
By: Delegate Montague

Introduced and read first time: February 6, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Standby Guardian**

3 FOR the purpose of altering the judicial appointment and parental designation
4 procedures of a standby guardian of the person or property of a minor child of a
5 parent for whom there is a significant risk of dying or becoming incapacitated within
6 a certain period; requiring that notice be given to certain persons of a petition for
7 the appointment or designation of a standby guardian; requiring that certain
8 reasonable efforts be made to locate persons with parental rights or joint legal
9 custody; providing for the challenge of the appointment or designation of a standby
10 guardian; requiring that a court consider certain factors in deciding whether to
11 appoint a standby guardian; altering certain forms for the designation of a standby
12 guardian and for the consent to the designation of a standby guardian; defining
13 certain terms; and generally relating to the appointment, designation, and
14 effectiveness of a standby guardian.

15 BY repealing and reenacting, without amendments,
16 Article - Estates and Trusts
17 Section 13-901(a)
18 Annotated Code of Maryland
19 (1991 Replacement Volume and 1996 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - Estates and Trusts
22 Section 13-903(a) and (d)(1) and 13-904
23 Annotated Code of Maryland
24 (1991 Replacement Volume and 1996 Supplement)

25 BY adding to
26 Article - Estates and Trusts
27 Section 13-901(f) through (h) and 13-903(h) through (j)
28 Annotated Code of Maryland
29 (1991 Replacement Volume and 1996 Supplement)

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

2

1 **Article - Estates and Trusts**

2 13-901.

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

4 (F) "PETITIONER" MEANS A PERSON:

5 (1) WHO FILES FOR THE JUDICIAL APPOINTMENT OF A STANDBY
6 GUARDIAN OF THE PERSON OR PROPERTY OF A MINOR; AND

7 (2) (I) WHO HAS PARENTAL RIGHTS AND FOR A SIGNIFICANT PERIOD
8 BEFORE THE ACTION IS COMMENCED HAS LIVED WITH THE MINOR IN THE SAME
9 PRINCIPAL PLACE OF RESIDENCE, UNLESS THE PERSON HAS STAYED IN A HEALTH
10 CARE FACILITY FOR A PROLONGED TIME BECAUSE OF ILLNESS;

11 (II) WHO HAS PARENTAL RIGHTS; OR

12 (III) WHO:

13 1. HAS A PARENT-CHILD RELATIONSHIP WITH THE MINOR
14 FOR AT LEAST 6 MONTHS BEFORE THE PETITION IS FILED OR FOR THE MAJORITY OF
15 THE MINOR'S LIFE IN THE SAME PRINCIPAL PLACE OF RESIDENCE; AND

16 2. REGULARLY PERFORMED AT LEAST AN EQUAL SHARE
17 OF THE PARENTING FUNCTIONS WITH THE PERMISSION OF A PERSON WITH
18 PARENTAL RIGHTS AND WITHOUT THE EXPECTATION OF FINANCIAL
19 COMPENSATION OTHER THAN FUNDS PAID BY A GOVERNMENTAL UNIT TO PAY FOR
20 EXPENSES OF THE MINOR.

21 (G) "PERSON WITH PARENTAL RIGHTS" MEANS A PERSON WHO:

22 (1) IS THE CHILD'S ADOPTIVE PARENT, BIRTH MOTHER, NATURAL
23 FATHER, OR LEGAL CUSTODIAN OR GUARDIAN; AND

24 (2) HAS NOT HAD PARENTAL RIGHTS TERMINATED BY JUDICIAL
25 DECREE.

26 (H) "NATURAL FATHER" MEANS A MAN WHO:

27 (1) WAS MARRIED TO AN INDIVIDUAL'S BIRTH MOTHER AT THE TIME
28 OF THE INDIVIDUAL'S BIRTH;

29 (2) WAS MARRIED TO AN INDIVIDUAL'S BIRTH MOTHER AT THE TIME
30 OF THE INDIVIDUAL'S CONCEPTION;

31 (3) IS NAMED AS THE FATHER ON AN INDIVIDUAL'S BIRTH
32 CERTIFICATE, UNLESS THE MAN SIGNS A DENIAL OF PATERNITY OR HIS
33 NONPATERNITY HAS BEEN ESTABLISHED TO THE SATISFACTION OF THE COURT BY
34 AFFIDAVIT OR TESTIMONY;

35 (4) HAS BEEN ADJUDICATED TO BE THE FATHER OF THE INDIVIDUAL;
36 OR

37 (5) HAS SIGNED A PATERNITY AFFIDAVIT.

