



Child Welfare League of American 2020 Annual Conference Expansion of Standby Guardianship in the District of Columbia

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Expansion of Standby Guardianship in the District of Columbia

- Why we needed to expand it.
- How we got it expanded.
- How it is useful in safety planning along with CPOAs.
- What we are doing to implement it.

Why expand standby guardianship in DC?

The image is a screenshot of a web browser displaying a news article on the Washington City Paper website. The browser's address bar shows the URL: washingtoncitypaper.com/news/city-desk/article/21074694/ice-activity-reported-across-northwest-dc-saturday-resulting-in-at-least-two-arrests. The website's header features the "WASHINGTON CITYPAPER" logo in large white letters on a black background. To the right of the logo are navigation links for "BEST OF D.C.", "PROMOTIONS", "CLASSIFIEDS", "NEWS", "FOOD", "ARTS", "SPORTS", "COLUMNS", and "DO". Below the header is a blue banner with the "CITYPAPER BEST of D.C." logo and the word "VOTE!" repeated three times in large, stylized yellow and white letters. The main article title is "Immigration Advocates Report ICE Activity Across Northwest D.C. Saturday, Resulting in at Least Two Arrests" in bold black text. Below the title is a sub-headline: "Two parents were taken from their children in their family home." The author is listed as "BY JOSHUA KAPLAN" and the date is "JUN 24, 2019 2 PM". On the right side of the article, there is a "RELATED" section with two items. The first item is titled "CITY DESK Can D.C. M Solar Ener" and features a photo of solar panels. The second item is partially visible and titled "CITY DESK". The Windows taskbar is visible at the bottom of the screen, showing the search bar, task view, and various application icons. The system tray on the right shows the time as 9:17 AM on 2/27/2020.

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BEST of D.C. **VOTE! VOTE! VOTE!**

Immigration Advocates Report ICE Activity Across Northwest D.C. Saturday, Resulting in at Least Two Arrests

Two parents were taken from their children in their family home.

BY **JOSHUA KAPLAN** — JUN 24, 2019 2 PM

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Solar Ener

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What happened to the children left behind?

- The Washington City Paper article said the children were DACA recipients and that both parents were undocumented.
- The parents clearly wanted to protect their children and planned ahead since they applied for and obtained DACA status for them.
- We wanted to make sure that undocumented parents also have legal resources to safety plan for the care of their children in the event of adverse immigration action.

Standby Guardianship in DC

- Like most jurisdictions that have Standby Guardianship laws, DC passed the Standby Guardianship Act of 2002 to assist parents affected by the AIDs epidemic to plan for the care of their children.
- DC's Standby Guardianship law (D.C. Code § 16-4801 et. seq.) allowed a parent to designate a standby guardian at any time but it only becomes effective when there is a "triggering event."
- The triggering events were the parent designator's debilitation, incapacity or death.
- There was nothing in the statute to help undocumented parents safety plan for the care of their children in case of adverse immigration action.

How we got DC's Standby Guardianship Law Expanded-part 1

- We proposed the expansion right after the ICE raid in DC, when there was heightened concern about the issue.
- We looked at other jurisdictions. Both New York and Maryland had recently expanded their Standby Guardianship laws to make them applicable to undocumented parents safety planning for their children.
- We wrote a letter to the DC Councilmember in whose ward the ICE raid happened and where there is a significant Central American immigrant population.
- The letter advocated to expand the definition of "triggering event" in the DC Standby Guardianship Law to include "Adverse Immigration Action."

Definition of Adverse Immigration Action-part 1

- Arrest or apprehension by any local, state, or federal law enforcement officer for an alleged violation of federal immigration law;
- Arrest, detention, or custody by the Department of Homeland Security or a federal, state, or local agency authorized or acting on behalf of DHS.
- Departure from the U.S. under an order of removal, deportation, exclusion, voluntary departure, or expedited removal, or a stipulation of voluntary departure;

Definition of Adverse Immigration Action-part 2

- The denial, revocation, or delay of the issuance of a visa or transportation letter by the Department of State;
- The denial, revocation, or delay of the issuance of a parole document or reentry permit by the DHS; or
- The denial of admission or entry into the U.S. by the DHS or other local or state officer acting on behalf of the DHS.

