

SENATE BILL 1239

N2

EMERGENCY BILL

8lr1033
CF HB 1613

By: **Senator Smith**

Introduced and read first time: March 5, 2018

Assigned to: Rules

Re-referred to: Judicial Proceedings, March 28, 2018

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 1, 2018

CHAPTER _____

1 AN ACT concerning

2 **Appointment or Designation of Standby Guardian – ~~Immigration Action Against~~**
3 **~~a Parent~~ Adverse Immigration Action**

4 FOR the purpose of ~~authorizing a parent of a minor to file a petition for the judicial~~
5 ~~appointment of a standby guardian of the person or property of the minor if there is~~
6 ~~a significant risk that the petitioner will be detained by immigration officials, be~~
7 ~~granted voluntary departure in lieu of removal under certain federal law, or be~~
8 ~~removed from the United States within a certain period of time after the filing of the~~
9 ~~petition; requiring a court to issue a certain decree for the appointment of a standby~~
10 ~~guardian of the person or property of a minor if the court finds that there is a~~
11 ~~significant risk that the petitioner will be detained by immigration officials, be~~
12 ~~granted voluntary departure in lieu of removal under certain federal law, or be~~
13 ~~removed from the United States within a certain period of time after the filing of the~~
14 ~~petition under certain circumstances; specifying certain procedures for the~~
15 ~~appointment or designation of a standby guardian of the person or property of a minor~~
16 ~~in the case of detainment by immigration officials, voluntary departure in lieu of~~
17 ~~removal under certain federal law, or removal from the United States of a parent;~~
18 ~~specifying when the authority of a standby guardian under this Act begins under~~
19 ~~certain circumstances; requiring a standby guardian to take certain actions; making~~
20 certain provisions relating to the appointment or designation of a standby guardian
21 of the person or property of a minor in cases of incapacity, debilitation, or death of a
22 parent applicable to the appointment or designation of a standby guardian of the
23 person or property of a minor in the ~~case of detainment by immigration officials,~~
24 ~~voluntary departure in lieu of removal under certain federal law, or removal from the~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~United States of event of an adverse immigration action against a parent; authorizing a parent to designate a standby guardian by means of a written designation in the event that of an adverse immigration action against the parent is detained by immigration officials, granted voluntary departure in lieu of removal under certain federal law, or removed from the United States under certain circumstances; providing that a standby guardian may file a petition without the consent of certain persons under certain circumstances; requiring the court to appoint a person to be a standby guardian if the court finds that notice of detainment by immigration officials, notice or an order of voluntary departure in lieu of removal under certain federal law, or an order of removal from the United States has been issued there is evidence of an adverse immigration action and specified parental consent has been given; specifying that a standby guardian's authority under certain provisions may not, itself, divest a parent of any parental or guardianship rights; providing for the construction of this Act; making certain conforming changes; altering certain definitions; defining a certain term; making this Act an emergency measure; and generally relating to official adverse immigration actions taken against a parent and standby guardianship of the person or property of a minor.~~

~~BY repealing and reenacting, without amendments,~~

~~Article – Estates and Trusts
 Section 13–901(a) and 13–902
 Annotated Code of Maryland
 (2017 Replacement Volume)~~

BY repealing and reenacting, with amendments,

Article – Estates and Trusts
 Section ~~13–901(e)~~ 13–901, ~~13–903~~, 13–904, and 13–907
 Annotated Code of Maryland
 (2017 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Estates and Trusts
 Section 13–902
 Annotated Code of Maryland
 (2017 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Estates and Trusts

13–901.

(a) In this subtitle the following words have the meanings indicated.

