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A PROPOSAL TO REVISE AND UPDATE THE LAWS RELATING
TO GUARDIANSHIPS OF MINOR CHILDREN AND TO PROVIDE FOR
SUPPLEMENTAL NEEDS TRUSTS IN THE DISTRICT OF COLUMBIA

SUMMARY

Current District of Columbia law does not adequately serve the best interests of minor children who acquire property. The present guardianship law, D.C. Code §21-101 et seq., has been in place for over one hundred years and has not been significantly revised since enacted. Not surprisingly, it employs antiquated language and concepts. In one quaint provision, the law provides that "[t]he Probate Court may appoint guardians to indigent minor children for the purpose of securing their enlistment in the naval or marine service of the United States," with the Register of Wills preparing the paperwork necessary to secure such enlistments. More importantly, the present guardianship law fails to provide for modern concepts of asset management, resulting in lost revenue for minors, and the administration of guardianships is needlessly cumbersome and expensive.

In most instances when a minor becomes entitled to more than a very modest amount of money or other property, current law requires that a formal guardianship be established and a guardian appointed to manage the minor's property. Few alternatives to formal guardianship exist. For example, a guardian of the property of a minor must be appointed whenever a minor becomes entitled to more than \$3,000 from settlement of a lawsuit. Similarly, transfers to a custodial account established pursuant to the Uniform Transfers to Minors Act, in lieu of a guardianship, cannot exceed \$10,000.

A guardian of the property of a minor must be bonded for the minor's protection, but it is extremely difficult for an average person to obtain the surety bond required as a condition of appointment. As a result, a third party (usually an attorney) has to be appointed guardian. This is demeaning to a parent who can be expected to properly manage his or her children's assets. It is also a real problem in cases involving only a modest amount of money because the guardianship becomes needlessly complicated and expensive.

Moreover, under current law, guardianships are unduly restrictive and costly to maintain. Prior court authorization is required for virtually all expenditures, including expenditures for the minor's education and medical care. Petitions for authority to

expend guardianship funds are typically prepared by an attorney whose fees must be paid from the minor's assets.

Management of guardianships is also made more difficult because guardians are required to obtain court approval before investing funds in anything other than a federally insured bank account or United States Treasury security. To obtain authority to invest in securities, a guardian must file a petition and a court hearing may be required. The resulting legal fees can be burdensome. Moreover, as current law does not provide standards or guidance with respect to investments, the court may, and often does, deny such petitions, to the child's financial detriment.

In addition to antiquated law governing investments, current law requires outright and full distribution of all funds when the minor reaches age 18. There is no express statutory authority for alternative arrangements, such as the purchase of annuities, insurance policies, or structured settlements providing for payments beyond age 18.

Another problem with the current law is that the rules governing compensation of guardians are unfair to both guardians and minor children. A guardian is entitled to an annual commission equal to five percent of expenditures, plus a "turnover commission" equal to five percent of the value of the guardianship estate payable when the minor turns 18 and the guardianship terminates. There is generally no relationship between the amount of money paid and the time and energy the guardian must devote to administering the guardianship. In a small asset guardianship, a guardian is often not reasonably compensated. In a large asset guardianship, a guardian could receive a windfall resulting from the five percent "turnover" commission. The current irrational compensation provisions discourage attorneys from becoming involved in guardianship cases, even when their involvement is needed, because a parent cannot obtain the required surety bond. The inequities inherent in commission-based compensation was recognized by the Council of the District of Columbia when it abolished commissions for personal representatives of decedents' estates and conservators for incapacitated adults.

An additional problem with current law is that a testamentary guardian of the person of a minor, who is a person nominated under a parent's last will, may have difficulty establishing his or her status to third parties. This could present a significant problem as rules governing access to official records, such as school or medical records, are increasingly rigorous.

One final area the proposed legislation addresses pertains to supplemental needs trusts. Currently, there is no statute authorizing the establishment of supplemental needs trusts by the court. This has caused confusion and has led to inconsistent results.

The proposed legislation is intended to address these problems in the following ways:

1. Allow for the use of a minor's assets and income for the benefit of the minor in a more efficient and less expensive manner;
2. Provide for cost-effective alternatives to full guardianships, though still safeguarding the minor's assets and income, when the property of the minor is of a comparatively modest amount or when the minor's property is not expected to be expended while the minor is under age 18;
3. Provide authority for alternative arrangements for managing the property of a minor beyond the age of 18;
4. Afford parents who can be expected to properly manage their child(ren)'s property the opportunity to serve as guardians by changing the bond requirements and allowing for alternative protective arrangements;
5. Provide for the investment of a minor's assets pursuant to modern asset management principles;
6. Reform the current system of compensation by providing for reasonable compensation based on actual services rendered;
7. Provide for the formal recognition of a testamentary guardian of the person of a minor and clarify the law when there is neither a parent nor testamentary guardianship, or when a third party other than a testamentary guardian seeks appointment; and
8. Bring the law up to date by expressly providing for the establishment of supplemental needs trusts for disabled persons pursuant to the Social Security Act as amended by the Omnibus Budget Reconciliation Act of 1993.

To amend Title 21 and Title 16 of the District of Columbia Code to revise and update the laws relating to guardianships of minor children and protection of property of minor children.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this Act may be cited as the "Revision of Guardianship of Minors and Creation of Supplemental Needs Trusts Act of 2008."

Section 1: Title 21 of the District of Columbia Code is amended as follows:

(a) By amending the table of contents for the title by striking "1. Guardianship of Infants" and inserting "1. Protection of Property of Minor Children." in its place, and by inserting a new Chapter 2 to read as follows: "2. Supplemental Needs Trusts."

(b) By striking in its entirety the table of contents for Chapter 1 and inserting in its place:

CHAPTER 1. PROTECTION OF PROPERTY OF MINOR CHILDREN

Subchapter I. Purposes; Definitions.

Sec.

- 21-101. Purposes.
- 21-102. Definitions.

Subchapter II. Property or Claims of a Minor Child.

- 21-111. Property of a minor child.
- 21-112. Settlement of actions involving a minor child.
- 21-113. Property of a minor - ten thousand dollars or less.
- 21-114. Property of a minor - more than ten thousand dollars.

Subchapter III. Guardian of the Property of a Minor.

- 21-121. Appointment of a guardian of the property of a minor.
- 21-122. Priority for appointment of a guardian.
- 21-123. Bond.
- 21-124. Statutory agent.
- 21-125. Possession of property.
- 21-126. Letter of guardianship; recording.
- 21-127. Guardianship plan and inventory.
- 21-128. Accounts.
- 21-129. Permissible court orders.

- 21-130. Powers of the guardian in administration.
21-131. Expenditures of guardianship funds for maintenance
and care of the minor.

