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## Standby Guardianship

Every State permits transfer of guardianship authority over a child from a parent, including an adoptive parent, to another adult when the child has no other parent available to assume responsibility for his or her care and custody. A traditional guardianship provides for the care of a child in the event of the parent's death or permanent disability and is generally regarded as a permanent transfer of custody and authority from the parent to the guardian.

Standby guardianship laws provide parents a way to legally transfer custody of their child without the necessity of relinquishing their parental rights. Many States developed these laws specifically to address the needs of parents living with HIV/AIDS, other disabling conditions, or terminal illnesses who want to plan a legally secure future for their children. Approximately 28 States and the District of Columbia have made statutory provisions for standby guardianships.<sup>1</sup>

<sup>1</sup> The word "approximately" is used to stress the fact that the States frequently amend their laws. The States that, as of February 2015, have provisions for standby guardianship include Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Most standby guardianship laws include these provisions:

- A parent may designate a certain person to be guardian for his or her children.
- The guardianship may go into effect during the parent's lifetime and may continue after the parent's death.
- The parent retains much control over the guardianship. He or she may determine when it can begin (although it may commence automatically if the parent becomes seriously ill or mentally incapacitated) and can withdraw the authority if the arrangement does not work to the parent's satisfaction.
- The parent shares decision-making responsibility with the guardian. During the parent's lifetime, the guardian is expected to be in the background, embrace responsibility when needed, and step back when the parent is feeling capable.
- The court order for standby guardianship is supported by the authority of a court that has examined facts relevant to the particular family.

## Establishing a Standby Guardianship

Many States allow a parent or legal guardian to nominate a standby guardian regardless of the nominator's health status. However, five States and the District of Columbia preclude such nomination unless the parent is either chronically ill or has been diagnosed with a terminal illness.<sup>2</sup> In six States, the parent must be at significant risk of death or a condition of incapacity that will impair the parent's ability to care for his or her child within the next 2 years.<sup>3</sup>

Standby guardianship is typically established in one of two ways:

- Seven States require the nominating parent to file a petition, followed by a court hearing, prior to the circumstance (which is referred to as a "triggering event") that necessitates the standby guardianship.<sup>4</sup>

- Twenty States and the District of Columbia allow the parent to nominate a standby guardian through a written designation that is signed by two witnesses. The nomination must be affirmed by filing a petition prior to or after the triggering event and by attending a court hearing following the event.<sup>5</sup>
- Nine States allow the parent to use either method to nominate a standby guardian.<sup>6</sup>
- Tennessee allows parents to designate a standby guardian through a power of attorney without court approval.

When confirming an appointment for a guardian, approximately nine States require that at a certain age, the child must be notified of the hearing and that the court must consider the child's preferences. The age requirement varies by State.<sup>7</sup>

## Activating the Standby Guardian's Authority

A triggering event is what must occur to activate the standby guardian's authority. Twenty States and the District of Columbia define this event as the parent's death, mental incapacity, or physical debilitation.<sup>8</sup> In seven States and the District of Columbia, the parent must provide consent when physical debilitation is the triggering event.<sup>9</sup> Nine States and the District of Columbia require that an attending physician document the incapacity or debilitation.<sup>10</sup> In eight States, the parent's consent alone is sufficient to activate the guardianship.<sup>11</sup>

<sup>5</sup> California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Nevada, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.

<sup>6</sup> California, Illinois, Maryland, Massachusetts, New York, North Carolina, Virginia, West Virginia, and Wisconsin.

<sup>7</sup> In Arkansas, Illinois, Massachusetts, Nebraska, Nevada, New Jersey, and New York the court must consider the wishes of a child that is age 14 or older. In Colorado and Virginia, the court must consider the wishes of a child that is age 12 or older.

<sup>8</sup> Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Virginia, West Virginia, and Wisconsin.

<sup>9</sup> Arkansas, Maryland, Minnesota, Nebraska, North Carolina, Pennsylvania, and Wisconsin.

<sup>10</sup> Colorado, Delaware, Georgia, Hawaii, Massachusetts, New Jersey, New York, North Carolina, and Wisconsin.

<sup>11</sup> Illinois, Massachusetts, New York, North Carolina, Pennsylvania, Virginia, West Virginia, and Wisconsin.

<sup>2</sup> California, Nebraska, North Carolina, Virginia, and West Virginia.

<sup>3</sup> Colorado, Delaware, Hawaii, Maryland, Massachusetts, and Wisconsin.

<sup>4</sup> Arkansas, Delaware, Iowa, Michigan, Nebraska, New Jersey, and Vermont.

Once nominated, the standby guardian is authorized to assume responsibility for the child immediately upon being notified of the occurrence of a triggering event. In 15 States and the District of Columbia, the standby guardian whose nomination was by written designation has a statutorily prescribed amount of time in which to file a petition with the court for official appointment as the child's guardian.<sup>12</sup> In 10 States, the standby guardian who was previously named guardian in a petition to the court must file documents with the court to confirm the appointment of guardianship.<sup>13</sup>

## The Noncustodial Parent

Approximately 13 States and the District of Columbia require that both parents, if living, consent to the appointment of a standby guardian.<sup>14</sup> Six States require that notice of any hearing regarding the nomination of a guardian be provided to the child's noncustodial parent.<sup>15</sup> In Massachusetts, a noncustodial parent may prevent the appointment of a guardian by filing a written objection with the court within 30 days. Some States allow the court to proceed without the noncustodial parent's consent under the following circumstances:

- The parent's parental rights have been terminated.<sup>16</sup>
- After reasonable efforts have been made to locate the parent, his or her whereabouts remain unknown.<sup>17</sup>
- The parent is unwilling or unable to assume responsibility for care of the child.<sup>18</sup>

<sup>12</sup> A petition must be filed within 20 days in Florida; 30 days in Colorado, Hawaii, Massachusetts, Virginia, and West Virginia; 60 days in Illinois, Minnesota, New York, and Pennsylvania; 90 days in Connecticut, the District of Columbia, and North Carolina; 120 days in Georgia; and 180 days in Maryland and Wisconsin.

<sup>13</sup> Confirming documents must be filed within 30 days in Delaware, Massachusetts, Virginia, and West Virginia; 60 days in Illinois and New Jersey; and 90 days in Maryland, New York, North Carolina, and Wisconsin.

<sup>14</sup> California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Maryland, Minnesota, Missouri, Nevada, Pennsylvania, and Wisconsin.

<sup>15</sup> Colorado, New Jersey, New York, North Carolina, Virginia, and West Virginia.

<sup>16</sup> In 12 States and the District of Columbia, including California, Colorado, Connecticut, Delaware, Georgia, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, and Pennsylvania.

<sup>17</sup> In 10 States, including Georgia, Illinois, Maryland, Minnesota, Nevada, New Jersey, Pennsylvania, Virginia, West Virginia, and Wisconsin.

<sup>18</sup> In five States, including Illinois, Minnesota, Nevada, Pennsylvania, and Wisconsin.

## Authority of the Parent vs. the Standby Guardian

Laws in approximately 10 States and the District of Columbia provide that once a standby guardianship is activated, the standby guardian and parent, while living, have concurrent or shared authority. Statutes in 15 States and the District of Columbia specifically state that the commencement of a guardianship does not in any way limit or terminate the parent's parental rights. However, four States provide that once the guardianship is activated, the standby guardian assumes sole authority. In six States and the District of Columbia, a standby guardian's authority becomes inactive upon an attending physician's written certification that the parent is restored to health. In Vermont, the guardianship order includes a written agreement regarding the respective responsibilities of the guardian and the parents, as well as any parent-child contact and parental involvement in decision-making.

## Withdrawing Guardianship

In 15 States and the District of Columbia, when a nomination of a standby guardian has been made by written designation, the parent may revoke the designation by informing the standby guardian in writing.<sup>19</sup> After an appointment has been approved by the court, 13 States and the District of Columbia require that a written revocation be filed with the court and that the standby guardian be notified in writing.<sup>20</sup> In eight States and the District of Columbia, a person may refuse an appointment to be a standby guardian by notifying both the court and the parent in writing.<sup>21</sup> In Indiana, a declaration of guardianship expires 90 days after it becomes effective, unless the guardian petitions the court to extend the guardianship. In Vermont, the parent may file a motion with the court to terminate the guardianship at any time.

<sup>19</sup> Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Maryland, Massachusetts, Minnesota, Nevada, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.

<sup>20</sup> Delaware, Florida, Iowa, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Virginia, West Virginia, and Wisconsin.

<sup>21</sup> Delaware, Florida, Maryland, New Jersey, New York, Virginia, West Virginia, and Wisconsin.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

**Suggested citation:**

Child Welfare Information Gateway. (2015). *Standby guardianship*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

## Alabama

These issues are not addressed in the statutes reviewed.

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## Alaska

These issues are not addressed in the statutes reviewed.

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## American Samoa

These issues are not addressed in the statutes reviewed.

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## Arizona

These issues are not addressed in the statutes reviewed.

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## Arkansas

### Who Can Nominate a Standby Guardian

**Citation: Ann. Code § 28-65-221(a)**

Any parent who is chronically ill or near death may have a standby guardian appointed by the court.

### How to Establish a Standby Guardian

**Citation: Ann. Code §§ 28-65-221(a); 28-65-204(b)(1)-(2)**

The parent must use the same procedures outlined in the subchapter for establishing a guardianship.

The court shall appoint as guardian the person who is most suitable and is willing to serve, having due regard to:

- Any request contained in a will or other written instrument executed by the parent
- Any request for the appointment of a person as his or her guardian made by a minor age 14 or older

### How Standby Authority Is Activated

**Citation: Ann. Code § 28-65-221(a)**

The standby guardian's authority would take effect as outlined in an order of standby guardianship upon:

- The death of the parent
- The mental incapacity of the parent
- The physical debilitation and consent of the parent

The standby guardian shall immediately notify the court upon the death, incapacity, or debilitation of the parent and shall immediately assume the role of guardian of the minor children. The court shall enter an order of guardianship in conformance with this section.

### Involvement of the Noncustodial Parent

This issue is not addressed in the statutes reviewed.

### Authority Relationship of the Parent and the Standby

**Citation: Ann. Code § 28-65-221(a)**

The parent does not surrender parental rights with the appointment of a standby guardian.

### Withdrawing Guardianship

**Citation: Ann. Code § 28-65-401**

Guardianship is terminated upon a minor's death, adoption, emancipation, attainment of majority, or by order of the court.

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## California

### Who Can Nominate a Standby Guardian

**Citation: Prob. Code § 2105**

A custodial parent who has been diagnosed as having a terminal condition, as confirmed by a licensed physician, may nominate a standby guardian.

