State of Wisconsin

Date of enactment: **July 1, 1998**
1997 Assembly Bill 713 Date of publication*: **July 15, 1998**

1997 WISCONSIN ACT 334

AN ACT ***to repeal*** 880.36 (3) and 880.36 (4); ***to amend*** 48.023 (intro.), 48.065 (3) (g), 48.14 (2) (b), 48.235 (1) (c), 48.299 (4) (a), 48.299 (4) (b), 48.62 (2), 48.831 (1) and 880.36 (1); and ***to create*** 48.978 and 808.075 (4) (a) 12. of the statutes; **relating to:** the designation by a parent or the appointment by a court of a standby guardian of a child whose duty and authority as standby guardian begins on the incapacity, death, or debilitation and consent, of the parent.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.023 (intro.) of the statutes is amended to read:

48.023 Guardianship. (intro.) Except as limited by an order of the court under s. 48.977 (5) (b) or 48.978 (6) (b) 2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

SECTION 2. 48.065 (3) (g) of the statutes is amended to read:

48.065 **(3)** (g) Conduct hearings, make findings or issue orders in proceedings under s. 48.977 or 48.978.

SECTION 3. 48.14 (2) (b) of the statutes is amended to read:

48.14 **(2)** (b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a) ~~and~~, 48.977 and 48.978 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

SECTION 4. 48.235 (1) (c) of the statutes is amended to read:

48.235 **(1)** (c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of a proceeding under s. 48.977 or 48.978.

SECTION 5. 48.299 (4) (a) of the statutes is amended to read:

48.299 **(4)** (a) Chapters 901 to 911 shall govern the presentation of evidence at the fact−finding hearings under ss. 48.31, 48.42 ~~and~~, 48.977 (4) (d) and 48.978 (2) (e) and (3) (f) 2.

SECTION 6. 48.299 (4) (b) of the statutes is amended to read:

48.299 **(4)** (b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing for a child held in custody under s. 48.21, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders or termination of guardianship orders entered under s. 48.977 (4) (h) 2. or (6) or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall admit all

* Section 991.11, WISCONSIN STATUTES 1995−96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

SECTION 7. 48.62 (2) of the statutes is amended to read:

48.62 **(2)** A relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) or a guardian of a child, who provides care and maintenance for a child, is not required to obtain the license specified in this section. The department, county department or licensed child welfare agency as provided in s. 48.75 may issue a license to operate a foster home or a treatment foster home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster home or treatment foster home for a specific child who is either placed by court order or who is the subject of a voluntary placement agreement under s. 48.63. The department, a county department or a licensed child welfare agency may, at the request of a guardian appointed under s. 48.977 <u>or 48.978</u> or ch. 880, license the guardian's home as a foster home or treatment foster home for the guardian's minor ward who is living in the home and who is placed in the home by court order. Relatives with no duty of support and guardians appointed under s. 48.977 <u>or 48.978</u> or ch. 880 who are licensed to operate foster homes or treatment foster homes are subject to the department's licensing rules.

SECTION 8. 48.831 (1) of the statutes is amended to read:

48.831 **(1)** TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of a child who does not have a living parent if a finding as to the adoptability of a child is sought. Except as provided in ~~s.~~ <u>ss.</u> 48.977 <u>and 48.978</u>, ch. 880 applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. An appointment of a guardian of the estate of a child who does not have a living parent shall be conducted in accordance with the procedures specified in ch. 880.

SECTION 9. 48.978 of the statutes is created to read:

48.978 Appointment or designation of standby guardian of a child. (1) DEFINITIONS. In this section:

(a) "Attending physician" means a physician licensed under ch. 448 who has primary responsibility for the treatment and care of a parent who has filed a petition under sub. (2) (a) or made a written designation under sub. (3) (a) or, if more than one physician has responsibility for the treatment and care of that parent, if a physician is acting on behalf of a physician who has primary responsibility for the treatment and care of that parent or if no physician is responsible for the treatment and care of that parent, "attending physician" means any physician licensed under ch. 448 who is familiar with the medical condition of that parent.

(b) "Debilitation" means a person's chronic and substantial inability, as a result of a physical illness, disease, impairment or injury, to care for his or her child.

