Sylvia,

You'll see that these provisions provide for a new testamentary document in which a parent may appoint a guardian by designation. Also, the short-term guardianship is important in situations in which parents must be hospitalized, for example, and they haven't made preparations for standby. Since, in Georgia, we can do nothing, effectually, to anticipate the protest of an absent parent whose rights haven't been terminated, I felt that temporary guardianship requirements per 29-4-4.1 are sufficient for standby.

I am ready, willing and able to make alterations, so please contact me as soon as you have suggestions. I may be in Atlanta at the end of the week for the Health Law Task Force mtg;would it be beneficial for us to meet then? Your answer will figure in my decision whether to travel to Atlanta.

Let me know what you think.

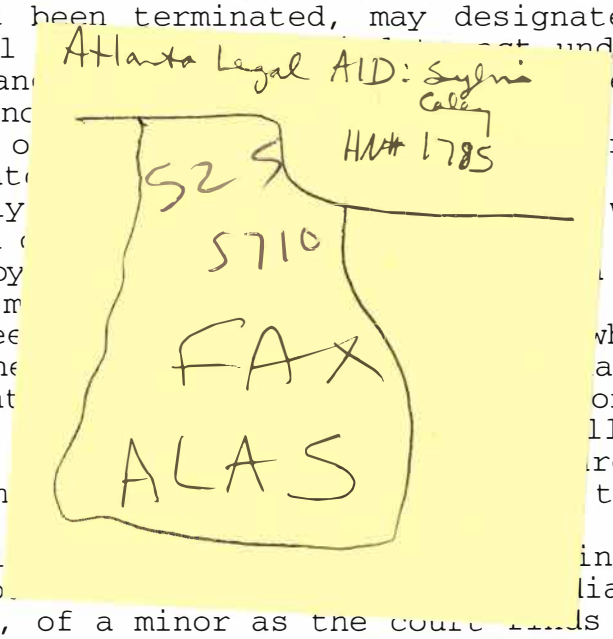
Robert

1) Appointment of Standby Guardian:
a) A parent, adoptive parent or adjudicated parent whose parental rights have not been terminated, may designate in any writing, including a will [illegible] under OCGA *** to be appointed as stan[illegible]estate, or both of an unmarried minc[illegible] born. A parent, adoptive parent o[illegible]rental rights have not been terminat[illegible] unmarried minor or of a child likely [illegible] writing, including a will, a person [illegible] to be appointed as successor standby [illegible] or estate or both. The designation m[illegible] credible witnesses at least eightee[illegible]whom is the person designated as the[illegible]ation may be proved by any competent [illegible]on is executed and attested in the [illegible]ll have prima facie validity. The [illegible]rdian or successor standby guardian [illegible] the other parent in the minor.
b) Upon the fil[illegible]intment of a standby guardian, the co[illegible]lian of the person or estate, or both, of a minor as the court finds to be in the best interest of the minor.
c)The court lacks jurisdiction to proceed on a petition for the appointment of a standby guardian of a minor if;

i) the minor has a living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, unless the parents consent in writing to the appointment;

ii) there is a guardian for the minor appointed by a court of competent jurisdiction, and such guardianship has not been terminated by the designating parent, adoptive parent, adjudicated parent, or guardian.

d) the standby guardian shall take and file an oath or affirmation that the standby guardian will faithfully discharge the duties of



Sylvia,

You'll see that these provisions provide for a new testamentary document in which a parent may appoint a guardian by designation. Also, the short-term guardianship is important in situations in which parents must be hospitalized, for example, and they haven't made preparations for standby. Since, in Georgia, we can do nothing, effectually, to anticipate the protest of an absent parent whose rights haven't been terminated, I felt that temporary guardianship requirements per 29-4-4.1 are sufficient for standby.

I am ready, willing and able to make alterations, so please contact me as soon as you have suggestions. I may be in Atlanta at the end of the week for the Health Law Task Force mtg;would it be beneficial for us to meet then? Your answer will figure in my decision whether to travel to Atlanta.

Let me know what you think.

Robert

1) Appointment of Standby Guardian:
a) A parent, adoptive parent or adjudicated parent whose parental rights have not been terminated, may designate in any writing, including a will a person qualified to act under OCGA *** to be appointed as standby guardian of the person or estate, or both of an unmarried minor or of a child likely to be born. A parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, or a standby guardian of an unmarried minor or of a child likely to be born may appoint in any writing, including a will, a person qualified to act under OCGA *** to be appointed as successor standby guardian of the minor's person or estate or both. The designation must be witnessed by two or more credible witnesses at least eighteen years of age, neither of whom is the person designated as the standby guardian. The designation may be proved by any competent evidence. If the designation is executed and attested in the same manner as a will, it shall have prima facie validity. The designation of a standby guardian or successor standby guardian does not affect the rights of the other parent in the minor.
b) Upon the filing of a petition for the appointment of a standby guardian, the court may appoint a standby guardian of the person or estate, or both, of a minor as the court finds to be in the best interest of the minor.
c)The court lacks jurisdiction to proceed on a petition for the appointment of a standby guardian of a minor if;

i) the minor has a living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, unless the parents consent in writing to the appointment;

ii) there is a guardian for the minor appointed by a court of competent jurisdiction, and such guardianship has not been terminated by the designating parent, adoptive parent, adjudicated parent, or guardian.

d) the standby guardian shall take and file an oath or affirmation that the standby guardian will faithfully discharge the duties of

the office of standby guardian according to law, and shall file in and have approved by the court a bond binding the standby guardian so to do, but shall not be required to file a bond until the standby guardian assumes all duties as guardian of the minor under OCGA sec 29-4-12.

2) Short-term Guardian
a) A living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, may appoint in writing, without court approval, a short-term guardian of an unmarried minor or a child likely to be born. The written instrument appointing a short-term guardian shall be dated and shall identify the appointing parent, the minor, and the person appointed to be the short-term guardian. The written instrument shall be signed by, or at the direction of the appointing parent in the presence of at least two credible witnesses at least eighteen years of age, neither of whom is the person appointed as the short-term guardian shall also sign the written instrument, but need not sign at the same time as the appointing parent.
b) A parent shall not appoint a short-term guardian of a minor if
i) the minor has another living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, unless the nonappointing parent consents to the appointment by signing the written instrument of appointment;or,
ii) there is a guardian of the minor appointed by a court of competent jurisdiction unless that guardianship has been dissolved by the appointing parent.
c) The appointment of the short-term guardian is effective immediately upon the date the written instrument is executed, unless the written instrument provides for the appointment to become effective upon a later specified date or event. The short-term guardian shall have authority to act as guardian of the minor as provided for a period of sixty days from the date the appointment is effective, unless the written instrument provides for the appointment to terminate upon an earlier specified date or event. Only one written instrument appointing a short-term guardian may be force at any given time.
d) Every appointment of a short-term guardian may be amended or revoked by the appointing parent at any time, pursuant to OCGA sec 29-4-4.1.
e) The appointment of a short-term guardian or successor short-term guardian does not affect the rights of the other parent in the minor.

3. Procedure for appointing a Standby Guardian
a) The petitioner must file a petition for guardianship pursuant to OCGA 29-4-4.1.
b) In addition to the information required by OCGA sec. 29-4-4.1 the petition for standby guardianship shall also contain:
i)a statement of the intention of the appointing parent or guardian that the guardianship shall not immediately take effect, but that it is a standby guardianship.
ii)the signature of the nominated guardian, accepting the

appointment.

4.Duties of Standby Guardian
a) Before a standby guardian of a minor may act, the standby guardian must be appointed by the court of the proper county and, in the case of a standby guardian of the minor's estate, the standby guardian must give the bond prescribed in OCGA sec. 29-4-12.
b) The standby guardian shall not have any duties nor authority to act until the standby guardian receives knowledge of the death or consent of the minor's parent or parents, or the inability of the minor's parent or parents to make and carry out day-to-day child care decisions concerning the minor for whom the standby guardian has been appointed. This inability of the minor's parent or parents to make and carry out day-to-day decisions may be communicated either by the parent's own admission or by the written certification of the parent's attending physician. Immediately upon receipt of that knowledge, the standby guardian shall assume all duties as guardian of the minor as previously determined by the order appointing the standby guardian. The guardian shall have the authority to act as guardian of the person without direction of court for a period of up to sixty days.
c) Within sixty days of the standby guardian's receipt of knowledge of the death or consent of the minor's parent or parents, or the inability of the minor's parent or parents to make and carry out day-to-day child care decisions concerning the minor, the standby guardian shall file or cause to be filed information regarding the triggering inability of the parent with the court. Upon the filing of this information, the guardianship shall continue indefinitely.

5. Duties of short-term guardian of a minor
a) Immediately upon the effective date of the appointment of a short-term guardian, the short-term guardian shall assume all duties as short-term guardian of the minor as provided in this Section. The short-term guardian of the person shall have authority to act as short-term guardian, without direction of court, for the duration of the appointment, which in no case shall exceed a period of sixty days.
b) Unless further specifically limited by the instrument appointing the short-term guardian, a short-term guardian shall have the authority to act as a guardian of the person of a minor as prescribed in OCGA sec. 29-2-1, but shall not have any authority to act as guardian of the estate of a minor, except that a short-term guardian shall have the authority to apply for and receive on behalf of the minor benefits to which the child may be entitled from or under federal, State, or local organizations or programs.

12/13:
--Kathleen Teahan called;I ret'd:770-985-0594;committee asked us to work together on standby guardianships;she wants me to get Sidney to get info and send to her;she will give info to Demetrius who is lobbyist for GA Nursg Ass'n, among others;P.O. Box 1258, Snellville 30278,fax:770-985-1002;Demetrius Mazacaoufa, 404-897-1000;fax 404-897-1990 → call to get his address
--talked with Judge Harris Lewis;notarized statements serve as pref before or AFTER death of parent;he has concern of probate ct approval of settlements in sit'ns where settlement occurs;rt to jury trial in probate ct proceeding is very scary;as law stands the necessity for the gdn in incapacitated adult case is a jury issue;
--called Sylvia:gave her review of yesterday's hearing;she recommended that we include lang in our testamentary guardianships as to why the parent chose the proposed gdn;

1401 Peachtree St
Suite 234
Atl. Ga 30309

Alice, plz mail copies of those documents which I gave ya this a.m. to:

KT

DM

Rep. MM Oliver
Rep Th Baker

(these addys shld be on the letters we sent the already.)

