

PROPOSED RECODIFICATION BILL

[Proposed FLAC Recommendations (Revised January 2018)]

ARTICLE 5

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

PART 1

GENERAL PROVISIONS [SEE PATLAC LANGUAGE]

PART 2

GUARDIANSHIP OF MINOR

§5-201. Appointment and status of guardian; findings and purposes [18-A §5-201]

1. Appointment and status. A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings under Title 22, section 4038-C. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.

2. Findings and purposes. The Legislature makes the following findings concerning the appointment of guardians for minors:

A. The Legislature finds that the interests of minor children are usually best promoted in the child's own home. However, when parents are temporarily unable to care for their children, guardianship provides a process through which family members or other parties can be appointed by a court to provide care for children.

B. The Legislature finds that parents have a fundamental liberty interest in the care, custody, and control of their children, and the State has an interest in preserving and promoting the welfare of children. The State may interfere with parents' fundamental constitutional rights only where there is an urgent reason or there are exceptional circumstances affecting the child that justify the intrusion.

C. The Legislature finds that decisions about raising a child made by a person other than the child's parent should be based on the informed consent of the parties unless there has been a finding of parental unfitness by clear and convincing evidence.

D. The Legislature finds that a parent's fundamental liberty interest in parenting their child may not be infringed simply by proof that another person might provide a "better" living arrangement for the child.

E. The Legislature finds that safe and consistent contact between parents and children during a guardianship can preserve the parent-child relationship and facilitate possible reunification.

F. The Legislature finds that it is in the interests of all parties, including the children, that parents and proposed guardians have a shared understanding of the rights and responsibilities of the parties during the guardianship and the circumstances under which the parents resume care for their children.

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§5-202. Parental appointment of guardian [18-A §5-202]

1. Appointment by parent. A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

2. Petition to confirm selection, terminate right to object. Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within 2 years, and after notice as provided in section 5-205, subsection 1, the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

3. Appointment effective. Subject to section 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

4. Acceptance of appointment. The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

A. File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

B. Give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor.

5. Notice of right to object. Unless the appointment was previously confirmed by the court, the notice given under subsection 4, paragraph B must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 5-203.

6. Petition to confirm appointment. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-205, subsection 1.

7. Parental rights not superseded; priority. The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent that is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

8. Relation back of powers. The powers of a guardian who timely complies with the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

9. Termination of authority. The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of

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the filing of an objection pursuant to section 5-203.

§5-203. Objection by minor or others to parental appointment [18-A §5-203]

Until the court has confirmed an appointee under section 5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent if all other requirements for appointment, including appointment over the objection of a parent, are met. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary interim guardian under section 5-204 and proceed accordingly.

§5-204. Judicial appointment of guardian; conditions for appointment [18-A §5-204; §5-207(c); §5-207(c)(1)]

1. Petition. A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

2. Appointment. The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, the proposed guardian is suitable, and finds:

- A. That the parents consent;
- B. That all parental rights have been terminated; or
- C. By clear and convincing evidence that ~~the parents are unwilling or unable to exercise their parental rights;~~

(1) the parent is currently unwilling or unable to meet the child's needs and that will have a substantial adverse effect on the child's well-being if the child lives with the parent; or

(2) the parent has failed, without good cause, to maintain a parental relationship with the child including, but not limited to, regular contact with the child for a length of time that evidences an intent to abandon the child.

3. Priority for appointment. If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated under section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

4. Temporary Appointment of a guardian on an emergency basis. ~~If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection 5.~~

~~Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under section 5-111 and section 5-205, except that the notice must be given at least 5 days before the hearing, and~~

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~~notice need not be given to any person whose address and present whereabouts are unknown and cannot be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age. If the court finds that following the procedures of this Part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed 90 days, and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of the hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment. The court shall schedule a hearing on the appointment of the guardian within 14 days but not less than 7 days after issuance of the order appointing guardian, except that counsel for a parent may request that the hearing take place sooner. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this section.~~

~~**5. Parent member of National Guard or Reserves.** If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under that active duty order or until an order of the court so provides. This subsection applies only if the parent's service is in support of:~~

~~A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or~~

~~B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.~~

~~**6. Appointment of counsel.** A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.~~

~~**7. Child support.** When appointing a guardian, including on an emergency or interim basis, the court's order should indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the guardianship appointment on such order. In a proceeding on a petition for judicial appointment of a guardian, the court may shall consider whether to order a parent to pay child support to the guardian in accordance with Title 19-A, Part 3. A guardian shall be treated as a "caretaker relative" for computation of a parental support obligation pursuant to Title 19-A, section 2006, subsection 4. The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.~~

~~**8. Limited guardian.** If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-108 and section 5-206, and any parental rights and responsibilities retained by the parent of the minor.~~

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§5-205. Judicial appointment of guardian; procedure [18-A §5-207]

1. Petition; notice of hearing. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

- A. The minor, who may appear through counsel, if the minor has attained 14 years of age and is not the petitioner;
- B. Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition;
- C. Each living parent of the minor or, if there is none, the adult nearest in kinship that can be found;
- D. Any person nominated as guardian by the minor if the minor has attained 14 years of age;
- E. Any appointee of a parent whose appointment has not been prevented or terminated under section 5-203; and
- F. Any guardian or conservator currently acting for the minor in this State or elsewhere.

