REPORT OF THE
VIRGINIA COMMISSION ON YOUTH ON

STUDY OF STANDBY GUARDIANSHIP

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 20

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COMMONWEALTH of VIRGINIA

Commission on Youth

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January 8, 1998

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TO: The Honorable George F. Allen, Governor of Virginia

and

Members of the Virginia General Assembly

The 1997 General Assembly, through Senate Joint Resolution 306, requested that the Virginia Commission on Youth "be directed to study the need to provide for standby guardians for children whose parents are terminally ill."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

Thomas M. Jackson, Jr.

Thomas M. Jackson, Jr.
Chairman

Delegate Eric I. Cantor
Delegate L. Karen Darner
Delegate R. Creigh Deeds

Delegate Phillip A. Hamilton
Senator R. Edward Houck
Delegate Jerrauld C. Jones

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I. Authority for Study

The 1997 General Assembly approved Senate Joint Resolution 306 (Earley) directing the Virginia Commission on Youth to study the need to provide for standby guardians for children whose parents are progressively and/or chronically ill and to submit its findings and recommendations to the Governor and the 1998 General Assembly.

§ 9-292 of the *Code of Virginia* establishes the Virginia Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." § 9-294 provides the Commission the power to "...undertake studies and gather information and data in order to accomplish its purposes...and to formulate and present its recommendations to the Governor and members of the General Assembly."

The Commission on Youth, in fulfilling its legislative mandate, undertook the study of the need for the establishment of standby guardianship provisions in the *Code* for children whose parents are afflicted with a progressive and/or chronic illness.

II. Members Appointed to Serve

For the purpose of conducting the studies assigned to it by the 1997 General Assembly Session, the Commission on Youth divided itself into three subcommittees. SJR 306 was assigned to the Services Subcommittee, which received staff briefings in the summer and fall of 1996. The recommendations of the Subcommittee were forwarded to the full Commission at its December 11th legislative meeting and were approved at that time. The members of the Services Subcommittee are:

Del. Jerrauld C. Jones (Norfolk), Subcommittee Chair
Sen. Mark L. Earley (Chesapeake), Subcommittee Vice-Chair
Sen. Yvonne B. Miller (Norfolk)
Del. Eric I. Cantor (Henrico)
Del. R. Creigh Deeds (Bath)
Del. Phillip Hamilton (Newport News)
Ms. Norma M. Clark (Virginia Beach)
Ms. Michelle Harris (Norfolk)

III. Executive Summary

The death of a parent is a traumatic event for a child. This trauma is exacerbated if the death is accompanied by uncertainty over the future care and custody. A parent's chronic illness often robs the child of a sense of security and protection. For diseases such as AIDS, the stigma and attendant denial attached to the disease often serve as a barrier to the parent's confronting their imminent death and forestall their making arrangements for their children's future care and custody.

Currently in Virginia, parents have three options for planning for the future care and custody of their child. Two of these options--adoption and the appointment a guardian--require the termination of parental rights. The third option--nomination of a caretaker in a will--does not guarantee that the parent's preference will be honored. In addition, a will routinely takes months to resolve, leaving the child in limbo.

Standby guardianship is a legal remedy for those parents who want to plan for the future care of their children while they are still alive, are able to know that their preferences will be honored, and are able to maintain their parental rights for as long as they are able to care for their child. The advantage of standby guardianship is that it allows the parent with a progressive and/or chronic illness to insure that their wishes will be honored and the child will not be placed in foster care or be without a permanent guardian at the time of their death. Their designating a standby guardian does not affect their parental rights while they are still able to care for their child. National studies indicate that when a parent has attended to the future care of their children, they are able to devote more energy to participating in their medical regime and to maintain their capacity for as long as possible.

Medical advances over the last few years have resulted in fewer HIV-infected adults dying from AIDS. In Virginia the rate of HIV infection in women of child-bearing ages is slowly decreasing; however, over the next decade there will undoubtedly be children orphaned in Virginia as a result of AIDS. Service providers working with HIV-infected parents and their children often offer legal clinics as part of their services. If enacted into Virginia law, knowledge of the standby guardianship provisions would benefit attorneys providing services in pro bono legal aid clinics for AIDS patients and service professionals who work with parents having terminal illnesses.

As a result of conducting the study on the need for standby guardianship, the Commission on Youth offers the following two recommendations:

Recommendation 1

Amend Title 16.1 of the *Code of Virginia* by adding a new section to allow for the appointment of a standby guardian responsible for the care and custody of minor children. The provision of standby guardianship should be available for the custodial parent who has been diagnosed with a progressive and/or chronic illness. Through the identification of a standby guardian, the parent does not revoke their parental rights and responsibilities.

Recommendation 2

The Department of Health, in collaboration with the Commission on Youth, will develop a dissemination plan to AIDS service providers across the state who are working with patients to whom standby guardianship might apply. The Department of Health shall also provide the Commission with a list of other providers working with terminally ill parents who would benefit from knowledge of standby guardianship provisions.

IV. Study Goals and Objectives

On the basis of the requirements of SJR 306, the following study goals and objectives were developed by staff and approved by the Commission on Youth at their April 2, 1997 meeting:

I. Identify the goals of standby guardianship legislation.
   A. Review national literature;
   B. Contact Virginia programs serving terminally ill parents.

II. Using Department of Health statistics, determine the number of Virginia children who would potentially be affected by the enactment of standby guardianship legislation.

III. Identify other states with similar legislative provisions.
   A. Contact National State Council of State Legislatures;
   B. Analyze the statutory provisions from states having recently enacted standby guardianship laws.

IV. Assess potential problems and remedies standby guardianship may impose.
   A. Review national literature;
   B. Contact representatives of the Virginia State Bar for analysis;
   C. Contact constituency groups in Virginia potentially impacted by legislative change.

V. Identify salient policy decisions for legislative consideration.
   A. Present issues to Commission on Youth Services Subcommittee.
   B. Draft legislation for review and comment by Commission on Youth members, constituency groups, and the Virginia State Bar Association.

V. Methodology

The Commission on Youth developed a workplan to examine the issues and develop recommendations related to standby guardianship. The workplan had three primary elements: 1) review and analysis of the legal procedures for standby guardianship, 2) identification of the prevalence of need, and 3) development of a legislative proposal. The National Council of State Legislatures was initially contacted by Commission staff with a request to provide information about their work on standby guardianship, a copy of their analysis of the issues, and a list of states that have recently enacted standby guardianship legislation. The states identified by the National Council and other sources were then contacted for copies of their legislation. Analysis of the states' different approaches was conducted to distill points of commonality and divergence. The bill introduced in the 1997 Virginia General Assembly Session, out of which SJR 306 grew, was also included in the analysis.

To address prevalence issues, the Virginia Department of Health was contacted for vital statistics on the number of persons affected with the HIV virus who were parents. Attempts were also made to gather similar information about other terminal illnesses. The Department of Health also provided information on the work of the Ryan White Consortia across the state and their involvement in the standby guardian issue. Virginia Commonwealth University was also contacted for their data analysis of the demographics of Virginians affected by HIV. In addition, program providers working with AIDS patients across the state were asked about their interest in the issue and their perspectives on the effect enactment of standby guardianship legislation would have on their clients. Opinions about legislation were also solicited from physicians and constituency groups addressing the concerns of non-custodial parents.