(c) "Incapacity" means a person's chronic and substantial inability, as a result of a mental impairment, to care for his or her child.

(2) JUDICIAL APPOINTMENT. (a) *Who may file petition.* 1. A parent of a child may file a petition for the judicial appointment of a standby guardian of the person or estate or both of the child under this subsection. A parent may include in the petition the nomination of an alternate standby guardian for the court to appoint if the person nominated as standby guardian is unwilling or unable to serve as the child's guardian or if the court determines that appointment of the person nominated as standby guardian as the child's guardian is not in the best interests of the child. Subject to subds. 2. and 3., if a petition is filed under this subdivision, the petition shall be joined by each parent of the child.

2. If a parent of a child cannot with reasonable diligence locate the other parent of the child, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that reasonable diligence, the court may grant the petition.

3. If a parent of a child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that refusal, unwillingness or inability, the court may grant the petition.

(b) *Contents of petition.* A proceeding for the appointment of a standby guardian for a child under this subsection shall be initiated by a petition that shall be entitled "In the interest of .... (child's name), a person under the age of 18" and shall set forth with specificity all of the following:

1. The name, birth date and address of the child.

2. The names and addresses of the child's parent or parents, guardian and legal custodian.

3. The name and address of the person nominated as standby guardian and, if the petitioner is nominating an alternate standby guardian, the name and address of the person nominated as alternate standby guardian.

4. The duties and authority that the petitioner wishes the standby guardian to exercise.

5. A statement of whether the duty and authority of the standby guardian are to become effective on the petitioner's incapacity, on the petitioner's death, or on the petitioner's debilitation and consent to the beginning of the duty and authority of the standby guardian, or on whichever occurs first.

6. A statement that there is a significant risk that the petitioner will become incapacitated or debilitated or die, as applicable, within 2 years after the date on which the petition is filed and the factual basis for that statement.

7. If a parent of the child cannot with reasonable diligence locate the other parent of the child, a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duties and authority of guardianship and who, with reasonable diligence, can be located and a statement of the efforts made to locate the other parent.

8. If a parent of the child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship and a statement that the nonpetitioning parent has refused to join in the petition or has indicated that he or she is unwilling or unable to exercise the duty and authority of guardianship.

9. A description of the child's income and assets, if any.

10. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.

11. A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (d) to be served on all of the following persons:

a. The child if the child is 12 years of age or older.

b. The child's guardian and legal custodian.

c. The child's guardian ad litem.

d. The child's counsel.

e. The child's other parent, if that parent has not joined in the petition and if that parent can with reasonable diligence be located.

f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.

g. The person who is nominated as the standby guardian of the child in the petition and, if an alternate standby guardian is nominated in the petition, the person who is nominated as the alternate standby guardian.

2. Service shall be made by certified mail at least 7 days before the hearing or by personal service in the same manner as a summons is served under s. 801.11 (1) (a) or (b) at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or by personal or substituted service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last−known location of the party.

(d) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date that allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition.

2. If the petition is not contested, the court may immediately proceed to a dispositional hearing under par. (g), unless an adjournment is requested under par. (g).

3. If the petition is contested, the court shall set a date for a fact−finding hearing under par. (e) that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(e) *Fact−finding hearing.* The court shall hold a fact−finding hearing on the petition on the date set by the court under par. (d) 3. at which any party may present evidence relevant to any of the following issues:

1. Whether there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. Whether the child has any parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. If a parent cannot be located, whether the petitioner has made diligent efforts to locate that parent.

4. If a parent has refused to join in the petition, whether that refusal is unreasonable.

(f) *Required findings by court.* If the court, at the conclusion of the fact−finding hearing, makes all of the following findings by clear and convincing evidence, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested under par. (g):

1. That there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. That the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent.

4. That, if a parent has refused to join in the petition, the refusal was unreasonable.

5. That the person nominated as standby guardian is willing and able to act as standby guardian or, if that person is not so willing and able, that the person nominated

as alternate standby guardian is willing and able to act as standby guardian.

(g) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified under par. (d) 2. or (e), at which any party may present evidence, including expert testimony, relevant to the disposition. If at the plea hearing or the fact−finding hearing a party requests an adjournment of the dispositional hearing, the court shall set a date for the dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing or fact−finding hearing.

