



**SPONSORS STATEMENT:** (Begins on page 11 of original bill) Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes

Identical to fiscal estimate for S1813

**VETO MESSAGE:** Yes

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"New law lets caregivers become legal guardians," 10-12-2001 Asbury Park Press, pA4

"Kinship care' bill signed into law," 10-12-2001The Record, p.A9

"New law ensures rights of kin raising children," The Press, p.A6

# SENATE, No. 1813

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 21, 2001

**Sponsored by:**

**Senator JAMES S. CAFIERO**

**District 1 (Cape May, Atlantic and Cumberland)**

**Senator DIANE ALLEN**

**District 7 (Burlington and Camden)**

**Co-Sponsored by:**

**Senators Turner, Vitale, Furnari and Assemblyman Pennacchio**

**SYNOPSIS**

Establishes court awarded kinship legal guardianship status and creates three additional judgeships.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/29/2001)**

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

4

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

7

8 1. (New section) The Legislature finds and declares that:

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

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

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

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

35

36 2. (New section) As used in sections 1 through 6 of P.L. , c.  
37 (C. )(pending before the Legislature as this bill):

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

43 "Child" means a person under 18 years of age, except as otherwise

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 provided in P.L. , c. (C. )(pending before the Legislature as this  
2 bill).

3 "Commissioner" means the Commissioner of Human Services.

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

5 "Department" means the Department of Human Services.

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

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

11 "Home review" means the basic review of the information provided  
12 by the petitioner and a visit to the petitioner's home where the child  
13 will continue to reside, in accordance with the provisions of P.L. , c.  
14 (C. )(pending before the Legislature as this bill) and pursuant to  
15 regulations adopted by the commissioner.

16 "Kinship caregiver assessment" means a written report prepared in  
17 accordance with the provisions of P.L. , c. (C. )(pending before  
18 the Legislature as this bill) and pursuant to regulations adopted by the  
19 commissioner.

20 "Kinship legal guardian" means a caregiver who is willing to assume  
21 care of a child due to parental incapacity, with the intent to raise the  
22 child to adulthood, and who is appointed the kinship legal guardian of  
23 the child by the court pursuant to P.L. , c. (C. ) (pending before the  
24 Legislature as this bill). A kinship legal guardian shall be responsible  
25 for the care and protection of the child and for providing for the child's  
26 health, education and maintenance.

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

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

33

34 3. (New section) The Superior Court, Chancery Division, Family  
35 Part shall have jurisdiction under sections 1 through 6 of P.L. , c.  
36 (C. )(pending before the Legislature as this bill). Venue of a kinship  
37 legal guardianship action shall be determined in accordance with the  
38 applicable Rules of Court.

39

40 4. (New section) a. (1) Except as provided in paragraph (2) of this  
41 subsection, a kinship legal guardian shall have the same rights,  
42 responsibilities and authority relating to the child as a birth parent,  
43 including, but not limited to: making decisions concerning the child's  
44 care and well-being; consenting to routine and emergency medical and  
45 mental health needs; arranging and consenting to educational plans for  
46 the child; applying for financial assistance and social services for which

1 the child is eligible; applying for a motor vehicle operator's license;  
2 applying for admission to college; responsibility for activities necessary  
3 to ensure the child's safety, permanency and well-being; and ensuring  
4 the maintenance and protection of the child.

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

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

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

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

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

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

23 c. For the purposes of P.L. , c. (C. )(pending before the  
24 Legislature as this bill), a kinship legal guardian shall have the same  
25 meaning as the term "legal guardian" as defined in 42 U.S.C. s. 675,  
26 except that the process, procedure and ruling for kinship legal  
27 guardianship shall be apart from, and shall not amend, supplant or  
28 contravene, the provisions of Chapter 12 of Title 3B of the New Jersey  
29 Statutes.

30 d. (1) The provisions of P.L. , c. (C. )(pending before the  
31 Legislature as this bill) shall not be construed to grant or confer upon  
32 any person appointed kinship legal guardian of a child any of the  
33 additional rights or privileges accorded to persons appointed guardian  
34 of a minor's person or estate by a Surrogate or the Superior Court,  
35 Chancery Division, Probate Part pursuant to the provisions of Chapter  
36 12 of Title 3B of the New Jersey Statutes.

37 (2) The provisions of P.L. , c. (C. )(pending before the  
38 Legislature as this bill) shall not be construed to preclude an  
39 application to the court for guardianship of the person or estate of a  
40 minor by any person appointed kinship legal guardian of a child.

41

42 5. (New section) a. Upon petition of a caregiver, the court may  
43 appoint the caregiver as kinship legal guardian of a child residing in  
44 the caregiver's home pursuant to the provisions of P.L. , c. (C. )  
45 (pending before the Legislature as this bill).

46 b. A petition for the appointment of a kinship legal guardian shall

- 1 include a kinship caregiver assessment, which shall contain:
- 2 (1) the full name and address of the person seeking to become the
- 3 kinship legal guardian;
- 4 (2) the circumstances of the kinship relationship;
- 5 (3) the whereabouts of the child's parents, if known;
- 6 (4) the nature of the parents' incapacitation, if known;
- 7 (5) the wishes of the parents, if known;
- 8 (6) the ability of the kinship caregiver family to assume permanent
- 9 care of the child;
- 10 (7) the child's property and assets, if known;
- 11 (8) the wishes of the child, if appropriate;
- 12 (9) any current involvement of a child with the division if the child
- 13 has an open division case and is actively receiving services;
- 14 (10) certification from the caregiver that the caregiver has been
- 15 providing care and support for the child, while the child has been
- 16 residing in the caregiver's home, for at least the last 12 consecutive
- 17 months;
- 18 (11) the results from a criminal history record background check
- 19 and a domestic violence central registry check of the caregiver and any
- 20 adult residing in the caregiver's household conducted pursuant to
- 21 section 9 of P.L. , c. (C. )(pending before the Legislature as this
- 22 bill);
- 23 (12) the results from a child abuse record check arranged for and
- 24 coordinated by the division pursuant to section 9 of P.L. , c. (C. )
- 25 (pending before the Legislature as this bill); and
- 26 (13) the results of the caregiver's home review.
- 27
- 28 6. (New section) a. In making its determination about whether to
- 29 appoint the caregiver as kinship legal guardian, the court shall
- 30 consider:
- 31 (1) if proper notice was provided to the child's parents;
- 32 (2) the best interests of the child;
- 33 (3) the kinship caregiver assessment;
- 34 (4) in cases in which the division is involved with the child as
- 35 provided in subsection a. of section 8 of P.L. , c. (C. )(pending
- 36 before the Legislature as this bill), the recommendation of the division,
- 37 including any parent time or visitation restrictions;
- 38 (5) the potential kinship legal guardian's ability to provide a safe
- 39 and permanent home for the child;
- 40 (6) the wishes of the child's parents, if known to the court;
- 41 (7) the wishes of the child if the child is 12 years of age or older,
- 42 unless unique circumstances exist that make the child's age irrelevant;
- 43 (8) the suitability of the kinship caregiver and the caregiver's family
- 44 to raise the child;
- 45 (9) the ability of the kinship caregiver to assume full legal
- 46 responsibility for the child;

- 1 (10) the commitment of the kinship caregiver and the caregiver's  
2 family to raise the child to adulthood;
- 3 (11) the results from the child abuse record check conducted  
4 pursuant to section 9 of P.L. , c. (C. )(pending before the  
5 Legislature as this bill); and
- 6 (12) the results from the criminal history record background check  
7 and domestic violence check conducted pursuant to section 9 of  
8 P.L. , c. (C. )(pending before the Legislature as this bill). In any  
9 case in which the caregiver petitioning for kinship legal guardianship,  
10 or any adult residing in the prospective caregiver's home, has a record  
11 of criminal history, the court shall review the record with respect to  
12 the type and date of the criminal offense and make a determination as  
13 to the suitability of the person to become a kinship legal guardian. For  
14 the purposes of this paragraph, the court shall consider convictions for  
15 offenses specified in subsections c., d. and e. of section 1 of P.L.1985,  
16 c.396 (C.30:4C-26.8).
- 17 b. The court shall not award kinship legal guardianship of the child  
18 unless proper notice was served upon the parents of the child and any  
19 other party to whom the court has awarded custody or parenting time  
20 for that child, in accordance with the Rules of Court.
- 21 c. The court shall not award kinship legal guardianship of the child  
22 solely because of parental incapacity.
- 23 d. The court shall appoint the caregiver as a kinship legal guardian  
24 if, based upon clear and convincing evidence, the court finds that:
- 25 (1) each parent's incapacity is of such a serious nature as to  
26 demonstrate that the parents are unable, unavailable or unwilling to  
27 perform the regular and expected functions of care and support of the  
28 child;
- 29 (2) the parents' inability to perform those functions is unlikely to  
30 change in the foreseeable future;
- 31 (3) in cases in which the division is involved with the child as  
32 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
33 before the Legislature as this bill), (a) the division exercised reasonable  
34 efforts to reunify the child with the birth parents and these  
35 reunification efforts have proven unsuccessful or unnecessary; and (b)  
36 adoption of the child is neither feasible nor likely; and
- 37 (4) awarding kinship legal guardianship is in the child's best  
38 interests.
- 39 e. The court order appointing the kinship legal guardian shall  
40 specify, as appropriate, that:
- 41 (1) a kinship legal guardian shall have the same rights,  
42 responsibilities and authority relating to the child as a birth parent,  
43 including, but not limited to: making decisions concerning the child's  
44 care and well-being; consenting to routine and emergency medical and  
45 mental health needs; arranging and consenting to educational plans for  
46 the child; applying for financial assistance and social services for which



1 the child is eligible; applying for a motor vehicle operator's license;  
2 applying for admission to college; responsibility for activities necessary  
3 to ensure the child's safety, permanency and well-being; and ensuring  
4 the maintenance and protection of the child; except that a kinship legal  
5 guardian may not consent to the adoption of the child or a name  
6 change for the child;

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

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

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

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

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

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

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

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

38

39 7. (New section) As used in sections 7 through 10 of P.L. , c.  
40 (C. ) (pending before the Legislature as this bill):

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

46 "Child" means a person under 18 years of age, except as otherwise

1 provided in P.L. , c. (C. )(pending before the Legislature as this  
2 bill).

3 "Commissioner" means the Commissioner of Human Services.

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

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

7 "Kinship caregiver assessment" means a written report prepared in  
8 accordance with the provisions of P.L. , c. (C. )(pending before  
9 the Legislature as this bill) and pursuant to regulations adopted by the  
10 commissioner.

11 "Kinship legal guardian" means a caregiver who is willing to assume  
12 care of a child due to parental incapacity, with the intent to raise the  
13 child to adulthood, and who is appointed the kinship legal guardian of  
14 the child by the court pursuant to P.L. , c. (C. ) (pending before the  
15 Legislature as this bill). A kinship legal guardian shall be responsible  
16 for the care and protection of the child and for providing for the child's  
17 health, education and maintenance.

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

20

21 8. (New section) a. In the case of a child who has been removed  
22 from his home by the division within the last 12 months, or for whom  
23 the division has an open or currently active case:

24 (1) The kinship caregiver assessment required pursuant to section  
25 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall  
26 be conducted by the division, at no cost to the caregiver.

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

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

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

39 (1) The kinship caregiver assessment required pursuant to section  
40 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall  
41 be conducted by an agency in accordance with regulations adopted by  
42 the commissioner.

43 (2) The costs for the kinship caregiver assessment shall be born by  
44 the department in cases where a financially eligible individual is  
45 applying for cash assistance under a kinship care program or pilot  
46 program provided by the department, for which kinship legal

1 guardianship is a requirement for receiving such assistance. For all  
2 other cases under this subsection, the caregiver shall be responsible for  
3 all of the costs of the kinship caregiver assessment.

