

Comment,
A SURVEY OF STATE GUARDIANSHIP
STATUTES: ONE CONCEPT, MANY
APPLICATIONS

Introduction

All fifty states and the District of Columbia have enacted guardianship statutes. The North Carolina State Legislature, for example, has stated the following purpose for enacting its version: “[m]inors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults to handle property or benefits to which they are entitled. Parents are the natural guardians of the person of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible, accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf.”¹

Starting in the early 1990s, a handful of states began implementing additional statutory provisions to help ensure children stay with their biological parents.² States have recognized that in many cases parents who are unable to take care of their children, but who do not wish to give their children up for adoption or to terminate their parental rights, should have the option of appointing a guardian for their children. Even in cases where the children are placed in protective state custody, and will not be returning to the home, sometimes severing all ties to their biological parents would be contrary to their best interests. Guardianship, therefore, is a viable option to parents, as it does not require the termination of parental rights, but gives the guardian legal rights to the child and removes the state agency from the lives of the family.

Guardianships then can be used to appoint a legal representative for a child, as an alternative to adoption or as a temporary means of caring for a child when a parent is unable to do so. There are many statutory variations. For instance, probate

¹ N.C. GEN. STAT § 35A-1201 (2002).

² Examples include standby, limited, emergency, and temporary guardianships.

courts, circuit courts, chancery courts, family courts or juvenile courts may all have jurisdiction over guardianships. States also vary with regard to the age of majority and the age at which the minor may choose his or her own guardian. States also differ in their classification of the ward – a number of states lump minors with incapacitated persons, while other states distinguish between the two categories of persons. More similarities, however, exist between the states than do differences. Among the 51 statutes surveyed, one main theme was prevalent: the law presumes that parents serve as legal guardians of their children, giving them exclusive rights to care, custody, and control along with responsibility to support the child.

Part I of this Comment describes guardianship in a national context. Parents, traditionally, had available to them two options to appoint a guardian for the child. A parent could appoint a guardian by will or by petition. While these two options remain viable to parents, state legislatures have begun to amend their respective guardianship statutes in response to two significant demographic events: single parenthood and AIDS. Generally, if one parent dies, the natural guardianship shall pass to the surviving parent; this is not the case where there is only one parent involved in raising the child. Therefore, a growing number of states have added standby guardianship provisions, which preserve the legal relationship between the parent and child. The Comment then describes, in Part II, each state's guardianship statute separately. The fundamental issue being how each state has addressed the arena of guardianship and what mechanisms each state has implemented to accomplish the most appropriate method of third-party guardianship.

I. Guardianship in a National Context

As stated by the Honorable Jeremy A. Stahlin, Associate Justice of Massachusetts' Probate and Family Court Department, "[g]uardianship of minor children has been available to provide custodians of persons of minors and of their property since well before the United States achieved its independence. In England,

guardianships were available well before its first known efforts to establish colonies in America.”³

A guardian is a court-appointed decision-maker who is responsible for the ward’s physical well-being.⁴ Generally, a guardian may be appointed for any person whose mental capacity or lack of capacity prevents them for caring for themselves, providing for shelter, food, clothing, medical care or other necessities of life. The incapacitated person or child is typically referred to as the “ward.” The guardian has approximately the same responsibilities for and authority over the ward in a full guardianship appointment as a parent has for a small child, except a guardian does not have the duty to supply funds to support the ward.⁵ Guardianship may be fashioned to precisely what is needed for the ward in question. Courts have a duty to fashion a guardianship to the least restrictive alternative based upon all the facts and circumstances.⁶

Parents have three different options to select the person who will have legal authority for the child – by petition, by testamentary will, and, most recently, through a process appropriately termed “standby guardianship.” The first method, commonly called, guardianship by petition or “traditional guardianship,” is initiated when a parent petitions the court to have a person of his or her choosing serve as the guardian of the minor child. Depending on the particular state statute, the court has the power to appoint a guardian for a child on a limited, temporary or permanent basis. The parent’s choice, however, is limited to the court’s mandate that the appointment must serve the best interests of the child. Thus, there is no guarantee that the court will uphold the parent’s choice of a guardian. Furthermore, while traditional guardianship permits a living parent to establish guardianship for the child, it does not allow the parent to retain his or her guardianship rights; traditional guardianship would require the parent

³ Jeremy A. Stahlin, *Massachusetts Guardianship and Conservatorship Practice Chapter 8: Minors*, in MASSACHUSETTS CONTINUING LEGAL EDUCATION, INC. (1997).

⁴ *E.g.*, COLO. REV. STAT § 15-14-207 (2002).

⁵ *E.g.*, NEB. REV. STAT. § 30-2613 (2002).

⁶ *E.g.*, FLA. STAT. ch. 744.1012 (2002).

to relinquish all parental rights and perhaps even physical custody of the child.⁷

The second method, through a testamentary designation of a guardian, is perhaps the most commonly method used to appoint a guardian. A guardian who is appointed by a parent using this method becomes the guardian only upon the death of the parent. The guardian may be designated by will “either jointly by both parents or by a single parent if only that parent is living at the time of the will.”⁸ A single parent cannot establish guardianship by will unless he or she is the sole surviving parent. In some states, if the other parent is living at the time the first parent makes the testamentary designation, then that designation is invalid or “at best serves only as a testamentary nomination of a guardian.”⁹

Unlike the first and second method, the third method – standby guardianship – allows a parent to make permanent plans for his or her child without relinquishing custody or other parental rights.¹⁰ When single parents with a life-threatening disease are unable to care for their children, the lack of a “back up” guardian becomes critical. Therefore, a standby guardian statute gives such parents the authority to appoint a guardian to act as coguardian or guardian upon the occurrence of a triggering event, which, generally, is defined as, “[a] specified occurrence stated in the designation which empowers a standby guardian to assume the powers, duties and responsibilities of guardian or coguardian.”¹¹ The standby guardian preserves the legal relationship between the parent and child since the parent retains legal custody of the child during the period that the standby guardian is required to take responsibility. Therefore, the standby guardian has the authority to make decisions concerning the child while the parent is still alive but may be incapacitated. Not only will the child be cared for during the parent’s illness/incapacity

⁷ Joyce McConnell, *Standby Guardianship: Sharing the Legal Responsibility for Children*, 7 MD. J. CONTEMP. LEGAL ISSUES 249, 260 (1996).

⁸ *Id.*

⁹ *Id.*

¹⁰ Lenore M. Molee, *The Ultimate Demonstration of Love for a Child: Choosing a Standby Guardian New Jersey Standby Guardianship Act*, 22 SETON HALL LEGIS. J. 475 (1998).

¹¹ *See, e.g.*, 23 Pa. CSA § 5602 (2002).

by a person the parent chooses, but upon the death of the parent, the standby guardian can be affirmed and approved as the child's permanent guardian through a simple court proceeding.

II. Individual State Guardian Statutes

*Alabama*¹²

Alabama has adopted the Uniform Guardianship and Protective Proceedings Act.¹³ The age of majority is nineteen-years of age.¹⁴ Jurisdiction over guardianship matters is in the probate court, but administration may be removed to circuit court.¹⁵ The court must determine the guardian to be in the best interest of the child.¹⁶ If two or more appointments for guardianship of the minor are nominated, the last in time has priority.¹⁷ A minor of fourteen or more years of age may block a parental appointment and choose his or hers own nominee; however, the court must find the minor's nominee in the best interests of the child.¹⁸

*Alaska*¹⁹

In Alaska, the Superior Court has jurisdiction over guardianship matters pursuant to the Uniform Probate Code.²⁰ The court can appoint a full or partial guardian. A partial guardian has only those duties granted by the court whereas a full guardian has the relationship of a parent to a minor except for the liability for care and maintenance of ward and liability based solely on guardianship for harm caused by ward.²¹ The court may appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.²² A guardian's authority and responsibility terminate upon the death, resignation, or removal of the

¹² ALA. CODE §§ 26-1-1 to 26-2A-53 (2002).

¹³ *Id.* at § 26-2A-1.

¹⁴ *Id.* at § 26-1-1.

¹⁵ *Id.* at § 26-2-2.

¹⁶ *Id.* at § 26-2A-76.

¹⁷ *Id.* at § 26-2A-71.

¹⁸ *Id.* 26-2A-76.

¹⁹ ALASKA STAT. ANN. §§ 13.26.005 to .085(2002).

²⁰ *Id.* at § 13.26.100.

²¹ *Id.* at § 13.26.150.

²² *Id.* at § 13.26.055.

258 *Journal of the American Academy of Matrimonial Lawyers*

guardian or upon the minor's death, adoption, marriage, or attainment of majority.²³

*Arizona*²⁴

Arizona has adopted the Uniform Probate Code. The superior court has jurisdiction with venue where the minor resides or is present.²⁵ If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.²⁶ A permanent guardian may be appointed if the minor has been in the custody of the prospective guardian for at least nine months, and reunification with the parents is deemed by the court to be not practical.²⁷ Permanent guardianship results in the legal custody of a minor, but does not terminate the parent's rights or affect the child's inheritance rights.²⁸ A guardian of a minor may be appointed by will if the minor is under the age of fourteen-years, and if the minor is fourteen-years or older and does not object.²⁹ The court may also appoint a guardian if all parental rights of custody have been terminated or suspended.³⁰ In all circumstances, the court must look to the best interests of the child. Guardianship cannot be terminated by resignation until the guardian receives approval by the court.³¹ Permanent guardianship terminates if the court finds significant change of circumstance by clear and convincing evidence and a showing that revocation is in child's best interest.³²

*Arkansas*³³

Arkansas' guardianship statute extends to persons specifically provided for under the terms of the Uniform Veterans' Guardi-

²³ *Id.* at § 13.26.075.