(h) *Dispositional factors.* In determining the appropriate disposition under this par. (j), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person nominated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person nominated as standby guardian or alternate standby guardian to serve as the child's guardian if the petitioner becomes incapacitated or debilitated or dies.

3. The wishes of the child.

(i) *Appearance by petitioner.* If the petitioner is medically unable to appear at a hearing under par. (d), (e) or (g), the court may dispense with the petitioner's appearance, except on the motion of a party and for good cause shown.

(j) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the person nominated as standby guardian or alternate standby guardian as the child's standby guardian is not in the best interests of the child.

2. A disposition ordering that the person nominated as standby guardian or alternate standby guardian be appointed as the child's standby guardian if the court determines that such an appointment is in the best interests of the child.

(k) *Guardianship order.* A standby guardianship order under par. (j) 2. shall include all of the following:

1. A statement of whether the standby guardianship is a full guardianship under sub. (6) (b) 1. or a limited guardianship under sub. (6) (b) 2.

2. A statement of when the standby guardianship goes into effect, which may be on receipt by the standby guardian of a determination of the petitioner's incapacity, a certificate of the petitioner's death, or a determination of the petitioner's debilitation and the petitioner's written consent under par. (L) 3. that the standby guardianship go into effect.

(L) *Commencement of duty and authority of court−appointed standby guardian.* 1. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of the certificate of the petitioner's death.

3. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's debilitation and consent to the standby guardianship going into effect, the duty and authority of a standby guardian shall begin on the receipt by the standby guardian of a determination of debilitation under sub. (4) and a written consent to the beginning of that duty and authority signed by the petitioner in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If the petitioner is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the petitioner and at the direction of the petitioner, in the presence of the petitioner and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

4. The standby guardian shall file the determination of incapacity received under subd. 1., the certificate of death received under subd. 2., or the determination of debilitation and written consent received under subd. 3., whichever is applicable, with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination, certificate, or determination and written consent. If the standby guardian fails to file that determination, certificate, or determination and written consent with that court within those 90 days, the court may rescind the guardianship order.

(m) *Suspension of duty and authority of court−appointed standby guardian.* 1. The duty and authority of a standby guardian appointed under par. (j) 2. shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. The standby guardian shall file the determination of recovery or remission received under subd. 1. with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

3. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (L).

(n) *Rescission of standby guardianship.* 1. If at any time before the duty and authority of a standby guardian appointed under par. (j) 2. begin, the court finds that the findings of the court under par. (f) no longer apply or determines that the determination of the court under par. (j) 2. no longer applies, the court may rescind the guardianship order.

2. A person who is appointed as a standby guardian under par. (j) 2. may, at any time before his or her duty and authority as a standby guardian begin, renounce that appointment by executing a written renunciation, filing the renunciation with the court that issued the guardianship order and notifying the petitioner in writing of the renunciation. On compliance with this subdivision, the court shall rescind the guardianship order.

3. A person who is appointed as a standby guardian under par. (j) 2. may, at any time after his or her duty and authority as standby guardian begin, resign that appointment be executing a written resignation, filing the resignation with the court that issued the guardianship order and notifying the petitioner, if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

4. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time before the duty and authority of the standby guardian begin by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court shall rescind the guardianship order.

5. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time after the duty and authority of the standby guardian begin by executing a written revocation, filing the written revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(3) PARENTAL DESIGNATION. (a) *Written designation.* A parent may designate a standby guardian for his or her child by means of a written designation signed by the parent in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If a parent is physically unable to sign that written designation, another person 18 years of age or over who is not the standby guardian may sign the written designation on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

(b) *Contents of written designation; form.* 1. A written designation of a standby guardian shall identify the parent who is making the designation, the child who is the subject of the standby guardianship and the person who is designated to be the standby guardian. The written designation shall also state the duties and authority that the parent wishes the standby guardian to exercise and shall indicate that the parent intends for the duty and authority of standby guardian to begin on the parent's incapacity, death, or debilitation and consent under par. (c) 3. to the beginning of the duty and authority of the standby guardian, or on whichever occurs first. A parent may designate an alternate standby guardian in the same written designation and in the same manner as the parent designates the standby guardian.

