

**Foster Children's Guardianship  
in the District of Columbia:  
*An Overview and Explanation***

**by**

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The District of Columbia's Foster Children's Guardianship Act of 2000 was created in response to a pressing need for permanency which was not being met by traditional legal outcomes. During the fall of 1999 a mayoral chartered committee [Committee] of guardian ad litem, attorneys, judges, social services professionals and policy makers meet in weekly public sessions with the goal of aligning the District's law with the needs of the District's foster children. The result was a new guardianship law which combined well established legal principles with nationally regarded best practices.

The Act borrows heavily from the District's termination of parental rights statute.<sup>1</sup> Ironically, the Act's primary objective—to serve as an alternative to terminating parental rights—directly contrasts the termination of parental rights statute. In creating a framework for the Act, the Committee reviewed similar laws from several states and the District of Columbia. The Committee ultimately settled on the District's termination of parental rights statute finding that the constitutional and procedural rights implicated in guardianship were similar to those in a termination of parental rights.

The Committee also considered modeling guardianship on the District's adoption statute. The Committee found the District's adoption statute<sup>2</sup> antiquated – having last been updated in the 1950s by Congressional fiat – and did not provide any of the content or structure required in a modern statute. Child custody<sup>3</sup> was another legal area which was evaluated. Since the District relies on common law custody principles,

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1 DC Code 16-2351 *et. seq.*

2 DC Code 16-301 *et. seq.*

3 *See* DC Code 16-914.

many of which are not statutory but are based on case law and local practice, the usefulness of custody law was limited at best.

One of the Committee's primary intentions was to make guardianship accessible and responsive to the needs of foster children and their caregivers. The Committee intentionally limited the law's scope to children in foster care and placed the new provisions in a new subchapter in the District's child welfare code<sup>4</sup>. Detailed below is a section by section analysis of The District of Columbia's Foster Children's Guardianship Act of 2000.

**§ 16-2381. Purpose of the subchapter; construction of provisions.**

The general purpose of this subchapter is to:

- (1) Encourage stability in the lives of certain children who have been adjudicated neglected and have been removed from the custody of their parent by providing judicial procedures for the creation of a permanent guardianship in the circumstances set forth in this subchapter;
- (2) Ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and
- (3) Increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing government supervision.

The Committee chose to create a guardianship law which complied with the guardianship provision in the Adoption and Safe Families Act of 1997 [ASFA].<sup>5</sup> There was a significant amount of debate over the degree of permanency provided by

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4 Since eliminating barriers to permanency was a central goal of the Committee's work we also enacted a provision to eliminate court costs and other fees associated with adoption petitions. *See* DC Code 15-719.

5 "The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term 'legal guardian' means the caretaker in such a relationship." 42 U.S.C. 675(7).

guardianship, especially by adoption advocates who felt that legal adoption – which terminates parental rights – was the only true permanent placement. The Committee purposefully called its guardianship “permanent guardianship” to signify its intention that a guardianship created under the act was designed to be permanent and to comply with federal requirements. It also felt that it was important for parents and guardians to understand that the guardianship arrangement was intended to be permanent, short of an adoption and termination of parental rights.

The initial section mimics the District’s termination of parental rights statute<sup>6</sup> and emphasizes stability, constitutional rights and the fundamental needs of children. Suggestions from the kinship care community persuaded the Committee to add the phrase “especially with relatives” in order to highlight the unique role of guardianship in kinship placements. The Child and Family Services Agency [Agency] added the condition “without ongoing government supervision” in furtherance of its desire to close the neglect case once a guardianship was finalized. The ASFA-inspired phrase “prompt permanent placement of children” was without controversy and reinforced the

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6 “The general purposes of this subchapter are to:  
(a) (1) encourage stability in the lives of certain children who have been adjudicated neglected and have been removed from the custody of their parent by providing judicial procedures for the permanent termination of the parent and child relationship in the circumstances set forth in this subchapter; (2) ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and (3) increase the opportunities for the prompt adoptive placement of children for whom parental rights have been terminated.  
(b) This subchapter shall be liberally construed to promote the general purposes stated in this section.”  
DC Code 16-2351.

Committee's desire that guardianship be an expedient and permanent outcome for children in the foster care system.

**§ 16-2382. Definitions.**

(a) For purposes of this subchapter:

(1) "Agency having responsibility for the child" means the Mayor of the District of Columbia or his or her designee, or any licensed child placing agency as defined in section 32-1007;

(2) "Guardianship order" means the court document which establishes the permanent guardianship and enumerates the permanent guardian's rights and responsibilities concerning the care, custody and control of the child.

(3) "Health care" includes, but is not limited to, ordinary and emergency medical, dental, psychological, psychiatric and mental health care and treatment.

(4) "Permanent guardian" means an individual or individuals designated by the court pursuant to this subchapter.

(5) "Relatives" includes a parent, grandparent, sibling, great-grandparent, uncle or aunt, nephew or niece, great-great grandparent, great-uncle or aunt, first cousin, great-great-great grandparent, great-great uncle or aunt, or a first cousin once removed.

(b) Except when inconsistent with this subchapter, the terms found in this subchapter which are defined in section 16-2301 of this chapter shall be given the same definition herein.

This section defines common terms used in the guardianship act. The Committee settled on an "order" based guardianship as opposed to a "law" based model to give the court and the parties maximum flexibility to address unusual or unique situations.<sup>7</sup> It also felt that a written document which details the specific rights bestowed upon a guardian is more useful in addressing daily needs such as medical care and school issues. For birth parents a specific order delineates the scope of their ongoing responsibilities and rights such as visitation. In all, the Committee determined that a

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<sup>7</sup> In other words, guardianship rights and responsibilities are set forth in a written court order as opposed to a set of enumerated rights and responsibilities which are only found in the legal code.

comprehensive written court order is more portable and self-executing than a statute bound scheme which is often inaccessible to lay individuals and the community.<sup>8</sup>

Of special note is the Committee's definition of health care which includes routine and emergency care including mental health treatment. Many informal caregivers and relatives experience difficulties securing health care for children in their physical custody.<sup>9</sup> By including this definition of health care the Committee sought to legally empower a permanent guardian to seek treatment for their child. The definition of "relatives" comes directly from federal law.<sup>10</sup>

**§ 16-2383. Grounds for the creation of a permanent guardianship**

(a) A guardianship order may not be entered unless the child has been adjudicated neglected pursuant to section 16-2317 and has been living with the proposed permanent guardian for at least six months.

(b) If the child is fourteen years of age or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child's best interests.

(c) The court may issue a guardianship order only if the court finds that:

(1) The permanent guardianship is in the child's best interests;

(2) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and

(3) The proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

(d) In determining whether it is in the child's best interests that a permanent guardian be designated, the court shall consider each of the following factors:

(1) The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

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8 In the District of Columbia the term "guardian" is often used by kin and non-kin to describe an informal child caring relationship. In reality very few people in the District have legal guardianship of a child which is a probate disposition which is rarely used to obtain physical custody. See DC Code 21-101 *et. seq.*

9 See DC Code 16-4901, the Authorization for Medical Consent for Children in the Care of Adults Other than Parents Amendment Act of 1993, which was one attempt to address this problem.

10 42 U.S.C. 406(a).

- (2) The physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;
- (3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, or caretakers, including the proposed permanent guardian;
- (4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and
- (5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 6-2104.1. Evidence of continued drug-activity shall be given great weight.

In many ways this section is the heart of the guardianship law and highlights several policy choices facing the Committee. Paragraph (a) limits guardianship to children who are adjudicated neglected. The Committee felt this was a necessary restriction to insure that individuals could not obtain the benefits of guardianship without a court deciding that the child was truly abused or neglected. In addition, this requirement made it clear that guardianship was limited to foster children which was an important political consideration. The second restriction limits the entry of a guardianship order to children who have resided with the proposed guardian for at least six months. Although a guardianship petition may be filed concurrently with the neglect petition in order to expedite permanency, like adoption a child must develop a positive track record with a guardian for six months before the order can be finalized.<sup>11</sup>

Paragraph (b) tracks the District's adoption law which requires a child who is fourteen years of age or older to consent to his or her adoption.<sup>12</sup> In the guardianship context, a child who is age fourteen or older can nominate their own guardian which

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<sup>11</sup> "A final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least six months." DC Code 16-309(c).