To ____:

Plz find enclosed the following materials: which I recd from Sidney Watson copies of the MH + III standby guardianship statts, + these law review articles: (A, get these cites from the attached letter):

[redacted]
(Watson)

Please call with any comments or
requests. I will send you the comments from the individuals
in ILL + NY that I spoke w/ who were instrumental in
passing + amending the statutes.

Sincerely,

MERCER UNIVERSITY
WALTER F. GEORGE SCHOOL OF LAW
Faculty Offices

December 19, 1996

Mr. Robert Bush
Georgia Legal Services
P.O. Box 8667
Savannah, Ga 31412

RE: Guardianship Rewrite Committee - Standby Guardianship

Dear Robert:

Pursuant to our phone conversation, enclosed are copies of the New York and Illinois standby guardianship statutes. I also did a quick search for recent law review articles on standby guardianships and found two interesting articles: Deborah Weimer, Implementation of Standby Guardianship: Respect for Family Autonomy, 100 Dick. L. Rev. 65 (1995), and Joyce McConnell, Standby Guardianship: Sharing the Legal Responsibility for Children, 7 Md.J.Contemp.L.Issues 249 (1995). They are also enclosed.

I look forward to seeing your work. Thanks.

Sincerely,

(Ms) Sidney D. Watson
Professor of Law

enclosures(4)

cc: Senator Mary Margaret Oliver (w/o enclosure)
Representative Thurbert E. Baker (w/o enclosure)

1021 Georgia Avenue • Macon, Georgia 31207-0003
(912) 752-2611 • FAX (912) 752-2259

FAX COVER SHEET

SENDING TO

Individual Name Robert Bush

Company Name GLSP

City and State

Fax Number (912) 651-3300

Date 2/17/95 Time 12:55pm

Number of Pages (Including Cover Sheet) 9

SENT FROM

Sender's Name Sylvia Caley

ATLANTA LEGAL AID SOCIETY, INC.
FAMILY LAW DIVISION
151 SPRING STREET, NW
ATLANTA, GEORGIA 30303-2097
(404) 524-5811
FAX (404) 525-5710

COMMENTS HB 750

CONFIDENTIALITY NOTE

Sylvia

HB 150

LC 22 1604

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of minors, so as to provide for the designation and appointment of standby guardians and successor standby guardians for the persons or property of minor children or children likely to be born; to provide for writings, witnesses, proof, and prima facie validity of such designations; to provide for petitions for appointment and their contents; to provide for jurisdiction, notice, and hearing; to provide for oaths or affirmations and bonds; to provide when a standby guardian or successor standby guardian shall assume the authority and duties of a guardian; to provide for affidavits informing the court of events triggering the assumption of the authority and duties of guardianship; to provide for revocation, inactivation, and reactivation of the guardianship and the method, notice, and proof of such revocation, inactivation, or reactivation; to provide for the appointment of short-term guardians of the person of minors or children about to be born; to provide for the contents, witnesses, and signatures of a writing appointing a short-term guardian; to provide for applicability; to provide for the dissolution by operation of law of a short-term guardianship; to provide for amendment or revocation of a short-term guardianship; to provide that a short-term guardian shall not interfere with the rights of the other legal parent of the minor; to provide for limitations on the authority of short-term guardians; to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of minors, is amended by inserting new Code sections to be designated Code Section 29-4-4.2 and 29-4-4.3, respectively, to read as follows:

"29-4-4.2.

(a) As used in this Code section, the term:

(1) 'Attending physician' means the physician who has primary responsibility for the treatment and care of the parent. Where more than one physician shares such responsibility, any such physician may act as the attending physician pursuant to this Code section. Where no physician has such responsibility, any physician who is familiar with the parent's medical condition may act as the attending physician pursuant to this Code section.

(2) 'Legal father' shall have the same meaning as set out in Code Section 19-8-1.

(3) 'Legal mother' shall have the same meaning as set out in Code Section 19-8-1.

(4) 'Standby guardian' means a person designated by a legal parent and judicially appointed pursuant to this Code section as standby guardian of the person or property or person and property of a minor or child likely to be born, who assumes the authority and duties of guardianship upon the death, consent, or inability of the appointing parent to make and carry out daily child care decisions.

(5) 'Successor standby guardian' means a person designated by a legal parent and judicially appointed pursuant to this Code section as a successor standby guardian of the person or property or person and property of a minor or child likely to be born, who assumes the initial authority and duties of guardianship at the first inception of guardianship due to the death, consent, or inability of the standby guardian to make and carry out daily child care decisions. The successor standby guardian may also assume the subsequent authority and duties of guardianship after the guardianship has commenced when the standby guardian dies, consents, or becomes unable to serve as guardian.

(b) A legal father or legal mother may designate in a writing which complies with the provisions of this Code section a person to be appointed as standby guardian of the person or of the property or of both the person and property of an unmarried minor or a child likely to be born.

(c) A legal father or legal mother may designate in a writing which complies with the provisions of this Code section a person to be appointed as successor standby guardian of the person or of the property or of both the person and property of an unmarried minor or a child likely to be born.

(d) The written designation of a standby guardian or successor standby guardian shall be witnessed by two or more witnesses at least 18 years of age, neither of whom is the person designated. The designation may be proved by any competent evidence. A designation which is executed and attested in the same manner as a will shall have prima facie validity.

(e) A petition for the appointment of a standby guardian or successor standby guardian shall state the reasons or circumstances which make the appointment of a standby guardian or successor standby guardian advisable, state the intention of the appointing parent that the guardianship shall not become effective immediately but on a standby or successor standby basis, and include the signature of the person nominated as standby guardian or successor standby guardian indicating acceptance of the appointment and the signature of the minor's other legal parent or evidence of the notice required by subsection (f) of this Code section, if applicable.

(f)(1) If there is another legal parent of the minor child in addition to the appointing parent, he or she shall be notified by registered or certified mail, return receipt requested, at his or her last known address, that a petition is being filed for the appointment of a standby guardian or successor standby guardian, and such notice shall be deemed to have been received on the date delivery shown on the return receipt.

(2) If there is another legal parent of the minor child in addition to the appointing parent and proof of service upon that other legal parent is not shown by return receipt of certified mail as provided in paragraph (1) of this subsection, he or she shall be notified that a petition is being filed for the appointment of a standby guardian or successor standby guardian by publication in a newspaper of general circulation, such notice to be printed once a week for four weeks.

LC 22 1604

(3) Each notice to another legal parent pursuant to paragraphs (1) and (2) of this subsection shall include a statement that such legal parent can object to the appointment of a standby guardian or successor standby guardian and shall include the time and date of hearing for the petition.

(g) Upon hearing a petition for the appointment of a standby guardian, the court may appoint a standby guardian of the person ~~or of the property or of both the person and property~~ of a minor as the court finds to be in the best interest of the minor. Upon hearing a petition for the appointment of a successor standby guardian, the court may appoint a successor standby guardian of the person or of the property or of both the person and property of a minor as the court finds to be in the best interest of the minor.

(h) The court lacks jurisdiction to proceed on a petition for the appointment of a standby guardian or successor standby guardian of a minor if there is a guardian for the minor appointed by a court of competent jurisdiction and such guardianship has not been terminated.

(i) A standby guardian or successor standby guardian appointed by the court shall take the oath or affirmation described in subsection (a) of Code Section 29-4-12. A standby guardian or successor standby guardian of the property of a minor shall give bond as described in subsection (b) of Code Section 29-4-12 before acting as such guardian of the property of a minor.

(j)(1) A standby guardian shall have no authority or duty to act as a guardian until the standby guardian receives notice of the death of the appointing parent, written consent of the appointing parent to the assumption of authority and duties of the standby guardian, or notice of the inability of the appointing parent to make and carry out daily child care decisions regarding the minor for whom the standby guardian has been appointed. Notice of the inability of the appointing parent to make and carry out daily child care decisions may be communicated either by the parent's written admission or by the written certification of the parent's attending physician.

(2) A successor standby guardian shall have no authority or duty to act as a guardian until the successor standby

guardian receives written notice of the death, resignation, or inability of the standby guardian to continue acting as guardian of the minor for whom the standby guardian and successor standby guardian have been appointed. Notice of the inability of the standby guardian to make and carry out daily child care decisions may be communicated by the written admission of the standby guardian or by the written certification of the standby guardian's attending physician.

(k)(1) Immediately upon receipt of the notice specified in paragraph (1) of subsection (j) of this Code section, the standby guardian shall assume the authority and duties of a guardian as previously determined by the order appointing the standby guardian. Within 30 days of assuming guardianship duties, the standby guardian shall file an affidavit with the court that entered the standby guardianship order informing the court that guardianship duties have been assumed. The affidavit shall also provide information regarding the event which triggered the assumption of the authority and duties of guardianship and information regarding the current and probable future status of the ability of the parent to resume child care responsibilities.

(2) Immediately upon receipt the notice specified in paragraph (2) of subsection (j) of this Code section, the successor standby guardian shall assume the authority and duties of a guardian as previously determined by the order or orders appointing the standby guardian and successor standby guardian. Within 30 days of assuming guardianship duties, the successor standby guardian shall file an affidavit with the court that entered the standby and successor standby guardianship order or orders informing the court that guardianship duties have been assumed. The affidavit shall also provide information regarding the event which triggered the assumption of the authority and duties of guardianship and information regarding the current and probable future status of the ability of the parent to assume child care responsibilities.

(l)(1) The appointing parent may revoke the standby guardianship or successor standby guardianship at any time prior to the standby guardian or successor standby guardian's filing for the first time of the affidavit required by subsection (k) of this Code section. The

- could set up temporary guardianship if one parent becomes incapacitated; look at prof section of 29-5; take prop out?

revocation shall be in writing and witnessed by two or more persons at least 18 years of age, neither of whom is the person designated. The appointing parent shall provide written notice of such revocation to the person previously designated as a standby guardian or successor standby guardian. The revocation of an appointment may be proved by any competent evidence. A revocation of an appointment which is executed and attested in the same manner as a will shall have prima facie validity. Notice of the revocation shall be provided to the court.

(2) If a standby guardian or successor standby guardian has filed the affidavit required by subsection (k) of this Code section, the appointing parent may inactivate the guardianship in a writing which is witnessed by two or more persons at least 18 years of age, neither of whom is the person appointed, and by providing notice of such inactivation to the person performing the duties of a guardian; provided, however, that if the affidavit required by subsection (k) of this Code section asserts the inability of the appointing parent to make and carry out daily child care decisions regarding the minor child, the writing inactivating the guardianship shall include a written certification by the parent's attending physician that the appointing parent is able to make and carry out daily child care decisions regarding the minor child.

