

**CIP CHILDREN'S COURT IMPROVEMENT PROGRAM**  
WISCONSIN

## Minor Guardianship

Judge Jason Rossell

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### Chapter 48 vs. Chapter 54

Differences	Chapter 48	Chapter 54
CHIPS/JIPS finding	✓	
Child must live with guardian	✓	
Subsidized payments	✓	
Temporary guardianship		✓
If objection, <i>Barstad</i> standard		✓
Procedure for parent to request termination	✓	?

CIP 2

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### What Does Permanent Guardianship Get You Chapter 48 or 54?

- 1. Rights and duties of guardians:**
  - o To provide and make decisions about food, clothing, shelter, dental care, medical care, education, and supervision for the child
  - o To decide about driver's license, marriage, military enlistment
  - o To allow the parents reasonable visitation
- 2. Rights and duties retained by parents:**
  - o Parental rights including reasonable visitation

CIP 3

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## CHAPTER 48 GUARDIANSHIPS (S. 48.977)

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### Appointing a Ch. 48 Guardian

- Must be an underlying CHIPS or JIPS case pending/order
- Child is placed out of the home with the proposed guardian
- Proposed guardian is willing and able to serve as guardian for an extended period of time or until the child's 18<sup>th</sup> birthday
- Child's parents are neglecting, refusing or unable to carry out the duties of a guardian
- Reunification is unlikely or contrary to the best interests of the child
- It is not in the best interest of the child to terminate parental rights



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### Statutory Procedures Provided For:

- Who May File a Petition
- Contents of the Petition (JC-1605)
- Who, When, and How Everyone Must be Served
  - WICWA cases: notice to the parents, Indian custodian (if any), and Tribe must be provided by registered mail with return receipt requested at least 10 days prior to the first hearing
- Contents of the Court Report filed by the Agency



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## Plea Hearing

- Must occur within 30 days of the guardianship petition filing
- At the hearing, the parties must enter a plea:
  - **If uncontested**, court can proceed to Disposition immediately or within 30 days
  - **If Contested**, schedule a fact-finding hearing within 30 days after the plea hearing
- Parent can be defaulted for failure to appear

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## Fact-Finding Hearing

If the Petition is Contested:

- Any party may present evidence relevant to the issue of whether the conditions for guardianship are met
- The standard is clear and convincing evidence
- Rules of Evidence apply - Wis. Stat. 48.299(4)(a)
- If burden of proof is met, proceed to Disposition immediately or within 30 days of the fact-finding hearing

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## Dispositional Hearing

- Any party may present evidence, including expert testimony, relevant to disposition
- Rules of Evidence do not apply
- Within 10 days after the dispositional hearing the Court shall:
  - Dismiss the petition if the court determines that appointment of the person as the child's guardian is not in the best interests of the child
  - Appoint the child's guardian, if the court determines that such an appointment is in the best interests of the child

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## Dispositional Factors

- **The best interests of the child shall be the prevailing factor to be considered by the court.**
- *The court shall also consider the following factors:*
  - Whether the proposed guardian(s) would be a suitable guardian of the child
  - Willingness and ability of the person to serve as guardian for an extended period of time/until age 18
  - Wishes of the child
  - If the child is an Indian child, the order of placement preference unless the court finds good cause for departing from that order



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## Subsidized Guardianships

- Contractual agreement between child welfare agency and proposed guardian to receive payments
- Criteria set forth in § 48.623
- Successor guardian, if any, must be named in the subsidized guardianship agreement
- Requires the underlying CHIPS or JIPS case to close



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## Post-Disposition Matters

- **Revision to Order if:** a substantial change in circumstances and that the proposed revision would be in the best interests of the child
- **Termination of Order** on the Request of a Parent if:
  - there has been a substantial change in circumstances
  - the parent is willing and able to carry out the duties of a guardian
  - the proposed termination of guardianship would be in the best interests of the child
- **Removal of Guardian if:**
  - The guardian is or has been neglecting, refusing or unable to discharge the guardian's trust
  - OR the guardian resigns AND the court accepts the resignation
- JC-1628 – Petition to Terminate or Revise Guardianship Order



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## CHAPTER 54 GUARDIANSHIPS

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### Statutory Procedures Provided For:

- Who May File a Petition: Anyone
- Contents of the Petition (GN-3290)
  - Statement of Acts (GN-3140)
  - UCCJEA Affidavit (GF-150)
- Who, When, and How Everyone Must be Served
  - Affidavit of Service must be executed (GN-3120)



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### Appointing a Ch. 54 Guardian

- A hearing must be held within 90 days of the filing of the petition
- Clear and convincing evidence that the proposed ward is a minor
- Federal Indian Child Welfare Act (ICWA) applies to Chapter 54 guardianships
  - Notice, right to counsel, active efforts, placement preferences, serious damage finding, etc.



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## Dispositional Factors

*Barstad v. Frazier* - 118 Wis. 2d 549, 348 N.W.2d 479 (1984)

- Relationship between parent and child is a constitutionally protected right
- If a parent objects to the guardianship, the court must find the parent is unfit, or unable to care for child, or that there are compelling reasons for denying custody to the parent
  - Compelling reasons include: abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, or other similar extraordinary circumstances that would drastically affect the welfare of the child
  - If compelling reasons, court may award custody to a third party guardian if it is in the best interests of the child



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## Other Dispositional Matters

- Court can appoint a Standby or Successor Guardian at any time
- Upon request, the court can review the conduct of the guardian
- Guardianship can be terminated
  - No specific procedures - reverse Barstad?



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## Minor Guardianship Bill 2019 Assembly Bill 47

- Passed out of Assembly committee on September 10, 2019
- Moves minor guardianship (of person) from Ch. 54 to Ch. 48
  - Sec. 48.977 guardianships remain unchanged
- Creates four types of guardianship:
  - Full
  - Limited
  - Temporary (360 days)
  - Emergency (60 days)



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## Minor Guardianship Bill 2019 Assembly Bill 47

- Provides procedures for post-appointment matters:
  - Removal of guardian for cause
  - Modification of guardianship
  - Successor guardian
  - Termination of guardianship on request of child or parent
    - Substantial change in circumstances, parent is fit, and termination in child's best interests
    - Burden on child/parent requesting termination



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## Delegation of Parental Power

Wis. Stats. 48.979

- Only a parent with legal custody may execute this form
- Judicial approval required when:
  - Child is currently under juvenile court jurisdiction
  - Indian child
  - Delegation to non-relative for longer than 1 year
- May be helpful in certain cases where juvenile court jurisdiction no longer needed but parent is not caring for the child



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Chapter 48 Guardianship E-Learning Activity  
[www.wiccuptraining.com](http://www.wiccuptraining.com)

Any questions?

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