### How to Establish a Standby Guardian

**Citation: Prob. Code § 1502**

A nomination of a guardian may be made:

- In the petition for the appointment of the guardian or at the hearing on the petition
- In a writing signed either before or after the petition for the appointment of the guardian is filed

### How Standby Authority Is Activated

**Citation: Prob. Code §§ 2105; 1502**

The court may appoint the custodial parent and a person nominated by the custodial parent as joint guardians of the child.

The nomination of a guardian becomes effective when made or upon the occurrence of the specified condition or conditions that are stated in the writing, including the subsequent legal incapacity or death of the person making the nomination.

### Involvement of the Noncustodial Parent

**Citation: Prob. Code §§ 1500; 2105**

Subject to § 1502, a parent may nominate a guardian of the person or estate, or both, of a minor child in either of the following cases:

- The other parent nominates, or consents in writing to the nomination of, the same guardian for the same child.
- At the time the petition for appointment of the guardian is filed, either the other parent is dead or lacks legal capacity to consent to the nomination, or the consent of the other parent would not be required for an adoption of the child.

The appointment of a joint or standby guardian shall not be made over the objections of a noncustodial parent unless it is found that the noncustodial parent's custody would be detrimental to the minor, as provided in § 3041 of the Family Code.

### Authority Relationship of the Parent and the Standby

**Citation: Prob. Code § 2105**

The custodial parent and standby guardian will share in the care, custody, and control of the child.

It is the intent of the Legislature for a parent with a terminal condition to be able to make arrangements for the joint care, custody, and control of his or her minor children to minimize the emotional stress of, and disruption for, the minor children when the parent is incapacitated or upon the parent's death, and to avoid the need to provide a temporary guardian or place the minor children in foster care, pending appointment of a guardian, as might otherwise be required.

### Withdrawing Guardianship

**Citation: Prob. Code § 1502**

Unless the writing making the nomination expressly provides otherwise, a nomination made under this article remains effective notwithstanding the subsequent legal incapacity or death of the person making the nomination.

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## Colorado

### Who Can Nominate a Standby Guardian

**Citation: Rev. Stat. § 15-14-202**

A guardian may be appointed in a will or another signed writing by a parent for any minor child the parent has. A guardian may also be appointed in a will or another signed writing by a guardian of a minor child. A guardian may not appoint a surviving parent who has no parental rights to be a successor guardian.

### **How to Establish a Standby Guardian**

**Citation: Rev. Stat. § 15-14-202**

The appointment may specify the desired limitations on the powers to be given to the guardian.

Upon petition of an appointing parent or guardian and a finding that the appointing parent or guardian will likely become unable to care for the child within 2 years, the court, before the appointment becomes effective, may confirm the selection of a guardian by a parent or guardian and terminate the rights of others to object. If the child is age 12 or older, he or she must consent to the appointment of a guardian.

### **How Standby Authority Is Activated**

**Citation: Rev. Stat. § 15-14-202**

Subject to § 15-14-203, the appointment of a guardian becomes effective upon the death of the appointing parent or guardian, an adjudication that the parent or guardian is an incapacitated person, or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the child, whichever occurs first.

The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment.

### **Involvement of the Noncustodial Parent**

**Citation: Rev. Stat. §§ 15-14-203; 15-14-204; 15-14-205**

Until the court has confirmed an appointee, the other parent may prevent or terminate the appointment at any time by filing a written objection with the court.

Consent is required unless either the parent's parental rights have been terminated or the parent is unwilling or unable to exercise such rights.

After a petition for appointment of a guardian is filed, the court shall schedule a hearing. Notice of the hearing and a copy of the petition must be given to the noncustodial parent.

### **Authority Relationship of the Parent and the Standby**

**Citation: Rev. Stat. § 15-14-202**

The appointment of a guardian by a parent does not supersede the parental rights of either parent.

### **Withdrawing Guardianship**

**Citation: Rev. Stat. §§ 15-14-202; 15-14-210**

The appointing parent or guardian may revoke or amend the appointment at any time before it is confirmed by the court. The authority of the guardian terminates upon the appointment of another guardian by the court, the filing of an objection by another person, or the refusal of the minor age 12 or older to consent.

The guardianship terminates upon a minor's death, adoption, emancipation, or attainment of majority, or as ordered by the court.

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## **Connecticut**

### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Stat. § 45a-624**

A parent or guardian, as principal, may designate a standby guardian of a minor in accordance with the provisions of §§ 45a-624 to 45a-624g, inclusive.

### **How to Establish a Standby Guardian**

**Citation: Ann. Stat. §§ 45a-624; 45a-624b**

A designation of a standby guardian shall be in writing and signed and dated by the principal with at least two witnesses. The principal shall provide a copy of such designation to the standby guardian.

The form for a written designation of a standby guardian is provided in § 45a-624b.

### **How Standby Authority Is Activated**

**Citation: Ann. Stat. §§ 45a-624; 45a-624c; 45a-624e**

The designation shall take effect upon the occurrence of a specified contingency, including, but not limited to, the mental incapacity, physical debilitation, or death of the principal, provided a written statement signed under penalty of false statement has been executed pursuant to § 45a-624c that such contingency has occurred.

If a designation of a standby guardian is effective at the time of death of the principal, the designation shall remain in effect for a period of 90 days after the death. At the end of the 90-day period, the authority of the standby guardian shall cease, unless the standby guardian files an application for guardianship with the probate court in the district in which the minor resides and temporary custody of the minor is granted to the standby guardian or the court appoints the standby guardian as guardian of the person of the minor.

### **Involvement of the Noncustodial Parent**

**Citation: Ann. Stat. § 45a-624a**

If both parents are alive at the time the designation is made, both must consent to the designation unless either has been removed as guardian or has had parental rights terminated.

### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Stat. §§ 45a-624d; 45a-624e**

When a designation of a standby guardian becomes effective upon the occurrence of a specified contingency, the standby guardian shall have the authority and obligations of a guardian, as defined in § 45a-604(5). That designation shall be effective for a period of 1 year.

The standby guardian's authority ends when the specified contingency no longer exists or after 1 year, whichever is sooner.

### **Withdrawing Guardianship**

**Citation: Ann. Stat. § 45a-624f**

The principal may revoke a designation of a standby guardian at any time by written notification of the revocation to the standby guardian.

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## **Delaware**

### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Code Tit. 13, § 2365**

Any parent, custodian, or guardian may petition the family court for a standby guardianship order regarding a child for whom they have been given legal responsibility.

### **How to Establish a Standby Guardian**

**Citation: Ann. Code Tit. 13, §§ 2363; 2367(c)-(d)**

A petition for standby guardianship may be filed in the family court of any of the following counties:

- The county in which one natural parent resides
- The county in which a legal guardian of the child resides
- The county in which one child resides

The court must find, prior to the granting of an order for standby guardianship, that there is a significant risk that the parent, legal custodian, or guardian will die, become incapacitated, or become debilitated as a result of a chronic condition or terminal illness within 2 years of the filing of the petition as certified by an attending physician.

If an order for standby guardianship is granted, the order shall determine the triggering event for the standby guardianship by specifying whether:

- The authority of the standby guardian is effective on the receipt of a determination of the petitioner's incapacity or debilitation, or on the receipt of the certificate of the petitioner's death.
- The authority of the standby guardian may become effective earlier on written consent of the petitioner.

### How Standby Authority Is Activated

**Citation: Ann. Code Tit. 13, § 2368(a)-(d)**

Upon the occurrence of a triggering event set forth in an order appointing a standby guardian, the appointed standby guardian shall be empowered to assume the standby guardian duties immediately.

If the triggering event is the incapacity or debilitation of the parent, legal custodian, or guardian, the attending physician shall provide a copy of that physician's determination to the appointed standby guardian if the guardian's identity is known to the attending physician.

Within 30 days following the assumption of guardianship duties, the standby guardian shall petition the court for confirmation. The confirmation petition shall include a determination of incapacity or debilitation or a death certificate, as appropriate. Absent a judicial finding or determination of unfitness, the standby guardian's power and authority shall commence immediately upon the occurrence of the triggering event and shall continue unimpeded until the court may hear the standby guardian's petition for confirmation.

The court shall confirm an appointed standby guardian previously named and otherwise qualified to serve as guardian unless there is a judicial determination of unfitness with regard to the appointed standby guardian.

### Involvement of the Noncustodial Parent

**Citation: Ann. Code Tit. 13, § 2367(a)-(b)**

When the parent is the person suffering from a progressive chronic condition or terminal illness, prior to granting an order for standby guardianship, the court shall find that the standby guardianship is in the child's best interests, and:

- The child would be dependent, neglected, or abused in the care of the other parent.
- The other parent of the child is deceased.
- The other parent's parental rights have been terminated.
- The other parent consents to the appointment of a standby guardian.

When the legal custodian or guardian is the person suffering from a progressive chronic condition or terminal illness, prior to granting an order for standby guardianship, the court shall find that the standby guardianship is in the child's best interests, and as to each parent:

- The child remains dependent, neglected, or abused in the parent's care.
- The parent of the child is deceased.
- The parent's parental rights have been terminated.
- The parent consents to the appointment of a standby guardian.

### Authority Relationship of the Parent and the Standby

**Citation: Ann. Code Tit. 13, §§ 2361; 2368(f)**

A standby guardianship enables a parent, custodian, or guardian suffering from a progressive chronic condition or a terminal illness to make plans for the permanent future care or the interim care of a child without terminating parental or legal rights.

When the duties of the standby guardian begin, the appointed standby guardian will share authority with the parent, legal custodian, or guardian of the minor child unless the petition states otherwise.

### Withdrawing Guardianship

**Citation: Ann. Code Tit. 13, § 2368(e), (g), (h)**

A standby guardian may decline the appointment at any time before the assumption of that standby guardian's duties by filing a written statement to that effect with the court, with notice to be provided to the petitioner and to the minor child if the latter is age 14 or older.

A parent, legal custodian, or guardian may revoke a standby guardianship by executing a written revocation, filing it with the court where the petition was filed, and promptly notifying the appointed standby guardian of the revocation.

A person who is judicially appointed as a standby guardian may renounce the appointment at any time by:

- Executing a written renunciation
- Filing the renunciation with the court
- Promptly notifying in writing the parent, legal custodian, or legal guardian of the renunciation

## District of Columbia

### Who Can Nominate a Standby Guardian

**Citation: Ann. Code § 16-4802**

A custodial parent, including a person other than a parent who has been awarded custody or guardianship of the child by a court, may be a designator of a standby guardian when he or she has been diagnosed with a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover.