4  
5 9. (New section) a. Prior to the submission of a petition for  
6 appointment as a kinship legal guardian, the caregiver and any adult  
7 residing in the caregiver's household shall undergo:

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

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

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

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

24  
25 10. (New section) With respect to a complaint initiated by the  
26 division pursuant to P.L.1974, c.119 (C9:6-8.21 et seq.) and section  
27 15 of P.L.1951, c.138 (30:4C-15):

28 a. Only the division or the court shall have legal standing to seek  
29 a kinship legal guardianship arrangement as an alternative disposition.  
30 The parents of the child who is the subject of the complaint may  
31 request, with appropriate notice to the division, that the court consider  
32 a kinship legal guardianship arrangement as an alternative disposition.  
33 If the division agrees to a kinship legal guardianship arrangement as an  
34 alternative disposition, the division shall not be required to file a new  
35 petition, but may amend the pending complaint in accordance with the  
36 Rules of Court.

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

40  
41 11. The Commissioner of Human Services, pursuant to the  
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
43 seq.), shall adopt rules and regulations to effectuate the purposes of  
44 this act.

45  
46 12. The Supreme Court of New Jersey may adopt court rules to

1 effectuate the purposes of this act.

2

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

4 2B:2-1. Number of Judges.

5 a. The Superior Court shall consist of [428] 431 judges.

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

9	Atlantic.....	11
10	Bergen.....	27
11	Burlington.....	10
12	Camden.....	16
13	Cape May.....	4
14	Cumberland.....	7
15	Essex .....	34
16	Gloucester.....	10
17	Hudson .....	24
18	Hunterdon.....	3
19	Mercer .....	9
20	Middlesex.....	24
21	Monmouth.....	17
22	Morris .....	15
23	Ocean .....	15
24	Passaic .....	17
25	Salem .....	3
26	Somerset.....	6
27	Sussex .....	4
28	Union .....	20
29	Warren .....	3

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

33	Atlantic .....	4
34	Bergen .....	12
35	Burlington.....	4
36	Camden.....	8
37	Cape May.....	2
38	Cumberland.....	4
39	Essex .....	14
40	Gloucester.....	6
41	Hudson .....	6
42	Hunterdon.....	2
43	Mercer .....	6
44	Middlesex.....	8
45	Monmouth.....	4
46	Morris .....	6

1 Ocean .....8  
2 Passaic .....6  
3 Salem .....2  
4 Somerset.....4  
5 Sussex .....2  
6 Union .....6  
7 Warren .....2

8 (cf: P.L.1999, c.104, s.1)

9

10 14. This act shall take effect 180 days after the date of enactment.

11

12

13 STATEMENT

14

15 This bill establishes a new type of guardianship called kinship legal  
16 guardianship to address the needs of children who cannot reside with  
17 their parents due to the parents' incapacity or inability. Kinship legal  
18 guardians are caregivers who have a biological, legal, extended or  
19 committed emotional or psychological relationship with a child and  
20 who are willing to assume care of the child due to parental incapacity  
21 or inability, with the intent to raise the child to adulthood. Kinship  
22 legal guardianship does not terminate parental rights. A kinship legal  
23 guardian is responsible for the care and protection of the child and for  
24 providing for the child's health, education and maintenance, while the  
25 child's parents retain the right to visitation and to consent to adoption.  
26 Kinship legal guardianship terminates when a child reaches 18 years of  
27 age, or when the child is no longer continuously enrolled in a  
28 secondary education program, whichever occurs later.

29 Upon petition of a caregiver, the Superior Court, Chancery  
30 Division, Family Part may appoint the caregiver as kinship legal  
31 guardian of a child who has resided in the caregiver's home for at least  
32 the last 12 consecutive months.

33 A petition for the appointment of a kinship legal guardian must  
34 include a kinship caregiver assessment, which contains:

35 (1) the full name and address of the person seeking to become the  
36 kinship legal guardian;

37 (2) the circumstances of the kinship relationship;

38 (3) the whereabouts of the child's parents, if known;

39 (4) the nature of the parents' incapacitation, if known;

40 (5) the wishes of the parents, if known;

41 (6) the ability of the kinship family to assume permanent care of the  
42 child;

43 (7) the child's property and assets, if known;

44 (8) the wishes of the child, if appropriate;

45 (9) any current involvement of a child with the Division of Youth  
46 and Family Services (DYFS) if the child has an open DYFS case and

1 is actively receiving services;

2 (10) certification from the caregiver that the caregiver has been  
3 providing care and support for the child, while the child has been  
4 residing in the caregiver's home, for at least the last 12 consecutive  
5 months;

6 (11) the results from a criminal history record background check  
7 and a domestic violence central registry check of the caregiver and any  
8 adult residing in the caregiver's household;

9 (12) the results from a child abuse record check arranged for and  
10 coordinated by DYFS; and

11 (13) the results of the caregiver's home review.

12 In making its determination about whether to appoint the caregiver  
13 as kinship legal guardian, the court shall consider:

14 (1) if proper notice was provided to the child's parents;

15 (2) the best interests of the child;

16 (3) the kinship caregiver assessment;

17 (4) in cases in which DYFS is involved with the child, the  
18 recommendation of DYFS, including any parent time or visitation  
19 restrictions;

20 (5) the potential kinship legal guardian's ability to provide a safe  
21 and permanent home for the child;

22 (6) the wishes of the child's parents, if known to the court;

23 (7) the wishes of the child if the child is 12 years of age or older,  
24 unless unique circumstances exist that make the child's age irrelevant;

25 (8) the suitability of the kinship caregiver and the caregiver's family  
26 to raise the child;

27 (9) the ability of the kinship caregiver to assume full legal  
28 responsibility for the child;

29 (10) the commitment of the kinship caregiver and the caregiver's  
30 family to raise the child to adulthood;

31 (11) the results from the child abuse record check; and

32 (12) the results from the criminal history record background check  
33 and domestic violence check.

34 The bill specifies that the court shall not award kinship legal  
35 guardianship unless proper notice was served upon the parties  
36 pursuant to court rules. Also, kinship legal guardianship shall not be  
37 awarded solely because of parental incapacity.

38 The court shall appoint the caregiver as a kinship legal guardian if,  
39 based upon clear and convincing evidence, the court finds that:

40 (1) each parent's incapacity is of such a serious nature as to  
41 demonstrate that the parents are unable, unavailable or unwilling to  
42 perform the regular and expected functions of care and support of the  
43 child;

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

46 (3) in cases in which DYFS is involved with the child: (a) DYFS

1 exercised reasonable efforts to reunify the child with the birth parents  
2 and these reunification efforts have proven unsuccessful or  
3 unnecessary; and (b) adoption of the child is neither feasible nor likely;  
4 and

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

7 The court order appointing the kinship legal guardian shall specify,  
8 as appropriate, that:

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

21 (2) the authority to consent to the adoption of the child or a name  
22 change for the child is retained by the birth parent of the child;

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

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

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

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

35 An order or judgment awarding kinship legal guardianship may be  
36 vacated by the court prior to the child's 18th birthday if the court finds  
37 that the kinship legal guardianship is no longer in the best interests of  
38 the child or, based upon clear and convincing evidence, the court finds  
39 that the parental incapacity or inability to care for the child that led to  
40 the original award of kinship legal guardianship is no longer the case  
41 and termination of kinship legal guardianship is in the child's best  
42 interests. The order or judgment also may be vacated by the court if,  
43 based upon clear and convincing evidence, the court finds that the  
44 guardian failed or is unable, unavailable or unwilling to provide proper  
45 care and custody of the child, or that the guardianship is no longer in  
46 the child's best interest.

1       In cases in which DYFS has removed the child from his home  
2 within the last 12 months, or DYFS has an open or currently active  
3 case, DYFS will conduct the kinship caregiver assessment required in  
4 this bill and will not charge a fee for the assessment. In all other cases,  
5 an agency will conduct the assessment in accordance with regulations  
6 adopted by the Commissioner of Human Services. In these cases, the  
7 caregiver will be responsible for the costs of the assessment; however,  
8 there will be no charge for the assessment in cases where a financially  
9 eligible individual is applying to the department for cash assistance  
10 under a kinship care program or pilot program for which kinship legal  
11 guardianship is a requirement.

12       The bill also provides that for pending litigation under N.J.S.A.9:6-  
13 8.21 et seq. (adjudication of child abuse or neglect) or N.J.S.A.30:4C-  
14 15 (termination of parental rights), DYFS is not required to file a new  
15 petition, but may amend the pending litigation upon notice to the  
16 parents. The bill provides that only DYFS has legal standing to seek  
17 a kinship legal guardianship arrangement as an alternative disposition.  
18 The parent, with appropriate notice to DYFS, may request that the  
19 court consider a kinship legal guardianship arrangement as a final  
20 disposition of the litigation. In a case that originated under  
21 N.J.S.A.9:6-8.21 et seq. or N.J.S.A.30:4C-15 in which an appointment  
22 of kinship legal guardianship is made, the bill provides that the court  
23 will view the kinship legal guardianship appointment as the final  
24 disposition of the case.

25       Finally, this bill amends N.J.S.2B:2-1 to create three additional  
26 judgeships in the Superior Court to implement the kinship legal  
27 guardianship process.



SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY  
SERVICES COMMITTEE

STATEMENT TO

**SENATE, No. 1813**

**STATE OF NEW JERSEY**

DATED: JUNE 25, 2001

The Senate Women's Issues, Children and Family Services Committee reports favorably Senate Bill No. 1813.

This bill establishes a new type of guardianship called kinship legal guardianship to address the needs of children who cannot reside with their parents due to the parents' incapacity or inability. Kinship legal guardians are caregivers who have a biological, legal, extended or committed emotional or psychological relationship with a child and who are willing to assume care of the child due to parental incapacity or inability, with the intent to raise the child to adulthood. Kinship legal guardianship does not terminate parental rights. A kinship legal guardian is responsible for the care and protection of the child and for providing for the child's health, education and maintenance, while the child's parents retain the right to visitation and to consent to adoption. Kinship legal guardianship terminates when a child reaches 18 years of age, or when the child is no longer continuously enrolled in a secondary education program, whichever occurs later.

Upon petition of a caregiver, the Superior Court, Chancery Division, Family Part may appoint the caregiver as kinship legal guardian of a child who has resided in the caregiver's home for at least the last 12 consecutive months.

A petition for the appointment of a kinship legal guardian must include a kinship caregiver assessment, which contains:

- (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 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 of Youth and Family Services (DYFS) if the child has an open DYFS 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;

(12) the results from a child abuse record check arranged for and coordinated by DYFS; and

(13) the results of the caregiver's home review.

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 DYFS is involved with the child, the recommendation of DYFS, including any parent 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; and

(12) the results from the criminal history record background check and domestic violence check.

The bill specifies that the court shall not award kinship legal guardianship unless proper notice was served upon the parties pursuant to court rules. Also, kinship legal guardianship shall not be awarded solely because of parental incapacity.

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 DYFS is involved with the child: (a) DYFS 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.

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 related 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 authority to consent to the adoption of the child or a name change for the child is retained by the birth parent of 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.

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. The order or judgment also 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 interest.

In cases in which DYFS has removed the child from his home within the last 12 months, or DYFS has an open or currently active case, DYFS will conduct the kinship caregiver assessment required in

this bill and will not charge a fee for the assessment. In all other cases, an agency will conduct the assessment in accordance with regulations adopted by the Commissioner of Human Services. In these cases, the caregiver will be responsible for the costs of the assessment; however, there will be no charge for the assessment in cases where a financially eligible individual is applying to the department for cash assistance under a kinship care program or pilot program for which kinship legal guardianship is a requirement.