(b) “ADVERSE IMMIGRATION ACTION” INCLUDES:

1 **(1) ARREST OR APPREHENSION BY A LAW ENFORCEMENT OFFICER**
2 **FOR AN ALLEGED VIOLATION OF FEDERAL IMMIGRATION LAW;**

3 **(2) DETENTION OR CUSTODY BY THE DEPARTMENT OF HOMELAND**
4 **SECURITY OR A FEDERAL, STATE, OR LOCAL AGENCY AUTHORIZED OR ACTING ON**
5 **BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY;**

6 **(3) DEPARTURE FROM THE UNITED STATES UNDER AN ORDER OF**
7 **REMOVAL, DEPORTATION, EXCLUSION, VOLUNTARY DEPARTURE, OR EXPEDITED**
8 **REMOVAL, OR A STIPULATION OF VOLUNTARY DEPARTURE;**

9 **(4) THE DENIAL, REVOCATION, OR DELAY OF THE ISSUANCE OF A VISA**
10 **OR TRANSPORTATION LETTER BY THE DEPARTMENT OF STATE;**

11 **(5) THE DENIAL, REVOCATION, OR DELAY OF THE ISSUANCE OF A**
12 **PAROLE DOCUMENT OR REENTRY PERMIT BY THE DEPARTMENT OF HOMELAND**
13 **SECURITY; OR**

14 **(6) THE DENIAL OF ADMISSION OR ENTRY INTO THE UNITED STATES**
15 **BY THE DEPARTMENT OF HOMELAND SECURITY.**

16 **(C) (1) “Attending physician” means a physician who has primary**
17 **responsibility for the treatment and care of a parent described under this subtitle.**

18 **(2) If more than one physician shares the responsibility for the treatment**
19 **and care of a parent or if another physician is acting on the attending physician’s behalf,**
20 **any physician described in this paragraph may act as the attending physician under this**
21 **subtitle.**

22 **(3) If no physician has responsibility for the treatment and care of a parent,**
23 **any physician who is familiar with the parent’s medical condition may act as the attending**
24 **physician under this subtitle.**

25 **[(c)] (D) (1) “Debilitation” means a person’s chronic and substantial inability,**
26 **as a result of a physically incapacitating illness, disease, or injury, to care for the person’s**
27 **dependent minor child.**

28 **(2) “Debilitated” means the state of having a debilitation.**

29 **[(d)] (E) (1) “Incapacity” means a person’s chronic and substantial inability,**
30 **as a result of mental impairment, to understand the nature and consequences of decisions**
31 **concerning the care of the person’s dependent minor child, and a consequent inability to**
32 **care for the child.**

33 **(2) “Incapacitated” means the state of having an incapacity.**

1 ~~(e)~~ **(F)** “Standby guardian” means a person:

2 (1) Appointed by a court under § 13–903 of this subtitle as standby guardian
3 of the person or property of a minor, whose authority becomes effective on the incapacity,
4 ~~DETAINMENT BY IMMIGRATION OFFICIALS, VOLUNTARY DEPARTURE UNDER THE~~
5 ~~IMMIGRATION AND NATIONALITY ACT, REMOVAL FROM THE UNITED STATES,~~ or
6 death of the minor’s parent, or on the consent of the parent; or

7 (2) Designated under § 13–904 of this subtitle as standby guardian of the
8 person or property of a minor, whose authority becomes effective on the incapacity of the
9 minor’s parent, [or] ~~ON THE DETAINMENT BY IMMIGRATION OFFICIALS AND CONSENT~~
10 ~~OF THE PARENT, ON THE VOLUNTARY DEPARTURE UNDER THE IMMIGRATION AND~~
11 ~~NATIONALITY ACT AND CONSENT OF THE PARENT, ON THE REMOVAL FROM THE~~
12 ~~UNITED STATES AND CONSENT OF THE PARENT, OR~~ on the debilitation and consent of
13 the parent, OR IN THE EVENT OF AN ADVERSE IMMIGRATION ACTION AGAINST THE
14 PARENT AND THE CONSENT OF THE PARENT.

15 13–902.

16 Except as otherwise provided in this subtitle, the provisions of this title concerning a
17 guardian of the person or property of a minor shall apply to standby guardians.

