

**Minor Guardianship Legislation**  
**2019 Wisconsin Act 109**  
**(Effective August 1, 2020)**

- I. Overview
  - a. Chapter 54 minor guardianships of the person (private guardianships) are removed from Chapter 54 and placed in Chapter 48 by creating §48.9795.
    - 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. The Guardianship petition may not seek to change an existing juvenile court order.
  - c. The Court must suspend a §48.9795 Guardianship proceeding when filed during the pendency of a juvenile court case until the juvenile court case is resolved. 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.
  - d. The Court shall determine whether the petitioner has proven the allegations in the Guardianship petition by clear and convincing evidence.
  - e. If the petitioner proves the allegations in the petition, the Court must consider the specified dispositional factors in determining the appropriate disposition.
    - i. If appointment is in the child's best interest, the Court shall order the guardianship and issue letters of guardianship.
    - ii. If the appointment of the proposed guardian is not in the child's best interests, the Court shall dismiss the petition.
  - f. The guardianship order may not change the placement of a child under the supervision of a court pursuant to ss. 48.13, 48.133, or 48.14(1) to (10) or (12), or Ch. 938.
  - g. The Court may provide reasonable rules of parental visitation (guardian's decision presumed to be in child's best interest).
- 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 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.

	<b>Full</b>	<b>Limited</b>	<b>Temporary (not to exceed 360 days)</b>	<b>Emergency (not to exceed 60 days)</b>
<b>Finding</b>	<p>The child's parents are unfit, unwilling, or unable to provide for the care, custody and control of the child <u>or</u> other compelling facts and circumstances that demonstrate a full guardianship is necessary</p> <p>And</p> <p>Dispositional Factors: Nominations, opinions, fitness of proposed guardian, placement preferences for an Indian child, best interests of the child</p>	<p>The parents need assistance in providing for the care, custody and control of the child. Parent may retain certain decision-making powers and may share placement with guardian</p> <p>And</p> <p>Dispositional Factors: Nominations, opinions, fitness of proposed guardian placement preferences for an Indian child, best interests of the child</p>	<p>The child's particular situation, including the inability of the child's parents to provide for the care, custody and control of the child for a temporary period of time, requires appointment of a temporary guardian</p> <p>And</p> <p>Dispositional Factors: Nominations, opinions, fitness of proposed guardian, placement preferences for an Indian child, best interests of the child</p>	<p>The child's welfare requires immediate appointment of an emergency guardian</p>
<b>Duties and Authority</b>	<p>Authority granted to other guardians under Ch. 48 <u>and</u> visitation, move out of state with child, duty to report change in address to court immediately and report status update to court annually</p>	<p>Court must specify the duties; may allow parent to retain certain decision-making powers and allow shared physical custody, if in the child's best interest</p>	<p>Court must limit the authority to those acts reasonably related to the need for a guardianship</p>	<p>Court must limit authority to those acts related to the reasons for the appointment</p>
<b>Procedure</b>	<p>Petition by any person or child (12 or older), hearing within 45 days, fact-finding/ disposition within 30 days or immediately</p> <p>Report of Guardian due 96 hours prior to hearing</p>	<p>Petition by any person or child (12 or older), hearing within 45 days, fact-finding/ disposition within 30 days or immediately</p> <p>Report of Guardian due 96 hours prior to hearing</p>	<p>Petition by any person or child (12 or older), hearing within 45 days, fact-finding/ disposition within 30 days or immediately</p> <p>Report of Guardian due 96 hours prior to hearing</p>	<p>Petition by any person, hearing as soon as possible</p> <p>Court may, without a hearing, issue an order that remains in effect until the emergency guardianship hearing</p>