(3) After inactivation, a standby or successor standby guardianship may be reactivated by the filing of an affidavit as required by subsection (k) of this Code section.

29-4-4.3.

(a) As used in this Code section the term 'short-term guardian' means a person appointed pursuant to this Code section as guardian of the person of a minor or child about to be born for a period not to exceed 60 days.

(b) A legal mother or legal father may appoint in writing a short-term guardian of the person of an unmarried minor or a child about to be born. Court approval shall not be required for the appointment of a short-term guardian. The writing appointing a short-term guardian shall be dated and shall identify the appointing parent, the minor, and the person appointed as short-term guardian. The writing shall be signed by or at the direction of the

appointing parent in the presence of two witnesses of at least 18 years of age, neither of whom is the person appointed as the short-term guardian. The short-term guardian shall also sign the writing to signify acceptance of the appointment, but the signature of the short-term guardian is not required to be made at the same time as the signing by or at the direction of the appointing parent.

(c) This Code section shall not apply when:

(1) The minor has another legal parent whose location is known, and who has not consented to the appointment by signing the writing making the appointment; or

(2) There is a guardian of the minor appointed by a court of competent jurisdiction, unless that guardianship has been terminated.

(d) Unless the writing appointing the short-term guardian provides for the appointment to become effective upon a specified date or event, the appointment of the short-term guardian is effective immediately upon the execution of the writing appointing a short-term guardian. The short-term guardian shall have authority to act without direction of the court as guardian of the person of the minor for the duration of the appointment, which shall dissolve by operation of law no later than 60 days from the date the appointment becomes effective. The appointing document may provide for the appointment to terminate upon an earlier specified date or event. Only one document appointing a short-term guardian may be in force at any time.

(e) Every appointment of a short-term guardian may be amended or revoked by either legal parent at any time in a writing signed by or at the direction of either legal parent in the presence of two witnesses of at least 18 years of age, neither of whom is the person appointed as short-term guardian.

(f) Except as provided by subsection (g) of this Code section, a short-term guardian shall assume all the duties and responsibilities of the appointing parent but shall not interfere with the preexisting rights of the other legal parent.

(g) Unless further expressly limited by the appointing document, a short-term guardian shall have the authority

to act as a guardian of the person of a minor as described in Code Section 29-2-1, but shall have no authority to act as guardian of the property of a minor except that a short-term guardian shall have the authority to apply for and receive on behalf of the minor benefits for which the child may be eligible pursuant to federal, state, or local law or from charitable organizations or programs."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

Robert Bush

LC 22 1604

H. B. No. 750
By: Representative Polak of the 67th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of minors, so as to provide for the designation and appointment of standby guardians and successor standby guardians for the persons or property of minor children or children likely to be born; to provide for writings, witnesses, proof, and prima facie validity of such designations; to provide for petitions for appointment and their contents; to provide for jurisdiction, notice, and hearing; to provide for oaths or affirmations and bonds; to provide when a standby guardian or successor standby guardian shall assume the authority and duties of a guardian; to provide for affidavits informing the court of events triggering the assumption of the authority and duties of guardianship; to provide for revocation, inactivation, and reactivation of the guardianship and the method, notice, and proof of such revocation, inactivation, or reactivation; to provide for the appointment of short-term guardians of the person of minors or children about to be born; to provide for the contents, witnesses, and signatures of a writing appointing a short-term guardian; to provide for applicability; to provide for the dissolution by operation of law of a short-term guardianship; to provide for amendment or revocation of a short-term guardianship; to provide that a short-term guardian shall not interfere with the rights of the other legal parent of the minor; to provide for limitations on the authority of short-term guardians; to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to guardians of minors, is amended by inserting new Code sections to be designated Code Section 29-4-4.2 and 29-4-4.3, respectively, to read as follows:

"29-4-4.2.

(a) As used in this Code section, the term:

(1) 'Attending physician' means the physician who has primary responsibility for the treatment and care of the parent. Where more than one physician shares such responsibility, any such physician may act as the attending physician pursuant to this Code section. Where no physician has such responsibility, any physician who is familiar with the parent's medical condition may act as the attending physician pursuant to this Code section.

(2) 'Legal father' shall have the same meaning as set out in Code Section 19-8-1.

(3) 'Legal mother' shall have the same meaning as set out in Code Section 19-8-1.

(4) 'Standby guardian' means a person designated by a legal parent and judicially appointed pursuant to this Code section as standby guardian of the person or property or person and property of a minor or child likely to be born, who assumes the authority and duties of guardianship upon the death, consent, or inability of the appointing parent to make and carry out daily child care decisions.

(5) 'Successor standby guardian' means a person designated by a legal parent and judicially appointed pursuant to this Code section as a successor standby guardian of the person or property or person and property of a minor or child likely to be born, who assumes the initial authority and duties of guardianship at the first inception of guardianship due to the death, consent, or inability of the standby guardian to make and carry out daily child care decisions. The successor standby guardian may also assume the subsequent authority and duties of guardianship after the guardianship has commenced when the standby guardian dies, consents, or becomes unable to serve as guardian.

(b) A legal father or legal mother may designate in a writing which complies with the provisions of this Code section a person to be appointed as standby guardian of the person or of the property or of both the person and property of an unmarried minor or a child likely to be born.

guardian receives written notice of the death, resignation, or inability of the standby guardian to continue acting as guardian of the minor for whom the standby guardian and successor standby guardian have been appointed. Notice of the inability of the standby guardian to make and carry out daily child care decisions may be communicated by the written admission of the standby guardian or by the written certification of the standby guardian's attending physician.

(k)(1) Immediately upon receipt of the notice specified in paragraph (1) of subsection (j) of this Code section, the standby guardian shall assume the authority and duties of a guardian as previously determined by the order appointing the standby guardian. Within 30 days of assuming guardianship duties, the standby guardian shall file an affidavit with the court that entered the standby guardianship order informing the court that guardianship duties have been assumed. The affidavit shall also provide information regarding the event which triggered the assumption of the authority and duties of guardianship and information regarding the current and probable future status of the ability of the parent to resume child care responsibilities.

(2) Immediately upon receipt the notice specified in paragraph (2) of subsection (j) of this Code section, the successor standby guardian shall assume the authority and duties of a guardian as previously determined by the order or orders appointing the standby guardian and successor standby guardian. Within 30 days of assuming guardianship duties, the successor standby guardian shall file an affidavit with the court that entered the standby and successor standby guardianship order or orders informing the court that guardianship duties have been assumed. The affidavit shall also provide information regarding the event which triggered the assumption of the authority and duties of guardianship and information regarding the current and probable future status of the ability of the parent to assume child care responsibilities.

(l)(1) The appointing parent may revoke the standby guardianship or successor standby guardianship at any time prior to the standby guardian or successor standby guardian's filing for the first time of the affidavit required by subsection (k) of this Code section. The

revocation shall be in writing and witnessed by two or more persons at least 18 years of age, neither of whom is the person designated. The appointing parent shall provide written notice of such revocation to the person previously designated as a standby guardian or successor standby guardian. The revocation of an appointment may be proved by any competent evidence. A revocation of an appointment which is executed and attested in the same manner as a will shall have prima facie validity. Notice of the revocation shall be provided to the court.

(2) If a standby guardian or successor standby guardian has filed the affidavit required by subsection (k) of this Code section, the appointing parent may inactivate the guardianship in a writing which is witnessed by two or more persons at least 18 years of age, neither of whom is the person appointed, and by providing notice of such inactivation to the person performing the duties of a guardian; provided, however, that if the affidavit required by subsection (k) of this Code section asserts the inability of the appointing parent to make and carry out daily child care decisions regarding the minor child, the writing inactivating the guardianship shall include a written certification by the parent's attending physician that the appointing parent is able to make and carry out daily child care decisions regarding the minor child.

(3) After inactivation, a standby or successor standby guardianship may be reactivated by the filing of an affidavit as required by subsection (k) of this Code section.

29-4-4.3.

(a) As used in this Code section the term 'short-term guardian' means a person appointed pursuant to this Code section as guardian of the person of a minor or child about to be born for a period not to exceed 60 days.

(b) A legal mother or legal father may appoint in writing a short-term guardian of the person of an unmarried minor or a child about to be born. Court approval shall not be required for the appointment of a short-term guardian. The writing appointing a short-term guardian shall be dated and shall identify the appointing parent, the minor, and the person appointed as short-term guardian. The writing shall be signed by or at the direction of the

guardian receives written notice of the death, resignation, or inability of the standby guardian to continue acting as guardian of the minor for whom the standby guardian and successor standby guardian have been appointed. Notice of the inability of the standby guardian to make and carry out daily child care decisions may be communicated by the written admission of the standby guardian or by the written certification of the standby guardian's attending physician.

(k)(1) Immediately upon receipt of the notice specified in paragraph (1) of subsection (j) of this Code section, the standby guardian shall assume the authority and duties of a guardian as previously determined by the order appointing the standby guardian. Within 30 days of assuming guardianship duties, the standby guardian shall file an affidavit with the court that entered the standby guardianship order informing the court that guardianship duties have been assumed. The affidavit shall also provide information regarding the event which triggered the assumption of the authority and duties of guardianship and information regarding the current and probable future status of the ability of the parent to resume child care responsibilities.

(2) Immediately upon receipt the notice specified in paragraph (2) of subsection (j) of this Code section, the successor standby guardian shall assume the authority and duties of a guardian as previously determined by the order or orders appointing the standby guardian and successor standby guardian. Within 30 days of assuming guardianship duties, the successor standby guardian shall file an affidavit with the court that entered the standby and successor standby guardianship order or orders informing the court that guardianship duties have been assumed. The affidavit shall also provide information regarding the event which triggered the assumption of the authority and duties of guardianship and information regarding the current and probable future status of the ability of the parent to assume child care responsibilities.

(l)(1) The appointing parent may revoke the standby guardianship or successor standby guardianship at any time prior to the standby guardian or successor standby guardian's filing for the first time of the affidavit required by subsection (k) of this Code section. The

revocation shall be in writing and witnessed by two or more persons at least 18 years of age, neither of whom is the person designated. The appointing parent shall provide written notice of such revocation to the person previously designated as a standby guardian or successor standby guardian. The revocation of an appointment may be proved by any competent evidence. A revocation of an appointment which is executed and attested in the same manner as a will shall have prima facie validity. Notice of the revocation shall be provided to the court.