<sup>12</sup> "Consent to a proposed adoption of a person under eighteen years of age is necessary from the prospective adoptee, if he is fourteen years of age or over." DC Code 16-304(b)(1).

the court must approve unless the designation is not in the child's best interest. In enacting this paragraph, the Committee recognized that teenagers can and should be empowered to direct the course of their permanent placement when their choice serves their best interests.

Paragraph (c) represents several important policy choices and limits the court's ability to enter a guardianship order unless three factors are present: (1) The court must find that guardianship is in the child's best interests; (2) the court must rule out adoption, termination of parental rights and return to parent as inappropriate permanency options for the child;<sup>13</sup> and (3) the proposed guardian must be "suitable and able" to provide a "safe and permanent home" for the child.

Paragraph (d) establishes a definition of best interests in the context of a permanent guardianship by borrowing language set forth in the District's termination of parental rights statute.<sup>14</sup> The Committee, to the greatest extent possible, borrowed

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13 The federal ASFA regulations make extensive use of the term "appropriate" in regards to permanency plans. *See* 45 C.F.R. §§ 1356.21(b), 1356.21(h)(3) and 1356.21(i)(2)(ii)(a).

14 "In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:  
(1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;  
(2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;  
(3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;  
(3A) the child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;



language from current District law to insulate the guardianship statute from constitutional and other legal challenges. Much of the borrowed language survived challenges on appeal and enjoyed a consistent judicial interpretation. This was intended to lend stability to the guardianship law, especially when using language from the termination of parental rights and adoption laws which rely on a clear and convincing standard and are subject to greater constitutional scrutiny.<sup>15</sup>

### **§ 16-2384. Motions**

(a) A motion for permanent guardianship may be filed by the proposed permanent guardian, the District of Columbia government or by the child through his or her legal representative.

(b) A motion for a permanent guardianship may be filed any time after a neglect petition is filed pursuant to section 16-2305.

(c) A motion for permanent guardianship shall include the following:

- (1) The name, sex, date and place of birth, and current placement of the child;
- (2) The proposed permanent guardians' name and relationship to the child;
- (3) The name and address of the child's parents;
- (4) A plain and concise statement of the facts and opinions on which the permanent guardianship is sought;
- (5) A description of the child's mental and physical health;
- (6) A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to parent is in the child's best interests;
- (7) A statement as to the various efforts taken by the moving party to locate the parent of the child;
- (8) An itemization of the child's assets;
- (9) A statement of compliance with Chapter 3 of Title 21, if applicable;
- (10) The name of proposed successor guardians, if any, and their relationship to the child and proposed permanent guardians;
- (11) Information required by Chapter 45 of Title 16; and

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(4) to the extent feasible, the child's opinion of his or her own best interests in the matter; and

(5) evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977. Evidence of continued drug-activity shall be given great weight.”

DC Code 16-2353(b).

15 DC Code 16-2359(f).

(12) Written consents, if any, to the permanent guardianship.

(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the court may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations contained in the motion for permanent guardianship.

(e) The court may issue an order of reference directing the Mayor to file a report and recommendation regarding the proposed permanent guardianship order within forty-five days of the filing date of the motion.

This section represents another series of important policy choices. Paragraph (a) was controversial since it allows the government and the child's legal representative to file a guardianship petition in addition to the proposed permanent guardian. In typical civil litigation, attorneys for one party cannot file legal documents on behalf of another party. Once again the Committee borrowed from the District's termination of parental rights law which permits the government or the child's legal representative to file a TPR petition.<sup>16</sup>

This provision was somewhat experimental since there is no certainty that either the government or the child's legal representative can ethically represent a proposed permanent guardian in a guardianship proceeding. The Committee attempted to address a common situation in which a proposed permanent guardian can neither qualify for free legal assistance nor afford private counsel. Foster children languish unnecessarily, sometimes for years, due to this structural but very real barrier. The Committee's "cost-neutral" solution was to permit attorneys already involved in the case to file on behalf of the proposed permanent guardian in order to begin the legal process.

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<sup>16</sup> "... a motion for the termination of the parent and child relationship may be filed by the District government or by the child through his or her legal representative." DC Code 16-2354(a).

It was not anticipated that either the government attorney or the legal representative would provide ongoing representation to the proposed permanent guardian. This “unbundling” of legal services would allow the proposed permanent guardian to proceed pro se.

Paragraph (b) permits a guardianship petition to be filed immediately after a neglect petition. The Committee wanted to expedite permanency while insuring that the child was placed into a safe and stable home. It also wanted to prevent individuals from utilizing the child welfare system in order to obtain guardianship. Allowing a guardianship petition to be filed concurrent with the neglect filing fulfills these goals and encourages the child welfare agency and government attorneys to place the case on a guardianship track as soon as or before the neglect petition is filed.

The contents of the guardianship petition are outlined in paragraph (c). Subparagraph (6) requires the petitioner to state why permanent guardianship, rather than adoption, termination of parental rights or return to the parent is in the child’s best interests. This provision was inserted after a debate with adoption advocates over the role of permanent guardianship in the hierarchy of permanency options. It also echoes federal regulations regarding planned permanent living arrangements.<sup>17</sup>

Although the Committee did not consider permanent guardianship inferior to any of the other permanency options, adoption advocates wanted assurances that permanent guardianship would not replace adoption as a preferred permanent placement. Additionally, they wanted assurances that adoption was considered and

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<sup>17</sup> 45 CFR 1356.21(h)(3)

ruled out before permanent guardianship was awarded. As such, the Committee expanded this notion by requiring a statement ruling out alternative permanency options such as a return to parent and termination of parental rights. This not only placed birth parents on the same level with adoption and permanent guardianship, but mandated best practices which dictate that all permanency options be considered before selecting the final permanency goal.

Paragraph (c)(7) requires the petitioner to include a statement about the various efforts taken by the moving party to locate the child's parent. This was added in response to the common practice of failing to identify or locate birth parents—especially fathers—in termination of parental rights or adoption proceedings. The Committee found that the failure to identify and locate birth parents was one of the greatest barriers to achieving timely permanency in the District of Columbia. This paragraph was added to expedite the process of identifying and serving notice on birth parents in a guardianship proceeding.

Paragraphs (c)(8) and (9) require the petitioner to include an overview of the child's financial assets. The most common type of guardianship of children in the District of Columbia is a guardianship of a child's financial assets under the probate code, not a guardianship of the person. Since a permanent guardian is a guardian of the person, the Committee did not want to ignore the traditional guardianship function which is almost exclusively financial. By requiring the petitioner to include information

about the child's assets, including any funds in a Uniform Transfer to Minor's Account,<sup>18</sup> the Committee required a comprehensive consideration of not only the child's physical and mental well being but also his or her financial status.

Paragraph (c)(10) requires the petitioner to name any proposed successor guardians and outline their relationship to the child and proposed permanent guardians. (The concept of successor guardian is addressed later in the statute and this commentary.) The statement is required based on the Committee's desire that this information be included in the petition.

Paragraph (c)(11) reminds petitioners that permanent guardianship proceedings are subject to the Uniform Child Custody Jurisdiction Act (now the Uniform Child Custody Jurisdiction and Enforcement Act)<sup>19</sup> and requires that this information be included in the petition.

Similar to an adoption proceeding, paragraph (c)(12) allows consents to be filed with the permanent guardianship petition. Early in the Committee's deliberations a comprehensive system of consents and waivers akin to adoption consents and relinquishments were considered.<sup>20</sup> Parent advocates on the Committee felt that parents deserved legal protection when consenting to a permanent guardianship and that full due process, counseling and mandatory legal assistance should be required.

After considerable debate the Committee rejected this requirement largely due to the fact that permanent guardianship does not terminate parental rights. In addition,

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<sup>18</sup> DC Code 12-301 *et. seq.*

<sup>19</sup> DC Code 16-4601.01 *et. seq.*

<sup>20</sup> DC Code 16-304 (adoption consent) and DC Code 4-1406 (adoption relinquishment).

unlike adoptions, a guardianship order is entered based on a preponderance of the evidence and, like any other civil order, can be set aside based on fraud, duress or mistake. This provision therefore has more in common with a custody order than an adoption decree. A voluntary consent to custody is quite common and does not possess any of the procedural safeguards present in a consent to adoption. The Committee decided that permanent guardianship is more akin to custody than adoption and therefore special procedures are unnecessary to challenge or set aside a voluntary consent to guardianship.