18 ~~13–903.~~

19 ~~(a) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, a~~
20 ~~petition for the judicial appointment of a standby guardian of the person or property of a~~
21 ~~minor under this section may be filed only by a parent of the minor, and if filed, shall be~~
22 ~~joined by each person having parental rights over the minor.~~

23 ~~(2) If a person who has parental rights cannot be located after reasonable~~
24 ~~efforts have been made to locate the person, the parent may file a petition for the judicial~~
25 ~~appointment of a standby guardian.~~

26 ~~(3) If the petitioner submits documentation, satisfactory to the court, of the~~
27 ~~reasonable efforts to locate the person who has parental rights, the court may issue a decree~~
28 ~~under this section.~~

29 ~~(b) A petition for the judicial appointment of a standby guardian shall state:~~

30 ~~(1) The duties of the standby guardian;~~

31 ~~(2) Whether the authority of the standby guardian is to become effective on~~
32 ~~the petitioner’s incapacity, ON THE PETITIONER’S DETAINMENT BY IMMIGRATION~~
33 ~~OFFICIALS, ON THE PETITIONER’S VOLUNTARY DEPARTURE UNDER THE~~

1 ~~IMMIGRATION AND NATIONALITY ACT, ON THE PETITIONER'S REMOVAL FROM THE~~
2 ~~UNITED STATES, on the petitioner's death, or on whichever occurs first; and~~

3 ~~(3) That there is a significant risk that the petitioner will become~~
4 ~~incapacitated, BE DETAINED BY IMMIGRATION OFFICIALS, BE GRANTED VOLUNTARY~~
5 ~~DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND NATIONALITY~~
6 ~~ACT, BE REMOVED FROM THE UNITED STATES, or die, as applicable, within 2 years of~~
7 ~~the filing of the petition, and the basis for this statement.~~

8 ~~(e) If the petitioner is medically unable to appear, the petitioner's appearance in~~
9 ~~court may not be required, except on a motion and for good cause shown.~~

10 ~~(d) (1) If the court finds that there is a significant risk that the petitioner will~~
11 ~~become incapacitated, BE DETAINED BY IMMIGRATION OFFICIALS, BE GRANTED~~
12 ~~VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND~~
13 ~~NATIONALITY ACT, OR BE REMOVED FROM THE UNITED STATES, or die within 2 years~~
14 ~~of the filing of the petition and that the interests of the minor will be promoted by the~~
15 ~~appointment of a standby guardian of the person or property of the minor, the court shall~~
16 ~~issue a decree accordingly.~~

17 ~~(2) A decree under this subsection shall:~~

18 ~~(i) Specify whether the authority of the standby guardian is effective~~
19 ~~on the receipt of a determination of the petitioner's incapacity, ON THE RECEIPT OF~~
20 ~~OFFICIAL NOTICE OF DETAINMENT OF THE PETITIONER BY IMMIGRATION OFFICIALS,~~
21 ~~ON THE RECEIPT OF AN ORDER OR OTHER OFFICIAL NOTICE OF A GRANT OF~~
22 ~~VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND~~
23 ~~NATIONALITY ACT, ON THE RECEIPT OF AN ORDER OF REMOVAL FROM THE UNITED~~
24 ~~STATES ENTERED AGAINST THE PETITIONER, on the receipt of the certificate of the~~
25 ~~petitioner's death, or on whichever occurs first; and~~

26 ~~(ii) Provide that the authority of the standby guardian may become~~
27 ~~effective earlier on written consent of the petitioner in accordance with subsection [(e)(3)]~~
28 ~~(E)(4) of this section.~~

29 ~~(3) If at any time before the beginning of the authority of the standby~~
30 ~~guardian the court finds that the requirements of paragraph (1) of this subsection are no~~
31 ~~longer satisfied, the court may rescind the decree.~~

32 ~~(e) (1) (i) If a decree under subsection (d) of this section provides that the~~
33 ~~authority of the standby guardian is effective on receipt of a determination of the petitioner's~~
34 ~~incapacity, the standby guardian's authority shall begin on the standby guardian's receipt~~
35 ~~of a copy of a determination of incapacity made under § 13-906 of this subtitle.~~