(2) If a standby guardian or successor standby guardian has filed the affidavit required by subsection (k) of this Code section, the appointing parent may inactivate the guardianship in a writing which is witnessed by two or more persons at least 18 years of age, neither of whom is the person appointed, and by providing notice of such inactivation to the person performing the duties of a guardian; provided, however, that if the affidavit required by subsection (k) of this Code section asserts the inability of the appointing parent to make and carry out daily child care decisions regarding the minor child, the writing inactivating the guardianship shall include a written certification by the parent's attending physician that the appointing parent is able to make and carry out daily child care decisions regarding the minor child.

(3) After inactivation, a standby or successor standby guardianship may be reactivated by the filing of an affidavit as required by subsection (k) of this Code section.

29-4-4.3.

(a) As used in this Code section the term 'short-term guardian' means a person appointed pursuant to this Code section as guardian of the person of a minor or child about to be born for a period not to exceed 60 days.

(b) A legal mother or legal father may appoint in writing a short-term guardian of the person of an unmarried minor or a child about to be born. Court approval shall not be required for the appointment of a short-term guardian. The writing appointing a short-term guardian shall be dated and shall identify the appointing parent, the minor, and the person appointed as short-term guardian. The writing shall be signed by or at the direction of the

appointing parent in the presence of two witnesses of at least 18 years of age, neither of whom is the person appointed as the short-term guardian. The short-term guardian shall also sign the writing to signify acceptance of the appointment, but the signature of the short-term guardian is not required to be made at the same time as the signing by or at the direction of the appointing parent.

(c) This Code section shall not apply when:

(1) The minor has another legal parent whose location is known, and who has not consented to the appointment by signing the writing making the appointment; or

(2) There is a guardian of the minor appointed by a court of competent jurisdiction, unless that guardianship has been terminated.

(d) Unless the writing appointing the short-term guardian provides for the appointment to become effective upon a specified date or event, the appointment of the short-term guardian is effective immediately upon the execution of the writing appointing a short-term guardian. The short-term guardian shall have authority to act without direction of the court as guardian of the person of the minor for the duration of the appointment, which shall dissolve by operation of law no later than 60 days from the date the appointment becomes effective. The appointing document may provide for the appointment to terminate upon an earlier specified date or event. Only one document appointing a short-term guardian may be in force at any time.

(e) Every appointment of a short-term guardian may be amended or revoked by either legal parent at any time in a writing signed by or at the direction of either legal parent in the presence of two witnesses of at least 18 years of age, neither of whom is the person appointed as short-term guardian.

(f) Except as provided by subsection (g) of this Code section, a short-term guardian shall assume all the duties and responsibilities of the appointing parent but shall not interfere with the preexisting rights of the other legal parent.

(g) Unless further expressly limited by the appointing document, a short-term guardian shall have the authority

to act as a guardian of the person of a minor as described in Code Section 29-2-1, but shall have no authority to act as guardian of the property of a minor except that a short-term guardian shall have the authority to apply for and receive on behalf of the minor benefits for which the child may be eligible pursuant to federal, state, or local law or from charitable organizations or programs."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

Notepad: STANDBY

4/27/94 Called the Orphan Project to get info regarding legislation that had been proposed or drafted in NY regarding alternate forms of guardianship and other support provisions. Spoke with someone at the Orphan Project and they recommended the Legal Aid Youth and Rights Division, contact person Nannette Shrandt. Also they recommended the HIV Law Project at 212-674-7590, contact person Cynthia Reed, and also the Minority Task Force on AIDS, client services number 212-864-4046 -- Called the HIV/AIDS Law Project. Spoke with Cynthia Reed. Informed her that I wanted info regarding recent innovations in guardianship law in NY in response to HIV/AIDS. I was referred to Susan Johnson. She and I spoke about the provisions of the guardianship statute in NY. She mentioned a model packet which was developed in Illinois and she said she will fax me a copy of the kit that they send out. She will mail the originals and put other backup in the material in the mail also. She said the benefits of this guardianship are that the mother can designate someone to serve as guardian of the child when she becomes incapacitated, but can regain guardianship once she regains capacity without totally dissolving the guardianship, but putting that guardian on standby until the mother is incapacitated again. In this situation, the kids are not put into foster care, but the mother gets to choose the guardian and there is not the characteristic of permanency which prevents a lot of women from making arrangements for their children before they become incapacitated. Also, the mother will get benefits while she does have the child.

9/12/94 Today I spoke with Mildred Pinnot with the Community Law Project, (212) 722-2000. I discussed with Ms. Pinnot statements by Michael Brown of the Minority Task Force that the standby guardianship statutes had not encouraged women to make arrangements for their children before they became incapacitated. Ms. Pinnot's experience is different, however, and said that women have been coming much more frequently to make arrangements at the appropriate times. She said, however, they had conducted extensive community outreach. I asked her whether she spent a lot of time terminating father's rights and she said "no", that you cannot terminate father's rights with the standby guardianship. She said the fathers have to be given notice of the hearings so they have an opportunity to present themselves. If the fathers don't show up at the hearings, then she said you can get final letters of guardianship with prejudice so that fathers can't simply show up to contest the letters. I asked her what changes she would make in the statute and she said they are currently drafting amendments. First, they would like to expand the standing to parents and/or guardians because standing only lies with parents. Second, in the statute as it currently reads, the parent has to assert a substantial likelihood of dying within two years. They hope to change this provision to reflect "progressively chronic illness" as the criteria. Also, they are drafting the statute to require the courts to expedite reporting requirements because there are certain clearance forms and reports required in New York State that don't come back for maybe three months. This concern will not be relevant to our state because we don't these same reporting clearance forms.

In seeking support for the legislation, Ms. Pinnot said they approached legal services providers, the child welfare administration, and individual legislators. She said that their primary selling points is that this does not cost money and just disposes of issues without a crisis.

I spoke with Judge Probst a few months ago. He is with the Council of Probate Judges. I explained to him the gist of the standby guardianships and asked whether or not they would support it. He said he would be happy to consider it. He said their preference, however, is to minimize court involvement until it is needed. He said in Georgia an adult guardian can name a contingent guardian and that maybe the statute would conflict with Juvenile Court control over permanent guardianship.

=>met with Sylvia Caley, Linda Lowe and Vicki Kimbrel in Atlanta to discuss

proposing the standby guardianship legislation to our task force;i will draft prospectus to present in Atlanta in 17 Oct

10/14/94 spoke with Cindy Wade. She says she is not actually working with the task force that is revising the entire guardianship, but that's what the Elder Law Task Force is setting out to do. She said I should definitely contact Becky Kurtz who won't be in her office until the 24th of October. She said I could contact Sarah Brownley who is the head of Adult Protective Services at (404) 657-3419, x 3409; that I could speak with Charlie Lambert who is Chair of the Council on Elder Abuse who, along with Sarah Brownley, is on the committee to draft the legislation. His number is (404) 378-4159, and she also recommended talking to Mary Margaret who is on the judiciary sending in the commitment so that it might be a good idea to hook a committee member first and then to approach Mary Margaret.

10/14/94 I also spoke with Larry Pelligrini. He said that he would not be able to be the front person on this legislation, but that he would work to support it however he could. He recommended especially Tom Cawthorne as someone to introduce the bill or perhaps Denmark Groover. Says that Tom Cawthorne has a lot of progressive support and that Denmark Groover has a really odd, unpredictable scope of positions, but that he can work well to get things passed. He said that maybe even Tom Murphy would want to push this so we might want to get someone with rapport with Tom Murphy. He said that Jim Martin would do it but since the reich watches him so closely that is probably better for him not to be the one proposing it. He said that maybe it is better to go through the Senate at first. He also recommended Mary Margaret who is on the judiciary who would probably press the issue. He said not to get a Republican because they won't pass anything easily, but it is best to get a Democrat. Here are some suggestions: Peg Blitch, parenthetically not good at fighting; Nadine Thomas, parenthetically would do it if she is not already involved in fighting on another issue, but she does work really hard; George Hooks probably could get it through. Parenthetically, he is good and is Chairman of an Appropriations Committee; Walter Ray, parenthetically he is supposed to be a new leader in the Senate; Steve Langford of LaGrange, parenthetically probably would do this. He said Slotin would support the bill but wouldn't sponsor it. He recommended Paul Broom from Athens as a possible co-sponsor, maybe Steve Hinson and he said that Mark Taylor might help. He gave me a list of over 30 names of other persons who might support or co-sponsor the bill --- conference with Bill Broker regarding possible issues which might arise in opposition -- conference with Chris Colson regarding same.

Note: After discussion with C. Colson, Juvenile Court has strict jurisdictional requirements that must be met, whereas the Probate Court's jurisidiction is more vague.

11/1:called Linda Koons, Illinois:call AIDS Legal Counsel, 312-427-8990, Justin is Dir., and Susan Curry is legal director;maybe Ky passed similar statutes;look at MD and NJ;Linda participated in the drafting of the Ill stats and is willing to talk to me about their experience

--called AIDS Legal Counsel;talked w/Morgan, she will fax me the section of the Ill Code dealing with standbys;i asked if she knew anyone who assisted in drafting them she said Janet Ahearn;told me that Susan would call me back re. this matter

--Susan Curry called me back;she participated in drafting and pushing the leg'n in Ill;suggested bldg coalitions;brought test case and won based upon probate judge's refusal to use equitable power to create standby;phoned press the day they anticipated the judge's denial;in CA, the Code gives the judge flexibility in determining when gdnships take effect, so there's no need for special provisions;SC said she'd be happy to talk more about this if I would

PROSPECTUS: GENERAL DISCUSSION OF STANDBY GUARDIANSHIP

Elaine died Sunday, October 9, 1994, of complications from AIDS. She left behind three children, ranging in age from 4 to 15. She was married to none of the fathers of the children, and none of the fathers had legitimated the children. Before she passed away, she was among a sizable group of mothers with AIDS who refused to execute legal documents placing their children with a guardian.

Now that Elaine is dead, her three children have joined the burgeoning ranks of AIDS orphans who have no legal guardian.