3

1 13-903.

2 (a) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, a
3 petition for the judicial appointment of a standby guardian of the person or property of a
4 minor under this section may be filed only by [a parent of the minor, and if filed, shall be
5 joined by each person having parental rights over the minor]:

6 (I) A PERSON WHO HAS PARENTAL RIGHTS AND FOR A
7 SIGNIFICANT PERIOD BEFORE THE ACTION IS COMMENCED HAS LIVED WITH THE
8 MINOR IN THE SAME PRINCIPAL PLACE OF RESIDENCE, UNLESS THE PERSON HAS
9 STAYED IN A HEALTH CARE FACILITY FOR A PROLONGED TIME BECAUSE OF
10 ILLNESS; OR

11 (II) IF A PERSON WHO MEETS THE REQUIREMENTS OF ITEM (I) OF
12 THIS PARAGRAPH IS NOT AVAILABLE:

13 1. A PERSON WHO HAS PARENTAL RIGHTS; OR

14 2. A PERSON WHO HAS A PARENT-CHILD RELATIONSHIP
15 WITH THE MINOR FOR AT LEAST 6 MONTHS BEFORE THE PETITION IS FILED OR FOR
16 THE MAJORITY OF THE MINOR'S LIFE IN THE SAME PRINCIPAL PLACE OF RESIDENCE
17 AND WHO REGULARLY PERFORMED AT LEAST AN EQUAL SHARE OF THE
18 PARENTING FUNCTIONS WITH THE PERMISSION OF A PERSON WITH PARENTAL
19 RIGHTS AND WITHOUT THE EXPECTATION OF FINANCIAL COMPENSATION OTHER
20 THAN FUNDS PAID BY A GOVERNMENTAL UNIT TO PAY FOR EXPENSES OF THE
21 MINOR.

22 (2) THE PETITIONER SHALL, AT THE SAME TIME THE PETITION IS FILED,
23 GIVE WRITTEN NOTICE OF THE PETITION TO EACH OTHER PERSON WHO HAS
24 PARENTAL RIGHTS OVER THE MINOR.

25 (3) A PERSON WHO HAS PARENTAL RIGHTS MAY CHALLENGE THE
26 PETITION IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION.

27 [(2)] (4) (I) If a person who has parental rights OR JOINT LEGAL
28 CUSTODY cannot be located after reasonable efforts have been made to locate the
29 person, the [parent] PETITIONER may file a petition for the judicial appointment of a
30 standby guardian WITHOUT GIVING NOTICE OF THE PETITION TO A PERSON WHO HAS
31 PARENTAL RIGHTS OR WITHOUT THE CONSENT OF THE JOINT LEGAL CUSTODIAN.

32 (II) TO MAKE REASONABLE EFFORTS TO LOCATE THE PERSON
33 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PETITIONER SHALL
34 RESEARCH AT LEAST THREE OF THE FOLLOWING SOURCES OF INFORMATION:

35 1. THE PERSON'S LAST KNOWN ADDRESS;

36 2. THE UNITED STATES POSTAL SERVICE;

37 3. FAMILY MEMBERS AND FRIENDS OF THE PERSON;

38 4. THE PERSON'S LAST KNOWN PLACE OF EMPLOYMENT;

39 5. THE MOTOR VEHICLE ADMINISTRATION;

4

- 1 6. TELEPHONE DIRECTORIES;
- 2 7. CHILD SUPPORT AGENCIES;
- 3 8. PRISONS; AND
- 4 9. VOTING REGISTRATION RECORDS.

5 [(3)] (5) (I) If the petitioner submits documentation, satisfactory to the
6 court, of the reasonable efforts to locate the person who has parental rights OR JOINT
7 LEGAL CUSTODY, the court may issue a decree under this section REGARDLESS OF
8 WHETHER THE PERSON WHO HAS PARENTAL RIGHTS HAS HAD AN OPPORTUNITY TO
9 CHALLENGE THE GUARDIANSHIP DESIGNATION, OR REGARDLESS OF WHETHER
10 THE JOINT LEGAL CUSTODIAN HAS JOINED THE PETITION.