1 (ii) ~~A standby guardian shall file a copy of the determination of~~
2 ~~incapacity with the court that issued the decree within 90 days of the date of receipt of the~~
3 ~~determination.~~

4 (iii) ~~If a standby guardian fails to comply with subparagraph (ii) of~~
5 ~~this paragraph, the court may rescind the standby guardian's authority.~~

6 (2) (i) ~~If a decree under subsection (d) of this section provides that the~~
7 ~~authority of the standby guardian is effective on receipt of a certificate of the petitioner's~~
8 ~~death, the standby guardian's authority shall begin on the standby guardian's receipt of a~~
9 ~~certificate of death.~~

10 (ii) ~~The standby guardian shall file a copy of the certificate of death~~
11 ~~with the court that issued the decree within 90 days of the date of the petitioner's death.~~

12 (iii) ~~If the standby guardian fails to comply with subparagraph (ii) of~~
13 ~~this paragraph, the court may rescind the standby guardian's authority.~~

14 (3) (1) ~~IF A DECREE UNDER SUBSECTION (D) OF THIS SECTION~~
15 ~~PROVIDES THAT THE AUTHORITY OF THE STANDBY GUARDIAN IS EFFECTIVE ON~~
16 ~~RECEIPT OF OFFICIAL NOTICE OF DETAINMENT OF THE PETITIONER BY~~
17 ~~IMMIGRATION OFFICIALS, ON THE RECEIPT OF AN ORDER OR OTHER OFFICIAL~~
18 ~~NOTICE OF A GRANT OF VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE~~
19 ~~IMMIGRATION AND NATIONALITY ACT, ON THE RECEIPT OF AN ORDER OF REMOVAL~~
20 ~~FROM THE UNITED STATES OF THE PETITIONER, THE STANDBY GUARDIAN'S~~
21 ~~AUTHORITY SHALL BEGIN ON THE STANDBY GUARDIAN'S RECEIPT OF A COPY OF~~
22 ~~OFFICIAL NOTICE OF DETAINMENT OF THE PETITIONER BY IMMIGRATION OFFICIALS,~~
23 ~~ON THE RECEIPT OF AN ORDER OR OTHER OFFICIAL NOTICE OF A GRANT OF~~
24 ~~VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND~~
25 ~~NATIONALITY ACT, OR ON THE RECEIPT OF AN ORDER OF REMOVAL.~~

26 (ii) ~~THE STANDBY GUARDIAN SHALL FILE A COPY OF THE ORDER~~
27 ~~OF REMOVAL WITH THE COURT THAT ISSUED THE DECREE WITHIN 90 DAYS OF THE~~
28 ~~DATE OF RECEIPT OF THE ORDER.~~

29 (iii) ~~IF THE STANDBY GUARDIAN FAILS TO COMPLY WITH~~
30 ~~SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT MAY RESCIND THE STANDBY~~
31 ~~GUARDIAN'S AUTHORITY.~~

32 ~~(3)~~ (4) (i) ~~Notwithstanding paragraphs (1) [and], (2), AND (3) of this~~
33 ~~subsection, a standby guardian's authority shall begin on the standby guardian's receipt of~~
34 ~~the petitioner's written consent to the beginning of the standby guardian's authority signed~~
35 ~~by:~~

~~1 1. The petitioner in the presence of two witnesses at least 18~~
~~2 years of age, neither of whom may be the standby guardian; and~~

~~3 2. The standby guardian.~~

~~4 (ii) 1. If the petitioner is physically unable to sign a written~~
~~5 consent to the beginning of the standby guardian's authority, another person may sign the~~
~~6 consent on the petitioner's behalf and at the petitioner's direction.~~

~~7 2. A consent under this subparagraph to the beginning of the~~
~~8 standby guardian's authority shall be signed in the presence of the petitioner and two~~
~~9 witnesses at least 18 years of age, neither of whom may be the standby guardian.~~