2. A written designation of a standby guardian complies with this subsection if the written designation substantially conforms to the following form:

DESIGNATION OF STANDBY GUARDIAN

I, ... (name and address of parent), being of sound mind, do hereby designate .... (name and address of standby guardian) as standby guardian of the person and estate of my child(ren) .... (name(s), birth date(s) and address(es) of child(ren)).

(You may, if you wish, provide that the duty and authority of the standby guardian shall extend only to the person, or only to the estate, of your child(ren), by crossing out "person and" or "and estate", whichever is inapplicable, above.)

The duty and authority of the standby guardian shall begin on one of the following events, whichever occurs first:

1. I die.

2. My doctor determines that I am mentally incapacitated, and thus unable to care for my child(ren).

3. My doctor determines that I am physically debilitated, and thus unable to care for my child(ren), and I consent in writing, before 2 witnesses, to the standby guardian's duty and authority taking effect.

If the person I designate above is unwilling or unable to act as standby guardian for my child(ren), I hereby designate .... (name and address of alternate standby guardian) as standby guardian for my child(ren).

I also understand that the duty and authority of the standby guardian designated above will end 180 days after the day on which that duty and authority begin if the standby guardian does not petition the court within those 180 days for an order appointing him or her as standby guardian.

I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship, that I may revoke the standby guardianship at any time before the standby guardianship begins, that I may revoke the standby guardianship at any time after the

standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on my recovery or remission from my incapacity or debilitation.

Signature.... Date ....

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:
(print) Name ... Date ....
Address ....
Signature ....

Witness No. 2:
(print) Name .... Date ....
Address ....
Signature ....

STATEMENT OF STANDBY GUARDIAN
AND ALTERNATE STANDBY GUARDIAN

I .... (name and address of standby guardian), and I, ... (name and address of alternate standby guardian), understand that .... (name of parent) has designated me to be the standby guardian or alternate standby guardian of the person and estate (cross out "person and" or "and estate", if inapplicable) of his or her child(ren) if he or she dies, becomes mentally incapacitated, or becomes physically debilitated and consents, to my duty and authority taking effect. I hereby declare that I am willing and able to undertake the duty and authority of standby guardianship and I understand that within 180 days after that duty and authority begin I must petition the court for an order appointing me as standby guardian. I further understand that .... (name of parent) retains full parental rights over his or her child(ren) even after the beginning of the standby guardianship, that he or she may revoke the standby guardianship at any time before the standby guardianship begins, that he or she may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on his or her recovery or remission from his or her incapacity or debilitation.

Standby guardian's signature .... Date ....
Address ....

Alternate standby guardian' signature .... Date ....
Address ....

3. A written designation of a standby guardian may also contain a consent to that designation that substantially conforms to the following form and that shall be completed if the child's other parent can be located:

CONSENT TO DESIGNATION OF
STANDBY GUARDIAN

I, ... (name and address of other parent), being of sound mind, do hereby consent to the designation by .... (name of designating parent) of .... (name of standby guardian) as standby guardian, and of .... (name of alternate standby guardian) as alternate standby guardian, of the person and estate (cross out "person and" or "and estate", if inapplicable) of my child(ren) .... (name(s), birth date(s) and address(es) of child(ren)).

I also consent to the terms and conditions of the standby guardianship stated above and I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship and that I may revoke my consent to the standby guardianship at any time.

Signature .... Date ....

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:
(print) Name .... Date ....
Address ....
Signature ....

Witness No. 2:
(print) Name .... Date ....
Address ....
Signature ....

(c) *Commencement of duty and authority of designated standby guardian.* 1. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a certificate of the parent's death.

3. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent becoming debilitated and consenting to the beginning of the standby guardianship, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of

a determination of debilitation under sub. (4) and a copy of the parent's written consent to the beginning of that duty and authority signed by the parent in the presence of 2 witnesses, neither of whom may be the standby guardian, and by the standby guardian. If the parent is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses, neither of whom may be the standby guardian.

4. Subject to par. (d) 2., the standby guardian shall file a petition under par. (e) for judicial appointment as standby guardian of the child within 180 days after the date on which the standby guardianship begins. If the standby guardian fails to file that petition within those 180 days, the standby guardian's duty and authority shall end 180 days after the date on which the standby guardianship began. If the standby guardian files the petition after the expiration of those 180 days, the duty and authority of the standby guardian shall begin again on the date on which the petition is filed.