11 (II) SATISFACTORY DOCUMENTATION SHALL INCLUDE AN
12 AFFIDAVIT BY PETITIONER DESCRIBING:

- 13 1. THE EFFORTS MADE TO NOTIFY THE PERSON WITH
14 PARENTAL RIGHTS OR THE JOINT LEGAL CUSTODIAN;
- 15 2. THE RESULTS OF SUCH EFFORTS; AND
- 16 3. ANY SPECIAL CIRCUMSTANCES SURROUNDING THE
17 PARTICULAR CASE AFFECTING THE REASONABLENESS OF THE EFFORTS MADE.

18 (d) (1) If the court finds that there is a significant risk that the petitioner will
19 become incapacitated or die within 2 years of the filing of the petition [and that the
20 interests of the minor will be promoted by the appointment of a standby guardian of the
21 person or property of the minor], the court shall issue a decree accordingly.

22 (H) THE APPOINTMENT OF A STANDBY GUARDIAN MAY BE CHALLENGED BY
23 A PERSON:

24 (1) WHO HAS PARENTAL RIGHTS AND FOR A SIGNIFICANT PERIOD
25 BEFORE THE ACTION IS COMMENCED HAS LIVED WITH THE MINOR IN THE SAME
26 PRINCIPAL PLACE OF RESIDENCE, UNLESS THE PERSON HAS STAYED IN A HEALTH
27 CARE FACILITY FOR A PROLONGED TIME BECAUSE OF ILLNESS;

28 (2) WHO HAS PARENTAL RIGHTS; OR

29 (3) WHO:

30 (I) HAS A PARENT-CHILD RELATIONSHIP WITH THE MINOR FOR
31 AT LEAST 6 MONTHS BEFORE THE PETITION IS FILED OR FOR THE MAJORITY OF THE
32 MINOR'S LIFE IN THE SAME PRINCIPAL PLACE OF RESIDENCE; AND

33 (II) REGULARLY PERFORMED AT LEAST AN EQUAL SHARE OF THE
34 PARENTING FUNCTIONS WITH THE PERMISSION OF A PERSON WITH PARENTAL
35 RIGHTS AND WITHOUT THE EXPECTATION OF FINANCIAL COMPENSATION OTHER
36 THAN FUNDS PAID BY A GOVERNMENTAL UNIT TO PAY FOR EXPENSES OF THE
37 MINOR.

5

1 (I) (1) THE COURT SHALL SUSTAIN A CHALLENGE TO A STANDBY
2 GUARDIAN PETITION IF IT IS NOT IN THE MINOR'S BEST INTEREST TO GRANT THE
3 PETITION.

4 (2) THE FACTORS THAT THE COURT SHALL CONSIDER IN MAKING ITS
5 DECISION INCLUDE:

6 (I) THE FITNESS OF THE PROPOSED GUARDIAN;

7 (II) THE RELATIONSHIP BETWEEN THE PROPOSED GUARDIAN AND
8 THE MINOR;

9 (III) THE PAST AND PRESENT RELATIONSHIP OF THE CHALLENGER
10 AND THE MINOR;

11 (IV) THE PREFERENCE OF THE MINOR IF THE MINOR IS OF
12 SUITABLE AGE AND CAPACITY TO FORM A RATIONAL JUDGMENT;

13 (V) THE POTENTIAL DISRUPTION OF THE FAMILY, SOCIAL, AND
14 SCHOOL LIFE OF THE MINOR;

15 (VI) THE SINCERITY OF THE CHALLENGER IN OBJECTING TO THE
16 PROPOSED GUARDIANSHIP;

17 (VII) THE DEGREE TO WHICH THE CHALLENGER HAS CONTRIBUTED
18 TO THE PHYSICAL CARE AND SUPPORT OF THE MINOR;

19 (VIII) OPPORTUNITIES AFFECTING THE FUTURE OF THE MINOR; AND

20 (IX) ANY ALTERNATIVE GUARDIANSHIP PLAN THAT THE
21 CHALLENGER PRESENTS.

22 (J) THIS SECTION DOES NOT AFFECT THE RIGHT OF A PERSON TO SEEK A
23 REMEDY PROVIDED UNDER ANY OTHER LAW.

24 13-904.

