

Proposed Guardianship Legislation
2019 Assembly Bill 47
Creating Ch. 48 Subchapter XX Sec. 48.9795

- I. Overview
 - a. Chapter 54 minor guardianships of the person are removed from Chapter 54 and placed in Chapter 48
 - i. Four types of guardianship: full, limited, temporary, and emergency
 - ii. Incorporates requirements of the Wisconsin Indian Child Welfare Act
 - iii. Guardianship of minor's estate remains in Ch. 54 (consolidation permitted)
 - b. Impact of a § 48.9795 Guardianship petition or proceeding
 - i. A petitioner may not may not seek to change an existing juvenile court order
 - ii. A dispositional order may not change the placement of the child under supervision by the Court. The Court must suspend a §48.9795 Guardianship proceeding until the juvenile court case is resolved.
 - iii. The Court may suspend a §48.9795 Guardianship proceeding pending the outcome of paternity proceeding, if no undue delay to the paternity proceeding will result
 - c. Two Step Process: Fact-Finding and Disposition
 - i. Fact-finding: The Court shall determine whether the petitioner has proven the allegations in the guardianship petition by clear and convincing evidence
 - ii. Disposition: If allegations proven, the Court must consider the specified dispositional factors in determining the appropriate disposition
 - iii. Dispositional Options (Standard= Best Interests of the Child)
 - 1. Order the guardianship and issue letters of guardianship
 - 2. Dismiss the Petition
 - 3. Adjourn the hearing for 30 days to allow for the nomination of a new proposed guardian
 - d. Visitation
 - i. The Court may provide reasonable rules of parental visitation (guardian's decision presumed to be in child's best interest)
 - ii. The Court may grant reasonable visitation privileges to grandparents and stepparents, if the surviving parent has notice of the hearing and if the visitation is in the child's best interests
- II. Role of the Guardian ad Litem
 - a. Duties and responsibilities generally required of a GAL under §48.235(3)(a)
 - b. Conduct a *diligent* investigation sufficient to represent the child's best interests in court
 - i. *As appropriate to the circumstances*, the investigation may include, personally or through a trained designee, meeting with or observing the child, meeting with the proposed guardian and interested persons, and visiting the homes of the child and proposed guardian
 - c. Inspect reports and records related to the child, the family, and proposed guardian
 - d. Attend all court proceedings, present evidence concerning the child's best interest (if necessary), and make clear and specific recommendations to the court

- III. Post-Appointment Matters
 - a. The guardian must immediately notify the Court of any change in the address of the guardian or child AND must file an annual report on the condition of the child
 - i. The report shall include the location of the child, the health condition of the child, and any recommendations regarding the child
 - b. A successor guardian may be appointed at the time of the original appointment or after a guardian has died, resigned (with court approval), or been removed
 - c. The Court may remove the guardian or impose other remedies for cause
 - i. Grounds for Removal
 - 1. Abuses or neglects the child or knowingly permits others to do so
 - 2. Fails to disclose information that would have prevented his/her appointment
 - 3. Fails to follow or comply with the court's order
 - 4. Fails to perform any of his or her duties as a guardian
 - ii. Remedies
 - 1. Remove the guardian
 - 2. Remove the guardian and appoint successor guardian
 - 3. Enter any other order that may be necessary or appropriate to compel the guardian to carry out the guardian's duties, including an order setting reasonable rules of visitation for the child
 - 4. Modify the duties and authority of the guardian
 - 5. Require the guardian to pay any costs of the proceeding, including costs of service and attorneys fees, if the court finds the guardian's conduct was egregious
 - d. The Court may modify the guardianship where the Court finds:
 - i. A substantial change in circumstances, AND
 - ii. It is in the best Interests of the child
- IV. Termination of Guardianship
 - a. Child reaches age 18, marries, is adopted, or dies
 - b. Court sets an expiration date and that time has expired
 - c. Child's residence changes to another state and guardian appointed in the new state
 - d. Guardian dies, resigns (with court approval), or is removed for cause and a successor guardian is not appointed
 - e. The parent or child petitions the court and proves all of the following:
 - i. That there is a substantial change in circumstances since the entry of the last order affecting the guardianship,
 - ii. The parent is fit, willing, and able to carry out the duties of the guardian or that no compelling circumstances exist demonstrating a guardianship is necessary, AND
 - iii. Termination of the guardianship is in the child's best interests