Subchapter IV. Minor's Trust Accounts.

- 21-141. Appointment of trustee of minor's trust account.
21-142. Establishment of minor's trust account.
21-143. Operation of minor's trust account.
21-144. Court order for withdrawal of funds.
21-145. Annual certification of trustee.
21-146. Removal or substitution of trustee.
21-147. Termination of trust.

Subchapter V. General Provisions.

- 21-151. Guardian ad litem.
21-152. Professional advisor.
21-153. Fiduciary standards.
21-154. Right to seek court resolution.
21-155. Compensation.
21-156. Form and service of petitions, accounts, etc.
21-157. Standard of proof.
21-158. Existing guardianship cases.

(c) By striking in their entirety Sections 21-101 through 21-182 of Chapter 1 of Title 21 and inserting in their place Sections 21-101 through 21-168, to read as follows:

"CHAPTER 1. PROTECTION OF PROPERTY OF MINOR CHILDREN

"Subchapter I. Purposes; Definitions.

"§21-101. Purposes.

"(a) The purposes of this chapter are to provide efficient and cost-effective property management of the property of minor children and to ensure that property of minor children is used for their benefit and best interests.

"(b) The provisions of this chapter shall be construed and applied to promote its purposes."

"§21-102. Definitions.

"For the purposes of this chapter, the term:

"(1) "Court" means the Superior Court of the District of Columbia, unless otherwise specified.

"(2) "Financial Institution" shall have the same meaning as set forth in section 102(18) of the general provisions of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Code, sec. 26-441.02(18)).

"(3) "Interested Person" means:

"(A) The mother and father of the minor;

"(B) Any person with a duty to support the minor;

"(C) Any person having legal care and custody of the minor;

"(D) The spouse of the minor;

"(E) If neither the mother and father of the minor is living, any adult sibling of the minor;

"(F) The subject of a proceeding under this Chapter, after he or she reaches age 18.

"(G) Any person who is granted the status of interested person by the court.

"(4) "Minor" means an individual who has not reached the age of 18 years.

"(5) "Minor's trust account" is an account created pursuant to the provisions of D.C. Code, sec. 21-141.

"(6) "Net value" means the total value of money and property belonging to or due to a minor child, after deduction of fees, costs, and all other expenses of litigation or incurred to perfect the minor's right to such money or property.

"(7) "Trustee" means the trustee of a minor's trust account, unless otherwise specified."

"Subchapter II. Property or Claims of a Minor Child.

"§21-111. Property of a minor child.

"(a) No person may receive, take possession of or exercise control over any property, real or personal or tangible or intangible, belonging to or due to a minor child, except pursuant to this Chapter 1.

"(b) This section does not apply to or prohibit any transfer made pursuant to the terms of D.C. Code, sec. 21-301 (District of Columbia Uniform Transfers to Minors Act), a transfer to a trustee pursuant to an inter vivos trust or will of a decedent admitted to probate, or a distribution of all or a portion of a decedent's estate not requiring court approval pursuant to D.C. Code, sec. 20-1106.

"(c) This Chapter does not apply to gifts of modest value made for reasons of love or affection, such as birthday or holiday gifts."

"§21-112. Settlement of actions involving a minor child.

"A person entitled to maintain a claim or cause of action on behalf of a minor may settle the claim or cause of action, and give full acquittance and release of all liability in connection with the claim or cause of action, only upon approval of the court in which the action has been brought or which has jurisdiction to adjudicate the claim."

"§21-113. Property of a minor - ten thousand dollars or less.

"(a) If a minor is entitled to property with a net value of ten thousand dollars or less, a parent, legal guardian, or next friend of the minor shall designate a custodian to receive the property on behalf of the minor. The person responsible for the payment of the money or transfer of property shall make payment to, or register the property in the name of, the designated custodian, followed in substance by the words "as custodian for _____ [name of minor], under the District of Columbia Uniform Transfers to Minors Act." The custodian may act without any need for any order of the court, unless required by Section 21-112 or a court appoints a guardian of the property of the minor or establishes a trust pursuant to this chapter.

"(b) Payment to a designated custodian pursuant to this section shall be a full discharge of all liability of the payor to the minor, the person acting on behalf of the minor, or a person entitled to maintain a claim or cause of action on behalf of the minor."

"§21-114. Property of a minor - more than ten thousand dollars.

"(a) If a minor is entitled to property with a net value of more than ten thousand dollars, the court shall, upon petition of any interested person:

"(1) Appoint a guardian of the property of a minor pursuant to D.C. Code, sec. 21-121, or otherwise enter an order pursuant to D.C. sec. 21-129; or

"(2) Establish a minor's trust account pursuant to D.C. Code, sec. 21-141; or

"(3) Establish a supplemental needs trust pursuant to D.C. Code, Title 21, Chapter 2.

"(b) Payment to a guardian or trustee appointed under this section shall be a full discharge of all liability of the payor to the minor, the person acting on behalf of the minor, or a person entitled to maintain a claim or cause of action on behalf of the minor."

"Subchapter III. Guardian of the Property of a Minor.

"§21-121. Appointment of a guardian of the property of a minor.

"(a) A petition for the appointment of a guardian of the property of a minor may be filed by an interested person or a person holding property belonging to or due to the minor.

"(b) The court shall hold a hearing on the petition for appointment of a guardian, except that the court may grant the petition without a hearing if, when the petition is filed, the petitioner also files written consents to the petition signed by all interested persons and by the minor if the minor is at least fourteen years of age.

"(c) If consents by all interested persons are not filed with the petition, the petition, along with a notice of the filing of the petition and the rights of interested persons, shall be served

on all interested persons and on the minor if the minor is at least fourteen years of age. Service shall be by personal service or by certified mail, return receipt requested, or by publication if, after reasonable effort, an interested person cannot be located. Service shall be made not less than fourteen days prior to the date of a hearing on the petition.

"(d) The hearing on the petition for appointment of a guardian shall be attended by the petitioner, the person(s) nominated to serve as guardian, and the minor if the minor is at least fourteen years of age. The court may excuse the presence of any person for good cause.

"(e) The order appointing a guardian of the property of a minor shall specify those interested persons who shall be served with copies of future filings and who shall receive notice of future proceedings. The designation of interested persons may be modified on petition of the guardian or any interested person."

"§21-122. Priority for appointment of a guardian.

"(a) The court shall apply the following order of priority when appointing a guardian of the property of a minor:

"(1) The parent(s) of the minor;

"(2) The person(s) nominated in the last will of a deceased parent;

"(3) The person having legal care and custody of the minor;

"(4) Any adult sibling of the minor;

"(5) Any heir at law of the minor;

"(6) A person with a demonstrated interest in the welfare of the minor, such as a relative or professional advisor; or

"(7) Any other person deemed appropriate by the court.