25 (A) IN THIS SECTION, "DESIGNATING PERSON" MEANS A PERSON:

26 (1) WHO DESIGNATES A STANDBY GUARDIAN; AND

27 (2) (I) WHO HAS PARENTAL RIGHTS AND FOR A SIGNIFICANT PERIOD
28 BEFORE THE ACTION IS COMMENCED HAS LIVED WITH THE MINOR IN THE SAME
29 PRINCIPAL PLACE OF RESIDENCE, UNLESS THE PERSON HAS STAYED IN A HEALTH
30 CARE FACILITY FOR A PROLONGED TIME BECAUSE OF ILLNESS;

31 (II) WHO HAS PARENTAL RIGHTS; OR

32 (III) WHO:

33 1. HAS A PARENT-CHILD RELATIONSHIP WITH THE MINOR
34 FOR AT LEAST 6 MONTHS BEFORE THE PETITION IS FILED OR FOR THE MAJORITY OF
35 THE MINOR'S LIFE IN THE SAME PRINCIPAL PLACE OF RESIDENCE; AND

6

1 2. REGULARLY PERFORMED AT LEAST AN EQUAL SHARE
2 OF THE PARENTING FUNCTIONS WITH THE PERMISSION OF A PERSON WITH
3 PARENTAL RIGHTS AND WITHOUT THE EXPECTATION OF FINANCIAL
4 COMPENSATION OTHER THAN FUNDS PAID BY A GOVERNMENTAL UNIT TO PAY FOR
5 EXPENSES OF THE MINOR.

6 [(a)] (B) (1) A [parent] DESIGNATING PERSON may designate a standby
7 guardian by means of a written designation:

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

10 (ii) Signed by the standby guardian.

11 (2) (i) If a [parent] DESIGNATING PERSON is physically unable to sign a
12 written designation, another person may sign the designation on the [parent's]
13 DESIGNATING PERSON'S behalf and at the [parent's] DESIGNATING PERSON'S
14 direction.

15 (ii) 1. A designation under this paragraph shall be signed in the
16 presence of the [parent] DESIGNATING PERSON and two witnesses at least 18 years of
17 age, neither of whom may be the standby guardian.

18 2. The standby guardian also shall sign a designation under this
19 paragraph.

20 [(b)] (C) (1) A designation of a standby guardian shall identify the [parent]
21 DESIGNATING PERSON, the minor, and the person designated to be the standby
22 guardian, state the duties of the standby guardian, and indicate that the [parent]
23 DESIGNATING PERSON intends for the standby guardian to become the minor's guardian
24 in the event the [parent] DESIGNATING PERSON either:

25 (I) DIES;

26 [(i)] (II) Becomes incapacitated; or

27 [(ii)] (III) Becomes debilitated and consents to the beginning of the
28 standby guardian's authority.

29 (2) A [parent] DESIGNATING PERSON may designate an alternate standby
30 guardian in the same writing and by the same manner as the designation of a standby
31 guardian.

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

33 Designation of Standby Guardian

34 I (name of [parent] DESIGNATING PERSON) hereby designate (name, home
35 address, and telephone number of standby guardian) as standby guardian of the person
36 and property of my child(ren) (name of child(ren)).

7

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

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

5 (1) I DIE;

6 [(1)] (2) My doctor concludes I am mentally incapacitated, and thus unable
7 to care for my child(ren); or

8 [(2)] (3) My doctor concludes that I am physically debilitated, and thus
9 unable to care for my 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 as
16 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] DESIGNATING PERSON'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
36 standby guardian by a parent may, but need not be, in the following form:

8

1 Consent to Designation of Standby Guardian

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

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

8 Signature of Person with Parental Rights: _____

9 Address: _____

10 Date: _____

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

15 Witness's Signature: _____

16 Address: _____

17 Date: _____

18 Witness's Signature: _____

19 Address: _____

20 Date: _____

21 Standby Guardian's Signature: _____

22 Address: _____

23 Date: _____]

24 [(c)] (D) The authority of the standby guardian under a designation shall begin
25 on:

26 (1) THE STANDBY GUARDIAN'S RECEIPT OF A COPY OF THE
27 DESIGNATING PERSON'S DEATH CERTIFICATE;

28 [(1)] (2) The standby guardian's receipt of a copy of a determination of
29 incapacity under § 13-906 of this subtitle; or

30 [(2)] (3) The standby guardian's receipt of:

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

33 (ii) A copy of the [parent's] DESIGNATING PERSON'S written
34 consent to the beginning of the standby guardianship, signed by the [parent]
35 DESIGNATING PERSON in the presence of two witnesses at least 18 years of age, neither
36 of whom is the standby guardian, and signed by the standby guardian; and

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

1 [(d)] (E) (1) If a parent is physically unable to sign a written consent to the
2 beginning of the standby guardianship, another person may sign the written consent to
3 the beginning of the standby guardianship on the parent's behalf and at the parent's
4 direction.