Elaine had come to Georgia Legal Services Programs in order to execute advance directives and other documents, but she resisted the suggestion that she should complete guardianships for each of her children. She explained that she was not "giving up her children". She wouldn't budge from this position even though she was clearly in the final stages of her illness. she acknowledged that her sister, whom she favored as guardian of the children after her death, was willing to take responsibility for them. But she wouldn't "give up her children" no matter how much we implored her to make arrangements before it was too late.

Elaine's situation is typical of parents who are HIV positive parents, or parents with AIDS. Because AIDS is a progression of losses to those who are infected with it, they often cannot bear to undertake the symbolic loss of their most significant reason to fight the encroachment of their illness. The Official Code of Georgia does not provide relief from this "life" choice, currently. And none of the provisions which one might use to make legal arrangements for one's children provide the certainty which the parents need to motivate them to secure the custodial situation of their children.

New York, Illinois and Florida, among other states, has answered the reluctance of these parents by adopting statutes creating standby guardianships. In short, this type of guardianship allows a parent who is terminally ill to appoint a guardian in advance of the time when one is actually necessary, so that when the parent reaches the point of incapacity or debilitation the guardian can step in and make necessary decisions and arrangements on behalf of the child(ren).

Georgia law should include similar provisions for its citizens with HIV/AIDS. I am proposing that we draft and attempt to assist in passing legislation similar to that passed in New York and other states. I know that the Elder Law Task Force is considering pushing an overhaul of the guardianship statutes as a whole, but many of my clients will die without making arrangements for their children before their target date of 1996. I hope that we can prioritize this issue for the upcoming legislative session.

Here are some concerns that persons have voiced regarding my suggestion:

1. **How will this legislation affect the rights of non-custodial parents?**

It won't. Jurisdiction for standby guardianships will be placed with Probate court. Probate Court jurisdiction cannot grant custody to anyone over the objections of a legal parent. If a non-custodial parent appears to contest the guardianship, the Probate court must dissolve it. King v. Brown, 193 Ga. App. 495.

There are also provisions for notice of the appointment hearing to the non-custodial parent. Putative fathers who wish to make any claim or objections can easily file for legitimation so that their rights and responsibilities can be enforced.

2. **Then why bother with this in the first place?**

For most of my clients the non-custodial parent is dead or long absent. This legislation would benefit them by providing certainty regarding the placement of their children without requiring them to acquiesce to placing their children under the control of another when they are still capable of parenting.

3. **Why should we prioritize this issue?**

Our client base is disproportionately affected by AIDS because AIDS more greatly impacts marginalized populations. In Georgia alone, the number of AIDS cases is projected to increase from 12,000 to 30,000 just within the next six weeks. The number of women projected to become infected with the AIDS virus is expected to increase at any ever greater rate, as more cases will be heterosexually transmitted. Currently, in Chatham County, 1 in every 200 women who give birth are HIV.

We will have to deal with this issue at some juncture. Now, since many mothers are reluctant to make preparations for their children, we often are forced to make unguided decisions regarding the placement of the children because the custodial parent is not around. Or, our clients are forced to surrender decisionmaking authority over their children before they are prepared to do so. This often adversely affects the health of these clients.

This legislation also provides stability to children of persons who have HIV/AIDS. Such children are more prone to behavioral and developmental problems because of the multiple issues surrounding the disruption of their lives. The certainty provided by a standby guardianship can encourage and facilitate relationships between guardians and wards.

4. **Has this been successful in New York?**

Mildred Pinnot, who played a key role in drafting the N.Y. legislation, explained that, after they had made efforts through

community outreach to educate their clientele regarding standby guardianships, the numbers of mothers executing guardianships increased greatly.

5. **What if the incapacitated parent's condition improves and he/she regains the ability to parent?**

The standby guardianship is a concurrent authority with that of the parent. If the parent can once again manage the child, he/she may do so without any additional procedure.

6. **What are some other states that have done this?**

In addition to New York (see attached), Florida (Fla. Stat. Ann. ec. 744.304) and Illinois (755 ILCS 5/1-2.23, et seq.) have also passed standby guardianship procedures.

PROSPECTUS: GENERAL DISCUSSION OF STANDBY GUARDIANSHIP

Elaine died Sunday, October 9, 1994, of complications from AIDS. She left behind three children, ranging in age from 4 to 15. She was married to none of the fathers of the children, and none of the fathers had legitimated the children. Before she passed away, she was among a sizable group of mothers with AIDS who refused to execute legal documents placing their children with a guardian.

Now that Elaine is dead, her three children have joined the burgeoning ranks of AIDS orphans who have no legal guardian.

Elaine had come to Georgia Legal Services Programs in order to execute advance directives and other documents, but she resisted the suggestion that she should complete guardianships for each of her children. She explained that she was not "giving up her children". She wouldn't budge from this position even though she was clearly in the final stages of her illness. she acknowledged that her sister, whom she favored as guardian of the children after her death, was willing to take responsibility for them. But she wouldn't "give up her children" no matter how much we implored her to make arrangements before it was too late.

Elaine's situation is typical of parents who are HIV positive parents, or parents with AIDS. Because AIDS is a progression of losses to those who are infected with it, they often cannot bear to undertake the symbolic loss of their most significant reason to fight the encroachment of their illness. The Official Code of Georgia does not provide relief from this "life" choice, currently. And none of the provisions which one might use to make legal arrangements for one's children provide the certainty which the parents need to motivate them to secure the custodial situation of their children.

New York, Illinois and Florida, among other states, have answered the reluctance of these parents by adopting statutes creating standby guardianships. In short, this type of guardianship allows a parent who is terminally ill to appoint a guardian in advance of the time when one is actually necessary, so that when the parent reaches the point of incapacity or debilitation the guardian can step in and make necessary decisions and arrangements on behalf of the child(ren).

Georgia law should include similar provisions for its citizens with HIV/AIDS. I am proposing that we draft and attempt to assist in passing legislation similar to that passed in New York and other states. I know that the Elder Law Task Force is considering pushing an overhaul of the guardianship statutes as a whole, but many of my clients will die without making arrangements for their children before their target date of 1996. I hope that we can prioritize this issue for the upcoming legislative session.

Here are some concerns that persons have voiced regarding my suggestion:

1. **How will this legislation affect the rights of non-custodial parents?**

It won't. Jurisdiction for standby guardianships will be placed with Probate court. Probate Court jurisdiction cannot grant custody to anyone over the objections of a legal parent. If a non-custodial parent appears to contest the guardianship, the Probate court must dissolve it. King v. Brown, 193 Ga. App. 495.

There are also provisions for notice of the appointment hearing to the non-custodial parent. Putative fathers who wish to make any claim or objections can easily file for legitimation so that their rights and responsibilities can be enforced.

2. **Then why bother with this in the first place?**

For most of my clients the non-custodial parent is dead or long absent. This legislation would benefit them by providing certainty regarding the placement of their children without requiring them to acquiesce to placing their children under the control of another when they are still capable of parenting.

3. **Why should we prioritize this issue?**

Our client base is disproportionately affected by AIDS because AIDS more greatly impacts marginalized populations. In Georgia alone, the number of AIDS cases is projected to increase from 12,000 to 30,000 just within the next six weeks. The number of women projected to become infected with the AIDS virus is expected to increase at any ever greater rate, as more cases will be heterosexually transmitted. Currently, in Chatham County, 1 in every 200 women who give birth are HIV.

We will have to deal with this issue at some juncture. Now, since many mothers are reluctant to make preparations for their children, we often are forced to make unguided decisions regarding the placement of the children because the custodial parent is not around. Or, our clients are forced to surrender decisionmaking authority over their children before they are prepared to do so. This often adversely affects the health of these clients.

This legislation also provides stability to children of persons who have HIV/AIDS. Such children are more prone to behavioral and developmental problems because of the multiple issues surrounding the disruption of their lives. The certainty provided by a standby guardianship can encourage and facilitate relationships between guardians and wards.

4. **Has this been successful in New York?**

Mildred Pinnot, who played a key role in drafting the N.Y. legislation, explained that, after they had made efforts through

community outreach to educate their clientele regarding standby guardianships, the numbers of mothers executing guardianships increased greatly.

5. **What if the incapacitated parent's condition improves and he/she regains the ability to parent?**

The standby guardianship is a concurrent authority with that of the parent. If the parent can once again manage the child, he/she may do so without any additional procedure.

6. **What are some other states that have done this?**

In addition to New York (see attached), Florida (Fla. Stat. Ann. ec. 744.304) and Illinois (755 ILCS 5/1-2.23, et seq.) have also passed standby guardianship procedures.

Rebecca has two children and ten T-cells. She is enervated much of the time, and she has already been hospitalized with AIDS-related pneumonia. Because of persistent fatigue and pains that were later diagnosed as related to cancer, Rebecca was forced to quit her job and she has qualified for Supplemental Security Income. She insists that her children are better off under her care than with any of her family members or close friends because she is their "momma" and children should be with their "momma." Because of this, Rebecca will not execute guardianship papers naming another person as guardian of her children;Rebecca also secretly fears that, if she "gave up" her children, then she would lose her reason for fighting to survive her illness. A testamentary guardianship is out of the question, because, to Rebecca, executing a will means admitting that the end is near. Anyway, she feels that what little property she has will go to her children even if she doesn't have a will.

Barbara, terminally ill mother of two:"If I had something that I could do like that(standby guardianship), then I wouldn't worry about risk of somebody taking control of my kids once I feel better and can take control of them again. I'm afraid, like many women that a guardianship will backfire. I know that if I knew that I could give guardianship for down times, then I would feel more secure. I wouldn't be afraid that I would lose my children....If we had something like standby guardianships it would settle so many questions in my mind that I probably would have kept my children with me. Now, when we need more than ever to be able to spend time together, my two boys are living in another state with their grandparent."

Donna died leaving two children, a thirteen-year-old boy and a sixteen-year-old girl with no legal guardian. The father had passed away a year earlier, and no other relative was willing to step forward to assume responsibility for the chilren. Donna had resisted attempts to make guardianship arrangements during her lifetime because she "wasn't ready to give up yet." DFCS intends to exert custody over the children, and expects that they will be sent to separate foster homes.

STANDBY GUARDIANSHIPS
QUESTIONS & ANSWERS

1. WHAT IS A STANDBY GUARDIANSHIP?

In August 1992, the Surrogate's Court Procedure Act was amended to allow for standby guardianships. The new law permits parents who are ill to make permanent plans for their children's future without giving up their legal rights. If the parent is alive when the standby guardianship goes into effect, the guardian and parent have concurrent authority and the parental or guardianship rights of the parent are not diminished.