### How to Establish a Standby Guardian

**Citation: Ann. Code §§ 16-4803; 16-4807**

A designator may designate a standby guardian at any time. The designation shall be in writing and signed and dated by the designator or the designator's proxy in the presence of two witnesses who shall be over age 18 and who cannot be the standby guardian.

The standby guardian shall sign the executed designation to indicate acceptance of the standby guardianship. A petition must be filed with the court to approve the designation.

### How Standby Authority Is Activated

**Citation: Ann. Code §§ 16-4802; 16-4805; 16-4806; 16-4807**

The standby guardian's authority becomes effective upon the occurrence of a triggering event, which includes:

- The designator's written acknowledgment of debilitation and consent to commencement of the standby guardianship
- The designator's incapacity as determined by an attending clinician
- The designator's death

If the petition filed by the designator pursuant to § 16-4805 is approved by the court before the occurrence of the triggering event, the standby guardian's authority will commence automatically upon the occurrence of the triggering event. No further petition or confirmation is necessary.

If the petition for approval of the designation has not been filed before the occurrence of a triggering event, the standby guardian shall have temporary legal authority to act as legal custodian or guardian of the child without authorization of the court for a period of 90 days from the date of the triggering event. Within that 90-day period, the standby guardian shall file a petition for approval of the standby guardianship in accordance with § 16-4805.

### Involvement of the Noncustodial Parent

**Citation: Ann. Code § 16-4806**

The court shall presume that approval of a standby guardian petition order is in the best interests of the child if:

- The designator is the sole surviving parent.
- The parental rights of any noncustodial parent have been terminated or relinquished.
- All parties consent to the designation.

An order approving the standby guardianship shall not be entered without a hearing if:

- A noncustodial parent requests a hearing within 20 days of the date the noncustodial parent receives notice of the filing of the petition.
- There is other litigation pending regarding custody of the child.

### Authority Relationship of the Parent and the Standby

**Citation: Ann. Code § 16-4804**

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.

If a clinician determines 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.

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 the rights of any other individual with parental or custodial rights existing at the time of the designation. The standby guardianship shall be construed 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. 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 decision-making on behalf of the child.

### **Withdrawing Guardianship**

**Citation: Ann. Code § 16-4810**

The authority of the standby guardian may be revoked by the designator by filing a notice of revocation with the court.

An executed designation that has not been activated because a triggering event has not occurred or a petition has not been filed may be revoked by the designator or declined by the prospective standby guardian by notifying the other party in writing. A designation may also be revoked by the execution of a subsequent inconsistent designation.

Failure of the standby guardian to file a certificate of death within 90 days of a designator's death shall be grounds for the court to rescind the authority of the standby guardian.

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## **Florida**

### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Stat. § 744.3046**

Both parents, natural or adoptive, if living, or the surviving parent, may nominate a preneed guardian of the person, property, or both, of the parent's minor child.

### **How to Establish a Standby Guardian**

**Citation: Ann. Stat. § 744.3046**

The preneed guardian is nominated by making a written declaration that names the guardian to serve if the minor's last surviving parent becomes incapacitated or dies. An alternate to the guardian may also be nominated to act if the designated preneed guardian refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the last surviving parent of the minor.

The written declaration must reasonably identify the designated preneed guardian and must be signed by the parents in the presence of at least two attesting witnesses present at the same time. The written declaration must also provide the full name as it appears on the birth certificate or as ordered by a court, date of birth, and Social Security number, if any, for each minor child.

The parent making the declaration must file the declaration with the clerk of the court.

### **How Standby Authority Is Activated**

**Citation: Ann. Stat. § 744.3046**

When a petition for incapacity of the last surviving parent or the appointment of a guardian upon the death of the last surviving parent is filed, the clerk shall produce the declaration. Production of the declaration in a proceeding to determine incapacity of the last surviving parent, or in a proceeding to appoint a guardian upon the death of the last surviving parent, constitutes a rebuttable presumption that the designated preneed guardian is entitled to serve as guardian. The court is not bound to appoint the designated preneed guardian if the designated preneed guardian is found to be unqualified to serve as guardian.

Within 20 days after assumption of duties as guardian, a preneed guardian shall petition for confirmation of appointment. If the court finds the preneed guardian to be qualified to serve as guardian, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with § 744.347 and shall file a bond, if the court requires a bond. Letters of guardianship must then be issued in the manner provided in § 744.345.

### **Involvement of the Noncustodial Parent**

**Citation: Ann. Stat. § 744.3046**

Both parents or the surviving parent must consent.

**Authority Relationship of the Parent and the Standby****Citation: Ann. Stat. § 744.3046**

The preneed guardian shall assume the duties of guardian immediately upon an adjudication of incapacity of the last surviving parent or the death of the last surviving parent.

**Withdrawing Guardianship****Citation: Ann. Stat. § 744.3046**

If the preneed guardian refuses to serve, a written declaration appointing an alternate preneed guardian constitutes a rebuttable presumption that the alternate preneed guardian is entitled to serve as guardian. The court is not bound to appoint the alternate preneed guardian if the alternate preneed guardian is found to be unqualified to serve as guardian.

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**Georgia****Who Can Nominate a Standby Guardian****Citation: Ann. Code § 29-2-9**

A standby guardian may be named by a 'designating individual,' which includes:

- A parent who has physical custody of the child and whose rights have not been terminated
- A guardian of the child

**How to Establish a Standby Guardian****Citation: Ann. Code §§ 29-2-10; 29-2-11**

A designating individual may designate an individual to serve as standby guardian of a minor upon the health determination being made.

The designation must be in writing and signed by the designating individual or by some other individual in the designating individual's presence and at the designating individual's express direction. The designation shall be attested to and subscribed by two or more competent witnesses. Neither the witness nor an individual signing on behalf of the designating individual may be named the standby guardian.

A form for the designation is provided in § 29-2-11.

**How Standby Authority Is Activated****Citation: Ann. Code §§ 29-2-10; 29-2-13**

Upon the health determination being made and without the necessity of any judicial intervention, the standby guardian shall assume all the rights, duties, and responsibilities of guardianship of the person of the minor. At that time, the standby guardian shall file with the court a notice of the standby guardianship with a copy of the standby guardianship designation and the health determination attached.

Within 120 days of the health determination being made, the standby guardian shall file, with the probate court in the county of domicile of the minor, a petition seeking temporary guardianship of the minor. Except as otherwise provided, a standby guardianship shall automatically terminate 120 days after the making of the health determination unless the standby guardian has filed a petition for temporary guardianship of the minor, in which case the standby guardianship shall remain in effect, unless otherwise revoked, until the petition is ruled upon.

**Involvement of the Noncustodial Parent****Citation: Ann. Code §§ 29-2-10; 29-2-11**

No proceedings under this part shall relieve any parent, custodial or noncustodial, of a duty to support the minor.

With regard to a parent of the minor who is not the designating individual, the designation shall state, to the extent known, that parent's name and address, whether that parent had his or her parental rights terminated, and whether that parent cannot be located or is deceased.

### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Code § 29-2-10**

Depending on the designating individual's physical or mental condition or health, the designating individual may confer with the standby guardian in decision-making concerning the care and welfare of the minor.

### **Withdrawing Guardianship**

**Citation: Ann. Code § 29-2-12**

At any time before the health determination is made, a standby guardianship may be revoked without notice to anyone by destruction or obliteration of the designation with an intent to revoke, or by a written revocation signed by the designating individual and attested to by two or more competent witnesses.

After the health determination has been made, the standby guardianship may be revoked by the designating individual by filing a notice of such revocation with the court in which the standby guardianship was filed and by mailing a copy of the notice of revocation to the standby guardian.

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## **Guam**

These issues are not addressed in the statutes reviewed.

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## **Hawaii**

### **Who Can Nominate a Standby Guardian**

**Citation: Rev. Stat. § 560:5-202**

A parent may appoint a guardian for any minor child.

### **How to Establish a Standby Guardian**

**Citation: Rev. Stat. § 560:5-202**

A parent may appoint a guardian in a will or another signed writing. Before the appointment becomes effective, the court may confirm the parent's selection of a guardian and terminate the rights of others to object upon:

- Petition of an appointing parent
- A finding that the appointing parent will likely become unable to care for the child within 2 years
- Notice, as provided in § 560:5-205(a), has been given

### **How Standby Authority Is Activated**

**Citation: Rev. Stat. § 560:5-202**

The appointment of a guardian becomes effective upon one of the following:

- The appointing parent's death
- An adjudication that the parent is an incapacitated person
- A written determination by a physician who has examined the parent that states that the parent is no longer able to care for the child

The guardian becomes eligible to act upon the filing of an acceptance of appointment. This acceptance must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

- File the acceptance of appointment and a copy of the will with the court or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court
- Give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor

### **Involvement of the Noncustodial Parent**

**Citation: Rev. Stat. § 560:5-203**

Until the court has confirmed an appointee under § 560:5-202, a minor who is the subject of an appointment by a parent and who is age 14 or older, the child's other parent, or a person other than a parent or guardian having care or custody of the minor, may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment.

**Authority Relationship of the Parent and the Standby****Citation: Rev. Stat. § 560:5-202**

The appointment may specify the desired limitations on the powers to be given to the guardian. The appointment of a guardian by a parent does not supersede the parental rights of either parent.

**Withdrawing Guardianship****Citation: Rev. Stat. § 560:5-202**

The appointing parent may revoke or amend the appointment before confirmation by the court.

The authority of a guardian appointed under this section terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to § 560:5-203, whichever occurs first.

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**Idaho**

These issues are not addressed in the statutes reviewed.

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**Illinois****Who Can Nominate a Standby Guardian****Citation: Comp. Stat. Ch. 755, § 5/11-5.3**

A parent, adoptive parent, adjudicated parent whose rights have not been terminated, or legal guardian may designate a standby guardian.

**How to Establish a Standby Guardian****Citation: Comp. Stat. Ch. 755, §§ 5/11-5.3; 5/11-10.1**

A standby guardian may be designated in any writing, including a will. The designation must be witnessed by two or more credible witnesses who are at least age 18, neither of whom is the person designated as the standby guardian.

Upon the filing of a petition, the court may appoint a standby guardian. Children age 14 and older must be notified of the hearing.

The standby guardian must take an oath or affirmation that he or she will faithfully discharge the duties of guardianship and may be required to file a bond once duties are assumed.

**How Standby Authority Is Activated****Citation: Comp. Stat. Ch. 755, § 5/11-13.1**

The standby guardian shall not have any duties or authority to act until the standby guardian receives knowledge of:

- The death or consent of the minor's parent or parents or guardian
- The inability of the minor's parent or parents or guardian to make and carry out day-to-day child care decisions concerning the minor

When the triggering event has occurred, the standby guardian has 60 days to file confirming documents and petition the court for guardianship.