The bill also provides that for pending litigation under N.J.S.A.9:6-8.21 et seq. (adjudication of child abuse or neglect) or N.J.S.A.30:4C-15 (termination of parental rights), DYFS is not required to file a new petition, but may amend the pending litigation upon notice to the parents. The bill provides that only DYFS has legal standing to seek a kinship legal guardianship arrangement as an alternative disposition. The parent, with appropriate notice to DYFS, may request that the court consider a kinship legal guardianship arrangement as a final disposition of the litigation. In a case that originated under N.J.S.A.9:6-8.21 et seq. or N.J.S.A.30:4C-15 in which an appointment of kinship legal guardianship is made, the bill provides that the court will view the kinship legal guardianship appointment as the final disposition of the case.

Finally, this bill amends N.J.S.2B:2-1 to create three additional judgeships in the Superior Court to implement the kinship legal guardianship process.

This bill is identical to Assembly Bill No. 3673 (Pennacchio), which is on second reading in the General Assembly.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 1813

# STATE OF NEW JERSEY

DATED: JUNE 25, 2001

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1813.

This bill establishes a new type of guardianship called kinship legal guardianship to address the needs of children who cannot reside with their parents due to the parents' incapacity or inability. Kinship legal guardians are caregivers who have a biological, legal, extended or committed emotional or psychological relationship with a child and who are willing to assume care of the child due to parental incapacity or inability, with the intent to raise the child to adulthood. Kinship legal guardianship does not terminate parental rights. A kinship legal guardian is responsible for the care and protection of the child and for providing for the child's health, education and maintenance, while the child's parents retain the right to visitation and to consent to adoption. Kinship legal guardianship terminates when a child reaches 18 years of age, or when the child is no longer continuously enrolled in a secondary education program, whichever occurs later.

Upon petition of a caregiver, the Superior Court, Chancery Division, Family Part may appoint the caregiver as kinship legal guardian of a child who has resided in the caregiver's home for at least the last 12 consecutive months.

A petition for the appointment of a kinship legal guardian must include a kinship caregiver assessment, which contains:

- (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 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 of Youth and Family Services (DYFS) if the child has an open DYFS 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;

(12) the results from a child abuse record check arranged for and coordinated by DYFS; and

(13) the results of the caregiver's home review.

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 DYFS is involved with the child, the recommendation of DYFS, including any parent 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; and

(12) the results from the criminal history record background check and domestic violence check.

The bill specifies that the court shall not award kinship legal guardianship unless proper notice was served upon the parties pursuant to court rules. Also, kinship legal guardianship shall not be awarded solely because of parental incapacity.

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 DYFS is involved with the child: (a) DYFS 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.

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 related 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 authority to consent to the adoption of the child or a name change for the child is retained by the birth parent of 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.

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. The order or judgment also 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 interest.

In cases in which DYFS has removed the child from his home within the last 12 months, or DYFS has an open or currently active case, DYFS will conduct the kinship caregiver assessment required in this bill and will not charge a fee for the assessment. In all other cases, an agency will conduct the assessment in accordance with regulations

adopted by the Commissioner of Human Services. In these cases, the caregiver will be responsible for the costs of the assessment; however, there will be no charge for the assessment in cases where a financially eligible individual is applying to the department for cash assistance under a kinship care program or pilot program for which kinship legal guardianship is a requirement.

The bill also provides that for pending litigation under N.J.S.A.9:6-8.21 et seq. (adjudication of child abuse or neglect) or N.J.S.A.30:4C-15 (termination of parental rights), DYFS is not required to file a new petition, but may amend the pending litigation upon notice to the parents. The bill provides that only DYFS has legal standing to seek a kinship legal guardianship arrangement as an alternative disposition. The parent, with appropriate notice to DYFS, may request that the court consider a kinship legal guardianship arrangement as a final disposition of the litigation. In a case that originated under N.J.S.A.9:6-8.21 et seq. or N.J.S.A.30:4C-15 in which an appointment of kinship legal guardianship is made, the bill provides that the court will view the kinship legal guardianship appointment as the final disposition of the case.

Finally, this bill amends N.J.S.2B:2-1 to create three additional judgeships in the Superior Court to implement the kinship legal guardianship process.

**FISCAL IMPACT:**

The proposed FY2002 Appropriations Act includes an appropriation to the Judiciary in the amount of \$970,000 for Kinship Legal Guardianship, subject to the enactment of legislation establishing the program.



**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 1813**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: JULY 19, 2001

**SUMMARY**

**Synopsis:** Establishes court awarded kinship legal guardianship status and creates three additional judgeships.

**Type of Impact:** General Fund expenditure increase.

**Agencies Affected:** Department of Human Services (DHS) and the courts.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>			
<i>Judiciary Costs</i>	The cost for the three new Judgeships would be about \$1 million annually.	Routine Inflationary Increases See Comments Below	
<i>DHS Costs</i>	Indeterminate		

! The number of "caregivers" that will petition the court to be appointed "kinship legal guardian" is not known. The amount of time DHS will need to conduct the various functions assigned to the department cannot be determined, as it is not known how many caregivers that will seek guardianship are already known to DHS and how many are not known to DHS.

**BILL DESCRIPTION**

Senate Bill No. 1813 of 2001 establishes a program of court awarded legal guardianship status and creates three additional judgeships.

Under the terms of the legislation, a caregiver who has a kinship relationship with the child and has been providing care and support for the child for at least 12 consecutive months may petition the court to be appointed as a "kinship legal guardian." DHS would be required to provide the court with various information on the petition, including a kinship caregiver assessment and a home review for certain cases in which the Division of Youth and Family Services (DYFS) is or has been involved with child. In other cases, DHS may designate another agency to conduct the assessment and home review, the cost of which will be assumed by the caregiver.

**FISCAL ANALYSIS*****OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services estimates that the legislation would cost a minimum of \$1.0 million during the first year as follows:

**Judiciary Costs** - The estimated cost per judgeship, including support staff, is about \$340,000 annually. As three new judgeships would be established under the legislation, the annual cost is approximately \$1,020,000.

**DHS Costs** - The additional costs DHS may incur cannot be determined as the number of caregivers (known to DYFS) who will petition the court to become a kinship legal guardian is not known. If the caregiver is known to DHS, additional costs may be incurred to prepare the caregiver assessment, home review and to arrange for a criminal history record background check. The cost to conduct a home review and kinship caregiver assessment is not known as the amount of staff time required to conduct such functions is not known. At present, the State Police charges about \$50 to conduct an individual criminal history record background check.

Section: *Human Services; Judiciary.*

Analyst: *Jay Hershberg*  
*Principal Fiscal Analyst*  
*Anne Raughley*  
*Lead Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[First Reprint]

**SENATE, No. 1813**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED JUNE 21, 2001

**Sponsored by:**

**Senator JAMES S. CAFIERO**

**District 1 (Cape May, Atlantic and Cumberland)**

**Senator DIANE ALLEN**

**District 7 (Burlington and Camden)**

**Co-Sponsored by:**

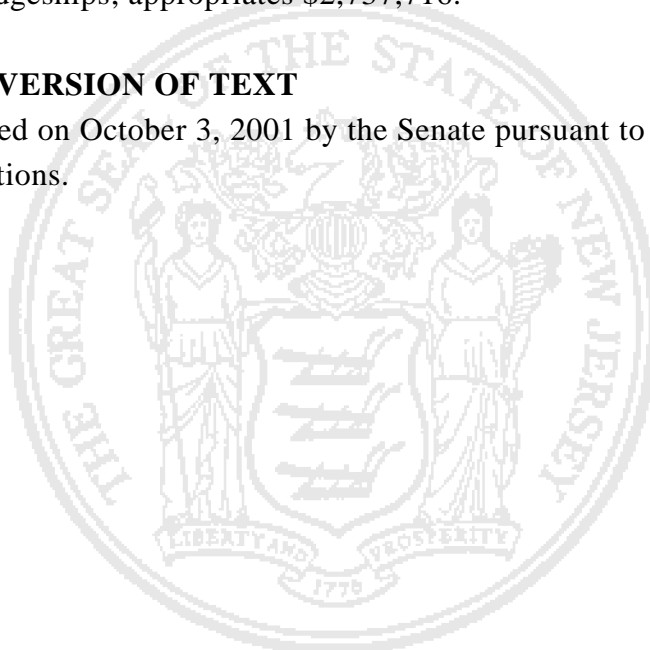
**Senators Turner, Vitale, Furnari and Assemblyman Pennacchio**

**SYNOPSIS**

Establishes court awarded kinship legal guardianship status, creates seven additional judgeships; appropriates \$2,737,716.

**CURRENT VERSION OF TEXT**

As amended on October 3, 2001 by the Senate pursuant to the Governor's recommendations.



**(Sponsorship Updated As Of: 6/29/2001)**

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

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) The Legislature finds and declares that:

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

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

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

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

35  
36 2. (New section) As used in sections 1 through 6 of P.L. , c.  
37 (C. )(pending before the Legislature as this bill):

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

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate amendments adopted in accordance with Governor's recommendations October 3, 2001.

1 months.

2 "Child" means a person under 18 years of age, except as otherwise  
3 provided in P.L. , c. (C. )(pending before the Legislature as this  
4 bill).

5 "Commissioner" means the Commissioner of Human Services.

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

7 "Department" means the Department of Human Services.

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

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

13 "Home review" means the basic review of the information provided  
14 by the petitioner and a visit to the petitioner's home where the child  
15 will continue to reside, in accordance with the provisions of P.L. ,  
16 c. (C. )(pending before the Legislature as this bill) and pursuant  
17 to regulations adopted by the commissioner.

18 "Kinship caregiver assessment" means a written report prepared in  
19 accordance with the provisions of P.L. , c. (C. )(pending before  
20 the Legislature as this bill) and pursuant to regulations adopted by the  
21 commissioner.

22 "Kinship legal guardian" means a caregiver who is willing to assume  
23 care of a child due to parental incapacity, with the intent to raise the  
24 child to adulthood, and who is appointed the kinship legal guardian of  
25 the child by the court pursuant to P.L. , c. (C. ) (pending  
26 before the Legislature as this bill). A kinship legal guardian shall be  
27 responsible for the care and protection of the child and for providing  
28 for the child's health, education and maintenance.

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

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

35

36 3. (New section) The Superior Court, Chancery Division, Family  
37 Part shall have jurisdiction under sections 1 through 6 of P.L. , c.  
38 (C. )(pending before the Legislature as this bill). Venue of a  
39 kinship legal guardianship action shall be determined in accordance  
40 with the applicable Rules of Court.

41

42 4. (New section) a. (1) Except as provided in paragraph (2) of  
43 this subsection, a kinship legal guardian shall have the same rights,  
44 responsibilities and authority relating to the child as a birth parent,  
45 including, but not limited to: making decisions concerning the child's  
46 care and well-being; consenting to routine and emergency medical and

1 mental health needs; arranging and consenting to educational plans for  
2 the child; applying for financial assistance and social services for which  
3 the child is eligible; applying for a motor vehicle operator's license;  
4 applying for admission to college; responsibility for activities necessary  
5 to ensure the child's safety, permanency and well-being; and ensuring  
6 the maintenance and protection of the child.

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

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

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

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

19 (6) Kinship legal guardianship terminates when the child reaches  
20 18 years of age or when the child is no longer continuously enrolled  
21 in a secondary education program, whichever event occurs later, or  
22 when kinship legal guardianship is otherwise terminated.