Paragraph (d) is borrowed from the District's termination of parental rights law which requires a bill of particulars in particular situations. Rarely used in a TPR proceeding, a bill of particulars is a specific factual and legal statement regarding each element of a permanent guardian petition. It is used to rectify poorly drafted petitions and allows a parent to be fully apprised of the allegations against him or her.<sup>21</sup>

Paragraph (e) is taken from the District's adoption law which requires the government social services agency under the auspices of the Mayor to conduct a comprehensive study of the proposed adoptive parents and issue a report and recommendation.<sup>22</sup> The court is permitted, but not required, to request a similar

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21 "When any facts required pursuant to subsection (d) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the judge may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations contained in the motion for the termination of the parent and child relationship." DC Code 16-2354(e).

22 "The investigation, report, and recommendation shall include:  
(1) an investigation of:  
(A) the truth of the allegations of the petition;

investigation in a permanent guardianship proceeding. The District's adoption court rules outline the content of these reports in great detail and were intended to be a guide in guardianship reports and recommendations.<sup>23</sup> In essence, this paragraph formalizes best social work practices and permits the court to order a comprehensive investigation of any proposed permanent guardian in order to make a healthy and safe placement decision in the child's best interest.

**§ 16-2385. Parties**

Parties to a permanent guardianship proceeding shall be the child, the parents of the named child, the proposed permanent guardian, the agency having the legal custody of the child and the District of Columbia. The court may at its discretion, on its own motion or in response to a motion for joinder or intervention, join additional parties to a guardianship proceeding.

This section is similar to the District's termination of parental rights law and permits the court broad discretion to add parties.<sup>24</sup>

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(B) the environment, antecedents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;

(C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and

(D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge, including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892.

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.”

DC Code 16-307(b).

<sup>23</sup> See Adoption Rule 7(d).

<sup>24</sup> “Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child. The judge may at his or her discretion, name on his or her own motion or in response to a motion for joinder or intervention, join additional parties to a proceeding to terminate the parent and child relationship.”

**§ 16-2386. Notice**

- (a) When a motion for permanent guardianship is filed, the court shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.
- (b) The court shall direct the issuance to and personal service upon the child's parents of a summons together with a copy of the motion for permanent guardianship.
- (c) When it is appropriate to the proper disposition of the case, the court may direct the service of a summons upon other persons.
- (d) If a personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

This section also tracks the District's termination of parental rights law.<sup>25</sup> It is, however, important to note that although the court must "cause notice" of the adjudicatory hearing "to all parties," it does not serve the parties itself but "direct[s] the issuance to and personal service upon" the parents, and when appropriate other persons. These "other persons" include individuals mandated by the Uniform Child Custody Jurisdiction and Enforcement Act and court rules. "Personal" and "constructive service" are well known forms of notice in the District of Columbia.

**§ 16-2387. Conduct of hearings**

- (a) All hearings and proceedings conducted pursuant to this subchapter shall be held by the court, without a jury.
- (b) All hearings and proceedings conducted pursuant to this subchapter shall be recorded by appropriate means.
- (c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only

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DC Code 16-2356.

<sup>25</sup> (a) When a motion to terminate the parent and child relationship is filed, a judge shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

(b) A judge shall direct the issuance to and personal service upon the child's parent of a summons together with a copy of the motion to terminate the parent and child relationship.

(c) When it is appropriate to the proper disposition of the case, a judge may direct the service of a summons upon other persons.

(d) If a personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia."

DC Code 16-2357.



persons necessary to such hearings and proceedings shall be admitted, but the court may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

(d) If the court finds it is in the child's best interests, the child may be temporarily excluded from any proceeding. Under no circumstances, however, may counsel in the case be excluded.

Like the District's termination of parental rights law,<sup>26</sup> this section details the conduct of hearings in guardianship proceedings. All trials and hearings are bench trials with no right to a jury. Proceedings must be recorded, usually by audio tape, unless the proceeding takes the form of a trial, in which case court reporters are utilized. Paragraph (c) renders proceedings closed to the public although court rules do permit certain categories of persons like reporters admittance as long as they maintain the confidentiality of the child and his or her family. Although a child may be excluded from a proceeding, the child's counsel cannot be excluded. Thus, this paragraph can also be read to prohibit any counsel from being excluded from a proceeding.

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26 "(a) All hearings and proceedings on a motion to terminate the parent and child relationship shall be held by the judge, without a jury.

(b) All hearings and proceedings held pursuant to this subchapter shall be recorded by appropriate means.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings shall be admitted, but a judge may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

(d) If a judge finds it is in the best interests of the child, he or she may temporarily exclude the child from any proceeding. Under no circumstances, however, may counsel in the case be excluded."

DC Code 16-2358.

**§ 16-2388. Adjudicatory hearings**

- (a) The court shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If a parent has been given proper notice but fails to appear, the court may proceed in the parent's absence.
- (b) The court shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.
- (c) Every party shall have the right to present evidence, to be heard in his or her own behalf and to cross-examine witnesses called by another party.
- (d) All evidence which is relevant, material, and competent to the issues before the court shall be admitted.
- (e) Notwithstanding the provisions of sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.
- (f) The court may enter, modify or terminate a guardianship order after considering all of the evidence presented, including the Mayor's report and recommendation, and after making a determination based upon a preponderance of the evidence that creation, modification or termination of the guardianship order is in the child's best interests. If the court does not find that sufficient grounds exist to create, modify or terminate a guardianship order, the motion may be dismissed.

This section is modeled on the District of Columbia's termination of parental rights law.<sup>27</sup> Paragraph (a) permits the court to proceed in a parent's absence if the

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<sup>27</sup> (a) A judge shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If the parent has been given proper notice but has failed to appear the judge may proceed in his or her absence.  
(b) A judge shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.  
(c) Every party shall have the right to present evidence, to be heard in his or her own behalf and to cross-examine witnesses called by another party.  
(d) All evidence which is relevant, material, and competent to the issues before the judge shall be admitted.  
(e) Notwithstanding the provisions of sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.  
(f) A judge may enter an order permanently terminating the parent and child relationship after considering all of the evidence presented and after making a determination based upon clear and convincing evidence that termination of the parent and child relationship is in the best interest of the child. If a judge does not find that sufficient grounds exist for termination, the motion for termination of the parent and child relationship may be

parent was properly notified. Paragraph (c) permits every party, including the child, to present evidence and to cross-examine witnesses. Paragraph (d) sets a “trial level” admissibility standard whereby all evidence must be relevant, material and competent. The District of Columbia has a lower standard of admissibility for some hearings in which evidence need only be relevant and material to be admitted.<sup>28</sup>

Paragraph (e) suspends the statutorily created husband/wife, physician/client and mental health professional/client privilege. No party can assert these privileges in order to exclude evidence. Finally, paragraph (f) establishes a preponderance of the evidence standard in guardianship proceedings. The Committee debated and decided against the higher clear and convincing standard used in termination of parental rights and adoption proceedings<sup>29</sup> since a guardianship order does not terminate parental rights and—like a custody order—is subject to modification until the child reaches adulthood. This paragraph also repeats that creation, modification or termination of the guardianship order must be in the child’s best interests.

#### **§ 16-2389. Effect of Guardianship Order**

(a) Unless the court specifies otherwise, the permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

- (1) Protect, nurture, discipline and educate the child;
- (2) Provide food, clothing, shelter, education as required by law, and routine health care for the child;
- (3) Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

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dismissed.”

DC Code 16-2359

<sup>28</sup> What this basically means is that hearsay evidence is admissible in these proceedings.

<sup>29</sup> Required by the United States Supreme Court in *Santosky v. Kramer*, 455 U.S. 745 (1982).

- (4) Authorize a release of health care and educational information;
- (5) Authorize a release of information when consent of a parent is required by law, regulation or policy;
- (6) Consent to social and school activities of the child;
- (7) Consent to military enlistment;
- (8) Obtain representation for the child in legal actions; and
- (9) Determine the nature and extent of the child's contact with other persons.
- (b) The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.
- (c) Entry of a guardianship order does not terminate the parent and child relationship, including:
  - (1) The right of the child to inherit from his or her parents;
  - (2) The parents' right to visit and contact the child (except as limited by the court);
  - (3) The parents' right to consent to the child's adoption;
  - (4) The parents' right to determine the child's religious affiliation; and
  - (5) The parents' responsibility to provide financial, medical and other support for the child.
- (d) The guardianship order may specify the frequency and nature of visitation or contact between relatives and the child. Such visitation or contact may must be determined by the court to be in the child's best interests.
- (e) Except as required by a motion under subsection ( f) of this section, upon entry of a guardianship order, and during the period of time such an order remains in effect, the requirements of sections 16-2322 and 16-2323 shall be suspended.
- (f) The court shall make a permanency determination and close the neglect case upon motion by any party to the permanent guardianship proceeding if the court finds that such a determination is in the child's best interests.