Under the new law, there are two procedures for appointing a standby guardian:

a. Court-Appointed Standby Guardian

A parent who is at risk of becoming incapacitated or dying within two years can petition the court to appoint a standby guardian. The guardianship does not go into effect until the parent is no longer able to care for the children, has died, or consents that the guardianship begin. The parent chooses the guardian and the court determines whether the appointment should be approved.

b. Written Designation of Standby Guardian

A parent can also designate a standby guardian in writing without going to court. The standby guardian then has the authority to act upon a determination that the parent is mentally incapacitated or physically debilitated (with the parent's consent). The standby guardian has to file a petition for guardianship within 60 days of getting the proof of incapacity or debilitation for the authority to continue.

2. HOW DOES A PARENT APPOINT A STANDBY GUARDIAN?

a. Court-appointed Standby Guardian

The parent can petition either the Family court or Surrogate's court to have the standby guardian appointed. Parents do not have to go to court if they are too ill.

The petition must say that the parent is at risk of dying or becoming incapacitated within two years. It names the proposed standby guardian, and states when the guardianship goes into effect.

The court then determines the suitability of the proposed guardian, using the same procedure as in a traditional guardianship and, if satisfied, issues an order appointing the standby guardian.

b. Written Designation of Standby Guardian

The parent, without petitioning the court, may appoint a standby guardian by preparing a written statement, called a designation, that must be signed by the parent and by two witnesses over the age of eighteen. The standby guardian must also sign the designation, but cannot act as one of the two witnesses. If the parent is too ill to sign, another person can sign for the parent in the presence of the parent and the two witnesses.

The designation must include the names of the parent, the child(ren), and the person designated to be the standby guardian. It should also indicate that the guardianship will take effect when the parent becomes incapacitated or becomes debilitated and gives consent for the standby guardianship to begin. (See #'s 4 and 5 below).

The designation can also include an alternate standby guardian who can act if the standby guardian is unwilling or unable to act.

3. WHEN DOES THE STANDBY GUARDIANSHIP TAKE EFFECT?

a. When Standby Guardian is court-appointed

i. Death

If the guardianship is to begin when the parent has died, it starts when the standby guardian receives a copy of the parent's death certificate.

ii. Incapacity

If the guardianship is to begin when the parent becomes incapacitated, it begins when the guardian receives a written statement of parental incapacity from the physician who has primary responsibility for the treatment and care of the parent or, if there is no such physician, another physician who is familiar with the parent's medical condition may make that determination. (Incapacity is explained in #4).

iii. Consent

The standby guardianship can begin at any time with the parent's written consent. Two witnesses and the standby guardian must also sign the written consent. The guardian's authority begins as soon as the guardian receives the parent's written consent.

* * *

A copy of the document that triggers the standby guardianship (the death certificate, the written determination of incapacity, or the parent's written consent) must be filed with the court. In order for the guardian's authority to continue, the standby guardian has 90 days

after getting the documents to file them with the court. If the guardian does not file the document within 90 days, the authority may lapse, but should be renewed when the document is filed.

b. When Standby Guardian is Designated in Writing

i. Incapacity

The guardianship begins when the guardian receives a written statement from the parent's attending physician stating that the parent is incapacitated and detailing the nature and duration of the incapacity. (See #4 below).

ii. Debilitation

The guardianship begins when the guardian receives a copy of the doctor's written determination of debilitation and a copy of the parent's written consent to the commencement of the guardianship. The consent must be signed in the presence of two witnesses over the age of eighteen, as well as by the standby guardian. If the parent is physically unable to sign, another person can sign for the parent in the presence of the parent and the two witnesses. (See # 5 below).

The standby or alternate standby guardian must file a petition for appointment as guardian within 60 days of receiving the determination of incapacity or debilitation. The written designation of guardianship must be filed with the court along with the documents that triggers the standby guardianship. If the necessary documents are not filed within 60 days, the standby guardian's authority will stop, but will be renewed when they are filed.

4. DEFINITIONS OF INCAPACITY AND DEBILITATION

i. What does incapacity mean in the standby guardian law?

Incapacity is defined by the law as the inability to "understand the nature and consequences of the decisions concerning the care of one's dependent infant." If the parent wants to challenge the determination of incapacity, the parent can make a motion to revoke the standby guardianship at any time.

ii. What does debilitation mean in the standby guardianship law?

Debilitation is defined by the law as "a chronic and substantial inability, as a result of physically debilitating illness, disease or injury, to care for one's dependent infant." A determination of debilitation must be made by the parent's attending physician to a reasonable degree of medical certainty. The determination must be in writing and state the physician's opinion regarding the cause and nature of the debilitation, as well its anticipated duration.

5. WHAT ARE THE SIMILARITIES AND DIFFERENCES BETWEEN TRADITIONAL AND STANDBY GUARDIANSHIPS?

There are two main differences: 1) who can choose the guardian and 2) when the guardianship takes effect.

In a traditional guardianship proceeding, a parent or someone else can petition the court to appoint a guardian for the children. If the judge approves the proposed guardian and signs an order appointing the guardian, the guardian has the authority to act for the child as soon as the order is signed.

In a standby guardianship, only the parent can petition the court to appoint the standby guardian. The court still has to approve the standby guardian using the same criteria as if the person were appointed as a guardian. The parent decides when the guardianship will go into effect.

When a petition for standby guardianship is brought, like a petition for a traditional guardianship, the court requests a child abuse clearance from Albany and gives notice to the other parent (unless the other parent has abandoned the child) and/or other interested relatives. The court may also require an investigation by a protective agency.

When a parent executes a written designation of a standby guardian, the parent does not have to go to court. The designated guardian's authority to act begins upon receipt of a determination of incapacity or debilitation and consent.

Once a standby guardianship goes into effect, the standby guardian fulfills the same functions as a traditional guardian.

6. WHAT OTHER TYPES OF GUARDIANSHIP ARE AVAILABLE?

There are two options other than standby guardianship for appointing a guardian.

a. The parent can name a guardian in a will (or deed). This is not always adequate because the parent does not know whether his/her wishes will be respected since the determination of guardian will not be decided until his/her death.

b. The parent can petition the court for appointment of a guardian for the children while the parent is still alive. This is not a good choice for many parents because they do not want to give up any of their legal rights as parents while they can still care for their children.

This document was prepared by a group of legal service providers, including, Brooklyn Legal Services Corp B's HIV Unit, Community Law Offices, Gay Men's Health Crisis, Legal Action Center, Montefiore, and the Orphan Project. For more information, call Legal Action Center at (212) 243-1313.

DESIGNATION OF STANDBY GUARDIAN

I, _____, residing at _____ hereby designate the following individual as Standby Guardian of the person (and property) of my child(ren), namely: _____ born on _____ and _____ born on _____:

Name of Standby Guardian: _____

Address of Standby Guardian: _____

Telephone Number: ( ) _____

The Standby Guardian's authority shall take effect if and when any of the following conditions are met:

1. My doctor concludes that I am mentally incapacitated rendering me unable to care for my child(ren); or

2. My doctor concludes that I am physically debilitated to such a degree that I am rendered unable to care for my child(ren) and I consent, in writing before two witnesses, to the Standby Guardian's authority taking effect.

In the event the Standby Guardian I have designated above is unable or unwilling to act as guardian for my child(ren), I hereby designate the following individual as Alternate Standby Guardian:

Name of Alternate Standby Guardian: _____

Address of Alternate Standby Guardian: _____

Telephone of Alternate Standby Guardian: ( ) _____

I understand that my standby Guardian's authority will terminate sixty (60) days after it begins unless by such date she or he petitions the court for appointment as guardian.

I understand also that I retain full parental rights even after the start of the Standby Guardian's authority and that I can revoke the standby guardianship at any time by signing a written revocation in front of two witnesses at least 18 years of age and then promptly notifying the Standby Guardian.

If I am physically unable to sign this Designation of Standby Guardian myself, I understand that I can direct someone else to sign for me as long as I am present when that other person signs my name.

Signature of Parent: _____

Signature of Standby Guardian: _____

(If Parent is physically unable to sign the Designation and directs that someone else sign it for him or her, that person should indicate that he or she is signing for the parent by putting his or her initials after the signature. The name address and relationship of the person signing for the parent is as follows:

Name _____

Address _____

Relationship to Parent: _____

Address of Parent: _____

Date: _____

WITNESSES DECLARATION

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign and asked another individual, namely _____ _____, to sign this document, and she/he did so in my presence. I further declare that I am at least eighteen years old and am not the person designated as Standby Guardian.

Witness' Name (Please print): _____

Witness' Signature: _____

Address: _____

Date: _____

Witness' Name (Please print): _____

Witness' Signature: _____

Address: _____

Date: _____

WRITTEN CONSENT TO STANDBY GUARDIANSHIP

Pursuant to Section 1726 of the Surrogate's Court Procedure Act, I , hereby consent to the commencement of the authority of , as Standby Guardian of my child(ren), namely:
upon receipt by of this Written Consent to Standby Guardianship executed in accordance with the provisions of Section 1726(e)(iii) of the Surrogate's Court Procedure Act.

This Written Consent to Standby Guardianship is signed by me in the presence of two witnesses who are at least eighteen years of age and are not designated as Standby Guardian:

1) Name:
Address:

2) Name:
Address:

and by the Standby Guardian.

Date: , 199 .

_____
NAME:

I declare that the person whose name appears above signed this consent in my presence. I further declare that I am at least eighteen years old and am not the person designated as Standby Guardian.

Witness: _____
NAME:

Witness: _____
NAME:

Standby Guardian: _____
NAME:

NEW YORK STATE'S STANDBY GUARDIAN LAW

Recommendations for Amendments, Implementation, and Education

Gary L. Stein, Esq.
Policy Director, The Orphan Project

In cooperation with:

Carol Levine
Executive Director
The Orphan Project

Alice Herb
Assistant Professor
State University of New York
Health Science Center-Brooklyn

The Orphan Project
121 6th Avenue, 6th Floor
New York, N.Y. 10013
(212) 925-5290
Fax (212) 925-5675

Planning for the future care and custody of their children is one of the most difficult decisions facing parents with HIV. The New York State Standby Guardian Law (Surrogate's Court Procedures Act, § 1726), which was initiated by attorneys working with HIV-infected parents* in collaboration with Governor Mario Cuomo's legal staff and enacted in June 1992, reinforced the right of parents to retain custody of their children and to determine who will care for them when they are no longer able to do so. Prior to the passage of this precedent-setting law, parents desiring to appoint a future guardian for their children named that person in either a will or deed, which delayed the judicial approval of this designation until after the parent's death. During the parent's lifetime, he or she could file a guardianship petition, which often required giving up custodial rights -- an unsatisfactory and even insensitive approach. The Standby Guardian Law combined these alternatives. It permits parents to appoint a guardian for their children during their lifetime, yet becomes effective only upon the parent's death, physical debilitation or mental incapacity, or consent.