²⁴ ARIZ. REV. STAT. ANN. §§ 14-5101 to -5212 (West 2002).

²⁵ *Id.* at §§ 14-5102, 14-5205.

²⁶ *Id.* at § 14-5207(C).

²⁷ *Id.* at § 8-871.

²⁸ *Id.* at § 8-871 to 872.

²⁹ *Id.* at 14-5202 to 5204.

³⁰ *Id.*

³¹ *Id.* at § 14-5210.

³² *Id.* at § 8-873.

³³ ARK. CODE. ANN. §§ 28-65-101 to -403 (2002).

anship Act.³⁴ The probate court has jurisdiction over all matters of guardianship.³⁵ Venue for the appointment of a guardian is in the county of the ward's domicile, or if not domiciled in the state, venue is in the county of the ward's residence. If none of the above apply, then venue shall be in the county in which the ward's property is situated.³⁶ A guardian may be appointed for unmarried minors under the age of eighteen, those detained by or confined by a foreign power or who have disappeared, and any person defined as incapacitated.³⁷ Determination of incapacity, disappearance, detention or confinement by foreign power can be established by satisfactory evidence.³⁸ Section 28-65-203 outlines the individuals qualified to be appointed guardian. Generally, a natural person of eighteen-years of age who resides in the state of sound mind and not a convicted or unpardoned felon may be appointed as a guardian.³⁹ The court may appoint a temporary guardian not to exceed 90 days if the court finds imminent danger to the life or health of the ward.⁴⁰ If the ward is over fourteen-years of age, immediate notice of temporary guardianship shall be served.⁴¹ At the same age, the minor may petition the court to remove the current guardian and appoint a substitute.⁴² In 1999, the state enacted a standby guardianship statute.⁴³ In the event the parent is chronically ill or near death he or she may have a standby guardian appointed by the court for the parent's minor children without surrendering parental rights.⁴⁴

*California*⁴⁵

California's guardianship statute allows any competent person, including a nonresident of the state, to be appointed as a guard-

³⁴ *Id.* at § 28-65-102.

³⁵ *Id.* at § 28-65-107.

³⁶ *Id.* at § 28-65-202.

³⁷ *Id.* at § 28-65-104, 201.

³⁸ *Id.* at § 28-65-211.

³⁹ *Id.* at § 28-65-203.

⁴⁰ *Id.* at § 28-65-218.

⁴¹ *Id.*

⁴² *Id.* at § 28-65-219.

⁴³ *Id.* at 28-65-221.

⁴⁴ *Id.*

⁴⁵ CAL. PROB. CODE ANN §§ 1400 to 2258 (West 2002).

260 *Journal of the American Academy of Matrimonial Lawyers*

ian.⁴⁶ A parent may nominate a guardian by will if the other parent consents in writing, is dead, lacks legal capacity to consent, or consent of the other parent would not be required for adoption.⁴⁷ A petition for guardianship may be filed by a relative of the minor or the minor, if the minor is twelve-years of age or older.⁴⁸ California allows for the appointment of temporary guardians upon a showing of good cause.⁴⁹ The relationship of guardian and ward is a fiduciary relationship, and is governed by the law of trusts.⁵⁰ The breach of this duty may result in various liabilities depending on the circumstances, but may be excused if the guardian acted reasonably and in good faith.⁵¹ Within 90 days of appointment, the guardian must return to the court a verified inventory of the ward's estate.⁵² The guardian, with certain exceptions, must give bond for performance as directed by the court.⁵³ The guardian is also required to take an oath to perform duties of the office.⁵⁴ When the ward attains majority or dies, the guardianship terminates, and under the Family Code guardianship terminates on adoption or emancipation of the ward.⁵⁵ The court may also terminate the guardianship if, by petition, the guardianship is no longer necessary or is in the best interests of the ward.⁵⁶

*Colorado*⁵⁷

Colorado has adopted the Uniform Probate Code. Jurisdiction over guardianship proceedings is in the probate court in Denver and district courts elsewhere. If the minor is already under the jurisdiction of the Juvenile Court, then proper jurisdiction is in the juvenile court.⁵⁸ Appointment of a guardian must be in the

⁴⁶ *Id.* at § 2107.

⁴⁷ *Id.* at § 1500.

⁴⁸ *Id.* at § 1501.

⁴⁹ *Id.* at § 2250.

⁵⁰ *Id.* at § 2101.

⁵¹ *Id.* at §§ 2401.3 to .5.

⁵² *Id.* at § 2330.

⁵³ *Id.* at § 2320.

⁵⁴ *Id.* at § 2300.

⁵⁵ *Id.* at § 1600.

⁵⁶ *Id.* at § 1860.

⁵⁷ COLO. REV. STAT. §§ 15-14-101 to -210 (2002).

⁵⁸ *Id.* at §§ 15-14-106, 19-1-104.

best interests of the minor.⁵⁹ The parent of a minor may appoint a guardian by will or petition.⁶⁰ If the minor is twelve-years of age or older, he or she has the right to consent or refuse to consent to the appointment.⁶¹ The court shall appoint the guardian nominated by the minor, unless the court finds the appointment unsuitable and not in the best interests of the minor.⁶² Eligibility requirements allow any person twenty-one years of age or older, including a nonresident, to be appointed as a guardian.⁶³ The appointed guardian must, however, file a written acceptance of appointment.⁶⁴

*Connecticut*⁶⁵

In Connecticut, a parent may appoint a guardian of a minor by will or other writing signed by the parent and attested to by witnesses. The appointment is effective upon filing the writing with the probate court.⁶⁶ Conversely, if the court finds the parents unfit, either or both may be removed upon application to the probate court by any adult relative (blood or marriage) of the minor, by the court itself, or by the minor's counsel.⁶⁷ In response to societal changes mentioned earlier, Connecticut has enacted a standby guardianship statute.⁶⁸ Upon the parent's mental incapacity, physical disability, or death, the standby guardianship takes effect for a period of up to one year.⁶⁹ The principal may revoke a designation of a standby guardian at any time by written revocation and notification of the revocation to the standby guardian.⁷⁰

⁵⁹ *Id.* at § 15-14-202.

⁶⁰ *Id.*

⁶¹ *Id.* at § 15-14-203.

⁶² *Id.* at § 15-14-206.

⁶³ *Id.* at § 15-14-102.

⁶⁴ *Id.* at § 15-14-202.

⁶⁵ CONN. GEN. STAT. §§ 45a-591 to 627(2002).

⁶⁶ *Id.* at § 45a-596.

⁶⁷ *Id.* at §§ 45a-606, -614.

⁶⁸ *Id.* at § 45a-624d.

⁶⁹ *Id.*

⁷⁰ *Id.* at § 45a-624f

262 *Journal of the American Academy of Matrimonial Lawyers**Delaware*⁷¹

Delaware's statute grants discretion to the Chancery Court to appoint, if needed, two or more persons as guardian for the minor who is under the age of fourteen-years.⁷² No one has the authority to act in the capacity of a guardian without having been appointed by the court.⁷³ If over fourteen-years of age, the minor may choose his or her own guardian and the court shall appoint this person if there is no just cause to the contrary.⁷⁴ In 1999, as matter of first impression, the Supreme Court of Delaware ruled that foster parents who cared for a child most of his life had standing to petition for guardianship.⁷⁵ According to the rules of the Chancery Court, the guardian is required, within thirty-days of appointment, to provide the court with an inventory of the ward's property. When the guardian turns the age of eighteen-years, the guardianship terminates. In addition, the guardian is allowed to resign if the Chancery deems proper, and may be removed for any sufficient cause.⁷⁶

*District of Columbia*⁷⁷

The District of Columbia grants exclusive jurisdiction in appointing guardians to the Probate Division of the Superior Court. Unlike other statutes, a "minor" is referred to as an "infant." If an infant does not have a natural or testamentary guardian, a guardian may be appointed by the probate court in its own discretion or on the application of the infant's next of friend.⁷⁸ If deemed suitable by the probate court, an infant under the age of fourteen-years is entitled to preference in appointing a guardian.⁷⁹ If, on the other hand, the infant is over the age of fourteen-years, he or she is entitled to select his or her own guardian.⁸⁰ If the infant marries, he or she may select his or her

⁷¹ DEL. CODE ANN. tit. 12 §§ 3901 to 3926 (2002).

⁷² *Id.* at § 3901.

⁷³ *Id.* at § 3902[a].

⁷⁴ *Id.* at § 3902[c][d].

⁷⁵ *See Div. of Family Serv. v. Harrison*, 741 A.2d 1016 (Del. 1999).

⁷⁶ *Id.* at § 3908.

⁷⁷ D.C. CODE §§ 21-100 to -182 (2002).

⁷⁸ *Id.* at § 21-107.