**Involvement of the Noncustodial Parent****Citation: Comp. Stat. Ch. 755, § 5/11-5.3**

The designation of a standby guardian does not affect the rights of the other parent of the child.

The court lacks jurisdiction to proceed on a petition to appoint a guardian if the minor has a living, adoptive, or adjudicated parent whose parental rights have not been terminated, and whose whereabouts are known, and who is willing to assume day-to-day care of the child, unless the parent consents or fails to object after receiving notice of the petition.

**Authority Relationship of the Parent and the Standby****Citation: Comp. Stat. Ch. 755, § 5/11-13.1**

Once the guardianship has been activated, the standby guardian assumes all duties as guardian of the minor.

## Withdrawing Guardianship

**Citation: Comp. Stat. Ch. 755, § 5/11-13.1**

The authority of the standby guardian may be limited or terminated by a court of competent jurisdiction.

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## Indiana

### Who Can Nominate a Standby Guardian

**Citation: Ann. Code § 29-3-3-7**

A parent of a minor may designate a standby guardian.

### How to Establish a Standby Guardian

**Citation: Ann. Code § 29-3-3-7**

A parent may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

A declaration must contain the following information:

- The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any
- The name and date of birth for each child for whom a standby guardian is being designated

A declaration executed under this section must be signed by the declarant in the presence of a notary public.

### How Standby Authority Is Activated

**Citation: Ann. Code § 29-3-3-7**

A declaration executed under this section becomes effective upon the death or incapacity (as defined in § 29-3-1-7.5) of the parent.

### Involvement of the Noncustodial Parent

This issue is not addressed in the statutes reviewed.

### Authority Relationship of the Parent and the Standby

**Citation: Ann. Code § 29-3-3-7**

A standby guardian shall have all the powers granted to a guardian under this article.

## Withdrawing Guardianship

**Citation: Ann. Code § 29-3-3-7**

A declaration executed under this section terminates 90 days after the declaration becomes effective. If, however, the designated standby guardian files a petition for a guardianship of the minor during that 90 day period, the declaration remains in effect until the court rules on the petition.

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## Iowa

### Who Can Nominate a Standby Guardian

**Citation: Ann. Stat. §§ 633.560; 633.591A**

A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in §§ 633.591 to 633.597 for appointment of standby conservator.

A person having physical and legal custody of a minor may petition for appointment of standby conservator.

### How to Establish a Standby Guardian

**Citation: Ann. Stat. §§ 633.591A; 633.571**

A verified petition must be filed with the court. The petition shall be acted upon by the court only when an event specified in the petition has occurred.

The court will consider the preference of a child age 14 or older.

**How Standby Authority Is Activated****Citation: Ann. Stat. § 633.595**

Upon a triggering event, confirming documents must be filed with the court. A hearing will be conducted to appoint the standby guardian.

**Involvement of the Noncustodial Parent**

This issue is not addressed in the statutes reviewed.

**Authority Relationship of the Parent and the Standby****Citation: Ann. Stat. § 633.597**

The powers and duties of such a conservator shall be the same as those of a conservator appointed in response to any of the other petitions authorized in the probate code.

**Withdrawing Guardianship****Citation: Ann. Stat. § 633.594**

The petition may be revoked by the petitioner at any time before appointment of a conservator by the court, provided that the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may also be deposited there.

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**Kansas**

These issues are not addressed in the statutes reviewed.

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**Kentucky**

These issues are not addressed in the statutes reviewed.

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**Louisiana**

These issues are not addressed in the statutes reviewed.

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**Maine**

These issues are not addressed in the statutes reviewed.

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**Maryland****Who Can Nominate a Standby Guardian****Citation: Ann. Code, Est. & Trusts § 13-903**

The parent may file a petition for appointment of a standby guardian. Each person having parental rights over the minor must join in the petition.

**How to Establish a Standby Guardian****Citation: Ann. Code, Est. & Trusts §§ 13-903; 13-904**

The petition for the judicial appointment of a standby guardian shall state:

- The duties of the standby guardian
- Whether the authority of the standby guardian is to become effective on the petitioner's incapacity or death, whichever occurs first
- That there is a significant risk that the petitioner will become incapacitated or die within 2 years of the filing of the petition and the basis for this statement

If the court finds that there is a significant risk that the petitioner will become incapacitated or die within 2 years of the filing of the petition and that the interests of the minor will be promoted by the appointment of a standby guardian, the court shall issue a decree accordingly.

A parent may also designate a standby guardian by means of a written designation that is signed in the presence of two witnesses who are at least age 18, neither of whom is the standby guardian, and signed by the standby guardian. The written designation shall identify the parent, the minor, and the person designated to be the standby guardian, state the duties of the standby guardian, and indicate that the parent intends for the standby guardian to become the minor's guardian in the event the parent either:

- Becomes incapacitated
- Becomes debilitated and consents to the beginning of the standby guardian's authority

#### **How Standby Authority Is Activated**

**Citation: Ann. Code, Est. & Trusts §§ 13-903; 13-904**

The standby guardian's authority becomes effective at:

- The parent's death
- The parent's incapacity
- On receipt of the written consent of the parent

If the petition to appoint has already been approved, the standby guardian has 90 days after the parent's death or incapacity to file confirming documents with the court.

The authority of the standby guardian under a written designation shall begin on the standby guardian's receipt of:

- A copy of a determination of debilitation under § 13-906 of this subtitle
- A copy of the parent's written consent to the beginning of the standby guardianship, signed by the parent in the presence of two witnesses who are at least age 18, neither of whom is the standby guardian, and signed by the standby guardian
- A copy of the birth certificate for each child for whom the standby guardian is designated

The standby guardian shall file a petition for judicial appointment within 180 days of the date of the beginning of the standby guardianship under this section.

#### **Involvement of the Noncustodial Parent**

**Citation: Ann. Code, Est. & Trusts § 13-903**

Any person with parental rights over the minor must join in the petition to appoint a standby guardian. If a person with parental rights cannot be located after reasonable efforts have been made, the court may proceed to appoint a standby guardian.

#### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Code, Est. & Trusts § 13-907**

The standby guardian's authority is limited and does not divest the parent of any parental or guardianship rights.

#### **Withdrawing Guardianship**

**Citation: Ann. Code, Est. & Trusts §§ 13-903; 13-904**

Before the petition is filed, the parent may notify the standby guardian verbally or in writing. After the petition has been granted, the parent must file a written revocation with the court and notify the standby guardian.

The standby guardian may renounce an appointment at any time before assuming authority by filing a written renunciation with the court and notifying the parent in writing.

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## **Massachusetts**

### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Laws Ch. 190B, § 5-202**

A parent may appoint a guardian for any minor child the parent has or may have in the future. A guardian may appoint a guardian for any minor child for whom the guardian serves.

### **How to Establish a Standby Guardian**

**Citation: Ann. Laws Ch. 190B, §§ 5-202; 5-203**

A parent or guardian, by will or other writing signed by the parent or guardian and attested by at least two witnesses, may appoint a guardian for his or her minor child, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.

Upon petition of an appointing parent or guardian, upon finding that the appointing parent or guardian will likely become unable to care for the minor within 2 years or less, and after notice as provided in § 5-206(b), the court, before the appointment becomes effective, may confirm the parent's or guardian's selection of a guardian and terminate the rights of others under § 5-203.

The minor child age 14 or older who is the subject of a parental appointment may prevent the appointment or cause it to terminate by filing in the court in which the appointing instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance.

### **How Standby Authority Is Activated**

**Citation: Ann. Laws Ch. 190B, § 5-202**

The appointment of a guardian becomes effective on the first of the following to occur:

- The appointing parent's or guardian's death
- An adjudication that the parent or guardian is an incapacitated person
- A written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the minor unless the minor is in the care or custody of a person other than a parent

Within 30 days after the appointment becomes effective, a guardian shall:

- File a notice of acceptance of appointment and a copy of the will or other nominating instrument with the court of the county in which the will was or could be probated or, in the case of another nominating instrument, with the court of the county in which the minor resides
- Unless the appointment was previously confirmed by the court, petition the court for confirmation of the appointment

### **Involvement of the Noncustodial Parent**

**Citation: Ann. Laws Ch. 190B, § 5-203**

The child's other parent, if that parent's parental rights have not been terminated, may prevent the appointment or cause it to terminate by filing a written objection to the appointment in the court in which the appointing instrument is filed before it is accepted or within 30 days after receiving notice of its acceptance.

### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Laws Ch. 190B, § 5-202**

The parental appointment of a guardian shall not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who dies or was adjudged incapacitated has priority.

### **Withdrawing Guardianship**

**Citation: Ann. Laws Ch. 190B, § 5-202**

The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court, the revocation of the appointment by the appointing parent or guardian, or the filing of an objection pursuant to § 5-203.

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## **Michigan**

### **Who Can Nominate a Standby Guardian**

**Citation: Comp. Laws § 700.5205**

The court may appoint a limited guardian for an unmarried minor upon the petition of the minor's parent or parents.

### How to Establish a Standby Guardian

**Citation: Comp. Laws § 700.5205**

The court may appoint a limited guardian for an unmarried minor upon the petition of the minor's parent or parents if all of the following requirements are met:

- The parents with custody of the minor consent or, in the case of only one parent having custody of the minor, the sole parent consents to the appointment of a limited guardian.
- The parent or parents voluntarily consent to the suspension of their parental rights.
- The court approves a limited guardianship placement plan agreed to by both of the following parties:
  - » The parents with custody of the minor or, in the case of only one parent having custody of the minor, the sole parent who has custody of the minor
  - » The person or persons whom the court will appoint as the minor's limited guardian

### How Standby Authority Is Activated

**Citation: Comp. Laws § 700.5205**

The parent or parents of a minor who desire to have the court appoint a limited guardian and the person or persons who desire to be appointed the limited guardian must develop a limited guardianship placement plan, using a form given by the State court administrator. A limited guardianship placement plan form must include a notice that informs a parent who is a party to the plan that substantial failure to comply with the plan without good cause may result in the termination of the parent's parental rights.

The proposed limited guardianship placement plan shall be attached to the petition requesting the court to appoint a limited guardian. The limited guardianship placement plan shall include provisions concerning all of the following:

- The reason the parent or parents are requesting the court to appoint a limited guardian for the minor
- Parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship
- The duration of the limited guardianship
- Financial support for the minor
- Any other provisions that the parties agree to include in the plan

### Involvement of the Noncustodial Parent

This issue is not addressed in the statutes reviewed.

### Authority Relationship of the Parent and the Standby

**Citation: Comp. Laws §§ 700.5205(2)(b); 5206(4)**

The limited guardianship placement plan shall provide for parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship.

