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## FISCAL IMPACT REPORT

SPONSOR: SFC DATE TYPED: 03/08/01 HB \_\_\_\_\_  
 SHORT TITLE: Kinship Guardianship Act SB 185/SFCS  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of SFC Substitute Bill

This Senate Finance Committee substitute bill amends the Probate Code to establish a legal procedure for relatives and adults to apply for a guardianship order when they have a child living with them for three months or more.

According to the Children, Youth and Families Department (CYFD), this bill authorizes legal guardianships for children who are being raised by care givers other than the child's parents. These care givers are often family members of the child. The bill primarily supplements and, to a limited extent, clarifies existing law on guardianships. The existing law primarily allows for appointment of a guardian where both parents have died (Guardianship of Minors Act, Uniform Probate Code 45-5-201 et. seq.) and permanent guardianship of a child through an abuse and neglect proceeding (Children's Code: Child Abuse and Neglect 32A-4-31 and 31A-4-32). This new law addresses the situation in which substitution or supplementation of parental care and supervision is needed. Typically this is where the parents are living, but are not the primary care givers for the child for long periods of time. The order of guardianship provides the guardian with virtually all of the rights and obligation of a parent, but can be revoked. The Act contemplates that most guardians appointed will be a relative of the child in question.

The guardianship may be dissolved when the biological parent is able to resume the parental role. If CYFD is involved with the family, the person desiring to be the caretaker notifies CYFD, and CYFD has the option to permit the guardianship to move forward. The caretaker can also file an affidavit

## Senate Bill 185/SFCS -- Page 2

that permits enrollment in school, mental health treatment and medical care during the three month waiting period.

The bill substitute clarifies public policy statement to reflect that parents should raise their children, but when they are unable, they should arrange for a caregiver.

SB 185 substitute made the following changes to the original bill:

- Child must live with care giver continuously for ninety days.
- Notice to parent includes a statement of the purpose and effect of care giver arrangement, the right to appear and be heard at the hearing and that the parent can contest the appointment of the care giver.
- Any interested party may move to intervene in the action.
- Allows the *ex parte* appointment of a care giver, but permits the parent to object and have a hearing within ten days.
- Standard of proof is changed to clear and convincing evidence to make threshold for appointment more rigorous.
- Appointment of Guardian ad Litem if parent objects to care giver.
- Standard of proof to dissolve guardianship is preponderance of evidence to make it easier to return to children to parent.
- Visitation is permitted by parents.

### Significant Issues

According to the CYFD, presently, there is no formal legal mechanism permitting relatives and caretakers a way to step into the shoes of parents who are unable or unwilling to provide the necessary stability for their children. This bill provides another avenue to relatives and caretakers to assume responsibility to provide the children with a secure and stable environment without state involvement. This is different from an adoption because the biological parent is able to dissolve the guardianship once they are able to show they are able to resume their parental obligations. The parent still assumes the obligation of child support and the child still retains the right to inherit from their natural parent.

According to the Administrative Office of the Courts, Section 11 allows a child 14 years old or older to object to the appointment of a specific guardian. Under Section 11. B, the court shall not appoint a person as guardian if the child objects. However, the Act does not provide what action the court should take if this objection does occur.

CYFD has joined with a number of advocacy organizations to support this legislation. Advocacy, Inc, the Way Project, the Court Improvement Project, and the Human Needs Coordinating Council all support this legislation.

## FISCAL IMPLICATIONS

The Act impacts the court-appointed attorney fee fund by requiring additional expenditures from this fund without providing additional resources to this fund. This fund presently has insufficient funds to pay existing obligations required by existing law.

### **ADMINISTRATIVE IMPLICATIONS**

According to the Administrative Office of the Courts, the Act provides more cases for the courts by increasing the number of guardianship proceedings that will be filed. However, if stability and legal custody of children is established through this mechanism, it may reduce the number of problems.

### **TECHNICAL ISSUES**

Jurisdiction of the court under Section 14 should terminate when the child is 18.

### **OTHER SUBSTANTIVE ISSUES**

According to the Administrative Office of the Courts, Section 1-14 of the Act outline the procedures for establishing a kinship guardian. Section 15 outlines the powers of care giver for limited purposes after providing an affidavit. Section 15 is apparently intended for people who have not followed the more extensive procedures to become a kinship guardian in Sections 1-14. A person who has been appointed as a kinship guardian likely has no need to fill out the affidavit set forth in Section 15. This distinction between Sections 1 -14 and Section 15 might be clarified.

According to the Administrative Office of the Courts, Section 15.D. states that medical decision by a care giver is superceded by a parent having parental rights unless the contravening decision jeopardizes life, health or safety of the child. However, the Act does not provide direction about who decides whether the decision jeopardizes life, health or safety. Additionally, the Act does not provide direction about what action should be taken in the event of a conflict. Is it the courts, the treating physician, the care giver? Clarification of this provision may be helpful.

PD/njw:ar