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

25 c. For the purposes of P.L. , c. (C. )(pending before the  
26 Legislature as this bill), a kinship legal guardian shall have the same  
27 meaning as the term "legal guardian" as defined in 42 U.S.C. s. 675,  
28 except that the process, procedure and ruling for kinship legal  
29 guardianship shall be apart from, and shall not amend, supplant or  
30 contravene, the provisions of Chapter 12 of Title 3B of the New Jersey  
31 Statutes.

32 d. (1) The provisions of P.L. , c. (C. )(pending before the  
33 Legislature as this bill) shall not be construed to grant or confer upon  
34 any person appointed kinship legal guardian of a child any of the  
35 additional rights or privileges accorded to persons appointed guardian  
36 of a minor's person or estate by a Surrogate or the Superior Court,  
37 Chancery Division, Probate Part pursuant to the provisions of  
38 Chapter 12 of Title 3B of the New Jersey Statutes.

39 (2) The provisions of P.L. , c. (C. )(pending before the  
40 Legislature as this bill) shall not be construed to preclude an  
41 application to the court for guardianship of the person or estate of a  
42 minor by any person appointed kinship legal guardian of a child.

43

44 5. (New section) a. Upon petition of a caregiver, the court may  
45 appoint the caregiver as kinship legal guardian of a child residing in

- 1 the caregiver's home pursuant to the provisions of P.L. , c.  
2 (C. ) (pending before the Legislature as this bill).
- 3 b. A petition for the appointment of a kinship legal guardian shall  
4 include a kinship caregiver assessment, which shall contain:
- 5 (1) the full name and address of the person seeking to become the  
6 kinship legal guardian;
- 7 (2) the circumstances of the kinship relationship;
- 8 (3) the whereabouts of the child's parents, if known;
- 9 (4) the nature of the parents' incapacitation, if known;
- 10 (5) the wishes of the parents, if known;
- 11 (6) the ability of the kinship caregiver family to assume permanent  
12 care of the child;
- 13 (7) the child's property and assets, if known;
- 14 (8) the wishes of the child, if appropriate;
- 15 (9) any current involvement of a child with the division if the child  
16 has an open division case and is actively receiving services;
- 17 (10) certification from the caregiver that the caregiver has been  
18 providing care and support for the child, while the child has been  
19 residing in the caregiver's home, for at least the last 12 consecutive  
20 months;
- 21 (11) the results from a criminal history record background check  
22 and a domestic violence central registry check of the caregiver and any  
23 adult residing in the caregiver's household conducted pursuant to  
24 section 9 of P.L. , c. (C. )(pending before the Legislature as  
25 this bill);
- 26 (12) the results from a child abuse record check arranged for and  
27 coordinated by the division pursuant to section 9 of P.L. , c.  
28 (C. ) (pending before the Legislature as this bill); and
- 29 (13) the results of the caregiver's home review.
- 30
- 31 6. (New section) a. In making its determination about whether to  
32 appoint the caregiver as kinship legal guardian, the court shall  
33 consider:
- 34 (1) if proper notice was provided to the child's parents;
- 35 (2) the best interests of the child;
- 36 (3) the kinship caregiver assessment;
- 37 (4) in cases in which the division is involved with the child as  
38 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
39 before the Legislature as this bill), the recommendation of the division,  
40 including any parent time or visitation restrictions;
- 41 (5) the potential kinship legal guardian's ability to provide a safe  
42 and permanent home for the child;
- 43 (6) the wishes of the child's parents, if known to the court;
- 44 (7) the wishes of the child if the child is 12 years of age or older,  
45 unless unique circumstances exist that make the child's age irrelevant;
- 46 (8) the suitability of the kinship caregiver and the caregiver's family

- 1 to raise the child;
- 2 (9) the ability of the kinship caregiver to assume full legal  
3 responsibility for the child;
- 4 (10) the commitment of the kinship caregiver and the caregiver's  
5 family to raise the child to adulthood;
- 6 (11) the results from the child abuse record check conducted  
7 pursuant to section 9 of P.L. , c. (C. )(pending before the  
8 Legislature as this bill); and
- 9 (12) the results from the criminal history record background check  
10 and domestic violence check conducted pursuant to section 9 of  
11 P.L. , c. (C. )(pending before the Legislature as this bill). In  
12 any case in which the caregiver petitioning for kinship legal  
13 guardianship, or any adult residing in the prospective caregiver's home,  
14 has a record of criminal history <sup>1</sup>or a record of being subjected to a  
15 final domestic violence restraining order under P.L.1991, c.261  
16 (C.2C:25-17 et seq.)<sup>1</sup>, the court shall review the record with respect  
17 to the type and date of the criminal offense <sup>1</sup>or the provisions and date  
18 of the final domestic violence restraining order<sup>1</sup> and make a  
19 determination as to the suitability of the person to become a kinship  
20 legal guardian. For the purposes of this paragraph, <sup>1</sup>with respect to  
21 criminal history,<sup>1</sup> the court shall consider convictions for offenses  
22 specified in subsections c., d. and e. of section 1 of P.L.1985, c.396  
23 (C.30:4C-26.8).
- 24 b. The court shall not award kinship legal guardianship of the child  
25 unless proper notice was served upon the parents of the child and any  
26 other party to whom the court has awarded custody or parenting time  
27 for that child, in accordance with the Rules of Court.
- 28 c. The court shall not award kinship legal guardianship of the child  
29 solely because of parental incapacity.
- 30 d. The court shall appoint the caregiver as a kinship legal guardian  
31 if, based upon clear and convincing evidence, the court finds that:
- 32 (1) each parent's incapacity is of such a serious nature as to  
33 demonstrate that the parents are unable, unavailable or unwilling to  
34 perform the regular and expected functions of care and support of the  
35 child;
- 36 (2) the parents' inability to perform those functions is unlikely to  
37 change in the foreseeable future;
- 38 (3) in cases in which the division is involved with the child as  
39 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
40 before the Legislature as this bill), (a) the division exercised reasonable  
41 efforts to reunify the child with the birth parents and these  
42 reunification efforts have proven unsuccessful or unnecessary; and (b)  
43 adoption of the child is neither feasible nor likely; and
- 44 (4) awarding kinship legal guardianship is in the child's best  
45 interests.
- 46 e. The court order appointing the kinship legal guardian shall



1 specify, as appropriate, that:

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

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

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

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

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

24 (6) kinship legal guardianship terminates when the child reaches  
25 18 years of age or when the child is no longer continuously enrolled  
26 in a secondary education program, whichever event occurs later, or  
27 when kinship legal guardianship is otherwise terminated.

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

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

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

1 7. (New section) As used in sections 7 through 10 of P.L. , c.  
2 (C. ) (pending before the Legislature as this bill):

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

8 "Child" means a person under 18 years of age, except as otherwise  
9 provided in P.L. , c. (C. )(pending before the Legislature as  
10 this bill).

11 "Commissioner" means the Commissioner of Human Services.

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

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

15 "Kinship caregiver assessment" means a written report prepared in  
16 accordance with the provisions of P.L. , c. (C. )(pending before  
17 the Legislature as this bill) and pursuant to regulations adopted by the  
18 commissioner.

19 "Kinship legal guardian" means a caregiver who is willing to assume  
20 care of a child due to parental incapacity, with the intent to raise the  
21 child to adulthood, and who is appointed the kinship legal guardian of  
22 the child by the court pursuant to P.L. , c. (C. ) (pending  
23 before the Legislature as this bill). A kinship legal guardian shall be  
24 responsible for the care and protection of the child and for providing  
25 for the child's health, education and maintenance.

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

28

29 8. (New section) a. In the case of a child who has been removed  
30 from his home by the division within the last 12 months, or for whom  
31 the division has an open or currently active case <sup>1</sup>and where legal  
32 representation is currently being provided by the Office of the Public  
33 Defender either through its Law Guardian Program or Parental  
34 Representation Unit<sup>1</sup>:

35 (1) The kinship caregiver assessment required pursuant to section  
36 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall  
37 be conducted by the division, at no cost to the caregiver.

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

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

1 considered by the court as the permanent placement for the child.

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

4 (1) The kinship caregiver assessment required pursuant to section  
5 5 of P.L. , c. (C. )(pending before the Legislature as this bill)  
6 shall be conducted by an agency in accordance with regulations  
7 adopted by the commissioner.

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

15

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

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

24 (2) a domestic violence central registry check, which shall be  
25 conducted by the Division of State Police. The Division of State  
26 Police shall provide a report on all incidents of domestic violence  
27 <sup>1</sup>[involving] perpetrated by<sup>1</sup> the caregiver and any adult in the  
28 caregiver's household.

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

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

36

37 10. (New section) With respect to a complaint initiated by the  
38 division pursuant to P.L.1974, c.119 (C9:6-8.21 et seq.) and section  
39 15 of P.L.1951, c.138 (30:4C-15):

40 a. Only the division or the court shall have legal standing to seek  
41 a kinship legal guardianship arrangement as an alternative disposition.  
42 The parents of the child who is the subject of the complaint may  
43 request, with appropriate notice to the division, that the court consider  
44 a kinship legal guardianship arrangement as an alternative disposition.  
45 If the division agrees to a kinship legal guardianship arrangement as an  
46 alternative disposition, the division shall not be required to file a new

1 petition, but may amend the pending complaint in accordance with the  
2 Rules of Court.

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

6  
7 11. The Commissioner of Human Services, pursuant to the  
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
9 seq.), shall adopt rules and regulations to effectuate the purposes of  
10 this act.

11  
12 12. The Supreme Court of New Jersey may adopt court rules to  
13 effectuate the purposes of this act.

14  
15 13. N.J.S.2B:2-1 is amended to read as follows:

16 2B:2-1. Number of Judges.

17 a. The Superior Court shall consist of [428] <sup>1</sup>[431] 435<sup>1</sup> judges.

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

21	Atlantic.....	11
22	Bergen.....	27
23	Burlington.....	10
24	Camden.....	16
25	Cape May.....	4
26	Cumberland.....	7
27	Essex .....	34
28	Gloucester.....	10
29	Hudson .....	24
30	Hunterdon.....	3
31	Mercer .....	9
32	Middlesex.....	24
33	Monmouth.....	17
34	Morris .....	15
35	Ocean .....	15
36	Passaic .....	17
37	Salem .....	3
38	Somerset.....	6
39	Sussex .....	4
40	Union .....	20
41	Warren .....	3

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

45	Atlantic .....	4
46	Bergen .....	12

1 Burlington.....4  
2 Camden.....8  
3 Cape May.....2  
4 Cumberland.....4  
5 Essex .....14  
6 Gloucester.....6  
7 Hudson .....6  
8 Hunterdon.....2  
9 Mercer .....6  
10 Middlesex.....8  
11 Monmouth.....4  
12 Morris .....6  
13 Ocean .....8  
14 Passaic .....6  
15 Salem .....2  
16 Somerset.....4  
17 Sussex .....2  
18 Union .....6  
19 Warren .....2

20 (cf: P.L.1999, c.104, s.1)

21

22 <sup>1</sup>14. a. There is appropriated to the Administrative Office of the

23 Courts from the General Fund \$464,000 for costs associated with the

24 additional judgeships created by this act.

25 b. There is appropriated to the Administrative Office of the Courts

26 from the General Fund \$1,401,000 for staff associated with the

27 operation of the additional judgeships created by this act.

28 c. There is appropriated to the Office of the Public Defender from

29 the General Fund \$872,716 for costs associated with implementation

30 of the kinship legal guardianship program.<sup>1</sup>

31

32 <sup>1</sup>[14.] 15.<sup>1</sup> This act shall take effect <sup>1</sup>[180 days after the date of

33 enactment] January 1, 2002, except that sections 13 and 14 shall take

34 effect December 1, 2001<sup>1</sup>.