If the court finds that receiving information from the Department of Health and Human Services may be necessary for a determination of whether to appoint a guardian for a minor, it may order a Department of Health and Human Services child protection worker to attend the hearing and to provide information relevant to the proceeding. When receiving any information that is confidential pursuant to Title 22, section 4008, the court shall close the proceeding and take other measures necessary to preserve the confidentiality of the information received.

2. Notice to parent excused. The Court may, on motion of the petitioner, excuse the petitioner from the requirement of providing notice to a parent of a minor under subsection (1)(C) or under court rules for service of process if the Court finds that the petitioner is unable to give notice to the parent or the parent has waived the right to notice under this section. The Court may make such finding based on sworn affidavits submitted by the petitioner that demonstrate either:

A. The parent could not be located after due diligence and that there are no reasonable means available to the petitioner to provide actual notice to the parent; or

B. The parent's actions reflect a clear intention to waive their right to notice of these proceedings.

The Court may require the petitioner to appear and provide evidence in a testimonial hearing prior to ruling on a motion to excuse notice. "Reasonable means" are those that do not involve significant difficulty or expense.

23. Appointment; other disposition. The court, after the hearing scheduled pursuant to subsection 1, shall make the appointment of a guardian if the court finds that ~~a qualified person seeks appointment~~, venue is proper, the required notices have been given, the conditions of section 5-204, subsection 2 have been met and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

4. Appointment of guardian or coguardians Priority of minor's nominee. ~~The court shall appoint as guardian or coguardians of a minor a person or persons whose appointment will be in the best interest of the minor. The court shall appoint a person or persons nominated by the minor, if the minor has attained 14 years~~

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of age, in accordance with the requirements of section 5-204.

5. Appointment of counsel. A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.

36. Court-appointed attorney for a minor; notice to minor. If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age. A minor 14 or older must receive notice of any proceeding subsequent to the appointment of a guardian through the same means as required for any other party, and the minor may consent, object, or otherwise participate in the proceeding.

7. Informed Consent of Parent. If the petition for guardianship is filed by or with the consent of a parent, the petition must include a consent signed by the parent verifying that the parent understands the nature of the guardianship and knowingly and voluntarily consents to the guardianship. If a parent informs the court after the petition has been filed that he or she wishes to consent to the guardianship, the court shall require the parent to sign the consent form at that time. The consent required by this section must be on a court form or substantially similar document.

8. Term or Duration of Order. The court may specify the term of the appointment based on the parties' agreement or the court's findings. The term may be extended or otherwise modified by agreement of the parties or after a hearing. If no term is specified, then the appointment remains in place until modified or the occurrence of an event resulting in termination set forth in section 5-210.

If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

9. Interim Order. Upon motion by a party or the court's initiative, and pursuant to an agreement of the parties or findings made after a hearing, the court may enter an Interim Order appointing a guardian for a period of time up to six months or pending the court's order after the scheduled final hearing on a petition for appointment, if such order is necessary to provide for the minor's housing, health, education, medical, or other essential needs prior to such hearing. Any Interim Order must meet the requirements of section 5-204 and this section, including notice, and may be extended or modified pursuant to an agreement of the parties or findings made after a hearing.

10. Mediation. The court may refer the parties to mediation at any time after a petition or motion is filed and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that any party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court

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order.

11. Identifying information sealed. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, including but limited to the address of a party or the minor, the information must be sealed by the clerk and not disclosed to any other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or minor and determines that the disclosure is in the interest of justice.