The Commission Subcommittee received two briefings on the issue and reviewed a summary of other states' legislation on standby guardianship. The Subcommittee also made a line-by-line review of draft legislation for consideration by the 1998 General Assembly. The draft legislation was discussed and amendments to the draft were incorporated and brought to the full Commission on Youth for endorsement.

VI. Scope of the Problem

The death of a parent is clearly a traumatic event for the surviving child. The experience is made more potent in the case of children who, as minors, continue to be in need of the care and nurturing of a parenting figure. In addition to the stress of attending to the tangible aspects of daily living, children who have lost their parents are faced with a tremendous sense of loss, feelings of abandonment, and uncertainty about the future. When children in single parent families lose their primary caretaker, the pragmatic decisions regarding custody of the children and preparations to meet their physical and emotional needs often take precedence over attending to the emotional aspects of their grief and sense of loss. As with all other life stresses, if the children are from low-income families, the situation is further complicated by the lack of financial resources, which often prompts the intervention of the public sector.

Despite the advances of modern medicine which have served to curtail the number of parents dying from terminal illnesses, the fact remains that every year, across the nation, children are orphaned as a result of the death of a parent due to illness. Planning for the care and custody of one's child in the event of one's death is called "permanency planning." Although the term is often associated with the child welfare system, the goal of the planning is the same, i.e., to ensure a stable and nurturing future for one's children. Permanency planning for children in the face of a progressive and/or chronic illness is usually attended to by the parent as part of the process of confronting their imminent death. However, there are some parents who, due to their own physical incapacity, the nature of the illness, or their coping mechanisms, are unable or unwilling to plan for the future caretaking needs of their children. Even when these parents are able to overcome the physical and emotional

barriers to permanency planning, there are legal impediments to their effectively insuring that their children will be cared for after their death by a person they have selected. Provision of standby guardianship has been used by states as a means of responding to this legal barrier.

The concept of standby guardianship--which allows a parent to name a guardian to assume parental responsibility for their children while they are still alive and without termination of their parental rights--grew out of efforts by the AIDS community, but it has application for all forms of progressive and/or chronic illness. However, the focus of this report, with respect to prevalence of children orphaned due to their parents' contracting a terminal illness, is focused on parents infected with the HIV virus.

A. PREVALENCE OF NEED

The most frequently quoted estimate suggests that from 125,000 to 150,000 American children will lose their mothers to AIDS by the end of the century.[1] This estimate is for maternal deaths only and does not include fathers who die of AIDS. In an article in *The Journal of American Medicine*, David Michael, the founder of the Orphan Project in New York, forecasted that by 1998 there would be more than 45,000 children orphaned as a result of AIDS and that 24,600 of them would be under the age of 13.[2] His forecasting model assumes that women's AIDS-related deaths will have reached a plateau as of 1993 and that less than 10% of the children orphaned will be infected with the HIV virus. Most of these children who are orphaned are from low income, minority households. Research conducted by the National Center for Disease Control and Prevention released in 1993 showed that, of the 968 AIDS pediatric cases (under the age of 13), 50% were female, 55% were African American, 27% were Latino, and the majority of their households were headed by single mothers who were current or former substance abusers.[3]

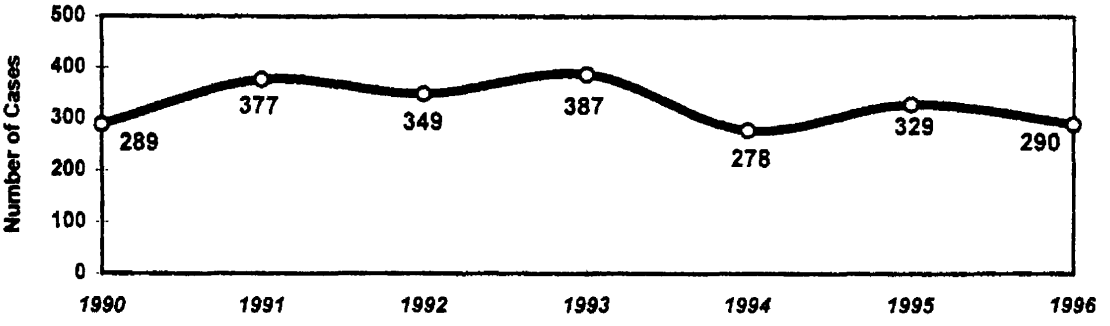
Unfortunately, Michael's prediction of a leveling of HIV infection among women is not being borne out. Women of child-bearing age comprise the fastest growing segment of persons contracting AIDS. HIV infection has increased 9.8% for women, compared to 2.5% for men, according to 1994 federal government statistics.[4] Nationally, with more women contracting AIDS, there will be a corresponding number of children who will lose their primary caretaking parents to the disease in future years.

In Virginia the statistics for women are less bleak. The number of women contracting HIV has remained at a stable level from 1990 to 1996, with 289 cases reported in 1990 and 290 cases in 1996. However, in the intervening years, there has been a high of 349 cases reported in 1993. Chart 1 depicts the trend of HIV-infected women in Virginia over the last seven years reported. It is important to note that not all the women in Virginia reported to have contracted HIV are mothers.

While the demographics of HIV-infected women in Virginia differ from national statistics, the Commonwealth mirrors the rest of the country with respect to the ethnic and age breakdown of those who have contracted the disease.

Chart 1

Number of Virginia Women Infected with HIV 1989-1996

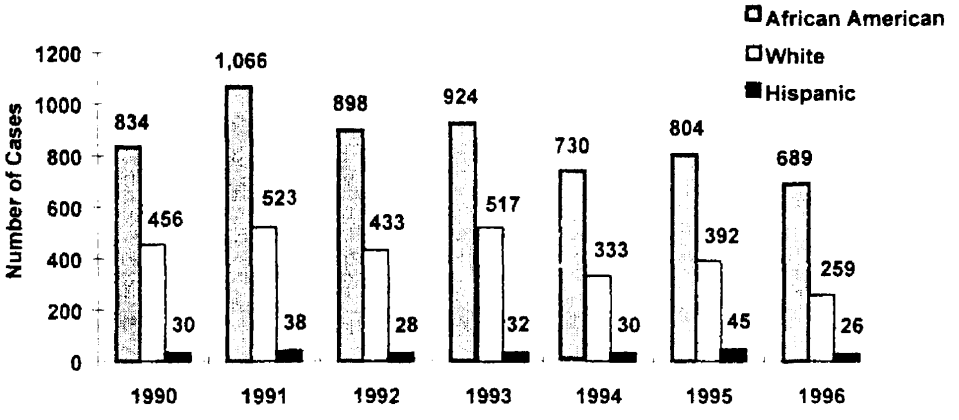


Source: Virginia Commission on Youth Graphic/Analysis of Virginia Dept. of Health Statistics, Fall 1997

In Virginia, HIV infection tends to be contracted predominately by African Americans. Over the last seven years, as noted in Chart 2, cases of HIV infection for African Americans are reported at almost twice the rate of those reported for whites. HIV infection also tends to be a predominately male disease, with approximately three times as many males as females reported to be HIV-infected. For all three ethnic groups (African American, whites and Hispanics) the pattern of HIV infection over the last seven years has remained constant, with alternate year increases followed by slight decreases in infection rate.