A limited guardian appointed under this section has all of the powers and duties enumerated in § 5215 except that a minor's limited guardian shall not consent to marriage or adoption of the minor ward or to the release of the minor ward for adoption.

### Withdrawing Guardianship

**Citation: Comp. Laws § 700.5206(3)**

The voluntary suspension of parental rights under § 5205 does not prevent the parent or parents from filing a petition to terminate the limited guardianship at any time as provided in § 5208. Appointment of a limited guardian under this section is a continuing appointment.

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## Minnesota

### Who Can Nominate a Standby Guardian

**Citation: Ann. Stat. §§ 257B.03; 257B.05**

A parent with legal and physical custody or a legal custodian may designate a standby or temporary custodian.

If a triggering event has not occurred, only a custodian or legal guardian may file a petition with the court. If a triggering event has occurred, the standby guardian may file.

### **How to Establish a Standby Guardian**

**Citation: Ann. Stat. §§ 257B.04; 257B.05**

The written designation must identify the designator, the children, the other parent, if any, the standby guardian, and the triggering events. It must include the signed consent of the standby guardian and the other parent, or a statement why the other parent's consent is not required.

The designation must be signed by the designator in the presence of two witnesses who are age 18 or older and not otherwise named in the designation. The witnesses must also sign the declaration.

Approval without a hearing is permitted if both parents consent to the designation, or there is only one surviving parent. A hearing is required in other cases. An optional designation form is provided in the statute.

### **How Standby Authority Is Activated**

**Citation: Ann. Stat. § 257B.06**

The standby custodian's authority commences upon a triggering event, such as a determination of incapacity or a determination of physical debilitation plus consent. If the petition is approved before the triggering event, no further court action is required.

If a designation has been made but not yet approved by the court, the standby custodian has 60 days from the triggering event to file confirming documents and petition for approval. If the parent dies, the standby custodian shall be appointed permanent guardian without additional petition.

### **Involvement of the Noncustodial Parent**

**Citation: Ann. Stat. § 257B.03**

Consent to the designation is required unless the whereabouts of the parent are unknown, parental rights have been terminated, or the parent is unwilling and unable to care for the child.

### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Stat. § 257B.06**

The commencement of the standby custodian's authority does not itself divest the designator of any parental rights but confers on the standby custodian concurrent or shared custody of the child.

The standby custodian shall ensure frequent and continuing contact with and physical access by the parent with the child and shall ensure the involvement of the parents, to the greatest extent possible, in decision-making on behalf of the child.

The standby custodian's authority becomes inactive upon the attending physician's written certification that the parent is restored to health.

### **Withdrawing Guardianship**

**Citation: Ann. Stat. § 257B.07**

Before the petition has been filed with the court, the designator may revoke the appointment of a standby custodian by destroying the designation and notifying the standby custodian. After a petition has been filed, the designator must file a written revocation with the court and notify the standby custodian in writing.

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## **Mississippi**

These issues are not addressed in the statutes reviewed.

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## **Missouri**

### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Stat. § 475.046**

A custodial parent may designate a person to act as standby guardian of a minor.

The laws applicable to guardianship proceedings shall apply to all proceedings under this section, except to the extent determined by the court to be inconsistent with the provisions of this section or as expressly provided in this section.

### How to Establish a Standby Guardian

**Citation: Ann. Stat. § 475.046**

The designation of a standby guardian may be made in a will that complies with the requirements of § 474.320 or by a separate written instrument that is dated and is either duly executed and acknowledged by the custodial parent or is signed by the custodial parent in the presence of at least two disinterested witnesses. If the custodial parent executes more than one document designating a standby guardian and there is a conflict between the documents as to the person designated, the document bearing the latest date shall control.

If a custodial parent who has designated a standby guardian is or becomes seriously ill, either the custodial parent or the person designated as standby guardian may file a petition in the probate division of the circuit court of the county that would be of proper venue for the appointment of a guardian for the child. A copy of the will or written instrument designating the standby guardian and a consent to act as standby guardian signed by the designated person shall be filed with the petition. The petition shall state:

- The name, age, domicile, actual place of residence, and mailing address of the minor
- The name and address of the custodial parent and the designated standby guardian
- The name and address of each parent of the minor and whether that parent is living or dead
- The name and address of the spouse, if applicable, and the names, ages, and addresses of all living children of the minor
- If the person for whom appointment of a standby guardian is sought has been adjudicated incapacitated, the date of adjudication and the name and address of the court that entered the judgment
- The reasons why the appointment of a standby guardian is sought

### How Standby Authority Is Activated

**Citation: Ann. Stat. § 475.046**

The court shall determine appointment of a standby guardian in accordance with the best interests of the minor after considering all relevant factors, including:

- Whether there is a parent other than the custodial parent and, if so, whether the other parent is willing, able, and fit to assume the duties of a parent
- The suitability of a person nominated by the minor, if he or she is able to communicate a reasonable choice
- The desirability of providing arrangements for the care, custody, and control of the minor that shall minimize stress and disruption and avoid his or her placement in foster or similar care pending appointment of a guardian if the custodial parent is adjudicated incapacitated or dies

The authority of a person to act as standby guardian for a minor shall take effect only as follows:

- If the person has previously been appointed by the court as standby guardian, upon the granting of letters of standby guardianship to that person
- If the person has not previously been appointed as standby guardian, either because a petition for appointment has not been filed or because the proceedings are still pending, upon the first to occur of the following:
  - » The duly executed consent of the custodial parent
  - » Entry of an order adjudicating the custodial parent to be incapacitated
  - » The death of the custodial parent

The person shall, within 10 days after he or she begins to act as standby guardian, notify the court in writing of that fact. The court may grant letters of standby guardianship to the person or, if the court deems it advisable, conduct a hearing to determine the propriety of the person having begun, and continuing, to act as standby guardian and the propriety of issuing letters of standby guardianship to the person.

### Involvement of the Noncustodial Parent

This issue is not addressed in the statutes reviewed.

**Authority Relationship of the Parent and the Standby****Citation: Ann. Stat. § 475.046**

Nothing in this section shall be construed to:

- Deprive a parent of his or her legal rights with respect to a child of that parent, including court-ordered visitation with the child, nor to authorize a grant of authority to a standby guardian that would supersede any such rights
- Relieve a parent of his or her legal obligations or duties to a child of that parent, including a duty to support the child in accordance with a court or administrative order

**Withdrawing Guardianship****Citation: Ann. Stat. § 475.083**

The authority of a guardian terminates:

- When a minor ward becomes age 18
- Upon an adjudication that an incapacitated or disabled person has been restored to his or her capacity or ability
- Upon revocation of the letters of the guardian
- Upon the acceptance by the court of the resignation of the guardian
- Upon the death of the ward
- Upon an order of court terminating the guardianship

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**Montana**

These issues are not addressed in the statutes reviewed.

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**Nebraska****Who Can Nominate a Standby Guardian****Citation: Rev. Stat. § 30-2608**

The court may appoint a standby guardian for a minor whose parent is chronically ill or near death.

**How to Establish a Standby Guardian****Citation: Rev. Stat. §§ 30-2608; 30-2610**

A petition must be filed and a hearing held before the court to appoint a guardian.

The court shall appoint a person nominated by a minor who is age 14 or older, unless the court finds that the appointment is contrary to the minor's best interests.

**How Standby Authority Is Activated****Citation: Rev. Stat. § 30-2608**

The standby guardian's authority may take effect, if the minor is left without a remaining parent, upon:

- The death of the parent
- The mental incapacity of the parent
- The physical debilitation and consent of the parent

**Involvement of the Noncustodial Parent****Citation: Rev. Stat. § 30-2608**

A parent is preferred as a guardian.

For a child born out of wedlock, the court also considers:

- The wishes of the deceased parent, as stated in a will
- The surviving parent's acknowledgment of paternity, payment of child support, and fitness as a parent

**Authority Relationship of the Parent and the Standby****Citation: Rev. Stat. § 30-2608**

An appointment of a standby guardian does not suspend or terminate a parent's parental rights.

**Withdrawing Guardianship**

This issue is not addressed in the statutes reviewed.

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**Nevada****Who Can Nominate a Standby Guardian****Citation: Rev. Stat. § 159.205**

A parent may appoint a short-term guardian for the child.

**How to Establish a Standby Guardian****Citation: Rev. Stat. § 159.205**

Except as otherwise provided in this section or § 127.045, a parent, without the approval of a court, may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of the minor child.

The appointment of a short-term guardianship is effective for a minor who is age 14 or older only if the minor provides written consent to the guardianship.

**How Standby Authority Is Activated****Citation: Rev. Stat. § 159.205**

The written instrument appointing a short-term guardian becomes effective immediately upon execution and must include, without limitation:

- The date on which the guardian is appointed
- The names of the parent who appointed the guardian, the minor child for whom the guardian is appointed, and the person who is appointed as the guardian
- The signature of the parent and the guardian in the presence of a notary public acknowledging the appointment of the guardian

The short-term guardian serves as guardian for 6 months, unless the written instrument appointing the guardian specifies a shorter term or specifies that the guardianship is to terminate upon the happening of an event that occurs sooner than 6 months.

Only one written instrument appointing a short-term guardian may be effective at any given time.

**Involvement of the Noncustodial Parent****Citation: Rev. Stat. § 159.205**

The appointment of a short-term guardian does not affect the rights of the other parent of the minor.

A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent:

- Whose parental rights have not been terminated
- Whose whereabouts are known
- Who is willing and able to make and carry out daily child care decisions concerning the minor
- Who has not given written consent to the appointment

**Authority Relationship of the Parent and the Standby**

This issue is not addressed in the statutes reviewed.

**Withdrawing Guardianship****Citation: Rev. Stat. § 159.205**

The appointment of a short-term guardian:

- May be terminated by an instrument in writing signed by either parent, if that parent has not been deprived of the legal custody of the minor
- Can be terminated by any order of a court of competent jurisdiction

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## New Hampshire

These issues are not addressed in the statutes reviewed.

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## New Jersey

### Who Can Nominate a Standby Guardian

**Citation: Ann. Stat. § 3B:12-72**

A parent or legal custodian may petition the court to appoint a standby guardian.

### How to Establish a Standby Guardian

**Citation: Ann. Stat. §§ 3B:12-72; 3B:12-74; 3B:12-77**

A petition for the judicial appointment of a standby guardian of a minor child shall state:

- The triggering event or events that shall cause the authority of the appointed standby guardian to become effective
- That there is a significant risk that the parent or legal custodian will die, become incapacitated, or become debilitated as a result of a progressive chronic condition or a fatal illness
- The name, address, and qualifications of the proposed standby guardian

The parent or legal custodian may choose a standby guardian by means of a written designation that names the standby guardian in the event of the designator's death, incapacity, or debilitation. The written designation shall reasonably identify the designator, the minor child, and the standby guardian. The written designation shall be signed by the designator in the presence of two witnesses who shall also sign the designation.