~~10 3. A standby guardian also shall sign a written consent to the~~
~~11 beginning of the standby guardian's authority under this subparagraph.~~

~~12 (iii) The standby guardian shall file the written consent with the court~~
~~13 that issued the decree within 90 days of the date of receipt of the written consent.~~

~~14 (iv) If the standby guardian fails to comply with subparagraph (iii) of~~
~~15 this paragraph, the court may rescind the standby guardian's authority.~~

~~16 (f) The petitioner may revoke a standby guardianship created under this section~~
~~17 by:~~

~~18 (1) Executing a written revocation;~~

~~19 (2) Filing the revocation with the court that issued the decree; and~~

~~20 (3) Promptly notifying the standby guardian of the revocation.~~

~~21 (g) A person who is judicially appointed as a standby guardian under this section~~
~~22 may at any time before the beginning of the person's authority renounce the appointment~~
~~23 by:~~

~~24 (1) Executing a written renunciation;~~

~~25 (2) Filing the renunciation with the court that issued the decree; and~~

~~26 (3) Promptly notifying in writing the petitioner of the revocation.~~

27 13-904.

28 (a) (1) A parent may designate a standby guardian by means of a written
29 designation:

1 (i) Signed in the presence of two witnesses, at least 18 years old,
2 neither of whom is the standby guardian; and

3 (ii) Signed by the standby guardian.

4 (2) (i) If a parent is physically unable to sign a written designation,
5 another person may sign the designation on the parent's behalf and at the parent's direction.

6 (ii) 1. A designation under this paragraph shall be signed in the
7 presence of the parent and two witnesses at least 18 years of age, neither of whom may be
8 the standby guardian.

9 2. The standby guardian also shall sign a designation under
10 this paragraph.

11 (b) (1) A designation of a standby guardian shall identify the parent, the minor,
12 and the person designated to be the standby guardian, state the duties of the standby
13 guardian, and indicate that the parent intends for the standby guardian to become the
14 minor's guardian in the event the parent [either]:

15 (i) Becomes incapacitated; [or]

16 ~~(ii) IS DETAINED BY IMMIGRATION OFFICIALS, IS GRANTED~~
17 ~~VOLUNTARY DEPARTURE, OR IS REMOVED FROM THE UNITED STATES AND~~
18 ~~CONSENTS TO THE BEGINNING OF THE STANDBY GUARDIAN'S AUTHORITY; OR~~

19 ~~{(ii)} (iii)~~ Becomes debilitated and consents to the beginning of the
20 standby guardian's authority; OR

21 (iii) IS SUBJECT TO AN ADVERSE IMMIGRATION ACTION AND
22 CONSENTS TO THE BEGINNING OF THE STANDBY GUARDIAN'S AUTHORITY.

23 (2) A parent may designate an alternate standby guardian in the same
24 writing and by the same manner as the designation of a standby guardian.

25 (3) A designation may, but need not, be in the following form:

26 Designation of Standby Guardian

27 I (name of parent) hereby designate (name, home address, and telephone number
28 of standby guardian) as standby guardian of the person and property of my child(ren)
29 (name of child(ren)).

30 (You may, if you wish, provide that the standby guardian's authority shall extend
31 only to the person, or only to the property, of your child, by crossing out "person" or
32 "property", whichever is inapplicable, above.)

33 The standby guardian's authority shall take effect if and when [either]:

34 (1) My doctor concludes I am mentally incapacitated, and thus unable to care for

1 my child(ren); [or]

2 (2) My doctor concludes that I am physically debilitated, and thus unable to care
3 for my child(ren) and I consent in writing, before two witnesses, to the standby guardian's
4 authority taking effect; OR

5 ~~(3) I HAVE BEEN DETAINED BY IMMIGRATION OFFICIALS, GRANTED~~
6 ~~VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND~~
7 ~~NATIONALITY ACT, OR REMOVED FROM THE UNITED STATES AM SUBJECT TO AN~~
8 ~~ADVERSE IMMIGRATION ACTION, AND I AM THUS UNABLE TO CARE FOR MY~~
9 ~~CHILD(REN) AND I CONSENT IN WRITING, BEFORE TWO WITNESSES, TO THE~~
10 ~~STANDBY GUARDIAN'S AUTHORITY TAKING EFFECT.~~

11 If the person I designate above is unable or unwilling to act as guardian for my
12 child(ren), I hereby designate (name, home address, and telephone number of alternate
13 standby guardian), as standby guardian of my child(ren).