Chart 2

Growth in Virginia HIV Cases by Race 1990-1996



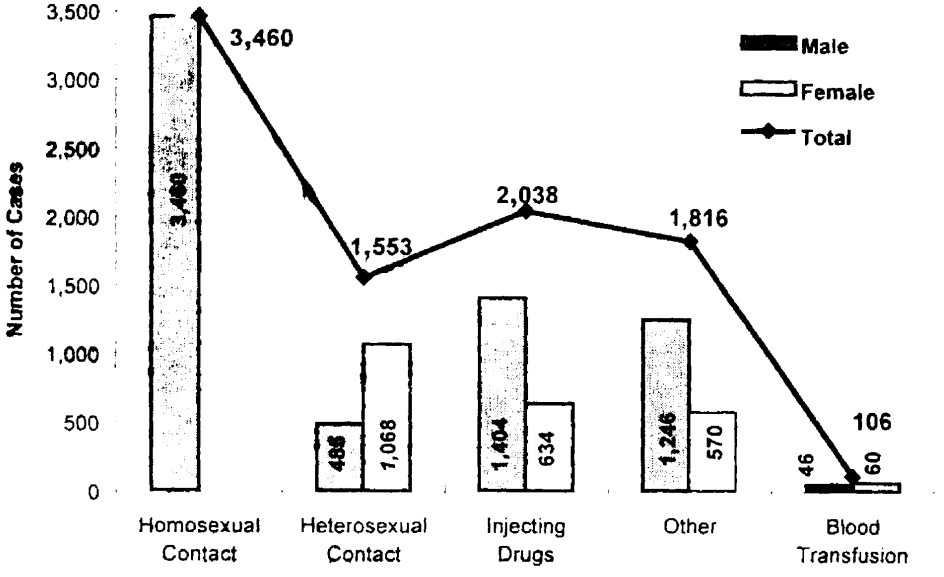
Source: Virginia Commission on Youth Graphic/Analysis of Virginia Dept. of Health Statistics, Fall 1997

For the seven years for which data is available, African Americans accounted for an average of 66% of the total HIV infection caseload. 1996 saw the lowest cumulative caseload. In that year, however, African Americans--at 71%--represented the greatest percentage of cases.

Understanding the mode of transmission is important to isolating and identifying the number of women of child-bearing years who are at risk for contracting the disease. The Virginia Department of Health statistics as of March 31, 1997 show a cumulative total of 6,641 HIV infection cases for men, as opposed to 2,322 cases for women. The primary mode of transmission for men is homosexual contact, while for women the primary transmission mode is listed as "Other," although heterosexual contact trails slightly, by less than 200 cases. When added together, the second leading means of transmission for all HIV cases is the use of needles when injecting drugs. Over twice as many men contract HIV through drug injection; however, for women, drug-related infection is the second most common form of transmission. Chart 3 details the cumulative totals of mode of transmission of HIV by gender as of March 1997. These statistics represent a cumulative count of reported cases.

Chart 3

Mode of HIV Transmission by Gender

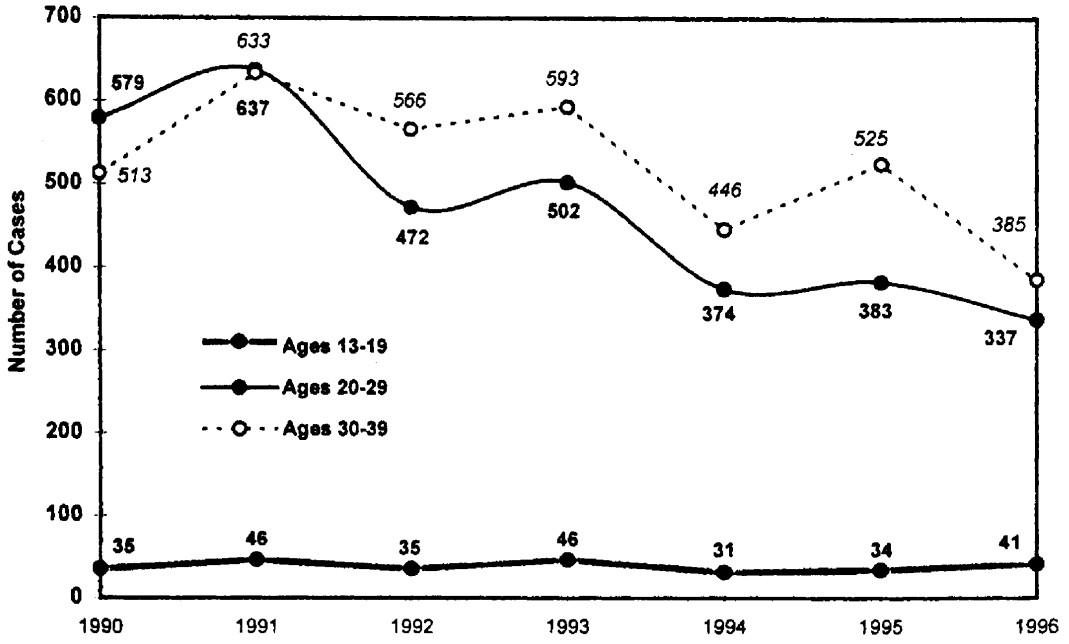


Source: Virginia Commission on Youth Graphic/Analysis of Virginia Dept. of Health Statistics, Fall 1997

The last piece of the statistical puzzle is the analysis of the growth of HIV infection by age group in order to identify the number of women of child-bearing age who have contracted the virus. In Virginia there have been relatively few cases of pediatric AIDS. The years 1991 and 1993 saw the largest number of cases of HIV infection for those between the ages of 13 and 19, with 46 cases recorded for each year. The largest number of cases is in the 30 to 39 age group, with 6,733 and 593 cases, respectively, for the years 1991 and 1993. The third age group is comprised of those between ages 20 and 29. The three groups taken together represent those who are most likely to have children and thus those for whom the issue of permanency planning is most relevant.

Chart 4

Growth in HIV Cases by Age 1990-1996



Source: Virginia Commission on Youth Graphic/Analysis of Virginia Dept. of Health Statistics, Fall 1997

It is encouraging that those in the age 20-29 bracket, who fall in the child-bearing age group, show a steadily decreasing trend of HIV infection. A slower rate of infection, coupled with medical advances, serves to lessen the number of children for whom permanency planning may be necessary.

B. EFFECTS OF PARENTAL HIV INFECTION ON CHILDREN

According to researchers Levine and Stein, 53% of parents living with AIDS have no viable plan for their minor or adolescent children in the event of their death.[5] With AIDS becoming the leading cause of death among men and women age 25 to 44, a network of services has developed quickly to serve children affected physically and emotionally by the disease. Those who work with these children have come to believe that that the specific constellation of problems faced by families coping with AIDS sets the disease apart from other contemporary health problems. Specifically, they cite five specific challenges to the child's grieving process when they lose a parent to AIDS.