"(b) If there is more than one person of equal priority, the court may select the person it deems best qualified to serve.

"(c) For good cause and in the best interests of the minor, the court may pass over a person having priority and appoint a person having lower priority or no priority."

"§21-123. Bond.

"(a) The court may, but need not, require a guardian to furnish a bond in an amount the court deems appropriate, conditioned on faithful discharge of the guardian's duties. In determining whether to require a bond from the guardian and, if so, in what amount, the court shall consider the relationship(s) between the guardian and the minor; the personal circumstances of the guardian, such as employment, prior fiduciary experience, or personal financial status; the nature of the property to be held by the guardian, whether real or personal or tangible or intangible; the value of the property to be held by the guardian; the expected income from the assets held by the guardian; any restrictions on the transfer of any property held by the guardian; the existence of alternative means of property protection; the terms of any guardianship plan filed with the petition; and any other factors deemed relevant by the court.

"(b) Absent a showing of good cause to the contrary, no bond shall be required of a guardian nominated in the will of a deceased parent admitted to probate if the will excuses or waives bond.

"(c) No bond shall be required of a financial institution appointed guardian pursuant to this chapter."

"§21-124. Statutory agent.

"A guardian of the property of a minor is the statutory agent or representative of the minor for purposes of filing all government reports and tax returns due from or with respect to the minor."

"§21-125. Possession of property.

"(a) The appointment of a guardian vests in the guardian title as guardian to all property of the minor held as of the date of appointment or thereafter acquired.

"(b) The guardian of the property of a minor shall take possession and control of all real and personal property of the minor or to which the minor is or becomes entitled.

"(c) Property in the possession and control of a guardian is not subject to levy, garnishment, or similar process except as provided in an order issued by the court in the guardianship proceeding."

"§21-126. Letters of guardianship; recording.

"(a) Letters of guardianship are evidence of the transfer of all assets, including the right to receive income, of the minor to the guardian. An order terminating a guardianship shall be evidence of the transfer of all assets subject to the guardianship to the minor or the minor's successor(s) in interest.

"(b) The guardian shall file or record letters of guardianship and any order terminating the guardian's appointment in the Office of the Recorder of Deeds."

"§21-127. Guardianship plan and inventory.

"(a) Not more than three months after appointment, the guardian shall file a guardianship plan and inventory of assets with the court. The guardianship plan shall:

"(1) Include an inventory of the real and personal property of the minor which will be subject to the control of the guardian, valued as of the date of appointment of the guardian;

"(2) Specify the services which are necessary to manage the property held by the guardian;

"(3) Describe the manner in which the services will be provided;

"(4) State whether the assistance of any third person, such as an attorney, accountant, investment advisor, tax consultant or other specialist, will be used by the guardian;

"(5) Set out an investment plan or description of the manner in which the property held by the guardian will be maintained and managed;

"(6) Describe generally the needs of the minor which will be met by the guardian and the manner in which those needs will be met.

"(b) A copy of the guardianship plan and inventory shall be served on those interested persons designated to receive notice pursuant to D.C. Code, sec. 21-121(e). Any interested person may file objections to the guardianship plan and inventory within twenty days after service.

"(c) The guardianship plan and inventory provided for in this Section may be filed with the petition for appointment of a guardian provided for in D.C. Code, sec. 21-121. The order appointing a guardian may include approval of the guardianship plan and inventory."

"§21-128. Accounts.

"(a) The guardian shall account to the court for the administration of the assets and income subject to court supervision at least annually within sixty days after the anniversary date of appointment, and at such other times as the court may direct. The guardian shall file a final account within sixty days after the minor reaches age eighteen.

"(b) A copy of the guardian's account shall be served on those interested persons designated to receive notice pursuant to D.C. Code, sec. 21-121(e). The final account of a guardian of a minor who has reached age eighteen shall also be served on the subject of the proceeding. Any interested person may file objections to a guardian's account within twenty days after service.

"(c) Subject to appeal or vacation within the time permitted, an order entered after notice approving an intermediate account of a guardian adjudicates liabilities concerning matters considered in connection with the order, except for liability for fraud or breach of fiduciary duty.

"(d) Subject to appeal or vacation within the time permitted, an order entered after notice approving a final account adjudicates all previously unsettled liabilities of the guardian to the minor or minor's successor(s) in interest relating to the guardianship, except for liability for fraud or breach of fiduciary duty.

"(e) Concurrently with the approval of a final account of the guardian of a minor who has reached the age of eighteen, the court shall enter an order terminating the guardianship, subject to the filing of a receipt by the minor of distribution of the guardianship assets, as shown in the final account."

"§21-129. Permissible court orders.

"(a) The court may exercise, directly or through a guardian, all of the powers with respect to the property and income of the minor that the minor could exercise if an adult. The court may exercise its authority for the benefit of the minor, and in so

doing, the court may issue orders which incidentally benefit third persons. The court may exercise its authority even if the effect of such exercise may extend beyond the minor reaching age eighteen. The powers which may be exercised by the court include, but are not limited to:

"(1) The power to make gifts;

"(2) The power to convey or release contingent and expectant interests in property;

"(3) The power to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

"(4) The power to exercise or release powers of appointment of which the minor is donee;

"(5) The power to enter into contracts;

"(6) The power to create revocable or irrevocable trusts;

"(7) The power to exercise options to purchase securities or other property;

"(8) The power to purchase annuity or insurance policies or contracts; and

"(9) The power to exercise rights or to elect options under insurance and annuity policies and to surrender such policies for cash value.

"(b) The court shall exercise its powers in the best interests of the minor. In determining the best interests of the minor, the court may take actions it deems appropriate, including appointment of a guardian ad litem, professional advisor, or both, for the minor as well as for any other person whose interests may be affected by the court's exercise of its powers."

"§21-130. Powers of the guardian in administration.