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

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

10 [(e)] (F) (1) A standby guardian shall file a petition for judicial appointment
11 within 180 days of the date of the beginning of the standby guardianship under this
12 section.

13 (2) A STANDBY GUARDIAN WHO FILES A PETITION SHALL GIVE
14 WRITTEN NOTICE OF THE REQUEST FOR JUDICIAL APPOINTMENT TO EACH PERSON
15 WHO HAS PARENTAL RIGHTS OVER THE MINOR.

16 (3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (G)(3) AND (4)
17 OF THIS SECTION, EACH PERSON WHO HAS PARENTAL RIGHTS MAY CHALLENGE
18 THE PETITION IN ACCORDANCE WITH THIS SUBTITLE.

19 [(2)] (4) If the standby guardian fails to file the petition OR GIVE WRITTEN
20 NOTICE OF THE PETITION TO EACH PERSON WHO HAS PARENTAL RIGHTS OVER THE
21 MINOR within the time specified in this subsection, the standby guardian's authority shall
22 terminate 180 days from the date of the beginning of the standby guardianship.

23 [(3)] (5) The standby guardian's authority shall begin again on the filing of
24 the petition AND THE GIVING OF NOTICE.

25 [(f)] (G) (1) A standby guardian shall file a petition for appointment as
26 guardian after receipt of:

27 (I) A COPY OF THE DESIGNATING PERSON'S DEATH CERTIFICATE;

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

30 [(ii)] (III) Copies of:

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

33 2. The [parent's] DESIGNATING PERSON'S written consent to
34 the beginning of the standby guardianship under this section.

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

37 (i) The written designation of the standby guardian signed[, or
38 consented to, by each person having parental rights over the child] BY THE
39 DESIGNATING PERSON;

10

1 (ii) A copy of:

2 1. THE DESIGNATING PERSON'S DEATH CERTIFICATE;

3 [1.] 2. The determination of incapacity of the [parent]

4 DESIGNATING PERSON; or

5 [2.] 3. The determination of debilitation and the [parental]

6 consent BY PETITIONER to the beginning of the standby guardianship; [and]

7 (III) PROOF THAT EACH PERSON WITH PARENTAL RIGHTS WAS

8 SERVED WITH NOTICE OF THE STANDBY GUARDIAN'S REQUEST FOR JUDICIAL

9 APPOINTMENT AND INFORMED OF THE RIGHT TO CHALLENGE THE DESIGNATION;

10 AND

11 [(iii)] (IV) If the petition is filed by a person designated as alternate

12 standby guardian, a statement that the person designated as standby guardian is unwilling

13 or unable to act as standby guardian, and the basis for the statement.

14 (3) (I) If a person who has parental rights cannot be located after

15 reasonable efforts have been made to locate the person, the standby guardian may file a

16 petition under this section [without the consent of the person to the designation of the

17 standby guardian].

18 (II) TO MAKE REASONABLE EFFORTS TO LOCATE THE PERSON

19 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PETITIONER SHALL

20 RESEARCH AT LEAST THREE OF THE FOLLOWING SOURCES OF INFORMATION:

21 1. THE PERSON'S LAST KNOWN ADDRESS;

22 2. THE UNITED STATES POSTAL SERVICE;

23 3. FAMILY MEMBERS AND FRIENDS OF THE PERSON;

24 4. THE PERSON'S LAST KNOWN PLACE OF EMPLOYMENT;

25 5. THE MOTOR VEHICLE ADMINISTRATION;

26 6. TELEPHONE DIRECTORIES;

27 7. CHILD SUPPORT AGENCIES;

28 8. PRISONS; AND

29 9. VOTING REGISTRATION RECORDS.