~~§5-206. Judicial appointment of guardian; priority of minor's nominee; limited guardianship-Terms of Order Appointing Guardian [18-A §5-105, §5-204, §5-206]~~

~~1. Appointment of guardian or coguardians Priority of minor's nominee.~~ The court shall appoint as guardian or coguardians of a minor a person or persons whose appointment will be in the best interest of the minor. The court shall appoint a person or persons nominated by the minor, if the minor has attained 14 years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

~~2. Limited powers of guardian or coguardian.~~ In the interest of developing self reliance of a ward or for other good cause, the court, at the time of appointment or later, on the court's own motion or on motion of the minor or other interested person, may limit the powers of a guardian or coguardian otherwise granted by this Part and thereby create a limited guardianship. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

1. Terms of order. An order appointing a guardian of a minor must include the following:

A. The reasons for the appointment of the guardian, including whether there was any agreement by the parties or findings after a hearing;

B. The powers and duties granted to the guardian, including those set forth at section. 5-207;

C. The rights and responsibilities retained by the parent, as described in subsection 3;

D. The anticipated duration of the appointment, including whether it remains in place until a petition to modify or terminate and whether the parties agree to termination after a particular event, such as return from deployment;

E. A description of the process and standards for modification and termination; and

F. Notice of the court's authority to hold a hearing and find that a party has violated a part of the order and is in contempt and to order relief to the other party for such violations or contempt.

2. Other orders concerning child. If any orders regarding custody or other parental rights of the minor are in effect at the time of the appointment of a guardian, the order must refer to such orders and indicate the effect of the appointment on the rights and responsibilities set forth in the other order.

3. Rights and responsibilities retained by parent. An order appointing guardian must specify whether the minor's parent retains any of the following rights and responsibilities after the appointment, and if such rights or responsibilities are not retained, the reasons therefor:

A. The Order must specify a schedule of parent-child contact or a determination by the court that that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the minor. The court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the child's best interests. Any schedule of contact must reflect

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any existing parent-child contact order then in effect to the extent reasonably practicable and consistent with the Court's findings or the agreement of the parties. The court may set forth specific conditions that must be satisfied by the parent prior to the start of some or all aspects of the contact schedule;

B. Access to records and information regarding the child as provided under 19-A M.R.S.A. section 1653(2)(D)(4);

C. Parental rights and responsibilities as described under 19-A M.R.S.A. section 1501(5); and

D. Child support as defined at 19-A M.R.S.A. section 1501(2).

4. Parent as co-guardian. A parent may co-petition and be appointed as a co-guardian of their minor child if the court determines such joint appointment with a non-parent is in minor's best interest and is made with the parent's consent.

§5-207. Duties of guardian [18-A §5-209]

1. Duties and responsibilities of a parent. Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's minor's support, care, education, health and welfare. A guardian shall act at all times in the ward's minor's best interest and exercise reasonable care, diligence and prudence.

2. Specific duties and responsibilities. A guardian shall:

A. Become or remain personally acquainted with the ward minor and maintain sufficient contact with the ward minor to know of the ward's minor's capacities, limitations, needs, opportunities and physical and mental health;

B. Take reasonable care of the ward's minor's personal effects and bring a protective proceeding if necessary to protect other property of the ward minor;

C. Expend money of the ward that has been received by the guardian for the ward's minor's current needs for support, care, education, health and welfare;

D. Conserve any excess money of the ward minor for the ward's minor's future needs, but if a conservator has been appointed for the estate of the ward minor, the guardian shall pay the money at least quarterly to the conservator to be conserved for the ward's minor's future needs;

E. Report the condition of the ward minor and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's minor's welfare or as required by court rule; and

F. Inform the court of any change in the ward's minor's custodial dwelling or address.

3. Reporting on the status of the minor. The Court may require the guardian to submit regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent on an annual basis or under other conditions set by the court.

A. The Court may require the status report to include specific information including, but not limited to, the following to the extent applicable to the guardianship:

(1) The current address of the minor and each parent;

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(2) The minor's health care and health needs, including any medical and mental health services the child received;

(3) The minor's educational needs and progress, including the name of the minor's school, day care, or other early education program, the minor's grade level, and the minor's educational achievements;

(4) Contact between the minor and their parents, including the frequency and duration of the contact and whether it was supervised;

(5) How the parents have been involved in decision making for the minor;

(6) Whether the parents have provided any financial support for the minor;

(7) How the guardian has carried out their responsibilities and duties under the order of appointment;

(8) An accounting of any funds received on the minor's behalf;

(9) The minor's strengths, challenges, and any other areas of concern; and

(10) Recommendations with supporting reasons as to whether the guardianship order should be continued, modified, or terminated.

B. Before deciding whether to require status reports, the Court shall consider whether reporting would create a substantial likelihood of harm to the health, safety or liberty of the child.

C. The contents of status reports are confidential and may not be released to any non-party except by court order.

D. A parent or other person interested in the minor's welfare may petition the Court to seek a status report from the guardian if one is not otherwise required or based upon specific concerns about the minor's care.

E. Nothing in this section limits a court's authority to otherwise supervise the guardianship, including scheduling a status conference to address matters raised in a status report or to be held at a specified time after the entry of the order or appointing a guardian ad litem or visitor to conduct an investigation. The court shall accept any information submitted by a minor 14 or more years of age regarding the guardianship.