14 I also understand that my standby guardian's authority will cease 180 days after
15 beginning unless by that date my standby guardian petitions the court for appointment
16 as guardian.

17 I understand that I retain full parental rights even after the beginning of the
18 standby guardian's authority, and may revoke the standby guardianship at any time.

19 Parent's Signature: _____

20 Address: _____

21 Date: _____

22 I declare that the person whose name appears above signed this document in my
23 presence, or was physically unable to sign and asked another to sign this document, who
24 did so in my presence. I further declare that I am at least 18 years old and am not the
25 person designated as standby guardian.

26 Witness's Signature: _____

27 Address: _____

28 Date: _____

29 Witness's Signature: _____

30 Address: _____

31 Date: _____

32 Standby Guardian's Signature: _____

33 Address: _____

34 Date: _____

35 (4) A consent by another person with parental rights to a designation of a standby
36 guardian by a parent may, but need not be, in the following form:

37 Consent to Designation of Standby Guardian

38 I (name of person with parental rights) agree with the designation by (name of
39 parent) of (name, home address, and telephone number of standby guardian) as standby
40 guardian of the person and property of my child(ren) (name of child(ren)).

41 I agree also to the terms stated above and understand that I retain full parental
42 rights even after the beginning of the standby guardian's authority, and may revoke my
43 consent to the standby guardianship at any time.

44 Signature of Person with Parental Rights: _____

1 Address: _____

2 Date: _____

3 I declare that the person whose name appears above signed this document in my
4 presence, or was physically unable to sign and asked another to sign this document, who
5 did so in my presence. I further declare that I am at least 18 years old and am not the
6 person designated as standby guardian.

7 Witness's Signature: _____

8 Address: _____

9 Date: _____

10 Witness's Signature: _____

11 Address: _____

12 Date: _____

13 Standby Guardian's Signature: _____

14 Address: _____

15 Date: _____

16 (c) The authority of the standby guardian under a designation shall begin on:

17 (1) The standby guardian's receipt of a copy of a determination of incapacity
18 under § 13-906 of this subtitle; [or]

19 (2) The standby guardian's receipt of:

20 (i) A copy of a determination of debilitation under § 13-906 of this
21 subtitle;

22 (ii) A copy of the parent's written consent to the beginning of the
23 standby guardianship, signed by the parent in the presence of two witnesses at least 18
24 years of age, neither of whom is the standby guardian, and signed by the standby guardian;
25 and

26 (iii) A copy of the birth certificate for each child for whom the standby
27 guardian is designated; OR

28 **(3) THE STANDBY GUARDIAN'S RECEIPT OF:**

29 ~~**(i) A COPY OF OFFICIAL NOTICE OF THE PARENT'S DETAINMENT**~~
30 ~~**BY IMMIGRATION OFFICIALS, A COPY OF AN ORDER OR OTHER OFFICIAL NOTICE**~~
31 ~~**GRANTING VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION**~~
32 ~~**AND NATIONALITY ACT, OR AN ORDER OF REMOVAL FROM THE UNITED STATES;**~~

33 **(i) EVIDENCE OF AN ADVERSE IMMIGRATION ACTION AGAINST**
34 **THE PARENT; AND**

35 **(ii) A COPY OF THE PARENT'S WRITTEN CONSENT TO THE**
36 **BEGINNING OF THE STANDBY GUARDIANSHIP, SIGNED BY THE PARENT IN THE**