This section is an enumeration of the parties' rights and responsibilities once a guardianship order is entered. The Committee decided that a list of rights and responsibilities which can be modified by the court is an important element of the statute. This section provides a specific enumeration of not only the guardian's rights and responsibilities, but the parents' retained rights and responsibilities.

Paragraph (a) states that, at minimum, the permanent guardian has physical custody of the child and must (1) protect, nurture, discipline and educate the child and (2) provide food, clothing, shelter, education and routine health care for the child.

Paragraph (a)(3) was taken from Alabama law which limits a permanent guardian's liability when consenting to health care to that of a birth parent; the permanent guardian the same liability as a parent.

Paragraphs (a)(4), (5) and (6) address a common situation facing legal custodians in the District of Columbia - the authority to sign releases for information and records and to consent to routine school activities. The guardianship law gives a permanent guardian explicit authorization and authority in these areas unless limited or modified by the court. Paragraph (a)(7) permits the permanent guardian to consent to military enlistment. Paragraph (a)(8) authorizes the permanent guardian to secure representation for the child in legal actions like personal injury. Paragraph (a)(9) explicitly states that, unless otherwise modified by the court, the permanent guardian has the power to limit or extend contact with a child, including visitation (with the parents).

Paragraph (b) limits the liability of permanent guardians for illegal and tortious acts of the child unless the permanent guardian is liable for reasons other than the relationship. In other words, a permanent guardian cannot be held liable based solely on the fact that he or she is the child's permanent guardian. There must be some other nexus between the permanent guardian and the child's acts in order to attach liability.

Paragraph (c) makes it clear that the entry of a permanent guardianship order does not terminate parental rights. The child continues to inherit from his or her parents and the parents have a right to visit and contact the child (except as limited by

the court). The parents also have a right to consent to the child's adoption and to determine the child's religious affiliation. The parents have an ongoing responsibility to provide financial, medical and other support for the child. None of these rights and responsibilities can be limited or modified by the court.

Paragraph (d) permits the court to determine, after a consideration of the child's best interests, the frequency and nature of visitation or contact between relatives—including parents—and the child. Although visitation is a fundamental parental right, it is limited to the child's best interests and in the guardianship context the judge can decide not only frequency, but the nature of contact between the child and his or her parents and relatives.

Paragraphs (e) and (f) were added at the government's request and limit or eliminate the ASFA requirement of permanency reviews after a guardianship order has been entered.<sup>30</sup> Paragraph (e) suspends permanency reviews during the period of time that a guardianship order remains in effect.

Paragraph (f) purports to "close the neglect case" when such a closure is in the child's best interests. This controversial provision is intended to relieve the social services agency of ongoing responsibility for monitoring and service delivery after a guardianship order is entered. The provision is not meant to divest the court of jurisdiction or to eliminate the underlying neglect cause of action which legally remains open until the child reaches 21 years of age. The Committee felt strongly that the legal neglect case, like a custody case, must remain the underlying cause of action in every

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<sup>30</sup> See DC Code 16-2323.

guardianship proceeding. As such, the Committee felt that the neglect case should be dormant during the life of the guardianship.<sup>31</sup> Most importantly, if the guardianship is dissolved, the neglect case is reopened and the court's jurisdiction in the neglect case continues without the filing of a new neglect case. The Committee believed this was an essential safety net for children subject to a guardianship order.

#### **§ 16-2390. Jurisdiction**

The court shall retain jurisdiction to enforce, modify or terminate a guardianship order until the child reaches 18 years of age. If the court finds that it is in the child's best interests and if the child consents, the court may retain jurisdiction until the child reaches 21 years of age.

This section is identical to the jurisdiction provision in the neglect law<sup>32</sup> and also reflects the District's domestic relations law which makes parents responsible for support until a child reaches the age of 21.<sup>33</sup> Although the issue of jurisdiction under the guardianship law was debated, the Committee wanted to insure that children placed into guardianships were entitled to the same jurisdictional protections as children in the neglect system.

#### **§ 16-2391. Relocation**

The permanent guardian shall not relocate with the child over 100 miles from his or her place of residence at the time the guardianship order is entered without filing a notice

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31 "After the issuance of a judgment, decree, or order granting custody, child support, or alimony, the Court retains jurisdiction for the entry of future orders modifying or terminating the initial judgment, decree, or order to the extent the retention of jurisdiction does not contravene other statutory provisions."

DC Code 16-914.01

32 "For purposes of this subchapter, jurisdiction obtained by the Division in the case of a child shall be retained by it until the child becomes twenty-one years of age, unless jurisdiction is terminated before that time."

DC Code 16-2303.

33 See DC Code 16-916.01.

with the court which is personally served on all parties fifteen business days prior to the relocation.

This section reflects a trend in domestic relations law to monitor and control the ability of custodial parents to relocate. Since guardianship does not terminate parental rights and birth parents in many cases will retain the right to visit, the Committee felt that some consideration should be given to guardians who want to relocate. Since the District of Columbia is geographically small and many people with ties to the District reside in Virginia and Maryland, the Committee set a 100 mile limit on relocation.

The Committee purposely did not establish any relief or process other than notice when relocation is being considered. In retrospect the 15 business day notification period is probably too short. The Committee anticipated that if any party objects to the relocation, they will file an action under § 16-2395 to modify, terminate or enforce the guardianship order.

**§ 16-2392. Guardianship order; finality; appeals; transcripts**

- (a) Every guardianship order shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.
- (b) Except as otherwise expressly provided by law, in all hearings and cases tried before the court pursuant to this subchapter, the judgment of the court shall be final.
- (c) In all appeals from decisions of the court with respect to an order under this subchapter, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.
- (d) Upon the filing of a motion and supporting affidavit stating that he or she is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal of an order under this subchapter shall be furnished, at no cost or at such part of cost as he or she is able to pay, so much of the transcript as is necessary adequately to prepare and support the appeal.
- (e) An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court,



that court may order otherwise if suitable provision is made in the order for the care and custody of the child.

This section is identical to similar provisions in the District's laws on termination of parental rights and neglect.<sup>34</sup> Of note is the provision allowing for a free transcript to any party who is in financial need, including permanent guardians.<sup>35</sup>

#### **§ 16-2393. Confidentiality of records**

The provisions of sections 16-2332 and 16-2333 shall apply to all records and files that are created pursuant to proceedings under this subchapter.

#### **§ 16-2394. Unlawful disclosure**

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2393 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$250 or imprisoned for not more than 90 days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

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<sup>34</sup> "(a) Every order of the Division terminating the parent and child relationship shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction."

DC Code 16-2362.

"(a) Except as otherwise expressly provided by law, in all hearings and cases tried before the Division pursuant to this subchapter, the judgment of the Division is final.

(b) In all appeals from decisions of the Division with respect to a child alleged to be neglected, delinquent, or in need of supervision, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

(c) Upon the filing of a motion and supporting affidavit stating that he is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal shall be furnished, at no cost or at such part of cost as he is able to pay, so much of the transcript as is necessary adequately to prepare and support the appeal.

(d) An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court, that court may order otherwise if suitable provision is made for the care and custody of the child."

DC Code 16-2329.

<sup>35</sup> See *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996).

These sections cite the District of Columbia's law governing the confidentiality of neglect and termination of parental rights proceedings.<sup>36</sup> Therefore, these sections provide protections for permanent guardianship proceedings.

**§ 16-2395. Modification, termination or enforcement of the guardianship order**

(a) Any party may move the court to modify, terminate or enforce a guardianship order or an order of child support created under this subchapter.

(b) Notice of a motion to modify, terminate or enforce a guardianship order or an order of child support shall be personally served on all parties. If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

(c) The court may issue an order of reference directing the Mayor to file a report and recommendation regarding the proposed modification or termination of the guardianship order within forty-five days of the filing date of the motion.