Opposition to Expansion of Standby Guardianship

The screenshot shows a web browser window displaying a news article on the WAMU 88.5 website. The browser's address bar shows the URL: wamu.org/story/18/09/20/marshal-law-d-c-sanctuary-city-status-stops-courthouse-door/. The website header features the WAMU 88.5 logo and a navigation menu with options for Stories, Series, Shows, Support, and More... There are also buttons for LIVE and DONATE. Below the header, there are four featured articles with small images and titles. The main article is titled "Marshal Law: D.C. Is A Sanctuary City, But That Status Stops At The Courthouse Door" and is dated SEP 20, 2018. The author is identified as Martin Austermuhle. The article is part of a live broadcast, as indicated by the "WAMU 88.5 LIVE Here & Now" banner at the bottom of the page. The Windows taskbar at the bottom shows the system time as 3:54 PM on 3/3/2020.

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How We Addressed Opposition

- We identified the fear: That undocumented parents may be unnecessarily exposing themselves to ICE scrutiny by having to go to court to file for Standby Guardianship.
- We educated stakeholders about the reality: That no court filing is necessary BEFORE adverse immigration action, only AFTERWARD.
- The standby guardian must file 90 days AFTER the triggering event and may not have concerns about going to the courthouse (e.g., standby guardian is a legal resident, citizen, etc.)
- We advocated for undocumented parents to have CHOICE to use Standby Guardianship as a tool, either alone or with Custodial Power of Attorney (CPOA), to safety plan for their children in the event of adverse immigration action.

Enactment of DC's Standby Guardianship Law Expansion

- The Councilmember's staff contacted us within days to assist in drafting the amendment to expand the law.
- We took a copy of the current law and made redlined edits to that law based on MD law.
- We testified in support of Standby Guardianship expansion at the DC Council hearing on the legislation.
- Within weeks, the Councilmember introduced emergency legislation to expand the Standby Guardianship law, and it was passed unanimously by the DC Council.

What is a Custodial Power of Attorney?

- In DC, you can share custody of your child with someone through a CPOA (DC Code § 21–2301).
- Like Standby Guardianship, it can be a useful tool for undocumented parents to safety plan for the care of their children that has both advantages and disadvantages.
- One advantage of CPOAs is that they are not filed with the court or approved by a judge.
- It can allow for a trusted person to care for the child, get medical care for the child, and enroll the child in school.
- Some disadvantages of CPOAs are that they may not be honored in other states; they cannot be used to obtain a passport or birth certificate for the child; they cannot be used to obtain certain benefits like SSI; and they must begin upon signing or upon a date certain.

Advantages of Standby Guardianship

- It begins upon a triggering event and not before;
- Like a CPOA, it grants to another person the right to care for the child, get medical care for the child, and enroll the child in school;
- It results in a court order that must be honored in DC and throughout the United States;
- It can be used to obtain a passport for the child, which can be important for the child to be able to visit their parents in other countries;
- It can be used to obtain a child's birth certificate, which may be needed to show relatedness for TANF and required for other benefits, such as SSI.

Disadvantages of Standby Guardianship

- It is more complicated than a CPOA in that it requires more than one document, a designation and a petition, and must be ultimately be ordered by the court; and
- If the standby guardian is also undocumented, it could possibly expose that standby guardian to ICE scrutiny through court filings.
 - ❖ *Consider whether court filings can be sealed.*

What is a Standby Guardianship Designation?

- A form signed by the parent
- Signed by two adult witnesses
- Signed by the standby guardian
- Signed by alternate standby guardian, if any
 - ❖ *See handout of sample designation form*

What is a Standby Guardianship Petition

- Court filing by the standby guardian requesting that the court approve the standby guardian as the child's legal custodian
- Requires proof of the triggering event
- Birth certificates of the child(ren) must be attached
- Notice to parents (guardians) must be provided
- Consent to appointment of guardian signed by respondent (usually, the non-designating parent) or a statement of reason why respondent is not or should not be assuming responsibility for the child(ren)
 - ❖ *See handout of sample petition*

How We are Implementing the DC Standby Guardianship Law Expansion

- We drafted amended forms for designating standby guardians BEFORE any adverse immigration action occurs and for petitioning the court for standby guardianship AFTER the adverse immigration action has happened.
- We are working with the DC Bar to finalize the forms and getting the forms translated into Spanish.
- We are partnering with other local advocates to educate the immigrant community about safety planning for the care of their children through Standby Guardianship and CPOAs.