(d) *Suspension of duty and authority of designated standby guardian.* 1. The duty and authority of a standby guardian designated under par. (a) shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. If the standby guardian receives a determination of recovery or remission under subd. 1. before the standby guardian files the petition under par. (e), the standby guardian need not file the petition under par. (e).

3. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian files the petition under par. (e), but before the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court with which the petition is filed by the time of the next hearing on the petition or within 7 days after the date on which the standby guardian receives that determination, whichever is sooner. On compliance with this subdivision, the court shall dismiss the petition. If the standby guardian fails to file that determination with that court within those 7 days, the court may rescind the guardianship.

4. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

5. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (c).

(e) *Petition for judicial appointment.* A petition for judicial appointment as standby guardian of a child under this subsection shall be in the same form as a petition under sub. (2) (b) and shall set forth with specificity the information specified in sub. (2) (b) 1. to 4. and 7. to 11. The petition shall also contain a statement that the parent has become incapacitated, has died, or has become debilitated and has consented to the beginning of the duty and authority of the standby guardian. In addition, the petition shall be accompanied by the following documentation:

1. The written designation under par. (a) signed or consented to by each parent of the child or, if a parent cannot with reasonable diligence be located or has refused to consent to the designation, the written designation under par. (a) signed by one parent and a statement of the efforts made to find the other parent or of the fact that the other parent has refused to consent to the designation.

2. A copy of the determination of incapacity received under par. (c) 1., the certificate of death received under par. (c) 2. or the determination of debilitation and written consent received under par. (c) 3.

3. If the petition is filed by a person who has been designated as an alternate standby guardian, a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian and the factual basis for that statement.

(f) *Procedure for judicial appointment.* 1. The petitioner shall cause the petition and notice of the time and place of the plea hearing under subd. 2. to be served on all of the persons specified in sub. (2) (c) 1. a. to f. and on the parent who has made the written designation under par. (a), if living. Service shall be made in the manner provided in sub. (2) (c) 2.

2. The court shall hold a plea hearing, a fact−finding hearing and a dispositional hearing in the manner provided in sub. (2) (d) to (g) and shall enter a dispositional order as provided in sub. (2) (j) and (k) 1., except that at the fact−finding hearing any party may present evidence relevant to the issues specified in par. (g), and at the conclusion of that hearing the court shall immediately proceed to a dispositional hearing, unless an adjournment is requested, if the court finds by clear and convincing evidence that the conditions specified in par. (g) have been met.

(g) *Required findings by court.* The court shall appoint a person to be a standby guardian under this subsection if, after making the following findings by clear and convincing evidence, the court determines that the appointment is in the best interests of the child:

1. That the person was designated as standby guardian in accordance with pars. (a) and (b).

2. That the standby guardian has received a determination of incapacity, a death certificate, or a determination of debilitation and written consent, as provided in par. (c) 1., 2. or 3., whichever is applicable.

3. That the child has no parent who is willing and able to exercise the duty and authority of guardianship.

4. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent or, if a parent has refused to consent to the designation of the standby guardian, the consent was unreasonably withheld.

5. That, if the petitioner is a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian.

(h) *Dispositional factors.* In determining the appropriate disposition under par. (g), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person designated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person designated as standby guardian or alternate standby guardian to serve as the child's guardian.

3. The wishes of the child.

(i) *Appearance by parent.* If the parent who has made a written designation under par. (a) is medically unable to appear at a hearing specified in par. (f) 2., the court may dispense with the parent's appearance, except on the motion of a party and for good cause shown.

(j) *Revocation by parent.* 1. A parent who has made a written designation under par. (a) may, at any time before the filing of a petition under par. (e), revoke a standby guardianship created under this subsection by executing a written revocation and notifying the standby guardian in writing of the revocation, making a subsequent written designation under par. (a) or verbally revoking the standby guardianship in the presence of 2 witnesses.

2. After a petition under par. (e) has been filed but before the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court with which the petition has been filed and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may dismiss the petition and rescind the guardianship if the court determines that dismissal of the petition and rescission of the guardianship are in the best interests of the child.