(d) A guardianship order may be modified or terminated if the court finds by a preponderance of the evidence that there has been a substantial and material change in the child's circumstances subsequent to the entry of the guardianship order and that it is in the child's best interests to modify or terminate the guardianship order.

(e) The court shall hold an adjudicatory hearing as provided for in section 16-2388 before modifying or terminating a guardianship order and shall, at the conclusion of the hearing, enter a written order reciting the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

(f) Upon entry of an order terminating the guardianship, the permanent guardian shall no longer be entitled to physical custody of the child, have any other parental rights and responsibilities concerning the child created under this subchapter, or have party status in any further proceeding brought under this subchapter.

(g) Upon entry of an order terminating the guardianship, the court shall hold a hearing pursuant to section 16-2323.

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<sup>36</sup> "The provisions of §§ 16-2332 and 16-2333 shall apply to all juvenile case records and juvenile social records as defined therein which are created pursuant to the proceedings under this subchapter."

DC Code 16-2363.

"Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2363 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than two hundred and fifty dollars (\$250) or imprisoned for not more than ninety (90) days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia."

DC Code 16-2364.

This section allows any party to file a motion with the court to modify, terminate or enforce a guardianship order or an order of child support entered in connection with a guardianship order. Paragraph (b) recites the standard method of service of process for termination of parental rights proceedings in the District.

Much of the language in this paragraph is borrowed from the District's adoption law.<sup>37</sup> Paragraph (c) reflects the Committee's belief that, in order to make a reasoned decision, the Court needs as much information as possible about the current social, physical and emotional well-being of the child. The Agency expressed a desire to conduct an investigation and updated home study when a guardianship matter returns to court since, in some cases, a return to the court will happen years after the original guardianship order was entered. Although "report and recommendation" is not defined in law, the adoption rules have an extensive list of requirements.<sup>38</sup> The Court is given discretion to decide whether a report and recommendation is required and issues a request to the Agency in the form of an order of reference.

Paragraph (d) establishes the legal standard to modify or terminate a guardianship order. The court must consider all the evidence presented—including the mayor's report and recommendation—after an adjudicatory hearing. The standard of proof is based on a preponderance of the evidence that there is a substantial and material change in the child's circumstance and that it is in the child's best interests to modify or terminate the guardianship order.

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<sup>37</sup> See DC Code 16-307 and Adoption Rule 4(a)(3).

<sup>38</sup> Adoption Rule 7(d).

After a great deal of debate and a comprehensive review of current District, state and United States Supreme Court law, the Committee concluded that since a guardianship order does not terminate parental rights, any action in relation to a guardianship order need only be proven by a preponderance of the evidence.<sup>39</sup>

The Committee, however, qualified the evidentiary standard with two requirements: (1) a modification or termination can only occur if there is a substantial and material change in the child's circumstances subsequent to the entry of the guardianship order; and (2) the modification or termination must be in the child's best interests. The primary goal was to provide fairness to birth parents while insuring that any "permanent" guardianship provides the requisite level of permanency.

The first qualification is often used in custody modification cases and is based on a change in the child's, not the parent's, circumstances during the period of time since the guardianship order was originally entered. A change in the parent's condition, like becoming drug free and financially stable, is not enough to warrant modification or termination of a guardianship order. There must be some connection between the parent's situation and the child's circumstances. This most frequently involves evidence that the child's relationship with the parent has changed for the positive or that the child's home situation has deteriorated while the parent's abilities have improved.

Paragraph (f) clearly states that when a guardianship is terminated the permanent guardian's rights and responsibilities regarding the child ceases. This

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<sup>39</sup> Clear and convincing evidence is the minimum standard for termination of parental rights and adoptions. Beyond a reasonable doubt is often reserved for criminal matters.

includes the right to physical custody of the child and ongoing party status. Although party status is extinguished in the guardianship action, the former permanent guardian can seek party status in the neglect case which is re-opened upon termination of the guardianship.

Paragraph (g) requires that once the guardianship is terminated, the court must hold a permanency hearing under the District's neglect law. Since the court's jurisdiction for guardianship arises from the neglect matter—just like a custody case is attendant to a divorce action—jurisdiction in the neglect matter is not extinguished when a guardianship order is entered. This allows the court to “re-open” the neglect case and resume jurisdiction under the original neglect cause of action. The Agency does not have to re-petition the neglect case or obtain jurisdiction anew. Finally, permanency planning resumes and the child can be placed as necessary.

#### **§ 16-2396. Support**

(a) Nothing under this subchapter shall preclude the permanent guardian from receiving monies paid for the child's support to the child's parent under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

(b) After due notice to the parent or other persons legally obligated to care for and support the child and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the guardianship order is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against them for contempt, or the order may be filed and shall have the effect of a civil judgment.

One important obligation survives the entry of a guardianship order—the parents' responsibility to provide financial, medical and other support for the child. This section

recognizes that the child may be entitled to financial benefits if a parent is capable of providing reasonable financial and medical child support.

Paragraph (a) makes the permanent guardian the de facto conservator of the child's financial estate. As such, the provision states that a permanent guardian is entitled—like a birth parent—to receive any monies paid for the child's support, including public benefits like Social Security and TANF and a wide variety of private insurance and other financial sources. The Committee intended to make the permanent guardian both the legal and financial guardian of the child thereby eliminating a separate probate action and reporting requirements required by a guardian of the child's estate.

Paragraph (b) is based on a provision in the District's neglect law which addresses child support and permits the court to conduct an inquiry and award child support without requiring the guardian to file a separate case.<sup>40</sup> In general, one of the Committee's primary goal in drafting the guardian statute was to, wherever possible, eliminate structural barriers which would otherwise prevent a comprehensive legal solution to all aspects of a foster child's permanent placement. Allowing the court to

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40 “Whenever legal custody of a child is vested in any agency or individual other than the child's parent, after due notice to the parent or other persons legally obligated to care for and support the child and after hearing, the Division may, at the dispositional hearing or thereafter, order and decree that the parent or other legally obligated person shall pay, in such manner as the Division may direct, a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the Division may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.”

DC Code 16-2325.

consider child support is one way of streamlining the legal process while addressing each child's unique social and financial needs.

**§ 16-2397. Interlocutory order of guardianship**

(a) If it is in the child's best interests, the court may enter an interlocutory guardianship order, which shall by its terms automatically become a guardianship order on a day therein named, not less than six months nor more than one year, from the date of entry of the interlocutory order, unless in the interim the order shall have been set aside for cause shown.

(b) The agency having responsibility for the child shall be permitted to visit the child during the period of the interlocutory order and may be ordered to provide services as specified in the interlocutory order.

(c) The court may revoke its interlocutory guardianship order, either on its own motion or on the motion of one of the parties, for good cause shown in the child's best interests, at any time before it becomes a guardianship order. Before the revocation, personal notice shall be given to the parties and an adjudicatory hearing shall be conducted pursuant to section 16-2388.

The Committee borrowed this concept from the District's adoption law to allow a child to be “conditionally” placed with a proposed permanent guardian.<sup>41</sup> The dual goal was to facilitate the timely placement of a child with a proposed permanent guardian and to allow the Court to order the Agency to provide services to the child pending a final disposition and closure of the case. The Committee identified numerous situations in which the agreed upon goal could not be accomplished without some Agency

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41 “(d) If it appears to be in the interest of the prospective adoptee, the court may enter an interlocutory decree of adoption, which shall by its terms automatically become a final decree of adoption on a day therein named, not less than six months nor more than one year, from the date of entry of the interlocutory decree, unless in the interim the decree shall have been set aside for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.

(e) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before the revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all of them to be heard.”

DC Code 16-309.

action—for instance, a subsidy determination, the provision of a special service or other specific act. In these cases the barrier to permanency was not legal but due to a lack of adequate social services. The Committee intended to allow the legal process to be finalized while providing for continued but limited Agency involvement.

The Committee also recognized that, like adoptions, the child in a permanent guardianship might not reside with the proposed permanent guardian for the required six month period prior to finalization. This section allows the legal process to be completed subject to the six month minimum time period called for in § 16-2383(a) with the guardianship automatically created at a time certain, subject to the Agency's ongoing monitoring and possible revocation.

