §1 (AMD).]

**3. Priority for appointment.** If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated under section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. Appointment of a guardian on an emergency basis.** The court may appoint a guardian on an emergency basis for a minor pursuant to this subsection.

A. On motion by a person who has also filed a petition for appointment of a guardian pursuant to subsection 1, the court may appoint a guardian for the minor on an emergency basis if the court finds by a preponderance of the evidence that:

(1) The sworn affidavit or testimony demonstrates that appointment of a guardian on an emergency basis is needed to prevent substantial harm to the minor's physical health or safety;

(2) No other person appears to have authority and willingness to act in the circumstances;

(3) Following the procedures set forth in section 5-205, including those for appointment of a guardian on an interim basis, will likely result in substantial harm to the minor's health or safety before a guardian can be appointed;

- (4) A petition has been filed under subsection 1 and there is a substantial likelihood that a basis for appointment of a guardian under subsection 2 exists; and
- (5) The requirements of this subsection for providing notice have been satisfied. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- B. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this subsection. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- C. The duration of the authority of a guardian appointed pursuant to this subsection may not exceed 90 days, and the guardian may exercise only the powers specified in the order. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- D. Reasonable notice of the motion for appointment of an emergency guardian and the time and place of the hearing on the petition must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent. The court shall hold a hearing on the appointment of the guardian on an emergency basis within 14 days but not less than 7 days after the filing of the petition. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- E. The court may dispense with the notice requirement in paragraph D and appoint a guardian pursuant to this subsection on a temporary ex parte basis if it finds from affidavit or testimony that the minor will be substantially harmed before notice can be completed to all those entitled to receive notice and a hearing can be held on the petition. If the guardian is appointed without notice and hearing, the court shall schedule a hearing on the appointment of the guardian on an emergency basis within 14 days but not less than 7 days after issuance of the order appointing the guardian, except that a parent may request that the hearing take place sooner. Notice of the appointment and hearing must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent, within 48 hours after the appointment. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- F. The notices required under this subsection regarding guardianship on an emergency basis may be provided orally or in writing using a means that the petitioner in good faith believes is the most effective way to ensure actual notice. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice and to whom the notice was provided or attempted. The court shall make a determination as to whether the methods of notices or attempted notices by petitioner were reasonably calculated to give notice of the pendency of the petition. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- G. Appointment of a guardian on an emergency basis under this subsection is not a determination that the conditions required for appointment of a guardian under subsection 2 or the notice requirements set forth in section 5-205 have been satisfied. Before a guardian may be appointed pursuant to subsection 2, the petitioner must meet the notice requirements set forth in this Part and any applicable rules of procedure. [PL 2019, c. 417, Pt. A, §18 (NEW).]
- [PL 2019, c. 417, Pt. A, §18 (RPR).]

**5. Child support.** When appointing a guardian, including on an emergency or interim basis, the court's order must indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the guardianship appointment on the orders. The court shall consider whether to order a parent to pay child support to the guardian in accordance with Title 19-A, Part 3. A guardian must be treated as a caretaker relative for computation of a parental support obligation pursuant to Title 19-A, section 2006, subsection 4. The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a

hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §18 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 340, §1 (AMD).

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