

AN ACT

*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2002 Winter  
Supp.

West Group  
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 16 of the District of Columbia Official Code to add a new Chapter 48 establishing a standby guardianship law that enables a parent, legal guardian, or legal custodian who is terminally ill or periodically incapable or debilitated to make long-term plans for a child without terminating or limiting that person's parental or custodial rights.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Standby Guardianship Act of 2002".

Sec. 2. Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the phrase "48. Standby Guardianship . . . 16-4801" after the phrase "47. Free Flow of Information . . . 16-4701".

(b) A new Chapter 48 is added to read as follows:

"Chapter 48  
"Standby Guardianship

"Section

"§ 16-4801. Findings.

"§ 16-4802. Definitions.

"§ 16-4803. Designation of a standby guardian.

"§ 16-4804. Authority of the standby guardian.

"§ 16-4805. Petition for approval of standby guardianship.

"§ 16-4806. Court approval of standby guardian and alternate standby guardian.

"§ 16-4807. Effect of filing standby guardianship petition.

"§ 16-4808. Notice.

"§ 16-4809. Challenging a standby guardianship designation.

"§ 16-4810. Revocation, repudiation, or rescission of standby guardianship.

"§ 16-4801. Findings.

"The Council of the District of Columbia finds that:

"(1) Existing custody law does not provide adequately for the needs of a parent who is terminally ill, or who is periodically incapable of caring for the needs of a child due to the

New  
§ 16-4801

parent's incapacity or debilitation resulting from illness, and who desires to make long-term plans for the future of a child without terminating or limiting in any way the parent's legal rights.

"(2) Children are becoming unnecessarily involved in adversarial court proceedings or are without legally sanctioned caretakers because their ill parents cannot or will not permanently or temporarily transfer care, custody, or control of their children to another person if such a transfer requires any limitation of the custodial parent's rights.

"§ 16-4802. Definitions.

New  
§ 16-4802

For the purposes of this chapter, the term:

(1) "Alternate standby guardian" means a person with all the rights, responsibilities, and qualifications of a standby guardian who acts as the standby guardian if the current or originally designated standby guardian repudiates the designation, becomes incapacitated, or dies.

"(2) "Attending clinician" means a licensed physician or licensed nurse practitioner who:

"(A) Has primary responsibility for the treatment and care of a designator;

"(B) Shares the responsibility for the treatment and care of a designator, or is acting on behalf of the licensed physician or licensed nurse practitioner who has primary responsibility for the treatment and care of the designator; or

"(C) Is familiar with the designator's medical condition in cases where no licensed physician or licensed nurse practitioner has the responsibility for the treatment and care of a designator.

"(3) "Child" means a person under 18 years of age.

"(4) "Consent" means a written authorization signed by the designator.

"(5) "Court" means the Domestic Relations Branch of the Family Division of the Superior Court of the District of Columbia.

"(6) "Debilitation" means those periods when a person cannot care for that person's minor child as a result of a chronic condition caused by physical illness, disease, or injury from which, to a reasonable degree of probability, the designator may not recover.

"(7) "Designation" means the written naming of a standby guardian by the designator.

"(8) "Designator" means a custodial parent, including a person other than a parent who has physical custody of a child and who has been awarded legal custody or guardianship by a court, who has been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover.

"(9) "Determination of incapacity" means a written determination made by the attending clinician that, to a reasonable degree of certainty, a designator is chronically and substantially unable to understand the nature and consequences of decisions concerning the care

of a minor child as a result of a mental or organic impairment and is consequently unable to care for the minor child.

"(10) "Incapacity" means a chronic and substantial inability, as a result of a mental or organic impairment, to understand the nature and consequences of decisions concerning the care of a minor child, and a consequent inability to care for the minor child.

"(11) "Parent" means the biological parent or adoptive mother or father of a child.

"(12) "Standby guardian" means a person named by the designator to assume the duties of a legal custodian of a child upon the occurrence of a triggering event.

"(13) "Triggering event" means any of the following 3 events:

"(A) The designator's debilitation, with the designator's written acknowledgement of debilitation and consent to commencement of the standby guardianship;

"(B) The designator's incapacity as determined by an attending clinician;

or

"(C) The designator's death.

"§ 16-4803. Designation of a standby guardian.

New  
§ 16-4803

"(a) A designator may designate a standby guardian at any time.

"(b) The designation of a standby guardian shall be in writing and shall contain the following information:

"(1) The full name, address, birth date, and gender of the child affected;

"(2) The full name, address, and telephone number of the designator; and

"(3) If known, the names and addresses of any other persons having legal rights to the care, custody, or control of the child.

"(c) The designation shall be signed by the designator. Another adult may sign the designation on behalf of the designator if the designator is physically unable to do so, the designator expressly requests that the adult sign the designation, and the adult signs the designation in the presence of the designator. The designated standby guardian or alternate standby guardian may not sign on behalf of the designator.