**§ 16-2398. Successor guardian**

(a) Upon filing a motion for permanent guardianship pursuant to section 16-2384, the movant may designate and the court shall approve any a successor guardian which shall only be approved by the court after finding that the designation is in the child's best interests and the successor guardian is suitable and able to provide a safe and permanent home for the child.

(b) A successor guardian may be designated or removed after the creation of the permanent guardianship by the filing of a motion to modify pursuant to section 16-2395. The court shall approve the designation or removal only after finding that the designation or removal is in the child's best interests and, in the case of designation, that the successor guardian is suitable and able to provide a safe and permanent home for the child.

(c) The successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child upon the permanent guardian's death, or physical or mental infirmity.

(d) The successor guardian shall move the court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the court, the successor guardian shall assume the permanent guardian's rights and responsibilities concerning the child until the court conducts a hearing on the motion to modify.

(e) A motion filed pursuant to this section shall:

(1) Include information required by section 16-2384(c);



- (2) Append the original order which designated the successor guardian; and
- (3) Append a copy of either:
  - (A) Proof of the permanent guardian's death, such as a copy of a death certificate or funeral home receipt; or
  - (B) Proof of the permanent guardian's physical or mental infirmity.
- (f) Before issuing a final order transferring the permanent guardian's rights and responsibilities to the successor guardian, the court shall, in addition to the requirements specified in section 16-2395(e), find that:
  - (1) The successor guardian was duly designated by the permanent guardian;
  - (2) The permanent guardian is deceased or is physically or mentally infirm;
  - (3) The transfer of permanent guardianship is in the child's best interests;
  - (4) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and
  - (5) The successor guardian is suitable and able to provide a safe and permanent home for the child."

The notion of a successor guardian comes from standby guardians which exist in many states but not, at the time of this legislation, in the District of Columbia.<sup>42</sup> The Committee wanted to create a mechanism, especially for older permanent guardians, whereby another permanent guardian could be pre-screened in case the original permanent guardian was unable to exercise his or her responsibilities.

Paragraph (a) permits a motion for permanent guardianship to include—or allows the moving party to designate—a successor guardian. The court must approve any successor guardian and can only do so after finding that the designation is in the child's best interests and the successor guardian is suitable and able to provide a safe and permanent home for the child.

Paragraph (b) allows a successor guardian to be named after the permanent guardianship is created by filing a motion to modify the guardianship order. The

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<sup>42</sup> This legislation was recently enacted after a multi-year effort. *See* DC Code 16-4801 *et. seq.*

standard for approval—the child’s best interests and that the successor guardian is suitable and able to provide a safe and permanent home—is the same as Paragraph (a).

Paragraphs (c) and (d) detail the process and circumstances under which a successor guardian becomes the permanent guardian. The Committee chose a probate standard of “death or physical or mental infirmity” to dictate when a successor guardian can and must immediately obtain physical custody of the child and assume the permanent guardian’s rights and responsibilities as set forth in the guardianship order.

In order to validate the new guardianship the successor guardian must move the court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. This allows the court to issue an order of reference directing the mayor to file a report and recommendation about the child’s current status and conduct a full review of the successor guardian with notice to all parties.

In order to insure that the child has a ongoing legal placement in the interim, the successor guardian is authorized to assume the permanent guardian’s rights and responsibilities until the court conducts a hearing on the motion to ratify. This authority can be limited or modified by the court anytime prior to the hearing.

Paragraph (e) outlines the content of the motion to validate the successor guardianship. The motion must include the standard information required by § 16-2384(c). In addition, the motion must contain an appendix which includes a copy of the original order which designated the successor guardian, and either proof of the

permanent guardian's death, such as a copy of a death certificate or funeral home receipt, or proof of the permanent guardian's physical or mental infirmity.

In order to issue a final order transferring the permanent guardian's rights and responsibilities to the successor guardian, the court must meet all the requirements of § 16-2395(e) and find that the successor guardian was duly designated by the permanent guardian. The court must also find that the permanent guardian is deceased or is physically or mentally infirm; the transfer of permanent guardianship is in the child's best interests; adoption, termination of parental rights, or return to parent is not appropriate for the child; and the successor guardian is suitable and able to provide a safe and permanent home for the child.

To the greatest extent possible the Committee wanted to insure that a range of permanency options were evaluated at every stage of the proceeding. This not only guarantees the child's best interests, but protects the parents' constitutional rights.

**§ 16-2399. Permanent guardianship subsidy**

(a) To the extent that appropriated funds are available, the Mayor may make guardian subsidy payments to a permanent guardian, irrespective of the permanent guardian's state of residence, as needed on behalf of a child with special needs where the permanent guardian has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. For the purposes of this section a "child with special needs" includes any child who is difficult to place in adoption because of age, race, ethnic background, physical or mental condition, or membership in a sibling group which should be placed together, or a child who, in all likelihood, would go without another permanent placement arrangement except for the acceptance of the child as a member of the permanent guardian's family.

(b) Subsidy payments may be made under this section only pursuant to a subsidy payment agreement entered into by the Mayor and the permanent guardian.

(c) Subsidy payments allowed under this section may be paid, subject to the availability of appropriated funds necessary to carry out the provisions of this section, on a long-term basis to help a permanent guardian whose income is limited and likely to remain

so, or on a time limited basis to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time.

(d) Eligibility for subsidy payments under this section may continue during the period of the guardianship order until the child reaches 18 years of age.

(e) No permanent guardianship subsidy payment shall be made on behalf of any child with respect to whom a guardianship order has been entered by the Superior Court of the District of Columbia, pursuant to this subchapter, prior to October 1, 2000.

(f) Once during each calendar year and at other times during the year when changed conditions and costs are deemed by the Mayor to warrant review, the Mayor shall review the need for continuing each permanent guardianship subsidy. A permanent guardian who is subject to a subsidy agreement under this section may request, in writing, at any time, for reasons set forth in the request, a review of the amount of the payment or the level of continuing payments. Such review shall begin not later than 30 days from the receipt of the request by the Mayor. At the time of a review, appropriate adjustments in payment shall be made based upon changes in the needs of the child. Any adjustment may be made retroactive to the date a request for review was received by the Mayor. If a request for review is not acted on within 30 days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of subchapter I of Chapter 15 of Title I.

(g) The Mayor shall disseminate information to prospective permanent guardians as to eligibility for subsidy under this section.

(h) The Mayor shall keep such records as are necessary to evaluate the effectiveness of permanent guardianship subsidies as a means of encouraging and promoting the placement of children with special needs with permanent guardians. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include, but not be limited to the number of children placed with permanent guardians under subsidy payment agreements during the year preceding the annual report and the major characteristics of the children placed.

(i) Permanent guardianship subsidies shall be subject to the availability of appropriations. Nothing in this section shall be construed to create an entitlement to a permanent guardianship subsidy for any person.

(j) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 may issue rules to implement the provisions of this section.

The Committee did not propose or discuss this section. The Agency added this section after the Committee finished its draft in order to provide a limited subsidy for permanent guardians similar to adoption subsidy. To some extent, this section is based

on the District's 25 year old adoption subsidy law<sup>43</sup> and is subject to appropriations. As such, the section is not an entitlement like adoption subsidy. It is also based on the permanent guardian's financial need—as determined by the Mayor—and not the child's needs. Unlike an adoption subsidy, and although the child remains eligible for payments until age 18, guardianship subsidy can be limited to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time. They can also continue, but are not guaranteed, on a long-term basis, but only to help a permanent guardian whose income is limited and likely to remain so. Guardianship subsidies are subject to an annual or more frequent review and any disputes are appealable through an administrative fair hearing process.

The Committee's original and still unfulfilled intent was to create a “placement neutral” subsidy based on each child's unique needs. This subsidy was envisioned as an entitlement which would follow the child regardless of his or her ultimate and sometimes changing permanent placement. The subsidy would consist of an array of services, including cash and health benefits, tailored to each child's special needs. We unfortunately were unable to address this critical remaining issue.

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43 DC Code 4-301 *et. seq.*

AN ACT

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*Codification  
District of  
Columbia  
Code  
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend, on an emergency basis, due to legislative review, Chapter 7 of Title 15 of the District of Columbia Code to waive court costs or fees for persons seeking to adopt children who have been adjudicated to be neglected, and to amend Chapter 23 of Title 16 of the District of Columbia Code to establish a procedure for the appointment of permanent guardians for children who have been adjudicated to be neglected and have been removed from the custody of their parents, and to provide eligibility for a subsidy for permanent guardians, subject to appropriations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Foster Children's Guardianship Legislative Review Emergency Act of 2000".