Although the Standby Guardian Law provided an important new option for parents wishing to develop a custody plan, it quickly became apparent that more needed to be done to promote its use and that some "fine-tuning" of the statutory language was needed. To that end, on October 18, 1993, The Orphan Project, working with the coalition of AIDS attorneys, sponsored a forum -- attended by attorneys, family court

---

* This group included Brooklyn Legal Services Corporation B, Gay Men's Health Crisis, Legal Action Center, Legal Aid Society/Community Law Offices, Montefiore Medical Center, The Orphan Project, and State University of New York Health Science Center-Brooklyn.

judges and surrogates, agency administrators, mental health and child welfare workers, case managers, and family members -- to examine New York's experience in implementing the Standby Guardian Law and to issue guidance to further its appropriate use. Evolving from this meeting were recommendations for: (1) amendments to broaden the application of and clarify the Standby Guardian Law; (2) professional education on custody planning for attorneys, judges and surrogates, case managers, and mental health workers; (3) community outreach and consumer training to increase awareness among parents on the benefits of custody planning; (4) procedural guidelines to promote implementation of the law; and (5) further policy analysis on the financial implications of custody plans.

Amendments to the N.Y.S. Standby Guardian Law

The Standby Guardian Law, which amended the Surrogate's Court Procedure Act, has been a useful custody planning tool for parents contemplating their children's future care. The law has enabled parents to formalize the choice of a guardian for their children, while allowing them to continue their parental responsibilities unimpaired. However, attorneys representing parents report that some provisions would benefit from clarification, both to assist them and judges hearing standby guardian cases. In addition, minor substantive changes would appropriately broaden the class of parents and other caretakers who could benefit from the law. These substantive and technical

modifications are reviewed below and attached as an Appendix."

1. Statutory application. The current law requires a parent's physician to document "that there is a significant risk that the [parent] ... will become incapacitated or die ... within two years of the filing of the [standby guardian] petition," as well as the medical basis for this claim (§ 1726(3)(b)(ii)). Imposing time parameters on the lives of parents attempting to use the Standby Guardian Law creates two unnecessary barriers. First, determining the length of time an ill person, especially one with AIDS, has to live is fraught with uncertainty and unnecessarily places upon physicians the difficult responsibility of making a precise judgment. Second, the time limitation forces parents who might otherwise establish a standby guardianship to delay formalizing their custody plan. Such delays contradict the recommendations of attorneys, social workers, and other HIV professionals that parents with HIV consider custody planning options and formalize them early in their illness.

A functional definition of disability, rather than a time limitation, eliminates difficult medical speculation on patients' remaining years and promotes early custody planning by parents. It is recommended that the Standby Guardian Law be amended to apply to parents suffering from a progressive, chronic condition or an irreversible, fatal illness.

" Mildred Pinott of the Legal Aid Society/Community Law Office drafted the proposed amendments with valuable contributions from Alice Herb, State University of New York Health Science Center-Brooklyn; Carol Horwitz, Brooklyn Legal Services Corporation A; Susan Jacobs, Legal Action Center; Randye Retkin, Gay Men's Health Crisis; Lauren Shapiro, Brooklyn Legal Services Corporation B; and Gary L. Stein, The Orphan Project.

2. Appointing successor guardians. Under the Standby Guardian Law, only parents may appoint guardians for their children. However, experience has shown that this provision may not meet the needs of children and youth orphaned by HIV and their new caretakers. For example, in many families grandparents, who may be elderly or have serious chronic conditions, or other relatives or friends, who may themselves be HIV-infected, are appointed as standby guardians. However, these elderly or ill caretakers, who will probably be best able to promote the interests of their wards, are legally unable to plan for the children's futures should they themselves become incapacitated or die. To permit guardians to develop care plans, it is recommended that the law be amended to permit duly appointed standby guardians to nominate successor guardians.

3. Clarifying the triggering event. The Standby Guardian Law authorizes two tracks for nominating a guardian. The most effective route requires parents to file a standby guardian petition in the Family Court or Surrogate's Court requesting the judge to approve the parent's selection. Once approved, the standby guardianship becomes effective on the parent's death, mental incapacity, or consent (§ 1726(3)(d)(ii)). In the alternative, parents can designate a standby guardian in a written statement. In this situation, the proposed guardian must file a standby guardianship petition within 60 days of the parent's physical debilitation (with the parent's consent) or mental incapacity (§ 1726(4)(b)(i)). It was intended by the bill's drafters that when a parent dies following the execution of a designation, the proposed guardian would petition the court to appoint a regular guardian, rather than a standby guardian.

This lack of symmetry on the event triggering a standby guardianship has created confusion among attorneys and judges. To clarify that courts may approve standby guardianships following a parent's death or incapacity, whether by petition or designation, it is recommended that the law be amended to include death as a triggering event for a standby guardianship based upon an appropriately executed designation. Similarly, the regular guardianship law should be modified to authorize courts to approve temporary guardianships based on the executed designation of a standby guardian.

4. State Central Registry checks. Prior to the approval of a guardianship appointment, judges and surrogates must obtain clearance from State Central Registry (SCR) office of the New York State Department of Social Services (DSS) to confirm that the proposed guardian was not the subject of a verified charge of child abuse or neglect. Although this background check is meant to protect children and youth, this exercise frequently takes up to four months or longer, thereby delaying the appointment of guardians. Although judges may issue temporary letters of guardianship to ensure that proposed guardians may consent to their child's medical care or enroll the child in school, these delays may create needless uncertainties, and at worst, may jeopardize the safety of the children. To provide a time frame for DSS to perform abuse and neglect checks, it is suggested that the Surrogate's Court Procedure Act (§ 1706) and the Social Services Law be amended to require DSS to complete State Central Registry checks as expeditiously as possible, but within no more than 10 working days from the receipt of a judicial inquiry.

Procedural Guidelines

To facilitate implementation of the Standby Guardian Law, the following guidelines are recommended:

1. Designations versus court petitions. As previously noted, the Standby Guardian Law permits parents to nominate standby guardians either by: (1) filing a standby guardianship petition with the Family Court or Surrogate's Court, pending a hearing to finalize the appointment; or (2) preparing a statement designating the standby guardian, subject to a court hearing subsequent to the triggering event -- the parent's physical debilitation or mental incapacity (death is not a triggering event in designations, see "Amendments," § 3).

Since the enactment of the Standby Guardian Law, attorneys have been debating which of the two options are preferable. The advantage of court filings has become apparent -- following a judicial hearing, parents can rest assured that their choice of a guardian for their children will be honored; however, if there is opposition from the children's other parent, family members, or others, parents can introduce evidence that supports their choice. This raises the question: If court filings are clearly the preferred approach, why not amend the law to discourage designations, perhaps by deleting this option altogether?

A consensus among attorneys to retain both procedures has emerged. Although court filings should be attempted in most situations, some parents, either because of advancing illness or emotional difficulties, are unable or unwilling to appear in court to support their selection of a guardian, yet desire to nominate a standby guardian. With

these parents, preparing a designation at least documents their wishes; however, the parent will be unavailable to defend her choice at the hearing initiated by the proposed guardian. To promote earlier resolution of standby guardianship applications, attorneys and social workers are advised to encourage parents to file petitions wherever possible.

In addition, it has been suggested that preparing designations saves understaffed legal services attorneys valuable time lost in courtroom waits, thereby allowing them to serve additional clients. However, scarce resources should not be used to justify less than optimal representation of clients.

2. Case scheduling. Attorneys and social workers report the difficulties of very ill clients as they wait several hours for their cases to be heard in Family Court. The Family Court dockets are filled with difficult and compelling cases, many of them deserving expedited hearings. However, long waits in court present significant obstacles to the sickest individuals in their attempts to resolve legal issues. To prevent lengthy court waits for individuals who can document severe illness, guidelines should be developed to allow court administrators to prioritize cases involving such parties when setting the order for hearing cases.

3. Surrogate's Court fees. Although the Standby Guardian Law permits parents to file petitions in either the Family Court or the Surrogate's Court, some attorneys avoid the Surrogate's Court because their low income clients cannot afford the $15 filing fee. (In contrast, there is no filing fee in the Family Courts.) The Clerk for the Manhattan Surrogate's Court reports that judges can waive the filing fee for indigent clients who so request by affidavit. In November 1993, the New York State Chief Administrative Judge

issued forms for use in standby guardian cases in the Surrogate's Courts. While these forms will simplify the filing of cases and promote procedural uniformity, the Office of Court Administration should additionally develop a form for requesting a waiver of the filing fee.

4. **The family as client.** Surviving children and their new caretakers need continued legal representation to finalize custody plans after the ill parent's death. For example, the Standby Guardian Law requires proposed guardians (in designations) to file papers with the court following the parent's incapacity. As community-based HIV organizations develop legal programs to serve parents, they should examine their policies on maintaining surviving family members as clients following the ill parent's incapacity or death. Although scarce legal resources will be further strained, in custody planning cases, agencies should generally construe the newly-constructed family as their client. Where agencies cannot follow this policy because of staff shortages or conflicts of interest, they should develop formal linkages with legal services agencies that can continue representing the family.

Professional and Community Education

Public and private resources are necessary to develop training programs on custody planning targeting attorneys and judges, mental health and social service providers, and parents with HIV. The concerns of parents considering custody planning are forcing professionals to assume new roles and acquire new information, frequently within an interdisciplinary approach. For example, attorneys need assistance

understanding their client's psychosocial issues; social workers and case managers lack information on the legal options involved in developing custody plans; judges may be unaware of the needs of families with HIV and the availability of community resources. Moreover, many professionals are uninformed about the impact of custody plans on a new caretaker's eligibility for financial benefits and services.