# ASSEMBLY, No. 3673

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 21, 2001

**Sponsored by:**

**Assemblyman JOSEPH PENNACCHIO**

**District 26 (Essex, Morris and Passaic)**

**SYNOPSIS**

Establishes court awarded kinship legal guardianship status and creates three additional judgeships.

**CURRENT VERSION OF TEXT**

As introduced.



A3673 PENNACCHIO

2

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

4

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

7

8 1. (New section) The Legislature finds and declares that:

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

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

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

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

35

36 2. (New section) As used in sections 1 through 6 of P.L. , c.  
37 (C. )(pending before the Legislature as this bill):

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

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**A3673 PENNACCHIO**

1 "Child" means a person under 18 years of age, except as otherwise  
2 provided in P.L. , c. (C. )(pending before the Legislature as this  
3 bill).

4 "Commissioner" means the Commissioner of Human Services.

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

6 "Department" means the Department of Human Services.

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

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

12 "Home review" means the basic review of the information provided  
13 by the petitioner and a visit to the petitioner's home where the child  
14 will continue to reside, in accordance with the provisions of P.L. , c.  
15 (C. )(pending before the Legislature as this bill) and pursuant to  
16 regulations adopted by the commissioner.

17 "Kinship caregiver assessment" means a written report prepared in  
18 accordance with the provisions of P.L. , c. (C. )(pending before  
19 the Legislature as this bill) and pursuant to regulations adopted by the  
20 commissioner.

21 "Kinship legal guardian" means a caregiver who is willing to assume  
22 care of a child due to parental incapacity, with the intent to raise the  
23 child to adulthood, and who is appointed the kinship legal guardian of  
24 the child by the court pursuant to P.L. , c. (C. ) (pending before the  
25 Legislature as this bill). A kinship legal guardian shall be responsible  
26 for the care and protection of the child and for providing for the child's  
27 health, education and maintenance.

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

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

34  
35 3. (New section) The Superior Court, Chancery Division, Family  
36 Part shall have jurisdiction under sections 1 through 6 of P.L. , c.  
37 (C. )(pending before the Legislature as this bill). Venue of a kinship  
38 legal guardianship action shall be determined in accordance with the  
39 applicable Rules of Court.

40  
41 4. (New section) a. (1) Except as provided in paragraph (2) of this  
42 subsection, a kinship legal guardian shall have the same rights,  
43 responsibilities and authority relating to the child as a birth parent,  
44 including, but not limited to: making decisions concerning the child's  
45 care and well-being; consenting to routine and emergency medical and  
46 mental health needs; arranging and consenting to educational plans for



1 the child; applying for financial assistance and social services for which  
2 the child is eligible; applying for a motor vehicle operator's license;  
3 applying for admission to college; responsibility for activities necessary  
4 to ensure the child's safety, permanency and well-being; and ensuring  
5 the maintenance and protection of the child.

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

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

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

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

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

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

24 c. For the purposes of P.L. , c. (C. )(pending before the  
25 Legislature as this bill), a kinship legal guardian shall have the same  
26 meaning as the term "legal guardian" as defined in 42 U.S.C. s. 675,  
27 except that the process, procedure and ruling for kinship legal  
28 guardianship shall be apart from, and shall not amend, supplant or  
29 contravene, the provisions of Chapter 12 of Title 3B of the New Jersey  
30 Statutes.

31 d. (1) The provisions of P.L. , c. (C. )(pending before the  
32 Legislature as this bill) shall not be construed to grant or confer upon  
33 any person appointed kinship legal guardian of a child any of the  
34 additional rights or privileges accorded to persons appointed guardian  
35 of a minor's person or estate by a Surrogate or the Superior Court,  
36 Chancery Division, Probate Part pursuant to the provisions of Chapter  
37 12 of Title 3B of the New Jersey Statutes.

38 (2) The provisions of P.L. , c. (C. )(pending before the  
39 Legislature as this bill) shall not be construed to preclude an  
40 application to the court for guardianship of the person or estate of a  
41 minor by any person appointed kinship legal guardian of a child.

42

43 5. (New section) a. Upon petition of a caregiver, the court may  
44 appoint the caregiver as kinship legal guardian of a child residing in  
45 the caregiver's home pursuant to the provisions of P.L. , c.  
46 (C. )(pending before the Legislature as this bill).

- 1       b. A petition for the appointment of a kinship legal guardian shall  
2 include a kinship caregiver assessment, which shall contain:
- 3       (1) the full name and address of the person seeking to become the  
4 kinship legal guardian;
- 5       (2) the circumstances of the kinship relationship;
- 6       (3) the whereabouts of the child's parents, if known;
- 7       (4) the nature of the parents' incapacitation, if known;
- 8       (5) the wishes of the parents, if known;
- 9       (6) the ability of the kinship caregiver family to assume permanent  
10 care of the child;
- 11       (7) the child's property and assets, if known;
- 12       (8) the wishes of the child, if appropriate;
- 13       (9) any current involvement of a child with the division if the child  
14 has an open division case and is actively receiving services;
- 15       (10) certification from the caregiver that the caregiver has been  
16 providing care and support for the child, while the child has been  
17 residing in the caregiver's home, for at least the last 12 consecutive  
18 months;
- 19       (11) the results from a criminal history record background check  
20 and a domestic violence central registry check of the caregiver and any  
21 adult residing in the caregiver's household conducted pursuant to  
22 section 9 of P.L. , c. (C. )(pending before the Legislature as this  
23 bill);
- 24       (12) the results from a child abuse record check arranged for and  
25 coordinated by the division pursuant to section 9 of P.L. , c.  
26 (C. )(pending before the Legislature as this bill); and
- 27       (13) the results of the caregiver's home review.
- 28
- 29       6. (New section) a. In making its determination about whether to  
30 appoint the caregiver as kinship legal guardian, the court shall  
31 consider:
- 32       (1) if proper notice was provided to the child's parents;
- 33       (2) the best interests of the child;
- 34       (3) the kinship caregiver assessment;
- 35       (4) in cases in which the division is involved with the child as  
36 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
37 before the Legislature as this bill), the recommendation of the division,  
38 including any parent time or visitation restrictions;
- 39       (5) the potential kinship legal guardian's ability to provide a safe  
40 and permanent home for the child;
- 41       (6) the wishes of the child's parents, if known to the court;
- 42       (7) the wishes of the child if the child is 12 years of age or older,  
43 unless unique circumstances exist that make the child's age irrelevant;
- 44       (8) the suitability of the kinship caregiver and the caregiver's family  
45 to raise the child;
- 46       (9) the ability of the kinship caregiver to assume full legal

1 responsibility for the child;

2 (10) the commitment of the kinship caregiver and the caregiver's  
3 family to raise the child to adulthood;

4 (11) the results from the child abuse record check conducted  
5 pursuant to section 9 of P.L. , c. (C. )(pending before the  
6 Legislature as this bill); and

7 (12) the results from the criminal history record background check  
8 and domestic violence check conducted pursuant to section 9 of  
9 P.L. , c. (C. )(pending before the Legislature as this bill). In any  
10 case in which the caregiver petitioning for kinship legal guardianship,  
11 or any adult residing in the prospective caregiver's home, has a record  
12 of criminal history, the court shall review the record with respect to  
13 the type and date of the criminal offense and make a determination as  
14 to the suitability of the person to become a kinship legal guardian. For  
15 the purposes of this paragraph, the court shall consider convictions for  
16 offenses specified in subsections c., d. and e. of section 1 of P.L.1985,  
17 c.396 (C.30:4C-26.8).

18 b. The court shall not award kinship legal guardianship of the child  
19 unless proper notice was served upon the parents of the child and any  
20 other party to whom the court has awarded custody or parenting time  
21 for that child, in accordance with the Rules of Court.

22 c. The court shall not award kinship legal guardianship of the child  
23 solely because of parental incapacity.

24 d. The court shall appoint the caregiver as a kinship legal guardian  
25 if, based upon clear and convincing evidence, the court finds that:

26 (1) each parent's incapacity is of such a serious nature as to  
27 demonstrate that the parents are unable, unavailable or unwilling to  
28 perform the regular and expected functions of care and support of the  
29 child;

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

32 (3) in cases in which the division is involved with the child as  
33 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
34 before the Legislature as this bill), (a) the division exercised reasonable  
35 efforts to reunify the child with the birth parents and these  
36 reunification efforts have proven unsuccessful or unnecessary; and (b)  
37 adoption of the child is neither feasible nor likely; and

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

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

42 (1) a kinship legal guardian shall have the same rights,  
43 responsibilities and authority relating to the child as a birth parent,  
44 including, but not limited to: making decisions concerning the child's  
45 care and well-being; consenting to routine and emergency medical and  
46 mental health needs; arranging and consenting to educational plans for

1 the child; applying for financial assistance and social services for which  
2 the child is eligible; applying for a motor vehicle operator's license;  
3 applying for admission to college; responsibility for activities necessary  
4 to ensure the child's safety, permanency and well-being; and ensuring  
5 the maintenance and protection of the child; except that a kinship legal  
6 guardian may not consent to the adoption of the child or a name  
7 change for the child;

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

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

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

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

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

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

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

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

39

40 7. (New section) As used in sections 7 through 10 of P.L. , c.  
41 (C. )(pending before the Legislature as this bill):

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

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1 "Child" means a person under 18 years of age, except as otherwise  
2 provided in P.L. , c. (C. )(pending before the Legislature as this  
3 bill).

4 "Commissioner" means the Commissioner of Human Services.

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

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

8 "Kinship caregiver assessment" means a written report prepared in  
9 accordance with the provisions of P.L. , c. (C. )(pending before  
10 the Legislature as this bill) and pursuant to regulations adopted by the  
11 commissioner.

12 "Kinship legal guardian" means a caregiver who is willing to assume  
13 care of a child due to parental incapacity, with the intent to raise the  
14 child to adulthood, and who is appointed the kinship legal guardian of  
15 the child by the court pursuant to P.L. , c. (C. ) (pending before the  
16 Legislature as this bill). A kinship legal guardian shall be responsible  
17 for the care and protection of the child and for providing for the child's  
18 health, education and maintenance.

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

21  
22 8. (New section) a. In the case of a child who has been removed  
23 from his home by the division within the last 12 months, or for whom  
24 the division has an open or currently active case:

25 (1) The kinship caregiver assessment required pursuant to section  
26 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall  
27 be conducted by the division, at no cost to the caregiver.

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

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

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

40 (1) The kinship caregiver assessment required pursuant to section  
41 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall  
42 be conducted by an agency in accordance with regulations adopted by  
43 the commissioner.

44 (2) The costs for the kinship caregiver assessment shall be born by  
45 the department in cases where a financially eligible individual is  
46 applying for cash assistance under a kinship care program or pilot

1 program provided by the department, for which kinship legal  
2 guardianship is a requirement for receiving such assistance. For all  
3 other cases under this subsection, the caregiver shall be responsible for  
4 all of the costs of the kinship caregiver assessment.

5  
6 9. (New section) a. Prior to the submission of a petition for  
7 appointment as a kinship legal guardian, the caregiver and any adult  
8 residing in the caregiver's household shall undergo:

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

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

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

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

25  
26 10. (New section) With respect to a complaint initiated by the  
27 division pursuant to P.L.1974, c.119 (C9:6-8.21 et seq.) and section  
28 15 of P.L.1951, c.138 (30:4C-15):

29 a. Only the division or the court shall have legal standing to seek  
30 a kinship legal guardianship arrangement as an alternative disposition.  
31 The parents of the child who is the subject of the complaint may  
32 request, with appropriate notice to the division, that the court consider  
33 a kinship legal guardianship arrangement as an alternative disposition.  
34 If the division agrees to a kinship legal guardianship arrangement as an  
35 alternative disposition, the division shall not be required to file a new  
36 petition, but may amend the pending complaint in accordance with the  
37 Rules of Court.