⁷⁹ *Id.*

⁸⁰ *Id.* at §§ 21-108, 109.

spouse as guardian, with the approval of the court.⁸¹ A provision in the statute prohibits any person from acting as a guardian of five or more infants at one time; the only exception being if the infants are members of the same family.⁸² The statute also requires of every appointed guardian an inventory, within three months after execution and approval of bond, of the infant's real and personal property.⁸³ Both natural and appointive guardianships cease when the minor reaches the age of majority – eighteen-years of age.⁸⁴ Unique to the District of Columbia, the Probate Court may appoint guardians to indigent minor children for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of costs on account of the proceeding.⁸⁵

*Florida*⁸⁶

Florida's guardianship statute is a modified version of the Uniform Veterans' Guardianship Act. The circuit court has exclusive jurisdiction over guardianship proceedings. The proper venue for the appointment of a guardian is: 1) county where incapacitated person resides; or 2) if a nonresident, in any county in Florida where incapacitated person owns property; or 3) if neither, where an debtor of incapacitated person resides; or 4) if the incapacitated person is found in a county other than the county of residence, venue for the appointment of a guardian is where the incapacitated person is found.⁸⁷ The minor's parent, brother, sister, next of kin, or other person interested in the welfare of the minor may petition the court to appoint a guardian.⁸⁸ Florida has enacted a standby guardian provision: a standby guardian of a minor may be appointed by petition or consent of both parents, if living, or of the surviving parent, to assume the duties of guardianship upon death or incapacity of the minor's

⁸¹ *Id.*

⁸² *Id.* at §§ 21-103[b], 106[c].

⁸³ *Id.* at § 21-142.

⁸⁴ *Id.* at § 21-104.

⁸⁵ *Id.* at § 21-181.

⁸⁶ FLA. STAT. ch. 744.100 to .601 (2002).

⁸⁷ *Id.* at 744.201, 202.

⁸⁸ *Id.* 744.3021.

last surviving parent.⁸⁹ Florida also has a provision for a voluntary guardian, who is a person appointed upon petition of a resident/nonresident person who is unable due to age or physical condition to manage his or her property.⁹⁰ The circuit court may appoint any person who is fit and proper and qualified to act as a guardian, whether related to the ward or not; but the court will give preferences to appointment as stated in 744.312. In its decision of appointment, the court will consider the wishes expressed by a minor who is fourteen-years of age or older.⁹¹ The court requires that the guardian file an initial guardianship report within sixty-days after letters of guardianship are signed, and subsequent annual reports pursuant to 744.367.⁹² The guardianship of the minor terminates when the ward becomes *sui juris* or the ward dies or is restored to capacity, or the guardian has been unable to locate the ward through a diligent search.⁹³

*Georgia*⁹⁴

In Georgia, jurisdiction and venue of the minor is in the probate court of the county of the infant's domicile or where the minor is found, unless the interested party requests transfer to the county of the minor's domicile.⁹⁵ If the infant is over the age of fourteen-years, the infant, then, may select and appoint a guardian subject to the approval of the probate judge.⁹⁶ Generally, the nearest of kin related by blood is given preference by the probate judge, but the judge retains final discretion.⁹⁷ The statute also allows the probate judge to act as guardian if no other guardian is appointed, and has discretionary authority to appoint a successor guardian upon the death of the duly appointed guardian.⁹⁸ The guardian is required to take an oath or affirmation to perform the duty of guardian, and at the judge's discretion be required to

⁸⁹ *Id.* at 744.304.

⁹⁰ *Id.* at 744.341.

⁹¹ *Id.* at 744.312, 342.

⁹² *Id.* at 744.361[2]-[3].

⁹³ *Id.* at 744.521.

⁹⁴ GA. CODE ANN. §§ 29-4-4 to 29-8-9 (2002).

⁹⁵ *Id.* at § 29-4-4.

⁹⁶ *Id.*

⁹⁷ *Id.* at § 29-4-8.

⁹⁸ *Id.* at §§ 29-8-1, 29-2-75.

give bond of up to \$1,000.⁹⁹ After appointment, the guardian must within four months file an inventory with the probate judge, file annual returns, and file a final return when the minor reaches majority or when a new guardian is appointed.¹⁰⁰ If the probate court finds misconduct by the guardian, the judge has the discretion to terminate the guardian from any further duty to the minor.¹⁰¹

*Hawaii*¹⁰²

Hawaii's guardianship statute is a modified version of the Uniform Probate Code. Jurisdiction of guardianship proceedings are in the family court of the circuit court.¹⁰³ Hawaii adheres to the best interests of the minor standard; thus, any person who the court deems to fit this criterion may be appointed as a guardian.¹⁰⁴ The court, however, may give priority to certain individuals: 1) spouse or reciprocal beneficiary, 2) adult child, 3) parent or person nominated by will of deceased parent, and 4) nominee of person caring for or paying benefits to the incapacitated person.¹⁰⁵ A minor who is fourteen-years of age or older may nominate their own guardian, but appointment requires court approval.¹⁰⁶ Although Hawaii's statute is similar to other state statutes concerning the duties of the guardian, the statute does mandate that each child placed in foster care be covered by a comprehensive health care plan.¹⁰⁷ Only by the approval of the family court may a guardian's resignation take effect.¹⁰⁸

*Idaho*¹⁰⁹

Idaho has adopted the Uniform Probate Code, with various modifications. The venue provision is quite general: venue for guardianship proceedings for a minor is in the place where the minor

⁹⁹ *Id.* at § 29-4-2.

¹⁰⁰ *Id.* at §§29-2-24, 29-2-76.

¹⁰¹ *Id.* at § 29-2-45.

¹⁰² HAW. REV. STAT. §§ 560:1-101 to 560:5-212 (2002).

¹⁰³ *Id.* at § 560:5-102.

¹⁰⁴ *Id.* at § 560:5-206.

¹⁰⁵ *Id.* at § 560:5-311.

¹⁰⁶ *Id.* at § 560:5-206.

¹⁰⁷ *Id.* at § 587-85.

¹⁰⁸ *Id.* at § 560:5-210.

¹⁰⁹ IDAHO CODE §§ 15-5-101 to -212 (2002).

resides or is present.¹¹⁰ Proceedings for the appointment of a guardian may be initiated by any relative of the minor, the minor if he or she is fourteen-years of age, or any person interested in the welfare of the minor.¹¹¹ The court may appoint as a guardian any person whose appointment would be in the best interests of the minor. However, the court shall appoint a person nominated by the minor, if the minor is fourteen-years of age or older, unless the court finds the appointment contrary to the best interests of the minor.¹¹² In addition to appointment by will, a parent or a guardian of a minor, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any powers regarding care, custody, or property.¹¹³ Resignation of a guardian does not terminate the guardianship until approved by the court.¹¹⁴ A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.¹¹⁵

*Illinois*¹¹⁶

Illinois, applying a modified version of the Probate Act of 1975, has in its guardianship statute provisions for a traditional, short-term, and standby guardianship, with proceedings being instituted in the court of the county in which the minor resides.¹¹⁷ The short-term guardian has the authority to act as a guardian for a period of sixty-days from the date the appointment is effective – the date the written instrument is executed and witnessed by two credible individuals.¹¹⁸ The statute mandates that unless the non-appointing parent consents, a parent or guardian may not appoint a short-term guardian if the minor has another living, adoptive, or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are unknown, and who is willing and able to make and carry out day-to-day child care deci-

¹¹⁰ *Id.* at § 15-5-205.

¹¹¹ *Id.* at § 15-5-207.

¹¹² *Id.* at § 15-5-206.

¹¹³ *Id.* at § 15-5-104.

¹¹⁴ *Id.* at § 15-5-210.

¹¹⁵ *Id.*

¹¹⁶ 755 ILL. COMP. STAT. 5/11-1 to -18 (2002).

¹¹⁷ *Id.* at § 11-6.

¹¹⁸ *Id.* at § 11-5.4.

sions concerning the minor.¹¹⁹ A standby guardian, one who must be approved by a court applying the best interests of the minor, shall not have any duties or authority to act until 1) the standby guardian receives knowledge of the death or consent of the minor's parent or parents or of the guardian of the person of the minor, or 2) the inability of the minor's parent or parents or of the guardian of the person of the minor to make and carry out day-to-day child care decisions concerning the minor.¹²⁰ Per section 5/11-18, the court has the authority to appoint a successor guardian upon the death, incapacity, resignation or removal of a standby guardian or a guardian.¹²¹

*Indiana*¹²²

Indiana has adopted the Uniform Veterans' Guardianship Act. Jurisdiction for guardianship proceedings rest in the probate court in the county in which the minor resides or, in the alternative, in the county where the minor's property is situated.¹²³ The mental health division of the superior court has concurrent jurisdiction in matters relating to guardianship in connection with mental health proceedings under the statute.¹²⁴ Residence is actual presence not domicile.¹²⁵ The statute also outlines the selection process of a guardian and the persons entitled to priority. If a petition for a guardian for a minor is filed, the statute lists the individuals that must be given notice. Included in this list is the minor if he or she is at least fourteen-years of age. Indiana allows for the appointment of a temporary guardian. In case of an emergency, a temporary guardian may be appointed for a period of less than sixty-days. Notice and hearing is waived if the court finds immediate and irreparable harm in delay.¹²⁶ The guardian is required to file bond, take an oath, and within thirty-days of appointment, file an inventory indicating fair market value of

¹¹⁹ *Id.*

¹²⁰ *Id.* at § 11-13.1.

¹²¹ *Id.* at § 11-18.

¹²² IND. CODE. §§ 29-1-19-1 to 29-3-13-3 (2002).

¹²³ *Id.* at § 29-3-3-2.

¹²⁴ *Id.* at § 29-3-2-1.

¹²⁵ *Id.* at § 29-3-2-5.

¹²⁶ *Id.* at § 29-3-3-4.

268 *Journal of the American Academy of Matrimonial Lawyers*

property under guardian's control.¹²⁷ Termination of the guardian is governed by IC29-3-12-1; the guardian may be removed for cause after notice and hearing.