1. Legal training. New attorneys are needed to assist a growing number of parents desiring to discuss options for custody planning and to develop formal plans. To promote interest in this area and expand services, efforts are needed to: recruit and offer financial support to law students interested in assisting parents with AIDS; develop HIV family law clinics at law schools; increase public and private funding for legal services agencies and other community-based organizations that desire to develop legal programs for people with HIV; encourage law firms to develop pro bono programs; and develop professional training programs at times and locations accessible to the private bar. Education and training programs should cover the diverse planning options open to parents, including a comprehensive review of the Standby Guardian Law. In addition, since all custody plans impact upon eligibility for, as well as the scope of, public benefits and services, training programs should integrate the principles of family and welfare law.

Family Court judges and surrogates also require comprehensive training on HIV and family law. Unfortunately, due to the high caseloads of most judges, judicial training has often been neglected. Court administrators, working with the bar associations and attorneys specializing in family and HIV law, should develop materials and accessible programs on the range of custody planning options for parents with HIV, including

standby guardianships. Programs for judges should also consider related issues facing the family bench, such as the impact of HIV on juvenile justice and ensuring that caretakers have the authority to consent to their children's medical care.

2. **Social service/mental health training.** Parents with HIV rely heavily on clinicians, counselors, and case managers for professional support, information on benefits and services, and community referral. To inform parents about the importance of developing custody plans and to provide an overview of custodial options, social service and mental health workers need information on how to introduce and present information on custody planning. Training should consider: the psychosocial needs of terminally ill parents as they plan for their children's future; the difficulties most parents have in disclosing their HIV status or serious illness to their children; the range of custody planning options; developing linkages with legal providers; and a general overview of family court procedures.

Finally, training should examine the complementary professional roles of social service and mental health workers, and attorneys. Clinicians and case managers perform the crucial role of initiating and supporting parents through the planning process; attorneys inform parents of their legal rights and responsibilities and planning options, and formalize custody arrangements in the courts. While these roles may become blurred, especially when legal services are scarce and parents represent themselves pro se, professionals generally serve their clients best when acting within their areas of expertise.

3. **Community outreach/consumer training.** Community education is essential to

increase awareness among parents on how custody planning can help them regain control of their children's future. Understandably, there are many psychological hurdles for parents to overcome before decisions on custody planning can be made. To foster thoughtful decision-making on their children's future, HIV providers, child welfare agencies, legal service organizations, bar associations, mental health educators, and health practitioners should develop community-based educational programs on the importance of custody planning. These efforts should be located in accessible, non-threatening community sites where parents can feel comfortable. In addition, easy-to-understand, multi-lingual materials should be available to introduce the concepts of custody planning, as well as brief descriptions of custodial options, including the appointment of standby guardians. To be optimally effective, providers should augment community outreach efforts with individualized counseling.

Policy Analysis

Eligibility for financial benefits. Appointment as a standby guardian has important implications for financial planning: these caretakers, commonly grandparents and maternal aunts, cannot become eligible for the enhanced subsidies available to foster parents and some adoptive parents. As a practical matter, this means that low income guardians can apply only for Aid to Families with Dependent Children (AFDC or ADC) on behalf of the children in their care; low income households may also be eligible for food stamps. Currently, a New York City guardian may be eligible for up to $367 per month in public assistance for one child, plus a supplement of approximately $100 to

$110 for each additional child. In contrast, foster parents and some adoptive parents (for example, under the New York City Child Welfare Administration's Early Permanency Planning Program) are eligible for monthly subsidies of about $455 to $1,346 for each child, with rates set according to the child's age and health status.

As a matter of equity and concern for children, federal and state laws governing child welfare programs should equalize the benefits available to guardians and foster parents. In "Orphans of the HIV Epidemic: Unmet Needs in Six U.S. Cities," The Orphan Project calls on legislators and policymakers to enact subsidies for low income guardians (pages 41-42). Until legislation enhancing the financial situation of guardians is enacted, lawyers and social workers must ensure that parents with HIV and proposed caretakers understand the financial implications of custody plans.

Conclusion

Although New York State's Standby Guardian Law is a relatively modest revision of family law and court procedures, it significantly enhances the ability of terminally-ill parents to determine who will care for their children when they are no longer able to do so, and helps avert costly and disruptive foster care placements. Use of this law can be promoted by increasing professional and community awareness, clarifying statutory language, and refining courtroom procedures. Addressing these concerns can make one of the most difficult challenges facing parents with HIV -- planning for their children's future care -- just a little bit easier.

THE LEGAL AID SOCIETY

*VOLUNTEER DIVISION * COMMUNITY LAW OFFICES*
230 East 106th Street, New York, N.Y. 10029
Tel. No. (212) 722-2000 Fax No. 212-876-5365

FAX TRANSMITTAL FORM

CONFIDENTIALITY NOTE:

DATE: 9/8/94 TIME: 3:30

TRANSMITTAL TO: Robert Bush

TRANSMITTAL FROM: Mildred Penott

NUMBER OF PAGES: 30 (INCLUDING THIS PAGE) 31

912
Fax No. 651-3300

COMMENTS:

Good Luck

THE LEGAL AID SOCIETY

*VOLUNTEER DIVISION * COMMUNITY LAW OFFICES*
230 East 106th Street, New York, N.Y. 10029
Tel. No. (212) 722-2000 Fax No. 212-876-5365

FAX TRANSMITTAL FORM

CONFIDENTIALITY NOTE:

DATE: 9/8/94 TIME: 3:30

TRANSMITTAL TO: Robert Bush

TRANSMITTAL FROM: Mildred Pinott

NUMBER OF PAGES: 30 (INCLUDING THIS PAGE) 31

912

Fax No. 651-3300

COMMENTS:

Good Luck

AIDS AND YOUR CONSTITUENCY

A 30-year-old man w/HIV goes to the local indigent treatment clinic for a checkup and the doctor completes the exam without ever once touching his client. The doctor tells the client that he is fine.	A 31-year-old woman who has been treated by the same physician for over ten years is told that that same doctor will not see her because he does not treat persons with HIV/AIDS.

A pregnant woman with HIV is referred to the high risk prenatal unit at a nearby hospital only to be told that she cannot also receive treatment for her HIV condition. She returns to the clinic which referred her, and is refused treatement for her HIV because she is pregnant. She received no treatment, preventive or otherwise, for her HIV condition during her nine-month pregnancy.	A 36-year-old man who has AIDS is taken to the emergency room in excruciating pain because of an impaction. The doctor hands his mother, who is much smaller than her son, an enema and tells her to take him home and administer it. She insists that she is not capable of doing so, finally the physician directs an intern to administer it. He applies it incorrectly, and the patient, suffering intense pain, is forced to dig out the impaction by hand.

A forty-eight-year-old HIV positive man requires the services of a home health agency. The nurse assigned to him remains very distant and seems reluctant to get close to him. The day that the patient needs his nurse to transport him to a medical provider, she directs him to sit with a mat between him and her car seat. Once he finally exits the car, he sees her frantically wiping down any surface which he might have touched.	A man with AIDS comes close to dying, but is prescribed a medication that brings about remarkable changes in his condition. The medicine, however, is very expensive, and after a month of surprising physical gains, the man can no longer afford it. His decline begins almost immediately, and he dies soon thereafter. Medicare would not cover the cost of the medication.

THURBERT E. BAKER
REPRESENTATIVE, DISTRICT 70
4048 RAINBOW DRIVE
DECATUR, GEORGIA 30034
(404) 284-4351 (H)
(404) 651-5795 (FAX)

House of Representatives

STATE CAPITOL, ROOM 109
ATLANTA, GEORGIA 30334
(404) 651-7737

FLOOR LEADER

STANDING
COMMITTEES:

JUDICIARY
RETIREMENT-VICE CHAIRMAN
RULES
MARTOC

December 4, 1996

Mr. Robert Bush
Georgia Legal Services
P.O. Box 8667
Savannah, Georgia 31412

Dear Mr. Bush:

The Joint Guardianship Rewrite Committee created by Senate Resolution 399 will hold a public hearing -

December 12, 1996 / 2 p.m. / Room 307 Legislative Office Building

Our goal for this hearing is to receive input which will be used in consideration of possible legislation to be introduced in the upcoming session.

It has been brought to my attention that you have an interest in this issue, therefore, I hope you will be able to join us on the 12th.

Sincerely,

Thurbert E. Baker

Thurbert E. Baker

TEB/ac

House of Representatives
Atlanta, Georgia

THURBERT E. BAKER
Representative, District 70
4048 Rainbow Drive
Decatur, Georgia 30034

ATL GA 303 21:58 12/04

Mr. Robert Bush
Georgia Legal Services
P.O. Box 8667
Savannah, Georgia 31412

31412-8667

GEORGIA LEGAL SERVICES PROGRAMS
SAVANNAH REGIONAL OFFICE
10 Whitaker Street-2nd Floor
P. O. Box 8667
Savannah, Georgia 31412-8667
(912) 651-2180
(888) 220-8399
FAX (912) 651-3300

December 19, 1996

Representative Mary Margaret Oliver
150 E. Ponce de Leon Ave., Suite 480
Atlanta, GA 30030

Dear Rep. Oliver:

I am writing to follow up on the December 12 hearing regarding the re-drafting of our guardianship statute.

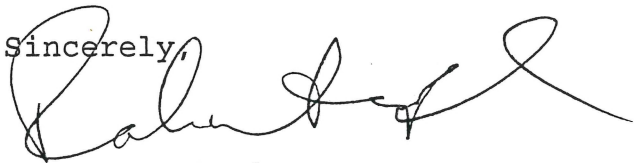
As I promised, I will procure copies of the most recent New York and Illinois standby guardianship statutes and their amendments. Sidney Watson, who is on the re-write committee, will help with this.

Enclosed you will find a copy of the standby guardianship bill which was introduced two years ago, which Sylvia Caley and I drafted. I have included the prospectus which we used to present the issue to our legislative advocacy committee, along with three client situations which help to illustrate the need. I will send a list of the proposed amendments and comments of the persons who drafted the standby statutes for New York and Illinois. I appreciate the opportunity to work with you, as does Sylvia.

For years now, I have been working with children orphaned by AIDS, and I know first hand how the disease robs them of their emotional security, as well as their physical security. A standby guardianship statute is a good first step for helping to stabilize the lives of these children.

I can be reached at the above address and phone numbers. Please feel free to call.

Sincerely,



Robert W. Bush

RWB:as
Enclosures
cc: Rep. Thurbert Baker