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

41  
42 11. The Commissioner of Human Services, pursuant to the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.), shall adopt rules and regulations to effectuate the purposes of  
45 this act.

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

3  
4 13. N.J.S.2B:2-1 is amended to read as follows:

5 2B:2-1. Number of Judges.

6 a. The Superior Court shall consist of [428] 431 judges.

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

10	Atlantic.....	11
11	Bergen.....	27
12	Burlington.....	10
13	Camden.....	16
14	Cape May.....	4
15	Cumberland.....	7
16	Essex .....	34
17	Gloucester.....	10
18	Hudson .....	24
19	Hunterdon.....	3
20	Mercer .....	9
21	Middlesex.....	24
22	Monmouth.....	17
23	Morris .....	15
24	Ocean .....	15
25	Passaic .....	17
26	Salem .....	3
27	Somerset.....	6
28	Sussex .....	4
29	Union .....	20
30	Warren .....	3

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

34	Atlantic .....	4
35	Bergen .....	12
36	Burlington.....	4
37	Camden.....	8
38	Cape May.....	2
39	Cumberland.....	4
40	Essex .....	14
41	Gloucester.....	6
42	Hudson .....	6
43	Hunterdon.....	2
44	Mercer .....	6
45	Middlesex.....	8
46	Monmouth.....	4

1 Morris .....6  
2 Ocean .....8  
3 Passaic .....6  
4 Salem .....2  
5 Somerset.....4  
6 Sussex .....2  
7 Union .....6  
8 Warren .....2  
9 (cf:P.L.1999, c.104, s.1)

10

11 14. This act shall take effect 180 days after the date of enactment.

12

13

14

STATEMENT

15

16 This bill establishes a new type of guardianship called kinship legal  
17 guardianship to address the needs of children who cannot reside with  
18 their parents due to the parents' incapacity or inability. Kinship legal  
19 guardians are caregivers who have a biological, legal, extended or  
20 committed emotional or psychological relationship with a child and  
21 who are willing to assume care of the child due to parental incapacity  
22 or inability, with the intent to raise the child to adulthood. Kinship  
23 legal guardianship does not terminate parental rights. A kinship legal  
24 guardian is responsible for the care and protection of the child and for  
25 providing for the child's health, education and maintenance, while the  
26 child's parents retain the right to visitation and to consent to adoption.  
27 Kinship legal guardianship terminates when a child reaches 18 years of  
28 age, or when the child is no longer continuously enrolled in a  
29 secondary education program, whichever occurs later.

30 Upon petition of a caregiver, the Superior Court, Chancery  
31 Division, Family Part may appoint the caregiver as kinship legal  
32 guardian of a child who has resided in the caregiver's home for at least  
33 the last 12 consecutive months.

34 A petition for the appointment of a kinship legal guardian must  
35 include a kinship caregiver assessment, which contains:

36 (1) the full name and address of the person seeking to become the  
37 kinship legal guardian;

38 (2) the circumstances of the kinship relationship;

39 (3) the whereabouts of the child's parents, if known;

40 (4) the nature of the parents' incapacitation, if known;

41 (5) the wishes of the parents, if known;

42 (6) the ability of the kinship family to assume permanent care of the  
43 child;

44 (7) the child's property and assets, if known;

45 (8) the wishes of the child, if appropriate;



1 (9) any current involvement of a child with the Division of Youth  
2 and Family Services (DYFS) if the child has an open DYFS case and  
3 is actively receiving services;

4 (10) certification from the caregiver that the caregiver has been  
5 providing care and support for the child, while the child has been  
6 residing in the caregiver's home, for at least the last 12 consecutive  
7 months;

8 (11) the results from a criminal history record background check  
9 and a domestic violence central registry check of the caregiver and any  
10 adult residing in the caregiver's household;

11 (12) the results from a child abuse record check arranged for and  
12 coordinated by DYFS; and

13 (13) the results of the caregiver's home review.

14 In making its determination about whether to appoint the caregiver  
15 as kinship legal guardian, the court shall consider:

16 (1) if proper notice was provided to the child's parents;

17 (2) the best interests of the child;

18 (3) the kinship caregiver assessment;

19 (4) in cases in which DYFS is involved with the child, the  
20 recommendation of DYFS, including any parent time or visitation  
21 restrictions;

22 (5) the potential kinship legal guardian's ability to provide a safe  
23 and permanent home for the child;

24 (6) the wishes of the child's parents, if known to the court;

25 (7) the wishes of the child if the child is 12 years of age or older,  
26 unless unique circumstances exist that make the child's age irrelevant;

27 (8) the suitability of the kinship caregiver and the caregiver's family  
28 to raise the child;

29 (9) the ability of the kinship caregiver to assume full legal  
30 responsibility for the child;

31 (10) the commitment of the kinship caregiver and the caregiver's  
32 family to raise the child to adulthood;

33 (11) the results from the child abuse record check; and

34 (12) the results from the criminal history record background check  
35 and domestic violence check.

36 The bill specifies that the court shall not award kinship legal  
37 guardianship unless proper notice was served upon the parties  
38 pursuant to court rules. Also, kinship legal guardianship shall not be  
39 awarded solely because of parental incapacity.

40 The court shall appoint the caregiver as a kinship legal guardian if,  
41 based upon clear and convincing evidence, the court finds that:

42 (1) each parent's incapacity is of such a serious nature as to  
43 demonstrate that the parents are unable, unavailable or unwilling to  
44 perform the regular and expected functions of care and support of the  
45 child;

46 (2) the parents' inability to perform those functions is unlikely to

1 change in the foreseeable future;

2 (3) in cases in which DYFS is involved with the child: (a) DYFS  
3 exercised reasonable efforts to reunify the child with the birth parents  
4 and these reunification efforts have proven unsuccessful or  
5 unnecessary; and (b) adoption of the child is neither feasible nor likely;  
6 and

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

9 The court order appointing the kinship legal guardian shall specify,  
10 as appropriate, that:

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

23 (2) the authority to consent to the adoption of the child or a name  
24 change for the child is retained by the birth parent of the child;

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

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

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

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

37 An order or judgment awarding kinship legal guardianship may be  
38 vacated by the court prior to the child's 18th birthday if the court finds  
39 that the kinship legal guardianship is no longer in the best interests of  
40 the child or, based upon clear and convincing evidence, the court finds  
41 that the parental incapacity or inability to care for the child that led to  
42 the original award of kinship legal guardianship is no longer the case  
43 and termination of kinship legal guardianship is in the child's best  
44 interests. The order or judgment also may be vacated by the court if,  
45 based upon clear and convincing evidence, the court finds that the  
46 guardian failed or is unable, unavailable or unwilling to provide proper

1 care and custody of the child, or that the guardianship is no longer in  
2 the child's best interest.

3 In cases in which DYFS has removed the child from his home  
4 within the last 12 months, or DYFS has an open or currently active  
5 case, DYFS will conduct the kinship caregiver assessment required in  
6 this bill and will not charge a fee for the assessment. In all other cases,  
7 an agency will conduct the assessment in accordance with regulations  
8 adopted by the Commissioner of Human Services. In these cases, the  
9 caregiver will be responsible for the costs of the assessment; however,  
10 there will be no charge for the assessment in cases where a financially  
11 eligible individual is applying to the department for cash assistance  
12 under a kinship care program or pilot program for which kinship legal  
13 guardianship is a requirement.

14 The bill also provides that for pending litigation under N.J.S.A.9:6-  
15 8.21 et seq. (adjudication of child abuse or neglect) or N.J.S.A.30:4C-  
16 15 (termination of parental rights), DYFS is not required to file a new  
17 petition, but may amend the pending litigation upon notice to the  
18 parents. The bill provides that only DYFS has legal standing to seek  
19 a kinship legal guardianship arrangement as an alternative disposition.  
20 The parent, with appropriate notice to DYFS, may request that the  
21 court consider a kinship legal guardianship arrangement as a final  
22 disposition of the litigation. In a case that originated under  
23 N.J.S.A.9:6-8.21 et seq. or N.J.S.A.30:4C-15 in which an appointment  
24 of kinship legal guardianship is made, the bill provides that the court  
25 will view the kinship legal guardianship appointment as the final  
26 disposition of the case.

27 Finally, this bill amends N.J.S.2B:2-1 to create three additional  
28 judgeships in the Superior Court to implement the kinship legal  
29 guardianship process.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3673

# STATE OF NEW JERSEY

DATED: JUNE 21, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3673.

Assembly Bill No. 3673 establishes a new type of guardianship called kinship legal guardianship to address the needs of children who cannot reside with their parents due to the parents' incapacity or inability.

Kinship legal guardians are caregivers who have a biological, legal, extended or committed emotional or psychological relationship with a child and who are willing to assume care of the child due to parental incapacity or inability, with the intent to raise the child to adulthood. Kinship legal guardianship does not terminate parental rights. A kinship legal guardian is responsible for the care and protection of the child and for providing for the child's health, education and maintenance, while the child's parents retain the right to visitation and to consent to adoption. Kinship legal guardianship terminates when a child reaches 18 years of age, or when the child is no longer continuously enrolled in a secondary education program, whichever occurs later.

The bill allows the Superior Court, Chancery Division, Family Part, to appoint, upon petition of a caregiver, the caregiver as kinship legal guardian of a child who has resided in the caregiver's home for at least the last 12 consecutive months.

The bill requires a petition for the appointment of a kinship legal guardian to include a kinship caregiver assessment, which contains:

- (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 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 of Youth and Family Services (DYFS) of the Department of Human Services if the child has an open DYFS 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;

(12) the results from a child abuse record check arranged for and coordinated by DYFS; and

(13) the results of the caregiver's home review.

The bill requires the court to consider in making its determination about whether to appoint the caregiver as kinship legal guardian:

(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 DYFS is involved with the child, the recommendation of DYFS, including any parent 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; and

(12) the results from the criminal history record background check and domestic violence check.

The bill specifies that the court shall not award kinship legal guardianship unless proper notice was served upon the parties pursuant to court rules. Also, kinship legal guardianship shall not be awarded solely because of parental incapacity.

Under the bill, 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 DYFS is involved with the child: (a) DYFS 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.

The bill requires that the court order appointing the kinship legal guardian to specify, as appropriate, that:

(1) a kinship legal guardian shall have the same rights, responsibilities and authority related 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 authority to consent to the adoption of the child or a name change for the child is retained by the birth parent of 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.

Under the bill, 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. The order or judgment also 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 interest.

In cases in which DYFS has removed the child from the child's home within the last 12 months, or DYFS has an open or currently active case, DYFS will conduct the kinship caregiver assessment

required in this bill and will not charge a fee for the assessment. In all other cases, an agency will conduct the assessment in accordance with regulations adopted by the Commissioner of Human Services. In these cases, the caregiver will be responsible for the costs of the assessment; however, there will be no charge for the assessment in cases where a financially eligible individual is applying to the department for cash assistance under a kinship care program or pilot program for which kinship legal guardianship is a requirement.

The bill also provides that for pending litigation under N.J.S.A.9:6-8.21 et seq. (adjudication of child abuse or neglect) or N.J.S.A.30:4C-15 (termination of parental rights), DYFS is not required to file a new petition, but may amend the pending litigation upon notice to the parents. The bill provides that only DYFS has legal standing to seek a kinship legal guardianship arrangement as an alternative disposition. The parent, with appropriate notice to DYFS, may request that the court consider a kinship legal guardianship arrangement as a final disposition of the litigation. In a case that originated under N.J.S.A.9:6-8.21 et seq. or N.J.S.A.30:4C-15 in which an appointment of kinship legal guardianship is made, the bill provides that the court will view the kinship legal guardianship appointment as the final disposition of the case.