"(d) The designation shall be signed and dated by the designator or the designator's proxy in the presence of 2 witnesses who shall be over 18 years of age and who cannot be the standby guardian or the alternate standby guardian. The witnesses shall indicate their witnessing of the signing of the designation by signing the designation.

"(e) The designation shall include a statement that the designation is not valid until it is signed and witnessed as required by subsection (d) of this section.

"(f) The standby guardian, and the alternate standby guardian, if one is designated, shall sign the executed designation to indicate acceptance of the standby guardianship.

"§ 16-4804. Authority of the standby guardian.

New  
§ 16-4804

"(a) Upon the occurrence of a triggering event, the standby guardian shall have authority to act and shall assume the rights, powers, duties, and obligations existing under law between a

legal custodian and a child. The designator shall retain concurrent authority over the child as the designator's health permits.

"(b) If a clinician determines, at the request of the designator, that the designator is no longer incapacitated, or the designator withdraws the consent that acknowledged debilitation, the standby guardian shall no longer have authority to act as the child's legal custodian. Failure of a standby guardian to comply with this provision and to immediately return the child to the designator's care shall entitle the designator to an emergency hearing in a court of competent jurisdiction.

"(c) The designation of a standby guardian does not extinguish or limit any rights, powers, duties, or obligations of the parent, legal custodian, or legal guardian, or of any other individual with parental or custodial rights existing at the time of the designation. The standby guardianship shall be construed so as to enable the designator to plan for the future care of a child, without terminating parental or legal rights, and to give the standby guardian the authority to act in a manner consistent with the known wishes of the designator regarding the care, custody, and support of the minor child.

"(d) The commencement of the standby guardian's authority to act shall not divest the designator of any parental rights. A standby guardian shall assure the designator frequent and continuing contact with and physical access to the child and, to the greatest extent possible, the involvement of the designator in the decision-making on behalf of the child.

"(e) At the death of the designator, the standby guardian shall become the legal custodian of the child as defined in District of Columbia statutes.

"§ 16-4805. Petition for approval of standby guardianship.

New  
§ 16-4805

"(a) A petition for court approval of a designation under this chapter may be made at any time by filing with the Court the petition and a copy of the designation.

"(1) If the triggering event has not occurred at or before the time of filing, only the designator may file the petition.

"(2) If the triggering event has occurred at or before the time of filing, the standby guardian or alternate standby guardian named in the designation may file the petition.

"(b) The petitioner shall state in the petition, under oath, the following:

"(1) The name and address of the designator;

"(2) The name, address, telephone number, and date of birth of the standby guardian who will obtain or has obtained custody of the child and any alternate standby guardian designated in the designation;

"(3) That the authority of the standby guardian shall become effective upon the earliest occurrence of any one of the following events:

"(A) The designator's debilitation, with the designator's acknowledgement of debilitation and written consent to commencement of the standby guardianship;

"(B) Determination of incapacity of the designator; or

"(C) The designator's death;

"(4) A statement that the designator suffers from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover, and the basis for the statement, such as the date and source of medical diagnosis, without requiring the identification of the injury, disease, or illness in question;

"(5) If incapacity is the triggering event, a determination of the designator's incapacity, signed and dated by the attending clinician;

"(6) If debilitation is the triggering event, the designator's acknowledgement of the debilitation and consent to commencement of the standby guardianship, signed and dated by the designator;

"(7) If death is the triggering event, the certificate of death for the designator;

"(8) The full name and date of birth of the child who is the subject of the designation;

"(9) The name and address of any other parent of the child whose identity and whereabouts are known to the petitioner or can be reasonably ascertained;

"(10) Consent of the other parent, or a statement of any known reasons why that parent is not assuming or should not assume responsibility for the child;

"(11) Whether there is any prior judicial history regarding custody of the child or any pending litigation regarding custody of the child;

"(12) A brief statement as to why the granting of the petition would be in the best interest of the child who is the subject of the designation;

"(13) The names and addresses of all persons who have lived with the child who is the subject of the designation for the 5 years immediately preceding the date the petition was filed or since the child's birth, if the child is less than 5 years old at the time the petition was filed; and

"(14) A request that the court approve the designation.

"(c) The standby guardian petitioning the court shall attach to the petition the following documentation or provide an explanation, under oath, as to why such documents are not attached:

"(1) A copy of the designation;

"(2) Proof of the triggering event;

"(3) The child's birth certificate;

"(4) Proof of notice of the petition and hearing, as required by this chapter; and

"(5) Consent of the other parent, or a statement of any known reasons why that parent is not assuming or should not assume responsibility for the child.

"(d) If filed after the triggering event, the petition shall be filed as soon as practicable after the occurrence of the triggering event, but in no event later than 90 days after the triggering event.

"(e) The authority of the standby guardian shall cease upon his or her failure to file the

petition within 90 days, but shall recommence upon the filing of the petition.

"§ 16-4806. Court approval of standby guardian and alternate standby guardian.

