
By: Delegate Montague

Introduced and read first time: February 6, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Standby Guardian - Parental Designation**

3 FOR the purpose of restricting the scope of the authority of a standby guardian
4 designated by a parent of a minor child to extend only to guardianship of the person
5 of the minor child; authorizing a person designated as standby guardian to become
6 guardian of the property of a minor only upon appointment by a court; altering the
7 period of time after the beginning of a standby guardianship within which a standby
8 guardian is required to file a petition for judicial appointment as guardian of the
9 person or property of a minor; making certain conforming changes in a certain form;
10 and generally relating to designation of a standby guardian.

11 BY repealing and reenacting, with amendments,
12 Article - Estates and Trusts
13 Section 13-901(e) and 13-904
14 Annotated Code of Maryland
15 (1991 Replacement Volume and 1996 Supplement)

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

18 **Article - Estates and Trusts**

19 13-901.

20 (e) "Standby guardian" means a person:

21 (1) Appointed by a court under § 13-903 of this subtitle as standby guardian
22 of the person or property of a minor, whose authority becomes effective on the incapacity
23 or death of the minor's parent, or on the consent of the parent; or

24 (2) Designated under § 13-904 of this subtitle as standby guardian of the
25 person [or property] of a minor, whose authority becomes effective on the incapacity of
26 the minor's parent, or on the debilitation and consent of the parent.

27 13-904.

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

2

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
6 direction.

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

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

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

16 (i) Becomes incapacitated; or

17 (ii) Becomes debilitated and consents to the beginning of the standby
18 guardian's authority.

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

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

22 Designation of Standby Guardian

23 I (name of parent) hereby designate (name, home address, and telephone number
24 of standby guardian) as standby guardian of the person [and property] of my child(ren)
25 (name of child(ren)).

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

29 The standby guardian's authority shall take effect if and when either:

30 (1) My doctor concludes I am mentally incapacitated, and thus unable to
31 care for my child(ren); or

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

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

3

1 I also understand that my standby guardian's authority will cease [180] 90 days
2 after beginning unless by that date my standby guardian petitions the court for
3 appointment as guardian.

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

6 Parent's Signature: _____

7 Address: _____

8 Date: _____

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

13 Witness's Signature: _____

14 Address: _____

15 Date: _____

16 Witness's Signature: _____

17 Address: _____

18 Date: _____

19 Standby Guardian's Signature: _____

20 Address: _____

21 Date: _____

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

24 Consent to Designation of Standby Guardian

25 I (name of person with parental rights) agree with the designation by (name of
26 parent) of (name, home address, and telephone number of standby guardian) as standby
27 guardian of the person [and property] of my child(ren) (name of child(ren)).

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

31 Signature of Person with Parental Rights: _____

32 Address: _____

33 Date: _____

4

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

5 Witness's Signature: _____

6 Address: _____

7 Date: _____

8 Witness's Signature: _____

9 Address: _____

10 Date: _____

11 Standby Guardian's Signature: _____

12 Address: _____

13 Date: _____

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

15 (1) The standby guardian's receipt of a copy of a determination of incapacity
16 under § 13-906 of this subtitle; or

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

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

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

24 (iii) A copy of the birth certificate for each child for whom the standby
25 guardian is designated.

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

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

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

5

1 (e) (1) A standby guardian shall file a petition for judicial appointment AS
 2 GUARDIAN OF THE PERSON OR PROPERTY OF THE MINOR within [180] 90 days of the
 3 date of the beginning of the standby guardianship under this section.

4 (2) If the standby guardian fails to file the petition within the time specified
 5 in this subsection, the standby guardian's authority shall terminate [180] 90 days from
 6 the date of the beginning of the standby guardianship.

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

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

11 (i) A copy of a determination of incapacity made under § 13-906 of
 12 this subtitle; or

13 (ii) Copies of:

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

16 2. The parent's written consent to the beginning of the standby
 17 guardianship under this section.

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

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

22 (ii) A copy of:

23 1. The determination of incapacity of the parent; or

24 2. The determination of debilitation and the parental consent
 25 to the beginning of the standby guardianship; and

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

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

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

36 (g) The court shall appoint a person to be a standby guardian OF THE PERSON
 37 OR PROPERTY OF A MINOR under this section if the court finds that:

6

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

2 (2) A determination of incapacity, or a determination of debilitation and
3 parental consent to the beginning of the standby guardianship, has been made under this
4 section;

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

7 (4) If the petition is by a person designated as alternate standby guardian,
8 the person designated as standby guardian is unwilling or unable to act as standby
9 guardian.

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

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

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

15 (i) Executing a written revocation;

16 (ii) Filing the revocation with the court in which the petition was filed;
17 and

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

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

22 (1) Executing a written renunciation;

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

24 (3) Promptly notifying in writing the parent of the revocation.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 1997.