"The guardian may, without need for prior court authorization or confirmation:

"(1) Invest and reinvest funds of the guardianship estate, except for purchase or sale of real property;

"(2) Collect, hold and retain assets of the minor until judging that disposition of an asset should be made;

"(3) Receive additions to the property held by the guardian;

"(4) Deposit guardianship funds in accounts in financial institutions registered with, or licensed or chartered by, the federal or a state government;

"(5) Expend funds for ordinary and necessary maintenance and repairs on or with respect to any real property owned or held for the benefit of the minor;

"(6) Insure the assets of the estate against damage or loss; and insure the guardian against liability with respect to third persons;

"(7) Acquire, grant or exercise an option for or relating to the acquisition or disposition of an asset;

"(8) Vote a security, in person or by general or limited proxy;

"(9) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

"(10) Sell or exercise stock subscription or conversion rights;

"(11) Pay property, income or other taxes, assessments and other expenses incurred in the collection, care, administration and protection of an asset held by or for the benefit of the minor;

"(12) Allocate items of income or expense to either estate income or principal; as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization or depletion;

"(13) Employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist in the performance of administrative duties of the guardian, act upon any recommendation of such person(s) without independent investigation, and instead of acting personally, employ one or more agents to perform any act of administration, whether discretionary or not; provided, however, that payment of any attorney or of any agent employed to perform an act of administration can be made only after court authorization of such payment;

"(14) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets held by or for the benefit of the minor and for the protection of the guardian in the performance of fiduciary duties; and

"(15) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian."

"§21-131. Expenditure of guardianship funds for maintenance and care of the minor.

"(a) The Guardian may, without need for prior court authorization or subsequent ratification:

"(1) Pay all costs required for the administration of the guardianship, including court costs, surety bond premiums and fees, costs for recording letters of guardianship and other orders and judgments, and costs for obtaining records and documents necessary for the administration of the guardianship.

"(2) Pay reasonable administrative costs incurred by the guardian in the discharge of the guardian's duties, and expend funds in exercise of a guardian's powers provided for in D.C. Code, Sec. 21-130.

"(b) The Guardian may, without need for prior court authorization or subsequent ratification:

"(1) Expend funds for health insurance and medical care and treatment of the minor, paying for such items as care and treatment in hospitals or other health care facilities; care and treatment by physicians, nurses, therapists or other health care providers; prescription medication; medical equipment and supplies; rehabilitation and therapeutic equipment or devices; and other reasonable costs associated with the medical care of the minor.

"(2) Pay reasonable costs of education, including tuition and fees assessed by any educational institution in which the minor is enrolled, books and supplies, uniforms, tutors, a computer system suitable for use for educational needs, and other costs directly related to the education of the minor.

"In exercising his or her discretion whether to expend guardianship funds as provided for in this subsection (b), the guardian shall consider the duty and ability of the minor's parents or other

persons to support the minor child and the availability of any sources of funds other than guardianship assets.

"(c) The guardian may petition for authorization to pay regular and recurring expenses anticipated for the minor. These expenses may include regular costs for housing, clothing and personal needs of the minor, gifts for the minor, recreation activities, or summer camp. Upon authorization, the guardian may pay such expenses without need for court approval.

"(d) In addition to expenditures permitted under subsections(a) and (b) or recurring expenditures approved pursuant to subparagraph (c), the court may, upon petition of the guardian or other interested person, approve specific expenditures of guardianship funds for the benefit of the minor.

"(e) In determining whether to authorize recurring expenditures, as provided in subparagraph (c), or a specific expenditure of guardianship funds, as provided in subparagraph (d), the court may:

"(1) Consider whether other resources are available to pay the proposed cost or expense;

"(2) Consider the duty of support of the minor owed by the minor's parents or other persons legally responsible for the care of the minor;

"(3) Require the parents or other persons legally responsible for the care of the minor to submit financial information to the court;

"(4) Condition the expenditure of funds in such manner as the court deems appropriate, including the guardian's receipt of funds or contributions from other sources; and

"(5) Appoint a guardian ad litem, professional advisor, or both for the minor, as well as for any other person whose interests may be affected by the court's decision with respect to approval of the guardianship plan or expenditure of funds.

"(f) Expenditures for the benefit of the minor may include expenditures which incidentally benefit third persons."

"Subchapter IV. Minor's Trust Accounts.

"§21-141. Appointment of trustee of minor's trust account.

"(a) If a minor is entitled to property with a net value of more than ten thousand dollars, the court, on petition of an interested person, may designate a trustee of a minor's trust account.

"(b) The court shall hold a hearing on the petition for appointment of a trustee of a minor's trust account, except that the court may grant the petition without a hearing if, when the petition is filed, the petitioner also files written consents to the petition signed by all interested persons and the minor if the minor is at least fourteen years of age.

"(c) If consents by all interested persons are not filed with the petition, the petition, along with a notice of the filing of a petition and the rights of interested persons, shall be served on all interested persons and on the minor if the minor is at least fourteen years of age. Service shall be by personal service or by certified mail, return receipt requested, or by publication if, after reasonable effort, an interested person cannot be located. Service shall be made not less than fourteen days prior to the date of a hearing on the petition.

"(d) The hearing on the petition for appointment of a trustee of a minor's trust account shall be attended by the petitioner, the person(s) nominated to serve as trustee, and the minor if the minor is at least fourteen years of age. The court may excuse the attendance of any person for good cause.

"(e) The order appointing a trustee of a minor's trust account shall specify those interested persons who shall be served with copies of all future filings and who shall receive notice of all future proceedings. The designation of interested persons to receive notice may be modified on petition of the trustee or any interested person.

"(f) The trustee shall serve without compensation, except that the court may authorize compensation for services rendered in connection with a petition for authority to withdraw funds.

"(g) The trustee shall not be required to give bond and shall not be required to file any accounting with the court."

"§21-142. Establishment of minor's trust account.

"(a) Upon the designation of a trustee of a minor's trust account, the person responsible for the payment of the money shall make payment to " " [name of trustee], trustee under Chapter 1 of Title 21 of the District of Columbia Code, for " " [name of minor].

"(b) A trustee who receives a payment pursuant to this subchapter shall:

"(1) Subject to paragraph (b) (3) of this section, deposit the payment in any financial institution as defined in this chapter; and

"(2) Invest or reinvest the funds, guided by the prudent investor rule as set forth in D.C. Code, Secs. 19-1309.02 through 19-1309.09, in:

"(A) Certificates of deposit or other interest-bearing accounts;

"(B) General obligations of or obligations guaranteed by the United States, any State, or the District of Columbia;

"(C) Other obligations of the United States, any State, the District of Columbia, or a political subdivision, agency, authority, or municipal corporation thereof that are rated in one of the two highest rating categories by a nationally recognized credit rating agency; or

"(D) Stocks or corporate bonds or stock mutual funds or bond mutual funds, totaling no more than thirty percent (30%) of the principal balance of the trust assets at the time of investment and continuing thereafter for the term of the trust and shall be made only in corporations or other investment companies or investment trusts which are required to file annual reports with the Securities and Exchange Commission of the federal government.

"(3) Deposits in a financial institution under paragraph (b) (2) (A) of this section may not exceed the amount of insurance provided for such deposits."

"§21-143. Operation of minor's trust account.