First, the disease is characterized by uncertainty. There is an approximate ten-year clinical cycle in the progression of the disease from diagnosis to death. This period is characterized often by long periods of asymptotic periods. The "on again, off again" nature of the illness creates uncertainty for the child, who is unable to trust the periods of relative good health for fear about when the next episode will recur. Younger children who have a minimal grasp of the concept of "future" are unable to discern any

pattern to their parent's health or to enjoy any sense of predictability that their parents will be able to care for them the next day. They often become withdrawn and fearful rather than risk the prospect that their parents will be unavailable when they do become ill.

Secondly, given the number of AIDS parents infected with HIV through the use of intravenous drug, the clinical regime of therapy may send a conflicting message to a child about the use of needles. The needle that caused the disease is now perceived by the child as the means by which the parent receives medicine. If the child is aware of the parent's prior (or continuing) drug usage and has come to see the use of needles in a certain light, this view is challenged when the clinical treatment of AIDS requires the self-administration of intravenous drugs.

Children of HIV-infected parents tend to experience losses in groups. It is not uncommon for these children also to lose siblings, aunts, uncles and other members of their family to the disease. These deaths tend to come close together so that, in the eyes of the child, death is a continuing presence in their world. Often the professionals working with these children call this "bereavement overload."

AIDS is unique in that it is a disease that carries a strong stigma. This stigma may result in the parent's keeping the disease a secret from their children and often from other professional caretakers. The parent's inability to discuss the disease often affects their ability to plan for the future of their children. A form of denial sets in, which often gets in the way of their medical treatment. Patients who are anxious and unable to discuss their disease with their family members are often distracted and unable to set aside the time or establish the routine necessary for treatment. This is an impediment for all patients with potentially fatal illness, but presents an additional burden for AIDS patients who often have to adhere to a rigid time schedule for self-administration of their medication. Physicians often refer AIDS patients to legal services to help them resolve issues which are getting in the way of their treatment. Legal Aid and pro bono legal services working with this client population report three primary areas in which their services are requested: landlord/housing, employment, and permanency planning. Options available for permanency planning are discussed in the following chapter.

Lastly, once a parent has died from AIDS, the children often experience a change in their living arrangements. Many of these children are from single parent families and the mother's death results in changes in where they live and the schools they attend. Children may be uprooted from familiar neighborhoods and routines.

C. PERMANENCY PLANNING FOR CHILDREN

Many AIDS patients believe that informal kinship care is the most reasonable option for their child. They may informally (i.e., without benefit of a legal arrangement) request a family member or close family friend to raise their children after their death. Unfortunately, without benefit of a legal document transferring the parental responsibility, the individual who has agreed to take the children will not be able to

consent to medical treatment for the child, enroll the child in school, or receive public assistance to help defray the financial costs of additional members in the household. Because of the potential economic and legal limbo informal kinship arrangements often create, attorneys working with AIDS patients usually recommend one of three different custody options.

1. Designating a Caretaker in the Parent's Will
   As the legal document used to record the parent's wishes upon their death, the will may include nomination of a caretaker to serve as the future guardian of the child. However, nomination in a will does not guarantee that the placement of the child(ren) will be with the named individual. Following the parent's death, the guardian named in the will must petition the Court on his/her behalf. The Court then holds a hearing and determines what placement is in the child(ren)'s best interest. If there is a surviving biological parent, that parent has to consent to the nominated guardian.

   While the ill parent retains full legal custody of the child until their death, their nomination in a will is not binding with the Court. The Court views the nomination as only an indication of parental preference of guardianship. There is also often a significant lapse in time between when a parent dies and the conclusion of the legal process in which a guardian is determined. In the interim, the child is in limbo with respect to guardianship.

2. Placing the Child up for Adoption
   Adoption is considered to be the most permanent of arrangements. Once an adoption is finalized, the biological parent's rights are terminated and transferred to the adoptive parent(s). To initiate adoption proceedings, an application or petition must be filed with the Court. The petition requires signed documentation that both parents give up their rights to their child. When prospective adoptive parents are located and indicate willingness to take the child (for many of these children there is a scarcity of adoptive homes available), a series of home visits is conducted to determine the adoptive parents' suitability. Following the completion of home visits and submission of a home study report, a judicial hearing is held, at which time the judge makes the final determination for placement. As with the will, the legal process can take a year or more and is often emotionally unfeasible for many parents living with AIDS.

   Because foster care payments are terminated following final adoption procedures, a foster parent who is interested in adopting the child under their care may find that adoption would cause financial hardship. There is some financial assistance through adoption payments in the form of Supplementary Security Income (SSI), Medicaid and Title IV-E, but the Welfare Reform Act of 1996 has altered many of the eligibility requirements for these programs, resulting in fewer children being eligible for assistance.

3. Designation of Guardianship
   Guardianship is a less permanent arrangement than adoption. A petition must be filed with the Court naming a guardian for the child. Court staff or a Department of Social Services social worker visits a prospective guardian's home. Following an assessment of the guardian, a judge considers the child's best interest and makes the final determination. If the ill parent is still alive, that parent must consent to the placement and waive their parental rights. The other biological parent may challenge the guardianship at any time. Once the guardianship is ordered, all parental rights are suspended and, from that point on, the guardian has full legal authority over the child. Guardianship requires that the parent relinquish all decision-making authority over their child.

Most parents want to make permanency plans for their children, but do not want to give up their parental rights. None of the existing options allows a parent to name a guardian with certainty that they will be awarded authority over their children, while at the same time retaining their parental rights while they are still able to care for their children.

Standby guardianship attempts to respond to this gap in the law by allowing parents, through Court appointment or through written designation, to name a guardian for their child while they are still alive. Under standby guardianship, the parent can continue caring for their children until their death or an identified event occurs, at which time they are no longer able to care for their children and guardianship responsibilities are automatically transferred to the standby guardian. A more through description of the standby guardian process is explained in the following section.

VII. Standby Guardianship

A. OVERVIEW OF THE CONCEPT

The purpose of standby guardianship is to enable parents with a progressive and/or chronic illness to designate an individual to serve as their children's guardian immediately upon incapacity or death. The use of a standby guardianship establishes who will be the future guardian of the children. The terminally ill parent is able to feel secure that their preference for guardianship will be honored, without being forced to give up their parental rights or the parenting role. With the issue of future care of their children resolved, the parent has lifted an emotional burden, freeing them to be involved in their medical treatment plan. The use of standby guardianship also avoids a custody battle or placement in foster care following the parent's death. Ten states have enacted standby guardianship provisions. The common elements in all standby guardianship laws are outlined below. Later in the chapter, the uniqueness of selected statutes will be examined.

Standby guardianship cannot be established if the other biological parent desires custody and is able to care for the child. Most states provide two options for

establishing standby guardianship: 1) appointment by the Court, and 2) completion of a form designating a standby guardian. With both options, the custodial parent must attempt to notify the other parent, even if that parent has abandoned the child. Some states allow the parent to go forward with the standby guardianship when they can show that they have made reasonable efforts to contact the other parent or they can prove the non-custodial parent is unfit.