*Iowa*¹²⁸

The Iowa legislature, in 2001, amended section 633.556 to read: "[i]f the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian."¹²⁹ The court has the authority to appoint a temporary guardian as well, but only after a hearing, and subject to conditions the court prescribes.¹³⁰ The statute indicates that either parent of a minor, if qualified and suitable, shall be preferred over all others for appointment as a guardian. Preference then is given to any person, nominated as a guardian by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor.¹³¹ During the guardianship proceeding, the court must give written notice to the minor that informs him or her that if a guardian is in fact appointed, the guardian may, without court approval, provide for the care of the ward, in addition to other listed powers.

*Kansas*¹³²

In May of 2002, Kansas amended and repealed many of the statutes concerning guardianship.¹³³ According to the new statute, a guardianship proceeding shall be initiated in the district court of the county of residence of the proposed ward or of any county wherein the proposed ward may be found.¹³⁴ If it appears that there is an imminent danger that the physical health or safety of the proposed ward will be seriously impaired, unless immediate

¹²⁷ *Id.* at § 29-3-12-1.

¹²⁸ IOWA CODE ANN. §§ 633.551 to .698 (West 2002).

¹²⁹ *Id.* at § 633.556.

¹³⁰ *Id.* at § 633.558.

¹³¹ *Id.* at § 559.

¹³² KAN. STAT. ANN. §§ 59-3001 to -3039 (2002).

¹³³ 2002 Kan. Sess. Laws 114.

¹³⁴ *Id.* at § 9(a)(1).

action is taken, the proposed ward, or any adult interested in the welfare of the proposed ward, may petition the court for the emergency appointment of a guardian.¹³⁵ Kansas has added a provision for a standby guardian, who has the authority and responsibility to assume the duties, responsibilities, powers and authorities assigned to the guardian upon the temporary absence or impairment of the guardian, or the resignation or death of the guardian.¹³⁶ However, the guardian shall at all times be subject to the control and direction of the court, and shall act in accordance with the provisions of any guardianship plan filed with the court.¹³⁷ The court must give the following individuals priority in appointment: 1) The nominee of the proposed ward, if such nomination is made within any durable power of attorney; 2) the nominee of a natural guardian; 3) the nominee of a minor who is the proposed ward, if the minor is over 14 years of age; 4) the nominee of the spouse, adult child or other close family member of the proposed ward; or 5) the nominee of the petitioner.¹³⁸

*Kentucky*¹³⁹

Kentucky has not adopted the Uniform Probate Code. The statute mandates that district courts have exclusive jurisdiction for the appointment and removal of guardians and limited guardians. If the minor is a resident, then venue is in the county where the will of the minor's last surviving parent was probated; if not a resident, then in the county where the minor resides.¹⁴⁰ Any interested person or entity may petition the district court for the appointment of a guardian or limited guardian for an unmarried minor.¹⁴¹ A limited guardian is one whose powers are limited.¹⁴² The district court will remove a guardian, limited guardian, or conservator if the guardian: (a) becomes insane, moves out of Kentucky, becomes incapable of discharging the duties of the appointment, or fails for any reason to discharge the duties of the

¹³⁵ KAN. STAT. ANN. § 59-3036.

¹³⁶ 2002 Kan. Sess. Laws 114 § 25(7)(e).

¹³⁷ *Id.* at § 26(a)(1).

¹³⁸ *Id.* at §14.

¹³⁹ KY. REV. STAT. ANN. §§ 387.010 to .330 (Banks-Baldwin 2002).

¹⁴⁰ *Id.* at § 387.020.

¹⁴¹ *Id.* at § 387.025.

¹⁴² *Id.* at 387.065(1) to (3).

270 *Journal of the American Academy of Matrimonial Lawyers*

appointment; or (b) removal is deemed to be in the best interest of the ward.¹⁴³ The guardian may resign provided the he or she first files a final settlement and delivers the ward's estate as directed by the court.¹⁴⁴

*Louisiana*¹⁴⁵

In Louisiana, guardianship is called, "tutorship." Proper jurisdiction is in the parish where the surviving parent or the parent awarded custody of the minor is domiciled.¹⁴⁶ If this is inapplicable, then jurisdiction is where the minor has his or her own domicile, or if the minor does not have a domicile, then where the minor has any real property situated, or if none, then where movable property is found.¹⁴⁷ Upon the death of either parent, tutorship of the minor child belongs by right to the surviving parent, but the surviving parent must qualify as provided by law.¹⁴⁸ The last surviving parent can appoint a tutor by will or by having made a declaration before death, provided it is executed before a notary public and two witnesses.¹⁴⁹ With discretion, the judge may for good reasons refuse to confirm the tutorship and appoint someone else.¹⁵⁰ An unemancipated minor will be placed under a tutor following the dissolution of marriage of his or her parents.

*Maine*¹⁵¹

Maine has adopted the Uniform Probate Court. In addition to the traditional form of guardianship, Maine allows for the appointment of temporary guardians.¹⁵² Upon filing the power of attorney, a parent or guardian may delegate to another person, for a period not exceeding six months, any of that parent's or guardian's powers regarding the minor's care, custody or property.¹⁵³ The statute allows a minor of fourteen-years or older, by

¹⁴³ *Id.* at § 387.090.

¹⁴⁴ *Id.*

¹⁴⁵ LA. CODE CIV. PROC. ANN. art. 4031 to 4464 (West 2002).

¹⁴⁶ *Id.* at 4031.

¹⁴⁷ *Id.*

¹⁴⁸ LA. CIV. CODE. ANN. art. 257 (West 2002).

¹⁴⁹ *Id.*

¹⁵⁰ CODE CIV. PROC. ANN. art. 4036.

¹⁵¹ ME. REV. STAT. ANN. tit. 18-A, §§ 5-101 to -212 (2002).

¹⁵² *Id.* at § 5-105.

¹⁵³ *Id.* at § 5-104.

filing an objection with the court, to prevent an appointment of his or her testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate. Absent the consent of the guardian, the court may not terminate the guardianship unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward; the burden of showing by a preponderance of the evidence that continuation of the guardianship is in the best interest of the ward is placed on the guardian.¹⁵⁴

*Maryland*¹⁵⁵

Maryland has granted orphans' courts and circuit courts (in equity) concurrent jurisdiction over minors.¹⁵⁶ If neither parent is serving as a guardian, and no testamentary appointment has been made, the court has the discretion to appoint a guardian. The statute allows for the consent of appointment to be withdrawn within thirty-days of its signing.¹⁵⁷ The appointment of a guardian is obtained by a petition in equity or by the orphans' court. The orphans' court can also procure appointment upon its own initiative.¹⁵⁸ Maryland has also adopted a standby guardianship statute; a guardian may be appointed by the court upon petition by the parent of the minor when there is sufficient evidence of risk that the petitioner will die or become incapacitated within two-years of filing the petition.¹⁵⁹ The authority of a standby guardian with respect to the minor is limited to the express authority granted to the standby guardian by the court.¹⁶⁰

*Massachusetts*¹⁶¹

Massachusetts allows with the approval of the court a minor over the age of fourteen-years of age to nominate a guardian of his or her own choosing.¹⁶² The appointment of a guardian will take

¹⁵⁴ *Id.* at § 5-212.

¹⁵⁵ MD. CODE. ANN. EST. TRUSTS §§ 13-101 to -908 (2002).

¹⁵⁶ *Id.* at § 13-105.

¹⁵⁷ *Id.* at § 5-317 (2002).

¹⁵⁸ *Id.* at § 13-201.

¹⁵⁹ *Id.* at §§ 13-901, -908.

¹⁶⁰ *Id.* § at 13-907.

¹⁶¹ MASS. GEN. LAWS CH. 201, §§ 1 to 51 (2003).

¹⁶² *Id.* at § 2.

272 *Journal of the American Academy of Matrimonial Lawyers*

effect when the guardian accepts the appointment by filing a bond.¹⁶³ Proper forum for a guardianship proceeding is where the ward resides, and if the ward is a nonresident, in the jurisdiction where the minor's property is located.¹⁶⁴ The Massachusetts statute allows for the appointment of a traditional,¹⁶⁵ standby,¹⁶⁶ temporary,¹⁶⁷ and a short-term emergency¹⁶⁸ guardian. The guardianship of the minor ward terminates in the event of the marriage or death of the ward, when the ward turns eighteen-years of age or upon the death, resignation or removal of the guardian.¹⁶⁹

*Michigan*¹⁷⁰

In Michigan, the court where the ward resides has concurrent jurisdiction over the resignation, removal, accounting, or another proceeding relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental appointment was filed.¹⁷¹ Michigan allows a minor fourteen-years of age or older to prevent an appointment or cause it to terminate by filing with the court a written objection to the appointment.¹⁷² The parents of a minor may petition the court to appoint a limited guardian.¹⁷³ The statute requires that the parent(s) file, in addition to the petition, a placement plan that outlines, in detail, the reasons the parent(s) is making the request, parenting time and contact with the minor by his or her parent (s) sufficient to maintain a parent and child relationship, the duration, financial support, and any other provisions that the parties agree to include in the plan.¹⁷⁴ Any person interested in a ward's welfare, which also includes the ward, if fourteen-years of

¹⁶³ *Id.* at § 3.

¹⁶⁴ *Id.* at § 1.

¹⁶⁵ *Id.* at § 3.

¹⁶⁶ *Id.* at § 2B.

¹⁶⁷ *Id.* at § 14.

¹⁶⁸ *Id.* at § 2G.

¹⁶⁹ *Id.* at § 4.

¹⁷⁰ MICH. COMP. LAWS. ANN. §§ 700.5201 to .5219 (2002).

¹⁷¹ *Id.* at § 700.5218.

¹⁷² *Id.* at § 700.5203.

¹⁷³ *id.* at § 700.5205.