"Except upon the order of the court or upon termination of a minor's trust account, any institution in which the minor's trust account is maintained may not allow the withdrawal of any of the funds except to pay income taxes, if any, to the local, state or federal government by draft payable to the taxing entity, or to transfer funds to another minor trust account. A trustee shall not withdraw or expend funds from the minor's trust account except as provided in this subchapter. The financial institution in which the minor's trust account is maintained may withdraw service fees and other account charges."

"§21-144. Court order for withdrawal of funds.

"(a) A trustee may file a petition for authority to withdraw funds from the minor's trust account. The petition shall state in detail the purposes for which the withdrawn funds will be used. Upon receiving a petition, the court shall make any inquiry necessary before granting or denying the petition in whole or in part.

"(b) A court order for withdrawal of funds is appropriate for medical expenditures for the minor, expenditures for the education of the minor, including reasonable expenditures for room and board, or for any other purpose for which a strong showing of necessity is made. If money is desired for any other reason, the trustee shall file a petition for guardianship of a minor in accordance with D.C. Code, sec. 21-121.

"(c) The order authorizing the withdrawal of funds shall direct the institution where the funds of the minor are on deposit to draw a check payable to the order of:

"(1) The trustee for the use of the minor; or

"(2) The person, firm, or organization which has performed or is to perform a service for or furnish goods to or for the benefit of the minor."

"§21-145. Annual certification of trustee.

"Each year, within 60 days after the anniversary date of appointment, the trustee shall file a certification that there have been no withdrawals from the minor's trust account, except for

payment of income taxes as provided in D.C. Code, sec. 21-143 or pursuant to a court order as provided in D.C. Code, sec. 21-144."

"§21-146. Removal or substitution of trustee.

"(a) The court may remove a trustee pursuant to a petition for removal filed by the parent, guardian, or a person interested in the welfare of the minor, or on the court's own motion. A petition to remove a trustee shall include grounds for the removal of the trustee and a prayer for the appointment of a successor trustee. The court may remove a trustee for good cause after notice and hearing.

"(b) Upon the death or resignation of a trustee or removal as provided herein, the court may appoint a successor trustee. A trustee so appointed succeeds to the title and powers of the predecessor."

"§21-147. Termination of trust.

"(a) The trust shall terminate either:

"(1) On the date the minor attains the age of 18 years;

"(2) Upon the death of the minor; or

"(3) Upon an order of court.

"(b) Payment by the trustee or any institution is a complete discharge of liability of the trustee and the institution for the funds paid, if payment is made:

"(1) To the beneficiary or the trust or a duly appointed representative of the beneficiary of the trust on or after the beneficiary's eighteenth birthday;

"(2) To the personal representative of the estate of the minor appointed after the death of the minor; or

"(3) Pursuant to a court order."

"Subchapter V. General Provisions.

"§21-151. Guardian ad litem.

"(a) At any point in a proceeding involving the property or claims of a minor, the court may, for good cause specified in the record of the proceeding, appoint a guardian ad litem to represent the interests of the minor if the court determines that the interests of a minor are not represented in the litigation of a civil action or as the beneficiary of an estate, trust or other fiduciary arrangement, or that otherwise available representation is or may be inadequate. The court shall set out its reasons for appointing a guardian ad litem and shall specify the tasks to be performed by the guardian ad litem.

"(b) Unless otherwise directed by the court, the guardian ad litem shall determine and advocate the best interests of the minor.

"(c) The court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind and act on behalf of the minor.

"(d) A guardian ad litem may be appointed to represent more than one minor at one time, if not precluded by any conflict of interest.

"(e) In determining the best interests of the minor, the guardian ad litem may consider general benefit accruing to the living members of the minor's family.

"(f) If no guardian ad litem has been appointed, one or both parents of the minor may represent the minor and the minor's interests, as next friend.

"(g) The appointment of a guardian ad litem shall terminate when the proceeding ends or sooner, in the discretion of the court, but shall not continue past a final determination in the proceedings or litigation for which the guardian ad litem was appointed."

"§21-152. Professional advisor.

"(a) At any point in a proceeding involving the property or claims of a minor, the court may, for good cause specified in the record of the proceeding, appoint a professional advisor to advise the court on any matter or issue before the court in an independent and third party capacity. The court shall set out its reasons for

appointing a professional advisor and shall specify the tasks to be performed by the professional advisor. The order appointing a professional advisor may set out the amount of compensation to be paid to the professional advisor upon the completion of the services required under the terms of the appointment.

"(b) The appointment of a professional advisor shall terminate when the proceeding ends or sooner, in the discretion of the court, but shall not continue past a final determination in the proceedings or litigation for which the professional advisor was appointed.

"(c) A professional advisor may be compensated pursuant to the order appointing the professional advisor, pursuant to a court order approving the settlement of the proceeding, or in response to a petition for fees. The compensation may be paid from the proceeds of any recovery, from the estate of the minor, or from the assets which are in dispute or whose status is to be determined as a result of the proceeding."

"§21-153. Fiduciary standards.

"(a) In the administration of the property of a minor and in the exercise of the powers granted by this chapter, a guardian or trustee appointed under this chapter shall act as a fiduciary and exercise the standards of care applicable to trustees.

"(b) When investing, reinvesting, purchasing, acquiring, exchanging, selling and managing property for the benefit of a minor, a guardian or trustee appointed under this chapter shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; with the "circumstances then prevailing" to specifically include the general economic conditions and the anticipated needs of the minor, the age of the minor and the size of the minor's estate.

"(c) A guardian or trustee appointed under this chapter shall not, either directly or indirectly, purchase or acquire an ownership interest in any asset held by such guardian or trustee for the benefit of a minor, nor shall such guardian or trustee, purchase or acquire, as guardian or trustee, an ownership interest in any asset in which such guardian or trustee, in his or her individual capacity, holds a substantial ownership interest either directly or indirectly."

"§21-154. Right to seek court resolution.

"An interested person, a guardian, a trustee of a minor's trust account, a creditor of the minor, a person having a direct interest in a question or matter arising in the course of the administration of a guardianship estate or minor's trust account, or the Register of Wills, may at any time petition the court for an order to resolve a question or controversy arising in the course of administration of a guardianship estate or a minor trust account."

"§21-155. Compensation.

"(a) Any guardian, guardian ad litem, or attorney representing any party to any proceeding under this chapter is entitled to reasonable compensation for services rendered in any proceeding under this chapter. Compensation may be paid from the assets held by or for the benefit of the minor. Compensation paid from the assets held by or for the benefit of the minor must be approved by the court prior to being paid.