Sec. 2. Chapter 7 of Title 15 of the District of Columbia Code is amended as follows:

(a) The Table of Contents is amended by adding the phrase "15-719. Adoption court costs and fees." to the end.

(b) A new section 15-719 is added to read as follows:

"§ 15-719. Adoption court costs and fees.

"Any person who files a petition pursuant to Chapter 3 of Title 16 to adopt a child who is a respondent in a neglect proceeding or who has been adjudicated to be neglected as defined in Chapter 23 of Title 16 shall not be required to pay court costs or fees in the Superior Court of the District of Columbia."

Sec. 3. Chapter 23 of Title 16 of the District of Columbia Code is amended as follows:

(a) The Table of Contents is amended by adding the following to the end:

*"Subchapter V. Permanent Guardianship*

16-2381. Purpose of the subchapter; construction of provisions.

16-2382. Definitions.

16-2383. Grounds for the creation of a permanent guardianship.

- 16-2384. Motions.
- 16-2385. Parties.
- 16-2386. Notice.
- 16-2387. Conduct of hearings.
- 16-2388. Adjudicatory hearings.
- 16-2389. Effect of guardianship order.
- 16-2390. Jurisdiction.
- 16-2391. Relocation.
- 16-2392. Guardianship order; finality; appeals; transcripts.
- 16-2393. Confidentiality of records.
- 16-2394. Unlawful disclosure.
- 16-2395. Modification, termination, or enforcement of the guardianship order.
- 16-2396. Support.
- 16-2397. Interlocutory order of guardianship.
- 16-2398. Successor guardian.
- 16-2399. Permanent guardianship subsidy.”.

(b) A new Subchapter V is added to read as follows:

*“Subchapter V. Permanent Guardianship*

“§ 16-2381. Purpose of the subchapter; construction of provisions.

“The general purpose of this subchapter is to:

“(1) Encourage stability in the lives of certain children who have been adjudicated to be neglected and have been removed from the custody of their parent by providing judicial procedures for the creation of a permanent guardianship in the circumstances set forth in this subchapter;

“(2) Ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and

“(3) Increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing government supervision.

“§ 16-2382. Definitions.

“(a) For the purposes of this subchapter, the term:

“(1) “Agency having responsibility for the child” means the Mayor or his or her designee, or any licensed child-placing agency, as defined in section 32-1007.

“(2) “Guardianship order” means the court document that establishes the permanent guardianship and enumerates the permanent guardian’s rights and responsibilities concerning the care, custody, and control of the child.

“(3) “Health care” includes, but is not limited to, ordinary and emergency medical, dental, psychological, psychiatric, and mental health care and treatment.

“(4) “Permanent guardian” means an individual or individuals designated by the

court pursuant to this subchapter.

“(5) “Relatives” includes a parent, grandparent, sibling, great-grandparent, uncle or aunt, nephew or niece, great-great grandparent, great-uncle or aunt, first cousin, great-great-great grandparent, great-great uncle or aunt, or a first cousin once removed.

“(b) Except when inconsistent with this subchapter, the terms found in this subchapter shall be given the same definition as provided in section 16-2301.

“§ 16-2383. Grounds for the creation of a permanent guardianship.

“(a) A guardianship order may not be entered unless the child has been adjudicated to be neglected pursuant to section 16-2317 and has been living with the proposed permanent guardian for at least 6 months.

“(b) If the child is 14 years of age or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child’s best interests.

“(c) The court may issue a guardianship order only if the court finds that:

“(1) The permanent guardianship is in the child’s best interests;

“(2) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and

“(3) The proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

“(d) In determining whether it is in the child’s best interests that a permanent guardian be designated, the court shall consider each of the following factors:

“(1) The child’s need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

“(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

“(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;

“(4) To the extent feasible, the child’s opinion of his or her own best interests in the matter; and

“(5) Evidence that drug-related activity continues to exist in a child’s home environment after intervention and services have been provided pursuant to section 6-2104.1. Evidence of continued drug-activity shall be given great weight.

“§ 16-2384. Motions.

“(a) A motion for permanent guardianship may be filed by the proposed permanent guardian, the District of Columbia government, or by the child through his or her legal representative.

“(b) A motion for a permanent guardianship may be filed any time after a neglect petition



is filed pursuant to section 16-2305.

“(c) A motion for permanent guardianship shall include:

“(1) The name, sex, date and place of birth, and current placement of the child;

“(2) The proposed permanent guardian's name and relationship to the child;

“(3) The name and address of the child's parents;

“(4) A plain and concise statement of the facts and opinions on which the permanent guardianship is sought;

“(5) A description of the child's mental and physical health;

“(6) A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to parent, is in the child's best interests;

“(7) A statement as to the various efforts taken by the moving party to locate the parent of the child;

“(8) An itemization of the child's assets;

“(9) A statement of compliance with Chapter 3 of Title 21, if applicable;

“(10) The name of proposed successor guardians, if any, and their relationship to the child and proposed permanent guardians;

“(11) Information required by Chapter 45 of Title 16; and

“(12) Written consents, if any, to the permanent guardianship.

“(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, the court, for good cause shown, may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations of neglect.

“§ 16-2385. Parties.

“Parties to a permanent guardianship proceeding shall be the child, the parents of the named child, the proposed permanent guardian, the agency having the legal custody of the child, and the District of Columbia. The court may, at its discretion, on its own motion, or in response to a motion for joinder or intervention, join additional parties to a guardianship proceeding.

“§ 16-2386. Notice.

“(a) When a motion for permanent guardianship is filed, the court shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

“(b) The court shall direct the issuance to and personal service upon the child's parents of a summons and a copy of the motion for permanent guardianship.

“(c) When it is appropriate to the proper disposition of the case, the court may direct the service of a summons upon other persons.

“(d) If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

“§ 16-2387. Conduct of hearings.

“(a) All hearings and proceedings conducted pursuant to this subchapter shall be held by a judge, without a jury.

“(b) All hearings and proceedings conducted pursuant to this subchapter shall be recorded by appropriate means.

“(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings shall be admitted, but the court may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

“(d) If the court finds it is in the child’s best interests, the child may be temporarily excluded from any proceeding. Under no circumstances, however, may counsel in the case be excluded.

“§ 16-2388. Adjudicatory hearings.

“(a) The court shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If a parent has been given proper notice but fails to appear, the court may proceed in the parent’s absence.

“(b) The court shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.

“(c) Every party shall have the right to present evidence, to be heard in his or her own behalf, and to cross-examine witnesses called by another party.

“(d) All evidence which is relevant, material, and competent to the issues before the court shall be admitted.

“(e) Notwithstanding the provisions of sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.

“(f) The court may enter, modify, or terminate a guardianship order after considering all of the evidence presented, including the Mayor’s report and recommendation, and after making a determination based upon a preponderance of the evidence that creation, modification, or termination of the guardianship order is in the child’s best interests. If the court does not find that sufficient grounds exist to create, modify, or terminate a guardianship order, the motion may be dismissed.

“§ 16-2389. Effect of guardianship order.

“(a) Unless the court specifies otherwise, the permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

“(1) Protect, nurture, discipline, and educate the child;

“(2) Provide food, clothing, shelter, education as required by law, and routine health care for the child;

“(3) Consent to health care without liability by reason of the consent for injury to

the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

“(4) Authorize a release of health care and educational information;

“(5) Authorize a release of information when consent of a parent is required by law, regulation, or policy;

“(6) Consent to social and school activities of the child;

“(7) Consent to military enlistment;

“(8) Obtain representation for the child in legal actions; and

“(9) Determine the nature and extent of the child’s contact with other persons.

“(b) The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.

“(c) Entry of a guardianship order does not terminate the parent and child relationship, including:

“(1) The right of the child to inherit from his or her parents;

“(2) The parents’ right to visit or contact the child (except as limited by the court);

“(3) The parents’ right to consent to the child’s adoption;

“(4) The parents’ right to determine the child’s religious affiliation; and

“(5) The parents’ responsibility to provide financial, medical, and other support for the child.

“(d) The guardianship order may specify the frequency and nature of visitation or contact between relatives and the child. Such visitation or contact may be determined by the court to be in the child’s best interest.