There are four primary steps to enacting standby guardianship by judicial appointment:

The parent must file with the Court a petition naming the standby guardian and setting out the event(s) which trigger the guardianship. (The standby guardian has no responsibilities while the parent is able to care for their children. Typically, states require the triggering event to be the parent's physical debilitation, mental incapacity, or death.)

The Court considers the petition, investigates the suitability of the proposed guardian, and determines whether the appointment is in the child's best interest.

Once the Court has approved guardianship, the standby guardian assumes responsibilities at the time the triggering event occurs.

The standby guardian files with the Court documentation of the triggering event. If they fail to do so within a specified period of time, the Court rescinds the guardianship. Most states require the triggering event to be authenticated by a physician. After a prescribed period of time set forth in the law, the standby guardian must petition the Court to assume permanent guardianship. All states allow the standby guardian to rescind their appointment.

For those parents who are too ill or who are intimidated by the Court process, many states have made provisions for the parent to complete the form to nominate a standby guardian. The written designation names the standby guardian and the triggering event. Every state requires the form to be signed by the parent in the presence of two adults over the age of 18, neither of whom is named as the standby guardian. As with the Court procedure, the standby guardian assumes responsibility when the triggering event occurs and must file with the Court within the designated timeframe or risk their guardianship being revoked.

B. NATIONAL LEGISLATIVE SUMMARY

As of spring 1997, there are ten states which have enacted standby guardianship provisions. Four additional states, including Virginia, have standby guardianship legislation pending. In 1995, at the federal level, Representative Carolyn B. Maloney (NY) introduced the National Standby Guardianship Act (H.R. 790). This bill would amend Part E of Title IV of the Social Security Act and would require states to enact laws which would permit a parent who is near death or chronically ill to designate a standby guardian. The bill requires that states have standby guardianship laws as a

condition of their eligibility for Foster Care and Adoption Assistance funds. The bill has 31 co-sponsors and is assigned to the House Ways ands Means Committee, where it is awaiting action.

Among the ten states' standby guardianship laws, there are more points of similarity than differences. A brief summary of the each state's provisions is provided below, with a summary chart of all the laws to follow.

Florida - Florida was the first state to enact standby guardianship legislation (1989). The law allows for the appointment of a standby guardian either through Court appointment or written designation. The Court is also given the authority to appoint an alternate to act in the event the named standby guardian should renounce, die, or become incapacitated following the surviving parent's death. The standby guardian can assume responsibility for the minor upon the death or adjudication of the incapacity of the last surviving parent of the minor. Within 20 days of assumption of duties as guardian, the standby guardian must petition the Court for confirmation of the appointment.

New York - In 1992, New York enacted a more extensive standby guardianship law. The statute permits a parent and, by 1994 amendment, a legal guardian to arrange for the appointment of a standby guardian by showing that the parent or legal guardian has a progressive and/or chronic illness. The statute as originally enacted required the parent to show that they were likely to become incapacitated or die within two years. The 1994 amendment removed the two-year provision and now conforms to New York's functional definition of disability. The standby guardian's authority commences upon the parent's or legal guardian's death or incapacity or upon their consent. The parent or legal guardian can designate a standby guardian using a form which is signed by the parent or legal guardians and witnessed by two adults, neither of whom can be named as the standby guardian. In both processes, upon the assumption of the standby guardian's authority (by way of notice of incapacity or death), the standby guardian then has 60 days in which to file a petition in Court for final judicial appointment or their authority ceases. A parent married to the petitioner continues to have the right to guardianship of the child and unmarried parents have procedural rights to consent to or contest the appointment or designation. The guardian's authority is concurrent with and does not usurp the parent's authority. The law has a provision which allows the Court to rescind its decree of authority of standby guardianship if the parent's health improves.

Arizona - Arizona enacted its legislation in 1994, allowing a petition or designation of a standby guardian to be made by the parent or legal guardian. As with New York, the standby guardian's authority commences once they receive notice of the death or incapacity of the parent. In the case of incapacity, the standby guardian's authority is concurrent with that of the parent. In the Arizona statute, the standby guardian is provided 90 days to file with the Court once they receive notification of the parent's death or incapacity. If the petition is

not filed within that period of time, the Court rescinds its appointment. The Arizona Code allows the parent to file the petition requesting the appointment of a standby guardian without having to appear in Court unless there is good cause shown for their presence. All appointments must be made by Court decree.

Maryland - Maryland's standby guardianship legislation, enacted in 1994, shares many similarities to New York's current law. The law requires the non-custodial parent to be contacted prior to the filing of a standby guardianship petition and allows the Court to proceed if the petitioner can prove they used reasonable efforts to locate the other parent. The standby guardian is given 90 days to file with the Court once they receive notice of the parent's death, incapacity, or debilitation. As with the other states, the authority of the standby guardian runs concurrent with the parent's as long as the parent is alive.

New Jersey - Enacted in 1994, the New Jersey legislation has similar provisions with respect to the two processes by which to designate a standby guardian, as well as to allow for the revocation of the appointment by the parent or the standby guardian at any time. If the nomination of a standby guardian is made by written designation, the nomination expires after six months if there has been no judicial appointment. New Jersey law also states that, upon death of the parent, the person named as the standby guardian shall be deemed to confer a preference by the parent of the permanent choice of the minor's guardian notwithstanding any law to the contrary. This ensures that custody will not be a debatable issue in the event there is a will naming another individual.

Illinois - Illinois law (1994) authorizes birth parents, adoptive parents and adjudicated parents whose rights have not been terminated to designate in writing a standby guardian. The Illinois law allows a will to be used as a means of nominating a standby guardian. The law also allows the parent, adoptive parent, legal guardian and standby guardian in turn to appoint another individual to serve as a successor standby guardian over the minor and their estate. If there is another parent who is willing to care for the child and their parental rights have not been terminated, the Court has no jurisdiction to accept the nomination of a standby guardian. A form must be filled out prior to a petition's being filed and approved by the Court. Illinois law also allows for the appointment of a short-term guardian who will have responsibility over the minor their estate for a period not to exceed 60 days after the date the appointment is effective. The standby guardian's responsibility is effective once they receive notice from the parent's physician or the parent directly communicates with the standby guardian. They have 60 days upon receipt of that notice to file with Court for a permanent appointment as guardians of the person or estate.

North Carolina - North Carolina's law (1995) allows the parent or the guardian ad litem of the parent to file a petition or fill out a form designating a standby guardian. While the definition used for debilitation is the same as with the other states, incapacity is referred to as "chronic and substantial inability as a result of

mental or organic impairment or to understand the nature of consequences." The Code requires the petitioner to state if the child is involved in any other lawsuit and precludes the use of standby guardianship for children who are in the custody of the Department of Social Services. Their Code also requires the physician of the parent to provide written notice to Court and the standby guardian when the parent has regained capacity. It is the only state to require such documentation.

Connecticut - Connecticut is one of the last states to enact standby guardianship laws (1995). Connecticut allows designation of a standby guardian through either a form nominating a standby guardian or a Court petition. Both parents must consent to the designation unless one parent is found to be unfit or cannot be located after reasonable efforts. However, the authority of the standby is effective only for one year after the triggering event occurs. The standby guardian is given 90 days to file with the probate Court once they receive confirmation of the occurrence of the event specified in the petition or form. If they do not file within that timeframe, their guardianship responsibilities are revoked.