The designation shall state the triggering event by which the parent or legal custodian intends the designated standby guardianship of the minor child to be activated. An optional designation form is provided in the statute.

Children who are age 14 or older must be notified and the court will consider their preference.

### How Standby Authority Is Activated

**Citation: Ann. Stat. § 3B:12-73**

Upon the occurrence of a triggering event, the standby guardian is empowered to immediately assume his or her duties. If the triggering event is the incapacity or debilitation of the parent or legal custodian, the attending physician shall provide a copy of his determination to the appointed standby guardian.

Within 60 days, the standby guardian must file a petition with the court for confirmation of guardianship. The confirmation petition shall include a determination of incapacity or debilitation or a death certificate, as appropriate.

### Involvement of the Noncustodial Parent

**Citation: Ann. Stat. § 3B:12-72**

Notice of a hearing must be served to any parent who has parental rights within 30 days of filing the petition. If, after a diligent search, the noncustodial parent cannot be found, the court may proceed.

No notice is required to a parent who is deceased or whose rights have been previously terminated.

### Authority Relationship of the Parent and the Standby

**Citation: Ann. Stat. §§ 3B:12-73; 3B:12-74**

Commencement of the duties of the standby guardian shall confer upon the appointed standby guardian shared authority with the custodial parent or legal custodian of the minor child, unless the petition states otherwise.

Appointment of a standby guardian shall not involuntarily deprive any parent of parental rights.

### Withdrawing Guardianship

**Citation: Ann. Stat. § 3B:12-73**

A standby guardian may decline appointment at any time before the assumption of his or her duties by filing a written statement to that effect with the court, with notice to the petitioner and to the minor child if the latter is age 14 or older.

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A parent or legal custodian may revoke a standby guardianship by executing a written revocation, filing it with the court where the petition was filed, and promptly notifying the appointed standby guardian of the revocation.

An unwritten revocation may be considered by the court if the revocation can be proved by clear and convincing evidence submitted to the court.

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## **New Mexico**

These issues are not addressed in the statutes reviewed.

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## **New York**

### **Who Can Nominate a Standby Guardian**

**Citation: Surrogate's Ct. Proc. Act § 1726**

A parent, legal guardian, or legal custodian may petition for the appointment of a standby guardian. The child's primary caretaker may petition when the parent, guardian, or custodian cannot be located.

### **How to Establish a Standby Guardian**

**Citation: Surrogate's Ct. Proc. Act §§ 1726; 1706**

The petition must state:

- Whether the authority of the standby guardian is to become effective upon the petitioner's incapacity, death, or consent, whichever occurs first
- That the petitioner suffers from either a progressively chronic illness or an irreversibly fatal illness, and the basis for such statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question

If the court finds that the petitioner suffers from a progressively chronic illness or an irreversibly fatal illness and that the interests of the child will be promoted by the appointment of a standby guardian, it must make a decree accordingly.

A standby guardian may also be designated by a written designation, signed by the parent in the presence of two witnesses. An optional designation form is provided in the statute.

The court will consider the preference of a child who is age 14 or older. If the youth is older than age 18, he or she shall consent to the appointment of a suitable guardian.

### **How Standby Authority Is Activated**

**Citation: Surrogate's Ct. Proc. Act § 1726**

The standby guardian's authority commences upon receipt of a determination of the parent's incapacity, certificate of the parent's death, or the parent's written consent. An attending physician must document the parent's incapacity.

A guardian by judicial decree has 90 days to file confirming documents. A guardian by written designation has 60 days to file confirming documents and petition for appointment.

### **Involvement of the Noncustodial Parent**

**Citation: Surrogate's Ct. Proc. Act § 1705**

Notice of hearing is required to any parent living in a known residence in New York, unless the parent has abandoned the child, is deprived of civil rights, divorced from the custodial parent, incompetent, or otherwise judicially deprived of custody of the child.

### **Authority Relationship of the Parent and the Standby**

**Citation: Surrogate's Ct. Proc. Act § 1726**

The commencement of the standby guardian's authority due to incapacity, debilitation, or consent shall not divest the parent of any parental rights, but shall confer upon the standby guardian concurrent authority with respect to the child.

### **Withdrawing Guardianship**

**Citation: Surrogate's Ct. Proc. Act § 1726**

The petitioner may revoke a standby guardianship created by judicial appointment by executing a written revocation, filing it with the court that issued the decree, and promptly notifying the standby guardian of the revocation.

A judicially appointed standby guardian may at any time before the commencement of his or her authority renounce the appointment by executing a written renunciation and filing it with the court that issued the decree, and promptly notifying the petitioner of the revocation.

The parent may revoke a standby guardianship created by written designation:

- By executing a subsequent designation of guardianship by petition to the court
- In the case of a standby guardian whose authority becomes effective upon the death of the parent, by a subsequent designation of standby guardian set forth in a will of the parent
- By notifying the standby guardian verbally or in writing or by any other act evidencing a specific intent to revoke the standby guardianship prior to the filing of a petition

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## North Carolina

### Who Can Nominate a Standby Guardian

**Citation: Gen. Stat. § 35A-1370**

A parent, adoptive parent, or legal guardian who suffers from a progressive chronic or irreversibly fatal illness may petition for the appointment of a standby guardian.

### How to Establish a Standby Guardian

**Citation: Gen. Stat. §§ 35A-1372; 35A-1373; 35A-1374**

A petition for the judicial appointment of a standby guardian of a minor child shall:

- Identify the petitioner, the minor child, and the person designated to be the standby guardian
- State that the authority of the standby guardian is to become effective upon the petitioner's death, incapacity, or debilitation, with the consent of the petitioner, or upon the petitioner's signing of a written consent stating that the standby guardian's authority is in effect, whichever occurs first
- State that the petitioner suffers from a progressively chronic illness or an irreversible fatal illness, and the basis for such a statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question

A parent also may designate a standby guardian by means of a written designation, signed by the parent in the presence of two witnesses who are at least age 18, other than the standby guardian, who shall also sign the writing.

Evidence is required at the hearing to determine whether the requirements of the statute have been satisfied.

### How Standby Authority Is Activated

**Citation: Gen. Stat. §§ 35A-1373; 35A-1374**

The authority of the standby guardian commences upon the parent's death, mental incapacity, physical debilitation plus consent, or written consent alone. An attending physician must document the parent's incapacity or debilitation.

The standby guardian must file confirming documents with the court within 90 days of the triggering event. If the guardianship is by written designation, the standby guardian must petition the court within 90 days for appointment as guardian.

### Involvement of the Noncustodial Parent

**Citation: Gen. Stat. § 35A-1373**

Notice to any biological or adoptive parent is required, along with a copy of the petition. The court may proceed if no complaint for custody of the child has been filed within 30 days.

### Authority Relationship of the Parent and the Standby

**Citation: Gen. Stat. § 35A-1377**

The commencement of the standby guardian's authority due to incapacity, debilitation, or written consent shall not itself divest the parent of any parental or guardianship rights, but shall confer upon the standby guardian concurrent authority with respect to the minor child.

### Withdrawing Guardianship

**Citation: Gen. Stat. §§ 35A-1373; 35A-1374; 35A-1376**

The petitioner may revoke a judicially created guardianship by executing a written revocation, filing it with the court, and notifying the standby guardian.

The standby guardian may at any time before the commencement of the person's authority renounce the appointment by executing a written renunciation, filing it with the court, and promptly providing the petitioner with a copy of the renunciation.

The parent may revoke a written designation at any time prior to commencement by notifying the standby guardian in writing.

When the authority of the standby guardian is due to incapacity or debilitation, and the parent is subsequently restored to capacity or ability to care for the child, the authority of the standby guardian based on that incapacity or debilitation shall be suspended.

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## North Dakota

### Who Can Nominate a Standby Guardian

**Citation: Cent. Code § 30.1-26-04**

A parent or a guardian of a minor, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child, except the power to consent to marriage or adoption of a minor ward.

### How to Establish a Standby Guardian

This issue is not addressed in the statutes reviewed.

### How Standby Authority Is Activated

This issue is not addressed in the statutes reviewed.

### Involvement of the Noncustodial Parent

This issue is not addressed in the statutes reviewed.

### Authority Relationship of the Parent and the Standby

This issue is not addressed in the statutes reviewed.

### Withdrawing Guardianship

This issue is not addressed in the statutes reviewed.

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## Northern Mariana Islands

These issues are not addressed in the statutes reviewed.

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## Ohio

### Who Can Nominate a Standby Guardian

**Citation: Rev. Code § 2111.121**

A person may nominate in a writing another person to be the guardian of one or more of the nominator's minor or incompetent adult children, whether born at the time of the execution of the writing or afterward.

### How to Establish a Standby Guardian

**Citation: Rev. Code § 2111.121**

The nomination is for consideration by a court if proceedings for the appointment of a guardian of the person, the estate, or both, of one or more of the nominator's minor or incompetent adult children are commenced at a later time. The person may authorize, in a writing of that nature, the person nominated as guardian to nominate a successor guardian for consideration by a court. The person also may direct, in a writing of that nature, that bond be waived for a person nominated as guardian in it or nominated as a successor guardian in accordance with an authorization in it.

To be effective as a nomination, the writing shall be signed by the person making the nomination in the presence of two witnesses; signed by the witnesses; and contain, immediately prior to their signatures, an attestation of the witnesses that the person making the nomination signed the writing in their presence; or be acknowledged by the person making the nomination before a notary public.

### **How Standby Authority Is Activated**

#### **Citation: Rev. Code § 2111.121**

Nomination of a person as a guardian or successor guardian of the person, the estate, or both, of one or more of the nominator's minor or incompetent adult children, and any subsequent appointment of the guardian or successor guardian as guardian under § 2111.02, does not vacate the jurisdiction of any other court that previously may have exercised jurisdiction over the person of the minor or incompetent adult child.

The writing containing the nomination of a person to be the guardian of the person, the estate, or both, of one or more of the nominator's minor or incompetent adult children may be filed with the probate court for safekeeping, and the probate court shall designate the nomination as the nomination of a standby guardian.

### **Involvement of the Noncustodial Parent**

This issue is not addressed in the statutes reviewed.

### **Authority Relationship of the Parent and the Standby**

This issue is not addressed in the statutes reviewed.