“(e) Except as required by a motion under subsection (f) of this section, upon entry of a guardianship order, and during the period of time such an order remains in effect, the requirements of sections 16-2322 and 16-2323 shall be suspended.

“(f) The court shall make a permanency determination and close the neglect case upon motion by any party to the permanent guardianship proceeding if the court finds that such a determination is in the child’s best interest.

“§ 16-2390. Jurisdiction.

“The court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until the child reaches 18 years of age. If the court finds that it is in the child’s best interest and if the child consents, the court may retain jurisdiction until the child reaches 21 years of age.

“§ 16-2391. Relocation.

“The permanent guardian shall not relocate with the child over 100 miles from his or her place of residence at the time the guardianship order is entered without filing a notice with the court, which is personally served on all parties, 15 business days before the relocation.

“§ 16-2392. Guardianship order; finality; appeals; transcripts.

“(a) Every guardianship order shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court’s jurisdiction.

“(b) Except as otherwise expressly provided by law, in all hearings and cases tried before the court pursuant to this subchapter, the judgment of the court shall be final.

“(c) In all appeals from decisions of the court with respect to an order under this subchapter, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

“(d) Upon the filing of a motion and supporting affidavit stating that he or she is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal of an order under this subchapter shall be furnished, at no cost or at such part of cost as he or she is able to pay, so much of the transcript as is necessary to prepare adequately and support the appeal.

“(e) An appeal does not operate to stay the order, judgment, or decree appealed from, but whenever the case is properly before the appellate court, that court, on application and hearing, may order otherwise if suitable provision is made in the order for the care and custody of the child.

“§ 16-2393. Confidentiality of records.

“The provisions of sections 16-2332 and 16-2333 shall apply to all records and files that are created pursuant to proceedings under this subchapter.

“§ 16-2394. Unlawful disclosure.

“Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2393 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$250 or imprisoned for not more than 90 days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

“§ 16-2395. Modification, termination, or enforcement of the guardianship order.

“(a) Any party may move the court to modify, terminate, or enforce a guardianship order or an order of child support created under this subchapter.

“(b) Notice of a motion to modify, terminate, or enforce a guardianship order or an order of child support shall be personally served on all parties. If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

“(c) The court may issue an order of reference directing the Mayor to file a report and recommendation regarding the proposed modification or termination of the guardianship order within 45 days of the filing date of the motion.

“(d) A guardianship order may be modified or terminated if the court finds, by a preponderance of the evidence, that there has been a substantial and material change in the child’s circumstances subsequent to the entry of the guardianship order and that it is in the child’s best interests to modify or terminate the guardianship order.

“(e) The court shall hold an adjudicatory hearing as provided for in section 16-2388

before modifying or terminating a guardianship order and shall, at the conclusion of the hearing, enter a written order reciting the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

“(f) Upon entry of an order terminating the guardianship, the permanent guardian shall no longer be entitled to physical custody of the child, have any other parental rights and responsibilities concerning the child created under this subchapter, or have party status in any further proceeding brought under this subchapter.

“(g) Upon entry of an order terminating the guardianship, the court shall hold a hearing pursuant to section 16-2323.

“§ 16-2396. Support.

“(a) Nothing under this subchapter shall preclude the permanent guardian from receiving money paid for the child's support to the child's parent under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

“(b) After due notice to the parent or other persons legally obligated to care for and support the child and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the guardianship order is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

“§ 16-2397. Interlocutory order of guardianship.

“(a) If it is in the child's best interests, the court may enter an interlocutory guardianship order, which shall by its terms automatically become a guardianship order on a date therein named, not less than 6 months nor more than one year from the date of entry of the interlocutory order, unless in the interim the order shall have been set aside for cause shown.

“(b) The agency having responsibility for the child shall be permitted to visit the child during the period of the interlocutory order and may be ordered to provide services as specified in the interlocutory order.

“(c) The court may revoke its interlocutory guardianship order, either on its own motion or on the motion of one of the parties, for good cause shown, at any time before it becomes a guardianship order if it is in the child's best interests. Before the revocation, personal notice shall be given to the parties and an adjudicatory hearing shall be conducted pursuant to section 16-2388.

“§ 16-2398. Successor guardian.

“(a) Upon filing a motion for permanent guardianship pursuant to section 16-2384, the movant may designate and the court shall approve any successor guardian.

“(b) A successor guardian may be designated or removed after the creation of the permanent guardianship by the filing of a motion to modify pursuant to section 16-2395.

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“(c) The successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian’s rights and responsibilities concerning the child upon the permanent guardian’s death, or physical or mental infirmity.

“(d) The successor guardian shall move the court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the court, the successor guardian shall assume the permanent guardian’s rights and responsibilities concerning the child until the court conducts a hearing on the motion to modify.

“(e) A motion filed pursuant to this section shall:

“(1) Include information required by section 16-2384(c);

“(2) Append the original order which designated the successor guardian; and

“(3) Append a copy of either:

“(A) Proof of the permanent guardian’s death, such as a copy of a death certificate or funeral home receipt; or

“(B) Proof of the permanent guardian’s physical or mental infirmity.

“(f) Before issuing a final order transferring the permanent guardian’s rights and responsibilities to the successor guardian, the court shall, in addition to the requirements specified in section 16-2395(e), find that:

“(1) The successor guardian was duly designated by the permanent guardian;

“(2) The permanent guardian is deceased or is physically or mentally infirm;

“(3) The transfer of permanent guardianship is in the child’s best interests;

“(4) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and

“(5) The successor guardian is suitable and able to provide a safe and permanent home for the child.

“§ 16-2399. Permanent guardianship subsidy.

“(a) To the extent that appropriated funds are available, the Mayor may make subsidy payments to a permanent guardian, irrespective of the permanent guardian’s state of residence, as needed on behalf of a child with special needs where the permanent guardian has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. For the purposes of this section a “child with special needs” includes any child who is difficult to place in adoption because of age, race, ethnic background, physical or mental condition, or membership in a sibling group which should be placed together, or a child who, in all likelihood, would go without another permanent placement arrangement except for the acceptance of the child as a member of the permanent guardian’s family.

“(b) Subsidy payments may be made under this section only pursuant to a subsidy payment agreement entered into by the Mayor and the permanent guardian.

“(c) Subsidy payments allowed under this section may be paid, subject to the availability of appropriated funds necessary to carry out the provisions of this section, on a long-

term basis to help a permanent guardian whose income is limited and likely to remain so, or on a time-limited basis to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time.

“(d) Eligibility for subsidy payments under this section may continue during the period of the guardianship order until the child reaches 18 years of age.

“(e) No subsidy payment to a permanent guardian shall be made on behalf of any child with respect to whom a guardianship order has been entered by the Superior Court of the District of Columbia, pursuant to this subchapter, before October 1, 2000.

“(f) Once during each calendar year and at other times during the year when changed conditions and costs are deemed by the Mayor to warrant review, the Mayor shall review the need for continuing each permanent guardianship subsidy. A permanent guardian who is subject to a subsidy agreement under this section may request, in writing, at any time, for reasons set forth in the request, a review of the amount of the payment or the level of continuing payments. Such review shall begin not later than 30 days from the receipt of the request by the Mayor. At the time of a review, appropriate adjustments in payment shall be made based upon changes in the needs of the child. Any adjustment may be made retroactive to the date a request for review was received by the Mayor. If a request for review is not acted on within 30 days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of subchapter I of Chapter 15 of Title 1.

“(g) The Mayor shall disseminate information to prospective permanent guardians as to eligibility for subsidy under this section.

“(h) The Mayor shall keep such records as are necessary to evaluate the effectiveness of permanent guardianship subsidies as a means of encouraging and promoting the placement of children with special needs with permanent guardians. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include the number of children placed with permanent guardians under subsidy payment agreements during the year preceding the annual report and the major characteristics of the children placed.

“(i) Permanent guardianship subsidies shall be subject to the availability of appropriations. Nothing in this section shall be construed to create an entitlement to a permanent guardianship subsidy for any person.

“(j) The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, may issue rules to implement the provisions of this section.”.

**Sec. 4. Applicability.**

This act shall apply as of November 12, 2000.

**Sec. 5.** The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule

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Act, approved December 24, 1973 (87 Stat. 813, D.C. Code § 1-233(c)(3)).

Sec. 6. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto) and approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and shall remain in effect for no longer than 90 day, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Code § 1-229(a)).

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia