


Councilmember Jack Evans

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this Act may be cited as the “Revision of Guardianship of Minors and Creation of Supplemental Needs Trusts Act of 2019.”

Section 2: Title 21 of the District of Columbia Code is amended as follows:

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

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

CHAPTER 1. PROTECTION OF PROPERTY OF MINOR CHILDREN

Subchapter I. Purposes; Definitions.

Sec.

21-101. Purposes.

21-102. Definitions.

Subchapter II. Property or Claims of a Minor Child.

21-111. Property of a minor child.

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

21-113. Property of a minor - \$10,000

or less.

- 1 21-114. Property of a minor - more than \$10,000.
- 2 *Subchapter III. Guardian of the Property of a Minor.*
- 3 21-121. Appointment of a guardian of the property of a
- 4 minor.
- 5 21-122. Priority for appointment of a guardian.
- 6 21-123. Bond.
- 7 21-124. Statutory agent.
- 8 21-125. Possession of property.
- 9 21-126. Letter of guardianship; recording.
- 10 21-127. Guardianship plan and inventory.
- 11 21-128. Accounts.
- 12 21-129. Permissible court orders.
- 13 21-130. Powers of the guardian in administration.
- 14 21-131. Expenditures of guardianship funds for maintenance
- 15 and care of the minor.
- 16 *Subchapter IV. Minor's Trust Account.*
- 17 21-141. Appointment of trustee of minor's trust account.
- 18 21-142. Establishment of minor's trust account.
- 19 21-143. Operation of minor's trust account.
- 20 21-144. Court order for withdrawal of funds.
- 21 21-145. Annual certification of trustee.
- 22 21-146. Removal or substitution of trustee.
- 23 21-147. Termination of trust.

1 *Subchapter V. Protective Orders for Property of a Minor.*

2 21-151. Protective order for property of a minor.

3 21-152. Petition for protective order.

4 21-153. Determination of best interest of minor.

5 *Subchapter VI. General Provisions.*

6 21-161. Guardian ad litem.

7 21-162. Professional advisor.

8 21-163. Fiduciary standards.

9 21-164. Right to seek court resolution.

10 21-165. Compensation.

11 21-166. Form and service of petitions, accounts, etc.

12 21-167. Standard of proof.

13 21-168. Existing guardianship cases.

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

16 **“CHAPTER 1. PROTECTION OF PROPERTY OF MINOR CHILDREN**

17 *“Subchapter I. Purposes; Definitions.*

18 “§21-101. Purposes.

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

22 “(b) The provisions of this chapter must be construed and applied to promote its
23 purposes.”.

1 “§21-102. Definitions.

2 “For the purposes of this chapter, the term:

3 “(1) “Court” means the Superior Court of the District of Columbia, unless otherwise specified.

4 “(2) “Financial Institution” has the same meaning as set forth in section 2(a)(18) of the 21st
5 Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C.
6 Code, sec. 26-551.02(18), or a national bank as provided in 12 U.S.C. § 92a(f).

7 “(3) “Interested Person” means:

8 “(A) the mother and father of the minor;

9 “(B) any person with a duty to support the minor;

10 “(C) any person having legal care and custody of the minor;

11 “(D) the spouse of the minor;

12 “(E) if neither the mother and father of the minor is living, any adult sibling of the
13 minor;

14 “(F) the subject of a proceeding under this Chapter, after he or she reaches age 18.

15 “(G) any person who is granted the status of interested person by the court.

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

17 “(5) “Minor’s trust account” is an account created pursuant to the provisions of D.C. Code,
18 sec. 21-141.

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

22 “(7) “Trustee” means the trustee of a minor’s trust account, unless otherwise specified.”.

23 “*Subchapter II. Property or Claims of a Minor Child.*

1 “§21-111. Property of a minor child.

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

5 “(b) This section does not apply to or prohibit any transfer made pursuant to the terms
6 of D.C. Code, sec. 21-301 (District of Columbia Uniform Transfers to Minors Act), a transfer to a
7 trustee pursuant to an inter vivos trust or will of a decedent admitted to probate, or a distribution
8 of all or a portion of a decedent’s estate not requiring court approval pursuant to D.C. Code, sec.
9 20-1106.

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

12 “§21-112. Settlement of actions involving a minor child.

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

17 “§21-113. Property of a minor - \$10,000 or less.

18 “(a) If a minor is entitled to property with a net value of \$10,000 or less, a parent, legal
19 guardian, or next friend of the minor must designate a custodian to receive the property on behalf
20 of the minor. The person responsible for the payment or transfer of that property must make
21 payment to, or register the property in the name of, the designated custodian, followed in substance
22 by the words “as custodian for _____ [name of minor], under the District of Columbia

1 Uniform Transfers to Minors Act.” The custodian may act without any need for any order of the
2 court unless required by Section 21-112 or a court enters an order pursuant to Section 21-114.

3 “(b) Payment to a designated custodian pursuant to this section is full discharge of all
4 liability of the payor to the minor, the person acting on behalf of the minor, or a person entitled
5 to maintain a claim or cause of action on behalf of the minor.”.

6 “§21-114. Property of a minor - more than \$10,000.

7 “(a) If a minor is entitled to property with a net value of more than \$10,000, the court
8 must, upon petition of any interested person:

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

11 “(2) Establish a minor’s trust account pursuant to D.C. Code, sec. 21-141;

12 “(3) Establish a supplemental needs trust, or direct the placement of assets into
13 a pooled trust, pursuant to D.C. Code, Title 21, Chapter 2; or

14 “(4) Enter any other protective order with respect to property of the minor that
15 is in the best interests of the minor, pursuant to D.C. Code, sec. 21-151.

16 “(b) Payment to a guardian or trustee appointed under this section, payment authorized
17 by the court pursuant to D.C. Code, Sec. 21-151, or, if the minor is not domiciled in the District of
18 Columbia, payment made pursuant to applicable law of the domicile of the minor is full discharge
19 of all liability of the payor to the minor, the person acting on behalf of the minor, or a person
20 entitled to maintain a claim or cause of action on behalf of the minor.”.

21 *“Subchapter III. Guardian of the Property of a Minor.*

22 “§21-121. Appointment of a guardian of the property of a minor.

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

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

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

13 “(d) The petitioner, the person(s) nominated to serve as trustee, and the minor if the
14 minor is at least fourteen years of age must attend the hearing on the petition for appointment of a
15 guardian of the property of a minor. The court may excuse the presence of any person for good
16 cause.

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

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

22 “(a) The court must apply the following order of priority when appointing a guardian
23 of the property of a minor:

- 1 “(1) the parent(s) of the minor;
- 2 “(2) the person(s) nominated in the last will of a deceased parent;
- 3 “(3) the person having legal care and custody of the minor;
- 4 “(4) any adult sibling of the minor;
- 5 “(5) any heir at law of the minor;
- 6 “(6) a person with a demonstrated interest in the welfare of the minor, such as a relative or
- 7 professional advisor; or
- 8 “(7) any other person deemed appropriate by the court.

9 “(b) If there is more than one person of equal priority, the court may select the person

10 it deems best qualified to serve.

11 “(c) For good cause and in the best interests of the minor, the court may pass over a

12 person having priority and appoint a person having lower priority or no priority.”.

13 “§21-123. Bond.

14 “(a) The court may, but need not, require a guardian to furnish a bond in an amount the

15 court deems appropriate, conditioned on faithful discharge of the guardian’s duties.

16 “(b) In determining whether to require a bond from the guardian and, if so, in what

17 amount, the court must consider:

18 “(1) the relationship(s) between the guardian and the minor;

19 “(2) the personal circumstances of the guardian, such as employment, prior

20 fiduciary experience, or personal financial status;

21 “(3) the nature of the property to be held by the guardian, whether real or

22 personal or tangible or intangible;

23 “(4) the value of the property to be held by the guardian;

- 1 “(5) the expected income from the assets held by the guardian;
- 2 “(6) any restrictions on the transfer of any property held by the guardian;
- 3 “(7) the existence of alternative means of property protection;
- 4 “(8) the terms of any guardianship plan filed with the petition;
- 5 “(9) and any other factors deemed relevant by the court.

6 “(c) Absent specific good cause to the contrary, no bond may be required from a
7 guardian nominated in the will of a deceased parent admitted to probate if the will excuses or
8 waives bond.

9 “(d) No bond is required of a regulated financial institution that is appointed guardian
10 pursuant to this chapter.”.

11 “§21-124. Statutory agent.

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

15 “§21-125. Possession of property.

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

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

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

23 “§21-126. Letters of guardianship; recording.

1 “(a) Letters of guardianship are evidence of the transfer to the guardian of all assets,
2 including the right to receive income, of the minor. An order terminating a guardianship is
3 evidence of the transfer of all assets subject to the guardianship to the minor or the minor’s
4 successor(s) in interest.

5 “(b) The guardian must file or record letters of guardianship and any order terminating
6 the guardian’s appointment in the Office of the Recorder of Deeds.”.

7 “§21-127. Guardianship plan and inventory.

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

10 “(1) include an inventory of the real and personal property of the minor which
11 will be subject to the control of the guardian, valued as of the date of appointment of the
12 guardian;

13 “(2) specify the services which are necessary to manage the property held by the
14 guardian;

15 “(3) describe the manner in which the services will be provided;

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

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

21 “(6) describe generally the needs of the minor which will be met by the
22 guardian and the manner in which those needs will be met.

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

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

8 “§21-128. Accounts.

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

13 “(b) A copy of the guardian’s account must be served on those interested persons
14 designated to receive notice pursuant to D.C. Code, sec. 21-121(e). The final account of a
15 guardian of a minor who has reached age eighteen must also be served on that former minor. Any
16 interested person may file objections to a guardian’s account within twenty days after service.

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

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

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

5 “§21-129. Permissible court orders.

6 “On petition of the guardian or any other interested person, the court may enter an order
7 pursuant to D.C. Code, sec. 21-151. In determining the best interests of a minor when considering
8 a petition filed pursuant to this section, the provisions of D.C. Code, sec. 21-153 apply.”.

9 “§21-130. Powers of the guardian.

10 “(a) The guardian may, without need for prior court authorization or confirmation:

11 “(1) invest and reinvest funds of the guardianship estate, except for purchase or
12 sale of real property;

13 “(2) collect, hold and retain assets of the minor until judging that disposition of
14 an asset should be made;

15 “(3) receive additions to the property held by the guardian;

16 “(4) deposit guardianship funds in accounts in financial institutions registered
17 with, or licensed or chartered by, the federal or a state government;

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

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

22 “(7) acquire, grant or exercise an option for or relating to the acquisition or
23 disposition of an asset;

1 “(8) vote a security, in person or by general or limited proxy;

2 “(9) pay calls, assessments, and any other sums chargeable or accruing against
3 or on account of securities;

4 “(10) sell or exercise stock subscription or conversion rights;

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

8 “(12) allocate items of income or expense to either estate income or principal; as
9 provided by law, including creation of reserves out of income for depreciation,
10 obsolescence, amortization or depletion;

11 “(13) prosecute or defend actions, claims, or proceedings in any jurisdiction for
12 the protection of assets held by or for the benefit of the minor and for the protection of
13 the guardian in the performance of fiduciary duties;

14 “(14) execute and deliver all instruments that will accomplish or facilitate the
15 exercise of the powers vested in the guardian; and

16 “(15) employ and compensate persons to advise or assist in the performance of the
17 guardian’s duties and powers, including attorneys, accountants, investment advisors,
18 agents, or other service providers, and act upon any recommendation of such person(s)
19 without independent investigation.”.

20 “§21-131. Expenditure of guardianship funds for maintenance and care of the minor.

21 “(a) The guardian may, without need for prior court authorization or subsequent
22 ratification:

1 “(1) pay all costs required for the administration of the guardianship, including
2 court costs, surety bond premiums and fees, costs for recording letters of guardianship and
3 other orders and judgments, and costs for obtaining records and documents necessary for
4 the administration of the guardianship; and

5 “(2) pay reasonable administrative costs incurred by the guardian in the
6 discharge of the guardian’s duties, and expend funds in exercise of a guardian’s powers
7 provided for in D.C. Code, Sec. 21-130.

8 “(b) The guardian may, without need for prior court authorization or subsequent
9 ratification:

10 “(1) expend funds for health insurance and medical care and treatment of the
11 minor, paying for such items as care and treatment in hospitals or other health care
12 facilities; care and treatment by physicians, nurses, therapists or other health care
13 providers; prescription medication; medical equipment and supplies; rehabilitation and
14 therapeutic equipment or devices; and other reasonable costs associated with the medical
15 care of the minor; and

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

20 “In exercising his or her discretion whether to expend guardianship funds as provided for in this
21 subsection (b), the guardian must consider the duty and ability of the minor’s parents or other
22 persons to support the minor child and the availability of any sources of funds other than
23 guardianship assets.

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

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

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

13 “(1) consider whether other resources are available to pay the proposed cost or
14 expense;

15 “(2) consider the duty of support of the minor owed by the minor’s parents or
16 other persons legally responsible for the care of the minor;

17 “(3) require the parents or other persons legally responsible for the care of the
18 minor to submit financial information to the court;

19 “(4) condition the expenditure of funds in such manner as the court deems
20 appropriate, including the guardian’s receipt of funds or contributions from other sources;

21 and

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

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

6 “(g) Limitations for Specific Personal Expenditures.

7 “(1) The guardian must seek and obtain court approval before expending funds for:

8 “(A) removal of any body organ, except in exigent circumstances and
9 when necessary to preserve the minor’s life or prevent immediate serious
10 impairment of physical health;

11 “(B) experimental treatment;

12 “(C) the minor’s participation in experimental research;

13 “(D) abortion or sterilization;

14 “(E) psycho-surgery;

15 “(F) convulsive therapy;

16 “(G) a behavior modification program involving aversive intervention
17 or an education program that employs aversive intervention or corporal
18 punishment; or

19 “(H) reparative or conversion therapy intended to modify the minor’s
20 sexual orientation or gender identity.

21 “For purposes of this subparagraph, “aversive intervention” means behavior treatment
22 interventions employing specific strategies involving noxious or painful stimuli,
23 techniques or activities; withholding essential nutrition or hydration for extended periods;

1 sleep deprivation; use of chemical or mechanical restraints; or other interventions
2 characterized by extreme deviation from commonly accepted child rearing or disciplinary
3 practices.

4 “(2) The court may approve the expenditure of funds for any purposes set forth
5 in subparagraph (g)(1) only after a hearing and upon a showing, by clear and convincing
6 evidence, that such expenditure is necessary for the best interests of the minor and that no
7 alternative is reasonably available.

8 “(3) In any proceeding for approval of expenditures listed in subparagraph (g),
9 the court must appoint a guardian ad litem for the minor and, if the minor is 14 years of
10 age or older, the court must appoint counsel for the minor.”

11 *“Subchapter IV. Minor’s Trust Account.*

12 “§21-141. Appointment of trustee of minor’s trust account.

13 “(a) If a minor is entitled to property with a net value of more than \$10,000, the court,
14 on petition of an interested person, may designate a trustee of a minor’s trust account.

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

19 “(c) If consents by all interested persons are not filed with the petition, the petition,
20 along with a notice of the filing of a petition and the rights of interested persons, must be served
21 on all interested persons and on the minor if the minor is at least fourteen years of age. Service
22 shall be by personal service, certified mail with return receipt requested, or by publication if,

1 after reasonable effort, an interested person cannot be located. Service must be made not less
2 than fourteen days prior to the date of a hearing on the petition.

3 “(d) The petitioner, the person(s) nominated to serve as trustee, and the minor if the
4 minor is at least fourteen years of age must attend the hearing on the petition for appointment of a
5 trustee of a minor’s trust account. The court may excuse the attendance of any person for good
6 cause.

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

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

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

15 “§21-142. Establishment of minor’s trust account.

16 “(a) Upon the designation of a trustee of a minor’s trust account, the person responsible
17 for payment of the funds to which the minor is entitled must make payment to “ ” [name of
18 trustee], trustee under Chapter 1 of Title 21 of the District of Columbia Code, for “ ” [name of
19 minor].

20 “(b) A trustee who receives a payment pursuant to this subchapter must:

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

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

3 “(A) certificates of deposit or other interest-bearing accounts;

4 “(B) general obligations of or obligations guaranteed by the United
5 States, any State, or the District of Columbia;

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

10 “(D) stocks, corporate bonds, or mutual funds, with such investments
11 cumulatively totaling no more than thirty percent (30%) of the principal balance of
12 the trust assets at the time of investment and continuing thereafter for the term of
13 the trust, and made only in corporations or other entities which are required to file
14 annual reports with the Securities and Exchange Commission of the federal
15 government.

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

18 “§21-143. Operation of minor’s trust account.

19 “Except upon the order of the court or upon termination of a minor’s trust account, any
20 institution in which the minor’s trust account is maintained must not allow the withdrawal of any
21 of the funds except to pay income taxes, if any, to the local, state or federal government by draft
22 payable to the taxing entity, or to transfer funds to another minor’s trust account. The trustee
23 must not withdraw or expend funds from the minor’s trust account except as provided in this

1 subchapter. The financial institution in which the minor's trust account is maintained may
2 withdraw service fees and other account charges.”.

3 “§21-144. Court order for withdrawal of funds.

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

8 “(b) The court may order withdrawal of funds for:

- 9 (1) medical expenditures for the minor,
10 (2) expenditures for the education of the minor, including reasonable
11 expenditures for room and board, or
12 (3) any other purpose for which a strong showing of necessity is made.

13 If money is desired for any other reason, the trustee must file a petition for guardianship of a
14 minor in accordance with D.C. Code, sec. 21-121.

15 “(c) The order authorizing the withdrawal of funds from the minor's trust account
16 must direct the institution where the funds of the minor are on deposit to draw a check payable to
17 the order of:

- 18 “(1) the trustee for the use of the minor; or
19 “(2) the person, firm, or organization which has performed or is to perform a
20 service for or furnish goods to or for the benefit of the minor.”.

21 “§21-145. Annual certification of trustee.

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

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

3 “§21-146. Removal or substitution of trustee.

4 “(a) The court may remove a trustee pursuant to a petition for removal filed by the
5 parent, guardian, or a person interested in the welfare of the minor, or on the court’s own motion.
6 A petition to remove a trustee must include specific reasons for the removal of the trustee and a
7 request for the appointment of a successor trustee. The court may remove a trustee for good
8 cause after notice and hearing.

9 “(b) Upon the death or resignation of a trustee or removal as provided herein, the court
10 may appoint a successor trustee or enter an order pursuant to Section 21-114.

11 “(c) A successor trustee succeeds to the title and powers of the predecessor.”.

12 “§21-147. Termination of trust.

13 “(a) The trust must terminate either:

14 “(1) on the date the minor attains the age of 18 years;

15 “(2) upon the death of the minor; or

16 “(3) pursuant to a court order.

17 “(b) Except for liability for fraud or breach of fiduciary duty, payment by the trustee or
18 any institution is a complete discharge of liability of the trustee and the institution for the funds
19 paid, if payment is made:

20 “(1) to the beneficiary or the trust or a duly appointed representative of the
21 beneficiary of the trust on or after the beneficiary’s eighteenth birthday;

22 “(2) to the personal representative of the estate of the minor appointed after the
23 death of the minor; or

1 “(3) pursuant to a court order.”.

2 “*Subchapter V. Protective Order for Property of a Minor.*

3 “§ 21-151. Authorization for protective order with respect to property of a minor.

4 “(a) The court, acting in the best interests of the minor, may exercise, directly or
5 through a fiduciary, all of the powers with respect to the property and income of the minor that
6 the minor could exercise if an adult, including:

7 “(1) make gifts;

8 “(2) convey or release contingent and expectant interests in property;

9 “(3) renounce or disclaim any interest by testate or intestate succession or by
10 inter vivos transfer.

11 “(4) exercise or release powers of appointment of which the minor is donee;

12 “(5) enter into contracts;

13 “(6) create revocable or irrevocable trusts;

14 “(7) exercise options to purchase securities or other property;

15 “(8) purchase annuity or insurance policies or contracts;

16 “(9) exercise rights or elect options under insurance and annuity policies and
17 surrender such policies for cash value;

18 “(10) transfer property into any protective arrangement authorized by or
19 established pursuant to federal or District of Columbia law, including, but not limited to,
20 a program or an account holding funds for post-secondary education or an account for
21 disabled or developmentally-delayed persons; or

1 “(11) authorize any other protective arrangement, account or program having the
2 purpose of protecting the property of a minor child and maintain the child’s eligibility for
3 medical, educational, or therapeutic services or programs.

4 “(b) The court may exercise its authority pursuant to this section even if the effect of
5 such exercise may extend beyond the minor reaching age eighteen. The court may also issue
6 orders which, while intended to be in the best interests of the minor, may incidentally benefit
7 third persons.

8 “(c) The court may, but is not required to, exercise continuing supervision over an
9 account, program or other protective arrangement authorized or established pursuant to this
10 section, and may appoint a fiduciary for the purposes of continuing court supervision. If the
11 court appoints a fiduciary for continuing court supervision;

12 “(1) the court must appoint the fiduciary pursuant to the priority set out in D.C.
13 Code, sec. 21-122;

14 “(2) the court must determine whether to require a bond from the fiduciary, and
15 the amount of any bond, pursuant to D.C. Code, sec. 21-123; and

16 “(3) the court may, but is not required to, require annual accounts prepared and
17 filed pursuant to D.C. Code, sec. 21-128 or annual certifications pursuant to D.C. Code
18 sec. 21-145.”.

19 “§ 21-152. Petition for protective order.

20 “(a) A petition for authorization for a protective order entered pursuant to D.C. Code,
21 Sec. 21-151 may be filed by an interested person or by a person holding property belonging to or
22 due to the minor.

1 “(b) The court must hold a hearing on the petition, except that the court may grant the
2 petition without a hearing if, when the petition is filed, the petitioner also files written consents to
3 the petition signed by all interested persons and by the minor if the minor is at least fourteen years
4 of age.

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

11 “(d) The petitioner, the person(s) nominated to serve as guardian, and the minor if the
12 minor is at least fourteen years of age must attend the hearing on the petition for a protective order.
13 The court may excuse the presence of any person for good cause.”.

14 “§ 21-153. Determination of best interest of the minor.

15 “In determining the best interests of the minor, the court may take actions it deems
16 appropriate, including:

17 “(a) appoint counsel for the minor or other person whose interests may be affected by
18 the court’s exercise of its powers;

19 “(b) pursuant to D.C. Code, Sec. 21-161, appoint a guardian ad litem for the minor or
20 other person whose interests may be affected by the court’s exercise of its powers; or

21 “(c) pursuant to D.C. Code, Sec. 21-162, appoint a professional advisor.”.

22 “*Subchapter VI. General Provisions.*

23 “§21-161. Guardian ad litem.

1 “(a) At any point in a proceeding involving the property or claims of a minor, the court
2 may appoint a guardian ad litem to represent the interests of the minor if the court determines that
3 the interests of a minor are not represented in the litigation of a civil action or as the beneficiary
4 of an estate, trust or other fiduciary arrangement, or that otherwise available representation is or
5 may be inadequate. The court must include in its order of appointment specific reasons for
6 appointing a guardian ad litem and must specify the tasks to be performed by the guardian ad litem.

7 “(b) Unless otherwise directed by the court, the guardian ad litem must determine and
8 advocate the best interests of the minor.

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

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

13 “(e) In determining the best interests of the minor, the guardian ad litem may consider
14 general benefits accruing to the living members of the minor’s family.

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

17 “(g) The appointment of a guardian ad litem terminates upon a final determination in
18 the proceedings or litigation for which the guardian ad litem was appointed, and may be
19 terminated prior to that time in the exercise of the court’s discretion.”.

20 “§21-162. Professional advisor.

21 “(a) At any point in a proceeding involving the property or claims of a minor, the court
22 may, for good cause specified in the record of the proceeding, appoint a professional advisor to
23 advise the court on any matter or issue before the court in an independent and third party capacity.

1 The court must include in its order of appointment specific reasons for appointing a professional
2 advisor and must specify the tasks to be performed by the professional advisor. The order
3 appointing a professional advisor may set out the amount of compensation to be paid to the
4 professional advisor upon the completion of the services required under the terms of the
5 appointment.

6 “(b) The appointment of a professional advisor terminates upon a final determination
7 in the proceedings or litigation for which the professional advisor was appointed, and may be
8 terminated prior to that time in the exercise of the court’s discretion.”.

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

14 “§21-163. Fiduciary standards.

15 “(a) In the administration of the property of a minor and in the exercise of the powers
16 granted by this chapter, a guardian, trustee of a minor’s trust account, or trustee or other fiduciary
17 appointed by an order entered pursuant to D.C. Code, sec. 21-151 (all collectively referred to in
18 this section as “a fiduciary”) must act as a fiduciary and exercise the standards of care applicable
19 to trustees.

20 “(b) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and
21 managing property for the benefit of a minor, a fiduciary appointed under this chapter must act
22 with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent
23 person acting in a like capacity and familiar with such matters would use in the conduct of an

1 enterprise of a like character and with like aims; with the “circumstances then prevailing” to
2 specifically include the general economic conditions, the anticipated needs of the minor, the age
3 of the minor, and the size of the minor’s estate.

4 “(c) Unless specifically authorized by the court, a fiduciary appointed under this
5 chapter must not, either directly or indirectly:

6 “(1) purchase or acquire, in a fiduciary or individual capacity, an ownership
7 interest in any asset held by the fiduciary for the benefit of a minor; or

8 “(2) purchase or acquire, as the appointed fiduciary, an ownership interest in any
9 asset in which the fiduciary, in his or her individual capacity, holds a substantial ownership
10 interest either directly or indirectly.”.

11 The limitations of this subparagraph do not apply to an ownership interest in any asset traded on
12 a public exchange, such as stocks, bonds, or mutual funds.

13 “§21-164. Right to seek court resolution.

14 “An interested person, a guardian, a trustee of a minor’s trust account, or trustee or other
15 fiduciary appointed by an order entered pursuant to D.C. Code, sec. 21-151, a creditor of the minor,
16 a person having a direct interest in a question or matter arising in the course of the administration
17 of a guardianship estate, minor’s trust account, or protective arrangement established pursuant to
18 D.C. Code, sec. 21-151, or the Register of Wills, may at any time petition the court for an order to
19 resolve a question or controversy arising in the course of administration of a guardianship estate,
20 a minor trust account, or protective arrangement.”.

21 “§21-165. Compensation paid from property of the minor.

22 “(a) Any guardian, guardian ad litem, attorney representing a person who obtains a court
23 order entered pursuant to D.C. Code, sec. 21-114, or attorney appointed by the court to represent

1 any party to any proceeding under this chapter is entitled to reasonable compensation for services
2 rendered in any proceeding under this chapter, with such compensation paid from the property of
3 the minor. In addition, the court may authorize the payment of compensation from the property
4 of the minor for services rendered to a person acting for the benefit of the minor, even if the person
5 was not appointed by the court.

6 “(b) Compensation paid pursuant to this section from the property of the minor must be
7 approved by the court prior to being paid.

8 “(c) Any person seeking compensation to be paid from the property of the minor
9 pursuant to this section must submit a petition for compensation setting forth the following:

- 10 “(1) the nature of the services performed;
- 11 “(2) the amount of time expended for such services;
- 12 “(3) the benefit(s) accruing to the minor as a result of the services for which
13 compensation is claimed;
- 14 “(4) the basis for the rate of compensation claimed;
- 15 “(5) the nature and extent of the assets held by or for the benefit of the minor;
- 16 “(6) the annual income payable to, or for the benefit of, the minor;
- 17 “(7) the minor’s age;
- 18 “(8) the adequacy of the minor’s assets to meet the minor’s future needs; and
- 19 “(9) any other factor relevant to determining compensation.

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

22 “(c) Notice of the filing of a petition for compensation and a copy of the petition must
23 be served on the guardian, a trustee of a minor’s trust account, trustee or other fiduciary

1 appointed by an order entered pursuant to D.C. Code, sec. 21-151, any party to the proceeding
2 during the time period in which the services for which compensation is sought were rendered,
3 and any interested person.

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

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

9 “§21-166. Form and service of petitions, accounts, etc.

10 “(a) Any petition for an order entered pursuant to D.C. Code, sec. 21-114, guardianship
11 plan and inventory, account, or certification filed under this chapter must be verified in the form
12 provided by the Superior Court Probate Division rules.

13 “(b) Except for a petition for an order entered pursuant to D.C. Code, sec. 21-114, any
14 petition, notice of hearing on a petition, guardianship plan and inventory, account, or other
15 pleading filed with the court must be served on all interested persons in the same manner as a
16 motion filed pursuant to the Superior Court Civil Rules.

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

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

21 “§21-167. Standard of proof.

1 "In proceedings under this chapter, the petitioner or moving party has the burden of
2 proof, by a preponderance of the evidence, unless a higher standard of proof is specifically
3 required."

4 "§21-168. Existing guardianship cases.

5 "Except as provided in D.C. Code, sec. 21-165(e), the administration of guardianships of
6 minors established prior to the effective date of this chapter shall be governed by the provisions of
7 this chapter."

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

9 **CHAPTER 2. SUPPLEMENTAL NEEDS TRUSTS**

10 Sec.

- 11 21-201. Purposes; rules of construction.
12 21-202. Definitions.
13 21-203. Establishment of supplemental needs trust.
14 21-204. Priority for appointment of trustee.
15 21-205. Bond.
16 21-206. Guardian ad litem.
17 21-207. Professional advisor.
18 21-208. Inventories and Accounts.
19 21-209. Compensation.
20 21-210. Form and service of petitions, accounts, etc.
21 21-211. Construction of supplemental needs trust.
22 21-212. Administration of trust.
23 21-213. Standard of proof.

1 21-214. Self-Settled Trusts.

2 21-215. Existing trusts.

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

4 **CHAPTER 2. SUPPLEMENTAL NEEDS TRUSTS**

5 “§21-201. Purposes; Rules of Construction.

6 “(a) The purposes of this chapter are to:

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

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

12 “(b) This chapter must be liberally construed and applied to promote its purposes.”

13 “§21-202. Definitions.

14 “For purposes of this chapter, the term:

15 “(1) “Beneficiary” includes, where appropriate, the intended beneficiary of a supplemental needs
16 trust.

17 “(2) “Charitable Organization” has the same meaning as set forth in United States Internal
18 Revenue Code, 26 U.S.C. sec. 501(c)(3).

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

21 “(4) “Financial Institution” has the same meaning as set forth in section 102(18) of the general
22 provisions of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C.
23 Law 13-308; D.C. Code, sec. 26-551.02(18).

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

8 “(6) “Incapacitated Person,” has the same meaning as set out in D.C. Code sec. 21-2011(11).

9 “(7) “Mentally Incapacitated Person” means an incapacitated person whose incapacity results
10 from mental illness, mental injury or mental disability.

11 “(8) “Interested Person” means:

12 “(A) the beneficiary of a supplemental needs trust;

13 “(B) the spouse of the beneficiary;

14 “(C) the mother and father of the beneficiary, if the beneficiary is a minor or if
15 there is no spouse;

16 “(D) the adult children of the beneficiary, if there is no spouse;

17 “(E) any person having care and custody of the beneficiary;

18 “(F) any person with a duty to support the beneficiary;

19 “(G) if there is no spouse, mother or father, or adult child of the beneficiary,
20 any adult sibling of the beneficiary;

21 “(H) any person appointed representative payee of the beneficiary by the Social
22 Security Administration;

1 “(I) the District of Columbia, if the beneficiary is receiving government benefits
2 or assistance from the District; and

3 “(J) any person who is granted the status of interested person by the court.

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

6 “§21-203. Establishment of supplemental needs trust.

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

8 (1) a disabled adult who is not mentally incapacitated;

9 (2) an interested person, in the case of a minor or a disabled adult; or

10 (3) a person holding property belonging to or due to a minor or disabled adult.

11 “(b) The court may grant the petition without a hearing if, when the petition is filed, the
12 petitioner also files written consents to the petition signed by all interested persons; except that
13 consents from a minor less than fourteen years of age or a mentally incapacitated adult shall not
14 be required.

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

21 “(d) The hearing on the petition for the establishment of a supplemental needs trust shall
22 be attended by the petitioner, the person(s) nominated to serve as trustee, a representative pursuant

1 to D.C. Code sec. 19-1303.05, if any, and the beneficiary unless the beneficiary is less than
2 fourteen years of age. The court may excuse the presence of any person for good cause.

3 “(e) The court may grant the petition upon a showing that the proposed supplemental
4 needs trust is in the best interests of the beneficiary and meets the requirements of 42 U.S.C. sec.
5 1396(d)(4)(A).

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

10 “(g) In lieu of establishing a supplemental needs trust that meets the requirements of 42
11 U.S.C. sec. 1396(d)(4)(A), upon the request of the petitioner or of any interested person acting on
12 behalf of a minor or mentally incapacitated adult, the court may direct the placement of assets into
13 a pooled trust that complies with the requirements of 42 U.S.C. sec. 1396(d)(4)(c). In that event,
14 the court’s supervision of the matter terminates with the placement of assets into a pooled trust.”.
15 “§21-204. Priority for appointment of trustee.

16 “(a) The court must apply the following order of priority when appointing a trustee of
17 a supplemental needs trust:

18 “(1) a person designated by the beneficiary, if the beneficiary is a disabled adult
19 who is not mentally incapacitated;

20 “(2) a person designated by the beneficiary in a durable power of attorney;

21 “(3) the spouse, parent, adult child, or guardian of the beneficiary; or

22 “(4) any other person, financial institution, or charitable organization deemed
23 appropriate by the court.

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

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

5 “§21-205. Bond.

6 “(a) The court may, but need not, require a trustee to furnish a bond in an amount the
7 court deems appropriate, conditioned on faithful discharge of the trustee’s duties.

8 “(b) In determining whether to require a bond from the guardian and, if so, in what
9 amount, the court must consider:

10 “(1) the relationship(s) between the trustee and the beneficiary;

11 “(2) the personal circumstances of the trustee, such as employment, prior
12 fiduciary experience, or personal financial status;

13 “(3) the nature of the property to be held by the trustee, whether real or
14 personal or tangible or intangible;

15 “(4) the value of the property to be held by the trustee;

16 “(5) the expected income from the assets held by the trustee;

17 “(6) any restrictions on the transfer of any property held by the trustee;

18 “(7) the existence of alternative means of property protection; and

19 “(8) and any other factors deemed relevant by the court.

20 “(b) No bond is required of a regulated financial institution or charitable organization
21 regularly engaged in the business of trust administration that is appointed trustee pursuant to this
22 chapter.”.

23 “§21-206. Guardian ad litem.

1 “(a) At any point in a proceeding involving the establishment or administration of a
2 supplemental needs trust, the court may, for good cause specified in the record of the proceeding,
3 appoint a guardian ad litem to represent an interest of the beneficiary of the trust if the court
4 determines that an interest of such person is not represented in the litigation of a civil action or as
5 the beneficiary of an estate, trust or other fiduciary arrangement, or that otherwise available
6 representation is or may be inadequate. The court must include in its order of appointment specific
7 reasons for appointing a guardian ad litem and must specify the tasks to be performed by the
8 guardian ad litem.

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

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

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

15 “(e) In determining the best interests of the beneficiary, the guardian ad litem may
16 consider general benefits accruing to the living members of the beneficiary’s family.

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

19 “(g) The appointment of a guardian ad litem terminates upon a final determination in
20 the proceedings or litigation for which the guardian ad litem was appointed, and may be
21 terminated prior to that time in the exercise of the court’s discretion.”.

22 “§21-207. Professional advisor.

23

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

9 “(b) The appointment of a professional advisor terminates upon a final determination
10 in the proceedings or litigation for which the professional advisor was appointed, and may be
11 terminated prior to that time in the exercise of the court’s discretion.”.

12
13 “(c) A professional advisor may be compensated pursuant to the order appointing the
14 professional advisor, pursuant to a court order approving the settlement of the proceeding, or in
15 response to a petition for fees. The compensation may be paid from the proceeds of any recovery,
16 from the estate of the beneficiary of a supplemental needs trust, or from the assets which are in
17 dispute or whose status is to be determined as a result of the proceeding.”.

18 “§21-208. Inventories and Accounts.

19 “(a) The court may, but need not, require a trustee of a supplemental needs trust to
20 account to the court for the administration of the trust. If the trustee is required to account to the
21 court, the trustee must file an inventory and investment plan not more than three months after
22 appointment, and must account at least annually within sixty days after the anniversary date of

1 appointment, and at such other times as the court may direct. The trustee must file a final account
2 within sixty days after the death of a beneficiary or termination of the trust.

3 “(b) The trustee’s inventory and investment plan must:

4 “(1) include an inventory of the real and personal property which will be held by
5 the trustee of the supplemental needs trust, valued as of the date of appointment of the
6 trustee;

7 “(2) specify the services which are necessary to manage the property of the
8 trust;

9 “(3) describe the manner in which the services will be provided;

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

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

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

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

22 “(e) Subject to appeal or vacation within the time permitted, an order entered after notice
23 approving a final account adjudicates all previously unsettled liabilities of the trustee to the

1 beneficiary or beneficiary's successor(s) in interest relating to the trust, except for liability for
2 fraud or breach of fiduciary duty.

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

7 “§21-209. Compensation.

8 “(a) Any trustee, guardian ad litem, attorney representing any party to a proceeding
9 under this chapter, or any other person appointed by the trust instrument to provide any service is
10 entitled to compensation for services rendered in any proceeding under this chapter.
11 Compensation may be paid from the assets of the supplemental needs trust or, with respect to a
12 petition for establishment of a supplemental needs trust, from assets held by or for the benefit of
13 the proposed trust beneficiary.

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

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

22 “(d) Except for trustee's compensation paid pursuant to a published fee schedule or
23 consistent with the terms of the trust, compensation paid from the assets of a supplemental needs

1 trust or from assets held by or for the benefit of a beneficiary must be approved by the court prior
2 to being paid.

3 “(e) Any person seeking compensation pursuant to subsection (d) must submit a
4 petition for compensation setting forth the following:

5 “(1) the nature of the services performed;

6 “(2) the amount of time expended for such services;

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

9 “(4) the basis for the rate of compensation claimed;

10 “(5) the nature and extent of the assets of the supplemental needs trust or assets
11 held by or for the benefit of the beneficiary;

12 “(6) the annual income of the supplemental needs trust;

13 “(7) the beneficiary’s age;

14 “(8) the adequacy of the assets of the supplemental needs trust to meet the
15 beneficiary’s future supplemental needs; and

16 “(9) any other factor relevant to determining compensation.

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

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

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

3 “§21-210. Form and service of petitions, accounts, etc.

4 “(a) Any petition, inventory, or account filed under this chapter must be verified in the
5 form provided by the Superior Court Probate Division Rules.

6 “(b) Except for a petition for the establishment of a supplemental needs trust, any
7 petition, notice of hearing on a petition, inventory and investment plan, account, or other pleading
8 filed with the court must be served on all interested persons in the same manner as a motion filed
9 pursuant to the Superior Court Civil Rules.

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

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

14 “§21-211. Construction of supplemental needs trust.

15 “(a) A supplemental needs trust must be construed as follows.

16 “(1) Neither principal nor income, prior to distribution by the trustee to the
17 beneficiary, is “available” to the beneficiary.

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

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

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

8 “§21-212. Administration of trust.

9 “A supplemental needs trust established pursuant to this Chapter is governed by the
10 provisions of Chapter 13 of Title 19 of the District of Columbia Code (“Uniform Trust Code”),
11 except that the provisions of this Chapter or the terms of a specific supplemental needs trust
12 supercede any contrary provision of Chapter 13 of Title 19 of the District of Columbia Code.”.

13 “§21-213. Standard of proof.

14 “In proceedings under this chapter, the petitioner or moving party has the burden of
15 proof, by a preponderance of the evidence.”.

16 “§21-214. Self-Settled Trusts.

17 “This chapter does not apply to the establishment, funding, administration, interpretation
18 or construction of any trust for which no judicial action is required ~~in order~~ to establish or fund
19 that trust.”.

20 “§21-215. Existing trusts.

21 “A trust created prior to the effective date of this chapter is not disqualified from
22 consideration as a supplemental needs trust if that trust was created for a beneficiary who was

1 eligible for public benefits or assistance or such beneficiary previously received public benefits
2 or assistance.”.

3 Section 2: Title 16 of the District of Columbia Code is amended as follows:

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

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

7 **CHAPTER 2. GUARDIAN OF THE PERSON OF A MINOR CHILD**

8 Sec.

9 16-201. Applicability of this chapter.

10 16-202. Care and custody of minor child.

11 16-203. Testamentary guardian of minor child.

12 16-204. Probate of will of deceased parent.

13 16-205. Certificate of testamentary guardianship.

14 16-206. Court appointment of a guardian of a minor.

15 (c) By adding new Sections 16-201 through 16-206, to read as follows:

16 **“TESTAMENTARY GUARDIAN OF THE PERSON OF A MINOR CHILD**

17 “§ 16-201. Applicability of this chapter.

18 “This chapter applies if the last surviving parent of a minor child was domiciled in the
19 District of Columbia at the time of the death of that parent.”.

20 “§ 16-202. Care and custody of minor child.

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

1 “§ 16-203. Testamentary guardian of minor child.

2 “Unless prohibited by agreement between both parents of a minor or by court order, the
3 surviving parent of a minor may appoint by last will and testament one or more guardians and
4 successor guardians of the person of his or her minor child.”

5 “§ 16-204. Probate of will of deceased parent.

6 “(a) This section is applicable only if a proceeding under D.C. Code, Title 20, has not
7 been commenced and the last-deceased parent did not own any property in the District of Columbia
8 required to be administered under Title 20.

9 “(b) If probate of the will of the last-deceased parent is needed only for the purpose of
10 obtaining testamentary guardianship of the minor, the person(s) appointed by the last will as
11 guardian(s) of the person of a minor child must file a petition for probate of the last-deceased
12 parent’s will. The applicable provisions of D.C. Code, Title 20 and Superior Court Probate Rules
13 govern proceedings under that petition.”.

14 “ § 16-205. Certificate of testamentary guardianship.

15 “(a) Upon the admission to probate of the will of the last-deceased parent, the Clerk of
16 the Court must issue to the person(s) appointed by that will a certificate of testamentary
17 guardianship of the person of the minor.

18 “(b) A certificate of testamentary guardianship is evidence of the recognition of the
19 appointment of a testamentary guardian and the testamentary guardian’s legal authority to act as
20 guardian of the person of the minor for all purposes.

21 “(c) A testamentary guardian has the rights and responsibilities set forth in D.C. Code
22 sec. 16-2389(a). The provisions of D.C. Code sec. 16-2389(b) through (d) apply to a testamentary
23 guardianship.”.

1 “§16-206. Court appointment of a third party guardian of the person of a minor.

2 “(a) Notwithstanding the recognition of a testamentary guardian, a third party may bring
3 an action for third party custody pursuant to D.C. Code, Title 16, Chapter 8A; provided, however,
4 that the testamentary guardianship is presumed to be in the best interests of the minor, with that
5 presumption rebuttable only by clear and convincing evidence.”.

6 “(b) If a minor has neither a natural nor testamentary guardian of his or her person, any
7 person may bring an action for custody pursuant to D.C. Code, Title 16, Chapter 8A. The
8 provisions of D.C. Code § 16-831.02(a) do not apply to such action”.

9 Sec. 3. Fiscal impact statement.

10 The Council adopts the fiscal impact statement in the committee report as the fiscal
11 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
12 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

13 Sec. 4. Effective date.

14 This act shall take effect following approval by the Mayor (or in the event of veto by the
15 Mayor, action by Council to override the veto), a 60-day period of Congressional review as
16 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
17 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
18 Columbia Register.