¹⁷⁴ *Id.* at § 700.5205.

age or older, may petition for the removal of a guardian if removal would serve the ward's welfare.¹⁷⁵

*Minnesota*¹⁷⁶

Minnesota's statute states that a person becomes the guardian of the minor by acceptance of the testamentary appointment or appointment by the court. The guardian has the powers and responsibilities of the custodial parent plus the powers and duties listed in section 525.619. The venue for the guardianship proceedings over a minor is in the place where the minor resides or is present.¹⁷⁷ Unique to Minnesota is the provision that outlines the procedure for the court to conduct a background study of the potential guardian.¹⁷⁸ As in many other state statutes, a minor of fourteen-years of age or older may prevent the parent's testamentary appointment from becoming effective.¹⁷⁹ If the court deems necessary, it may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.¹⁸⁰

*Mississippi*¹⁸¹

In Mississippi, guardianship proceedings are within the jurisdiction of the chancery court.¹⁸² If the minor is under no legal disability except minority, the court can allow the minor who is over the age of fourteen-years to select his or her own guardian.¹⁸³ If an appeal ensues following the appointment of a guardian, the court will appoint a fit person to serve as a guardian in the interim; that individual must give bond and take an oath to discharge the duties as in other cases.¹⁸⁴ The guardian must, within three months after the appointment, file with the court a true inventory of the estate, real and personal, and of all money or

¹⁷⁵ *Id.* at § 700.5219.

¹⁷⁶ MINN. STAT. §§ 525.539 to .6199 (2002).

¹⁷⁷ *Id.* at § 525.617.

¹⁷⁸ *Id.* at §§525.545.

¹⁷⁹ *Id.* at § 525.616.

¹⁸⁰ *Id.* at § 525.618.

¹⁸¹ MISS. CODE. ANN. §§ 93-13-1 to -79 (2002).

¹⁸² *Id.* at § 93-13-13.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at § 93-13-19.

274 *Journal of the American Academy of Matrimonial Lawyers*

other things which he or she may have received as the property of his or her ward; failure to comply is grounds for removal and the guardian's bond put in suit.¹⁸⁵

*Missouri*¹⁸⁶

Missouri's statute makes provisions for the appointment of a traditional, temporary, and limited guardian, and allows any person to file a petition for the appointment of a qualified person as a guardian of a minor.¹⁸⁷ The appointment of a temporary guardian by a properly executed power of attorney cannot exceed one-year.¹⁸⁸ The probate court has the authority to appoint a limited guardian if, after a hearing, the court finds that a person is partially incapacitated.¹⁸⁹ In its order, the court will specify the powers and duties of the limited guardian.¹⁹⁰ Throughout the guardianship proceeding, the court may make orders for the management of the estate of the protectee for his or her care, education, treatment, habilitation, support and maintenance.¹⁹¹ When a minor ward reaches the age of fourteen-years, his or her guardian may be removed on petition of the ward.¹⁹² The court will have another person appointed guardian if it is for the best interests of the ward.¹⁹³

*Montana*¹⁹⁴

Montana has adopted the Uniform Probate Code. A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court; the letters of guardianship must indicate the method of appointment.¹⁹⁵ The guardianship status continues until terminated.¹⁹⁶ A person afflicted only with an incapacity caused by minority is specifically

¹⁸⁵ *Id.* at § 93-13-33.

¹⁸⁶ MO. REV. STAT. §§ 475.010 to .340 (West 2002).

¹⁸⁷ *Id.* at § 475.060.

¹⁸⁸ *Id.* at § 475.024.

¹⁸⁹ *Id.* at § 475.080.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at § 475.125.

¹⁹² *Id.* at § 475.110.

¹⁹³ *Id.*

¹⁹⁴ MONT. CODE. ANN. §§ 72-5-101 to -234 (2002).

¹⁹⁵ *Id.* at § 72-5-201.

¹⁹⁶ *Id.*

excluded from coverage under the statutes for incapacitated persons.¹⁹⁷ Montana is similar to most states in that a minor of fourteen or more years may prevent an appointment of his testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing an objection with the court.¹⁹⁸ The court is authorized, if it finds necessary, to appoint a temporary guardian of a minor with the status of a full guardian, but the authority of a temporary guardian cannot last longer than six-months.¹⁹⁹

*Nebraska*²⁰⁰

Nebraska has adopted the Uniform Probate Code with specific modifications. The venue for guardianship proceedings is in the place where the minor resides or is present or where property is located if he is a nonresident of this state.²⁰¹ The parent of a minor may appoint by will a guardian of an unmarried minor, and becomes effective upon filing the guardian's acceptance in the court in which the will is probated.²⁰² Nebraska recognizes a testamentary appointment probated in another state that is the testator's domicile.²⁰³ Nebraska's code authorizes the court to appoint a standby guardian for a minor whose parent is chronically ill or near death, but does not suspend or terminate the parent's parental rights.²⁰⁴ The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon the parent's death, mental incapacity, or physical debilitation and consent of the parent.²⁰⁵ If in the best interest of the minor, the court may appoint a temporary guardian, with the status of an ordinary guardian, but not for a period lasting longer than six months.²⁰⁶ In an emergency, the court may also appoint a temporary guardian without notice.²⁰⁷ A guardian's authority termi-

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at § 72-5-213.

¹⁹⁹ *Id.* at § 72-5-224.

²⁰⁰ NEB. REV. STAT. §§ 30-2601 to -2616 (2002).

²⁰¹ *Id.* at § 2609.

²⁰² *Id.* at § 30-2606.

²⁰³ *Id.*

²⁰⁴ *Id.* at § 30-2608.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at § 30-2611.

²⁰⁷ *Id.*

276 *Journal of the American Academy of Matrimonial Lawyers*

nates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his or her obligation to account for funds and assets of his or her ward.²⁰⁸

*Nevada*²⁰⁹

Nevada's guardianship statute requires that the parents of a minor, or either parent, if qualified and suitable, be preferred over all others for appointment as a guardian for the minor.²¹⁰ If the parent(s) is not deemed suitable, the court will appoint as guardian a qualified person who is most suitable and is willing to serve.²¹¹ The statute allows also for the appointment of a temporary guardian without the court approval. The instrument making such an appointment must be properly executed and contain a provision for its expiration not more than six months after the date of its execution.²¹² The court itself can appoint a temporary guardian for a minor who is found unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention.²¹³ Such an appointment may serve for no longer than ten-days, at which time a hearing will be held, after which the court may extend the temporary guardianship until a general or special guardian is appointed, but not for more than thirty days.²¹⁴ The newly appointed guardian must file a verified inventory of all the property which came to his or her possession of knowledge with sixty days after the appointment, and if any further property comes into his or her possession, the guardian must file a verified supplemental inventory within thirty days.²¹⁵

²⁰⁸ *Id.* at § 30-2614.

²⁰⁹ NEV. REV. STAT. ANN. 159.013 to .215 (2002).

²¹⁰ *Id.* at 159.061.

²¹¹ *Id.*

²¹² *Id.* at 159.205.

²¹³ *Id.* at 159.052.

²¹⁴ *Id.*

²¹⁵ *Id.* at 159.085.

*New Hampshire*²¹⁶

New Hampshire grants the probate court exclusive jurisdiction over the appointment of a guardian.²¹⁷ Venue for guardianship proceedings is in the county where the minor resides, physically present when the proceedings are commenced, where the authorized agency is providing services, where an underlying cause of action arose, or where the real property, or a portion thereof, is located.²¹⁸ The probate court may appoint as guardian of the minor any person or authorized agency whose appointment is appropriate.²¹⁹ The probate court may also, with such notice as it deems reasonable, appoint a temporary guardian, who is required to file an account within ninety days after the termination of the guardianship; no term of a temporary guardianship can exceed sixty days, unless good cause is shown and within the discretion of the court.²²⁰ The probate court may from time to time, upon application of any person interested in the welfare of the minor, revise or alter any prior orders or make such new order or decree relative to the guardianship of the person as the best interests of the minor may require.²²¹ Any person appointed as guardian must serve until his or her resignation is accepted by the court, removal by the court for cause, death of the guardian, or other grounds for termination pursuant to section 463:16.

*New Jersey*²²²

New Jersey's statute states that the surrogate's court shall have and exercise the same powers as the superior court in the appointment of guardians for minors.²²³ Either parent may, by will, appoint a guardian of person and estate, of any of his or her children, who are under the age of eighteen years and unmarried at his or her death.²²⁴ However, if the other parent survives the appointing parent, the appointment shall be effective only when

²¹⁶ N.H. REV. STAT. ANN §§ 463:1 to 464-A:47 (2002).

²¹⁷ *Id.* at § 463:4.

²¹⁸ *Id.*

²¹⁹ *Id.* at § 463:10.

²²⁰ *Id.* at § 464-A:12.

²²¹ *Id.* at § 463:16.

²²² N.J. STAT. ANN. §§ 3B:12-12 to -78 (2002).

²²³ *Id.*

²²⁴ *Id.* at § 3B:12-13.