"(b) Any person seeking compensation to be paid from the minor's funds shall submit a petition for compensation, under oath and accompanied by an itemized statement of services and setting forth the following:

"(1) The nature of the services performed;

"(2) The amount of time expended for such services;

"(3) The benefit(s) accruing to the minor as a result of the services for which compensation is claimed;

"(4) The basis for the rate of compensation claimed;

"(5) The nature and extent of the assets held by or for the benefit of the minor;

"(6) The annual income payable to, or for the benefit of, the minor;

"(7) The minor's age;

"(8) The adequacy of the minor's assets to meet the minor's future needs; and

"(9) The amount of compensation previously paid from assets held by or for the benefit of the minor.

"(c) Notice of the filing of a petition for compensation and a copy of the petition shall be served on the guardian or trustee appointed pursuant to this chapter, any party to the proceeding during the time period in which the services for which compensation is sought were rendered, and any interested person.

"(d) Within twenty days of the mailing of the notice and petition for compensation, any person entitled to service may file written objections to the petition for compensation.

"(e) Any guardian appointed prior to the effective date of this Chapter shall be compensated pursuant to the terms of Superior Court Probate Rule 225, in effect as of the effective date of this chapter, unless that guardian elects to be compensated pursuant to this section."

"§21-156. Form and service of petitions, accounts, etc.

"(a) Any petition, guardianship plan and inventory, account or certification filed under this chapter shall be verified.

"(b) Except for a petition for appointment of a guardian or for designation of a trustee of a minor's trust account, any petition, notice of hearing on a petition, guardianship plan and inventory, account, or other pleading filed with the court shall be served on all interested persons by first class mail, postage prepaid.

"(c) Unless specifically required by a provision of this chapter, the court may rule on any petition with or without a hearing."

"(d) Except with respect to a matter requiring emergency relief, no hearing may be held sooner than fourteen days after service of a notice of the hearing."

"§21-157. Standard of proof.

"In proceedings under this chapter, the petitioner or moving party shall have the burden of proof, by a preponderance of the evidence."

"§21-158. Existing guardianship cases.

"Except as provided in D.C. Code, sec. 21-155(e), the administration of guardianships of minors established prior to the effective date of this chapter shall be governed by the provisions of this chapter."

(d) By adding a table of contents for a new Chapter 2, to read as follows:

CHAPTER 2. SUPPLEMENTAL NEEDS TRUSTS

Sec.

- 21-201. Purposes; rules of construction.
- 21-202. Definitions.
- 21-203. Establishment of supplemental needs trust.
- 21-204. Priority for appointment of trustee.
- 21-205. Bond.
- 21-206. Guardian ad litem.
- 21-207. Professional advisor.
- 21-208. Inventories and Accounts.
- 21-209. Compensation.
- 21-210. Form and service of petitions, accounts, etc.
- 21-211. Construction of supplemental needs trust.
- 21-212. Administration of trust.
- 21-213. Standard of proof.
- 21-214. Self-Settled Trusts.
- 21-215. Existing trusts.

(e) By adding new Sections 21-201 through 21-215, to read as follows:

CHAPTER 2. SUPPLEMENTAL NEEDS TRUSTS

"§21-201. Purposes; Rules of Construction.

"(a) The purposes of this chapter are to:

"(1) Comply with the requirements of 42 U.S.C. sec. 1396p(d)(4) requiring the District of Columbia to provide procedures for the establishment of supplemental needs trusts.

(2) Provide the simplest possible means for any individual under a legal disability to fund a trust that complies with the requirements of 42 U.S.C. sec. 1396p(d)(4).

"(b) This chapter shall be liberally construed and applied to promote its purposes."

"§21-202. Definitions.

"For purposes of this chapter, the term:

"(1) "Beneficiary" includes, where appropriate, the intended beneficiary of a supplemental needs trust.

"(2) "Disability" means a condition which results in a person being disabled within the meaning of 42 U.S.C. sec. 1382c(1)(3).

"(3) "Government benefits or assistance" means any program of benefits or assistance which is intended to provide or pay for support, maintenance or health care and established or administered, in whole or in part, by any federal, state, county, city or other governmental entity, and for which eligibility is based in part on the income and/or resources of the individual beneficiary, and including, but not limited to, programs established pursuant to Titles XVI (Supplemental Security Income) and XIX (Medical Assistance) of the Social Security Act, 42 U.S.C. secs. 1381 and 1396, respectively.

"(4) "Incapacitated Person," has the same meaning as set out in D.C. Code sec. 21-2011(11).

"(5) "Interested Person" means:

"(A) The beneficiary of a supplemental needs trust;

"(B) The spouse of the beneficiary;

"(C) The mother and father of the beneficiary, if the beneficiary is a minor or if there is no spouse;

"(D) The adult children of the beneficiary, if there is no spouse;

"(E) Any person having legal care and custody of the beneficiary;

"(F) Any person with a duty to support the beneficiary;

"(G) If there is no spouse, mother or father, or adult child of the beneficiary, any adult sibling of the beneficiary; and

"(H) The District of Columbia, if the beneficiary is receiving government benefits or assistance from the District.

"(I) Any person who is granted the status of interested person by the court.

"(6) "Supplemental needs trust" means a trust that meets all of the requirements of 42 U.S.C. sec. 1396p(d)(4)(A)."

"§21-203. Establishment of supplemental needs trust.

"(a) A petition to establish a supplemental needs trust may be filed by:

- (1) a disabled adult who is not mentally incapacitated;
- (2) an interested person, in the case of a minor or a disabled adult; or
- (3) a person holding property belonging to or due to a minor or disabled adult.

"(b) The court may grant the petition without a hearing if, when the petition is filed, the petitioner also files written consents to the petition signed by all interested persons except a minor less than fourteen years of age or a mentally incapacitated adult.

"(c) If consents by all interested persons and, if appropriate, the beneficiary are not filed with the petition, the petition, along with a notice of the filing of the petition and the rights of interested persons, shall be served on all interested persons except a minor less than fourteen years of age. Service shall be by personal service or by certified mail, return receipt requested, or by publication if, after reasonable effort, an interested person cannot be located. Service shall be made not less than fourteen days prior to the date of a hearing on the petition.

"(d) The hearing on the petition for the establishment of a supplemental needs trust shall be attended by the petitioner, the person(s) nominated to serve as trustee, a representative pursuant to D.C. Code sec. 19-1303.05, if any, and the beneficiary unless the beneficiary is less than fourteen years of age. The court may excuse the presence of any person for good cause.

"(e) The court may grant the petition upon a showing that the proposed supplemental needs trust is in the best interests of the beneficiary and meets the requirements of 42 U.S.C. sec. 1396(d)(4)(A).

"(f) The order establishing a supplemental needs trust shall specify those interested persons who shall be served with copies of future filings and who shall receive notice of future proceedings. The designation of interested persons may be modified on petition of the trustee or any interested person."