California - California also enacted legislation in 1995 and uses the term "joint guardians" to fulfill the role and responsibilities of standby guardian as defined by other states. As with New York, California's original bill required the parent to be diagnosed with a terminal illness which would be "determined with a reasonable degree of medical certainty to result in death within two years of the filing", but deleted the two year time frame in subsequent legislative amendments. The parent and the joint guardian, when there is one joint guardian named, must agree to exercise power over the minor. In cases where two or more joint guardians have been named, the Code provides that a majority must agree to exercise power. The appointment of a joint guardian can be objected to by the non-custodial parent, providing that parent has not been found to be unfit. The express purpose of the provision, as cited in California law, is to "minimize the emotional stress of and disruption for the children whenever the parent is incapacitated or upon the parent's death and to avoid the need to provide a temporary guardian or place the children in foster care pending appointment of a guardian as might otherwise be required."

Chart 5 summarizes the existing statutory provisions of the ten states. Seven areas have been identified for comparison: the petitioner, obligation of the non-custodial parent, nominating procedures, nature of the triggering event, ability to revoke appointment, when authority is assumed, and the timeframe for final filing with the Court for permanent guardianship of the child.

Chart 5

Summary of Selected States' Standby Guardianship Provisions

	AZ	CA	CT	FL	IL	MD	NC	NJ	NY
Petitioner									
Parent	✔	✔	✔	✔	✔	✔	✔	✔	✔
Legal guardian	✔		✔				✔	✔	✔
Standby guardian					✔			✔	
Parent's guardian ad litem							✔		
Adoptive parent			✔	✔	✔		✔		
Non-custodial Parent									
Must consent		✔			✔				
Must receive notice		✔	✔		✔	✔	✔		
Nomination Procedure									
Written form	✔	✔	✔		✔	✔	✔	✔	✔
Court petition	✔	✔	✔	✔	✔	✔	✔	✔	✔
Triggering Event									
Death	✔		✔	✔	✔	✔	✔	✔	✔
Consent	✔		✔		✔	✔	✔		✔
Irreversible fatal illness	✔	✔				✔	✔	✔	✔
Incapacitating chronic illness	✔		✔	✔		✔	✔	✔	✔
Debilitation			✔				✔	✔	✔
Revocation									
By parent	✔	✔	✔		✔	✔	✔	✔	✔
By Court	✔	✔	✔	✔	✔	✔	✔	✔	✔
By standby guardian	✔	✔	✔	✔	✔	✔	✔	✔	✔
Assumption of Authority									
Written confirmation	✔	✔	✔		✔	✔	✔	✔	✔
Verbal notice		✔		✔					
Final Filing									
20 days				✔					
60 days					✔			✔	
90 days	✔	✔	✔			✔	✔		✔

Source: Virginia Commission on Youth Analysis of Selected State Statutes, August 1997

Findings

Although the impetus for standby guardianship has come from the AIDS community, it is important to recognize that the legal provisions to plan for the future care of one child without surrendering parental rights applies to all progressive and/or chronic illnesses. The rate of HIV infection of women in Virginia has followed a cyclical pattern over the past seven years, with an average of 329 women contracting the disease annually. While the age cohort of women of child-bearing age (between 20 and 29) contracting the disease has declined, there will continue to be children in Virginia orphaned by AIDS over the next decade. The desire of parents with AIDS and other progressive and/or chronic illnesses to name a future guardian for their children while they are still alive without terminating their parental rights can be realized through enactment of standby guardianship in the *Code of Virginia*.

Amendments to the Code should be drafted to allow for the nomination of a standby guardian through the Court or written designation. Parental rights should not be terminated as a result of standby guardianship and all parties should have the authority to revoke the appointment. The situation for which the authority of a standby guardian will be evoked (i.e., the triggering event) should be identified in the nomination. The non-custodial parent should be provided notice of the appointment and with the opportunity to voice objection.

Recommendation 1

Amend Title 16.1 of the *Code of Virginia* by adding a new section to allow for the appointment of a standby guardian responsible for the care and custody of minor children. The provision of standby guardianship should be available for the custodial parent who has been diagnosed with a progressive and/or chronic illness. Through the identification of a standby guardian, the parent does not revoke their parental rights and responsibilities.

Findings

Most AIDS-affected mothers in Virginia do not have wills. Many of the providers of services to AIDS patients across the state offer access to legal counsel for their clients. National findings indicate the majority of legal issues involve concerns regarding housing, unemployment compensation and child custody issues. As the primary arrangements by which legal services are rendered are through pro bono legal clinics, there is no single dissemination point to inform attorneys of the change in statute. The network of the AIDS service community will need to be informed in a strategic way of the expanded legal options available to their clients. In addition, hospice workers would benefit from information about changes in the law.

Recommendation 2

The Department of Health, in collaboration with the Commission on Youth, will develop a dissemination plan to AIDS service providers across the state who are working with patients to whom standby guardianship might apply. The Department of Health shall also provide the Commission with a list of other providers working with terminally ill parents who would benefit from standby guardianship provisions.

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1 Geballe, Shelley, J.D., M.P.H., The Impact of AIDS on AIDS-Affected Children: Promoting Resiliency to Save a Generation, *Forgotten Children of the AIDS Epidemic*. Yale University Press, New Haven, Connecticut, 1995.
2 Teare, Catherine, Advocates Struggle to Develop Placement Options for AIDS Orphans, *Youth Law News*, Vol. XV, No. 3. San Francisco, California, 1994.
3 Ibid.
4 O'Neal, Brenda, Who Will Care for the Children? Unwinding the Legal Maze, *The Source*, Vol. 5., No. 2. University of California, Berkeley, Press, Fall 1995.
5 Ibid.

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SENATE JOINT RESOLUTION NO. 306

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rules
on February 3, 1997)

(Patron Prior to Substitute—Senator Earley)

Directing the Virginia Commission on Youth to study the need to provide for standby guardians for children whose parents are terminally ill.

WHEREAS, numerous studies suggest that children who survive their parents' deaths experience trauma and grief, which are exacerbated when less than adequate substitute care is provided for the child; and

WHEREAS, failure to provide adequate substitute care increases the risk that the child will suffer from psychological disorders, particularly depression, when faced with stress; and

WHEREAS, many parents facing imminent death wish to make guardianship arrangements for their children before they die or before illness or disease renders them incapable of participating in these decisions; and

WHEREAS, in recognition of the desires of these parents, several states, such as New York and Illinois, have enacted or have under consideration legislation which authorizes creation of a guardianship, in advance, allowing the parent to participate in the selection and appointment process and ensuring that a care-giver will be available to the child immediately upon the parent's death; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Commission on Youth be directed to study the need to provide for standby guardians for children whose parents are terminally ill.