278 *Journal of the American Academy of Matrimonial Lawyers*

the surviving parent, at or before the issuance of the letters, consents in writing in the presence of two witnesses.²²⁵ The court is authorized to appoint a standby guardian if the court finds that there is a significant risk that the parent or legal custodian will die, become incapacitated, or become debilitated as a result of a progressive chronic condition or a fatal illness, and that the interests of the minor child would be promoted by the appointment of the standby guardian.²²⁶ The petition for the judicial appointment of a standby guardian must state which triggering event(s) will cause the authority of the appointed standby guardian to become effective, at which time the designated standby guardian will be empowered to assume the duties of the office immediately.²²⁷ The court may, however, at the time of appointment or later, limit the powers conferred upon a guardian, or previously conferred by the court, and may at any time relieve him of any limitation.²²⁸

*New Mexico*²²⁹

New Mexico has adopted the Uniform Probate Code. The district courts have concurrent jurisdiction with the probate courts in each county as to all matters concerning informal probate.²³⁰ Furthermore, if the probate judge is unable to act, the acts and orders which the probate code specifies as performable by the probate court may be performed either by a judge of the district court or by a person designated by the district court.²³¹ A person becomes a guardian of a minor by parental appointment or upon appointment by the court, and continues until terminated.²³² A minor of fourteen or more years may prevent the appointment or may cause it to terminate by filing a written objection with the court.²³³ In proceedings subsequent to the appointment, the court where the ward resides has concurrent jurisdiction with the

²²⁵ *Id.* at § 3B:12-14.

²²⁶ *Id.* at § 3B:12-72.

²²⁷ *Id.*

²²⁸ *Id.* at § 3B:12-37.

²²⁹ N.M. STAT. ANN. §§ 45-1-101 to 45-5-212 (Michie 2002).

²³⁰ *Id.* at § 45-1-302.

²³¹ *Id.* at § 45-1-307.

²³² *Id.* at § 45-5-201.

²³³ *Id.* at § 45-5-203.

court which appointed the guardian; if the court located where the ward resides is not the appointing court, subsequent court must in all appropriate cases notify the other court, in New Mexico or another state, and, determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the ward.²³⁴

*New York*²³⁵

New York allows for the appointment of a guardian of a minor by will, petition, and by the standby guardianship process. The petition for the appointment of guardian may be made by any person on the infant's behalf or by the infant if he or she is fourteen or more years in age.²³⁶ Either parent, may by will, with the written consent of the other, appoint the other parent and third-person as guardians. Before the guardian can act, the parents' will must be probated; if a deed is not recorded within three months after the death of the grantor, the person appointed is presumed to have renounced the appointment.²³⁷ If the parents die simultaneously, then the appointment of the same person in both wills is held valid, but if the wills make conflicting appointments, then the surrogate's court will determine which appointment will best serve the welfare of the infant. If an infant's guardian ceases to serve, the court may appoint another guardian with all the powers conferred by the will or deed, unless such appointment would be contrary to the express provisions of the will or deed.²³⁸ The surrogate's court has the authority to appoint a standby guardian whose authority becomes effective upon the incapacity, consent or death of the infant's parent or legal guardian.²³⁹ The parent of the legal guardian must state in the petition that he or she suffers from either a progressively chronic illness or an irreversible fatal illness, and must provide basis of such a statement; petitioner is not required to identify his or her illness.²⁴⁰

²³⁴ *Id.* at § 45-5-211.

²³⁵ N.Y. S. C. P. A. LAW §§ 1701 to 1727 (McKinney 2002).

²³⁶ *Id.* at § 1703.

²³⁷ *Id.* at § 1711.

²³⁸ *Id.* at § 1712.

²³⁹ *Id.* at § 1726.

²⁴⁰ *Id.*

*North Carolina*²⁴¹

North Carolina's statute states that venue for the appointment of a guardian for a minor is in the county in which the minor resides or is domiciled.²⁴² Clerks of the superior court in their respective counties have original jurisdiction for the appointment of guardians for minors who have no natural guardian.²⁴³ Hearings for determining the necessity of a guardian are informal and the clerk may consider whatever testimony, written reports, affidavits, documents, or other evidence the clerk finds necessary to determine the minor's best interest.²⁴⁴ Section 35-1224 outlines the criteria the clerk must consider for appointment of a guardian; one provision states, "[i]f the minor's parent or parents have made a testamentary recommendation, the clerk shall give substantial weight to such recommendation; provided, such recommendation may not affect the rights of a surviving parent who has not willfully abandoned the minor, and the clerk shall in every instance base the appointment of a guardian or guardians on the minor's best interest." North Carolina allows two methods of appointing a standby guardian: by petition pursuant to section 35A-1373 or by designation pursuant to section 35A-1374.²⁴⁵ The appointment of a standby guardian does not itself divest the petitioner or designator of any parental or guardianship rights, but confers upon the standby guardian concurrent authority with respect to the minor child.²⁴⁶ If the authority of the standby guardian becomes effective and the petitioner or designator is subsequently restored to capacity or ability to care for the child, the authority of the standby guardian based on that incapacity or debilitation is suspended, provided a determination of restored capacity or ability is made.²⁴⁷

²⁴¹ N.C. GEN. STAT. §§ 35A-1101 to -1382 (2002).

²⁴² *Id.* at § 35A-1204.

²⁴³ *Id.* at § 35A-1203.

²⁴⁴ *Id.* at § 35A-1223.

²⁴⁵ *Id.* at § 35A-1372.

²⁴⁶ *Id.* at § 35A-1377.

²⁴⁷ *Id.* at § 35A-1376.

*North Dakota*²⁴⁸

North Dakota has adopted the Uniform Probate Code. The district court of each county has jurisdiction over all subject matter relating to a guardianship.²⁴⁹ The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.²⁵⁰ The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.²⁵¹ Any person, including the ward, if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward.²⁵² Also, a guardian may petition for permission to resign. If the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor.²⁵³

*Ohio*²⁵⁴

In Ohio, the probate court has exclusive jurisdiction to appoint and remove guardians.²⁵⁵ Ohio makes provisions for full, limited, interim, and emergency guardianships. A surviving parent by last will in writing may appoint a guardian for any of the surviving parent's children, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time.²⁵⁶ A minor over the age of fourteen years of age may select a guardian if the nominee is deemed suitable.²⁵⁷ The court may appoint a limited guardian for a definite or indefinite period with the order stating the reasons for, and specifying the limited powers of, the guardian.²⁵⁸ If a guardian appointed is temporarily or permanently removed or resigns, and if the wel-

²⁴⁸ N.D. CENT. CODE. §§ 30.1-01-01 to 30.1-27-12 (2001).

²⁴⁹ *Id.* at § 30.1-02-02.

²⁵⁰ *Id.* at § 30.1-27-05.

²⁵¹ *Id.* at § 30.1-27-06.

²⁵² *Id.* at § 30.1-27-12.

²⁵³ *Id.*

²⁵⁴ OHIO REV. CODE. ANN. §§ 2111.01 to .51 (West 2002).

²⁵⁵ *Id.* at § 2101.24(A)(1)(e).

²⁵⁶ *Id.* at § 2111.12(B).

²⁵⁷ *Id.* at § 2111.12(A).

²⁵⁸ *Id.* at § 2111.02(B)(1).

282 *Journal of the American Academy of Matrimonial Lawyers*

fare of the ward requires immediate action, the probate court may appoint, *ex parte* and with or without notice to the ward or interested parties, an interim guardian for a maximum period of fifteen days.²⁵⁹ If an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the minor, the court, *ex parte*, may issue any order that it considers necessary to prevent injury to the minor, or may appoint an emergency guardian for a maximum period of seventy-two hours.²⁶⁰ The court may extend an emergency guardianship for a specified period, but not to exceed an additional thirty days.²⁶¹

*Oklahoma*²⁶²

The Oklahoma Guardianship and Conservatorship Act grants the court of each county the power to appoint guardians for minors.²⁶³ If the minor is under the age of fourteen years, the court may appoint his or her guardian, pursuant to the guidelines set by section 21.1 of title 10 of the Oklahoma Statutes.²⁶⁴ A minor's parent who is competent and not otherwise unsuitable or disqualified by law to serve as the guardian of the minor, is entitled to the guardianship of the minor until the minor has attained the age of fourteen years.²⁶⁵ If the minor has attained such age, the minor may nominate his or her own guardian, if approved by the court.²⁶⁶ If the minor's nominee is not approved, the court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen years.²⁶⁷ After a minor ward has reached the age of majority, such ward may settle accounts with his guardian and give him a release, which is valid, subject to approval of the court, if obtained fairly and without undue influence.²⁶⁸

²⁵⁹ *Id.* at § 2111.02(B)(2).

²⁶⁰ *Id.* at 2111.02(B)(3).

²⁶¹ *Id.*

²⁶² OKLA. STAT. ANN. tit. 30, §§ 1-101 to 2-116 (2002).

²⁶³ *Id.* at § 2-101.

²⁶⁴ *Id.* at § 2-103.

²⁶⁵ *Id.* at § 2-206.

²⁶⁶ *Id.* at § 2-103.

²⁶⁷ *Id.* at § 2-105.

²⁶⁸ *Id.* at § 2-114.

*Oregon*²⁶⁹

Oregon's statute is similar to the Uniform Guardianship and Protective Proceedings Act, but with numerous modifications. The probate courts and commissioners have exclusive jurisdiction of protective proceedings.²⁷⁰ Upon petition, the court may appoint a guardian of a minor after notice and opportunity for written objection is given to the individuals listed in section 125.060. The guardian of a minor has the powers and responsibilities of a parent who has legal custody of a child, except that the guardian has no obligation to support the minor beyond the support that can be provided from the estate of the minor, and the guardian is not liable for the torts of the minor.²⁷¹ For persons who do not have relatives or friends willing to serve as a guardian and capable of assuming the duties of guardianship, the statute allows each county to create an office of public guardian.²⁷² The public guardian may serve as guardian upon the petition of any person or upon the petition of the public guardian.²⁷³

*Pennsylvania*²⁷⁴

In Pennsylvania, the appointment, control, removal, and discharge of guardians of minors are within the jurisdiction of the orphans' court division of the court of common pleas of the county where the minor resides.²⁷⁵ When a court has appointed a guardian of a minor, no other court can appoint a similar guardian for the minor within the commonwealth.²⁷⁶ A person of the same religious persuasion as the parents of the minor shall be preferred as guardian. A person nominated by a minor over the age of fourteen years, if found by the court to be qualified and suitable, shall be preferred as his or her guardian.²⁷⁷ The statute defines a standby guardian as a person named by a designator to assume the duties of co-guardian or guardian of a minor

²⁶⁹ OR. REV. STAT. §§ 125.005 to .730 (2001).

²⁷⁰ *Id.* at § 125.015.

²⁷¹ *Id.* at § 125.315(1)(e).

²⁷² *Id.* at § 125.700.

²⁷³ *Id.* at § 125.710.

²⁷⁴ 20 PA. CONS. STAT. ANN. §§ 5111 to 5131 (2002).

²⁷⁵ *Id.* at § 5111.

²⁷⁶ *Id.*

²⁷⁷ *Id.* at § 5113.

284 *Journal of the American Academy of Matrimonial Lawyers*

and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the minor's parent.²⁷⁸ The commencement of the standby guardian's authority to act as co-guardian does not itself divest the designator of any parental rights, but confers upon the standby guardian concurrent or shared custody of the child.²⁷⁹ If a physician determines that the designator has regained capacity, the co-guardian's authority, which commenced pursuant to the occurrence of a triggering event, becomes inactive.²⁸⁰ Guidance for the discharge of a guardian of a minor is outlined in section 5131.

*Rhode Island*²⁸¹

Rhode Island grants the probate court in each city or town to have the power to appoint or approve guardians of individuals who reside or have a legal settlement within the city or town, and of individuals who reside outside this state and have an estate within the city or town.²⁸² In any proceedings or suit in any court, neither parent shall have any natural priority or preference in any matter relating to their minor children.²⁸³ If a minor of the age of fourteen years neglects to choose a guardian when cited by the court to do so, or chooses one whom the court does not approve, or one who neglects to give bond as required by the court or by law, the court may appoint a guardian in the same manner as if the minor were under the age of fourteen years.²⁸⁴ Every person authorized by law to make a will may appoint by will, subject to the approval of the probate court, a guardian or guardians for his or her minor children, whether born at the time of making the will or afterwards, to continue during the minority of the children or for a less time.²⁸⁵ The probate court for cause shown may, if it deems proper, appoint a temporary guardian.²⁸⁶ A temporary guardian is to hold his or her office until the ques-

²⁷⁸ 23 PA. CONS. STAT. ANN. § 5602 (2002).

²⁷⁹ *Id.* at § 5613(a).

²⁸⁰ *Id.* at § 5613(d).

²⁸¹ R.I. GEN. LAWS §§ 33-15.1-1 to -40 (2002).

²⁸² *Id.* at § 33-15.1-4.

²⁸³ *Id.* at § 33-15.1-3.

²⁸⁴ *Id.* at § 33-15.1-6.

²⁸⁵ *Id.* at § 33-15.1-7.

²⁸⁶ *Id.* at § 33-15.1-14.

tion of appointment of a guardian is decided, or until he or she is discharged by the probate court; and there is no appeal from the appointment of a temporary guardian.²⁸⁷ A guardian may be removed or may resign pursuant to section 33-15.1-37.

*South Carolina*²⁸⁸

South Carolina has adopted the Uniform Probate Code with substantial modifications. The venue for guardianship proceedings is in the place where the incapacitated person resides or is present.²⁸⁹ Once a guardian is appointed, the court may limit the powers of a guardian and create a limited guardianship.²⁹⁰ A limitation on the statutory power of a guardian must be endorsed on the guardian's letters or, in the case of a guardian by parental or spousal appointment, must be reflected in letters issued at the time a limitation is imposed.²⁹¹ On petition of the ward or any person interested in his or her welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward.²⁹² On petition of the guardian, the court may accept his or her resignation and make any other order that may be appropriate.²⁹³ The court has the authority to appoint, with or without notice, a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62-5-311.

*South Dakota*²⁹⁴

South Dakota mandates that a petition for the appointment of a guardian must be filed in the county in which the minor either resides or is present or in a county in which the minor has interest in property.²⁹⁵ The court in which the proceeding is first commenced has exclusive jurisdiction to decide the petition unless that court determines that a transfer of venue would be in the

²⁸⁷ *Id.* at § 33-15.1-15.

²⁸⁸ S.C. CODE ANN. §§ 62-5-101 to -435 (Law. Co-op. 2002).

²⁸⁹ *Id.* at § 62-5-302.

²⁹⁰ *Id.* at § 62-5-304.

²⁹¹ *Id.*

²⁹² *Id.* at § 62-5-307.

²⁹³ *Id.*

²⁹⁴ S.D. CODIFIED LAWS §§ 29A-5-101 to -210 (Michie 2002).

²⁹⁵ *Id.* at § 29A-5-108.

best interests of the minor.²⁹⁶ Any adult individual may be appointed as a guardian if he or she is capable of providing an active and suitable program of guardianship for the minor.²⁹⁷ The appointment of a guardian does not constitute a finding of legal incompetence unless the court so orders.²⁹⁸ Without court approval, a guardian may not change the residence of the minor to another state, terminate or consent to a termination of the minor's parental rights, initiate a change in the minor's marital status.²⁹⁹ A petition for the appointment of a guardian may be filed by the minor, by an interested relative, by the individual or facility that is responsible for or has assumed responsibility for the minor's care or custody, by the individual or entity that the minor has nominated as guardian or conservator, or by any other interested person, including the department of human services or the department of social services.³⁰⁰ No nomination may supersede previous court appointment.³⁰¹ Nothing prohibits the court from limiting the powers that may otherwise be exercised by a guardian without prior court authorization.³⁰² The court may appoint a temporary guardian upon a showing that an immediate need exists and that an appointment would be in the minor's best interests.³⁰³ A temporary guardian has only those powers and duties which are specifically set forth in the order of appointment, and in no event may a temporary guardian or conservator be appointed for more than six months.³⁰⁴

*Tennessee*³⁰⁵

In Tennessee, actions for the appointment of only a guardian of the person may be brought in the juvenile court; actions for the appointment of a guardian of the person or property or both may be brought in a court exercising probate jurisdiction or any other

²⁹⁶ *Id.*

²⁹⁷ *Id.* at § 29A-5-110.

²⁹⁸ *Id.* at § 29A-5-118.

²⁹⁹ *Id.*

³⁰⁰ *Id.* at § 29A-5-203.

³⁰¹ *Id.* at § 29A-5-202.

³⁰² *Id.* at § 29A-5-419.

³⁰³ *Id.* at § 29A-5-210.

³⁰⁴ *Id.*

³⁰⁵ TENN. CODE ANN. §§ 34-1-101 to -106 (2002).

court of record in the county in which there is venue.³⁰⁶ Any person may file a petition for the appointment of a guardian having knowledge of the circumstances necessitating the appointment.³⁰⁷ The court has the authority to appoint, if necessary, a standby fiduciary to take the place of the fiduciary on a temporary or permanent basis.³⁰⁸ The standby fiduciary has the same powers, rights and obligations as the fiduciary.³⁰⁹ If found to be in the best interests of the minor, the court has broad discretion to require of the guardian additional actions not specified in the provisions of this chapter or waive those requirements that are specified.³¹⁰ Except in the case of a disabled person, when the minor reaches the age of eighteen years, the guardianship of the minor terminates.³¹¹

*Texas*³¹²

Texas defines an incapacitated person as including a minor.³¹³ The district court has original control and jurisdiction over guardians and wards under regulations as may be prescribed by law; however, the county court has the general jurisdiction of the probate court.³¹⁴ If two or more courts have concurrent venue of a guardianship matter, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the guardianship matter.³¹⁵ An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order.³¹⁶ The court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and shall give due consideration to the preference indicated by the incapacitated person.³¹⁷ A minor at least twelve years of age may, by

³⁰⁶ *Id.* at § 34-2-101.

³⁰⁷ *Id.* at § 34-2-102.

³⁰⁸ *Id.* at § 34-1-119.

³⁰⁹ *Id.*

³¹⁰ *Id.* at § 34-1-121.

³¹¹ *Id.* at § 34-2-106.

³¹² TEX. PROBATE CODE ANN. §§ 601 to 879 (Vernon 2002).

³¹³ *Id.* at § 601.

³¹⁴ *Id.* at §§ 605, 606.

³¹⁵ *Id.* at § 611.

³¹⁶ *Id.* at § 675.

³¹⁷ *Id.* at § 689.

288 *Journal of the American Academy of Matrimonial Lawyers*

writing, choose the guardian if the court approves the choice and finds that the choice is in the best interest of the minor.³¹⁸ Texas allows a person, the declarant, other than an incapacitated person, to designate by a written declaration person(s) to serve as a guardian of them if he or she becomes incapacitated.³¹⁹ The declarant may revoke a declaration in any manner provided for the revocation of a will, including the subsequent re-execution of the declaration.³²⁰

*Utah*³²¹

Utah has adopted the Uniform Probate Code with modifications. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his or her powers.³²² A person becomes a guardian of a minor by acceptance of a testamentary appointment, through appointment by a local school board under Section 53A-2-202, or upon appointment by the court.³²³ Any person interested in the welfare of a minor, or a minor of fourteen years or older, may file with the court a written objection to the appointment before it is accepted or within thirty-days after notice of its acceptance.³²⁴ If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but may not last longer than six months.³²⁵ A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.³²⁶ Resignation of a guardian does not terminate the guardianship until the court has approved it.³²⁷

³¹⁸ *Id.* at § 680.