"(g) Upon the request of the petitioner or any interested person, the court may direct the placement of assets into a pooled trust that complies with the requirements of 42 U.S.C. sec. 1396(d)(4)(c). In that event, the court's supervision of the matter terminates with the placement of assets into a pooled trust."

"§21-204. Priority for appointment of trustee.

"(a) The court shall apply the following order of priority when appointing a trustee of a supplemental needs trust:

"(1) A person designated by the beneficiary, if the beneficiary is a disabled adult who is not mentally incapacitated;

"(2) A person designated by the beneficiary in a durable power of attorney;

"(3) The spouse, parent, adult child or guardian of the beneficiary; or

"(4) Any other person deemed appropriate by the court.

"(b) If there is more than one person of equal priority, the court may select the person it deems best qualified to serve.

"(c) For good cause and in the best interests of the trust beneficiary, the court may pass over a person having priority and appoint a person having lower priority or no priority."

"§21-205. Bond.

"(a) The court may, but need not, require a trustee to furnish a bond in an amount the court deems appropriate, conditioned on

faithful discharge of the trustee's duties. In determining whether to require a bond from the trustee and, if so, in what amount, the court shall consider the relationship(s) between the trustee and the beneficiary; the personal circumstances of the trustee, such as employment, prior fiduciary experience, or personal financial status; the nature of the property to be held by the trustee, whether real or personal or tangible or intangible; the value of the property to be held in trust; the expected income from the assets held in trust; any restrictions on the transfer of any property held in trust; the existence of alternative means of property protection; and any other factors deemed relevant by the court.

"(b) No bond shall be required of a financial institution appointed trustee pursuant to this chapter."

"§21-206. Guardian ad litem.

"(a) At any point in a proceeding involving the establishment or administration of a supplemental needs trust, the court may, for good cause specified in the record of the proceeding, appoint a guardian ad litem to represent an interest of the beneficiary of the trust if the court determines that an interest of such person is not represented in the litigation of a civil action or as the beneficiary of an estate, trust or other fiduciary arrangement, or that otherwise available representation is or may be inadequate. The court shall set out its reasons for appointing a guardian ad litem and shall specify the tasks to be performed by the guardian ad litem.

"(b) Unless otherwise directed by the court, the guardian ad litem shall determine and advocate the best interests of the beneficiary of the supplemental needs trust.

"(c) The court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind and act on behalf of the beneficiary.

"(d) A guardian ad litem may be appointed to represent more than one beneficiary at one time, if not precluded by any conflict of interest.

"(e) In determining the best interests of the beneficiary, the guardian ad litem may consider general benefit accruing to the living members of the beneficiary's family.

"(f) If a beneficiary is a minor and if no guardian ad litem has been appointed, one or both parents of the beneficiary may represent that person's interests, as next friend.

"(g) The appointment of a guardian ad litem shall terminate when the proceeding ends or sooner, in the discretion of the court, but shall not continue past a final determination in the proceedings or litigation for which the guardian ad litem was appointed."

"§21-207. Professional advisor.

"(a) At any point in a proceeding involving the establishment or administration of a supplemental needs trust, the court may, for good cause specified in the record of the proceeding, appoint a professional advisor to advise the court on any matter or issue before the court in an independent and third party capacity. The court shall set out its reasons for appointing a professional advisor and shall specify the tasks to be performed by the professional advisor. The order appointing a professional advisor may set out the amount of compensation to be paid to the professional advisor upon the completion of the services required under the terms of the appointment.

"(b) The appointment of a professional advisor shall terminate when the proceeding ends or sooner, in the discretion of the court, but shall not continue past a final determination in the proceedings or litigation for which the professional advisor was appointed.

"(c) A professional advisor may be compensated pursuant to the order appointing the professional advisor, pursuant to a court order approving the settlement of the proceeding, or in response to a petition for fees. The compensation may be paid from the proceeds of any recovery, from the estate of the beneficiary of a supplemental needs trust, or from the assets which are in dispute or whose status is to be determined as a result of the proceeding."

"§21-208. Inventories and Accounts.

"(a) The court may, but need not, require a trustee of a supplemental needs trust to account to the court for the administration of the trust. If the trustee is required to account to the court, the trustee shall file an inventory and investment plan not more than three months after appointment, and shall

account at least annually within sixty days after the anniversary date of appointment, and at such other times as the court may direct. The trustee shall file a final account within sixty days after the death of a beneficiary or termination of the trust.

"(b) The trustee's inventory and investment plan shall:

"(1) Include an inventory of the real and personal property which will be held by the trustee of the supplemental needs trust, valued as of the date of appointment of the guardian;

"(2) Specify the services which are necessary to manage the property of the trust;

"(3) Describe the manner in which the services will be provided;

"(4) State whether the assistance of any third person, such as an attorney, accountant, investment advisor, tax consultant or other specialist, will be used by the trustee; and

"(5) Set out an investment plan or description of the manner in which the property held by the trustee will be maintained and managed.

"(c) A copy of the trustee's inventory and investment plan, and the trustee's account, shall be served on those interested persons designated to receive notice pursuant to D.C. Code, Sec. 21-203(f)). An interested person may file objections to the trustee's inventory and investment plan, or to a trustee's account, within twenty days after service of the account.

"(d) Subject to appeal or vacation within the time permitted, an order entered after notice approving an intermediate account of a trustee adjudicates liabilities concerning matters considered in connection with the order, except for liability for fraud or breach of fiduciary duty.

"(e) Subject to appeal or vacation within the time permitted, an order entered after notice approving a final account adjudicates all previously unsettled liabilities of the trustee to the beneficiary or beneficiary's successor(s) in interest relating to the trust, except for liability for fraud or breach of fiduciary duty.

"(f) Concurrently with the approval of a final account of a trustee, the court shall enter an order terminating the trust, subject to the filing of a receipt by the beneficiary or the beneficiary's successor(s) in interest of distribution of the trust assets, as shown in the final account."

"§21-209. Compensation.

"(a) Any trustee, guardian ad litem, attorney representing any party to a proceeding under this chapter, or any other person appointed by the trust instrument to provide any service is entitled to compensation for services rendered in any proceeding under this chapter. Compensation may be paid from the assets of the supplemental needs trust or, in the event of a petition for establishment of a supplemental needs trust disposed of in a manner other than by creation of a supplemental needs trust, from assets held by or for the benefit of the proposed trust beneficiary.

"(b) The trust may provide that the trustee's compensation shall be paid pursuant to a fee schedule published by a financial institution or a person regularly engaged in the business of trust administration, and may be paid at specified intervals. If so, the trustee's compensation may be paid pursuant to the terms of the trust without further action of the court. The trustee's compensation shall be clearly set out in the trustee's annual account or report.