All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Official Use By Clerks

Passed By The Senate		**Passed By The House of Delegates**	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the Senate Clerk of the House of Delegates

Issues of Standby Guardianship
Review Guide

1. **What is the purpose of standby guardianship?**

   Temporary guardianship of child while parent is ill; does not presume future permanent custody will be with the standby guardian

   Temporary guardianship of child while parent is ill; does presume future permanent custody will be with the standby guardian

   Shared decision-making over care and custody of child with ill parent; terminates when parent revokes guardianship or dies

2. **To whom should standby guardianship apply?**

   _____ Custodial parent (sole and/or joint)
   _____ Custodial parent with diagnosed illness
   _____ Custodial parent with diagnosed terminal illness
   _____ Single parent with no known, identified, involved other parent of child
   _____ Single parent with diagnosed illness with no known, identified, involved other parent of child
   _____ Single parent with diagnosed terminal illness with no known, identified, involved other parent of child

3. **When can standby guardianship be initiated?**

   _____ At any time
   _____ After diagnosis of illness
   _____ After diagnosis of terminal illness

4. **What are the rights of the non-custodial parent?**

   _____ Must agree to standby guardian
   _____ Must receive notice of intent to appoint standby guardian at time of petition
   _____ Must receive notice of intent to appoint standby guardian at time of triggering event
   _____ Presumed to serve as standby guardian unless proven unfit

5. **How is standby guardianship established?**

   _____ Court hearing only
   _____ Court petition; hearing if necessary
   _____ Written designation signed by parent
   _____ Written designation to be heard by the Court at time of triggering event

6. **<u>What triggers standby guardianship's authority</u>?**

_____ Death
_____ Parent's physical and/or mental debilitation as identified in Court papers
_____ Parent's written consent

7. **<u>Should different triggers be established for different forms, i.e., Court approval or written designation, for establishing standby guardianship</u>?**

_____ Yes
_____ No

8. **<u>Should there be timelimits</u>?**

_____ Standby guardian notifies Court of triggering event and assumption of authority within 30 days.
_____ Standby guardian notifies Court of triggering event and assumption of authority within 30 days if established by written description.
_____ Standby guardian maintains authority for an open-ended period of time.
_____ Standby guardian can maintain authority only for a set period of time.

9. **<u>How does standby guardianship affect custody determinations</u>?**

_____ Standby guardianship creates presumption of custody.
_____ Standby guardianship does <u>not</u> create presumption of custody.
_____ Procedures to initiate custody proceedings are incumbent on standby guardian.

A BILL to amend and reenact § 16.1-241 of the Code of Virginia, as it is currently effective and as it may become effective, and to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 17, consisting of sections numbered 16.1-349 through 16.1-353, relating to standby guardianship.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-241 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 17, consisting of sections numbered 16.1-349 through 16.1-353, as follows:

§ 16.1-241. Jurisdiction.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of §

16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted except where a final order of adoption is entered pursuant to § 63.1-231 or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown, (iii) he cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced,

caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers

and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to allow notice to an authorized person. After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notice to an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Court proceedings under this subsection shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard as soon as practicable but in no event later than four days after the petition is filed.

Notwithstanding any other provision of law, an expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order

authorizing an abortion without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless notice has been given or the minor delivers to the physician a court order entered pursuant to this section. However, neither notice nor judicial authorization shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or if, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required notice or judicial authorization because a delay would create a serious risk of substantial impairment of a major bodily function or substantial physical injury. The attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorized person" means: (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling, with whom the minor regularly and customarily resides and who has care and control of the minor.

"Notice" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by

telephone, at least twenty-four hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to the performance of the abortion; or (iii) at least one authorized person is present with the minor seeking the abortion; or (iv) the minor has delivered to the physician a written statement signed by an authorized person and witnessed by a competent adult that the authorized person knows of the minor's intent to have an abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73 or § 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of Chapter 11 of Title 16.1 relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

§ 16.1-241. (Delayed effective date) Jurisdiction.

The judges of the family court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each family court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the family court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent; except where the jurisdiction of the family court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary

thereto, the jurisdiction of the family court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the family court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the family court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the family court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the family court determines to transfer the case, jurisdiction of the family court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the family court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the family court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to,

grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted except where a final order of adoption is entered pursuant to § 63.1-231 or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown, (iii) cannot be

consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis.

H. Judicial consent to apply for work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a family court upon the filing of a certified copy of such order in the family court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

T. Suits for separate maintenance.

U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.

V. Petitions for adoption.

W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce, or adoption or when ancillary to any action within the jurisdiction of the family court.

X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions pursuant to §§ 22.1-214 and 22.1-214.1.

Z. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

AA. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

BB. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

CC. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to allow notice to an authorized person. After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notice to an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Court proceedings under this subsection shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard as soon as practicable but in no event later than four days after the petition is filed.

Notwithstanding any other provision of law, an expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless notice has been given or the minor delivers to the physician a court order entered pursuant to this section. However, neither notice nor judicial authorization shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or if, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required notice or judicial authorization because a delay would create a serious risk of substantial impairment of a major bodily function or substantial physical injury. The attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorized person" means: (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling, with whom the minor regularly and customarily resides and who has care and control of the minor.

"Notice" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least twenty-four hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to

the performance of the abortion; or (iii) at least one authorized person is present with the minor seeking the abortion; or (iv) the minor has delivered to the physician a written statement signed by an authorized person and witnessed by a competent adult that the authorized person knows of the minor's intent to have an abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73 or § 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1.

DD. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of Chapter 11 of Title 16.1 relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection CC shall be guilty of a Class 3 misdemeanor.

Article 17.

Standby Guardianship.

§ 16.1-349. Definitions.

"Attending physician" means the physician who has primary responsibility for the treatment and care of a qualified parent.

"Designation" means a writing which (i) is voluntarily executed in conformance with the requirements of § 16.1-351 and signed by a parent and (ii) names a person to act as standby guardian.

"Determination of debilitation" means a written determination made by an attending physician that a qualified parent is chronically and substantially unable to care for a minor child as a result of a debilitating illness, disease or injury. Such a determination shall include the physician's medical opinion to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's debilitating condition.

"Determination of incompetence" means a written determination made by the attending physician that to a reasonable degree of medical certainty a qualified parent is chronically and substantially unable to understand the nature and consequences of decisions concerning the care of a minor child as a result of a mental or organic impairment and is consequently unable to care for the child. Such a determination shall include the physician's medical opinion, to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's incompetence.

"Parent" means a genetic or adoptive parent or parent determined in accordance with the standards set forth in § 20-49.1 or § 20-158, and includes a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

"Qualified parent" means a parent who has been diagnosed, as evidenced in writing, 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.

"Standby guardian" means a person who, in accordance with this article, is designated in writing or approved by the court to temporarily assume the duties of guardian of the person or guardian of the property, or both, of a minor child a qualified parent upon the occurrence of a triggering event. The term shall be so construed as to enable the parent 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 a qualified parent regarding the care, custody and support of the minor child.

"Triggering event" means the event upon the occurrence of which the standby guardian may be authorized to act. The triggering event shall be specified in the court order or written designation and shall be the earlier of a determination of incompetence or the death of the qualified parent. However, in the case of a standby guardian judicially approved pursuant to § 16.1-350, the triggering event may also be specified as the qualified parent's written consent to the commencement of the standby guardian's authority. In the case of a standby guardian designated pursuant to § 16.1-351, the triggering event may also be specified as (i) a determination of debilitation of the qualified parent and (ii) that parent's written consent to the commencement of the designated standby guardian's authority.