"(a) The Court shall enter an order approving the designation of the standby guardian if the Court determines that the appointment of the standby guardian is in the best interest of the child. Unless required to hold a hearing pursuant to subsection (i) of this section, the Court shall make its determination that the appointment of the standby guardian is in the best interest of the child based upon:

"(1) The facts set forth in the petition; and

"(2) A finding that the designator meets the definition of designator as that term is defined in § 16-4802(8).

"(b) If requested in the petition, the Court may also approve an alternate standby guardian, identified by the designator, to act as the standby guardian if the current or originally designated standby guardian repudiates the designation, becomes incapacitated, or dies.

"(c) The order shall provide that, subject to restoration of the designator's ability to parent as provided in § 16-4804(b), the authority of the standby guardian to act as legal custodian of the child shall be effective upon the Court's receipt of, or immediately if the Court is in receipt of, one of the following documents:

"(1) The written consent of the designator to the commencement of the standby guardianship;

"(2) The determination of incapacity of the designator; or

"(3) The designator's death certificate.

"(d) Unless it appears on the face of the petition that requirements of this chapter have not been met, the Court shall grant the petition within 120 days of the filing of the petition, or within 20 days of the filing of proof of notice having been served on parties required to be served pursuant to § 16-4808, whichever occurs first. If the requirements of this chapter have not been met, the Court shall not dismiss the petition, but shall issue an order to the petitioner to appear in court within 30 days of issuance of the order to remedy the deficiencies in the petition or to show cause why the petition should be granted notwithstanding the deficiencies.

"(e) There shall be a rebuttable presumption that Court approval of a standby guardian petition order is in the best interest of the child if:

"(1) The designator is the sole surviving parent;

"(2) The parental rights of any non-custodial parent have been terminated or relinquished; or

"(3) All parties consent to the designation.

"(f) A designation of a standby guardian shall constitute a rebuttable presumption that the designated standby guardian is capable of serving as standby guardian.

"(g) The designation shall constitute evidence of the designator's wishes regarding the designator's children in the same manner as under § 16-911(a)(5).

"(h) The Court may approve the designation without a hearing when:



**ENROLLED ORIGINAL**

"§ 16-4808. Notice.

New  
§ 16-4808

"(a) The petitioner shall notify any person named in the designation within 10 days of the filing of the petition of any hearing on that petition. Notice shall be attempted on all other persons who are entitled to notice under §§ 16-4501 through 16-4524.

"(b) Notice shall be by summons, including a copy of the designation, the petition, and documents required by this section.

"(c) Notice is sufficient by mailing a copy of the executed copy of the petition, the designation, and other documents required by § 16-4805(b) to those persons entitled to notice under this section. The mailing shall be by certified mail, restricted delivery, return receipt requested to the current or last-known address of a person entitled to notice.

"(d) Notice may also be given in any other manner calculated to give notice and not prohibited by statute or court rule.

"(e) If the petition alleges that a parent, legal custodian, or guardian cannot be located, reasonable efforts, such as those required in legal custody cases as described in § 13-336, shall be made by the petitioner to locate the other parents. Such efforts must be reported to the court.

"§ 16-4809. Challenging a standby guardianship designation.

New  
§ 16-4809

"(a) An individual entitled to notice under §§ 16-4501 through 16-4524 (the Uniform Child Custody Jurisdiction Act) may challenge a standby guardianship designation order by initiating a child custody proceeding in the Superior Court of the District of Columbia or in any court that could exercise jurisdiction in accordance with §§ 16-4501 through 16-4524.

"(b) An order of custody issued by a court of competent jurisdiction supersedes any designation of standby guardianship.

"§ 16-4810. Revocation, repudiation, or rescission of standby guardianship.

New  
§ 16-4810

"(a) The authority of a standby guardian approved by the Court pursuant to § 16-4805 may be revoked by the designator filing a notice of revocation with the Court.

"(1) The notice of revocation shall identify the standby guardian or alternate standby guardian to whom the revocation shall apply.

"(2) A copy of the revocation shall also be delivered to the standby guardian whose authority is revoked and to any alternate standby guardian who may be authorized to act. The revocation shall be delivered to the standby guardian and the alternate standby guardian by certified mail, restricted delivery, return receipt requested or by any other method allowed by local law.

"(b) An executed designation not yet effective because a triggering event has not occurred or a petition has not been filed may be revoked by the designator or repudiated by the prospective standby guardian by notifying the other party in writing.

"(c) A designation may also be revoked by the execution of a subsequent inconsistent designation.

"(d) If at any time the Court finds that the designator no longer meets the definition of designator as that term is defined in § 16-4802(8), the Court shall rescind its approval of the

standby guardian.

"(e) The standby guardian shall file with the Court, as soon as practicable but no later than 90 days following a designator's death, a copy of the certificate of death. The standby guardian's failure to file within the 90-day period shall be grounds for the Court to rescind the authority of the standby guardian sua sponte. All acts undertaken by the standby guardian on behalf of and in the interest of the child before the Court's rescission shall be valid and enforceable."

**Sec. 3. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 603(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 4. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia