

House Research Act Summary

CHAPTER: 404

SESSION: 2000 Regular Session

TOPIC: Standby and Alternate Custodians of Children

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Overview

Since 1996, a parent has been able to name a designated caregiver to care for a child if the parent is unable to do so. The act creates standby and alternate custodians to replace that option.

- 1 **Standby or temporary custodian.** Amends a statute that allows issuance of a driver license with a symbol indicating an individual has appointed a designated caregiver. Eliminates a statutory form that was used for that purpose. Changes terminology to "standby or temporary custodian" throughout.
- 2 **Definitions.**
 - Subd. 1. Scope.**
 - Subd. 2. Alternate.** The term means a person with the rights, responsibilities and qualifications of a standby custodian if the standby custodian is unable or unwilling to act.
 - Subd. 3. Attending physician.** This person has primary responsibility for the care of the designator. Specifies when another physician can act for this physician.
 - Subd. 4. Co-custodian.** This is a standby custodian who acts with the child's parents and shares legal or physical custody, or both, due to a triggering event.
 - Subd. 5. Consent.** This is a written authorization signed by the designator before two adult witnesses, who also sign and who must not be named in the designation.
 - Subd. 6. Debilitation.** This means a person's chronic and substantial inability, because of disease or injury, to care for a child.
 - Subd. 7. Designation.** This is a written document naming a standby, temporary or alternate standby custodian. The document may not name an alternate temporary custodian.
 - Subd. 8. Designator.** This means a parent or legal custodian who names a standby or temporary custodian for a child.

Subd. 9. Determination of debilitation. This is a written finding by an attending physician that the designator suffers from an incapacitating disease or injury. It need not identify the condition.

Subd. 10. Determination of incapacity. This is a written finding by an attending physician that states the nature, extent, and probable duration of the designator's mental or organic incapacity.

Subd. 11. Incapacity. This is a substantial and chronic inability, from mental or organic impairment, to understand the nature and consequences of decisions about the care of a dependent child, with consequent inability to care for the child.

Subd. 12. Standby custodian. This is a person named by a designator to act as custodian or co-custodian of a child and whose authority takes effect on the incapacity, debilitation and consent, or death of the child's parent.

Subd. 13. Temporary custodian. This is a person named by a designator to assume duties of legal and physical custody of a child for a specific period up to 24 months.

Subd. 14. Triggering event. This is an occurrence specified in the designation that empowers a standby or temporary custodian to assume powers, duties, and responsibilities.

3 **Application of other laws.** Makes specified laws on custody of children born outside marriage, marriage dissolution, and guardianship of incapacitated adults applicable to custodians under the act. States that the parent does not lose parental rights or responsibilities or custodial rights under the act. States that the act does not relieve a parent of the duty to provide child support. Requires a court order to suspend or terminate a pre-existing child support order while a child is under a custodian's care under the act. Gives a custodian under the act a right of action for child support against an absent parent.

4 **Designator.** A parent with legal and physical custody of a child may designate a standby or temporary custodian by written designation, unless the child has another legal parent:

whose parental rights have not been terminated;

whose whereabouts are known;

who is willing and able to make and carry out daily decisions and care regarding the child.

If there is another parent, one of the parents may designate a custodian under the bill with the consent of the other parent or with court permission under section 6. Prohibits a temporary custodian from naming a different temporary custodian.

5 **Contents of designation.**

Subd. 1. Required information. Specifies contents.

Subd. 2. Signature; witnesses. Repeats material in definitions. Adds that a designator who is unable to sign may direct another person to sign in the presence of the designator and both witnesses.

Subd. 3. Alternate. Allows naming an alternate standby custodian but not an alternate temporary custodian.

Subd. 4. Recommended form. Provides optional language to use in designating a custodian under the act.

Subd. 5. Driver license. References the option of having a symbol on the driver license that shows an individual has named a standby or temporary custodian.