30 (4) (I) If the standby guardian submits documentation, satisfactory to the

31 court, of the reasonable efforts to locate the person who has parental rights, the court

32 may appoint a standby guardian under this section REGARDLESS OF WHETHER THE

33 PERSON WHO HAS PARENTAL RIGHTS HAS HAD AN OPPORTUNITY TO CHALLENGE

34 THE GUARDIANSHIP DESIGNATION.

35 (II) SATISFACTORY DOCUMENTATION INCLUDES AN AFFIDAVIT BY

36 THE STANDBY GUARDIAN DESIGNEE DESCRIBING THE EFFORTS MADE TO NOTIFY

37 THE PERSON WITH PARENTAL RIGHTS, THE RESULTS OF THE EFFORTS, AND ANY

11

1 SPECIAL CIRCUMSTANCES SURROUNDING THE PARTICULAR CASE THAT AFFECTS
2 THE REASONABLENESS OF THE EFFORTS MADE.

3 [(g)] (H) The court shall appoint a person to be a standby guardian under this
4 section if the court finds that:

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

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

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

11 (4)] If the petition is by a person designated as alternate standby guardian,
12 the person designated as standby guardian is unwilling or unable to act as standby
13 guardian.

14 [(h)] (I) A [parent] DESIGNATING PERSON may revoke a standby guardianship
15 created under this section:

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

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

20 (i) Executing a written revocation;

21 (ii) Filing the revocation with the court in which the petition was filed;
22 and

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

24 [(i)] (J) A person who is judicially appointed as a standby guardian under this
25 section may at any time before the beginning of the person's authority renounce the
26 appointment by:

27 (1) Executing a written renunciation;

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

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

30 (K) THE APPOINTMENT OF A STANDBY GUARDIAN MAY BE CHALLENGED BY
31 A PERSON:

32 (1) WHO HAS PARENTAL RIGHTS AND FOR A SIGNIFICANT PERIOD
33 BEFORE THE ACTION IS COMMENCED HAS LIVED WITH THE MINOR IN THE SAME
34 PRINCIPAL PLACE OF RESIDENCE, UNLESS THE PERSON HAS STAYED IN A HEALTH
35 CARE FACILITY FOR A PROLONGED TIME BECAUSE OF ILLNESS;

36 (2) WHO HAS PARENTAL RIGHTS; OR

12

1 (3) WHO:

2 (I) HAS A PARENT-CHILD RELATIONSHIP WITH THE MINOR FOR
3 AT LEAST 6 MONTHS BEFORE THE PETITION IS FILED OR FOR THE MAJORITY OF THE
4 MINOR'S LIFE IN THE SAME PRINCIPAL PLACE OF RESIDENCE; AND

5 (II) REGULARLY PERFORMED AT LEAST AN EQUAL SHARE OF THE
6 PARENTING FUNCTIONS WITH THE PERMISSION OF A PERSON WITH PARENTAL
7 RIGHTS AND WITHOUT THE EXPECTATION OF FINANCIAL COMPENSATION OTHER
8 THAN FUNDS PAID BY A GOVERNMENTAL UNIT TO PAY FOR EXPENSES OF THE
9 MINOR.

10 (L) THE COURT SHALL SUSTAIN A CHALLENGE TO A STANDBY GUARDIAN
11 PETITION IF IT IS NOT IN THE MINOR'S BEST INTEREST TO GRANT THE PETITION.
12 THE FACTORS THAT THE COURT SHALL CONSIDER IN MAKING ITS DECISION
13 INCLUDE:

14 (1) THE FITNESS OF THE PROPOSED GUARDIAN;

15 (2) THE RELATIONSHIP BETWEEN THE PROPOSED GUARDIAN AND THE
16 MINOR;

17 (3) THE PAST AND PRESENT RELATIONSHIP OF THE CHALLENGER AND
18 THE MINOR;

19 (4) THE PREFERENCE OF THE MINOR IF THE MINOR IS OF SUITABLE
20 AGE AND CAPACITY TO FORM A RATIONAL JUDGMENT;

21 (5) THE POTENTIAL DISRUPTION OF THE FAMILY, SOCIAL, AND SCHOOL
22 LIFE OF THE MINOR;

23 (6) THE SINCERITY OF THE CHALLENGER IN OBJECTING TO THE
24 PROPOSED GUARDIANSHIP;

25 (7) THE DEGREE TO WHICH THE CHALLENGER HAS CONTRIBUTED TO
26 THE PHYSICAL CARE AND SUPPORT OF THE MINOR;

27 (8) OPPORTUNITIES AFFECTING THE FUTURE OF THE MINOR; AND

28 (9) ANY ALTERNATIVE GUARDIANSHIP PLAN THAT THE CHALLENGER
29 PRESENTS.

30 (M) THIS SECTION DOES NOT AFFECT THE RIGHT OF A PERSON TO SEEK A
31 REMEDY PROVIDED UNDER ANY OTHER LAW.

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