1 PRESENCE OF TWO WITNESSES AT LEAST 18 YEARS OF AGE, NEITHER OF WHOM IS
 2 THE STANDBY GUARDIAN, AND SIGNED BY THE STANDBY GUARDIAN;~~AND~~

3 ~~(III) A COPY OF THE BIRTH CERTIFICATE FOR EACH CHILD FOR~~
 4 ~~WHOM THE STANDBY GUARDIAN IS DESIGNATED.~~

5 (d) (1) If a parent is physically unable to sign a written consent to the beginning
 6 of the standby guardianship, another person may sign the written consent to the beginning
 7 of the standby guardianship on the parent's behalf and at the parent's direction.

8 (2) A consent under this subsection to the beginning of the standby
 9 guardianship shall be signed in the presence of the parent and two witnesses at least 18
 10 years of age, neither of whom may be the standby guardian.

11 (3) The standby guardian also shall sign a consent to the beginning of the
 12 standby guardianship under this subsection.

13 (e) (1) A standby guardian shall file a petition for judicial appointment within
 14 180 days of the date of the beginning of the standby guardianship under this section.

15 (2) If the standby guardian fails to file the petition within the time specified
 16 in this subsection, the standby guardian's authority shall terminate 180 days from the date
 17 of the beginning of the standby guardianship.

18 (3) The standby guardian's authority shall begin again on the filing of the
 19 petition.

20 (f) (1) A standby guardian shall file a petition for appointment as guardian
 21 after receipt of:

22 (i) A copy of a determination of incapacity made under § 13-906 of
 23 this subtitle; [or]

24 (ii) Copies of:

25 1. A determination of debilitation made under § 13-906 of
 26 this subtitle; and

27 2. The parent's written consent to the beginning of the
 28 standby guardianship under this section; OR

29 ~~(III) COPIES OF:~~

30 ~~1. OFFICIAL NOTICE OF THE PARENT'S DETAINMENT BY~~
 31 ~~IMMIGRATION OFFICIALS, AN ORDER OR OTHER OFFICIAL NOTICE GRANTING~~

~~VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND NATIONALITY ACT, OR AN ORDER OF REMOVAL FROM THE UNITED STATES; AND~~

(III) 1. EVIDENCE OF AN ADVERSE IMMIGRATION ACTION AGAINST THE PARENT; AND

2. ~~THE~~ COPIES OF THE PARENT'S WRITTEN CONSENT TO THE BEGINNING OF THE STANDBY GUARDIANSHIP UNDER THIS SECTION.

(2) Subject to the provisions of paragraphs (3) and (4) of this subsection, the petition shall be accompanied by:

(i) The written designation of the standby guardian signed, or consented to, by each person having parental rights over the child;

(ii) **1.** A copy of:

~~1. A.~~ The determination of incapacity of the parent; ~~for~~

~~2. B.~~ The determination of debilitation and the parental consent to the beginning of the standby guardianship; **OR**

~~3. 2. THE OFFICIAL NOTICE OF THE PARENT'S DETAINMENT BY IMMIGRATION OFFICIALS, THE ORDER OR OTHER OFFICIAL NOTICE GRANTING VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND NATIONALITY ACT, OR THE ORDER OF REMOVAL FROM THE UNITED STATES AND THE PARENTAL CONSENT TO THE BEGINNING OF THE STANDBY GUARDIANSHIP~~
EVIDENCE OF AN ADVERSE IMMIGRATION ACTION AGAINST THE PARENT, THE PARENTAL CONSENT TO THE BEGINNING OF THE GUARDIANSHIP, AND A COPY OF THE BIRTH CERTIFICATE OR OTHER EVIDENCE OF PARENTAGE FOR EACH CHILD FOR WHOM THE STANDBY GUARDIAN IS DESIGNATED; and

(iii) If the petition is filed by a person designated as alternate standby guardian, a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian, and the basis for the statement.