### **Withdrawing Guardianship**

#### **Citation: Rev. Code § 2111.121**

A person's nomination, in a writing described above, of one or more of the nominator's minor children or incompetent adult children is revoked by the person's subsequent nomination of a guardian of one or more of the nominator's minor children or incompetent adult children, and, except for good cause shown or disqualification, the court shall make its appointment in accordance with the person's most recent nomination. If the writing contains a waiver of bond, the court shall waive bond of the person nominated as guardian unless it is of the opinion that the interest of the trust demands it.

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## **Oklahoma**

These issues are not addressed in the statutes reviewed.

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## **Oregon**

These issues are not addressed in the statutes reviewed.

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## **Pennsylvania**

### **Who Can Nominate a Standby Guardian**

#### **Citation: Cons. Stat. Tit. 23, § 5611**

A custodial parent, legal custodian, or legal guardian may designate a standby guardian.

### **How to Establish a Standby Guardian**

#### **Citation: Cons. Stat. Tit. 23, §§ 5611; 5612**

A standby guardian may be designated by a written designation that:

- Identifies the person making the designation, the minor or minors, any other parent, the standby guardian, and the triggering event or events that will commence the guardianship
- Has been signed by the designating person in the presence of two witnesses who are 18 years of age or older and not otherwise named in the designation, who shall also sign the designation

Different standby guardians may be designated for different triggering events.

A petition for court approval of a designation may be made at any time. If the triggering event has not yet occurred, only the designator may file the petition. If the triggering event has occurred already, the standby guardian may file the petition.

A designation may be approved without a court hearing if there is only one parent.

### How Standby Authority Is Activated

**Citation: Cons. Stat. Tit. 23, §§ 5612; 5613**

The standby guardian shall have authority to act as guardian upon the occurrence of a triggering event, including the parent's death, incapacity, physical debilitation with consent, or written consent alone.

If a designation has been made but the petition for approval of the designation has not been filed and a triggering event has occurred, the standby guardian shall have temporary legal authority to act as guardian of the minor without the direction of the court for a period of 60 days. The standby guardian shall within that period file a petition for approval in accordance with § 5612.

The petition of the standby guardian shall contain one of the following:

- A determination of the designator's incapacity
- A determination of the designator's debilitation
- The designator's signed and dated consent
- A copy of the designator's death certificate

If no petition is filed within the 60 days, the standby guardian shall lose all authority to act. If a petition has been filed but the court does not act upon it within the 60-day period, the temporary legal authority to act as guardian shall continue until the court orders otherwise.

### Involvement of the Noncustodial Parent

**Citation: Cons. Stat. Tit. 23, § 5611**

Consent of the other parent is required when the parent's whereabouts are known, his or her parental rights have not been terminated, and the parent is willing and able to care for the child.

### Authority Relationship of the Parent and the Standby

**Citation: Cons. Stat. Tit. 23, § 5613**

The commencement of the standby guardian's authority to act due to incapacity, debilitation and consent, or consent alone shall not itself divest the designator of any parental rights but shall confer upon the standby guardian concurrent or shared custody of the child.

The commencement of the standby guardian's authority to act as guardian due to the death of the designator shall not confer upon the standby guardian more than physical and legal custody.

A standby guardian shall ensure frequent and continuing contact with the child and ensure the involvement of the parent, including, to the greatest extent possible, in decision-making on behalf of the child.

### Withdrawing Guardianship

**Citation: Cons. Stat. Tit. 23, §§ 5613; 5614**

If a licensed physician determines that the designator has regained capacity, the standby guardian's authority that commenced on the occurrence of a triggering event shall become inactive, and the standby guardian shall return to having no authority.

Prior to a petition being filed, the designator may revoke a standby guardianship by simple destruction of the designation and notification of the revocation to the standby guardian. After a petition has been filed, the designator may revoke a standby guardianship by:

- Executing a written revocation
- Filing the revocation with the court
- Notifying the persons named in the designation of the revocation in writing

Regardless of whether a petition has been filed, an unwritten revocation may be considered by the court if it can be proven by clear and convincing evidence.

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### Puerto Rico

These issues are not addressed in the statutes reviewed.

## Rhode Island

These issues are not addressed in the statutes reviewed.

## South Carolina

These issues are not addressed in the statutes reviewed.

## South Dakota

These issues are not addressed in the statutes reviewed.

## Tennessee

### Who Can Nominate a Standby Guardian

**Citation: Ann. Code § 34-6-302**

The parent or parents of a minor child may delegate to any adult person residing in this State temporary care giving authority regarding the child when hardship prevents the parent or parents from caring for the child.

### How to Establish a Standby Guardian

**Citation: Ann. Code §§ 34-6-302; 34-6-303**

This authority may be delegated without the approval of a court by executing in writing a power of attorney for care of a minor child on a form provided by the Department of Children's Services. Hardships may include but are not limited to:

- The serious illness or incarceration of a parent or legal guardian
- The physical or mental condition of the parent or legal guardian or the child is such that care and supervision of the child cannot be provided
- The loss or uninhabitability of the child's home as the result of a natural disaster

The power of attorney for care of the minor child shall be signed by the parent and acknowledged before a notary public or two witnesses who shall sign and date their signatures in each other's presence.

The instrument providing for the power of attorney shall be executed by both parents, if both parents are living and have legal custody of the minor child, and shall state with specificity the details of the hardship preventing the parent from caring for the child.

### How Standby Authority Is Activated

This issue is not addressed in the statutes reviewed.

### Involvement of the Noncustodial Parent

**Citation: Ann. Code § 34-6-303**

If only one parent has legal custody of the minor child, then that parent shall execute the instrument. The other parent must consent in writing to the appointment in the instrument, or the executing parent shall explain in the instrument why the consent cannot be obtained. If both parents do not execute the affidavit, then the executing parent shall send a copy of the instrument to the other parent by certified mail, return receipt requested, at the last known address of the other parent.

### Authority Relationship of the Parent and the Standby

**Citation: Ann. Code §§ 34-6-304; 34-6-305; 34-6-307**

Through the power of attorney for care of a minor child, the parent may authorize the caregiver to perform the following functions without limitation:

- Enroll the child in school and extracurricular activities
- Obtain medical, dental, and mental health treatment for the child
- Provide for the child's food, lodging, housing, recreation, and travel

Nothing in this section shall be construed to limit the power of the parent to grant additional powers to the caregiver.

Except where limited by Federal law, the caregiver shall be assigned the rights, duties, and responsibilities that would otherwise be assigned to the parent, legal guardian, or legal custodian.

The power of attorney does not provide legal custody to the caregiver. If at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any health-care or educational decisions for the child, the parent must revoke the power of attorney and provide the health-care provider and local education agency either written documentation of the revocation or a court order appointing a legal guardian or legal custodian.

The decision of a caregiver to consent to or to refuse medical, dental, or mental health care for a child shall be superseded by any contravening decision of the parent having legal custody of the child as long as the decision of the parent does not jeopardize the life, health, or safety of the child. If at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any health-care decisions for the child, then the parent must revoke the power of attorney for care of a minor child and provide the health-care provider written documentation of the revocation.

### **Withdrawing Guardianship**

**Citation: Ann. Code § 34-6-306**

The power of attorney for care of a minor child may be terminated by an instrument in writing signed by either parent with legal custody. The power of attorney for care of a minor child may also be terminated by any order of a court of competent jurisdiction that appoints a legal guardian or legal custodian.

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### **Texas**

These issues are not addressed in the statutes reviewed.

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### **Utah**

These issues are not addressed in the statutes reviewed.

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### **Vermont**

#### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Stat. Tit. 14, § 2621**

When parents are temporarily unable to care for their children, guardianship provides a process through which parents can arrange for family members or other parties to care for the children.

#### **How to Establish a Standby Guardian**

**Citation: Ann. Stat. Tit. 14, § 2622**

A child in need of guardianship is a child who the parties consent is in need of adult care because of any one of the following:

- The child's custodial parent has a serious or terminal illness.
- A custodial parent's physical or mental health prevents the parent from providing proper care and supervision for the child.
- The child's home is no longer habitable as the result of a natural disaster.
- A custodial parent of the child is incarcerated.
- A custodial parent of the child is on active military duty.
- The parties have articulated and agreed to another reason that guardianship is in the best interests of the child.

#### **How Standby Authority Is Activated**

**Citation: Ann. Stat. Tit. 14, §§ 2623; 2626**

A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall include:

- The names and addresses of the parents, the child, and the proposed guardian
- The proposed guardian's relationship to the child
- The names of all members of the proposed guardian's household
- Specific reasons with supporting facts why guardianship is sought
- Whether the parties agree that the child is in need of guardianship and that the proposed guardian should be appointed as guardian

If the petition requests a consensual guardianship, the petition shall include a consent signed by the custodial parent or parents verifying that the parent or parents understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship.

The court shall grant the petition if it finds after the hearing by clear and convincing evidence that:

- The child is a child in need of guardianship, as defined above.
- The child's parents had notice of the proceeding and knowingly and voluntarily consented to the guardianship.
- The agreement is voluntary.
- The proposed guardian is suitable.
- The guardianship is in the best interests of the child.

If the court grants the petition, it shall approve the agreement at the hearing and issue an order establishing a guardianship. The order shall be consistent with the terms of the parties' agreement, unless the court finds that the agreement was not reached voluntarily or is not in the best interests of the child.

### **Involvement of the Noncustodial Parent**

**Citation: Ann. Stat. Tit. 14, § 2622**

A custodial parent is the parent who, at the time of the commencement of the guardianship proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child. If physical parental rights and responsibilities are shared pursuant to court order, both parents shall be considered 'custodial parents' for purposes of this subdivision.

### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Stat. Tit. 14, §§ 2621; 2626(b)**

It is in the interests of all parties, including the children, that parents and proposed guardians have a shared understanding about the length of time that they expect the guardianship to last, the circumstances under which the parents will resume care for their children, and the nature of the supports and services that are available to assist them.

On or before the date of the hearing, the parties shall file an agreement between the proposed guardian and the parents. The agreement shall address:

- The responsibilities of the guardian
- The responsibilities of the parents
- The expected duration of the guardianship, if known
- Parent-child contact and parental involvement in decision-making

### **Withdrawing Guardianship**

**Citation: Ann. Stat. Tit. 14, § 2632**

A parent may file a motion to terminate a guardianship at any time. The motion shall be filed with the court that issued the guardianship order and served on all parties and interested persons.

If the motion to terminate is made with respect to a consensual guardianship established under § 2626 of this title, the court shall grant the motion and terminate the guardianship unless the guardian files a motion to continue the guardianship within 30 days after the motion to terminate is served.