³¹⁹ *Id.* at § 679.

³²⁰ *Id.*

³²¹ UTAH CODE ANN. §§ 75-5-101 to -212 (2002).

³²² *Id.* at § 75-5-103.

³²³ *Id.* at § 75-5-201.

³²⁴ *Id.* at § 75-5-203.

³²⁵ *Id.* at § 75-5-207.

³²⁶ *Id.* at § 75-5-210.

³²⁷ *Id.*

*Vermont*³²⁸

In Vermont, a guardian can be appointed by will, or on petition of a minor or a person interested in the welfare of the minor.³²⁹ Minors residing in the state and having reached the age of fourteen years may choose their own guardians, subject to the approval of the probate court.³³⁰ Either parent may have the custody of the person and care of the education of the minor, if the court, at the time of appointing a guardian of the minor, deems the parent to be competent and suitable for that purpose.³³¹ Before issuing an order for permanent guardianship, the court must find by clear and convincing evidence all of the factors outlined in section 2664. The court must also issue an order permitting or denying visitation, contact or information with the parent at the same time the order of permanent guardianship is issued.³³² After the court appoints a permanent guardian, the minor's parent(s) retain rights listed in section 2663. A modification or termination of the permanent guardianship may be requested by the permanent guardian, if the child is fourteen years of age or older, the commissioner of social and rehabilitation services, or may be ordered by the probate court on its own initiative.³³³ After the termination of the permanent guardianship, the custody and guardianship of the child does not revert to the parent, but to the commissioner of social and rehabilitation services as if the child had been abandoned.³³⁴

*Virginia*³³⁵

Virginia's statute states that the circuit court or the circuit court clerk of any county or city in which a minor resides or in which he or she has any estate may appoint a guardian for the person of the minor unless he or she has a guardian appointed by his or her father or mother.³³⁶ In no case shall any person not related to

³²⁸ VT. STAT. ANN. tit. 14, §§ 2602 to 2658 (2002).

³²⁹ *Id.* at §§ 2645, 2656.

³³⁰ *Id.* at § 2650.

³³¹ *Id.* at § 2655.

³³² *Id.*

³³³ *Id.* at § 2666.

³³⁴ *Id.*

³³⁵ VA. CODE ANN § 31-1 to -18.1 (Michie 2002).

³³⁶ *Id.* at § 31-4.

290 *Journal of the American Academy of Matrimonial Lawyers*

the infant be appointed guardian until thirty days have elapsed since the death or disqualification of the natural or testamentary guardians, and the next of kin have had an opportunity to petition the court for appointment and unless the court or clerk is satisfied that such person is competent to perform the duties of the office.³³⁷ Until a guardian appointed by the court or clerk has given a bond, or while there is no guardian, the court or clerk may, from time to time, appoint a temporary guardian, who has all the powers a guardian.³³⁸ After the guardianship has commenced, the circuit court retains the authority to hear and determine all matters between guardians and their wards.³³⁹ Similar to language of other state statutes, the termination of a guardian is outlined in section 31.9.

*Washington*³⁴⁰

Washington grants the superior court of each county the power to appoint guardians for incapacitated persons.³⁴¹ The statute defines an incapacitated person as including a person determined to be under the age of eighteen-years.³⁴² The qualifications for the appointment of a guardian are outlined in section 11.88.020. The court possesses the power to appoint limited guardians for incapacitated persons, and impose, by order, only such specific limitations and restrictions as the court finds necessary for such persons' protection and assistance.³⁴³ With regard to testamentary guardians, when either parent is deceased, the surviving parent, by last will in writing may appoint a guardian of a minor child, whether born at the time of making the will or afterwards, to continue during the minority of such child or for any less time.³⁴⁴ The person appointed by the court as either guardian or limited guardian must file with the court a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-ap-

³³⁷ *Id.* at § 31-5.

³³⁸ *Id.* at § 31-7.

³³⁹ *Id.* at § 31-14.

³⁴⁰ WASH. REV. CODE. ANN. §§ 11.88.005 to .160 (West 2003).

³⁴¹ *Id.* at § 11.88.010.

³⁴² *Id.*

³⁴³ *Id.* at § 11.88.010.

³⁴⁴ *Id.* at § 11.88.080.

pointed guardian or limited guardian.³⁴⁵ If deemed necessary, the court having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person.³⁴⁶

*West Virginia*³⁴⁷

West Virginia grants jurisdiction to the circuit courts, who have exclusive jurisdiction unless that court determines that a transfer of venue would be in the best interests of the person alleged to need protection.³⁴⁸ The court alone shall determine whether a guardian should be appointed, the type of guardian, and the specific areas of protection, management and assistance to be granted.³⁴⁹ The court must consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person's maximum self-reliance and independence, the availability of less restrictive alternatives including advance directives and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse.³⁵⁰ West Virginia recognizes testamentary, standby, limited, and temporary guardianships. A limited guardian may be appointed for the individuals described in 44A-2-11. A temporary guardian may be appointed upon a finding that an immediate need exists, that adherence to the procedures for the appointment of a guardian may result in significant harm to a person, and that no other individual or entity appears to have authority to act on behalf of the person, or that the individual or entity with authority to act is unwilling, or has ineffectively or improperly exercised the authority.³⁵¹ A temporary guardian has only those powers and duties that are specifically set forth in the order of appointment, and must expire within forty-five days unless extended by the court.³⁵² In 1999, West Virginia enacted a

³⁴⁵ *Id.* at § 11.88.125.

³⁴⁶ *Id.* at § 11.88.130.

³⁴⁷ W. VA. CODE. ANN. §§ 44A-1-1 to 44A-5-9 (Michie 2002).

³⁴⁸ *Id.* at § 44A-2-1.

³⁴⁹ *Id.* at § 44A-2-10.

³⁵⁰ *Id.*

³⁵¹ *Id.* at § 44A-2-14.

³⁵² *Id.*

standby guardianship statute.³⁵³ The circuit court may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specific triggering event, and may also approve an alternate standby guardian identified by the petitioner, to act in the event the standby guardian is unable or unwilling to assume the responsibilities of the standby guardianship.³⁵⁴ The “triggering event” means the event upon the occurrence of which the standby guardian may be authorized to act.³⁵⁵

*Wisconsin*³⁵⁶

Wisconsin mandates that all minors, incompetents, and spendthrifts to be subject to guardianship, with the circuit court having jurisdiction over all petitions for guardianship.³⁵⁷ Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship.³⁵⁸ If the court finds that the welfare of a minor requires the immediate appointment of a guardian of the person, it may appoint a temporary guardian for a period not to exceed sixty days unless further extended for sixty days by order of the court; the court may extend the period only once with the authority of the temporary guardian limited as stated in the order of appointment.³⁵⁹ A grandparent or stepparent may petition for visitation privileges with respect to the child.³⁶⁰ A parent of a child may file a petition for the judicial appointment of a standby guardian, and an alternate standby guardian.³⁶¹ The petitioner must state whether the duty and authority of the standby guardian are to become effective on the petitioner’s incapacity, death, or debilitation and consent to the beginning of the duty and authority of the standby guardian or on whichever occurs first.³⁶² The petitioner must indicate that there is a significant risk that the petitioner will become incapacitated or debilitated or die, as applicable, within two years after

³⁵³ *Id.* at § 44A-5-1.

³⁵⁴ *Id.* at § 44A-5-3.

³⁵⁵ *Id.* at § 44A-5-2.

³⁵⁶ WIS. STAT. ANN. §§ 880.01 to .39 (West 2001).

³⁵⁷ *Id.* at § 880.02.

³⁵⁸ *Id.* at § 880.07.

³⁵⁹ *Id.* at § 880.15.

³⁶⁰ *Id.* at § 880.155.

³⁶¹ WIS. STAT. ANN. § 48.978 (West 2001).

³⁶² *Id.*

the date on which the petition is filed and the factual basis for that statement.³⁶³ If at any time before the standby guardianship commences the court determines that a standby guardian is not necessary, the court may rescind the guardianship order; the standby guardians may also renounce the appointment.³⁶⁴

Wyoming³⁶⁵

In Wyoming, any person may file a petition for the appointment of a guardian.³⁶⁶ By accepting the appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.³⁶⁷ The venue for a guardianship proceeding is in the place where the minor resides or is present.³⁶⁸ When appointing a guardian for a minor, the court looks to the list of preferences for appointment outlined in section 3-2-107. Upon the filing of a petition for a temporary guardian, the court may appoint a temporary guardian subject to any notice and conditions the court prescribes.³⁶⁹ An order appointing a temporary guardian of a minor ward must be limited to less than one-year.³⁷⁰

Conclusion

While all states, and the District of Columbia, provide for the traditional methods of appointing a guardian of a minor, the last ten years has seen state legislatures recognizing the need of enacting guardianship statutes that are tailored to an ever-changing society. This recognition has given birth to provisions allowing for temporary, limited, and most recently, standby guardianship statutes. These new statutes allow a growing segment of society to feel secure that their children's future needs

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ WYO. STAT. ANN. §§ 3-1-101 to 3-2-202 (Michie 2002).

³⁶⁶ *Id.* at § 3-2-101.

³⁶⁷ *Id.* at § 3-1-102.

³⁶⁸ *Id.* at § 3-1-103.

³⁶⁹ *Id.* at § 3-2-106.

³⁷⁰ *Id.*

294 *Journal of the American Academy of Matrimonial Lawyers*

will be met while, at the same time, retaining legal parental control of their children.

Peter Mosanyi, II