(3) **(I)** If a person who has parental rights cannot be located after reasonable efforts have been made to locate the person, the standby guardian may file a petition under this section without the consent of the person to the designation of the standby guardian.

(II) IF A PETITION INVOLVES AN ADVERSE IMMIGRATION ACTION AGAINST A PARENT AND A PERSON WHO HAS PARENTAL RIGHTS RESIDES OUTSIDE THE UNITED STATES, THE STANDBY GUARDIAN MAY FILE A PETITION UNDER THIS

1 SECTION WITHOUT THE CONSENT OF THE PERSON WHO HAS PARENTAL RIGHTS TO
2 THE DESIGNATION OF THE STANDBY GUARDIAN.

3 (4) If the standby guardian submits documentation, satisfactory to the
4 court, of the reasonable efforts to locate the person who has parental rights, the court may
5 appoint a standby guardian under this section.

6 (g) The court shall appoint a person to be a standby guardian under this section if
7 the court finds that:

8 (1) The person was duly designated as standby guardian;

9 (2) (I) A determination of incapacity, or a determination of debilitation
10 and parental consent to the beginning of the standby guardianship, has been made under
11 this section; OR

12 (II) ~~NOTICE OF DETENTION BY IMMIGRATION OFFICIALS, AN~~
13 ~~ORDER OR OTHER NOTICE OF VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER~~
14 ~~THE IMMIGRATION AND NATIONALITY ACT, OR AN ORDER OF REMOVAL FROM THE~~
15 ~~UNITED STATES HAS BEEN ISSUED~~ THERE IS EVIDENCE OF AN ADVERSE
16 IMMIGRATION ACTION AND PARENTAL CONSENT TO THE BEGINNING OF THE
17 STANDBY GUARDIANSHIP HAS BEEN GIVEN UNDER THIS SECTION;

18 (3) The interests of the minor will be promoted by the appointment of a
19 standby guardian of the person or property of the minor; and

20 (4) If the petition is by a person designated as alternate standby guardian,
21 the person designated as standby guardian is unwilling or unable to act as standby
22 guardian.

23 (h) A parent may revoke a standby guardianship created under this section:

24 (1) Before the filing of a petition, by notifying the standby guardian verbally
25 or in writing or by any other act that is evidence of a specific intent to revoke the standby
26 guardianship; and

27 (2) If a petition has been filed by:

28 (i) Executing a written revocation;

29 (ii) Filing the revocation with the court in which the petition was
30 filed; and

31 (iii) Promptly notifying the standby guardian of the revocation.

1 (i) A person who is judicially appointed as a standby guardian under this section
 2 may at any time before the beginning of the person's authority renounce the appointment
 3 by:

- 4 (1) Executing a written renunciation;
- 5 (2) Filing the renunciation with the court that issued the decree; and
- 6 (3) Promptly notifying in writing the parent of the revocation.

7 13-907.

8 (a) [The beginning of a standby guardian's authority in accordance with a
 9 determination of incapacity, determination of debilitation, or consent] **A STANDBY**
 10 **GUARDIAN'S AUTHORITY UNDER THIS SUBTITLE** may not, itself, divest a parent of any
 11 parental or guardianship rights.

12 (b) The authority of a standby guardian with respect to the minor is limited to the
 13 express authority granted to the standby guardian by a court under this subtitle.

14 **(C) THE APPOINTMENT OF A STANDBY GUARDIAN OF A MINOR UNDER THIS**
 15 **SUBTITLE MAY NOT BE CONSTRUED TO REQUIRE THE TERMINATION OF PARENTAL**
 16 **RIGHTS WITH RESPECT TO THE MINOR UNDER TITLE 5 OF THE FAMILY LAW**
 17 **ARTICLE.**

18 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
 19 ~~October 1, 2018.~~

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
 21 measure, is necessary for the immediate preservation of the public health or safety, has
 22 been passed by a ye and nay vote supported by three-fifths of all the members elected to
 23 each of the two Houses of the General Assembly, and shall take effect from the date it is
 24 enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.