If the guardian files a motion to continue the guardianship, the matter shall be set for hearing and treated as a nonconsensual guardianship proceeding under § 2627 of this title. The parent shall not be required to show a change in circumstances, and the court shall not grant the motion to continue the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship.

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## **Virgin Islands**

These issues are not addressed in the statutes reviewed.

## Virginia

### Who Can Nominate a Standby Guardian

**Citation: Ann. Code §§ 16.1-349; 16.1-351**

A qualified parent may petition the juvenile court to approve a standby guardian for the child. 'Qualified parent' means a parent who has been diagnosed by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease, or illness from which, to a reasonable degree of medical probability, the patient cannot recover.

Any other person may file a petition. If the petitioner, however, is someone other than the child's custodial parent, the parent must give consent.

### How to Establish a Standby Guardian

**Citation: Ann. Code §§ 16.1-350; 16.1-352**

Upon petition, the court may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specific triggering event. The petition shall include:

- The name and address of the petitioner and his or her relationship to the child, the name and address of the child's qualified parent, and the name and address of any other parent of the child whose identity and whereabouts are known to the petitioner
- The name, address, and birth date of the child
- The proposed triggering event
- Whether a determination of incompetence or debilitation has been made
- Whether there is a significant risk that the parent will imminently become physically or mentally incapable of caring for the child or die as the result of a progressive chronic condition or illness
- The name and address of the proposed standby guardian
- Any known reasons why the child's other parent is not assuming or should not assume the responsibilities of a standby guardian

The parent may also name a standby guardian by executing a written designation at any time.

Children who are age 12 or older must be notified of any hearing.

### How Standby Authority Is Activated

**Citation: Ann. Code §§ 16.1-352; 16.1-353**

The authority of the standby guardian is effective:

- Upon receipt by the standby guardian of a determination of incompetence or a certificate of death
- If so requested in the petition, upon receipt by the standby guardian of the written consent of the qualified parent and filing of the consent with the court

The court-approved standby guardian then has 30 days to file confirming documents with the court. A standby guardian by written designation must petition the court for approval as soon as possible, but no later than 30 days after the triggering event.

If the parent has died, the standby guardian has 90 days to petition for the appointment of a permanent guardian or initiate proceedings to determine custody of the child.

### Involvement of the Noncustodial Parent

**Citation: Ann. Code § 16.1-350**

Each parent whose identity and whereabouts are known must be notified of the petition.

Another known parent, stepparent, adult sibling, or other adult related to the child may request a hearing within 10 days. The court cannot proceed if a custody case is pending.

**Authority Relationship of the Parent and the Standby****Citation: Ann. Code §§ 16.1-349; 16.1-354**

The standby guardian temporarily assumes the duties of guardian of a minor child on behalf of, or in conjunction with, a qualified parent upon the occurrence of a triggering event. This is meant to enable the parent to plan for the future care of a child, without terminating parental or legal rights.

When a standby guardian's authority is effective upon debilitation or incompetence of the parent, the standby guardian's authority to act on behalf of the parent continues even though the parent is restored to health unless the parent notifies the guardian and, if appropriate, the court, in writing.

**Withdrawing Guardianship****Citation: Ann. Code § 16.1-354**

The authority of a standby guardian who has been approved by the court may be revoked by the parent by filing a notice of revocation with the court.

At any time following his or her approval by the court, a standby guardian may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the parent.

When a written designation has been executed but is not yet effective because the triggering event has not yet occurred, the parent may revoke or the prospective standby guardian may refuse the designation by notifying the other party in writing. A written designation may also be revoked by the execution of a subsequent inconsistent designation.

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**Washington**

These issues are not addressed in the statutes reviewed.

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**West Virginia****Who Can Nominate a Standby Guardian****Citation: Ann. Code §§ 44A-5-2; 44A-5-3**

A parent, functional parent, or any person acting on a parent's behalf may petition for a standby guardian for a child of a qualified parent. 'Qualified parent' means a parent who has been diagnosed by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease, or illness from which, to a reasonable degree of medical probability, the patient cannot recover and that is likely to lead to debilitation or incompetence.

**How to Establish a Standby Guardian****Citation: Ann. Code §§ 44A-5-3; 44A-5-4; 44A-5-5**

Upon petition, the court may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specific triggering event. The petition shall include:

- The name and address of the petitioner and his or her relationship to the child, the name and address of the child's qualified parent, and the name and address of any other parent of the child whose identity and whereabouts are known
- The name, address, and birth date of the child
- The proposed triggering event
- Whether a determination of incompetence or debilitation has been made
- Whether there is a significant risk that the qualified parent will die imminently, become physically or mentally incapable of caring for the child, or die as a result of a progressive chronic condition or illness
- The name and address of the proposed standby guardian
- Any known reasons why the child's other parent is not assuming or should not assume the responsibilities of a standby guardian

When a petition is filed by a person other than a parent having custody of the child, the standby guardian shall be appointed only with the consent of the qualified parent, unless the court finds that such consent cannot be given for medical reasons.

A parent may execute a written designation of a standby guardian at any time. The written designation shall be signed by the parent and witnessed by two adults.

Children who are age 14 or older must be notified of any hearing.

#### **How Standby Authority Is Activated**

**Citation: Ann. Code §§ 44A-5-4; 44A-5-5; 44A-5-6**

The authority of the standby guardian is effective:

- Upon receipt by the standby guardian of a determination of incompetence or a certificate of death
- If so requested in the petition, upon receipt by the standby guardian of a written consent of the qualified parent and filing of the consent with the court

A court-approved standby guardian then has 30 days to file confirming documents with the court. A standby guardian by written designation must petition the court for approval as soon as possible, but no later than 30 days after the triggering event.

If the parent has died, the standby guardian has 90 days to petition for the appointment of a permanent guardian or initiate proceedings to determine custody of the child.

#### **Involvement of the Noncustodial Parent**

**Citation: Ann. Code § 44A-5-3**

Each parent whose identity and whereabouts are known must receive notice and a copy of the petition; he or she has 10 days to request a hearing. The court cannot proceed if a custody case is pending.

#### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Code §§ 44A-5-2; 44A-5-7**

The standby guardian temporarily assumes the duties of guardian of the child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event. This enables the parent to plan for the future of the child without terminating parental or legal rights. It creates co-guardianship rights between a parent and the standby guardian, giving the standby guardian authority to act in a manner consistent with the known wishes of a qualified parent regarding the care, custody, and support of the child.

When a standby guardian's authority is effective due to debilitation or incompetence of the parent, the standby guardian's authority to act on behalf of the parent continues even when the parent is restored to health unless the parent notifies the guardian and, if appropriate, the court, in writing.

#### **Withdrawing Guardianship**

**Citation: Ann. Code § 44A-5-7**

The authority of a standby guardian who has been approved by the court may be revoked by the parent by filing a notice of revocation with the court.

At any time following his or her approval by the court, a standby guardian may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the parent.

When a written designation has been executed but is not yet effective because the triggering event has not yet occurred, the parent may revoke or the prospective standby guardian may refuse the designation by notifying the other party in writing.

A written designation may also be revoked by the execution of a subsequent inconsistent designation.

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## **Wisconsin**

### **Who Can Nominate a Standby Guardian**

**Citation: Ann. Stat. § 48.978**

A parent who is at significant risk of incapacity, debilitation, or death within 2 years may petition the court to appoint a standby guardian.

### **How to Establish a Standby Guardian**

**Citation: Ann. Stat. § 48.978**

A proceeding for the appointment of a standby guardian shall be initiated by a petition that shall include:

- The name, birth date, and address of the child
- The names and addresses of the child's parent or parents, guardian, and legal custodian
- The name and address of the person nominated as standby guardian
- The proposed triggering event
- A statement that there is a significant risk that the petitioner will become incapacitated or debilitated or die, as applicable, within 2 years after the date on which the petition is filed and the factual basis for that statement

Notice of the hearing must be served on the child if the child is age 12 or older, and the child's guardian, guardian ad litem, counsel, and other parent, if that parent has not joined in the petition and if that parent can with reasonable diligence be located. At the hearing, the court may approve the appointment of the standby guardian if it is found to be in the best interests of the child.

A parent may also designate a standby guardian for his or her child by means of a written designation signed by the parent in the presence of two witnesses who are age 18 or older, neither of which may be the standby guardian, and by the standby guardian. An optional form is provided in the statute.

### **How Standby Authority Is Activated**

**Citation: Ann. Stat. § 48.978**

The authority of the standby guardian will commence upon the parent's death, incapacity, debilitation with consent, or written consent. The attending physician must document incapacity or debilitation.

If the guardianship has prior court approval, the standby guardian has 90 days from the triggering event to file confirming documents. If the guardianship is by written designation only, the standby guardian has 180 days from the triggering event to file confirming documents and petition for appointment.

### **Involvement of the Noncustodial Parent**

**Citation: Ann. Stat. § 48.978**

The other parent must join in the petition unless he or she refuses, cannot be located, or indicates an unwillingness to assume responsibility for the child. Reasonable diligence is required to locate the parent and serve notice.

### **Authority Relationship of the Parent and the Standby**

**Citation: Ann. Stat. § 48.978**

The commencement of a guardianship does not divest the parent of any parental rights. The authority of the standby guardian is suspended upon a determination of the parent's recovery or remission.

### **Withdrawing Guardianship**

**Citation: Ann. Stat. § 48.978**

If at any time before the guardianship begins the court finds that the determination of the court no longer applies, the court may rescind the guardianship order.

A person who is appointed as a standby guardian may, at any time before the guardianship begins, renounce that appointment by executing a written renunciation, filing the renunciation with the court, and notifying the petitioner in writing.

The petitioner may revoke a standby guardianship at any time before the guardianship begins by executing a written revocation, filing the revocation with the court, and notifying the standby guardian in writing.

The petitioner may revoke a standby guardianship at any time after the guardianship has commenced by executing a written revocation, filing the written revocation with the court, and notifying the standby guardian in writing of the revocation. The court may rescind the guardianship order if the court determines that rescission is in the best interests of the child.

A parent who has made a written designation may, at any time before the filing of a petition, revoke it by executing a written revocation and notifying the standby guardian in writing, making a subsequent written designation, or verbally revoking the standby guardianship in the presence of two witnesses.

After a petition for confirmation of a written designation has been filed, but before the standby guardian has been judicially appointed, a parent who has created a standby guardianship by written designation may revoke it by filing a revocation with the court and notifying the standby guardian in writing of the revocation. The court may dismiss the petition and rescind the guardianship if the court determines that rescission is in the best interests of the child.

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## Wyoming

These issues are not addressed in the statutes reviewed.



U.S. Department of Health and Human Services  
Administration for Children and Families  
Administration on Children, Youth and Families  
Children's Bureau