§ 16.1-350. Petition for court approval of standby guardian.

A. Upon petition of any person, the juvenile or family court of the jurisdiction in which a child resides may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specified triggering event. If requested in the petition, the court may also approve an alternate standby guardian identified by the petitioner, to act in the event that at any time after approval pursuant to this section the standby guardian is unable or unwilling to assume the responsibilities of the standby guardianship.

B. The petition shall state:

1. The name and address of the petitioner and his relationship to the child, the child's parent or both;

2. The name, address and birthdate of the child and the name and address of the child's parents;

3. The nature of the proposed triggering event, including when a qualified parent's consent would be effective in those cases where such consent is chosen as the triggering event;

4. Whether a determination of incompetence or debilitation has been made and, if so, when and by whom it was made;

5. Whether there is a significant risk that the qualified 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; however, a petitioner shall not be required to submit medical documentation of a parent's medical status with the petition;

6. The name and address of the person proposed as standby guardian and any alternate and whether the petition requests that such person be given authority as a guardian of the person or guardian of the property of the minor, or both;

7. If known, a statement as to why the child's other parent is not or should not assume the responsibilities of a standby guardian;

6. Whether there is any prior judicial history regarding custody of the child or any pending litigation regarding custody of the child ; and

7. The name and address of the attending physician.

C. After a petition has been filed, the court shall direct the issuance of summonses to the child, if the child is twelve or more years of age; the child's parents, guardian, legal custodian or other person standing in loco parentis, if the identity and whereabouts of such persons are known; the proposed standby guardian and alternate, if any; and such other persons as appear to the court to be proper or necessary parties to the proceedings.

Sevice of the summons shall be made pursuant to § 16.1-264.

An order approving the standby guardian may be entered without a hearing if there is no other known parent and no other litigation pending regarding custody of the child. Prior to any hearing on the petition, the court may appoint a discreet and competent attorney at law as guardian ad litem to represent the child pursuant to § 16.1-266.1. In the case of a petition filed by anyone other than a parent of the child, the court shall appoint a guardian ad litem. The qualified parent shall not be required to appear in court if the parent is medically unable to appear, except upon motion for good cause shown.

§ 16.1-351. Court order approving standby guardianship; authority; when effective.

Upon consideration of the factors set out in § 20-124.3 and finding that (i) the child's parent is a qualified parent and (ii) appointment of a standby guardian is in the best interest of the child, the court shall appoint a proper and suitable person as standby guardian and, if requested, a proper and suitable person as alternate standby guardian. However, 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.

The order shall specify the triggering event and shall provide that the authority of the standby guardian is effective (i) upon receipt by the standby guardian of a determination of incompetence or a certificate of death or the earlier of either or (ii) 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. The written consent shall be executed after the entry of the court order and signed by the qualified parent, or by another in his presence and on his behalf, in the presence of two disinterested adult witnesses who shall also sign the consent.

As soon as practicable after entry of the order, a copy shall be served on the standby guardian.

A standby guardian shall have the powers and duties of a guardian of the person and a guardian of the property of a minor, unless otherwise specified in the order.

The standby guardian shall file with the court, as soon as practicable but in no event later than thirty days following his receipt thereof, a copy of the certificate of death, determination of incompetence or consent of the qualified parent upon which his authority is based. Failure to file within the time specified shall be grounds for the court to rescind the authority of the standby guardian sua sponte or upon petition of any person.

§ 16.1-352. Written designation of a standby guardian by a parent; commencement of authority; court approval required.

A. A parent may execute a written designation of a standby guardian at any time. The written designation shall state:

1. The name, address and birthdate of the child affected;

2. The triggering event; and

3. The name and address of the person designated as standby guardian or alternate.

The written designation shall be signed by the parent in the presence of two adult witnesses who shall also sign the designation. Another person may sign the written designation on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of the parent and in the presence of the parent and two adult witnesses. The designated standby guardian or alternate may not be a witness to the declaration and may not sign on behalf of the parent. The written designation shall include the address of the two witnesses. The signed and witnessed designation shall be delivered to the standby and any alternate named as soon as practicable.

B. Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence upon the occurrence of the specified triggering event and receipt by him of (i) a determination of incompetence, (ii) a certificate of death of the parent or (iii) a determination of debilitation and the qualified parent's written consent to such commencement, signed by the parent or another on his behalf and at his direction as provided in subsection A for the designation.

C. A standby guardian under a designation shall have the authority of a guardian of the person and a guardian of the property of the child, unless otherwise specified in the designation.

D. A designated standby guardian or alternate shall file a petition for approval as standby guardian. The petition shall be filed as soon as practicable after the occurrence of the triggering event but in no event later than thirty days after the date of the commencement of his authority. The authority of the standby guardian shall cease upon his failure to so file, but shall recommence upon such filing. The petition shall be accompanied by a copy of the designation and any determinations of incapacity or debilitation or a certificate of death.

The provisions of § 16.1- 350 C shall apply to a petition filed pursuant to this section. The court shall enter an order approving the designated guardian as standby guardian upon finding that:

1. The person was duly designated as standby guardian pursuant to this section and the designation has not been revoked;

2 A determination of incompetence was made; a determination of debilitation was made and the parent consented to commencement of the standby guardians authority; or the parent has died as evidenced by a death certificate;

3. The best interests of the child will be served by approval of the standby guardian; and

4. If the petition is by an alternate, that the designated standby guardian is unwilling or unable to serve.

§ 16.1- 353. Further proceedings to determine permanent guardianship, custody.

If the triggering event was death of the qualified parent, within thirty days following the occurrence of the triggering event or, if later, commencement of the standby guardian's authority, the standby guardian shall (i) petition for appointment of a guardian for the child as otherwise provided by law or (ii) initiate other proceedings to determine custody of the child pursuant to Chapter 6.1 (§ 20-124.1 et seq.) of Title 20, or both. In all other cases a standby guardian shall promptly after occurrence of the triggering event initiate such proceedings to determine permanent custody, absent objection by the qualified parent.

The petition shall be accompanied by:

1. The court order approving or written designation of a standby guardian; and

2. The attending physician's written determination of incompetence or debilitation or a verification of death.

§ 16.1-354. Revocation, refusal, termination of standby guardianship.

A. The authority of a standby guardian approved by the court may be revoked by the parent by his filing a notice of revocation with the court. The notice of revocation shall identify the standby guardian or alternate standby guardian to which the revocation will apply. A copy of the revocation shall also be delivered to the standby guardian whose authority is revoked and any alternate standby guardian who may then be authorized to act.

At any time following his approval by the court, a standby guardian approved by the court may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the parent and any alternate standby guardian who may then be authorized to act.

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.

C. When a standby guardian's authority is effective upon debilitation or incompetence of the qualified 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, that the standby guardian's authority is revoked upon such restoration or otherwise.

If at any time the court finds that that the parent no longer meets the definition of "qualified parent", the court may rescind its approval of the standby guardian.

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