Finally, this bill amends N.J.S.2B:2-1 to create three additional judgeships in the Superior Court to implement the kinship legal guardianship process.

**FISCAL IMPACT:**

The Office of Legislative Services has estimated the cost of the three new judgeships, including support staff, at \$340,000 per judgeship or a total of \$1,020,000 annually.

The additional costs that the Department of Human Services may incur cannot be determined as the number of caregivers who will petition the court to become kinship legal guardians, the costs of conducting a home review, and the costs of conducting a kinship caregiver assessment are not known.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 3673**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: JULY 11, 2001

**SUMMARY**

**Synopsis:** Establishes court awarded kinship legal guardianship status and creates three additional judgeships.

**Type of Impact:** General Fund expenditure increase.

**Agencies Affected:** Department of Human Services (DHS) and the courts.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>			
<i>Judiciary Costs</i>	The cost for the three new Judgeships would be about \$1 million annually.	Routine Inflationary Increases See Comments Below	
<i>DHS Costs</i>	Indeterminate		

! The number of "caregivers" that will petition the court to be appointed "kinship legal guardian" is not known. The amount of time DHS will need to conduct the various functions assigned to the department cannot be determined, as it is not known how many caregivers that will seek guardianship are already known to DHS and how many are not known to DHS.

**BILL DESCRIPTION**

Assembly Bill No. 3673 of 2001 establishes a program of court awarded legal guardianship status and creates three additional judgeships.

Under the terms of the legislation, a caregiver who has a kinship relationship with the child and has been providing care and support for the child for at least 12 consecutive months may petition the court to be appointed as a "kinship legal guardian." DHS would be required to provide the court with various information on the petition, including a kinship caregiver assessment and a home review for certain cases in which the Division of Youth and Family Services (DYFS) is or has been involved with child. In other cases, DHS may designate another agency to conduct the assessment and home review, the cost of which will be assumed by the caregiver.



**FISCAL ANALYSIS*****OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services estimates that the legislation would cost a minimum of \$1.0 million during the first year as follows:

**Judiciary Costs** - The estimated cost per judgeship, including support staff, is about \$340,000 annually. As three new judgeships would be established under the legislation, the annual cost is approximately \$1,020,000.

**DHS Costs** - The additional costs DHS may incur cannot be determined as the number of caregivers (known to DYFS) who will petition the court to become a kinship legal guardian is not known. If the caregiver is known to DHS, additional costs may be incurred to prepare the caregiver assessment, home review and to arrange for a criminal history record background check. The cost to conduct a home review and kinship caregiver assessment is not known as the amount of staff time required to conduct such functions is not known. At present, the State Police charges about \$50 to conduct an individual criminal history record background check.

Section: *Human Services; Judiciary.*

Analyst: *Jay Hershberg and Anne Raughley*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

## SENATE BILL NO. 1813

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1813 with my recommendations for reconsideration.

### A. Summary of Bill

This bill establishes a new type of legal guardianship to address the needs of children who cannot reside with their parents due to their parents' incapacity or inability. Kinship legal guardianship does not terminate parental rights. Instead, it allows kinship caregivers to assume full responsibility for the child in providing for the child's health, protection, education and maintenance. Biological parents retain the right to visitation and the duty to pay support, as determined by the court. Finally, this bill, as drafted, creates three additional judgeships in the Superior Court to implement the kinship legal guardianship process.

Following a properly executed petition to the court, a caregiver will only be awarded legal guardianship of a child when that caregiver has demonstrated that he or she satisfies several requirements. For example, a kinship caregiver must present and satisfy the following criteria: a kinship caregiver assessment detailing the relationship between the caregiver and the child; the circumstances of the biological parents' incapacitation, if known; the wishes of the biological parents, if known; the wishes of the child, if appropriate; any current involvement of a child with the State's Division of Youth and Family Services (DYFS) in the Department of Human Services; the results of a criminal background check of the caregiver and a domestic violence central registry check of the caregiver and any adult residing in the caregiver's household; and the results of a caregiver's home review and child abuse record check administered by DYFS.

Additionally, the court shall consider several factors in determining whether to appoint the caregiver as a kinship legal guardian including: the best interests of the child; whether proper notice was given to the biological parents; the recommendation of

DYFS, if applicable; whether the criteria mentioned above have been satisfied; and the suitability and commitment of the caregiver to raise the child.

The court shall appoint the caregiver as kinship legal guardian if, based upon clear and convincing evidence, the court finds that 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 and if each parent's inability to perform those functions is unlikely to change in the foreseeable future. Additionally, in cases in which DYFS is involved with the child, the court shall appoint the caregiver as the kinship legal guardian if the court finds that: DYFS exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary; adoption of the child is neither feasible nor likely; and awarding kinship legal guardianship is in the child's best interests.

#### B. Recommended Action

I commend the sponsors of this bill for their commitment to improving the lives of New Jersey's children and caregivers. I believe that kinship legal guardianship is an important and innovative initiative that will greatly improve the lives of children and caregivers throughout the State of New Jersey by offering more permanent, stable and secure home environments. Kinship legal guardianship will provide stability and permanency to children whose parents are unable or unwilling to care for them by allowing the caregiver to raise, protect, educate and care for them. This legislation is intended to require thorough background checks for all potential kinship legal guardians. Therefore, I recommend that criminal background checks of potential caregivers include an examination of acts of domestic violence. A technical change is also recommended to ensure that perpetrators of domestic violence, and not their victims, are barred from consideration as a kinship caregiver.

I have been advised that the number of judges in the bill must be increased from three to seven in order to administer the kinship legal guardianship program most effectively. As a result, I have recommended an appropriation to address the costs associated with creating the additional judgeships and requisite staff. I also

recommend that the bill clarify the role of the Office of the Public Defender in kinship legal guardianship cases. Accordingly, an appropriation to fund the additional responsibilities of the Office of the Public Defender is also recommended.

Finally, because kinship legal guardianship is such an important and necessary program, and has long been anticipated by many caregivers and children throughout the State of New Jersey, I recommend the effective date of the bill be amended to allow for the earliest possible commencement of the judgeships and the program.

Therefore, I herewith return Senate Bill No. 1813 and recommend that it be amended as follows:

- Page 1, Title, Line, 2: After "Revised Statutes" insert ","
- Page 1, Title, Line, 3: Delete "and"; after "N.J.S.2B:2-1" Insert "and making an appropriation"
- Page 6, Section 6. a. (12), Line 11: After "of criminal history," insert "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.),"
- Page 6, Section 6. a. (12), Line 12: After "criminal offense" insert "or the provisions and date of the final domestic violence restraining order"
- Page 6, Section 6. a. (12), Line 14: After "this paragraph" insert "with respect to criminal history,"
- Page 8, Section 8. a., Line 23: After "active case" insert "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"
- Page 9 , Section 9.a.(2), Line 16: Delete "involving" insert "perpetrated by"
- Page 10, Section 13, Line 5: Delete "431" insert "435"
- Page 11, After Line 8: Insert New Section 14 as follows: "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.”

Page 11, Section 14, Line 10:

Delete “14.” Insert “15.”; Delete 180 days after the date of enactment” insert “January 1, 2002, except that sections 13 and 14 shall take effect December 1, 2001.”

Respectfully,

/s/ Donald T. DiFrancesco

Acting Governor

[seal]

Attest:

/s/ James A. Harkness

Chief Counsel to the Governor

Title 3B.  
Chapter 12A. (New)  
Kinship Legal  
Guardianship  
§§1-6, 12 -  
C.3B:12A-1  
to 3B:12A-7  
§§7-11 -  
C.30:4C-84  
to 30:4C-88  
§14 - Approp.  
§15 - Note to §§1-14

P.L. 2001, CHAPTER 250, *approved October 11, 2001*  
Senate, No. 1813 (*First Reprint*)

1 AN ACT establishing kinship legal guardianship, supplementing Title  
2 3B of the New Jersey Statutes and Title 30 of the Revised Statutes  
3 <sup>1</sup>[and],<sup>1</sup> amending N.J.S.2B:2-1 <sup>1</sup>and making an appropriation<sup>1</sup>.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

- 8 1. (New section) The Legislature finds and declares that:  
9 a. There is an increase in the number of children who cannot reside  
10 with their parents due to the parents' incapacity or inability to perform  
11 the regular and expected functions of care and support of the child;  
12 b. An increasing number of relatives, including grandparents, find  
13 themselves providing care on a long-term basis to these children  
14 without court approved legal guardianship status because the  
15 caregivers either are unable or unwilling to seek termination of the  
16 legal relationships between the birth parent and the child, particularly  
17 when it is the caregiver's own child or sibling who is the parent. In  
18 these cases, adoption of the child is neither feasible nor likely, and it  
19 is imperative that the State create an alternative, permanent legal  
20 arrangement for children and their caregivers. One such alternative  
21 arrangement, which does not require the termination of parental rights,  
22 is a court awarded kinship legal guardianship that is intended to be  
23 permanent and self-sustaining, as evidenced by the transfer to the  
24 caregiver of certain parental rights, but retains the birth parents' rights  
25 to consent to adoption, the obligation to pay child support, and the  
26 parents' right to have some ongoing contact with the child;  
27 c. In considering kinship legal guardianship, the State is seeking to  
28 add another alternative, permanent placement option, beyond custody,  
29 without rising to the level of termination of parental rights, for  
30 caregivers in relationships where adoption is neither feasible nor likely;

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate amendments adopted in accordance with Governor's recommendations October 3, 2001.

1 and

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

5

6 2. (New section) As used in sections 1 through 6 of P.L. , c.  
7 (C. )(pending before the Legislature as this bill):

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

13 "Child" means a person under 18 years of age, except as otherwise  
14 provided in P.L. , c. (C. )(pending before the Legislature as this  
15 bill).

16 "Commissioner" means the Commissioner of Human Services.

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

18 "Department" means the Department of Human Services.

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

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

24 "Home review" means the basic review of the information provided  
25 by the petitioner and a visit to the petitioner's home where the child  
26 will continue to reside, in accordance with the provisions of P.L. ,  
27 c. (C. )(pending before the Legislature as this bill) and pursuant  
28 to regulations adopted by the commissioner.

29 "Kinship caregiver assessment" means a written report prepared in  
30 accordance with the provisions of P.L. , c. (C. )(pending before  
31 the Legislature as this bill) and pursuant to regulations adopted by the  
32 commissioner.

33 "Kinship legal guardian" means a caregiver who is willing to assume  
34 care of a child due to parental incapacity, with the intent to raise the  
35 child to adulthood, and who is appointed the kinship legal guardian of  
36 the child by the court pursuant to P.L. , c. (C. ) (pending  
37 before the Legislature as this bill). A kinship legal guardian shall be  
38 responsible for the care and protection of the child and for providing  
39 for the child's health, education and maintenance.

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

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

1       3. (New section) The Superior Court, Chancery Division, Family  
2 Part shall have jurisdiction under sections 1 through 6 of P.L. , c.  
3 (C. )(pending before the Legislature as this bill). Venue of a  
4 kinship legal guardianship action shall be determined in accordance  
5 with the applicable Rules of Court.

6

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

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

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

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

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

30       (6) Kinship legal guardianship terminates when the child reaches  
31 18 years of age or when the child is no longer continuously enrolled  
32 in a secondary education program, whichever event occurs later, or  
33 when kinship legal guardianship is otherwise terminated.

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

36       c. For the purposes of P.L. , c. (C. )(pending before the  
37 Legislature as this bill), a kinship legal guardian shall have the same  
38 meaning as the term "legal guardian" as defined in 42 U.S.C. s. 675,  
39 except that the process, procedure and ruling for kinship legal  
40 guardianship shall be apart from, and shall not amend, supplant or  
41 contravene, the provisions of Chapter 12 of Title 3B of the New Jersey  
42 Statutes.