3. After the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(k) *Renunciation of designation.* 1. A person whom a parent has designated as a standby guardian under par. (a) may, at any time before the filing of a petition under par. (e), renounce that designation by executing a written renunciation and notifying the parent, if living, in writing of that renunciation.

2. After a petition under par. (e) has been filed, but before the standby guardian has been judicially appointed under par. (g), a person whom a parent has designated as a standby guardian under par. (a) may renounce that designation by executing a written renunciation, filing the renunciation with the court with which the petition has been filed and notifying the parent, if living, in writing of that renunciation. On compliance with this subdivision, the court may accept the renunciation and rescind the guardianship order if the court finds that the renunciation and rescission are in the best interests of the child.

3. A person who has been judicially appointed as a standby guardian under par. (g) may, at any time after that appointment, resign that appointment by executing a written resignation, filing the resignation with the court that entered the guardianship order and notifying the parent who designated the person as a standby guardian under par. (a), if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

(4) DETERMINATION OF INCAPACITY OR DEBILITATION. (a) *In general.* 1. A determination of incapacity or debilitation under this section shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the cause and nature of the parent's incapacity or debilitation and the extent and probable duration of the incapacity or debilitation.

2. If a standby guardian's identity is known to an attending physician making a determination of incapacity or debilitation, the attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's incapacity or debilitation for purposes of this section.

(c) *Information to be provided to parent.* On receipt of a determination of a parent's incapacity, a standby guardian shall inform the parent of all of the following, if the parent is able to comprehend that information:

1. That a determination of incapacity has been made and, as a result, the duty and authority of the standby guardian have begun.

2. That the parent may revoke the standby guardianship in accordance with sub. (2) (n) 5. or (3) (j) 1., 2. or 3., whichever is applicable.

(5) DETERMINATION OF RECOVERY OR REMISSION. (a) *In general.* 1. A determination that a parent has recovered or is in remission from his or her incapacity or debilitation shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the extent and probable duration of the recovery or remission.

2. If a standby guardian's identity is known to an attending physician making a determination of recovery or remission, the attending physician shall provide a copy of the determination of recovery or remission to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's recovery or remission for purposes of this section.

(6) PARENTAL RIGHTS; DUTY AND AUTHORITY OF STANDBY GUARDIAN. (a) *Parental rights.* The beginning of the duty and authority of a standby guardian under sub. (2) or (3) does not, in itself, divest a parent of any parental rights.

(b) *Duties and authority of guardian.* 1. Unless limited under subd. 2., a standby guardian appointed under sub. (2) or designated under sub. (3) shall have all of the duties and authority specified in s. 48.023.

2. The court may order or a parent may provide that the duties and authority of a standby guardian appointed under sub. (2) or designated under sub. (3) be limited. The duties and authority of a limited standby guardian shall be as specified by the order of appointment under sub. (2) (j) 2. or the written designation under sub. (3) (a). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited standby guardian appointed under sub. (2) or designated under sub. (3) to the extent those provisions are relevant to the duties or authority of the limited standby guardian, except as limited by the order of appointment or written designation.

(7) RELATIONSHIP TO CH. 880. (a) Except when a different right, remedy or procedure is provided under this section, the rights, remedies and procedures provided in ch. 880 shall govern a standby guardianship created under this section.

(b) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(c) Nothing in this section prohibits an individual from petitioning a court for the appointment of a guardian under ch. 880.

SECTION 10. 808.075 (4) (a) 12. of the statutes is created to read:

808.075 **(4)** (a) 12. Rescission of a guardianship order under s. 48.978 (2) (L) 4., (m) 2. or (n) or (3) (d) 3. or 4., (j) 2. or 3. or (k) 2. or 3.

SECTION 11. 880.36 (1) of the statutes is amended to read:

880.36 **(1)** A petition for the appointment of a standby guardian of the person or property or both of a minor or person found incompetent under s. 880.08 <u>to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian</u> may be brought <u>under this chapter</u> at any time. <u>A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978.</u>

SECTION 12. 880.36 (3) of the statutes is repealed.

SECTION 13. 880.36 (4) of the statutes is repealed.