"(c) A financial institution or a personal regularly engaged in the business of trust administration serving as trustee may be compensated pursuant to a published fee schedule, and without action of the court, regardless of whether the trust so provides.

"(d) Except for trustee's compensation paid pursuant to a published fee schedule or consistent with the terms of the trust, compensation paid from the assets of a supplemental needs trust or from assets held by or for the benefit of a beneficiary must be approved by the court prior to being paid.

"(e) Any person seeking compensation pursuant to subsection (d) shall submit a petition for compensation, under oath, setting forth the following:

"(1) The nature of the services performed;

"(2) The amount of time expended for such services;

"(3) The benefit(s) accruing to the trust or beneficiary as a result of the services for which compensation is claimed;

"(4) The basis for the rate of compensation claimed;

"(5) The nature and extent of the assets of the supplemental needs trust or assets held by or for the benefit of the beneficiary;

"(6) The annual income of the supplemental needs trust;

"(7) The beneficiary's age;

"(8) The adequacy of the assets of the supplement needs trust to meet the beneficiary's future supplemental needs;

"(9) The amount of compensation previously paid from assets of the supplemental needs trust or assets held by or for the benefit of the beneficiary; and

"(10) Any other factor relevant to determining compensation.

The petition shall be accompanied by an itemized statement of services unless the petitioner does not maintain itemized statements of services in the ordinary course of that petitioner's business.

"(f) Notice of the filing of the petition for compensation and a copy of the petition shall be served on the trustee appointed pursuant to this chapter, any party to the proceeding during the time period in which the services for which compensation is sought were rendered, and any interested person, except a minor less than fourteen years of age.

"(g) Within twenty days of the mailing of the notice and petition for compensation, any person entitled to service may file written objections to the petition for compensation."

"§21-210. Form and service of petitions, accounts, etc.

"(a) Any petition, inventory, or account filed under this chapter shall be verified.

"(b) Except for a petition for the establishment of a supplemental needs trust, any petition, notice of hearing on a petition, inventory and investment plan, account, or other pleading

filed with the court shall be served on all interested persons by first class mail, postage prepaid.

"(c) Unless specifically required by a provision of this chapter, the court may rule on any petition with or without a hearing.

"(d) Except with respect to a matter requiring emergency relief, no hearing may be held sooner than fourteen days after service of a notice of the hearing."

"§21-211. Construction of supplemental needs trust.

"(a) A supplemental needs trust shall be construed as follows:

"(1) Neither principal nor income, prior to distribution by the trustee to the beneficiary, is "available" to the beneficiary.

"(2) Anything to the contrary in the trust notwithstanding, a trustee shall have no duty to make distributions to or for the benefit of the beneficiary that would render income or principal of the trust available to the beneficiary, as that word "available" is used with respect to income or resources for the purposes of 42 U.S.C. §§1382a or 1382b, respectively, or with respect to any other program of government benefits or assistance.

"(3) Anything to the contrary in the trust notwithstanding, a trustee may make distributions to or for the benefit of a beneficiary that supplant or replace government benefits or assistance when the trustee determines that it is in the beneficiary's best interests to do so.

"(b) The creation of a supplemental needs trust shall not, *per se*, preclude the claim of any medical assistance program to be subrogated to the claim of a beneficiary that gave rise to the assets used to fund the supplemental needs trust."

"§21-212. Administration of trust.

"A supplemental needs trust established pursuant to this Chapter shall be subject to the provisions of Chapter 13 of Title 19 of the District of Columbia Code ("Uniform Trust Code"); except that the provisions of this Chapter or the terms of a specific

supplemental needs trust shall supercede any contrary provision of Chapter 13 of Title 19 of the District of Columbia Code."

"§21-213. Standard of proof.

"In proceedings under this chapter, the petitioner or moving party shall have the burden of proof, by a preponderance of the evidence."

"§21-214. Self-Settled Trusts.

"This chapter shall not affect the establishment, funding, interpretation or construction of any trust for which no judicial action is required in order to establish or fund that trust."

"§21-215. Existing trusts.

"A trust created prior to the effective date of this legislation shall not be disqualified from consideration as a supplemental needs trust if that trust was created for a beneficiary who was eligible for public benefits or assistance or such beneficiary previously received public benefits or assistance."

Section 3: Title 16 of the District of Columbia Code is amended as follows:

(a) By amending the table of contents for the title by inserting a new Chapter 2 to read as follows: "2. Guardianship of the Person of a Minor Child."

(b) By adding a table of contents for a new Chapter 2, to read as follows:

CHAPTER 2. GUARDIAN OF THE PERSON OF A MINOR CHILD

Sec.

- 16-201. Care and custody of minor children.
- 16-202. Testamentary guardian of minor children.
- 16-203. Court appointment of guardian of a minor.
- 16-204. Effect of guardianship.

(c) By adding new Sections 16-201 through 16-204, to read as follows:

"GUARDIAN OF THE PERSON OF A MINOR CHILD

"§16-201. Care and custody of minor children.

"The father and mother are the joint natural guardians of the person of their minor child. If either parent dies or is incapable of acting as a parent, the other parent is the sole natural guardian."

"§16-202. Testamentary guardian of minor children.

"(a) Unless prohibited by agreement between both parents of a minor or by court order, the surviving parent of a minor may appoint by last will and testament one or more guardians and successor guardians of the person of an unmarried minor child. A guardian so appointed need not be approved by or qualify in any court.

"(b) The person(s) appointed by last will as guardian of the person of a minor child of the last-deceased parent may file with the court the last will of the deceased parent and a sworn certification that the will is the last will of the last-deceased parent and that no later will or codicil is known to the person.

Upon the filing of the will and such certification, and if the will appears on its face to be properly executed, the Clerk of the Court shall issue to the person(s) appointed under that will a certificate of testamentary guardianship of the person of a minor."

"§16-203. Court appointment of guardian of the person of a minor.

"(a) If an unmarried minor has neither a natural nor testamentary guardian of her or her person, a third party may bring an action for third party custody pursuant to D.C. Code, Title 16, Chapter 8A.

"(b) Notwithstanding the appointment of a testamentary guardian, a third party may bring an action for third party custody pursuant to D.C. Code, Title 16, Chapter 8A; provided, however, that there shall be a presumption that the testamentary guardianship is in the best interests of the minor child, which must be rebutted by clear and convincing evidence."

"16-204. Effect of guardianship.

"A testamentary guardian shall have the rights and responsibilities set forth in D.C. Code sec. 16-2389(a). The provisions of D.C. Code sec. 16-2389(b) through (d) shall apply to a testamentary guardianship."

Section 4: Effective Date: []