43       d. (1) The provisions of P.L. , c. (C. )(pending before the  
44 Legislature as this bill) shall not be construed to grant or confer upon  
45 any person appointed kinship legal guardian of a child any of the  
46 additional rights or privileges accorded to persons appointed guardian



1 of a minor's person or estate by a Surrogate or the Superior Court,  
2 Chancery Division, Probate Part pursuant to the provisions of  
3 Chapter 12 of Title 3B of the New Jersey Statutes.

4 (2) The provisions of P.L. , c. (C. )(pending before the  
5 Legislature as this bill) shall not be construed to preclude an  
6 application to the court for guardianship of the person or estate of a  
7 minor by any person appointed kinship legal guardian of a child.

8

9 5. (New section) a. Upon petition of a caregiver, the court may  
10 appoint the caregiver as kinship legal guardian of a child residing in  
11 the caregiver's home pursuant to the provisions of P.L. , c.  
12 (C. ) (pending before the Legislature as this bill).

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

15 (1) the full name and address of the person seeking to become the  
16 kinship legal guardian;

17 (2) the circumstances of the kinship relationship;

18 (3) the whereabouts of the child's parents, if known;

19 (4) the nature of the parents' incapacitation, if known;

20 (5) the wishes of the parents, if known;

21 (6) the ability of the kinship caregiver family to assume permanent  
22 care of the child;

23 (7) the child's property and assets, if known;

24 (8) the wishes of the child, if appropriate;

25 (9) any current involvement of a child with the division if the child  
26 has an open division case and is actively receiving services;

27 (10) certification from the caregiver that the caregiver has been  
28 providing care and support for the child, while the child has been  
29 residing in the caregiver's home, for at least the last 12 consecutive  
30 months;

31 (11) the results from a criminal history record background check  
32 and a domestic violence central registry check of the caregiver and any  
33 adult residing in the caregiver's household conducted pursuant to  
34 section 9 of P.L. , c. (C. )(pending before the Legislature as  
35 this bill);

36 (12) the results from a child abuse record check arranged for and  
37 coordinated by the division pursuant to section 9 of P.L. , c.  
38 (C. ) (pending before the Legislature as this bill); and

39 (13) the results of the caregiver's home review.

40

41 6. (New section) a. In making its determination about whether to  
42 appoint the caregiver as kinship legal guardian, the court shall  
43 consider:

44 (1) if proper notice was provided to the child's parents;

45 (2) the best interests of the child;

46 (3) the kinship caregiver assessment;

- 1 (4) in cases in which the division is involved with the child as  
2 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
3 before the Legislature as this bill), the recommendation of the division,  
4 including any parent time or visitation restrictions;
- 5 (5) the potential kinship legal guardian's ability to provide a safe  
6 and permanent home for the child;
- 7 (6) the wishes of the child's parents, if known to the court;
- 8 (7) the wishes of the child if the child is 12 years of age or older,  
9 unless unique circumstances exist that make the child's age irrelevant;
- 10 (8) the suitability of the kinship caregiver and the caregiver's family  
11 to raise the child;
- 12 (9) the ability of the kinship caregiver to assume full legal  
13 responsibility for the child;
- 14 (10) the commitment of the kinship caregiver and the caregiver's  
15 family to raise the child to adulthood;
- 16 (11) the results from the child abuse record check conducted  
17 pursuant to section 9 of P.L. , c. (C. )(pending before the  
18 Legislature as this bill); and
- 19 (12) the results from the criminal history record background check  
20 and domestic violence check conducted pursuant to section 9 of  
21 P.L. , c. (C. )(pending before the Legislature as this bill). In  
22 any case in which the caregiver petitioning for kinship legal  
23 guardianship, or any adult residing in the prospective caregiver's home,  
24 has a record of criminal history <sup>1</sup>or a record of being subjected to a  
25 final domestic violence restraining order under P.L.1991, c.261  
26 (C.2C:25-17 et seq.)<sup>1</sup>, the court shall review the record with respect  
27 to the type and date of the criminal offense <sup>1</sup>or the provisions and date  
28 of the final domestic violence restraining order<sup>1</sup> and make a  
29 determination as to the suitability of the person to become a kinship  
30 legal guardian. For the purposes of this paragraph, <sup>1</sup>with respect to  
31 criminal history,<sup>1</sup> the court shall consider convictions for offenses  
32 specified in subsections c., d. and e. of section 1 of P.L.1985, c.396  
33 (C.30:4C-26.8).
- 34 b. The court shall not award kinship legal guardianship of the child  
35 unless proper notice was served upon the parents of the child and any  
36 other party to whom the court has awarded custody or parenting time  
37 for that child, in accordance with the Rules of Court.
- 38 c. The court shall not award kinship legal guardianship of the child  
39 solely because of parental incapacity.
- 40 d. The court shall appoint the caregiver as a kinship legal guardian  
41 if, based upon clear and convincing evidence, the court finds that:
- 42 (1) each parent's incapacity is of such a serious nature as to  
43 demonstrate that the parents are unable, unavailable or unwilling to  
44 perform the regular and expected functions of care and support of the  
45 child;
- 46 (2) the parents' inability to perform those functions is unlikely to

1 change in the foreseeable future;

2 (3) in cases in which the division is involved with the child as  
3 provided in subsection a. of section 8 of P.L. , c. (C. )(pending  
4 before the Legislature as this bill), (a) the division exercised reasonable  
5 efforts to reunify the child with the birth parents and these  
6 reunification efforts have proven unsuccessful or unnecessary; and (b)  
7 adoption of the child is neither feasible nor likely; and

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

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

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

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

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

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

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

34 (6) kinship legal guardianship terminates when the child reaches  
35 18 years of age or when the child is no longer continuously enrolled  
36 in a secondary education program, whichever event occurs later, or  
37 when kinship legal guardianship is otherwise terminated.

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

46 In cases in which the division was involved, when determining

1 whether a child should be returned to a parent, the court may refer a  
2 parent for an assessment prepared by the division, in accordance with  
3 regulations adopted by the commissioner.

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

9

10 7. (New section) As used in sections 7 through 10 of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill):

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

17 "Child" means a person under 18 years of age, except as otherwise  
18 provided in P.L. , c. (C. )(pending before the Legislature as  
19 this bill).

20 "Commissioner" means the Commissioner of Human Services.

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

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

24 "Kinship caregiver assessment" means a written report prepared in  
25 accordance with the provisions of P.L. , c. (C. )(pending before  
26 the Legislature as this bill) and pursuant to regulations adopted by the  
27 commissioner.

28 "Kinship legal guardian" means a caregiver who is willing to assume  
29 care of a child due to parental incapacity, with the intent to raise the  
30 child to adulthood, and who is appointed the kinship legal guardian of  
31 the child by the court pursuant to P.L. , c. (C. ) (pending  
32 before the Legislature as this bill). A kinship legal guardian shall be  
33 responsible for the care and protection of the child and for providing  
34 for the child's health, education and maintenance.

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

37

38 8. (New section) a. In the case of a child who has been removed  
39 from his home by the division within the last 12 months, or for whom  
40 the division has an open or currently active case and where legal  
41 representation is currently being provided by the Office of the Public  
42 Defender either through its Law Guardian Program or Parental  
43 Representation Unit<sup>1</sup>:

44 (1) The kinship caregiver assessment required pursuant to section  
45 5 of P.L. , c. (C. )(pending before the Legislature as this bill) shall  
46 be conducted by the division, at no cost to the caregiver.

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

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

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

13 (1) The kinship caregiver assessment required pursuant to section  
14 5 of P.L. , c. (C. )(pending before the Legislature as this bill)  
15 shall be conducted by an agency in accordance with regulations  
16 adopted by the commissioner.

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

24  
25 9. (New section) a. Prior to the submission of a petition for  
26 appointment as a kinship legal guardian, the caregiver and any adult  
27 residing in the caregiver's household shall undergo:

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

33 (2) a domestic violence central registry check, which shall be  
34 conducted by the Division of State Police. The Division of State  
35 Police shall provide a report on all incidents of domestic violence  
36 <sup>1</sup>[involving] perpetrated by<sup>1</sup> the caregiver and any adult in the  
37 caregiver's household.

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

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

45  
46 10. (New section) With respect to a complaint initiated by the

1 division pursuant to P.L.1974, c.119 (C9:6-8.21 et seq.) and section  
2 15 of P.L.1951, c.138 (30:4C-15):

3 a. Only the division or the court shall have legal standing to seek  
4 a kinship legal guardianship arrangement as an alternative disposition.  
5 The parents of the child who is the subject of the complaint may  
6 request, with appropriate notice to the division, that the court consider  
7 a kinship legal guardianship arrangement as an alternative disposition.  
8 If the division agrees to a kinship legal guardianship arrangement as an  
9 alternative disposition, the division shall not be required to file a new  
10 petition, but may amend the pending complaint in accordance with the  
11 Rules of Court.

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

15  
16 11. The Commissioner of Human Services, pursuant to the  
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), shall adopt rules and regulations to effectuate the purposes of  
19 this act.

20  
21 12. The Supreme Court of New Jersey may adopt court rules to  
22 effectuate the purposes of this act.

23  
24 13. N.J.S.2B:2-1 is amended to read as follows:

25 2B:2-1. Number of Judges.

26 a. The Superior Court shall consist of [428] <sup>1</sup>[431] 435<sup>1</sup> judges.

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

30	Atlantic.....	11
31	Bergen.....	27
32	Burlington.....	10
33	Camden.....	16
34	Cape May.....	4
35	Cumberland.....	7
36	Essex .....	34
37	Gloucester.....	10
38	Hudson .....	24
39	Hunterdon.....	3
40	Mercer .....	9
41	Middlesex.....	24
42	Monmouth.....	17
43	Morris .....	15
44	Ocean .....	15
45	Passaic .....	17
46	Salem .....	3

1	Somerset.....	6
2	Sussex .....	4
3	Union .....	20
4	Warren .....	3
5	(2) Additionally, the following number of those judges of the	
6	Superior Court satisfying the residency requirements set forth above	
7	shall at all times sit in the county in which they reside:	
8	Atlantic .....	4
9	Bergen .....	12
10	Burlington.....	4
11	Camden.....	8
12	Cape May.....	2
13	Cumberland.....	4
14	Essex .....	14
15	Gloucester.....	6
16	Hudson .....	6
17	Hunterdon.....	2
18	Mercer .....	6
19	Middlesex.....	8
20	Monmouth.....	4
21	Morris .....	6
22	Ocean .....	8
23	Passaic .....	6
24	Salem .....	2
25	Somerset.....	4
26	Sussex .....	2
27	Union .....	6
28	Warren .....	2

29 (cf: P.L.1999, c.104, s.1)

30

31 <sup>1</sup>14. a. There is appropriated to the Administrative Office of the  
 32 Courts from the General Fund \$464,000 for costs associated with the  
 33 additional judgeships created by this act.

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

37 c. There is appropriated to the Office of the Public Defender from  
 38 the General Fund \$872,716 for costs associated with implementation  
 39 of the kinship legal guardianship program.<sup>1</sup>

40

41 <sup>1</sup>[14.] 15.<sup>1</sup> This act shall take effect <sup>1</sup>[180 days after the date of  
 42 enactment] January 1, 2002, except that sections 13 and 14 shall take  
 43 effect December 1, 2001<sup>1</sup>.

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2

3 Establishes court awarded kinship legal guardianship status, creates

4 seven additional judgeships; appropriates \$2,737,716.



## 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.