§5-208. Powers of guardian [18-A §5-209; §5-104]

1. Powers of a parent. Except as otherwise limited by the court, a guardian of a minor ~~ward~~ has the powers of a parent regarding the ~~ward's~~ minor's support, care, education, health and welfare.

2. Specific powers. A guardian may:

A. Apply for and receive money for the support of the ~~ward~~ minor otherwise payable to the ~~ward's~~ minor's parent, guardian or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship or custodianship;

B. If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ~~ward~~ minor, take custody of the ward and establish the ward's place of custodial dwelling, but may establish or move the ~~ward's~~ minor's custodial dwelling outside the State only upon express

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authorization of the court;

C. If a conservator for the estate of a ward minor has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward minor;

D. Except as limited by section 5-707, consent to medical or other care, treatment or service for the ward minor;

E. Consent to the marriage of the ward minor; and

F. If reasonable under all of the circumstances, delegate to the ward minor certain responsibilities for decisions affecting the ward's well-being.

3. Consent to adoption. The court may specifically authorize the guardian to consent to the adoption of the ward minor.

4. Powers of coguardians. If coguardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.

§5-209. Rights and immunities of guardian [18-A §5-209]

1. Reasonable compensation and reimbursement. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing provided by the guardian to the ward, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the ward minor, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

2. Personal liability. A guardian need not use the guardian's personal funds for the ward's minor's expenses. A guardian is not liable to a 3rd person for acts of the ward minor solely by reason of the guardianship. ~~A guardian is not liable for injury to the ward resulting from the negligence or act of a 3rd person providing medical or other care, treatment or service for the ward minor except to the extent that a parent would be liable under the circumstances.~~ *[Note: This was moved to new 5-121. As 5-120 is not being adopted and we need to retain the compensation sections of 5-209, perhaps we should just leave this last sentence here to keep all minor liability provisions together?]*

§5-210. Modification or Termination of guardianship; other proceedings after appointment [18-A §5-210]

1. Modification of guardianship order. A guardian, parent of the minor, a person interested in the welfare of a minor, the guardian, or the minor, if 14 or more years of age, may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interest of the minor as circumstances require. The motion must be filed with the court and served on all parties entitled to notice. Unless the motion specifies that is it filed with the consent of all parties entitled to notice, the matter must be set for hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the minor's best interests and the parent's rights. The court may identify certain conditions that must be met before a party may seek modification of specific provisions of the order. A court may modify a term of a guardianship order as needed

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to grant relief to a party to address contempt or other failure to follow the order.

1. 2. Termination of guardianship. A guardianship of a minor terminates upon the minor's death, adoption, emancipation, marriage or attainment of majority or as ordered by the court pursuant to this section.

~~**2. Petition for order.** A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained 14 years of age and is not the petitioner, the guardian and any other person as ordered by the court.~~

3. Termination of appointment. The appointment of a guardian or conservator terminates upon the death, resignation or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.

4. Petition for removal or, permission to resign. A minor if age 14 or older, a parent, or person interested in the welfare of the minor may petition for removal of a guardian on the ground that removal would be in the best interest of the minor or for other good cause. A guardian may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian.

5. Appointment of additional, successor guardian. The court may appoint an additional guardian at any time; to serve immediately or upon some other designated event, and may appoint a successor guardian in the event of a vacancy or make the appointment in contemplation of a vacancy; to serve if a vacancy occurs. An additional or successor guardian may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian succeeds to the predecessor's powers.

6. Termination without consent, best interest; subsequent petitions. Except upon a petition to terminate guardianship brought by a parent pursuant to subsection 7, the court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the minor. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the minor. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

7. Parent's petition to terminate guardianship; burden of proof. A parent may bring a petition to terminate the guardianship. A parent's notification to the court of the revocation of prior consent for a guardianship must be considered a petition to terminate the guardianship. A party opposing a parent's petition to terminate a guardianship bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor. If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent's fitness to regain custody, the court shall terminate the guardianship and make any further order that may be appropriate. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. In ruling on a petition to terminate a guardianship, the court may modify the terms of the guardianship or order transitional arrangements pursuant to section 5-211.

APPENDIX A - Family Law Advisory Commission Recommendations for 18-C, Article 5, Part 2

PROPOSED RECODIFICATION BILL

[Proposed FLAC Recommendations (Revised January 2018)]

§5-211. Transitional arrangement for minors [18-A §5-213]

In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the minor. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation. In determining the best interest of the minor, a court may consider the child's relationship with the guardian and need for stability.

§5-212. Appointment of Guardian ad litem for minor.

In any proceeding under this Part, including for issuing, modifying or terminating an order of guardianship for a minor, the court may appoint a guardian ad litem for the child. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceedings. The court shall follow the requirements of 18-C M.R.S. § 1-111 and other applicable law or court rules in making such appointment.