6 **Petition for approval.**

Subd. 1. Generally. Allows filing with the court at any time a petition for approval of a designation under the act. Exempts this from an initial filing fee, but lets the court determine ability to pay fees if there is a hearing. Permits only the designator to file a petition to confirm a

temporary custodian. Only the designator can file the petition before the triggering event occurs. After that event, the proposed standby custodian may file as provided in the act.

Subd. 2. Notice. Specifies who receives notice of any hearing under this section. Provides for notifying a parent who cannot be located by the current alternate service procedure in the marriage dissolution statute. States that notice is not required to a parent whose parental rights have been terminated.

Subd. 3. Jurisdiction. Jurisdiction of an action under this section is determined according to the Uniform Child Custody Jurisdiction and Enforcement Act.

Subd. 4. Presumptions. There is a presumption that a standby or temporary custodian is capable of serving. There is a presumption that confirming the designation is in the child's best interests if both parents consent, only one parent is living, or the other parent's parental rights have been terminated..

Subd. 5. Approval without hearing. Designation may be approved without a hearing if both parents consent, only one parent is living, or the other parent's parental rights have been terminated.

Subd. 6. Hearing. When a hearing is required the court must apply the statutory best interests standard in determining whether to confirm the designation, appoint a different custodian, or grant custody to the other parent.

Subd. 7. Court appearance. A designator medically unable to appear need not attend a hearing.

7 **Custodian's authority.**

Subd. 1. Generally. Provides that when a custodian's ability to act commences, that does not divest the parent of power to act. The two have concurrent or shared custody of the child.

Subd. 2. Death of designator. If the designator dies, the custodian has legal and physical custody as defined in the marriage dissolution statute. Requires appointment of the custodian as guardian when the parent dies. Exempts these cases from the petition, bond, and accounting requirements of the minor guardianship statute.

Subd. 3. Involvement of designator. Requires a co-custodian to assure contact between designator and child and assure involvement of the parents in decision making about the child.

Subd. 4. Effect of filing. Lets a designator file a petition for approval of a designation with the court at any time. Provides that the custodian's authority commences automatically upon the triggering event if court approval has occurred before then. Gives the custodian 60 days to act if court approval was not obtained before the triggering event. During that time, the custodian must file a petition for approval or lose authority to act. If the petition is filed but the court has not approved it within the 60 day period, the custodian's authority continues until the court orders otherwise.

Subd. 5. Parental rights. Commencement of custodian authority under this act does not in itself divest a parent of custodial or parental rights.

Subd. 6. Modification of appointment. When a designation has court approval, it may be modified under the statute on custody modification or the designator may revoke it.

Subd. 7. Restored capacity. If an attending physician determines that a parent has regained capacity, a designation started by the triggering event of incapacity becomes inactive. If the custodian fails to return the child to the designator, the designator may have an emergency hearing within five days after requesting it.

8 **Revocation.**

Subd. 1. Prepetition. Before a petition for court approval is filed, lets the designator revoke an appointment by destroying the designation and notifying the proposed custodian.

Subd. 2. Postpetition. After a petition has been filed, the designator must execute a written revocation, file it with the court, and give the named custodians written notice.

Subd. 3. Unwritten revocation. Allows the court to consider an unwritten revocation if proven by clear and convincing evidence.

9 **Conflicting documents.** If there is a conflict between the guardian named in a will and a standby custodian designation, the most recent document controls.

10 **Bond.** Prohibits requiring a custodian to post bond before the triggering event. Lets the court require a bond if the custodian is appointed regarding the child's estate but not if appointed only regarding the child's person.

11 **Transition.** Provides a transition for designated caregiver agreements entered under the law in effect before this act takes effect, but becoming operative after the act takes effect. Lets either the parent or the designated caregiver in this situation go to the court under section 5 and have the designation treated as a petition for approval under the new law.

12 **Repealer.** Repeals the current designated care giver statute.

13 **Effective date.** April 15, 2000.